Young, Deirdre R

From: Reynolds, William <william_f_reynolds@nps.gov>
Sent: Saturday, October 05, 2013 8:59 AM
To: McDowall, Lena
Cc: Shawn Benge; Mark Woods; Michael Litterst; Melissa Lackey; Suzanne Waldron; Dana Soehn; David Horne; Steve Stinnett
Subject: Re: Change to talking points re: sufficient notice
Attachments: BLRI - Pisgah Inn Tlk Pts - 100513 update.docx

I updated the attached Pisgah Talking points - changed dates, and reordered some of the messages - no substantive or context changes
Bill

On Fri, Oct 4, 2013 at 6:08 PM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:
Bill -

Melissa Lackey in SOL [redacted] (b) (5) Please let me know if you have any questions.

Thanks,

Lena

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

--
William F. Reynolds
Assistant Regional Director
National Park Service Southeast Region
404-507-5612

Blue Ridge Parkway – Pisgah Inn
DRAFT Talking Points

(b) (4)

[redacted]

(b) (5)

(b) (5)

[redacted]

DRAFT

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Friday, October 04, 2013 6:08 PM
To: Reynolds, William
Cc: Shawn Benge; Mark Woods; Michael Litterst; Melissa Lackey
Subject: Change to talking points re: sufficient notice
Attachments: BLRI - Pisgah Inn Tlk Pts - 100413 rev (2)_mlackey.docx

Bill -

Melissa Lackey in SOL [redacted] Please let me know if you have any questions.

Thanks,

Lena

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Blue Ridge Parkway – Pisgah Inn
DRAFT Talking Points
October 3, 2013

(b) (5)

(b) (5)

[redacted]

Young, Deirdre R

From: Mark Woods <mark_woods@nps.gov>
Sent: Friday, October 04, 2013 6:00 PM
To: McDowall, Lena
Cc: Shawn Benge; Steve Stinnett
Subject: Re: Response to your letter concerning Pisgah Inn

Thank you.

Mark H. Woods
Superintendent
Blue Ridge Parkway

Sent from my iPad

On Oct 4, 2013, at 5:54 PM, "McDowall, Lena" <lena_mcdowall@nps.gov> wrote:

VIA ELECTRONIC MAIL: NO HARD COPY TO FOLLOW

United States Department of the Interior
National Park Service
1849 C St NW
Washington, DC 20240

Mr. Kevin R. Garden
The Garden Law Firm, P.C.
901 N. Pitt Street, Suite 905
Alexandria, VA 22314

Re: Concession Contract BLRI003-04

Dear Mr. Garden

We are writing in response to your email of October 4, 2013 to Steve Stinnett, Chief Ranger of Blue Ridge Parkway, concerning the adequacy of notice to your client, Parkway Inn, Inc., d/b/a Pisgah Inn, to cease doing business in connection with the government shutdown.

Pursuant to 36 CFR 1.5, all units of the National Park System nationwide were closed to public visitation and use on October 1, 2013. This closure was necessitated by a lapse in funds appropriated by the United States Congress for the operation of the National Park System and will remain in effect until funding is restored. I am advised that your client was notified of the closure determination on October 1, 2013 via email by Kathy Tustanowski, Chief of the Division of Business Administration for Blue Ridge Parkway, and subsequently another email notice was sent to Bruce O'Connell by Ms. Tustanowski regarding Phase 2 of the shutdown applicable to lodging services. The National Park Service is of the view that the email notices constituted sufficient notice to your client and it should cease operations immediately, if it has not already done so. The language of 36 C.F.R. 1.5 does not require that your client also receive a copy of the closure determination decision itself for the notice to be effective. Nevertheless, I enclose a copy of the Director's determination for your client's reference.

In any case, as the October 1 notice articulates, a national closure was necessary to maintain public health and safety in units of the National Park System and to protect park resources and values during the shutdown period. In the normal course of operations, park activities necessarily require the support of numerous National Park Service functions: park operations do not function independently of contracting support; visitor protection cannot exist without the support of payroll personnel; concessioners and volunteers cannot conduct activities without management oversight. With parks closed to the public and its inability to provide necessary oversight, consistent with the provisions of its concessions contracts, the NPS has had to close all concession facilities in the National Park System.

Sincerely,

/s/ Lena McDowall

SIGNED ORIGINAL ON FILE

Lena McDowall
Associate Director, Business Services

cc: Mr. Bruce O'Connell
Mr. Shawn Benge
Mr. Mark Woods
Mr. Steve Stinnett

<Natl Park System Closure Determination and Notice 2013-10-01.pdf>

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Friday, October 04, 2013 5:54 PM
To: kevin@gardenlawfirm.com
Cc: BOconn8876@aol.com; Shawn Benge; Mark Woods; Steve Stinnett
Subject: Response to your letter concerning Pisgah Inn
Attachments: Natl Park System Closure Determination and Notice 2013-10-01.pdf

VIA ELECTRONIC MAIL: NO HARD COPY TO FOLLOW

United States Department of the Interior
National Park Service
1849 C St NW
Washington, DC 20240

Mr. Kevin R. Garden
The Garden Law Firm, P.C.
901 N. Pitt Street, Suite 905
Alexandria, VA 22314

Re: Concession Contract BLRI003-04

Dear Mr. Garden

We are writing in response to your email of October 4, 2013 to Steve Stinnett, Chief Ranger of Blue Ridge Parkway, concerning the adequacy of notice to your client, Parkway Inn, Inc., d/b/a Pisgah Inn, to cease doing business in connection with the government shutdown.

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In any case, as the October 1 notice articulates, a national closure was necessary to maintain public health and safety in units of the National Park System and to protect park resources and values during the shutdown period. In the normal course of operations, park activities necessarily require the support of numerous National Park Service functions: park operations do not function independently of contracting support; visitor protection cannot exist without the support of payroll personnel; concessioners and volunteers cannot conduct activities without management oversight. With parks closed to the public and its inability to provide necessary oversight, consistent with the provisions of its concessions contracts, the NPS has had to close all concession facilities in the National Park System.

Sincerely,

/s/ Lena McDowall

SIGNED ORIGINAL ON FILE

Lena McDowall
Associate Director, Business Services

cc: Mr. Bruce O'Connell
Mr. Shawn Benge
Mr. Mark Woods
Mr. Steve Stinnett

United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

Office of the Director

National Park System Closure Determination and Notice

Pursuant to 36 C.F.R. § 1.5, effective at 12:01 a.m. on October 1, 2013, all units of the National Park System nationwide are closed to public visitation and use, subject to the conditions and exceptions described below. This national closure determination and notice is necessitated by a lapse in funds appropriated by the United States Congress for the operation of the National Park System and will remain in effect until funding is restored. The period of time during which appropriated funds are not available may be referred to in this determination and notice as the "shutdown period."

Under 36 C.F.R. § 1.5(a) this national closure determination and notice is necessary to maintain public health and safety in units of the National Park System and to protect park resources and values during the shutdown period. Consistent with the Department of the Interior Contingency Plan, available at www.doi.gov/shutdown, only a relatively small number of "excepted personnel" will be on duty during the shutdown period. Those personnel are not sufficient to provide a full range of visitor services. Therefore, in light of the shutdown and Contingency Plan, measures less restrictive than a national closure will not suffice to maintain public health and safety and to protect park resources and values. The lapse in appropriated funds qualifies as an "emergency" under 36 C.F.R. § 1.5(b); therefore, this determination and notice does not require special rulemaking.

Condition and Exceptions:

1. National Park Service personnel who have been identified as excepted will continue to report for duty in accordance with the National Park Service Contingency Plan and as directed by their supervisors.

2. Members of the public who are currently visiting a unit of the National Park System and not staying overnight in the park must vacate the park immediately. All day-use concession-operated visitor services and facilities are to be closed immediately. Exceptions may be granted by superintendents only if a facility is deemed essential for health or safety purposes.

3. Subject to paragraph 6 below, members of the public who are currently visiting a unit of the national park system and staying overnight either in a National Park Service-operated campground or a concessioner-operated facility in the park must vacate the park by 6:00 p.m. EDT on October 3, 2013.

4. Subject to paragraph 6 below, National Park Service concessioners must suspend their operations in overnight accommodations by 6:00 p.m. EDT on October 3, 2013.

5. Subject to paragraph 6 below, holders of National Park Service commercial use authorizations must immediately cease their in-park operations.

6. The deadlines announced above do not apply to members of the public, concessioners, and holders of commercial use authorizations who are on multi-day backcountry trips that cannot be safely terminated before the end of the trip. Those individuals may continue and complete their multi-day backcountry trips in accordance with their approved permit or plan. Those individuals then must vacate the park within 12 hours after the completion of their trip.

7. This closure determination and notice does not apply to private owners of interests in real property located within the exterior boundaries of units of the National Park System. Park superintendents will continue to allow such owners reasonable access to their private property.

8. This closure determination and notice does not apply to roads that pass through units of the National Park System and provide primary access between points located outside of the parks. Members of the public may continue to use those roads during the shutdown period. However, superintendents may not expend any appropriated funds to maintain or repair those roads. Moreover, superintendents may close those roads, or portions of those roads, in accordance with 36 C.F.R. § 1.5, if such closure is warranted by weather, poor road conditions, or other circumstances.

9. All previously issued permits for special events scheduled to occur in units of the National Park System during the shutdown period are hereby cancelled. At the end of the shutdown period holders of cancelled permits may apply for a new permit. Except as provided in paragraph 10 below, all closed areas of the National Park System are also closed to First Amendment activities during the shutdown period, and any previously issued permits for First Amendment activities are hereby cancelled.

10. This closure determination and notice does not apply to First Amendment activities in the National Mall and Memorial Parks and areas administered by the NPS Liaison to the White House in Washington, D.C., and Independence National Historical Park in Philadelphia, Pennsylvania. Persons may continue to conduct First Amendment activities in these units in accordance with existing regulations.

11. Each park superintendent must take reasonable measures to comply with 36 C.F.R. § 1.7 and to provide adequate public notice of this national closure determination and notice.

12. This national closure determination and notice will expire automatically at the end of the shutdown period.

13. Violation of this national closure determination and notice is prohibited.

Jonathan B. Jarvis

Jonathan B. Jarvis
Director

October 1, 2013
Date

Young, Deirdre R

From: Lackey, Melissa <melissa.lackey@sol.doi.gov>
Sent: Friday, October 04, 2013 4:11 PM
To: Barry Roth; Lena McDowall
Subject: Fwd: Fw: Fwd: Draft Cliff House Response Letter
Attachments: Cliff House Letter_v2_10.04.13.docx; Natl Park System Closure Determination and Notice 2013-10-01.pdf

Barry and Lena

After reviewing the email string on the Cliff House letter, I assume (b) (5) [redacted] so no input is required. I am going off the clock now (and logging out of my DOI email), but will be around if you need me. Just call me at (b) (6) [redacted]

Melissa Lackey

Attorney Advisor
U. S. Department of the Interior, Office of the Solicitor
1849 C Street NW, Room 5323
Mail Stop 5311
Washington, DC 20240

Phone: 202 513-0733 Fax: 202 208-3877

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---------- Forwarded message ----------
From: **Melissa Lackey** (b) (6) [redacted]
Date: Fri, Oct 4, 2013 at 3:55 PM
Subject: Fw: Fwd: Draft Cliff House Response Letter
To: Melissa Lackey <melissa.lackey@sol.doi.gov>

Melissa

----- Forwarded Message -----
From: "Roth, Barry" <barry.roth@sol.doi.gov>
To: (b) (6) [redacted]

Sent: Friday, October 4, 2013 1:29 PM
Subject: Fwd: Draft Cliff House Response Letter

Barry N. Roth
Associate Solicitor
Division of Parks & Wildlife
202-208-4344
Fax: 202-208-3877
Barry.Roth@sol.doi.gov

This email is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee of or agent responsible for delivery of this email to the intended recipient, you are hereby notified that its dissemination, distribution, copying or use of this email is strictly prohibited. If you received this email in error, please notify the sender immediately and destroy all copies.

---------- Forwarded message ----------
From: **McDowall, Lena** <lena_mcdowall@nps.gov>
Date: Fri, Oct 4, 2013 at 12:39 PM
Subject: Re: Draft Cliff House Response Letter
To: Frank Dean <frank_dean@nps.gov>
Cc: "Neubacher, Patricia" <patty_neubacher@nps.gov>, Scott Wanek <scott_wanek@nps.gov>, Aaron Roth <Aaron_Roth@nps.gov>, Bruce Sheaffer <Bruce_Sheaffer@nps.gov>, Craig Dalby <craig_dalby@nps.gov>, Barry Roth <barry.roth@sol.doi.gov>

All-

I've attached another draft of the letter which more specifically addresses the attorney's question of (b) (5) [redacted] (b) (5) [redacted] I'll finalize and send to the park and region via e-mail so Frank has it for his meeting.

Thanks,

Lena

On Fri, Oct 4, 2013 at 11:41 AM, Frank Dean <frank_dean@nps.gov> wrote:

[redacted] (b) (5) [redacted]

On Oct 4, 2013, at 8:22 AM, "Neubacher, Patricia" <patty_neubacher@nps.gov> wrote:

Frank: (b) (5) [redacted] We'll incorporate it and ship it back to Bruce and Lena for their review. Thanks.

On Fri, Oct 4, 2013 at 8:17 AM, Francis Dean <frank_dean@nps.gov> wrote:

(b) (5) [redacted]

Thanks,

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

From: Neubacher, Patricia [mailto:patty_neubacher@nps.gov]
Sent: Friday, October 04, 2013 07:35 AM
To: Wanek, Scott <scott_wanek@nps.gov>
Cc: McDowall, Lena <lena_mcdowall@nps.gov>; Frank Dean <frank_dean@nps.gov>; Aaron Roth <aaron_roth@nps.gov>; Bruce Sheaffer <Bruce_Sheaffer@nps.gov>; Craig Dalby <craig_dalby@nps.gov>
Subject: Re: Draft Cliff House Response Letter

I agree with Scott's comments....and would offer just a couple of other comments.

(b) (5) [redacted]

(b) (5) [redacted]
(b) (5) [redacted] Thanks very much for your help!

On Fri, Oct 4, 2013 at 7:01 AM, Wanek, Scott <scott_wanek@nps.gov> wrote:
A couple of quick observations:

(b) (5) [redacted]

Scott

On Fri, Oct 4, 2013 at 6:46 AM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:

I've attached a draft response letter to Peanut Wagon, Inc's attorneys - please let me know if you have any edits. (b) (5) [redacted]
(b) (5) [redacted] We had Barry take a quick look at it already since he isn't planning to be here all day today. Please give me a call if you'd like to discuss.

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

--
Scott Wanek
Regional Chief Ranger
Pacific West Region
415-623-2180 office
510-501-0459 cell
415-623-2189 fax
VRP Sharepoint Site

--
Patty Neubacher
Deputy Regional Director
Pacific West Region
(415) 623-2105 work
(510) 604-9998 cell

--
Patty Neubacher
Deputy Regional Director
Pacific West Region
(415) 623-2105 work
(510) 604-9998 cell

--
Lena McDowall

Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Mr. Louis N. Haas
Has Najarian, LLP
58 Maiden Lane
2nd Floor
San Francisco, CA 94108

Dear Mr. Haas:

Your letter requesting reconsideration of the shutdown order issued to your client Peanut Wagon, Inc was forwarded to this office since we manage the National Park Service concessions program.

(b) (5)

For reasons discussed above, GGNRA's facilities, including concession facilities, must remain closed to visitors until funding is restored. I share your client's concerns about the economic impacts of a government shutdown. However, I have no choice in this matter but to deny your client's request for

(b) (5)

United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

Office of the Director

National Park System Closure Determination and Notice

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Condition and Exceptions:

1. National Park Service personnel who have been identified as excepted will continue to report for duty in accordance with the National Park Service Contingency Plan and as directed by their supervisors.

2. Members of the public who are currently visiting a unit of the National Park System and not staying overnight in the park must vacate the park immediately. All day-use concession-operated visitor services and facilities are to be closed immediately. Exceptions may be granted by superintendents only if a facility is deemed essential for health or safety purposes.

3. Subject to paragraph 6 below, members of the public who are currently visiting a unit of the national park system and staying overnight either in a National Park Service-operated campground or a concessioner-operated facility in the park must vacate the park by 6:00 p.m. EDT on October 3, 2013.

4. Subject to paragraph 6 below, National Park Service concessioners must suspend their operations in overnight accommodations by 6:00 p.m. EDT on October 3, 2013.

5. Subject to paragraph 6 below, holders of National Park Service commercial use authorizations must immediately cease their in-park operations.

6. The deadlines announced above do not apply to members of the public, concessioners, and holders of commercial use authorizations who are on multi-day backcountry trips that cannot be safely terminated before the end of the trip. Those individuals may continue and complete their multi-day backcountry trips in accordance with their approved permit or plan. Those individuals then must vacate the park within 12 hours after the completion of their trip.

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9. All previously issued permits for special events scheduled to occur in units of the National Park System during the shutdown period are hereby cancelled. At the end of the shutdown period holders of cancelled permits may apply for a new permit. Except as provided in paragraph 10 below, all closed areas of the National Park System are also closed to First Amendment activities during the shutdown period, and any previously issued permits for First Amendment activities are hereby cancelled.

10. This closure determination and notice does not apply to First Amendment activities in the National Mall and Memorial Parks and areas administered by the NPS Liaison to the White House in Washington, D.C., and Independence National Historical Park in Philadelphia, Pennsylvania. Persons may continue to conduct First Amendment activities in these units in accordance with existing regulations.

11. Each park superintendent must take reasonable measures to comply with 36 C.F.R. § 1.7 and to provide adequate public notice of this national closure determination and notice.

12. This national closure determination and notice will expire automatically at the end of the shutdown period.

13. Violation of this national closure determination and notice is prohibited.

Jonathan B. Jarvis

Jonathan B. Jarvis
Director

October 1, 2013
Date

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Friday, October 04, 2013 3:59 PM
To: Lackey, Melissa
Cc: Roth, Barry
Subject: Re: Draft Letter to Kevin Garden re Adequacy of Notice to Pisgah Inn

This looks good to me. I'll add the ccs and run by Shawk to get region's ok before sending.

On Fri, Oct 4, 2013 at 3:48 PM, Lackey, Melissa <melissa.lackey@sol.doi.gov> wrote:
Lena and Barry:

Attached is the version of the letter to Garden with my edits to Barry's edits. (b) (5) [redacted]

Lena: Barry also advised that Shawn Benge and Steve Stinnett be copied on the letter.

Melissa Lackey

Attorney Advisor
U. S. Department of the Interior, Office of the Solicitor
1849 C Street NW, Room 5323
Mail Stop 5311
Washington, DC 20240

Phone: 202 513-0733 Fax: 202 208-3877

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On Fri, Oct 4, 2013 at 3:19 PM, Roth, Barry <barry.roth@sol.doi.gov> wrote:
My thoughts on the draft, (b) (5) [redacted]

Barry N. Roth
Associate Solicitor
Division of Parks & Wildlife
202-208-4344
Fax: 202-208-3877
Barry.Roth@sol.doi.gov

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On Fri, Oct 4, 2013 at 2:59 PM, Lackey, Melissa <melissa.lackey@sol.doi.gov> wrote:
Lena:

Attached is a draft (incorporating some of your text from the Cliff House letter). (b) (5) [redacted]

(b) (5) [redacted]

Melissa Lackey

Attorney Advisor
U. S. Department of the Interior, Office of the Solicitor
1849 C Street NW, Room 5323
Mail Stop 5311
Washington, DC 20240

Phone: 202 513-0733 Fax: 202 208-3877

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--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Young, Deirdre R

From: Lackey, Melissa <melissa.lackey@sol.doi.gov>
Sent: Friday, October 04, 2013 3:53 PM
To: Lena McDowall; Barry Roth
Subject: Fwd: Pisgah Inn
Attachments: BLRI - Pisgah Inn Tlk Pts - 100413 rev.docx; BLRI - Pisgah Inn Tlk Pts - 100413 rev.docx

Attached are my comments to the talking points in redline. (b) (5)

(b) (5)

Let me know what other assistance you would like.

Melissa Lackey

Attorney Advisor
U. S. Department of the Interior, Office of the Solicitor
1849 C Street NW, Room 5323
Mail Stop 5311
Washington, DC 20240

Phone: 202 513-0733 Fax: 202 208-3877

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---------- Forwarded message ----------
From: **Reynolds, William** <william_f_reynolds@nps.gov>
Date: Fri, Oct 4, 2013 at 2:31 PM
Subject: Re: Pisgah Inn
To: "McDowall, Lena" <lena_mcdowall@nps.gov>
Cc: "Waldron, Suzanne" <sue_waldron@nps.gov>, Melissa Lackey <melissa.lackey@sol.doi.gov>, Mike Litterst <Mike_Litterst@nps.gov>, Cam Sholly <Cam_Sholly@nps.gov>, Maureen Foster <Maureen_Foster@nps.gov>, Peggy O'Dell <Peggy_O'Dell@nps.gov>, Blake Androff <Blake_Androff@ios.doi.gov>, Kate Kelly <Kate_Kelly@ios.doi.gov>, Mark Woods <mark_woods@nps.gov>

here are draft revised points based on today's developments

On Fri, Oct 4, 2013 at 2:28 PM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:
Looping in Melissa Lackey from SOL who is back from furlough today to help us out with concessions issues.

On Fri, Oct 4, 2013 at 2:03 PM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
think the points are (b) (5) background - the statement is (b) (5) let us know how it goes

(b) (5)

On Fri, Oct 4, 2013 at 1:52 PM, Reynolds, William <william_f_reynolds@nps.gov> wrote:
Plan - short term - Superintendent Mark Woods will handle media on site, if necessary. (he has been called in)

I will handle media calls from national and regional media using the talking points (b) (5)
(b) (5)

Unless you direct otherwise.
Bill

On Fri, Oct 4, 2013 at 1:31 PM, Reynolds, William <william_f_reynolds@nps.gov> wrote:
We expect media to b eon site to cover this.
There are some legal questions that are being worked out right now (b) (5)
(b) (5) Waiting to hear more on that. May be pulling in a PAO from GRSM (Dana or Molly) to handle.

On Fri, Oct 4, 2013 at 1:27 PM, Suzanne Waldron <sue_waldron@nps.gov> wrote:
Argh. Will take a look

Sent from my iPhone

On Oct 4, 2013, at 1:26 PM, "Reynolds, William" <william_f_reynolds@nps.gov> wrote:

> Looks as though they will be needed now. The concessioner is planning to reopen. Rangers en route to enforce closure. Will keep you posted.
> Bill
>
> On Fri, Oct 4, 2013 at 9:25 AM, Reynolds, William <william_f_reynolds@nps.gov> wrote:
> Thanks. Looks as though they are [redacted] now, but I will keep (b) (5) [redacted] language for future reference.
> Bill

On Fri, Oct 4, 2013 at 8:23 AM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
bill - asked lena to look at these - (b) (5) [redacted] 0- but just in case

---------- Forwarded message ----------
From: **McDowall, Lena** <lena_mcdowall@nps.gov>
Date: Thu, Oct 3, 2013 at 5:52 PM
Subject: Re: Pisgah Inn
To: "Waldron, Suzanne" <sue_waldron@nps.gov>

(b) (5) [redacted]

On Thu, Oct 3, 2013 at 3:33 PM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
fyi

---------- Forwarded message ----------
From: **William Reynolds** <william_f_reynolds@nps.gov>
Date: Thu, Oct 3, 2013 at 2:18 PM
Subject: Re: Pisgah Inn
To: Sue_Waldron@nps.gov

FYI, Rep. Meadows' office is reaching out to the park. Will let you know status of that contact ASAP.
Bill

From: Waldron, Suzanne [mailto:sue_waldron@nps.gov]
Sent: Thursday, October 03, 2013 09:55 AM
To: Karen Cucurullo <karen_cucurullo@nps.gov>; William Reynolds <william_f_reynolds@nps.gov>; Shawn Benge <shawn_benge@nps.gov>
Cc: Maureen Foster <maureen_foster@nps.gov>; Lena McDowall <Lena_McDowall@nps.gov>; Mike Litterst <Mike_Litterst@nps.gov>
Subject: Re: Pisgah Inn

bill - do you have point on this? or can you get this to who is?

On Thu, Oct 3, 2013 at 12:47 PM, Karen Cucurullo <karen_cucurullo@nps.gov> wrote:
I think someone else can better answer.

Sent from my iPhone

Begin forwarded message:

> **From:** <Colleen.Jenkins@thomsonreuters.com>
> **Date:** October 3, 2013, 11:22:52 AM EDT
> **To:** <Karen_Cucurullo@nps.gov>
> **Subject: Pisgah Inn**

Hi Karen,

I'm working on a story for Reuters about the Pisgah Inn in NC's Blue Ridge Mts choosing to stay open despite the government shutdown. Are you available to answer some questions regarding this matter? I can be reached at 727.331.4274.

Thanks!

Colleen

Colleen Jenkins
Correspondent, U.S. General News

Reuters

Thomson Reuters

Mobile: 727.331.4274
Colleen.Jenkins@thomsonreuters.com
www.reuters.com

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--
Sue Waldron
Assistant Director, Communications
National Park Service
(202) 208-3046
Visit us at www.nps.gov

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Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

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William F. Reynolds
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William F. Reynolds
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National Park Service Southeast Region
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Blue Ridge Parkway – Pisgah Inn
DRAFT Talking Points
October 3, 2013

(b) (5)

[redacted]

(b) (5)

[redacted]

Blue Ridge Parkway – Pisgah Inn
DRAFT Talking Points
October 3, 2013

(b) (5)

[redacted]

(b) (5)

[redacted]

Young, Deirdre R

From: Lackey, Melissa <melissa.lackey@sol.doi.gov>
Sent: Friday, October 04, 2013 3:49 PM
To: Roth, Barry
Cc: Lena McDowall
Subject: Re: Draft Letter to Kevin Garden re Adequacy of Notice to Pisgah Inn
Attachments: NPS ltr re BLRI003-04BNR.docx

Lena and Barry:

Attached is the version of the letter to Garden with my edits to Barry's edits. (b) (5) [redacted]

Lena: Barry also advised that Shawn Benge and Steve Stinnett be copied on the letter.

Melissa Lackey

Attorney Advisor
U. S. Department of the Interior, Office of the Solicitor
1849 C Street NW, Room 5323
Mail Stop 5311
Washington, DC 20240

Phone: 202 513-0733 Fax: 202 208-3877

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On Fri, Oct 4, 2013 at 3:19 PM, Roth, Barry <barry.roth@sol.doi.gov> wrote:
My thoughts on the draft, (b) (5) [redacted]

Barry N. Roth
Associate Solicitor
Division of Parks & Wildlife

202-208-4344
Fax: 202-208-3877
Barry.Roth@sol.doi.gov

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On Fri, Oct 4, 2013 at 2:59 PM, Lackey, Melissa <melissa.lackey@sol.doi.gov> wrote:
Lena:

Attached is a draft (incorporating some of your text from the Cliff House letter) (b) (5) [redacted]

Melissa Lackey

Attorney Advisor
U. S. Department of the Interior, Office of the Solicitor
1849 C Street NW, Room 5323
Mail Stop 5311
Washington, DC 20240

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(on National Park Service letterhead)

Via email and U.S. Mail

Mr. Kevin R. Garden
The Garden Law Firm, P.C.
901 N. Pitt Street, Suite 905
Alexandria, VA 22314

and

kevin@gardenlawfirm.com

Re: Concession Contract BLRI003-04

Dear Mr. Garden:

(b) (5)

(b) (5)

Young, Deirdre R

From: Roth, Barry <barry.roth@sol.doi.gov>
Sent: Friday, October 04, 2013 3:19 PM
To: Lackey, Melissa
Cc: Lena McDowall
Subject: Re: Draft Letter to Kevin Garden re Adequacy of Notice to Pisgah Inn
Attachments: NPS ltr re BLRI003-04BNR.docx

My thoughts on the draft, (b) (5) [redacted]
(b) (5) [redacted]

Barry N. Roth
Associate Solicitor
Division of Parks & Wildlife
202-208-4344
Fax: 202-208-3877
Barry.Roth@sol.doi.gov

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(b) (5) [redacted]

Melissa Lackey

Attorney Advisor
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Via email and U.S. Mail

Mr. Kevin R. Garden
The Garden Law Firm, P.C.
901 N. Pitt Street, Suite 905
Alexandria, VA 22314

and

kevin@gardenlawfirm.com

Re: Concession Contract BLRI003-04

Dear Mr. Garden:

(b) (5)

(b) (5)

Young, Deirdre R

From: Lackey, Melissa <melissa.lackey@sol.doi.gov>
Sent: Friday, October 04, 2013 3:00 PM
To: Lena McDowall; Barry Roth
Subject: Draft Letter to Kevin Garden re Adequacy of Notice to Pisgah Inn
Attachments: NPS ltr re BLRI003-04.docx

Lena:

Attached is a draft (incorporating some of your text from the Cliff House letter). (b) (5) [redacted]

(b) (5) [redacted]

Melissa Lackey

Attorney Advisor
U. S. Department of the Interior, Office of the Solicitor
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Via email and U.S. Mail

Mr. Kevin R. Garden
The Garden Law Firm, P.C.
901 N. Pitt Street, Suite 905
Alexandria, VA 22314

and

kevin@gardenlawfirm.com

Re: Concession Contract BLRI003-04

(b) (5)

(b) (5)

Young, Deirdre R

From: Francis Dean <frank_dean@nps.gov>
Sent: Friday, October 04, 2013 2:36 PM
To: lena_mcdowall@nps.gov
Cc: patty_neubacher@nps.gov
Subject: Re: Draft Cliff House Response Letter

Got it- thanks!

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

From: McDowall, Lena [mailto:lena_mcdowall@nps.gov]
Sent: Friday, October 04, 2013 11:26 AM
To: Dean, Frank <frank_dean@nps.gov>
Cc: Patricia Neubacher <patty_neubacher@nps.gov>
Subject: Re: Draft Cliff House Response Letter

it would help if I included the attachment

On Fri, Oct 4, 2013 at 2:00 PM, Dean, Frank <frank_dean@nps.gov> wrote:
Lena,

Just noticed this was still a draft and edits are showing and no signature. Can you final and sign it? If not, I will try to fix it here.

Thanks,

Frank

On Fri, Oct 4, 2013 at 9:41 AM, Francis Dean <frank_dean@nps.gov> wrote:
Yes, thanks Lena. Let's go with this version today.

Frank

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

From: Neubacher, Patricia [mailto:patty_neubacher@nps.gov]
Sent: Friday, October 04, 2013 09:40 AM
To: McDowall, Lena <lena_mcdowall@nps.gov>

Cc: Frank Dean <frank_dean@nps.gov>; Scott Wanek <scott_wanek@nps.gov>; Aaron Roth <Aaron_Roth@nps.gov>; Bruce Sheaffer <Bruce_Sheaffer@nps.gov>; Craig Dalby <craig_dalby@nps.gov>; Barry Roth <barry.roth@sol.doi.gov>
Subject: Re: Draft Cliff House Response Letter

Thanks for your help Lena! We truly appreciate it.

On Fri, Oct 4, 2013 at 9:39 AM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:
All-

I've attached another draft of the letter which more specifically addresses the attorney's question of (b) (5) (b) (5) (b) (5) I'll finalize and send to the park and region via e-mail so Frank has it for his meeting.

Thanks,

Lena

On Fri, Oct 4, 2013 at 11:41 AM, Frank Dean <frank_dean@nps.gov> wrote:
(b) (5)

On Oct 4, 2013, at 8:22 AM, "Neubacher, Patricia" <patty_neubacher@nps.gov> wrote:

Frank: (b) (5) We'll incorporate it and ship it back to Bruce and Lena for their review. Thanks.

On Fri, Oct 4, 2013 at 8:17 AM, Francis Dean <frank_dean@nps.gov> wrote:
(b) (5)

Thanks,

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

From: Neubacher, Patricia [mailto:patty_neubacher@nps.gov]
Sent: Friday, October 04, 2013 07:35 AM
To: Wanek, Scott <scott_wanek@nps.gov>

Cc: McDowall, Lena <lena_mcdowall@nps.gov>; Frank Dean <frank_dean@nps.gov>; Aaron Roth <aaron_roth@nps.gov>; Bruce Sheaffer <Bruce_Sheaffer@nps.gov>; Craig Dalby <craig_dalby@nps.gov>
Subject: Re: Draft Cliff House Response Letter

I agree with Scott's comments....and would offer just a couple of other comments.

(b) (5)

(b) (5)
(b) (5) Thanks very much for your help!

On Fri, Oct 4, 2013 at 7:01 AM, Wanek, Scott <scott_wanek@nps.gov> wrote:
A couple of quick observations:

(b) (5)

Scott

On Fri, Oct 4, 2013 at 6:46 AM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:

(b) (5)
(b) (5) We had Barry take a quick look at it already since he isn't planning to be here all day today. Please give me a call if you'd like to discuss.

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

--
Scott Wanek
Regional Chief Ranger
Pacific West Region

415-623-2180 office
510-501-0459 cell
415-623-2189 fax
VRP Sharepoint Site

--
Patty Neubacher
Deputy Regional Director
Pacific West Region
(415) 623-2105 work
(510) 604-9998 cell

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Email: Lena_McDowall@nps.gov

Young, Deirdre R

From: Reynolds, William <william_f_reynolds@nps.gov>
Sent: Friday, October 04, 2013 2:32 PM
To: McDowall, Lena
Cc: Waldron, Suzanne; Melissa Lackey; Mike Litterst; Cam Sholly; Maureen Foster; Peggy O'Dell; Blake Androff; Kate Kelly; Mark Woods
Subject: Re: Pisgah Inn
Attachments: BLRI - Pisgah Inn Tlk Pts - 100413 rev.docx

here are draft revised points based on today's developments

On Fri, Oct 4, 2013 at 2:28 PM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:
Looping in Melissa Lackey from SOL who is back from furlough today to help us out with concessions issues.

On Fri, Oct 4, 2013 at 2:03 PM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
think the points are (b) (5) background - the statement is (b) (5) - let us know how it goes

(b) (5)

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I will handle media calls from national and regional media (b) (5)
(b) (5)

Unless you direct otherwise.
Bill

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Sent from my iPhone

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To: "Waldron, Suzanne" <sue_waldron@nps.gov>

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Cc: Maureen Foster <maureen_foster@nps.gov>; Lena McDowall <Lena_McDowall@nps.gov>; Mike Litterst <Mike_Litterst@nps.gov>
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> **Subject: Pisgah Inn**
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> Hi Karen,
>
> I'm working on a story for Reuters about the Pisgah Inn in NC's Blue Ridge Mts choosing to stay open despite the government shutdown. Are you available to answer some questions regarding this matter? I can be reached at 727.331.4274.
>
> Thanks!
>
> Colleen

Colleen Jenkins
Correspondent, U.S. General News

Reuters

Thomson Reuters

Mobile: 727.331.4274
Colleen.Jenkins@thomsonreuters.com
www.reuters.com

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William F. Reynolds
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National Park Service Southeast Region
404-507-5612

Blue Ridge Parkway – Pisgah Inn
DRAFT Talking Points
October 3, 2013

(b) (5)

[redacted]

(b) (5)

[redacted]

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Friday, October 04, 2013 2:29 PM
To: Waldron, Suzanne; Melissa Lackey
Cc: Reynolds, William; Mike Litterst; Cam Sholly; Maureen Foster; Peggy O'Dell; Blake Androff; Kate Kelly
Subject: Re: Pisgah Inn

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(b) (5)

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Subject: Re: Pisgah Inn
To: "Waldron, Suzanne" <sue_waldron@nps.gov>

(b) (5)

On Thu, Oct 3, 2013 at 3:33 PM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
fyi

---------- Forwarded message ----------
From: **William Reynolds** <william_f_reynolds@nps.gov>
Date: Thu, Oct 3, 2013 at 2:18 PM
Subject: Re: Pisgah Inn
To: Sue_Waldron@nps.gov

FYI, Rep. Meadows' office is reaching out to the park. Will let you know status of that contact ASAP.
Bill

From: Waldron, Suzanne [mailto:sue_waldron@nps.gov]
Sent: Thursday, October 03, 2013 09:55 AM
To: Karen Cucurullo <karen_cucurullo@nps.gov>; William Reynolds <william_f_reynolds@nps.gov>; Shawn Benge <shawn_benge@nps.gov>
Cc: Maureen Foster <maureen_foster@nps.gov>; Lena McDowall <Lena_McDowall@nps.gov>; Mike Litterst <Mike_Litterst@nps.gov>
Subject: Re: Pisgah Inn

bill - do you have point on this? or can you get this to who is?

On Thu, Oct 3, 2013 at 12:47 PM, Karen Cucurullo <karen_cucurullo@nps.gov> wrote:
I think someone else can better answer.

Sent from my iPhone

Begin forwarded message:

From: <Colleen.Jenkins@thomsonreuters.com>
Date: October 3, 2013, 11:22:52 AM EDT
To: <Karen_Cucurullo@nps.gov>
Subject: Pisgah Inn

Hi Karen,

I'm working on a story for Reuters about the Pisgah Inn in NC's Blue Ridge Mts choosing to stay open despite the government shutdown. Are you available to answer some questions regarding this matter? I can be reached at 727.331.4274.

Thanks!

Colleen

Colleen Jenkins
Correspondent, U.S. General News

Reuters

Thomson Reuters

Mobile: 727.331.4274
Colleen.Jenkins@thomsonreuters.com
www.reuters.com

This email was sent to you by Thomson Reuters, the global news and information company. Any views expressed in this message are those of the individual sender, except where the sender specifically states them to be the views of Thomson Reuters.

--
Sue Waldron
Assistant Director, Communications
National Park Service
(202) 208-3046
Visit us at www.nps.gov

The National Park Service cares for special places saved by the American people so that all may experience our heritage.

EXPERIENCE YOUR AMERICA

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Ph: (202) 208-5651
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William F. Reynolds
Assistant Regional Director

National Park Service Southeast Region
404-507-5612

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Email: Lena_McDowall@nps.gov

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Friday, October 04, 2013 2:27 PM
To: Dean, Frank
Cc: Patricia Neubacher
Subject: Re: Draft Cliff House Response Letter
Attachments: Response to Haas Najarian_10.04.13.pdf

it would help if I included the attachment

On Fri, Oct 4, 2013 at 2:00 PM, Dean, Frank <frank_dean@nps.gov> wrote:
Lena,

Just noticed this was still a draft and edits are showing and no signature. Can you final and sign it? If not, I will try to fix it here.

Thanks,

Frank

On Fri, Oct 4, 2013 at 9:41 AM, Francis Dean <frank_dean@nps.gov> wrote:
Yes, thanks Lena. Let's go with this version today.

Frank

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

From: Neubacher, Patricia [mailto:patty_neubacher@nps.gov]
Sent: Friday, October 04, 2013 09:40 AM
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Subject: Re: Draft Cliff House Response Letter

Thanks for your help Lena! We truly appreciate it.

On Fri, Oct 4, 2013 at 9:39 AM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:
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I've attached another draft of the letter which more specifically addresses the attorney's question of (b) (5)

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I agree with Scott's comments....and would offer just a couple of other comments.

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On Fri, Oct 4, 2013 at 7:01 AM, Wanek, Scott <scott_wanek@nps.gov> wrote:
A couple of quick observations:

(b) (5)

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On Fri, Oct 4, 2013 at 6:46 AM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:
I've attached a draft response letter to Peanut Wagon, Inc's attorneys - please let me know if you have any edits. (b) (5)
(b) (5) We had Barry take a quick look at it already since he isn't planning to be here all day today. Please give me a call if you'd like to discuss.

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510-501-0459 cell
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United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

Mr. Louis N. Haas
Haas Najarian, LLP
58 Maiden Lane
2nd Floor
San Francisco, CA 94108

Dear Mr. Haas:

Your letter requesting reconsideration of the shutdown order issued to your client Peanut Wagon, Inc was forwarded to this office since we manage the National Park Service concessions program.

Pursuant to 36 C.F.R. § 1.5 all units of the National Park System nationwide were closed to public visitation and use on October 1, 2013. This closure was necessitated by a lapse in funds appropriated by the United States Congress for the operation of the National Park System and will remain in effect until funding is restored. The attached closure and determination notice issued under 36 C.F.R. § 1.5 articulates that a national closure was necessary to maintain public health and safety in units of the National Park System and to protect park resources and values during the shutdown period.

In the normal course of operations, park activities, necessarily require the support of numerous functions: park operations do not function independently of contracting support; visitor protection cannot exist without the support of payroll personnel; concessioners and volunteers cannot conduct activities without management oversight.

The purpose of a concessions contract is to conduct services for park visitors, but with the lapse in appropriations GGNRA, like all park units, is closed to the public. With parks closed to the public and its inability to provide necessary oversight, consistent with the provisions of its concessions contracts, the NPS has had to close all concession facilities in the National Park System. Similarly, the NPS has suspended construction and maintenance projects, partnership programs and other activities deemed not essential for life, health and safety.

For reasons discussed above, GGNRA's facilities, including concession facilities, must remain closed to visitors until funding is restored. I share your client's concerns about the economic impacts of a government shutdown. However, I have no choice in this matter but to deny your client's request for reconsideration of the shutdown order. The National Park Service appreciates Peanut Wagon, Inc.'s relationship with GGNRA and its strong commitment to provide excellent service to our visitors. We are

sorry for the hardship caused by the government shutdown and look forward to welcoming the public again when funding is restored.

Sincerely,

Lena McDowall

Lena McDowall
Associate Director, Business Services

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Friday, October 04, 2013 2:26 PM
To: Dean, Frank
Cc: Patricia Neubacher
Subject: Re: Draft Cliff House Response Letter

Frank -

Here's a scanned version of the signed letter. Will this work?

--Lena

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Lena,

Just noticed this was still a draft and edits are showing and no signature. Can you final and sign it? If not, I will try to fix it here.

Thanks,

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> General Superintendent
> Golden Gate
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Young, Deirdre R

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To: Dean, Frank
Subject: Re: Draft Cliff House Response Letter

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Cc: Mike Litterst; Lena McDowall; Cam Sholly; Maureen Foster; Peggy O'Dell; Blake Androff; Kate Kelly
Subject: Re: Pisgah Inn

think the points are [redacted] (b) (5) background - the statement is [redacted] (b) (5) - let us know how it goes

[redacted] (b) (5)

On Fri, Oct 4, 2013 at 1:52 PM, Reynolds, William <william_f_reynolds@nps.gov> wrote:
Plan - short term - Superintendent Mark Woods will handle media on site, if necessary. (he has been called in)

I will handle media calls from national and regional media [redacted] (b) (5)
[redacted] (b) (5)

Unless you direct otherwise.
Bill

On Fri, Oct 4, 2013 at 1:31 PM, Reynolds, William <william_f_reynolds@nps.gov> wrote:
We expect media to b eon site to cover this.
There are some legal questions that are being worked out right now [redacted] (b) (5)
[redacted] (b) (5) Waiting to hear more on that. May be pulling in a PAO from GRSM (Dana or Molly) to handle.

On Fri, Oct 4, 2013 at 1:27 PM, Suzanne Waldron <sue_waldron@nps.gov> wrote:
Argh. Will take a look

Sent from my iPhone

On Oct 4, 2013, at 1:26 PM, "Reynolds, William" <william_f_reynolds@nps.gov> wrote:

> Looks as though they will be needed now. The concessioner is planning to reopen. Rangers en route to enforce closure. Will keep you posted.
> Bill
>
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Bill

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I think someone else can better answer.

Sent from my iPhone

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> **From:** <Colleen.Jenkins@thomsonreuters.com>
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Subject: Pisgah Inn

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Thanks!

Colleen

Colleen Jenkins
Correspondent, U.S. General News

Reuters

Thomson Reuters

Mobile: 727.331.4274
Colleen.Jenkins@thomsonreuters.com
www.reuters.com

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Sue Waldron
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Sue Waldron
Assistant Director, Communications
National Park Service
(202) 208-3046
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EXPERIENCE YOUR AMERICA

Young, Deirdre R

From: Dean, Frank <frank_dean@nps.gov>
Sent: Friday, October 04, 2013 2:01 PM
To: Patricia Neubacher; Lena McDowall
Subject: Re: Draft Cliff House Response Letter

Lena,

Just noticed this was still a draft and edits are showing and no signature. Can you final and sign it? If not, I will try to fix it here.

Thanks,

Frank

On Fri, Oct 4, 2013 at 9:41 AM, Francis Dean <frank_dean@nps.gov> wrote:
Yes, thanks Lena. Let's go with this version today.

Frank

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

From: Neubacher, Patricia [mailto:patty_neubacher@nps.gov]
Sent: Friday, October 04, 2013 09:40 AM
To: McDowall, Lena <lena_mcdowall@nps.gov>
Cc: Frank Dean <frank_dean@nps.gov>; Scott Wanek <scott_wanek@nps.gov>; Aaron Roth <Aaron_Roth@nps.gov>; Bruce Sheaffer <Bruce_Sheaffer@nps.gov>; Craig Dalby <craig_dalby@nps.gov>; Barry Roth <barry.roth@sol.doi.gov>
Subject: Re: Draft Cliff House Response Letter

Thanks for your help Lena! We truly appreciate it.

On Fri, Oct 4, 2013 at 9:39 AM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:
All-

I've attached another draft of the letter which more specifically addresses the attorney's question of (b) (5) [redacted] (b) (5) [redacted] I'll finalize and send to the park and region via e-mail so Frank has it for his meeting.

Thanks,

Lena

On Fri, Oct 4, 2013 at 11:41 AM, Frank Dean <frank_dean@nps.gov> wrote:

(b) (5) [redacted]

On Oct 4, 2013, at 8:22 AM, "Neubacher, Patricia" <patty_neubacher@nps.gov> wrote:

Frank: (b) (5) [redacted] We'll incorporate it and ship it back to Bruce and Lena for their review. Thanks.

On Fri, Oct 4, 2013 at 8:17 AM, Francis Dean <frank_dean@nps.gov> wrote:

(b) (5) [redacted]

Thanks,

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

From: Neubacher, Patricia [mailto:patty_neubacher@nps.gov]
Sent: Friday, October 04, 2013 07:35 AM
To: Wanek, Scott <scott_wanek@nps.gov>
Cc: McDowall, Lena <lena_mcdowall@nps.gov>; Frank Dean <frank_dean@nps.gov>; Aaron Roth <aaron_roth@nps.gov>; Bruce Sheaffer <Bruce_Sheaffer@nps.gov>; Craig Dalby <craig_dalby@nps.gov>
Subject: Re: Draft Cliff House Response Letter

I agree with Scott's comments....and would offer just a couple of other comments.

(b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted] Thanks very much for your help!

On Fri, Oct 4, 2013 at 7:01 AM, Wanek, Scott <scott_wanek@nps.gov> wrote:
A couple of quick observations:

(b) (5)

Scott

On Fri, Oct 4, 2013 at 6:46 AM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:
I've attached a draft response letter to Peanut Wagon, Inc's attorneys - please let me know if you have any edits. (b) (5)
(b) (5) We had Barry take a quick look at it already since he isn't planning to be here all day today. Please give me a call if you'd like to discuss.

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

--
Scott Wanek
Regional Chief Ranger
Pacific West Region
415-623-2180 office
510-501-0459 cell
415-623-2189 fax
VRP Sharepoint Site

--
Patty Neubacher
Deputy Regional Director
Pacific West Region
(415) 623-2105 work
(510) 604-9998 cell

--
Patty Neubacher
Deputy Regional Director
Pacific West Region
(415) 623-2105 work
(510) 604-9998 cell

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

--
Patty Neubacher
Deputy Regional Director
Pacific West Region
(415) 623-2105 work
(510) 604-9998 cell

--
Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

Young, Deirdre R

From: Waldron, Suzanne <sue_waldron@nps.gov>
Sent: Friday, October 04, 2013 1:29 PM
To: Lena McDowall; Peggy O'Dell; Jon Jarvis; Maureen Foster; Mike Litterst; Cam Sholly
Subject: Re: Pisgah Inn

adding cam

On Fri, Oct 4, 2013 at 1:27 PM, Suzanne Waldron <sue_waldron@nps.gov> wrote:

Sent from my iPhone

Begin forwarded message:

> **From:** "Reynolds, William" <william_f_reynolds@nps.gov>
> **Date:** October 4, 2013, 1:26:27 PM EDT
> **To:** "Waldron, Suzanne" <sue_waldron@nps.gov>
> **Subject: Re: Pisgah Inn**
>
> Looks as though they will be needed now. The concessioner is planning to reopen. Rangers en route to enforce closure. Will keep you posted.
> Bill
>
> On Fri, Oct 4, 2013 at 9:25 AM, Reynolds, William <william_f_reynolds@nps.gov> wrote:
> Thanks. Looks as though they are (b) (5) now, but I will keep (b) (5) anguage for future reference.
> Bill
>
> On Fri, Oct 4, 2013 at 8:23 AM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
> bill - asked lena to look at these - (b) (5) 0- but just in case
>
> ---------- Forwarded message ----------
> From: **McDowall, Lena** <lena_mcdowall@nps.gov>
> Date: Thu, Oct 3, 2013 at 5:52 PM
> Subject: Re: Pisgah Inn
> To: "Waldron, Suzanne" <sue_waldron@nps.gov>
>
> (b) (5)
>
> On Thu, Oct 3, 2013 at 3:33 PM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
> fyi

---------- Forwarded message ----------
From: **William Reynolds** <william_f_reynolds@nps.gov>
Date: Thu, Oct 3, 2013 at 2:18 PM
Subject: Re: Pisgah Inn
To: Sue_Waldron@nps.gov

FYI, Rep. Meadows' office is reaching out to the park. Will let you know status of that contact ASAP.
Bill

From: Waldron, Suzanne [mailto:sue_waldron@nps.gov]
Sent: Thursday, October 03, 2013 09:55 AM
To: Karen Cucurullo <karen_cucurullo@nps.gov>; William Reynolds <william_f_reynolds@nps.gov>; Shawn Benge <shawn_benge@nps.gov>
Cc: Maureen Foster <maureen_foster@nps.gov>; Lena McDowall <Lena_McDowall@nps.gov>; Mike Litterst <Mike_Litterst@nps.gov>
Subject: Re: Pisgah Inn

bill - do you have point on this? or can you get this to who is?

On Thu, Oct 3, 2013 at 12:47 PM, Karen Cucurullo <karen_cucurullo@nps.gov> wrote:
I think someone else can better answer.

Sent from my iPhone

Begin forwarded message:

> **From:** <Colleen.Jenkins@thomsonreuters.com>
> **Date:** October 3, 2013, 11:22:52 AM EDT
> **To:** <Karen_Cucurullo@nps.gov>
> **Subject: Pisgah Inn**
>
> Hi Karen,
>
> I'm working on a story for Reuters about the Pisgah Inn in NC's Blue Ridge Mts choosing to stay open despite the government shutdown. Are you available to answer some questions regarding this matter? I can be reached at 727.331.4274.
>
> Thanks!
>
> Colleen
>
> **Colleen Jenkins**
> Correspondent, U.S. General News
>
> Reuters
>
> **Thomson Reuters**

Mobile: 727.331.4274
Colleen.Jenkins@thomsonreuters.com
www.reuters.com

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Sue Waldron
Assistant Director, Communications
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Lena McDowall

Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

--
Sue Waldron
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--
William F. Reynolds
Assistant Regional Director
National Park Service Southeast Region
404-507-5612

--
William F. Reynolds
Assistant Regional Director
National Park Service Southeast Region
404-507-5612

--
Sue Waldron
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Young, Deirdre R

From: Suzanne Waldron <sue_waldron@nps.gov>
Sent: Friday, October 04, 2013 1:27 PM
To: Lena McDowall; Peggy O'Dell; Jon Jarvis; Maureen Foster; Mike Litterst
Subject: Fwd: Pisgah Inn

Sent from my iPhone

Begin forwarded message:

> **From:** "Reynolds, William" <william_f_reynolds@nps.gov>
> **Date:** October 4, 2013, 1:26:27 PM EDT
> **To:** "Waldron, Suzanne" <sue_waldron@nps.gov>
> **Subject: Re: Pisgah Inn**
>
> Looks as though they will be needed now. The concessioner is planning to reopen. Rangers en route to enforce closure. Will keep you posted.
> Bill
>
> On Fri, Oct 4, 2013 at 9:25 AM, Reynolds, William <william_f_reynolds@nps.gov> wrote:
> Thanks. Looks as though they are (b) (5) now, but I will keep (b) (5) language for future reference.
> Bill
>
> On Fri, Oct 4, 2013 at 8:23 AM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
> bill - asked lena to look at these - (b) (5) 0- but just in case
>
> ---------- Forwarded message ----------
> From: **McDowall, Lena** <lena_mcdowall@nps.gov>
> Date: Thu, Oct 3, 2013 at 5:52 PM
> Subject: Re: Pisgah Inn
> To: "Waldron, Suzanne" <sue_waldron@nps.gov>
>
> (b) (5)
>
> On Thu, Oct 3, 2013 at 3:33 PM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
> fyi
>
> ---------- Forwarded message ----------
> From: **William Reynolds** <william_f_reynolds@nps.gov>
> Date: Thu, Oct 3, 2013 at 2:18 PM
> Subject: Re: Pisgah Inn

To: Sue_Waldron@nps.gov

FYI, Rep. Meadows' office is reaching out to the park. Will let you know status of that contact ASAP.
Bill

From: Waldron, Suzanne [mailto:sue_waldron@nps.gov]
Sent: Thursday, October 03, 2013 09:55 AM
To: Karen Cucurullo <karen_cucurullo@nps.gov>; William Reynolds <william_f_reynolds@nps.gov>; Shawn Benge <shawn_benge@nps.gov>
Cc: Maureen Foster <maureen_foster@nps.gov>; Lena McDowall <Lena_McDowall@nps.gov>; Mike Litterst <Mike_Litterst@nps.gov>
Subject: Re: Pisgah Inn

bill - do you have point on this? or can you get this to who is?

On Thu, Oct 3, 2013 at 12:47 PM, Karen Cucurullo <karen_cucurullo@nps.gov> wrote:
I think someone else can better answer.

Sent from my iPhone

Begin forwarded message:

> **From:** <Colleen.Jenkins@thomsonreuters.com>
> **Date:** October 3, 2013, 11:22:52 AM EDT
> **To:** <Karen_Cucurullo@nps.gov>
> **Subject: Pisgah Inn**
>
> Hi Karen,
>
> I'm working on a story for Reuters about the Pisgah Inn in NC's Blue Ridge Mts choosing to stay open despite the government shutdown. Are you available to answer some questions regarding this matter? I can be reached at 727.331.4274.
>
> Thanks!
>
> Colleen

Colleen Jenkins
Correspondent, U.S. General News

Reuters

Thomson Reuters

Mobile: 727.331.4274
Colleen.Jenkins@thomsonreuters.com
www.reuters.com

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Ph: (202) 208-5651
Cell: (202) 641-1814

Email: Lena_McDowall@nps.gov

--
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William F. Reynolds
Assistant Regional Director
National Park Service Southeast Region
404-507-5612

--
William F. Reynolds
Assistant Regional Director
National Park Service Southeast Region
404-507-5612

Young, Deirdre R

From: Waldron, Suzanne <sue_waldron@nps.gov>
Sent: Tuesday, October 15, 2013 3:48 PM
To: Androff, Blake; Lena McDowall
Cc: Edward Boling; Kelly, Katherine; mike litterst; Nicole Buffa; Kevin Haugrud; Tim Fullerton
Subject: Re: Ted says DOJ has edits to Pisgah

updated:

(b) (5)

[redacted]

On Tue, Oct 15, 2013 at 1:03 PM, Androff, Blake <blake_androff@ios.doi.gov> wrote:
Thanks, Ted.

Tim will post the policy on the website this afternoon. I will forward him the version named SOL Final.

Sue - do you have an updated statement that we can used if asked on the policy (we'll need to change the 401 and add a line about the updated policy being applied across the board)? Copied below is the most recent version for the case-by-case analyses:

(b) (5)

On Fri, Oct 11, 2013 at 9:17 PM, Edward Boling <ted.boling@sol.doi.gov> wrote:
(b) (5)

Sent from my iPhone

On Oct 11, 2013, at 8:29 PM, "Androff, Blake" <blake_androff@ios.doi.gov> wrote:

Ted -

Attached is the last thing I saw on an if asked statement re: concessions (b) (5) (b) (5) Can you let us know where that stands?

On Thu, Oct 10, 2013 at 3:29 PM, Boling, Edward <ted.boling@sol.doi.gov> wrote:
Attached are the edits and comments. (b) (5) (b) (5)

For present purposes, DOJ would be fine with this statement:

(b) (5)

Ted Boling
Deputy Solicitor -- Parks & Wildlife
U.S Department of the Interior
1849 C Street NW
Washington, DC 20240
202-208-4423 (main)
202-208-3125 (direct)
202-208-5584 (fax)
Ted.Boling@sol.doi.gov

On Thu, Oct 10, 2013 at 3:23 PM, Kelly, Katherine <kate_kelly@ios.doi.gov> wrote:
if you've already shared with people - that's fine. Ted - pls share the edits asap

On Thu, Oct 10, 2013 at 3:22 PM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
hold on the statement????

On Thu, Oct 10, 2013 at 2:30 PM, Kelly, Katherine <kate_kelly@ios.doi.gov> wrote:
Please hold til we get those back.

--

Kate Kelly
Director of Communications
Department of the Interior
(202) 208 2409
kate_kelly@ios.doi.gov

--

Sue Waldron
Assistant Director, Communications
National Park Service
(202) 208-3046
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Kate Kelly
Director of Communications
Department of the Interior
(202) 208 2409
kate_kelly@ios.doi.gov

--

Blake Androff
Deputy Director of Communications
U.S. Department of the Interior
Office: (202) 208-6416 | Cell: (202) 725-7435

<Proposed DOI Statement.doj comments.docx>

--

Blake Androff
Deputy Director of Communications
U.S. Department of the Interior
Office: (202) 208-6416 | Cell: (202) 725-7435

--

Sue Waldron
Assistant Director, Communications
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Young, Deirdre R

From: Litterst, Michael <mike_litterst@nps.gov>
Sent: Wednesday, October 09, 2013 2:45 PM
To: Dalby, Craig; Lena McDowall
Subject: Re: Explanation for Concession Closures

Looping in Lena MacDowall, the AD for Business Services. Her fact sheet and Q&As are on the InsideNPS shutdown page and address concessions, saying "All facilities and services operating under concessions contract, regardless of physical location, must cease operations in the event of a shutdown."

As for WHY they have to close, I know in the first few days of the shutdown she was (b) (5) [redacted]
(b) (5) [redacted]

LENA - Did you ever get anything back on that subject, or is there a basic explanation you can share? (b) (5) [redacted]
(b) (5) [redacted]

Mike

~~~~~~~~~~~~~~~~~~

Mike Litterst
Chief Spokesperson (acting)

National Park Service
1849 C Street NW
Washington, DC 20240
Ph: (202) 513-0354
Cell: (202) 306-4166

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On Wed, Oct 9, 2013 at 2:38 PM, Dalby, Craig <craig_dalby@nps.gov> wrote:
Mike,

GOGA is looking for some standard language on why concessions have to close. (One guess as to why.) Is there something that's been prepared?

Craig Dalby
Chief, Public Information
Pacific West Region
~~~~~~~~~~~~~~~~~~

National Park Service
206-220-4261

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Monday, October 07, 2013 3:25 PM
To: Patricia Neubacher
Subject: Two draft letters re: Cliff House for discussion
Attachments: GOGA019-98 response to attorney.docx; GOGA010-98 Notice of Default_10.07.13.docx

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Mr. Louis N. Haas
Haas Najarian, LLP
58 Maiden Lane
2nd Floor
San Francisco, CA 94108

Re: Concession Contract CC-GOGA019-90 (the "Contract")

(b) (5)

[on National Park Service letterhead]

Via email and hand delivery

(b) (5)

(b) (5)

Young, Deirdre R

From: Lackey, Melissa <melissa.lackey@sol.doi.gov>
Sent: Monday, October 07, 2013 2:49 PM
To: Lena McDowall
Subject: GOGA010-98
Attachments: GOGA010-98 NPS ltr to Haas.docx

Lena:

Is this what you had in mind? Note: I do not have access to this contract from home, but presume its provisions are standard.

Melissa Lackey

Attorney Advisor
U. S. Department of the Interior, Office of the Solicitor
1849 C Street NW, Room 5323
Mail Stop 5311
Washington, DC 20240

Phone: 202 513-0733 Fax: 202 208-3877

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(on NPS letterhead)

Louis N. Haas, Esq.
HaasNajarian LLP
58 Maiden Lane, 2nd Floor
San Francisco, CA 94108

Re: Concession Contract CC-GOGA019-98 (the "Contract")

Dear Mr. Haas:

(b) (5)

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Monday, October 07, 2013 2:48 PM
To: Melissa Lackey
Subject: Draft Cliff House Default Letter
Attachments: Cliff House Default Letter_10.07.13.docx

I added a few sentences. Let me know what you think.

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

[on National Park Service letterhead]

Via email and hand delivery

(b) (5)

(b) (5)

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Monday, October 07, 2013 9:24 AM
To: Melissa Lackey
Cc: Barry Roth
Subject: Fwd: URGENT- Quick phone call Monday morning?

Melissa -

Forgot to forward this one on to you as well. Just checked with Peggy, and I believe she is going to wait until after our normal 10:15 check-in meeting before talking to GOGA.

Thanks,

Lena

---------- Forwarded message ----------
From: **Francis Dean** <frank_dean@nps.gov>
Date: Mon, Oct 7, 2013 at 2:28 AM
Subject: URGENT- Quick phone call Monday morning?
To: jon_jarvis@nps.gov, peggy_o'dell@nps.gov
Cc: lena_mcdowall@nps.gov, patty_neubacher@nps.gov

Hello Jon and Peggy,

if possible, I would like to speak to one or both of you Monday morning. It is a shutdown issue regarding our distinction between a lease and concession contract One of our concessions (Cliff House) is considering reopening due to that NPS distinction and their financial hardship. I [redacted] (b) (5) [redacted] (b) (5) I told them I would speak to them again mid morning Pacific time on Monday before they took any action.

Nonetheless, as we go into week two of this shutdown, [redacted] (b) (5) [redacted] (b) (5) [redacted]

Fine to include Lena (she has been very helpful) and/or Bruce on the call, but this could become an operations issue and I want to hear from you on this as well.

You can call me starting at 0615 PDT. (415) 710-7484c

Thank you,

Frank

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Young, Deirdre R

From: Francis Dean <frank_dean@nps.gov>
Sent: Monday, October 07, 2013 5:42 AM
To: bruce_sheaffer@nps.gov; maureen_foster@nps.gov
Cc: lena_mcdowall@nps.gov; patty_neubacher@nps.gov
Subject: Fw: URGENT- Quick phone call Monday morning?

Hi Bruce and Maureen, meant to include you on this. Talk to you later today.

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

----- Original Message -----
From: Francis Dean [mailto:frank_dean@nps.gov]
Sent: Sunday, October 06, 2013 11:28 PM
To: 'jon_jarvis@nps.gov' <jon_jarvis@nps.gov>; 'peggy_o'dell@nps.gov' <peggy_o'dell@nps.gov>
Cc: 'lena_mcdowall@nps.gov' <lena_mcdowall@nps.gov>; 'patty_neubacher@nps.gov' <patty_neubacher@nps.gov>
Subject: URGENT- Quick phone call Monday morning?

Hello Jon and Peggy,

if possible, I would like to speak to one or both of you Monday morning.
It is a shutdown issue regarding our distinction between a lease and concession contract One of our concessions (Cliff House) is considering reopening due to that NPS distinction and their financial hardship. (b) (5) [redacted] (b) (5) [redacted] I told them I would speak to them again mid morning Pacific time on Monday before they took any action.

Nonetheless, as we go into week two of this shutdown, (b) (5) [redacted]

(b) (5) [redacted]

Fine to include Lena (she has been very helpful) and/or Bruce on the call, but this could become an operations issue and I want to hear from you on this as well.

You can call me starting at 0615 PDT. (415) 710-7484c

Thank you,

Frank

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123

(415) 561-4720

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Monday, October 07, 2013 5:34 AM
To: Melissa Lackey
Cc: Barry Roth
Subject: Fw: The Cliff House---NPS Shutdown Order
Attachments: image001.jpg; McDowall ltr 10-4-13.pdf

Melissa-

Just a heads-up that we may need your help on Cliff House today. Their lawyer's latest letter is attached.

Thanks,

Lena

---------- Forwarded message ----------
From: **Francis Dean**
Date: Monday, October 7, 2013
Subject: Fw: The Cliff House---NPS Shutdown Order
To: lena_mcdowall@nps.gov
Cc: patty_neubacher@nps.gov, peggy_o'dell@nps.gov, jon_jarvis@nps.gov

Hi Lena,

Am sending this letter by email in case FedEx is not getting to you promptly within MIB. I am also copying you on another email about this as we should talk Monday morning. I am holding the line here, but the lease and contract distinction is quite nuanced in this park as you know.

Thanks for your assistance on this,

Frank

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

From: Lou Haas [mailto:LHaas@hnattorneys.com]
Sent: Friday, October 04, 2013 05:47 PM
To: Frank Dean <frank_dean@nps.gov>
Subject: FW: The Cliff House---NPS Shutdown Order

Frank,

Thanks so much for your time today. Attached is my follow up letter to Lena, which she should receive Monday AM. I have also reached out to Derrick Crandall and hope to speak with him ASAP. I will also reach out to Dean Jenson regarding his experience on the insurance issue, but our agent and my coverage partner indicate that the situation is bleak (property damage is covered, but other than the loss of some food our losses are all economic and seem to fall under the sovereign act exclusion). We will be working on The Cliff House issues with management and the numbers folks this weekend, and I will update you either tomorrow or Sunday, but as discussed Danny finds himself in an impossible situation.

Lou

HAASNAJARIANLLP
Attorneys at Law

Louis N. Haas
Partner
HaasNajarian LLP
58 Maiden Lane, 2nd Floor
San Francisco, CA 94108
415.788.6330 v
415.391.0555 f
lhaas@hnattorneys.com

From: Leslie Mabie
Sent: Friday, October 04, 2013 5:26 PM
To: Lou Haas
Subject: 0364.018

HAASNAJARIANLLP
Attorneys at Law

Leslie Mabie
Assistant to Louis N. Haas and
David E. Bunim
HaasNajarian LLP
58 Maiden Lane, 2nd Floor
San Francisco, CA 94108

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lmabie@hnattorneys.com

IRS Circular 230 Disclosure: to ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding tax-related penalties under the U.S. Internal Revenue Code or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein. This e-mail message and any attachments are confidential and may be attorney-client privileged.

If you are not the intended recipient, please notify Haas & Najarian immediately by telephone at (415) 788-6330 or by e-mail to email@haasnaja.com and destroy all copies of this message and any attachments.

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

_HAASNAJARIANLLP
Attorneys at Law

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94108

T 415.788.6330
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October 4, 2013

0364.018

BY FEDERAL EXPRESS
Tracking No. 7968 4662 7458

Lena McDowall
Associate Director, Business Services
United States Department of the Interior
National Park Service
1849 C Street, N.W.
Washington, D.C 20240

Re: *Concession Contract No. CC-GOGA10-98*
Order to Discontinue Operations at The Cliff House
Response to NPS Letter Received Today

Dear Ms. McDowall:

Thank you so much for your prompt response to our letter of October 2, 2013 to Frank Dean, General Superintendent of GGNRA. While it seems that your decision to continue the shutdown order *vis-à-vis* The Cliff House concession is cast in concrete, I wanted to point out a few items in response to your letter:

- The economic devastation of the shutdown order upon this Concession may be irremediable; due to a 50% overrun in the cost of the improvements required under the Concession Contract and an almost four year delay in the design and construction project (almost exclusively due to NPS issues regarding design and construction), the Concessioner has never been able to realize a profit on its investment, much less the reasonable profit in relation to both gross receipts and capital invested required by both statute and regulation. In fact, the equity owners of the Concessioner, Peanut Wagon, Inc. ("PWI"), have not been able to take compensation for their daily efforts in overseeing operation of the Concession. The shutdown order may be the proverbial nail in the (economic) coffin, since the continuing monthly costs of maintaining the Concession even after laying off the food and beverage staff still exceeds $300,000.[1]

[1] In an ironic but vile twist, PWI's insurance carrier of more than 25 years (Fireman's Fund) is refusing to cover these significant business losses by applying a "sovereign acts" exclusion.

- Due to the fact that the economy has recovered more in San Francisco than in the rest of the country, the Concessioner has determined that the shutdown order will result in the loss of approximately 100 of its 200 employees, who will be forced to seek other employment (and in San Francisco, other employment is apparently available). When the shutdown order is lifted, the Concession will be crippled, requiring a large injection of capital to perform the Human Resources work in replacing the staff and training the new personnel, much to the detriment not only of the Concessioner and the Concession, but the experience of the Area visitors.

- We understand that the Secretary's national closure determination "... is necessary to maintain public health and safety in units of the National Park System and to protect Park resources and values during the shutdown period." However, the shutdown order as applied to The Cliff House will result in the opposite; *viz*, health and safety will not be enhanced and Park resources and values will be adversely impacted. PWI has been operating The Cliff House for years before NPS purchased the property from its prior owner, the Whitney family. PWI has been a model steward of this precious Park property and operates without the level of contracting support, visitor protection and management oversight emphasized in your letter. As I pointed out in my October 2 letter, due to concurrent jurisdiction, all of the necessary protective functions are provided by the City and County of San Francisco, including the providing of all utilities and life safety service providers.

- Finally, we cannot help but notice the "form vs. substance" aspect of the shutdown impacting concessions but not leaseholds. There is a leasehold operation 100 yards north of The Cliff House, Louis' Restaurant, operated by cousins of the owners of PWI, a fact well known to the community in San Francisco, especially regular Park visitors. It is a 10 year leasehold which required considerable improvements to be made by the Lessee. It is operated the same as The Cliff House and requires little Park oversight.[2] While I certainly appreciate that procurement management decisions regarding the nature and structure of Park property operations is exclusively the province of NPS, it is difficult for my client and the public to understand the distinctions, creating a public relations problem being laid at the feet my client and GGNRA.

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[2] Actually, if you check with GGNRA senior contract personnel, you will discover that Louis' requires more Park oversight and management than The Cliff House (which requires virtually none on a regular basis).

Thank you for your further consideration of these matters. If you require any clarification or wish to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

HAAS NAJARIAN, LLP

LOUIS N. HAAS

LNH/lm

cc: PWI
Frank Dean

N:\CLIENTS\03\0364\018\Correspondence\McDowall ltr 10-4-13.docx

Young, Deirdre R

From: Francis Dean <frank_dean@nps.gov>
Sent: Monday, October 07, 2013 2:29 AM
To: jon_jarvis@nps.gov; peggy_o'dell@nps.gov
Cc: lena_mcdowall@nps.gov; patty_neubacher@nps.gov
Subject: URGENT- Quick phone call Monday morning?

Hello Jon and Peggy,

if possible, I would like to speak to one or both of you Monday morning.
It is a shutdown issue regarding our distinction between a lease and concession contract One of our concessions (Cliff House) is considering reopening due to that NPS distinction and their financial hardship. (b) (5) [redacted] (b) (5) [redacted] I told them I would speak to them again mid morning Pacific time on Monday before they took any action.

Nonetheless, as we go into week two of this shutdown, (b) (5) [redacted]

(b) (5) [redacted]

Fine to include Lena (she has been very helpful) and/or Bruce on the call, but this could become an operations issue and I want to hear from you on this as well.

You can call me starting at 0615 PDT. (415) 710-7484c

Thank you,

Frank

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

Young, Deirdre R

From: Francis Dean <frank_dean@nps.gov>
Sent: Monday, October 07, 2013 2:12 AM
To: lena_mcdowall@nps.gov
Cc: patty_neubacher@nps.gov; peggy_o'dell@nps.gov; jon_jarvis@nps.gov
Subject: Fw: The Cliff House---NPS Shutdown Order
Attachments: image001.jpg; McDowall ltr 10-4-13.pdf

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From: Leslie Mabie
Sent: Friday, October 04, 2013 5:26 PM
To: Lou Haas
Subject: 0364.018

Leslie Mabie
Assistant to Louis N. Haas and
David E. Bunim
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415.788.6330 v
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Attorneys at Law

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California
94108

T 415.788.6330
F 415.391.0555

October 4, 2013

0364.018

BY FEDERAL EXPRESS
Tracking No. 7968 4662 7458

Lena McDowall
Associate Director, Business Services
United States Department of the Interior
National Park Service
1849 C Street, N.W.
Washington, D.C 20240

Re: *Concession Contract No. CC-GOGA10-98*
Order to Discontinue Operations at The Cliff House
Response to NPS Letter Received Today

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Thank you for your further consideration of these matters. If you require any clarification or wish to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

HAAS NAJARIAN, LLP

LOUIS N. HAAS

LNH/lm

cc: PWI
Frank Dean

N:\CLIENTS\03\0364\018\Correspondence\McDowall ltr 10-4-13.docx

Young, Deirdre R

From: Neubacher, Patricia <patty_neubacher@nps.gov>
Sent: Friday, October 04, 2013 12:59 PM
To: Lena McDowall
Subject: Fwd: Draft Cliff House Response Letter

You made everyone happy (well, except maybe the cliff house folks)

Thanks for your extra effort.

---------- Forwarded message ----------
From: **Wanek, Scott** <scott_wanek@nps.gov>
Date: Fri, Oct 4, 2013 at 9:42 AM
Subject: Re: Draft Cliff House Response Letter
To: "Neubacher, Patricia" <patty_neubacher@nps.gov>

Excellent.

On Fri, Oct 4, 2013 at 9:40 AM, Neubacher, Patricia <patty_neubacher@nps.gov> wrote:
Thanks for your help Lena! We truly appreciate it.

On Fri, Oct 4, 2013 at 9:39 AM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:
All-

I've attached another draft of the letter (b) (5) [redacted] (b) (5) [redacted] (b) (5) [redacted] 'll finalize and send to the park and region via e-mail so Frank has it for his meeting.

Thanks,

Lena

On Fri, Oct 4, 2013 at 11:41 AM, Frank Dean <frank_dean@nps.gov> wrote:
[redacted] (b) (5)

On Oct 4, 2013, at 8:22 AM, "Neubacher, Patricia" <patty_neubacher@nps.gov> wrote:

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Thanks,

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

From: Neubacher, Patricia [mailto:patty_neubacher@nps.gov]
Sent: Friday, October 04, 2013 07:35 AM
To: Wanek, Scott <scott_wanek@nps.gov>
Cc: McDowall, Lena <lena_mcdowall@nps.gov>; Frank Dean <frank_dean@nps.gov>; Aaron Roth <aaron_roth@nps.gov>; Bruce Sheaffer <Bruce_Sheaffer@nps.gov>; Craig Dalby <craig_dalby@nps.gov>
Subject: Re: Draft Cliff House Response Letter

I agree with Scott's comments....and would offer just a couple of other comments.

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On Fri, Oct 4, 2013 at 7:01 AM, Wanek, Scott <scott_wanek@nps.gov> wrote:
A couple of quick observations:

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On Fri, Oct 4, 2013 at 6:46 AM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:
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look at it already since he isn't planning to be here all day today. Please give me a call if you'd like to discuss.

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Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

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Scott Wanek
Regional Chief Ranger
Pacific West Region
415-623-2180 office
510-501-0459 cell
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VRP Sharepoint Site

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Patty Neubacher
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Young, Deirdre R

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Sent: Friday, October 04, 2013 12:41 PM
To: patty_neubacher@nps.gov; lena_mcdowall@nps.gov
Cc: scott_wanek@nps.gov; Aaron_Roth@nps.gov; Bruce_Sheaffer@nps.gov; craig_dalby@nps.gov; barry.roth@sol.doi.gov
Subject: Re: Draft Cliff House Response Letter

Yes, thanks Lena. Let's go with this version today.

Frank

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General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

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Young, Deirdre R

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Subject: Re: Draft Cliff House Response Letter
Attachments: Cliff House Letter_v2_10.04.13.docx; Natl Park System Closure Determination and Notice 2013-10-01.pdf

All-

I've attached another draft of the letter which more specifically addresses the attorney's question of (b) (5) [redacted] (b) (5) [redacted] I'll finalize and send to the park and region via e-mail so Frank has it for his meeting.

Thanks,

Lena

On Fri, Oct 4, 2013 at 11:41 AM, Frank Dean <frank_dean@nps.gov> wrote:

(b) (5) [redacted]

On Oct 4, 2013, at 8:22 AM, "Neubacher, Patricia" <patty_neubacher@nps.gov> wrote:

> Frank: (b) (5) [redacted] We'll incorporate it and ship it back to Bruce and Lena for their review. Thanks.
>
> On Fri, Oct 4, 2013 at 8:17 AM, Francis Dean <frank_dean@nps.gov> wrote:
>
> (b) (5) [redacted]
>
> Thanks,
>
> Frank Dean
> General Superintendent
> Golden Gate
> National Recreation Area
> San Francisco, CA 94123
> (415) 561-4720

From: Neubacher, Patricia [mailto:patty_neubacher@nps.gov]
Sent: Friday, October 04, 2013 07:35 AM
To: Wanek, Scott <scott_wanek@nps.gov>
Cc: McDowall, Lena <lena_mcdowall@nps.gov>; Frank Dean <frank_dean@nps.gov>; Aaron Roth <aaron_roth@nps.gov>; Bruce Sheaffer <Bruce_Sheaffer@nps.gov>; Craig Dalby <craig_dalby@nps.gov>
Subject: Re: Draft Cliff House Response Letter

I agree with Scott's comments....and would offer just a couple of other comments.

(b) (5) [redacted]

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(b) (5) [redacted] Thanks very much for your help!

On Fri, Oct 4, 2013 at 7:01 AM, Wanek, Scott <scott_wanek@nps.gov> wrote:
A couple of quick observations:

(b) (5) [redacted]

Scott

On Fri, Oct 4, 2013 at 6:46 AM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:

(b) (5) [redacted]
(b) (5) [redacted] Please give me a call if you'd like to discuss.

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

--

Scott Wanek
Regional Chief Ranger
Pacific West Region
415-623-2180 office
510-501-0459 cell
415-623-2189 fax
VRP Sharepoint Site

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Patty Neubacher
Deputy Regional Director
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Mr. Louis N. Haas
Has Najarian, LLP
58 Maiden Lane
2nd Floor
San Francisco, CA 94108

Dear Mr. Haas:

(b) (5)

(b) (5)

United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

Office of the Director

National Park System Closure Determination and Notice

Pursuant to 36 C.F.R. § 1.5, effective at 12:01 a.m. on October 1, 2013, all units of the National Park System nationwide are closed to public visitation and use, subject to the conditions and exceptions described below. This national closure determination and notice is necessitated by a lapse in funds appropriated by the United States Congress for the operation of the National Park System and will remain in effect until funding is restored. The period of time during which appropriated funds are not available may be referred to in this determination and notice as the "shutdown period."

Under 36 C.F.R. § 1.5(a) this national closure determination and notice is necessary to maintain public health and safety in units of the National Park System and to protect park resources and values during the shutdown period. Consistent with the Department of the Interior Contingency Plan, available at www.doi.gov/shutdown, only a relatively small number of "excepted personnel" will be on duty during the shutdown period. Those personnel are not sufficient to provide a full range of visitor services. Therefore, in light of the shutdown and Contingency Plan, measures less restrictive than a national closure will not suffice to maintain public health and safety and to protect park resources and values. The lapse in appropriated funds qualifies as an "emergency" under 36 C.F.R. § 1.5(b); therefore, this determination and notice does not require special rulemaking.

Condition and Exceptions:

1. National Park Service personnel who have been identified as excepted will continue to report for duty in accordance with the National Park Service Contingency Plan and as directed by their supervisors.

2. Members of the public who are currently visiting a unit of the National Park System and not staying overnight in the park must vacate the park immediately. All day-use concession-operated visitor services and facilities are to be closed immediately. Exceptions may be granted by superintendents only if a facility is deemed essential for health or safety purposes.

3. Subject to paragraph 6 below, members of the public who are currently visiting a unit of the national park system and staying overnight either in a National Park Service-operated campground or a concessioner-operated facility in the park must vacate the park by 6:00 p.m. EDT on October 3, 2013.

4. Subject to paragraph 6 below, National Park Service concessioners must suspend their operations in overnight accommodations by 6:00 p.m. EDT on October 3, 2013.

5. Subject to paragraph 6 below, holders of National Park Service commercial use authorizations must immediately cease their in-park operations.

6. The deadlines announced above do not apply to members of the public, concessioners, and holders of commercial use authorizations who are on multi-day backcountry trips that cannot be safely terminated before the end of the trip. Those individuals may continue and complete their multi-day backcountry trips in accordance with their approved permit or plan. Those individuals then must vacate the park within 12 hours after the completion of their trip.

7. This closure determination and notice does not apply to private owners of interests in real property located within the exterior boundaries of units of the National Park System. Park superintendents will continue to allow such owners reasonable access to their private property.

8. This closure determination and notice does not apply to roads that pass through units of the National Park System and provide primary access between points located outside of the parks. Members of the public may continue to use those roads during the shutdown period. However, superintendents may not expend any appropriated funds to maintain or repair those roads. Moreover, superintendents may close those roads, or portions of those roads, in accordance with 36 C.F.R. § 1.5, if such closure is warranted by weather, poor road conditions, or other circumstances.

9. All previously issued permits for special events scheduled to occur in units of the National Park System during the shutdown period are hereby cancelled. At the end of the shutdown period holders of cancelled permits may apply for a new permit. Except as provided in paragraph 10 below, all closed areas of the National Park System are also closed to First Amendment activities during the shutdown period, and any previously issued permits for First Amendment activities are hereby cancelled.

10. This closure determination and notice does not apply to First Amendment activities in the National Mall and Memorial Parks and areas administered by the NPS Liaison to the White House in Washington, D.C., and Independence National Historical Park in Philadelphia, Pennsylvania. Persons may continue to conduct First Amendment activities in these units in accordance with existing regulations.

11. Each park superintendent must take reasonable measures to comply with 36 C.F.R. § 1.7 and to provide adequate public notice of this national closure determination and notice.

12. This national closure determination and notice will expire automatically at the end of the shutdown period.

13. Violation of this national closure determination and notice is prohibited.

Jonathan B. Jarvis

Jonathan B. Jarvis
Director

October 1, 2013
Date

Young, Deirdre R

From: Frank Dean <frank_dean@nps.gov>
Sent: Friday, October 04, 2013 11:42 AM
To: Neubacher, Patricia
Cc: Scott Wanek; Lena McDowall; Aaron Roth; Bruce Sheaffer; Craig Dalby
Subject: Re: Draft Cliff House Response Letter

(b) (5) [redacted]

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National Recreation Area
San Francisco, CA 94123
(415) 561-4720

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Cc: McDowall, Lena <lena_mcdowall@nps.gov>; Frank Dean <frank_dean@nps.gov>; Aaron Roth <aaron_roth@nps.gov>; Bruce Sheaffer <Bruce_Sheaffer@nps.gov>; Craig Dalby <craig_dalby@nps.gov>
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Deputy Regional Director
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Young, Deirdre R

From: Benge, Shawn <shawn_benge@nps.gov>
Sent: Friday, October 04, 2013 11:26 AM
To: Lena McDowall
Subject: Fwd: Phase 2 Shutdown notification to Concession Operators
Attachments: Shutdown Plan_Concessions_Leases_CUAs_09.26.13 (2).docx; FY14 Commercial Services Shutdown Q&As (2).docx

FYI

---------- Forwarded message ----------
From: **Stinnett, Steve** <steve_stinnett@nps.gov>
Date: Fri, Oct 4, 2013 at 11:22 AM
Subject: Fwd: Phase 2 Shutdown notification to Concession Operators
To: Shawn Benge <shawn_benge@nps.gov>, David Horne <david_horne@nps.gov>

This is the message that was sent to all of our concessions by AO Kathy Tustanowski on October 1st.

Steve Stinnett
Chief Ranger
Blue Ridge Parkway
199 Hemphill Knob Rd
Asheville, NC 28803
828/348-3426 (O)
828/271-4118 (F)
828/273-6215 (C)

The National Park Service cares for special places saved by the American people so that all may experience our heritage.

Notice: This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is law enforcement sensitive, proprietary, privileged, or confidential and may be legally protected or otherwise exempt from disclosure. This message may be forwarded by the addressee, as appropriate, to further disseminate law enforcement sensitive information to the field, as needed. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

---------- Forwarded message ----------
From: **Tustanowski, Kathy** <kathy_tustanowski@nps.gov>
Date: Tue, Oct 1, 2013 at 3:19 PM
Subject: Fwd: Phase 2 Shutdown notification to Concession Operators
To: Steve Stinnett <steve_stinnett@nps.gov>
Cc: Lisa Davis <lisa_davis@nps.gov>, Laura Nelson <laura_s_nelson@nps.gov>

FYI -

Kathy Tustanowski

Chief, Division of Business Administration
Blue Ridge Parkway

828-348-3412 Office
828-674-4798 Cell
828-271-4313 Fax

Collaborate, Communicate, Succeed

---------- Forwarded message ----------
From: **Tustanowski, Kathy** <kathy_tustanowski@nps.gov>
Date: Tue, Oct 1, 2013 at 3:18 PM
Subject: Phase 2 Shutdown notification to Concession Operators
To: Addison Williams <pricelakeboatrentals@gmail.com>, Bruce O'Connell <PisgahInn@aol.com>, Ellen Schaller <parkwaycraft@bellsouth.net>, Karen Radcliff <sme9069@gmail.com>, Robert Peters <rpeters@dncinc.com>, Tom Bailey <tom@craftguild.org>

We have received notification that Phase 2 of the Shutdown is to begin.

Per the guidance previously issued " visitors in all overnight concession accommodations should be given 48 hours, starting from 6 pm on the date of notification, to make other arrangements and leave the park. This applies to visitors in both NPS and concession-operated facilities."

This would make Thursday, October 3 at 6pm the target to have visitors out of overnight facilities and concession operations at those locations closed to the public.

From this point on your point of contact during the government shutdwon will be our Chief Ranger, Steve Stinnett. He can be reached at 828/348-3426.

Kathy Tustanowski
Chief, Division of Business Administration
Blue Ridge Parkway

828-348-3412 Office
828-674-4798 Cell
828-271-4313 Fax

Collaborate, Communicate, Succeed

--
Shawn Benge

Deputy Regional Director
Southeast Region
National Park Service
Office: 404 507 5605
Cell: 404 272 7253

Shutdown Guidance: Concessions, CUA's, and Leases

Effective immediately upon a lapse in appropriations, the National Park Service will take all necessary steps to close and secure national park facilities and grounds. Day use visitors will be instructed to leave the park immediately. Visitors utilizing overnight concession accommodations and campgrounds will be notified to make alternate arrangements and depart the park as part of Phase 2. Wherever possible, park roads will be closed and access will be denied. National and regional offices and support centers will be closed and secured, except where they are needed to support excepted personnel. These steps will be enacted as quickly as possible while still ensuring visitor and employee safety as well as the integrity of park resources.

The shutdown will take place in two phases. Phase I includes all activities to notify the public of the closure, secure government records and property, and begin winding down operations to essential activities only. Day use facilities, concession and park operated, will be closed during Phase 1. Phase 1 will take place over a day and a half. Phase 2 will be initiated by the Director and will complete the shutdown of all concession facilities and commercial visitor services. Overnight visitors will be given two days to make alternate arrangements and depart the parks. The entire closure process – both phases – will be completed within four days. Facilities under lease will not be ordered to close during a shutdown.

Park superintendents should notify concessioners, CUA holders and lessees of these procedures and the potential implementation timeline immediately.

Phase 1 Shutdown Procedures:

Immediately upon receiving instructions from the Washington Office to begin closedown, take the following steps to begin orderly closure of concession facilities and services in the park.

1. All day-use, concession-operated visitor services and facilities are to be closed; Concession operations with overnight accommodations will be allowed to remain open until notified under phase 2, below. Exceptions may be granted by park superintendents, but only if a facility is deemed essential for health or safety purposes or is needed to support ongoing, essential park operations.

2. Services offered via commercial use authorizations, whether originating within or outside of park boundaries, are also to cease operations within the park.

3. Outfitter and guide concessioner and CUAs should not commence new trips after a shutdown has been initiated.

4. Access to leased facilities is permitted. However, no recreational uses outside of the inholding/leased facility on park lands are to be permitted.

Phase 2 Shutdown Procedures:

Should a prolonged lapse in appropriations occur, it will be necessary to take the following additional steps. Upon receiving instructions from WASO to begin Phase 2 of the shutdown, take the following steps to complete the shutdown of all concession facilities and commercial visitor services:

1. Visitors in all overnight concession accommodations should be given 48 hours, starting from 6 pm on the date of notification, to make other arrangements and leave the park. This applies to visitors in both NPS and concession-operated facilities.

2. All visitors must leave the park within the 48 hour period. Exceptions may be granted by superintendents where compliance could result in danger to park staff, concession employees, or visitors.

3. Visitors on outfitter or guided trips in the back country or on a secluded river that have already departed at the start of the shutdown will be allowed to complete their trip unless there is a practical and safe way to end the excursion and leave the park.

4. Concession employees who normally live in the park may remain in the park. Concessioners may continue to provide meals and accommodations for those employees. However, no recreational uses outside of the assigned area on park lands are to be permitted.

5. Access to privately owned boats is permitted but use for recreational purposes within the park boundary is not allowed.

6. Access to leased facilities is permitted. However, no recreational uses outside of the inholding/leased facility on park lands are allowed.

Commercial Services Shutdown Guidance
Frequently Asked Questions

1. What actions should parks take to prepare concessioners, CUA holders and lessees for a shutdown?

Park superintendents should notify concessioners, CUA holders and lessees of shutdown procedures and the potential implementation timeline immediately. All parks should designate an employee on the excepted list of personnel to be the POC for the concessioner for the duration of any shutdown event.

2. Must concession employees also vacate the park during a shutdown?

Concession employees who normally live in the park may remain in the park. Concessioners may continue to provide meals and accommodations for those employees. However, no recreational uses outside of the assigned area on park lands are to be permitted.

3. Can concessioners continue concessioner-funded construction, rehabilitation or repair work during the shutdown?

Park superintendents will determine whether this activity is permitted based on local conditions. Park superintendents will inform concessioners if they are authorized to continue any construction, rehabilitation, or repair work during the shutdown.

4. Will access to leased facilities be permitted during a shutdown?

Yes. Leased facilities can continue operating during a shutdown. However, no recreational uses outside of the leased facility on park lands are to be permitted.

5. My park has concession businesses operating outside of the park entrance station(s), do those businesses also have to close?

Yes. All facilities and services operating under concessions contract, regardless of physical location, must cease operations in the event of a shutdown.

6. My park's concessioner(s) operate in an urban park environment where it is not possible to physically "close" a specific park area. Do my concessioners have to close in the event of a shutdown?

Yes. All facilities and services operating under concessions contract, regardless of physical location, must cease operations in the event of a shutdown.

7. Will boat owners have access to privately owned boats in concession-operated marinas during a shutdown?

At the superintendent's discretion and depending on local conditions, access to privately owned boats is permitted, but use for recreational purposes within the park boundary is not allowed.

8. May concessioners volunteer their services in order to keep portions of the park open during a shutdown?

No. Concessioners may not volunteer their services or other company resources.

9. What happens after the shutdown?

Parks may reopen as soon as the Washington Office directs them to do so. Concessioners and CUA holders may resume operations once the park reopens.

Young, Deirdre R

From: Neubacher, Patricia <patty_neubacher@nps.gov>
Sent: Friday, October 04, 2013 11:23 AM
To: Francis Dean
Cc: Scott Wanek; Lena McDowall; Aaron Roth; Bruce Sheaffer; Craig Dalby
Subject: Re: Draft Cliff House Response Letter

Frank: (b) (5) [redacted] We'll incorporate it and ship it back to Bruce and Lena for their review. Thanks.

On Fri, Oct 4, 2013 at 8:17 AM, Francis Dean <frank_dean@nps.gov> wrote:

(b) (5) [redacted]

Thanks,

Frank Dean
General Superintendent
Golden Gate
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Sent: Friday, October 04, 2013 07:35 AM
To: Wanek, Scott <scott_wanek@nps.gov>
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A couple of quick observations:

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Scott

On Fri, Oct 4, 2013 at 6:46 AM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:

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(b) (5) [redacted] We had Barry take a quick look at it already since he isn't planning to be here all day today. Please give me a call if you'd like to discuss.

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Ph: (202) 208-5651
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Young, Deirdre R

From: Benge, Shawn <shawn_benge@nps.gov>
Sent: Friday, October 04, 2013 11:19 AM
To: Lena McDowall
Subject: Fwd: Pisgah Inn

Per our discussion.

---------- Forwarded message ----------
From: **Stinnett, Steve** <steve_stinnett@nps.gov>
Date: Fri, Oct 4, 2013 at 11:08 AM
Subject: Fwd: Pisgah Inn
To: Shawn Benge <shawn_benge@nps.gov>, David Horne <david_horne@nps.gov>

I need guidance form Concessions and Solicitor on this.

Steve Stinnett
Chief Ranger
Blue Ridge Parkway
199 Hemphill Knob Rd
Asheville, NC 28803
828/348-3426 (O)
828/271-4118 (F)
828/273-6215 (C)

The National Park Service cares for special places saved by the American people so that all may experience our heritage.

Notice: This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is law enforcement sensitive, proprietary, privileged, or confidential and may be legally protected or otherwise exempt from disclosure. This message may be forwarded by the addressee, as appropriate, to further disseminate law enforcement sensitive information to the field, as needed. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

---------- Forwarded message ----------
From: **Kevin Garden** <kevin@gardenlawfirm.com>
Date: Fri, Oct 4, 2013 at 10:58 AM
Subject: Pisgah Inn
To: steve_stinnett@nps.gov
Cc: BOconn8876@aol.com, "Newman, Philip" <Philip.Newman@mail.house.gov>, "Elliott, Beverly" <Beverly.Elliott@mail.house.gov>

Mr. Stinnett-

I am contacting you on behalf of the Pisgah Inn in an effort to determine the legal validity of the apparent direction to the Pisgah Inn to close its operations. The Pisgah Inn has not received any written notification from the Superintendent or his

authorized representative to close its operations. Nor has the Pisgah Inn received any copy of any closure order, pursuant to 36 C.F.R. § 1.5, which states that its operations are to be closed.

The only purported direction it has received is an email from you, passing on an email from an NPS employee. However, this does not appear to constitute a decision by the Superintendent or his properly delegated representative.

Under its contract, the Pisgah Inn is legally required to operate unless it has been properly directed not to do so. Thus, unless the Pisgah Inn confirms that it has been properly directed to close down, it risks being in breach of its contract if it does in fact close down. Moreover, the Pisgah Inn takes the risk of incorrectly assuming that government employees who give it directions are in fact legally authorized to do so, and the Pisgah Inn has a legal obligation to verify that any direction from a government employee is in fact authorized.

Please provide me with the alleged authorization that requires the Pisgah Inn to close so that we can review it in order to determine whether Pisgah Inn is at risk of breaching its contract if it fact closes.

Best regards,

Kevin Garden

Kevin R. Garden, Esq.

THE GARDEN LAW FIRM, P.C.

901 N. Pitt Street, Suite 325

Alexandria, VA 22314

Tel: 703.535.5565 Fax: 703.997.1330

The information contained in this message is confidential and may be an attorney-client communication. It is intended solely for the use of the recipient named above and is not intended to waive any confidentiality or attorney-client privilege. Any unauthorized use or distribution of this message is prohibited and may be unlawful. If the reader of this message is not the intended recipient, you are hereby notified that you have received this message in error and are requested to immediately notify me at the above email address or telephone number and destroy this message.

--

Shawn Benge
Deputy Regional Director
Southeast Region
National Park Service
Office: 404 507 5605
Cell: 404 272 7253

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(b) (5) [redacted]

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Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

--
Scott Wanek

Regional Chief Ranger
Pacific West Region
415-623-2180 office
510-501-0459 cell
415-623-2189 fax
VRP Sharepoint Site

--

Patty Neubacher
Deputy Regional Director
Pacific West Region
(415) 623-2105 work
(510) 604-9998 cell

Young, Deirdre R

From: Wanek, Scott <scott_wanek@nps.gov>
Sent: Friday, October 04, 2013 10:01 AM
To: McDowall, Lena
Cc: Patricia Neubacher; Frank Dean; Aaron Roth; Bruce Sheaffer; Craig Dalby
Subject: Re: Draft Cliff House Response Letter

A couple of quick observations:

(b) (5)

Scott

On Fri, Oct 4, 2013 at 6:46 AM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:

(b) (5)

(b) (5) We had Barry take a quick look at it already since he isn't planning to be here all day today. Please give me a call if you'd like to discuss.

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

--
Scott Wanek
Regional Chief Ranger
Pacific West Region
415-623-2180 office
510-501-0459 cell
415-623-2189 fax
VRP Sharepoint Site

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Friday, October 04, 2013 9:46 AM
To: Patricia Neubacher; Frank Dean; Aaron Roth
Cc: Bruce Sheaffer; Scott Wanek; Craig Dalby
Subject: Draft Cliff House Response Letter
Attachments: Cliff House Letter.docx

(b) (5) [redacted] We had Barry take a quick look at it already since he isn't planning to be here all day today. Please give me a call if you'd like to discuss.

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Mr. Louis N. Haas
Has Najarian, LLP
58 Maiden Lane
2nd Floor
San Francisco, CA 94108

Dear Mr. Haas:

(b) (5)

(b) (5)

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Friday, October 04, 2013 9:13 AM
To: Sheaffer, Bruce
Cc: Roth, Barry
Subject: Re: Draft Cliff House Letter

Thanks, Barry. This looks good to me too.

On Fri, Oct 4, 2013 at 7:55 AM, Sheaffer, Bruce <bruce_sheaffer@nps.gov> wrote:
this is good to go by me

On Thu, Oct 3, 2013 at 6:21 PM, Roth, Barry <barry.roth@sol.doi.gov> wrote:
My suggestions.

Barry N. Roth
Associate Solicitor
Division of Parks & Wildlife
202-208-4344
Fax: 202-208-3877
Barry.Roth@sol.doi.gov

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On Thu, Oct 3, 2013 at 5:46 PM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:
I've attached a draft response to the Cliff House letter. Bruce, the letter from the concessioner's attorney is attached for reference.

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

--
C. Bruce Sheaffer

Comptroller
National Park Service
202-208-4566
bruce_sheaffer@nps.gov

--

Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Young, Deirdre R

From: Sheaffer, Bruce <bruce_sheaffer@nps.gov>
Sent: Friday, October 04, 2013 7:55 AM
To: Roth, Barry
Cc: McDowall, Lena
Subject: Re: Draft Cliff House Letter

this is good to go by me

On Thu, Oct 3, 2013 at 6:21 PM, Roth, Barry <barry.roth@sol.doi.gov> wrote:
My suggestions.

Barry N. Roth
Associate Solicitor
Division of Parks & Wildlife
202-208-4344
Fax: 202-208-3877
Barry.Roth@sol.doi.gov

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I've attached a draft response to the Cliff House letter. Bruce, the letter from the concessioner's attorney is attached for reference.

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

--
C. Bruce Sheaffer
Comptroller
National Park Service
202-208-4566

bruce_sheaffer@nps.gov

Young, Deirdre R

From: Sheaffer, Bruce <bruce_sheaffer@nps.gov>
Sent: Friday, October 04, 2013 7:52 AM
To: Roth, Barry
Cc: McDowall, Lena
Subject: Re: Claude Moore farm statement for WASO/DOI review, please

I am fine with the statement and Barry's comment

On Thu, Oct 3, 2013 at 6:39 PM, Roth, Barry <barry.roth@sol.doi.gov> wrote:
My only comment to Kim on this statement was to add (b) (5)
(b) (5)

Barry N. Roth
Associate Solicitor
Division of Parks & Wildlife
202-208-4344
Fax: 202-208-3877
Barry.Roth@sol.doi.gov

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---------- Forwarded message ----------
From: **Fondren, Kim** <kim.fondren@sol.doi.gov>
Date: Thu, Oct 3, 2013 at 6:35 PM
Subject: Fwd: Claude Moore farm statement for WASO/DOI review, please
To: Barry Roth <Barry.Roth@sol.doi.gov>, Edward Boling <ted.boling@sol.doi.gov>

---------- Forwarded message ----------
From: **Lisa Mendelson** <lisa_mendelson-ielmini@nps.gov>
Date: Thu, Oct 3, 2013 at 6:17 PM
Subject: Fwd: Claude Moore farm statement for WASO/DOI review, please
To: Kim Fondren <kim.fondren@sol.doi.gov>

You should know that this statement is at WASO for DOI clearance. We are getting media requests.

Lisa Mendelson, AICP
National Park Service

Deputy Regional Director
202-297-1338 cell
202-619-7023 office

Begin forwarded message:

From: "Mummart, Jennifer" <jennifer_mummart@nps.gov>
Date: October 3, 2013, 5:38:45 PM EDT
To: Michael Litterst <mike_litterst@nps.gov>
Cc: Jon James <jon_james@nps.gov>, Lisa Mendelson <lisa_mendelson-ielmini@nps.gov>
Subject: Claude Moore farm statement for WASO/DOI review, please

Hi Mike,

Here is our proposed statement that covers the facts and responds to several assertions made by the friends group. Please let me know when we are ok to distribute (when asked).

Thank you,
Jennifer

Jennifer Mummart
Director of Communications
National Park Service - National Capital Region
(202) 619-7174
www.nps.gov

The National Park Service cares for special places saved by the American people so that all may experience our heritage.

EXPERIENCE YOUR AMERICA TM

--
Kimberly Fondren
Attorney-adviser
Division of Parks and Wildlife
Office of the Solicitor
Department of Interior
202-208-4338

--
C. Bruce Sheaffer

Comptroller
National Park Service
202-208-4566
bruce_sheaffer@nps.gov

Young, Deirdre R

From: Roth, Barry <barry.roth@sol.doi.gov>
Sent: Thursday, October 03, 2013 6:40 PM
To: McDowall, Lena; Sheaffer, C. B.
Subject: Fwd: Claude Moore farm statement for WASO/DOI review, please
Attachments: 2013 10 3 NCR draft on Claude Moore.docx

My only comment to Kim on this statement was to add (b) (5) [redacted]
(b) (5) [redacted]

Barry N. Roth
Associate Solicitor
Division of Parks & Wildlife
202-208-4344
Fax: 202-208-3877
Barry.Roth@sol.doi.gov

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Date: Thu, Oct 3, 2013 at 6:35 PM
Subject: Fwd: Claude Moore farm statement for WASO/DOI review, please
To: Barry Roth <Barry.Roth@sol.doi.gov>, Edward Boling <ted.boling@sol.doi.gov>

---------- Forwarded message ----------
From: **Lisa Mendelson** <lisa_mendelson-ielmini@nps.gov>
Date: Thu, Oct 3, 2013 at 6:17 PM
Subject: Fwd: Claude Moore farm statement for WASO/DOI review, please
To: Kim Fondren <kim.fondren@sol.doi.gov>

You should know that this statement is at WASO for DOI clearance. We are getting media requests.

Lisa Mendelson, AICP
National Park Service
Deputy Regional Director
202-297-1338 cell
202-619-7023 office

Begin forwarded message:

From: "Mummart, Jennifer" <jennifer_mummart@nps.gov>
Date: October 3, 2013, 5:38:45 PM EDT
To: Michael Litterst <mike_litterst@nps.gov>
Cc: Jon James <jon_james@nps.gov>, Lisa Mendelson <lisa_mendelson-ielmini@nps.gov>
Subject: Claude Moore farm statement for WASO/DOI review, please

Hi Mike,

Here is our proposed statement that covers the facts and responds to several assertions made by the friends group. Please let me know when we are ok to distribute (when asked).

Thank you,
Jennifer

Jennifer Mummart
Director of Communications
National Park Service - National Capital Region
(202) 619-7174
www.nps.gov

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EXPERIENCE YOUR AMERICA

--
Kimberly Fondren
Attorney-adviser
Division of Parks and Wildlife
Office of the Solicitor
Department of Interior
202-208-4338

National Park Service Statement on Claude Moore Colonial Farm

(b) (5)

[redacted]

Young, Deirdre R

From: Roth, Barry <barry.roth@sol.doi.gov>
Sent: Thursday, October 03, 2013 6:22 PM
To: McDowall, Lena
Cc: Bruce Sheaffer
Subject: Re: Draft Cliff House Letter
Attachments: Cliff House LetterBNR.docx

My suggestions.

Barry N. Roth
Associate Solicitor
Division of Parks & Wildlife
202-208-4344
Fax: 202-208-3877
Barry.Roth@sol.doi.gov

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On Thu, Oct 3, 2013 at 5:46 PM, McDowall, Lena <lena_mcdowall@nps.gov> wrote:
I've attached a draft response to the Cliff House letter. Bruce, the letter from the concessioner's attorney is attached for reference.

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Mr. Louis N. Haas
Has Najarian, LLP
58 Maiden Lane
2nd Floor
San Francisco, CA 94108

Dear Mr. Haas:

(b) (5)

[redacted]

Young, Deirdre R

From: Roth, Barry <barry.roth@sol.doi.gov>
Sent: Thursday, October 03, 2013 6:22 PM
To: McDowall, Lena
Cc: Bruce Sheaffer
Subject: Re: Draft Cliff House Letter
Attachments: Cliff House LetterBNR.docx

My suggestions.

Barry N. Roth
Associate Solicitor
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Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Mr. Louis N. Haas
Has Najarian, LLP
58 Maiden Lane
2nd Floor
San Francisco, CA 94108

Dear Mr. Haas:

(b) (5)

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Thursday, October 03, 2013 5:53 PM
To: Waldron, Suzanne
Subject: Re: Pisgah Inn
Attachments: BLRI - Pisgah Inn Tlk Pts - 100313 rev_lm edit.docx

I went ahead and edited the bullet about Pisgah Inn being a private business just in case you end up needing it.

On Thu, Oct 3, 2013 at 3:33 PM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
fyi

---------- Forwarded message ----------
From: **William Reynolds** <william_f_reynolds@nps.gov>
Date: Thu, Oct 3, 2013 at 2:18 PM
Subject: Re: Pisgah Inn
To: Sue_Waldron@nps.gov

FYI, Rep. Meadows' office is reaching out to the park. Will let you know status of that contact ASAP.
Bill

From: Waldron, Suzanne [mailto:sue_waldron@nps.gov]
Sent: Thursday, October 03, 2013 09:55 AM
To: Karen Cucurullo <karen_cucurullo@nps.gov>; William Reynolds <william_f_reynolds@nps.gov>; Shawn Benge <shawn_benge@nps.gov>
Cc: Maureen Foster <maureen_foster@nps.gov>; Lena McDowall <Lena_McDowall@nps.gov>; Mike Litterst <Mike_Litterst@nps.gov>
Subject: Re: Pisgah Inn

bill - do you have point on this? or can you get this to who is?

On Thu, Oct 3, 2013 at 12:47 PM, Karen Cucurullo <karen_cucurullo@nps.gov> wrote:
I think someone else can better answer.

Sent from my iPhone

Begin forwarded message:

> **From:** <Colleen.Jenkins@thomsonreuters.com>
> **Date:** October 3, 2013, 11:22:52 AM EDT
> **To:** <Karen_Cucurullo@nps.gov>
> **Subject: Pisgah Inn**
>
> Hi Karen,

I'm working on a story for Reuters about the Pisgah Inn in NC's Blue Ridge Mts choosing to stay open despite the government shutdown. Are you available to answer some questions regarding this matter? I can be reached at 727.331.4274.

Thanks!

Colleen

Colleen Jenkins
Correspondent, U.S. General News

Reuters

Thomson Reuters

Mobile: 727.331.4274
Colleen.Jenkins@thomsonreuters.com
www.reuters.com

This email was sent to you by Thomson Reuters, the global news and information company. Any views expressed in this message are those of the individual sender, except where the sender specifically states them to be the views of Thomson Reuters.

--
Sue Waldron
Assistant Director, Communications
National Park Service
(202) 208-3046
Visit us at www.nps.gov

The National Park Service cares for special places saved by the American people so that all may experience our heritage.

EXPERIENCE YOUR AMERICA

--
Sue Waldron
Assistant Director, Communications
National Park Service
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Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Blue Ridge Parkway – Pisgah Inn
DRAFT Talking Points
October 3, 2013

(b) (5)

[redacted]

(b) (5)

[redacted]

DRAFT

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Thursday, October 03, 2013 5:49 PM
To: Francis Dean
Cc: Aaron_Roth@nps.gov
Subject: Re: Fw: Cliff House

I'll have a letter for you later this evening or first thing in the morning my time.

On Thu, Oct 3, 2013 at 3:40 PM, Francis Dean <frank_dean@nps.gov> wrote:
Hi Lena,

Thanks for checking on this. The letter would be best tomorrow due to my meeting with them. Not easy as you know.

Frank

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

From: Francis Dean [mailto:frank_dean@nps.gov]
Sent: Thursday, October 03, 2013 12:31 PM
To: 'patty_neubacher@nps.gov' <patty_neubacher@nps.gov>; 'Aaron_Roth@nps.gov' <Aaron_Roth@nps.gov>
Cc: 'Scott_Wanek@nps.gov' <Scott_Wanek@nps.gov>; 'craig_dalby@nps.gov' <craig_dalby@nps.gov>; 'trystan_stern@nps.gov' <trystan_stern@nps.gov>; 'jessica_carter@nps.gov' <jessica_carter@nps.gov>
Subject: Re: Cliff House

Okay Patty. Would be good to get the letter by Noon PDT tomorrow as I am meeting with their attorney at 12:30.

Thanks,

Frank

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

From: Neubacher, Patricia [mailto:patty_neubacher@nps.gov]
Sent: Thursday, October 03, 2013 12:25 PM
To: Aaron Roth <aaron_roth@nps.gov>; Frank Dean <frank_dean@nps.gov>
Cc: Scott Wanek <Scott_Wanek@nps.gov>; Craig Dalby <craig_dalby@nps.gov>; Trystan Stern <trystan_stern@nps.gov>
Subject: Cliff House

Just got off the phone with Lena McDowall. The Cliff House response letter was reviewed by the DOI solicitors. They are drafting a response back which we should get today or tomorrow.

Sadly, the answer is the same -- the Cliff House needs to close.

--
Patty Neubacher
Deputy Regional Director
Pacific West Region
(415) 623-2105 work
(510) 604-9998 cell

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Thursday, October 03, 2013 5:47 PM
To: Barry Roth; Bruce Sheaffer
Subject: Draft Cliff House Letter
Attachments: Cliff House Letter.docx; DeanDeptofInterior ltr 10-2-13.pdf

I've attached a draft response to the Cliff House letter. Bruce, the letter from the concessioner's attorney is attached for reference.

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Mr. Louis N. Haas
Has Najarian, LLP
58 Maiden Lane
2nd Floor
San Francisco, CA 94108

Dear Mr. Haas:

(b) (5)

HAASNAJARIAN LLP
Attorneys at Law

58 Maiden Lane
2nd Floor
San Francisco
California
94108

T 415.788.6330
F 415.391.0555

October 2, 2013

0364/018

BY EMAIL AND FIRST CLASS U.S. MAIL
Frank_dean@nps.gov

Frank Dean, General Superintendent
Golden Gate National Recreation Area
National Park Service
Building 201, Fort Mason
San Francisco, CA 94123

Re: *Concession Contract No. CC-GOGA10-98*
Order to Discontinue Operations at The Cliff House

Dear Mr. Dean:

As you may recall, we represent Peanut Wagon, Inc. ("PWI"), Concessioner under the above-referenced Concession Contract (the "Contract"), between PWI and United States Department of the Interior, National Park Service ("NPS"). We understand that today NPS has ordered all operations of The Cliff House to be discontinued at the close of business today, delivering the shutdown order in an email from Jessica Carter, Chief of the Business Management Division of GGNRA. This letter is a request that NPS reconsider the shutdown order based on the unique circumstances of The Cliff House Concession and the very serious but avoidable economic consequences to the Concession, the Concessioner and NPS which will follow. This request is all the more important due to the possibility that this shutdown may be of long duration, and even if lifted, could recur based upon the current political climate which suggests an inability to resolve the various funding implications of the budget and debt ceiling.

While the Federal Government has the right to declare an emergency and assume control of its properties located worldwide, the budget crisis impasse does not seem to merit such an action in the case of The Cliff House Concession. Section 12(a)(2) of the Contract indicates that operations may be suspended at the discretion of the Secretary [of the Interior] when necessary to enhance or protect Area resources or visitor enjoyment or safety. Section 12(a)(3) indicates that any suspension (or termination) shall be by written notice with certain rights accorded to the Concessioner. In the case of The Cliff House

Concession, we question whether the shutdown (a "suspension" under the Contract) is "...necessary for the purpose of enhancing or protecting Area resources or visitor enjoyment or safety."

Under the Contract, all maintenance activities are to be performed by the Concessioner and there are no federal employees (NPS or otherwise) who work on The Cliff House premises. Per the Operating Plan (Exhibit "G" of the Contract), the Concessioner is responsible for contracting for all necessary services from state, local and private entities with the understanding that no such services will be provided by NPS. Police, fire, gas, electric, data, garbage and other necessary utilities are provided by the City and County of San Francisco and non-federal governmental service providers. In fact, even The Cliff House food and beverage operations are conducted under the auspices of state and local licensing entities, and not the federal government.

Under these circumstances, it is our opinion that The Cliff House Concession should continue to be operated if the budget crisis is not resolved by Congress, and that the resulting temporary absence of federal funds will not impact operations at The Cliff House. In fact, the shutdown order will in all probability result in a compensable claim under the Contract, which would be in the interest of neither PWI nor NPS. Moreover, the shutdown order will result in the loss of as many as 200 jobs and seriously impact the numerous contractors and vendors who provide services and products to The Cliff House. Furthermore, damage to the reputation of the Concession, the Concessioner and NPS is potentially enormous. An example of this damage to all parties concerned is the forced cancellation of special events required under the shutdown order, in addition to the cancellation of numerous dining reservations. One can only imagine the lingering vitriol rightfully caused to the poor folks who had their wedding reception cancelled this weekend. Finally, the shutdown order will cause direct adverse financial consequences to NPS by the certain reduction in the Franchise Fee payable under the Contract based on the Concessioner's gross revenues, and the possible claims raised above.

All of this will be caused unnecessarily since The Cliff House can continue to operate without direct federal involvement. In recognition of these circumstances, during the budget impasses of the 1990s, under which President Clinton ordered a suspension of federal services which went on for two protracted periods, The Cliff House was allowed to remain open since it was recognized that federal services are not required for its operation.

The Clinton shutdowns occurred in two periods, November 14 through November 19, 1995 and from December 16, 1995 to January 6, 1996, a total of 28 days. A 2010 Congressional Research Service report is an excellent source for the details of the 1995-1996 government shutdowns, clearly indicating that all sectors of the economy were impacted. With particular reference to the National Park Service, the shutdowns caused

the following:

> "**Parks/Museums/Monuments.** Closure of 368 National Park Service sites (loss of 7 Million visitors) occurred, with local communities near National Parks losing an estimated $14.2 Million per day in tourism revenues; and closure of National Museums and Monuments (estimated loss of 2 Million visitors) occurred."

Recognizing the potential devastation which would be caused (and which in fact was caused) by shutting down Park Service sites, it was apparently decided not to shut down those Park Service concessions which did not require federal personnel or funds to continue their operation. The decision to leave The Cliff House Concession open was wise then and would be even wiser now, considering the fragile recovery the economy is finally making from the worst recession since the Great Depression.

Please reconsider the shutdown order based upon the matters raised in this letter. We would be pleased to discuss this matter in more depth with you personally or the Regional Director's solicitor. To the extent that the shutdown decision is driven by either NPS or the Secretary of the Department of Interior's offices in Washington, D.C., please forward this request for reconsideration to the appropriate office(s).

Thank you for your consideration of this serious matter. If you have any questions, please do not hesitate to contact us.

Very truly yours,

HAAS NAJARIAN, LLP

LOUIS N. HAAS

LNH/lm

cc: Demosthenis M. Hountalas
Jessica Carter

N:\CLIENTS\03\0364\018\Correspondence\DeanDeptofInterior ltr 10-2-13.doc

Young, Deirdre R

From: Francis Dean <frank_dean@nps.gov>
Sent: Thursday, October 03, 2013 3:40 PM
To: lena_mcdowall@nps.gov
Cc: Aaron_Roth@nps.gov
Subject: Fw: Cliff House

Hi Lena,

Thanks for checking on this. The letter would be best tomorrow due to my meeting with them. Not easy as you know.

Frank

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

From: Francis Dean [mailto:frank_dean@nps.gov]
Sent: Thursday, October 03, 2013 12:31 PM
To: 'patty_neubacher@nps.gov' <patty_neubacher@nps.gov>; 'Aaron_Roth@nps.gov' <Aaron_Roth@nps.gov>
Cc: 'Scott_Wanek@nps.gov' <Scott_Wanek@nps.gov>; 'craig_dalby@nps.gov' <craig_dalby@nps.gov>; 'trystan_stern@nps.gov' <trystan_stern@nps.gov>; 'jessica_carter@nps.gov' <jessica_carter@nps.gov>
Subject: Re: Cliff House

Okay Patty. Would be good to get the letter by Noon PDT tomorrow as I am meeting with their attorney at 12:30.

Thanks,

Frank

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General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

From: Neubacher, Patricia [mailto:patty_neubacher@nps.gov]
Sent: Thursday, October 03, 2013 12:25 PM
To: Aaron Roth <aaron_roth@nps.gov>; Frank Dean <frank_dean@nps.gov>
Cc: Scott Wanek <Scott_Wanek@nps.gov>; Craig Dalby <craig_dalby@nps.gov>; Trystan Stern <trystan_stern@nps.gov>
Subject: Cliff House

Just got off the phone with Lena McDowall. The Cliff House response letter was reviewed by the DOI solicitors. They are drafting a response back which we should get today or tomorrow.

Sadly, the answer is the same -- the Cliff House needs to close.

--
Patty Neubacher
Deputy Regional Director
Pacific West Region
(415) 623-2105 work
(510) 604-9998 cell

Young, Deirdre R

From: Suzanne Waldron <sue_waldron@nps.gov>
Sent: Thursday, October 03, 2013 3:25 PM
To: Lena McDowall
Subject: Fwd: Pisgah Inn
Attachments: BLRI - Pisgah Inn Tlk Pts - 100313 rev.docx

Sent from my iPhone

Begin forwarded message:

> **From:** "Reynolds, William" <william_f_reynolds@nps.gov>
> **Date:** October 3, 2013, 3:08:50 PM EDT
> **To:** "Waldron, Suzanne" <sue_waldron@nps.gov>
> **Cc:** Shawn Benge <shawn_benge@nps.gov>, Mike Litterst <Mike_Litterst@nps.gov>, Mark Woods <mark_woods@nps.gov>, Steve Stinnett <steve_stinnett@nps.gov>, David Horne <david_horne@nps.gov>
> **Subject: Re: Pisgah Inn**
>
> Revised final draft, based on input from Steve and Shawn.
>
> On Thu, Oct 3, 2013 at 2:31 PM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
> per ealrier message - didnt even look as it appeared that the criss was over...if not - let em know and will put it back in the stack to triage
>
> On Thu, Oct 3, 2013 at 2:15 PM, William Reynolds <william_f_reynolds@nps.gov> wrote:
> We will handle it. On a conf call now. Will get clarity on current status and contact her.
>
> Were you okay with the talking points?
>
> ---
>
> **From**: Waldron, Suzanne [mailto:sue_waldron@nps.gov]
> **Sent**: Thursday, October 03, 2013 09:55 AM
> **To**: Karen Cucurullo <karen_cucurullo@nps.gov>; William Reynolds <william_f_reynolds@nps.gov>; Shawn Benge <shawn_benge@nps.gov>
> **Cc**: Maureen Foster <maureen_foster@nps.gov>; Lena McDowall <Lena_McDowall@nps.gov>; Mike Litterst <Mike_Litterst@nps.gov>
> **Subject**: Re: Pisgah Inn
>
> bill - do you have point on this? or can you get this to who is?
>
> On Thu, Oct 3, 2013 at 12:47 PM, Karen Cucurullo <karen_cucurullo@nps.gov> wrote:
> I think someone else can better answer.
>
> Sent from my iPhone
>
> Begin forwarded message:

From: <Colleen.Jenkins@thomsonreuters.com>
Date: October 3, 2013, 11:22:52 AM EDT
To: <Karen_Cucurullo@nps.gov>
Subject: Pisgah Inn

Hi Karen,

I'm working on a story for Reuters about the Pisgah Inn in NC's Blue Ridge Mts choosing to stay open despite the government shutdown. Are you available to answer some questions regarding this matter? I can be reached at 727.331.4274.

Thanks!

Colleen

Colleen Jenkins
Correspondent, U.S. General News

Reuters

Thomson Reuters

Mobile: 727.331.4274
Colleen.Jenkins@thomsonreuters.com
www.reuters.com

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--
Sue Waldron
Assistant Director, Communications
National Park Service
(202) 208-3046
Visit us at www.nps.gov

The National Park Service cares for special places saved by the American people so that all may experience our heritage.

EXPERIENCE YOUR AMERICA

--
Sue Waldron
Assistant Director, Communications
National Park Service
(202) 208-3046
Visit us at www.nps.gov

The National Park Service cares for special places saved by the American people so that all may experience our heritage.

EXPERIENCE YOUR AMERICA

--
William F. Reynolds
Assistant Regional Director
National Park Service Southeast Region
404-507-5612

Blue Ridge Parkway – Pisgah Inn
DRAFT Talking Points
October 3, 2013

(b) (5)

(b) (5)

[redacted]

DRAFT

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Thursday, October 03, 2013 10:09 AM
To: Shawn Benge
Cc: Cam Sholly
Subject: Pisgah closure letter
Attachments: Pisgah Inn facility closure letter.docx

Shawn -

Here's the draft letter closing the facility (b) (5) [redacted]

Thanks,

Lena

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Mr. Bruce O'Connell
Managing Director
Parkway Inn, Inc.
Post Office Drawer 749
Waynesville, NC 28786

(b) (5)

[redacted]

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Thursday, October 03, 2013 9:56 AM
To: Benge, Shawn
Cc: Cam Sholly
Subject: Draft Closure violation notice for Pisgah Inn
Attachments: Pisgah Inn breach of contract letter[2].docx

Shawn -

(b) (5) [redacted]

Thanks,

Lena

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Mr. Bruce O'Connell
Managing Director
Parkway Inn, Inc.
Post Office Drawer 749
Waynesville, NC 28786

Dear Mr. O'Connell:

(b) (5)

(b) (5)

Young, Deirdre R

From: O'Dell, Margaret <peggy_o'dell@nps.gov>
Sent: Thursday, October 03, 2013 9:52 AM
To: Benge, Shawn
Cc: Cam Sholly; Lena McDowall
Subject: Re: BLRI (Mt. Pisgah) and Tropical Storm

Hi Shawn,

More than happy to have conversations this afternoon. Let's plan on 3:00 EDT and you can use this number to call in:

(b) (5)
code (b) (5)

Cam and Lena also invited to that meeting.

I follow your logic to bring in the Supt to deal with the escalating issue so you are free to call him back.

Would you like to discuss storm issues as well at 3?

On Thu, Oct 3, 2013 at 9:08 AM, Benge, Shawn <shawn_benge@nps.gov> wrote:

Peggy,

(b) (5)

(b) (5) Let me know if you have any concerns.

We have been monitoring the storm in the Gulf of Mexico and are having discussions with potentially impacted parks (Gulf Islands and Jean Lafitte). While these units are closed, there is still work that will need to get accomplished as part of activating their respective hurricane/tropical storm plans. They will need to move equipment off island, secure real property, etc…. We will need to bring folks back to accomplish these activities, so our "excepted" list will grow in those parks. Also, depending on the impact of the storm, I may

need to bring in a 4th person in SERO to coordinate storm response efforts. I don't have the capacity to do that with current staffing levels. Stay-tuned!

Shawn Benge
Deputy Regional Director
Southeast Region
National Park Service
Office: 404 507 5605
Cell: 404 272 7253

Young, Deirdre R

From: Benge, Shawn <shawn_benge@nps.gov>
Sent: Thursday, October 03, 2013 9:08 AM
To: Margaret O'Dell
Cc: Cam Sholly; Lena McDowall
Subject: BLRI (Mt. Pisgah) and Tropical Storm

Peggy,

(b) (5)

(b) (5) Let me know if you have any concerns.

We have been monitoring the storm in the Gulf of Mexico and are having discussions with potentially impacted parks (Gulf Islands and Jean Lafitte). While these units are closed, there is still work that will need to get accomplished as part of activating their respective hurricane/tropical storm plans. They will need to move equipment off island, secure real property, etc…. We will need to bring folks back to accomplish these activities, so our "excepted" list will grow in those parks. Also, depending on the impact of the storm, I may need to bring in a 4th person in SERO to coordinate storm response efforts. I don't have the capacity to do that with current staffing levels. Stay-tuned!

Shawn Benge
Deputy Regional Director
Southeast Region
National Park Service
Office: 404 507 5605
Cell: 404 272 7253

Young, Deirdre R

From: Lars Hanslin <larshanslin@mindspring.com>
Sent: Thursday, October 03, 2013 9:07 AM
To: McDowall, Lena
Subject: Re: BLRI Concessioner Breach of Contract Ltr
Attachments: Pisgah Inn breach of contract letter[2].docx

Hi Lena: see the attached suggested edits. I would like to discuss them with you if you have time. Thanks. Lars (b) (6) [redacted]

From: "McDowall, Lena" <lena_mcdowall@nps.gov>
Date: Wednesday, October 2, 2013 6:10 PM
To: Lars Hanslin <larshanslin@mindspring.com>
Subject: BLRI Concessioner Breach of Contract Ltr

Lars -

Thanks so much for taking a look at this. (b) (5) [redacted]

(b) (5) [redacted]

Thanks,

Lena

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Mr. Bruce O'Connell
Managing Director
Parkway Inn, Inc.
Post Office Drawer 749
Waynesville, NC 28786

Dear Mr. O'Connell:

(b) (5)

(b) (5)

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Wednesday, October 02, 2013 6:10 PM
To: Lars Hanslin
Subject: BLRI Concessioner Breach of Contract Ltr
Attachments: Pisgah Inn breach of contract letter.docx; BLRI003-04-CC.pdf

Lars -

Thanks so much for taking a look at this. (b) (5) [redacted]

(b) (5) [redacted]

Thanks,

Lena

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Mr. Bruce O'Connell
Managing Director
Parkway Inn, Inc.
Post Office Drawer 749
Waynesville, NC 28786

Dear Mr. O'Connell:

(b) (5)

AMENDMENT NUMBER 1
CONCESSION CONTRACT CC-BLRI-003-04
PARKWAY INN, INC.

This AMENDMENT No. 1 is made and entered into on June 8, 2007, by and between the United States of America, acting in this matter by the Director, National Park Service (hereinafter referred to as the "Service"), through the Regional Director of the Southeast Region, (hereinafter referred to as the "Director"), and Parkway Inn, Inc., a corporation organized and existing under the laws of the State of North Carolina, doing business as "Pisgah Inn" (hereinafter referred to as the "Concessioner").

A. BACKGROUND

1. The Service and the Concessioner are parties to Concession CONTRACT No. CC-BLRI003-04 (which, including all Exhibits to the CONTACT, is hereinafter referred to as the "CONTRACT"). The CONTRACT requires the Concessioner to provide lodging and associated visitor services on the Blue Ridge Parkway ("Park") from September 1, 2004 through August 31, 2014. The parties are mutually committed to the Concessioner providing the services required and authorized under the CONTRACT in a manner and to an extent which fulfills the purposes and intent of the CONTRACT.

2. Section 10(a) of the CONTRACT provides that the Concessioner is solely responsible for maintaining and repairing all Concession Facilities to the satisfaction of the Director. The Concession Facilities include four (4) dormitory buildings (hereinafter referred to as the "Dorm Facilities") used solely to support the Concessioner's provision of CONTRACT services.

3. The parties have exchanged documentation evidencing that the existing roofing materials on the Dorm Facilities have exceeded their useful life and are in need of immediate replacement because continued use of the existing worn and damaged roofing materials would impair the structural integrity of the Dorm Facilities. Thus, the parties have agreed it is necessary for the Concessioner to replace the roofs on the Dorm Facilities (hereinafter referred to as the "Dorm Roofing Project") in order to preserve and protect the structural integrity of the buildings. Given the condition of the existing roofing, the parties understand that time is of the essence.

4. The parties also have agreed that because the Dorm Roofing Project will change the nature, appearance or value of Concession Facilities, the project is subject to the requirements in Exhibit F of the CONTRACT. In accordance with Exhibit F procedures, the Concessioner has submitted a proposed project statement (hereinafter referred to as the "Dorm Roofing Project Statement"). Consistent with the Concessioner's express intention, the Dorm Roofing Project Statement does not contain a request or claim for the Concessioner to obtain a Leasehold Surrender Interest in the project.

5. Paragraph 10(c) (1) of the CONTRACT requires the Concessioner to establish and manage a Repair and Maintenance Reserve (hereinafter referred to as the "R&M

Reserve") to carry out repair and maintenance projects such as roof replacement. Also, Paragraph 10(c) (3) of the CONTRACT requires the Concessioner to debit 1% of the Concessioner's gross receipts to the R&M Reserve on a monthly basis for expenditure on Concession Facilities maintenance. The R&M Reserve account currently shows a zero balance ($0.00) because of the Concessioner's recent expenditures on a roofing replacement project for Lodge Buildings A, B, and C at the Pisgah Inn.

B. OBJECTIVES

1. The Director has determined that in order for the Concessioner to fulfill its responsibilities under the CONTRACT it is necessary to maintain the structural integrity of the Dorm Facilities and appropriate to amend the CONTRACT as set forth below.

2. The purposes of Amendment No. 1 are to authorize the Concessioner (a) to undertake the Dorm Roofing Project in accordance with a duly executed Dorm Roofing Project Statement, the Project Documents referenced in Exhibit F, and the terms and conditions in Section C, below; and (b) to temporarily defer payments into the R&M Reserve under the terms and conditions in Section C, below.

C. TERMS AND CONDITIONS

In consideration of the foregoing recitals and the mutual benefits to the parties, the parties covenant and agree that the CONTRACT is amended as follows:

1. Concessioner

a. Upon the Park Superintendent's execution of the Dorm Roofing Project Statement, the Concessioner will commence the Dorm Roofing Project and ensure timely completion by no later than 8/31, 2007, unless the Park Superintendent extends this date in writing.

b. The Concessioner intends and agrees that the Concessioner will not seek or obtain a Leasehold Surrender Interest under the CONTRACT as a result of the Dorm Roofing Project.

c. The Concessioner will bear the full, complete and total cost of the Dorm Roofing Project in accordance with Section 10(a) of the CONTRACT and will not seek or otherwise request from the Director or the Park any funding, reimbursement, or other payment for the project.

d. Upon completion of the Dorm Roofing Project, the Concessioner will provide satisfactory evidence to the Park Superintendent of the Concessioner's payment of the final total Project Cost, as that term is defined in Exhibit F.

e. The Concessioner agrees to maintain all records for repair and maintenance expenditures under the CONTRACT, including the Dorm Roofing Project.

The Concessioner will comply with all reporting, accounting, and submission requirements in the CONTRACT including without limitation those set forth in Paragraph 10(c)(4). Additionally, on a monthly basis during the temporary Deferral Period defined in Paragraph C.2.a, below, the Concessioner will provide the Park Superintendent satisfactory documentation of detailed bookkeeping entries showing the amounts that, but for this Amendment No. 1, otherwise would have been debited to the R&M Reserve during the temporary Deferral Period.

2. Service

a. The Director will permit the Concessioner to temporarily defer the Section 10(c) (3) payments into the R&M Reserve for the period of time (hereinafter referred to as the "Deferral Period") commencing on the date described in Paragraph C.3.b., below, and continuing until the amount of the deferred payments equals the actual Project Cost of the Dorm Roofing Project.

b. Subject to the Concessioner's full compliance with the terms and conditions of Amendment No. 1, the Director agrees to temporarily forebear during the Deferral Period exercising the Director's right to terminate the CONTRACT under Paragraph 10(c)(3) for nonpayment of funds into the R&M Reserve.

3. The parties mutually agree as follows:

a. The Dorm Roofing Project is governed by the Exhibit F requirements and procedures. This project, is not, and will not be construed as, a major rehabilitation or a capital improvement project as those terms are defined in the CONTRACT.

b. The Deferral Period will commence on the first day after the Park Superintendent provides written notice to the Concessioner of project acceptance. As described in Paragraph D (14) of Exhibit F, a condition precedent for obtaining project acceptance is submission of the Concessioner's Project Completion Report. The Project Completion Report for the Dorm Roofing Project will include documentation of the Concessioner's final payment of the actual Project Cost.

c. During the Deferral Period the Concessioner's failure to debit amounts into the R&M Reserve which otherwise would have been required under Paragraph 10(c) (3) of the CONTRACT will not constitute a breach of the CONTRACT.

d. The Deferral Period will expire in the first month after a full dollar-for-dollar offset has been achieved; that is, at such time as when the dollar amount of the Concessioner's final, actual payment of the Project Cost equals the dollar amount that otherwise would have been debited into the R&M Reserve.

e. The Concessioner's R&M Reserve obligations under Paragraph 10(c) (3)

of the CONTRACT will resume when the Deferral Period expires.

f. The parties recognize and agree that they must and will work together in such manner and at such times as will facilitate the Concessioner's compliance with the record keeping requirements related to the Dorm Roofing Project and the R&M Reserve, including without limitation the tracking and calculation of the Deferral Period commencement and expiration dates.

g. All terms and conditions of the CONTRACT will remain in full force and effect for the term of the CONTRACT, except as amended by Amendment No. 1, and nothing herein will relieve the Concessioner of its obligation to comply with and perform all of the requirements in the CONTRACT.

PARKWAY INN, INC

By:

Bruce O'Connell
Managing Director
Parkway Inn, Inc.

Date: 6/7/07

UNITED STATES OF AMERICA

By:

Patricia A. Hooks, Regional Director
for National Park Service
Southeast Region

Date: 6/8/07

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

BLUE RIDGE PARKWAY

FOOD & BEVERAGE, LODGING & RETAIL SERVICES

CONCESSION CONTRACT NO. BLRI003-04

Parkway Inn, Inc.
Post Office Drawer 749
Waynesville, NC 28786
(828) 235-8228
pisgahinn@aol.com

Doing Business As

PISGAH INN

Covering the Period

SEPTEMBER 1, 2004 through SEPTEMBER 2, 2014

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[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 Southeast Region, (hereinafter referred to as the ``Director"), and Parkway Inn Inc., (Pisgah Inn) a corporation organized and existing under the laws of the State of North Carolina (hereinafter referred to as the ``Concessioner"):

WITNESSETH:

THAT WHEREAS, Blue Ridge Parkway 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 (16 U.S.C. 1, 2-4), and November 13, 1998 (Pub. L. 105-391), 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. BLRI003-04 (``CONTRACT") shall be effective as of September 1, 2004, and shall be for the term of ten (10) years until its expiration on SEPTEMBER 2, 2014, 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 three (3) years until its expiration on expire on December 31, 2007. 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 Blue Ridge Parkway.

(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

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 made 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 or Native Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia and Alabama 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:

- Food and beverage services: Operation of the Pisgah Inn restaurant
- Lodging services: Operation of the Pisgah Inn
- Retail services: Operation of the Pisgah Inn gift shop and General Store

(2) Authorized Visitor Services. The Concessioner is authorized but not required to provide the following visitor services during the term of this CONTRACT:

- Lodging amenities- Extra person charges, roll-a-way bed charge, VCR/DVD and movie rental, facsimile services
- Retail amenities- Automated Teller Machine and laundry machine services
- Interpretive services: Personal and/or non-personal fee and/or non-fee interpretive programs
- Other food services and food activities supporting visitor service operations as a whole including snacks, refreshments, catered services, banquet services, etc. in other locations within the assigned Area
- Visitor Internet access

(b) Operation and Quality of Operation

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.

(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) Because 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
Blue Ridge Parkway
199 Hemphill Knob Road
Asheville, NC 28803

Notices sent to the Concessioner shall be sent to the following address:

Parkway Inn, Inc. (Pisgah Inn)
Post Office Drawer 749
Waynesville, NC 28786

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 written 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 allow the Director to participate in 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).

(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. This 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. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

(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 F. 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 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 F. Among other matters, no Leasehold Surrender Interest shall be obtained as a result of expenditures from the Repair and Maintenance 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 $ 2,743,000 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:

PROJECT	ESTIMATED COST OF PROJECT	START DATE	COMPLETION DATE
Deferred Maintenance & Fire Safety	$57,000	2005	2007
Building A Guestroom Renovation	$182,000	2005	2007
Building B Guestroom Renovation	$683,000	2005	2007
Building C Guestroom Renovation	$747,000	2005	2007
Restaurant/Gift Shop Building Renovation	$616,000	2005	2007
Camp Store Renovation	$458,000	2005	2007
TOTAL REQUIRED CFIP PROJECTS	**$2,743,000**		

(3) The Concessioner shall commence construction under the Concession Facilities Improvement Program on or before November 1, 2005 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 F. 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 December 31, 2007. 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.

(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) Repair and Maintenance Reserve

(1) The Concessioner shall establish and manage a Repair and Maintenance Reserve. The funds in this Reserve shall be used to carry out, on a project basis in accordance with Exhibits F and H, repair and maintenance 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 Repair and Maintenance 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 Repair and Maintenance Reserve.

(3) The Concessioner shall establish within its accounting system a Repair and Maintenance 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: 1.0 percent (1.0%) of the Concessioner's gross receipts for the previous month. If the Concessioner fails to make timely debits to the Repair and Maintenance 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 Repair and Maintenance Reserve allocation, based on the preceding year's gross receipts.

(4) The balance in the Repair and Maintenance Reserve shall be available for projects in accordance with the Reserve's purpose. For all expenditures made for each project from the Repair and Maintenance Reserve, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Director. Failure to expend Repair and Maintenance 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) Repair and Maintenance Reserve funds shall not be used for a major rehabilitation as defined in this CONTRACT. The Concessioner shall obtain no ownership, Leasehold Surrender Interest, or other compensable interest as a consequence of the expenditure of Repair and Maintenance Reserve funds.

(6) Any Repair and Maintenance Reserve funds not duly expended by the Concessioner as of the termination or expiration of this CONTRACT shall be retained by the Concessioner (subject to otherwise applicable terms and conditions of this CONTRACT).

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 the following fees listed below of the Concessioner's gross receipts:

First $3.5 million Gross Revenue	3.0%
From $3.5 million to $4 million	4.0%
Over $4.0 million	5.0%

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fees except as provided below in subsection (d). 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 consisting of $10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(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 a reconsideration 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. 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 LIENS

(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 Generally Accepted Auditing Standards (GAAS) 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 shall submit annually, not later than one hundred twenty (120) days after the end of the Concessioner's accounting year, a statement reflecting total activity in the Maintenance Reserve 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 visitor services

required or 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 repair and maintenance reserve and the requirement to comply with Applicable Laws.

(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 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.

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 43 CFR, Subtitle A, Subpart D, 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. 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.

In Witness Whereof, the duly authorized representatives of the parties have executed this CONTRACT as of the 16TH day of AUGUST 2004.

Concessioner

BY Phyllis Sherrod

Pres

(Title)

Parkway Inn, Inc

(Company Name)

United States of America

BY Patricia A. Hooks

Regional Director, Southeast Region
National Park Service

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 F of this CONTRACT this Exhibit A shall prevail.

Section 1. Definitions

"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.

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.

"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).

"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 did) 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) 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."

"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.

"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).

"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 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 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.

Section 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.

Section 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.

Section 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 F. 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.)

Section 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 F. 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.

Section 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.

Section 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.

Section 8. Actions the Concessioner May or Must Take Regarding Leasehold Surrender Interest

The Concessioner:

1) May encumber a leasehold surrender interest in accordance with the terms of this CONTRACT;
2) Where applicable, must transfer its leasehold surrender interest in connection with any assignment, termination or expiration of this CONTRACT; and
3) May waive or relinquish a leasehold surrender interest.

Section 9. Extinguishment of a Leasehold Surrender Interest

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.

Section 10. Leasehold Surrender Interest Under a New Concession Contract

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.

Section 11. Payment for Leasehold Surrender Interest if the Concessioner is not Awarded a New Concession Contract

1) 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.

2) 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 of this CONTRACT.

Section 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's determination of leasehold surrender interest value will be final 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 are final and not subject to further arbitration.

Section 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 prior Concessioner its leasehold surrender interest value in existing capital improvements as determined under Section 12.

Section 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.

Section 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.

Section 16. Obtaining a Leasehold Surrender Interest in Existing Real Property Improvements in which no Leasehold Surrender Interest Exists

1) 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.
2) 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.

Section 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.

	DEPARTMENT OF THE INTERIOR
CONCESSIONER	NATIONAL PARK SERVICE
BY: Phyllis Prevost	BY:
TITLE: Pres	TITLE: SUPERINTENDENT
DATE: 08/11/04	DATE: 8/12/04

EXHIBIT B

OPERATING PLAN

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INTRODUCTION

This Operating Plan between Parkway Inn, Inc. (Pisgah Inn) (hereinafter referred to as the "Concessioner") and Blue Ridge Parkway (hereinafter referred to as the "Park"), and the National Park Service (hereinafter referred to as the "Service") will serve as a supplement to Concession Contract CC-BLRI003-04 (hereinafter referred to as the "Contract"). It describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within Blue Ridge Parkway that are assigned to the Concessioner for the purposes authorized by the Contract.

The National Park Service Concessions Management Guideline (D.O.48A), pending approval and issuance, offers general direction, expectations and standards on all aspects of concession operations.

In the event of any conflict between the terms of the Contract and this Operating Plan, the terms of the Contract, including its designations and amendments, will prevail.

This plan will be reviewed annually by the Superintendent of Blue Ridge Parkway in consultation with the Concessioner and revised as determined necessary by the Superintendent.

Any revisions will be consistent with the main body of this Contract. Any revisions must be reasonable and in furtherance of the purposes of the Contract. This plan will remain in effect until superceded or amended.

1) Responsibilities

A) Concessioner

(1) To achieve an effective and efficient working relationship between the Concessioner and the Service, the Concessioner will designate an on-site general manager who:

(a) Has the authority and the managerial experience for operating the authorized concessions facilities and services within the Park;

(b) Will employ a staff with the expertise and training to operate all services authorized under this Contract;

(c) Has full authority to act as a liaison in all concession administrative and operational matters within the Park; and,

(d) Has the responsibility for implementing the policies and directives of the Service.

(2) The Service has the right to review the qualifications of the General Manager, prior to hiring. More information regarding the General Manager may be found below in Section F.

B) Blue Ridge Parkway

The Superintendent of Blue Ridge Parkway is the Park manager with responsibility for all Park operations, including concession operations. The Superintendent carries out the policies and directives of the National Park Service, including concession contract management. Directly, or through designated representatives, the Superintendent

reviews, directs, and coordinates concessioner activities relating to Blue Ridge Parkway. This includes:

(1) Evaluation of concessioner services and facilities;

(2) Review and approval of rates charged for all commercial services; and,

(3) Review and approval of construction and all improvement to facilities.

Within 60 days of final execution of the contract, the Park shall provide a current list to the Concessioner with all appropriate points of contact.

2) <u>General Operating Standards and Requirements</u>

A) Schedule of Operation

(1) Obligation. The Concessioner will provide the required and authorized services for Blue Ridge Parkway visitors on a seasonal basis. The traditional operating season begins on or about early April and ends on or about early November. The Concessioner will annually submit a written schedule of proposed opening and closing dates and operating hours for all concession operations for the Superintendent's approval prior to implementation. Weather and visitation may cause specific dates of operating seasons to fluctuate. These changes, however, will be agreed upon and approved by the Superintendent prior to implementation. All services will be open with regular hours of operation during any holidays within the operating season.

B) Rate Determination and Approval Process

(1) Rate Determination. It is the objective of the Park to ensure that the Concessioner's rates and charges to the public are commensurate with the level of services and facilities provided, and are reasonable, justified, and comparable with similar facilities and services provided by the private sector. Reasonableness of rates will be judged based upon current concession management guidelines (see Appendix G). Rate approval methods are subject to change. The currently approved rate method is comparability for all services and facilities except for the following:

(a) Merchandise including gifts, souvenirs and convenience store items are approved by the Merchandise Pricing method of rate approval.

(b) If both the Park and the Concessioner have agreed to implement the NPS Core Menu Program, then the Park will approve core menu items utilizing the Core Menu Rate process, described in detail in Attachment A. However, if either party opts not to participate in the NPS Core Menu Program, the Park will return to the direct full review comparability method of rate approval.

(2) Request Submittal for Annual Rate Changes. All requests will be submitted in writing, at least 60 days prior to anticipated implementation dates, brochure publication dates and customer notification. Rate requests require support by established criteria and comparable data. The information to be included in the request is outlined in current Service guidelines. New rates will be evaluated once per year unless there are extenuating circumstances that require rates to be reevaluated. The Service will consider alternate rate settings methodology to reflect

substantial changes in service quality, expenditures, or required investment. A listing of approved rates for the current contract is included as Attachment B of this exhibit.

(3) Rate Approval

(a) Approval Timing. The Service will approve, disapprove or adjust rates and will inform the Concessioner within 60 days of the rate request submittal assuming some unusual situation does not arise that could postpone the review process. In the unlikely event a delay should occur, the Park would use the Indexing method of rate approval as a device to more quickly address temporary rates if the concessioner agrees. It is the responsibility of the Concessioner to submit rate requests in a timely manner.

(b) Approved Rate Posting. All rates for goods and services will be available to visitors. Room rates will be posted in each room.

(4) Rate Compliance. The Concessions Management Office staff will periodically conduct on-site comparability studies with follow-up telephone calls to update rate information for a rate review. Rate compliance will be checked during periodic operation evaluations and throughout the year. Approved rates will remain in effect until superceded by written changes approved by the Superintendent.

(5) Reduced Rates for Government Employees. Reduced rates for Government employees on official business will be part of the approved rate schedules and will not exceed allowable per diem as outlined in section 3(f)(3) of the Contract. Request for Government rates will be made to the concessioner as needed from the Superintendent through the Concessions Management Office. Goods and services may not be provided to government employees or their families without charge or at reduced rates, except within the provisions described above or as available to the general public.

C) Purchasing

(1) Competitive Purchasing. Purchases may be made from a facility operated or owned by the Concessioner or a parent company, provided the product is comparable in quality and price.

(2) Discounts. The Concessioner will take advantage of all available trade, cash and quantity discounts and rebates as detailed in the current Service Concession Management Guidelines (see Appendix D).

D) Evaluations

The Concessioner will ensure the public health and safety, and provide satisfactory services and accommodations for the Park visitor within the assigned areas of responsibility. The operation of accommodations, facilities, and services authorized by this Contract will conform to the evaluation standards set forth in the current Evaluation Program format. The evaluation of facilities and services is a component of the annual overall rating.

The Service and/or its representatives and the Concessioner will separately inspect and monitor concession facilities and services with respect to Service policy, applicable standards, authorized rates, safety, public health, environmental compliance, impacts on

cultural and natural resources, identified maintenance and operating deficiencies, and visitor comments.

The Concessioner will meet with Service officials to prioritize and schedule the correction of deficiencies and the implementation of improvement programs resulting from these inspections. The Concessioner will be responsible for correction of deficiencies and abatement plans within dates assigned by the Service.

(1) Periodic Operations Inspections. The Service will conduct both announced and unannounced periodic inspections of concession facilities and activities to ensure conformance to applicable standards. Location managers will be contacted at the time of facility evaluations so that a representative of the Concessioner may accompany the Park evaluator. The Service reserves the right to enter the Concessioner's facilities at any time for any evaluation when deemed necessary and appropriate.

(2) Health and Safety Inspections

(a) Concessioner Safety Inspection. The Concessioner will perform periodic interior and exterior safety inspections of all concession facilities, including employee housing, in accordance with its documented Risk Management Program. The Concessioner has the responsibility for both health and safety inspections in employee housing areas. The Concessioner will ensure employee compliance with health, fire, and safety code regulations as well as the Service's policies and guidelines.

(b) Service Safety Inspections. The Service will periodically conduct a comprehensive safety and occupational health evaluation of all operations and facilities in addition to the review of the Concessioner's Risk Management Program. Safety will also be a component of regular periodic evaluations.

(c) Public Health Inspections. The Public Health Service Sanitarian will conduct announced and unannounced periodic evaluations of the Concessioner's food and beverage, grocery and other food sales, and public shower facilities.

- Food and Beverage Operations. The Concessioner will develop and follow a Hazard Analysis Critical Control Point ("HACCP") Plan, consistent with the current food code published by the U.S. Public Health Service, which will be available from the Service upon request. The Service may help develop and update the program as necessary.

(3) Fire Inspections

(a) Service Responsibilities. The National Park Service Southeast Regional Office ("Region") is the jurisdiction having authority ("JHA") for all fire codes on federal lands within Blue Ridge Parkway. (The State of North Carolina also has jurisdiction and may conduct fire safety inspections of concessioner facilities.) The Region will conduct fire safety inspections at its discretion over the course of the contract term. The Park will also conduct fire safety inspections.

(b) Concessioner Responsibilities. The Concessioner will have a qualified professional perform interior and exterior fire inspections of all concession

buildings within 30 days of initial occupancy and on an annual basis thereafter. Written records, verifying the completion of such inspections, will be maintained by the Concessioner and available to the Service upon request. The Concessioner will conduct routine fire drills of concession facilities as required by its Risk Management Program.

(4) Visitor Comments. The Concessioner will make Service-approved comment cards available to visitors in order to measure service and quality standards, product mix, pricing and overall Park experience. It will be the responsibility of the Concessioner to make sure an adequate inventory of comment cards is available at appropriate locations within its facilities.

(a) The Concessioner will investigate and respond to all visitor complaints regarding its services. Visitor comments that allege misconduct by concession employees, pertain to the safety of visitors or other Park employees, or concern the safety of Park resources will be provided to the Service upon receipt.

(b) The Concessioner will forward to the Superintendent, at the end of the season, a summary of all comments and/or complaints received on comment cards or any other form of documentation regarding the Park. Individual comments must be provided upon request.

(c) The Service will forward to the Concessioner any comments and/or complaints received regarding the Concessioner's facilities or services. The Concessioner will investigate and make an initial response to any complaints within 48 hours. The Concessioner will provide a copy of responses to the Superintendent, and a copy of any Service responses will be forwarded to the Concessioner.

(5) Interpretive Audit Program. If interpretive programming is approved, the Service will regularly evaluate the Concessioner's interpretive and informational services to ensure appropriateness, accuracy, quality, and the relationship of interpretive presentations to Park themes.

(6) Environmental Audit. The Service has established a Concessioner Environmental Audit Program that is separate from the concession operation evaluation process, but is integrally linked. The audit program evaluates the Concessioner's facilities and operations with respect to environmental compliance and Best Management Practices Criteria contained within the current NPS environmental audit program operating guidelines. The Concessioner will submit to environmental audits at least every five years.

(7) Risk Management Program. As required by the Occupational Safety and Health Act of 1970 and the National Park Service Risk Management Program, the Concessioner will provide a safe and healthful environment for all of its employees and visitors. A Risk Management Plan will be developed and maintained by the Concessioner to implement an appropriate safety program. The initial plan will be developed and submitted to the Park within 60 days of the awarding of this contract. This plan will be reviewed and approved by the Park annually, in accordance with OSHA, NFPA and Service guidelines.

E) General Policies

(1) Facilities Use. Concession facilities may not be used for activities or services that do not directly and exclusively support contractual services authorized by the Contract without written permission from the Service.

(a) Quiet Hours. Quiet hours will be enforced between the hours of 9:00 p.m. and 8:00 a.m. in all Concessioner employee housing areas. Noise levels are to be maintained at levels that will not disturb visitor use at all times.

(b) Smoking Policy. Concession facilities must comply with current Service and Superintendent guidelines. Smoking is prohibited in all concession public areas and any other area within concession facilities so designated by "No Smoking" signs.

(2) ADA Compliance. The Concessioner will ensure that all facilities provided are in compliance with federal accessibility guidelines and standards. New construction and facility renovations will meet accessibility requirements. The Concessioner will be responsible for providing an ADA Compliance Plan to the Service within 90 days of awarding of the Contract.

(3) ATM. The Concessioner may provide ATMs. The locations of the machines and service rates will be in a convenient and secure location as approved by the Superintendent.

(4) Facility Reservations. The Concessioner will utilize a central computerized reservation system for all Park lodging activities. Reservations will be accepted on a 366-day forward rolling basis.

(a) Staff. The Concessioner will adequately staff the Reservations Office on a year-round basis and will increase staff, if necessary, to meet the need during peak periods. Reduced hours and dates of operation may be considered by the Park during periods of closure so long as a message is carried on the concessioner's phone that advises guests that reservations can be made by fax or Internet. The Internet address and fax number needs to be included in the message. If routine or scheduled closures are to be considered, appropriate information needs to be included on all advertising.

(b) Reservations Services. Reservations services will be available at a minimum via the telephone, mail, fax, and Internet.

(c) Deposits/Refunds. The deposit requirement and refund policy is part of the rate approval process. The policy will be included in all accommodation brochures and reservation confirmations.

- A one-night deposit may be required to hold a reservation and may be paid by cash, check, money order, or major credit card.
- Refunds will be processed within two weeks of cancellation.

(d) Cancellations. If cancellations are made within 14 days prior to arrival, the deposit will be refunded in full less an approved administrative fee. An administrative fee schedule will be submitted with each rate request. If the

cancellation is made in less than 48 hours prior to the approved check in time, the deposit may be forfeited. In situations where a legitimate emergency exists, the concessioner will be expected to use ordinary and customary business practice and refund the deposit.

(e) Confirmed Rates. Rates confirmed by the Concessioner, as identified in the reservation confirmation, will be honored during the entire time of stay.

(5) Lost and Found. The Concessioner will establish and provide an effective program for handling lost and found or unattended property in facilities and upon lands assigned to the Concessioner.

(a) Items lost or found within the Concessioner's Land Assignments will be processed as follows:

- Items will be tagged at the facility where they are found or turned in by completing a Lost and Found Report, which identifies the item, date, location and name of finder.
- Lost and Found report will be completed indicating name, address and telephone number of the person reporting a lost item, description of the item, date and location of loss, and the name of the person taking the report.
- The Concessioner will hold all found property for the operating season. Efforts will be made to return found items to the owner within a 30-day period.
- No items will be released without claimant providing proper identification of the item, name, address, and signature of receipt.
- Unclaimed items will be returned to the finder, if so requested.
- Unclaimed items not returned to the finder can become the property of the Concessioner or be donated to a charitable non-profit organization. Items of little or no value may be destroyed. Disposition of items will be noted on the Lost and Found Report.
- Lost and Found Reports will be retained by the Concessioner for 3 years.

(b) Items found outside the Concessioner's land assignments will be processed as follows.

- Finders shall be instructed to take items to the closest open visitor contact desk or Park Headquarters in Asheville to be further processed by the Park.

(6) *Credit Cards.* Government-issued credit cards will be honored and, at a minimum, American Express, MasterCard and Visa will be honored.

(7) Telephone Services

(a) Public Pay Phones. The Concessioner will not remove or supplement public pay phones within the assigned areas without the Superintendent's written approval. Public phones will be checked regularly to ensure that they are in working order.

Out-of-order phones must have a sign on them directing the visitors to the nearest working unit.

(8) Vending

(a) Vending Sources. Vending machines will be conveniently located, and of a design and color which complements the aesthetics of the building and surroundings. The Service will approve all locations.

(b) Standards. All machines will be clean, properly stocked, and in good working condition. Signing on the machine may relate to Park interpretive themes or will be generic in nature. Brand information will only be visible when at the machine. The machines will be adequately illuminated, but will not contribute to night light pollution.

(c) Out-of-service. Any vending machines that are temporarily out-of-service will have computer-generated signs posted with appropriate information that will direct visitors to the closest available unit.

(d) Cigarettes. Cigarette vending machines will not be located anywhere within the Concessioner's assigned areas.

(9) Vehicles

(a) Licensing, Insurance, Maintenance and Registration. All vehicular equipment used by the Concessioner as well as the vehicles belonging to Concessioner's employees, will be properly registered, licensed, insured, and maintained in accordance with federal and state law and regulations.

(b) Identification. Concessioner vehicles will be discreetly identified with the Company name. All lettering should be no larger than three and one half inches in height.

(10) Employee Housing and Food

(a) The Concessioner will provide food and housing for its employees when needed. Charges for such food and housing shall be in accordance with state and federal laws.

(b) The Concessioner will designate a supervisor for employee housing. The supervisor's name and contact information will be provided to the Service.

(c) Pets are not to be maintained by employees at Mount Pisgah.

(d) Employee rooms will be adequately furnished to serve the number of occupants. The Concessioner will ensure that occupancy levels are not exceeded.

(e) The Concessioner will notify a Park ranger of abandoned vehicles within its land assignment, which may include employee vehicles. The Park ranger will make arrangements to have vehicles towed in accordance with Park standard operating procedures.

(f) Employees residing in the Concessioner's employee housing area will be informed of service regulations and policies by means to include, but not limited

to, employee orientation, newsletters, and official advisories and notices provided by the Concessioner or the Service.

(g) The content of the employee housing lease agreement and the employee housing rules and regulations are subject to the approval of the Superintendent.

F) Human Resources Management

(1) Employee Identification and Appearance. The Concessioner will ensure that all employees in direct contact with the general public wear uniforms or standardized clothing with a personal nametag. Employees will be neat and clean in appearance and will project a hospitable, positive, friendly and helpful attitude.

(2) Check-in Procedures. The Concessioner will implement and utilize a standardized check-in and checkout system for every employee.

(3) Employee Hiring Procedures

(a) General Manager. The Concessioner will employ a local general manager who is responsible for the successful implementation of the terms required by the Contract. The general manager should have at least five years of experience as a general manager of a multi-disciplinary resort and have a strong background in the hospitality industry. The Concessioner will submit the resume of the general manager to the Service for its review.

(b) Staffing Requirements. The Concessioner will hire a sufficient number of employees to ensure satisfactory visitor services throughout the season. All applicable requirements of the Federal and/or State Department of Labor will be met.

(c) Drug-free Environment. The Concessioner will maintain, to the greatest extent possible, a drug-free workplace environment. The Concessioner will conduct educational program(s) for its employees to deter substance and alcohol abuse. All employees will be required to participate in a drug-testing program. Should illegal drug use occur, it must be promptly reported by the Concessioner to the Chief Rangers Office and Concessions Management Office.

(d) Background Checks. The Concessioner will establish hiring policies that will include appropriate background reviews of applicants for employment. The Concessioner will not hire, or retain, any person known to have an outstanding warrant for arrest and may coordinate with the Service to assist in securing this information prior to hiring new employees. Employees that have been terminated in the past of activities involving the use of drugs, inappropriate use of alcohol, violation of laws or regulations, disturbances requiring involvement by ranger staff, etc, are not to re rehired.

(e) Driver Requirements. Drivers of delivery trucks or passenger carrying vehicles will have a valid state operators license for the size and class of vehicle being driven. They shall also meet additional North Carolina requirements established for the type of vehicle driven or number of passengers carried.

(f) Affirmative Action. The Concessioner will have an affirmative action plan as required by law and will post the plan in offices and work areas.

(g) Park Employees. The spouse or dependent of the Superintendent, Assistant Superintendent, Concession Staff, Environmental Manager or Public Health Sanitarian may not be employed by the Concessioner. The Concessioner will not employ in any status a Park employee, his/her spouse, or minor children of other Park employees without the Superintendent's approval.

(4) Training

(a) Safety. The Concessioner will train its employees annually according to the training requirements in its Risk Management Plan.

(b) Job Training and Orientation. The Concessioner will provide appropriate job training to each employee prior to duty assignments and working with the public. The Concessioner will provide mandatory employee orientation for all new employees and inform employees of Park regulations and requirements that affect their employment and activities while working and residing in the Park.

(c) Hospitality Training. The Concessioner will provide hospitality training for employees who have direct visitor contact.

(d) Sanitation Training. The Concessioner will provide sanitation training to food service personnel at the start of their employment in a food service facility and as needed to comply with the current edition of the U. S. Public Health Service Food Code.

(e) Interpretive Training. If the Park approves interpretive activities, the Concessioner will provide interpretive skills training for all employees who provide interpretive, informational and safety orientation information and/or services. The Concessioner will work closely with the Concessions Management Office and Interpretive Division to improve the methods of preparing and presenting effective interpretive information. The Concessions Management Office will evaluate interpretive visitor services to ensure appropriateness, accuracy, and the relationship to Park interpretive themes.

(f) Employee Handbook. The Concessioner will provide all employees with a copy of the Concessioner's employee handbook, which will specifically identify the policies and regulations of the Concessioner and the Service. A copy of all employee handbooks will be provided to the Concessions Office for a 30-day period of review prior to distribution to employees to assure consistency with all Park rules and regulations. An updated copy is to be forwarded to the Park annually.

3) Utility Responsibility

A) Concessioner

(1) Responsibility

(a) The Concessioner is responsible for contracting independent suppliers to provide utility services not provided by the Park. The Concessioner is responsible for the direct payment to these suppliers.

(b) The Concessioner is liable for prompt payments of electricity, fuel, refuse collection, telephone, sewage disposal, water or any other utility or service, whether made by governmental authority, public or community service company.

B) National Park Service

(1) Responsibility

(a) The Service will provide water and sewage services to the Concessioner's assigned facilities. The Service will charge on a monthly basis for these services in accordance with current regulations and policies.

(b) The Service will review operating costs for utility systems and services annually and will notify the Concessioner in writing by March 1 annually of the rates for the upcoming year effective May 1 – April 30. A rate comparability study is to be done by the Park, and rates will be based on both the study and results of the preceding fiscal year's actual costs.

4) <u>Protection and Security</u>

A) Concessioner Security Personnel

(1) Security. During the operating season, the Concessioner will provide security personnel for the employee housing area to handle in-house employee issues and to check concession facilities for security purposes on a 24-hour, 7-day per week schedule. Concessioner-employed security personnel are empowered to enforce the Concessioner's employee policies and housing regulations.

(2) Authority. Concessioner-employed security personnel have only the authority of private citizens in their interaction with Park visitors. They have no authority to take law enforcement action or to carry firearms.

B) The National Park Service

(1) Authority. The National Park Service has jurisdiction on all parklands and facilities on parklands including law enforcement, search and rescue, emergency medical services and structural fire.

(2) The Service will provide visitor protection and will conduct law enforcement patrols within concession land assignments and facilities.

(3) The Service will provide law enforcement services for issues that extend beyond the appropriate duties of Concessioner security personnel.

(4) The Service will handle all violations of federal, state, county or Service regulations or policies. State or county officials may be called to assist in some matters but this will be accomplished through the Chief Ranger's Office or his/her authorized representative.

C) Fire Protection

The Service and the Concessioner will provide fire protection jointly, with primary responsibility lying with the Service.

(1) Concessioner

(a) Fire prevention, protection and suppression will be primary considerations at all facilities. In the event of a fire, the concessioner will contact the local fire department or 911 immediately and request assistance. The Parkway Communications Center will then be contacted. If it is not operational, the incident needs to be reported to 1-800- PARKWATCH.

(b) The Concessioner has the responsibility to ensure that all facilities within its assigned area meet federal, state and local codes and that fire detection and appropriate suppression equipment is installed, operated, and maintained in accordance with applicable National Fire Protection Association standards.

(2) National Park Service. The Service will respond to a fire and provide for visitor assistance and incident management.

D) Emergency Medical Care

(1) Emergency Medical Care. Emergency medical care is to be obtained from local out-of-Park services.

(2) Training

(a) The Concessioner is encouraged to allow employees to attend emergency medical training, including CPR and First Response courses.

(b) All concession employees will be trained in proper emergency reporting procedures and will be instructed to provide essential information, e.g. a call back number at their location.

(3) Points of Contact to Report Medical Emergencies. 911 should be contacted for all medical emergencies. The Parkway Communications Center will then be contacted. If it is not operational, the incident needs to be reported to 1-800- PARKWATCH.

(4) The Concessioner will be required to have an automatic external defibrillator (AED) and personnel trained to operate it.

5) <u>Public Relations</u>

A) Required Notices

The following notice will be prominently posted at all Concessioner cash registers and payment areas:

> "This service is operated by (Concessioner's name), a Concessioner under contract with the U.S. Government and administered by the National Park Service. The Concessioner is responsible for conducting these operations in a satisfactory manner. The National Park Service approves prices. Please address comments to:
>
> Superintendent
> Blue Ridge Parkway
> 199 Hemphill Knob Road
> Asheville, N.C. 28803

B) Public Statements

All media inquiries concerning operations within the Park will be forwarded to the Park's Concessions Management Office.

C) Advertisements and Promotional Material

(1) Promotional Material

(a) Approval. The Superintendent must approve all promotional material prior to publication, distribution, broadcast, etc. The Concessioner will contact the Concessions Management Office well in advance to establish specific time frames for each project review. The Superintendent may require unapproved promotional material to be removed from circulation.

(b) Promotional material distributed within the Park is restricted to services and facilities within the Park, unless the Superintendent approves exceptions.

(c) Promotional material may be displayed at approved locations within Park visitor centers as well as within the Concessioner's land assignments.

(d) Changes. Brochure changes and layout should be submitted to the Superintendent for review at least 30 days prior to projected need/printing dates. The Superintendent will make every effort to respond to minor changes to brochure and other texts within 15 days. Longer periods may be required for major projects or where Concessions Office assistance is required to help develop the product.

(e) Park Publications. The Park's newspaper, the *Milepost*, includes information on concessioner-operated facilities within the Park.

(2) Statements

(a) Authorization. Advertisements must include a statement that the National Park Service and the Department of the Interior authorize the Concessioner, to serve the public on the Blue Ridge Parkway.

(b) Equal Opportunity. Advertisements for employment must state that the company is an equal opportunity employer.

6) Volunteers in the Park ("VIP") Program

The Concessioner will encourage and permit its employees to participate in the Park's Volunteers in Parks program. The Concessioner will make arrangements for this training with the Park Volunteer in Parks coordinator through the Concessions Management Office.

7) Specific Operating Standards And Requirements

All services are to be provided in a consistent, quality manner. The specific operating standards, as described in the following paragraphs, are considered service minimums. The Concessioner is expected to make every effort to exceed these standards. The Concessioner will be responsible for monitoring its operations to ensure that quality standards are met.

A) Lodging

(1) General

(a) Telephone Service. Emergency messages must be delivered to the guest immediately upon receipt.

(b) Non-Smoking Rooms. Non-smoking rooms will be provided in accordance with hospitality industry and guest trends.

(c) Guest Room Security. Each guest unit door must be equipped with both a primary lock and a secondary deadbolt lock.

- Each door to a connecting room must be equipped with a deadbolt lock.
- Sliding glass doors must be equipped with an effective locking device. A secondary locking device is required if the door is located on the ground floor.

(d) Guest Room Cleanliness. At a minimum, each guest unit must be cleaned thoroughly with complete bed and bath linens changed between stays and with daily maid service for multiple-night stays. Fresh linens, towels and bathroom supplies must be available upon request. Adequate approved informational signs must be displayed in all rooms informing the visitor that the change of linen and towels is an environmental program endorsed by the Park and that it is their option to request daily changes and replacement if needed.

(e) Information Packet. At a minimum each guest room will include information outlining facilities and amenities available throughout the Park.

(2) Lodging

(a) Standard. The Lodge will be operated at a facility and service standard approximating a three-diamond hotel designation as determined by the American Automobile Association ("AAA"). All rooms will have the following minimum amenities:

- Complimentary in-room coffee/tea makers and coffee and tea packets, sugar, cream, etc.
- Hairdryers available
- Beverage containers and ice bucket
- Quality amenity package that includes soap, shampoo/conditioner, and lotion.
- Alarm clock
- Towel service that correlates to the number of pillows
- Iron and ironing board available upon request (irons must be equipped with automatic shut-offs)
- Complimentary toiletries available upon request, e.g. toothpaste, toothbrush, sewing kits

(b) Front Desk Operations. A front desk agent must be available for guest services 24-hours per day; 7 days a week during the entire operating season, including holidays.

(c) Group bookings. Secondary to providing standard and routine services to the public. However, the Park will approve and support supplementing revenues with group business when it does not impact regular visitor use. The Park and Concessioner will address group business annually (prior to opening for the season) and develop a group business plan for the season.

B) Food and Beverage Service

(1) General

(a) Facility Use. The Concessioner will not use the facilities assigned within the Contract to provide catering services outside the Park without the consent of the Superintendent.

(b) Management. The Concessioner will ensure that a manager and/or other key personnel will be visible in the food service outlet during service hours.

(c) Menus. All menus will maintain a price range that accommodates the general range of Park visitors, and be consistent with NPS Core Menu Program guidelines (see Attachment A). The Concessioner will offer a range of food that provides for a wide variety of visitors, including vegetarian entrees, heart healthy entrees, light eater's entrees, and children's menus. (The current concessioner's menus may be found in Attachment C of this exhibit).

(d) Food Safety Certification. The Concessioner will have at least one full-time certified food safety manager. The manager will be certified as a ServSafe Food Protection Manager by the National Restaurant Association.

(e) Liquor Laws. All alcoholic beverage services are to be provided consistent with state and federal laws and as approved in the food service rate approval.

(f) Product Specifications. The Concessioner will use the following specifications as a guide when purchasing product:

- Meat
  - Beef — USDA Prime and Choice
  - Pork — USDA Number 1
  - Veal — USDA Select and Choice
  - Lamb — USDA Prime Choice
  - Poultry — USDA Grade "A" for all graded fresh or frozen poultry and poultry products as a minimum specification.
- Seafood
  - Frozen fish, if used, must be a nationally distributed brand, packed under continuous inspection of the US Department of the Agriculture.
- Dairy
  - Eggs — Fresh USDA or State Graded "A" Large

♦ Butter	USDA Grade "A" (92) Score
♦ Cheese	USDA Grade "A" for all graded cheeses
♦ Milk and Milk Products	USDA Grade "A" Fresh
• Produce	USDA Grade "A"
• Dry Stores	Grade "A" Fancy
• Canned Goods	Grade "A" Fancy

C) Merchandising

(1) General

(a) Wherever possible and appropriate, informational tags will be attached to the sales items to show their relationship to Park themes.

(b) Handicraft items representing Park and regional themes, including crafts by local and Native American artists (see Sec.2.(i)(11), will be actively sought and prominently displayed.

(c) A broad range of gifts and souvenirs will provide visitors with opportunities to buy inexpensive as well as fine art items.

(d) Items of interpretive value and general value in natural and cultural education will be prominently displayed.

(2) Merchandise Plan. The Concessioner will develop and implement a merchandise plan based on the Park's Gift Shop Mission Statement (to be provided by the park subsequent to the award of the contract), and incorporate the merchandise plan into the operation of all merchandise areas.

(3) Items Available for Sale

(a) Gifts and Souvenirs. Gift shops will offer items that have a direct relationship to the Blue Ridge Parkway, its environs, history, or other related natural or cultural topics. This will provide visitors with opportunities to buy memorabilia of their visit while at the same time obtaining information or educational messages related to the Parks' resources. The Superintendent has the right to review and approve all merchandise sold in the Park. Certain items may be determined to be inappropriate and unacceptable for sale.

(b) Grocery and Convenience Items. The Concessioner will provide a wide range, selection, and pricing for grocery and convenience items appropriate to and with Park approval.

(c) Firewood. The Concessioner will acquire fully cured firewood from outside the Park for sale in its roadside General Store.

D) Interpretive Services

(1) Personal Interpretive Services

(a) Park Knowledge. Employees will demonstrate their knowledge of Blue Ridge Parkway resources, history, and utilize appropriate interpretive techniques in their presentations.

(b) Park Involvement. The Park staff is available to advise and assist the Concessioner in the development of interpretive materials.

(2) Non-Personal Interpretive Services

(a) Non-Personal Interpretive Items. The Concessioner will actively pursue a non-personal interpretive program. The Concessioner will explore a wide array of methods for conveying interpretive messages to visitors on Park-related themes and topics such as resource protection, appreciation of Park values, and Service goals. In retail, lodging, and food service facilities interpretive messages will be included on a variety of items, including hangtags, receipts, menus, placemats, paper cups, and comment cards. The Concessions Management Office will review and approve all interpretative materials for public distribution.

(b) Locations. Park interpretive themes will be integrated into the interior decors at retail, lodging, and food service facilities. Appropriate areas within the land assignment, both interior and exterior locations, will be made available to provide Park interpretive and safety messages in various mediums, including bulletin boards and kiosks.

(c) Maps and Guides. The Concessioner will make Park information available at lodging, restaurant, gift shop, general store and all other desks.

8) Reporting Requirements

A) Park Reports

(1) Utility Costs. The Park staff will conduct an annual review of the operating costs for utility systems and services and the Concessioner will be notified in writing of the rates for the upcoming year 30 days in advance of implementation.

(2) Annual Performance Evaluation. The Concessioner will receive an annual performance evaluation by the end of January for the preceding calendar year. The Superintendent and/or his/her representative(s) are available to meet with the Concessioner to discuss the annual evaluation, which includes contractual, operational, public health, and safety components.

B) Concessioner Operational Reports

The Service will be allowed to inspect supporting documentation for all operational reports upon request.

(1) General

(a) Management Listing. The local General Manager will provide the Concessions Management Office a list identifying key concession management and supervisory personnel by department with their job titles, and office and emergency phone numbers by March 15 of each year.

(b) Incident Reports. The Concessioner will immediately report to a Park ranger or call 1-800-PARKWATCH:

- Any motor vehicle accident resulting in property damage, personal injury or death as soon as practicable, but within 24 hours of the accident.
- Any incident resulting in personal injury (requiring more than minor first aid treatment) or property damage exceeding $300 as soon as possible.
- Other incidents that may affect Park resources (e.g., fires, hazardous material spills) or are violation of state and federal law.

(c) Human Illness Reporting. Any suspected outbreak of human illness, whether employees or guests, is to be promptly reported to the Public Health Officer through the Park's Concessions Management Office. A suspected outbreak of human illness is two or more persons with common symptoms that could be associated with contaminated water or food sources or other adverse environmental conditions.

(d) Survey Response Data. All customer surveys must be reviewed and approved by the Park Superintendent prior to any survey implementation. Data collected by the Concessioner or third parties for the Concessioner will be provided to the Superintendent in summary form within 30 days of receipt. The Superintendent reserves the right to review supplemental information that supports the summary provided.

(2) Monthly Visitor Use Reports. The Concessioner will provide a monthly visitor use report that may be phoned, faxed or emailed to the Concessions Management Office by the 4th day of each month and followed by the written report form. The Concessions Office will supply the format of the report. The report will include:

(a) No. of lodging units available.

(b) Number of lodging units occupied.

(c) Percentage of occupancy.

(d) Total guest count.

(3) Monthly Asset Monitoring Report

The Concessioner will maintain a management information system to document visitor use patterns and impacts. A monthly asset monitoring report will be provided to the Service. The following information will be included in this report. The report will be due to the Park by the 15th day of the following month.

(a) Financial and Operational Statistics. The Concessioner will provide operational statistics and financial information for each revenue-producing outlet. The statistics and information provided will be in a mutually agreed upon format.

- A status report on projects funded by the Maintenance Reserve

(b) Visitor Comments. The Concessioner will provide tabulated summaries of all visitor comments to the Park, including a year-to-date tabulation.

(4) Annual Facilities Improvement Plan

(a) Plan will include estimates of timing and costs of implementing projects for the following year, due by April 1st.

(5) Concessioner Operational Reports by Land Use. All operational statistics for the individual land uses will be included in the monthly asset management report. An annual summary report will be due 60 days after the end of the year, unless otherwise agreed upon by the Superintendent. This data should be presented in a concise spreadsheet format. Industry specific management software could be operated for each specific land use.

(a) Overnight Lodging

- Rooms available and occupied and average daily room rate
- Market segmentation (i.e. individual leisure, tours, group, conference)
- Total guest count
- Average length of stay
- Turn away demand for days during that month and reasons
- Telephone revenues (in room and fax charges)

(b) Food and Beverage

- Number of covers served by breakfast, lunch, brunch, and dinner by outlet with corresponding revenues
- Number of banquet covers by breakfast, lunch and dinner and corresponding revenues

(c) Merchandising

- Revenue by outlet
- Revenue by merchandise category (i.e. Native American and regional handicraft (see Sec.2.(i)(11), gifts and souvenirs, grocery, apparel

(d) Employee Housing

- Number of beds available and occupied

C) Concessioner Financial Reporting

In addition to the annual financial report ("AFR") required in the contract, the following financial reports will also be required

(1) Annual Budget. A budget including detailed utilization and revenue and expense projections, due by the date specified by the Park.

(2) Financial Forecast. A mid-season financial forecast for each business activity compared to annual budget.

(3) Annual Profit and Loss Reports. An annual Profit and Loss statement will be developed based on currently acceptable accounting practices. Each revenue-

producing department (i.e. lodging, food and beverage, and retail) will have a supporting schedule presenting revenues and cost of goods sold, labor and departmental expenses. The Superintendent will agree upon the report format within 90 days of inception of the contract. This report will be due 120 days after the end of each fiscal year.

D) Summary of Initial and Recurring Due Dates

The following page summarizes the preceding reporting requirements and details other reports, plans, payments, and inspections that will be the responsibility of the Concessioner.

SUMMARY INITIAL AND RECURRING DUE DATES			
Title	**Schedule**	**Due Date**	**Reference**
Initial Requirements			
Balance Sheet	Initial	Within 90 days of the effective date of contract execution	Contract, Sec. 14(c)
Environmental Management Plan	Initial	Within 60 days of the effective date of contract execution	Contract, Sec. 6(b)(1)
Risk Management Plan	Initial/ Annually	Within 60 days of the effective date of contract execution; Updates due by November 30 of preceding year	Operating Plan, Sec. 3, D.7
Merchandise Plan	Initial	To be determined	Operating Plan, Sec. 4, C.2
Annual			
Opening & Closing Dates & Hours of Operation	Annually	To be determined	Operating Plan, Sec. 3, A.1
Management Listing	Annually	March 15	Operating Plan, Sec. 6, B.1.a
Employee Handbook	Annually	All handbooks will be provided 30 days prior to release; updated copies will be provided annually	Operating Plan, Sec. 3, G.6.f
Annual Rate Change	Annually	At least 60 days prior to anticipated implementation dates.	Operating Plan, Sec. 3, B.2
Annual Financial Report	Annually	Not later than 120 days after the last day of the Concessioner's fiscal year	Contract, Sec. 14(b), pg. 29 Operating Plan Sec. 6, C. 4
Repair and Maintenance Reserve Activity Report	Annually	Not later than 120 days after the end of the Concessioner's accounting year	Contract, Sec. 14(c)(2)
Budget	Annually	To be determined	Operating Plan, Sec. 6, C. 1
Financial Forecast	Annually	To be determined	Operating Plan, Sec. 6, C.2
Structural Fire Inspection	Annually	Within 30 days of initial occupancy, annually thereafter	Operating Plan, Sec. 3, D. 3 a
Concessioner Operational Reports	Annually	Not later than 60 days after the end of the calendar year	Operating Plan, Sec. 9, B.
Annual Facilities Improvement Plan	Annually	By April 1st of the preceding year	Operating Plan, Sec. 9, B. 4
Monthly			
Visitor Use Statistics	Monthly	By the 4th day of the following month of each month of operation	Operating Plan, Sec. 6 B 2
Franchise Fee	Monthly	By the 15th day of the following month of each month of operations	Contract, Sec. 11 b Operating Plan
Monthly Asset Monitoring	Monthly	By the 15th day of the following month of each month of operation	Operating Plan, Sec. 6 B 3
Miscellaneous Reports and Data	As required	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.	Contract, Sec 15(c)

CONCESSIONER	DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE
BY: Phyllis Prevost	BY:
TITLE: Pres	TITLE: SUPERINTENDENT
DATE: 08/11/04	DATE: 8/12/04

ATTACHMENT A

001597

ATTACHMENT A TO APPENDIX B CORE MENU RATE APPROVAL PROCESS

The core menu concept has been developed to provide a more fluid and professional procedure for approving food and beverage rates for park concessioners. In the past the establishment of comparable rates for food and beverage operations required more in-depth analysis by the National Park Service than other services. This was due to the overall complexity and multiple variables that are a part of the food and beverage industry.

In recognition of the cumbersome approach required to properly address the establishment of appropriate menu rates, format and content using the direct comparability (full review) method, the concept of establishing a core menu has been developed as an **option** for use by NPS concessions management officials. The determination to use and/or continue using the core menu method is one that should be determined from consultation and agreement between the park and concessioner. ***If factors surface such as the level of agreement between the park and concessioner or other factors considered significant to the overall quality and integrity of the process, the park has the responsibility and authority to divert back to the use of the full review process of rate approval.***

Establishing Comparables

The knowledge of the park staff and concessioner can be utilized to help locate appropriate businesses. These businesses should be located in the same geographic region of the concession facilities. Concessioners may recommend potential comparable facilities/services, however final selection of comparables rests with the park Superintendent.

(a) Selection Factors

Competition is the only selection factor that must be considered and those food establishments being considered as potential comparable must have at least two or more competitors. Special screening and consideration factors, such as similar services, facility and clientele, may also be established by the park to help evaluate the similarities of the establishments being considered.

Parks need to pay special attention to those food establishments that are clustered in an area or location, such as resorts, where demand exceeds availability and rates are higher than those found in more competitive areas.

(b) Collection of Data

Once the comparables are selected, the core menu process permits the development of the core menu. All that is required at this point is the acquisition of the comparable's menus.

Core Menu Development

The basic core menu should be developed before the comparability review is conducted. The core menu is intended to identify those specific food categories and items that are standard on the comparable menus and that should be reflected on the concessioner's menu.

The core menu should be developed locally and should be representative of the needs and expectations of park visitors in that specific area. It should include a predetermined number of popular food and beverage selections. These selections cover food categories such as entrees, (beef, fish, fowl, pork, vegetarian, etc.), beverages, desserts, salads, appetizers, etc. and items that are regionally expected and offered in similar facilities. The basic core menu is established when the above are documented. 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.

Non-Core Menu Items

After the core menu items have been established, the concessioner is permitted to add additional items to the core menu without the need for a detailed park analysis. However, the rates for these additional items must still be established within the philosophy and concept of comparability and recognition of the market. The concessioner is charged with the responsibility for setting non-core rates consistent with the established comparables. If the park questions rates of non-core menu items, the concessioner should be prepared to justify the rates set and show how the rates were determined.

In situations where the concessioner does not demonstrate reasonable sensitivity to the comparable marketplace, the park has the option to return to the direct full review comparability method of rate approval.

By federal law the National Park Service is required to approve all concessioner services, products and rates. The National Park Service will not normally take any action beyond review and acknowledgement of the non-core menu rates and portions if the concessioner uses a positive approach in establishing sensitive rates. With an appropriate core menu it should not be necessary for the park to be concerned with minor or subtle pricing variations in the remainder of the menu. The core menu meets the NPS responsibility for meeting the requirements of the law by furnishing appropriate rates to the public while providing added flexibility and opportunity for creativity to park concessioners and ease of management to the National Park Service.

Rate Approval Process

Before prices are approved, an approval and agreement of the actual menu format and content must be established to ensure appropriate identification and menu placement of those core items.

The following outlines the details on how to structure and manage food and beverage rate approvals through utilization of the Core Menu Rate process.

A. Type of Food Service
When the rate review is conducted, the type of food service will be identified. Some examples of service types usually found in parks are:

Full Service Restaurants – This category includes restaurants ranging from small casual facilities with limited menus and table service to large formal gourmet operations that offer extensive and elaborate services and menu selections. Often, food service facilities in parks fall between these two extremes and similar comparables should be used. While the comparable or the concessioner may provide singular service types or different food options, it is important that the primary service style and menu be similar. For example, either may offer occasional buffets, seasonal features, traditional selections of the immediate area or package plans in conjunction with lodging or other promotions, but the standard menu and service style should be similar.

Coffee Shops – Usually limited menus/sit down and take-out food service operations.

Cafeteria – This includes operations that permit the customer to view and select from individual a-la-carte items as they pass through a serving line. The items are usually individually priced. A cafeteria usually offers specials that may provide a lower overall price when a set number or selection of items is chosen.

Fast Food & Snack Bar – May be table or counter service/walk up or waited/limited menu/eat-in or take-out.

Gourmet Fine Dining/Specialty/Limited/Ethnic –
Operations that have been established for catering to special food service needs (i.e. special selected and prepared items that may only meet the interests, needs and/or requirements of a small number of the general public). These operations are often located in parks which also offer standard food service; however, there may be a few situations where this may be the only service type offered by the park. A menu item from this type of facility may also be found on the other standard type of menus.

Other Facilities – These can be take out, limited seating and/or prepared food service operations in a setting such as a grocery store, service station, or other environment where prepared food is not the primary product offered.

B. Determine the Core Menu Rates
After the core menu is established as outlined above, the approval of rates should be relatively simple using the originally selected comparables. You may simply average the core menu item rates on the comparable menus and use that average as the approved rate. It is unacceptable to establish rate ranges and then approve only the high-end rates for menu items. The rate review process combined with the core menu concept produces an inventory of similar items at similar prices.

The core menu should also be reviewed to verify that selections of a national interest or expectation and items required for normal health considerations are included. Examples include salads, low calorie/low fat selections, grilled or baked fish and chicken selections, pastas, vegetables, etc. Local and regional selections are usually limited. The comparables menus can be used for approving the special needs and local/regional item rates.

Other items made available outside of the core menu do not usually require a significant level of review, but even with the core menu concept it is still necessary for the National Park Service to grant approval for non-core rates. This approval does not denote anything other than the recognition of the type of items on the menu. This is important to ensure that the configuration of the total menu is acceptable and that the park knows basic data of portions and rates. The additional menu offerings permit the concessioner the opportunity to be innovative. It also provides a reasonable means of merchandising without the need for item by item NPS comparability. It retains the visitor's ability to have a reasonable selection of items (core menu) at comparable rates.

The following sample outlines the Core Menu Rate process for a full-service restaurant. Other types of food service operations may be of a different size and have different types of menus and menu items, but the **Core Menu Rate process should include the following:**

1. Concessioner has requested a rate increase. The concessioner's proposed rates and menu items are a matter of record at this point.

The first step to take is to review the menus of the selected comparable's and identify those **food categories** that are generally found on each. Some specifics that may be included are:

Menu Layout	**Other**
Appetizers	Children's menus
Salads and soups	Senior citizen menus
A-la-carte items	Alcoholic beverage menus
Entrees	
Sandwiches	
Desserts	
Beverages	

Where applicable, these categories will be included for each meal period being reviewed (breakfast, lunch, and dinner).

2. Next, review the menus of the established comparables and identify those ***food types*** that are made available by most of the comparables (fish, fowl, pork, beef, pastas, diet, etc). Confirm that similar food types are on the core menu.

3. After establishing the food types then you need to identify the actual ***food items*** in the core menus. These items are routinely found on the majority of the comparable menus. Some portion sizes and special feature information should be collected for general reference. Other than those items that are typically described at a certain portion size on the menu (meats and some beverages) the approval of core and non-core items do not have to be tied to specific portions. The concessioner should have some leeway, especially on side dishes, to be creative in presentations and combinations. Adequate portion sizes must be provided by the concessioner. Failure on the part of the concessioner to provide reasonable portioning will result in an "A" deficiency on the operational periodic review.

The following listings reflect examples of food items that are found on most menus for each meal.

Attention should be given to selections of national interest or expectation and items necessary to satisfy normal health considerations. These should be included on the core menu even if not found on the comparable menus.

The last food item(s) to be added to the core menu are those items that are considered local or regional or those that meet the park's theme. There are usually only a few items of this type. While desirable, these items are not essential. They may be represented as a part of the non-core menu development by either the concessioner or the park.

Breakfast:
Juice (selection of two to three)
Eggs (Any Style) Grade A-Large
Bacon (three strips) or Sausage (two patties)
Grits or Potatoes
Toast or Biscuits
6" Pancakes (two to three)

A-La-Carte
Hash Browns
Grits
Order of Toast (2-slices) w/butter/jam
Bacon (3 slices)
Coffee (Decaf or Regular)

Lunch:
Soup (8 oz cup/12 oz. Bowl)
Garden Salad (1 to 1.5 cups mixed greens, tomato, onion, etc.)
Hamburger (6 oz.) (lettuce, tomato, onion, mayonnaise, etc. on sesame seed bun) served with fries
Fish Sandwich (5 oz. Natural filet) (lettuce, tomato, onion, mayonnaise, etc. on sesame seed bun)/served with fries (4 oz.)
Dessert
Soft Drink

Dinner:
Fried Mushrooms (4 oz.)
Soup (8 oz. cup /12 oz. bowl)
Garden Salad (1-1.5 cups mixed greens, tomato, onion, etc.)
Tuna Salad (6 oz. Tuna on mixed greens w/tomato and egg slices
Strip Steak (12 oz. USDA Choice), served with choice of potato, garden salad, bread/butter
Dessert
Soft Drinks (12 oz. Free refills) (both regular and diet)

Summary:

If the procedures outlined above are followed, park visitors will be provided with a selection of food items at reasonable prices guided by both the comparability process and market place consistent with public law

ATTACHMENT B

PARKWAY INN, INC.

SCHEDULE - III.
SECTION - C.
DATE: January, 2003

METHOD OF RATE APPROVAL - Rate Study Review
Revision - N/A

LODGING	CURR RATE 2001	RATE INC REQ 2003	AMT OF INC	% OF INC	APPR RATE 2003
STANDARD ROOMS					
Single & Double	75.00	79.91	4.91	6.5%	**80.00**
DELUXE ROOMS					
Single & Double	87.00	91.32	4.32	5.0%	**90.00**
OTHER RATES					
Extra Person	6.00	10.00	4.00	66.7%	**8.00**
Children (12 and under)	Free	Free			**Free**
Roll-a-way	6.25	10.00	3.75	60.0%	**8.00**
Crib	Free	Free			**Free**
SUITES					
Pisgah Room	125.00	125.00	0.00	0.0%	**130.00**
GOVERNMENT ROOM RATES (*)					
Single & Double (Includes tax)	55.00	55.00	0.00	0.0%	**55.00**
OTHER					
MOVIE RENTAL:					
One movie w/equipment.	6.99	6.99	0.00	0.0%	**6.99**
Unlimited movies w/equipment.	9.99	10.99	1.00	10.0%	**9.99**
(Rates for movie rentals are to be provided in the "visitor information" booklet.)					
FAX SERVICES:					
Outgoing - First Page	1.00	1.00	0.00	0.0%	**1.00**
Outgoing - Additional Pages	0.50	0.50	0.00	0.0%	**0.50**
Incoming - Up to five pages.	1.00	1.00	0.00	0.0%	**1.00**
Incoming - Over five pages (each).	0.50	0.50	0.00	0.0%	**0.50**
LATE CHECKOUT CHARGES					
Up to 1:00 pm	Free	Free	0.00		**Free**
1:00 pm to 2:00 pm	20.00	20.00	0.00	0.0%	**20.00**
2:00 pm to 3:00 pm	1/2 rate	1/2 rate	0.00		**1/2 rate**
(Rates for late check-outs are to be provided in the visitor information" booklet. A space providing this information on the guest register log should also be made available for the guest to be advised and for them to initial at check in.)					

PARKWAY INN, INC.

SCHEDULE - III.
SECTION - C.
DATE: January, 2003

METHOD OF RATE APPROVAL - Rate Study Review
Revision - N/A

NOTES:

1. Rates do not include sales taxes imposed by County, State, and Federal governments.

2. Approved rates are to remain in effect until changes are approved by the National Park Service.

3. Check-out time is 11:00 am and check-in is 3:00 pm.

4. Handicapped accessible rooms will be held as the last available rooms, including advance reservations. They are to be rented at the standard room rate when a "Standard" handicapped accessible room is requested. If they are the only rooms remaining unrented, they may then be rented at the higher (remodeled) rate when desired by non-handicapped persons. One of the three handicapped accessible rooms are to be smoking and the other two designated as non-smoking.

   Smoking Rooms - It is approved to reduce the number of smoking rooms. Smoking rooms will now be #201 (Pisgah Room), #211 & #111 (deluxe rooms), #117 (deluxe handicapped room), and # 225 - #224 - #125 & #124 (standard rooms). All other rooms will be designated as non-smoking.

5. An amenities package will be included in each room. As a minimum, it will include two small bars of face soap, a large bath bar of soap and shampoo. A sign should be placed in each accommodation advising visitors of other available items at the desk.

6. Twenty-four (24) hour visitor assistance must be available.

7. Cancellation & Administrative Policy

PISGAH INN
CANCELLATION POLICY

48 HOUR CANCELLATION POLICY

Cancellations made less than forty-eight (48) hours prior to the confirmed arrival date (check—in time) of a reservation is subject to forfeiture of the room deposit (one nights stay). The exception to forfeiture of the deposit will be when it can be demonstrated that a legitimate emergency (i.e., accident, death or illness in the family, automobile trouble, etc.) necessitated the cancellation or if the room is rented to another guest. The administrative fee ($15.00), discussed later in this approval, can be assessed against the cancellation should the cancellation be based on an emergency or if the room is rented to another guest.

PARKWAY INN, INC.

SCHEDULE - III.
SECTION - C.
DATE: January, 2003

METHOD OF RATE APPROVAL - Rate Study Review
Revision - N/A

TWO (2) WEEK CANCELLATION ADMINISTRATIVE FEE

An Administrative Fee in the amount of $15.00 may be assessed for cancellations made less than two weeks from the confirmed arrival date (check-in time).

NOTES TO CANCELLATION POLICY:

1. This program can be revoked by the Blue Ridge Parkway

2. All reservations, except those where a written confirmation cannot be supplied due to the short period of time between when the reservation is made and the date the reservation is for, are to be confirmed in writing with all terms and conditions of the "Two Week Cancellation Administrative Fee" and "48 Hour Cancellation Policy" included on the confirmation.

3. All terms and conditions of the "Two Week Cancellation Administrative Fee" and "48 Hour Cancellation Policy" are to be provided verbally to each person making a reservation by phone at the time the reservation is made.

4. Any advertising and/or rate sheets that contain information about rooms must contain information clearly outlining the "Two Week Cancellation Administrative Fee" and "48 Hour Cancellation Policy."

5. A waiting list will be maintained for up to three persons requesting reservations at times reservations are all booked. These persons will be offered the opportunity to book the reservation in the order the requests are received if a cancellation occurs.

The following language is to be included on all rate sheets, confirmation notices, and other publications or advertisements when rates are provided.

CANCELLATION POLICY (Per Room):
A fee is charged of $15.00 for cancellations made two weeks or less from the arrival date or one night's deposit for cancellations made 48 hours or less from the arrival date.

If the above cannot be applied using the two colors, the entire message should be added as red. Yellow highlight will be acceptable until this item is reprinted.

- Government Rate - Discount to federal employees conducting official business and approved by the Superintendent.

DATE: _____

APPROVED BY: _____

Superintendent
Blue Ridge Parkway

Good Mountain Morning

Pisgah Inn Breakfast

Fruits, Pastries, and Breads

Fresh Melon in Season	$2.25	Blueberry Muffins	$1.50
Fresh Strawberries	$2.75	Buttery Croissant	$1.75
Half Fresh Grapefruit	$1.50	Toasted Bagel with butter	$1.50
Danish Pastry	$1.75	Toast with butter & jelly	$1.50
Homemade Biscuits	$1.50	Bagel with Cream Cheese	$1.95

Full Breakfasts

Two eggs, Homefries or Grits,
Toast or Biscuits
$2.95
or with your choice of

Bacon	$4.75
Breakfast Steak	$6.50
Fresh Mountain Trout	$9.95
Sugar Cured Ham	$4.95
8 oz. Ribeye Steak	$8.95
Twin Pork Chops	$7.95
Sausage	$4.75
Country Ham	$7.95

Omelettes

Western Omelette $6.95 Cheese Omelette $5.95
Omelettes served with Homefries or Grits, Toast or Biscuits

Stack of Pancakes
served with butter and syrup
Bacon or Sausage
$4.95

French Toast
served with butter and syrup
Bacon or Sausage
$5.25

à la Carte/Sides/Beverages

Sausage or Bacon	$2.00	Biscuits & Gravy	$2.25
Sugar Cured Ham	$2.75	Hot Oatmeal	$1.75
Country Ham	$4.75	Scalloped Apples	$1.50
Homefries or Grits	$1.15	French Toast	$3.50
Cold Cereals	$1.70	Stack of Pancakes	$3.50

Coffee, Iced Tea, Decaf, Milk, Hot Tea, Sodas (free refills on all beverages) $1.25
Fruit Juices Lg. $1.85 Sm. $1.35

Pisgah Inn Lunch

SOUPS AND APPETIZERS

French Onion Soup $ 3.75
Smothered with selected cheese

Soup Du Jour cup $ 2.75, bowl $ 3.50
Always Homemade and Hearty

Smoked Trout Fillet $ 6.95
Served with Capers, Red Onion, Crouton and Dill Sauce

Fried Chicken Tenders $ 4.95
Served with Honey Mustard

Fresh Fruit Cocktail $ 2.75
Seasonal Fresh Fruits and Berries

Mozzarella Sticks $ 4.95
Served with Marinara Sauce

Deep Fried Mushrooms $ 4.95
Served with Ranch Dip

BURGERS

All American Burger $ 5.25
With Cheddar $ 5.75
With Bacon and Swi $ 6.25
Veggie Burger $ 5.95
For the non-meat eater

SANDWICHES

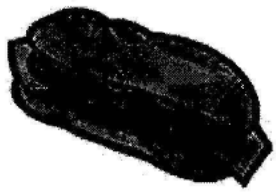
Fish Fillet Sandwich $ 5.25
Delicate fillet of white fish

Chicken Fillet Sandwich $ 5.50
Deep fried boneless breast

Traditional Reuben Sandwich $ 6.50
Corned Beef, Sauerkraut, Swiss, 1000 Island, Grilled on Rye

Monte Cristo Sandwich $ 6.95
Ham, Turkey, Swiss & Cheddar. Dipped in a light egg wash and grilled. Served warm with marmalade.

Sandwich of the Day
with Potato Chips and Pickle $ 3.95
with Soup, Salad, or French Fries and Pickle $ 4.75



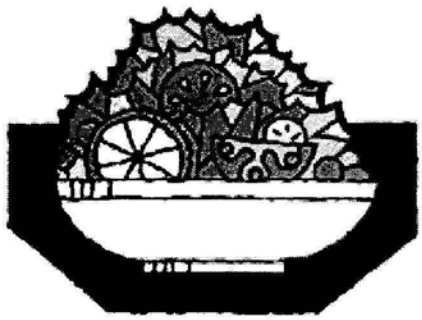
Chicken Parmesan Sandwich $ 6.95
Smothered in mozzarella cheese with marinara sauce

Grilled Chicken Sandwich $ 6.50
Marinated 6 oz. boneless and skinless breast of chicken
With Bacon and Cheese $ 6.95

All Sandwiches and Burgers served with French Fries and appropriate condiment

Coffee, Tea, Milk, Soft Drinks (free refills on all beverages) $ 1.25

SALADS



Chef's Salad $ 6.25
Mixed greens with ham, turkey, shredded cheddar and jack cheeses, egg, and veggies. Choice of dressing.

House Salad $ 2.95
Mixed greens with veggies. Your choice of dressing.

Cottage Cheese and Fruit Plate $ 5.95
Cottage Cheese surrounded with seasonal fresh fruit and berries.

Grilled Shrimp Salad $ 7.95
Shrimp on a skewer. Grilled and served over a bed of mixed greens. Your choice of dressing.

Grilled Chicken Salad $ 6.95
Marinated skinless chicken breast, grilled and served over a bed of mixed greens. Your choice of dressing.

MAIN COURSES

Twin Center Cut Pork Chops $ 7.95
Grilled and served with scalloped apple

10 ounce Ribeye Steak $ 9.95
Cut from USDA Choice Beef in our kitchen

10 ounce Ground Sirloin Steak $ 8.50
Served with mushroom gravy

Half Fried Chicken $7.75
The Inn's own recipe. Golden and Crusty

Fresh Mountain Trout $ 9.95
A Pisgah Inn specialty. Filleted at your table upon request. Baked in Lemon Butter or Charbroiled.

Country Ham Steak $ 8.75
Center cut, boneless, may be too salty for some.

All main courses served with potato, vegetable, salad, and roll

DESSERTS

Ice Creams & Sherbets	$ 2.50
Assorted Cobblers	$ 2.25
Assorted Pies	$ 2.75
á la mode	extra .70
Homemade Cheesecake	$ 3.50
with topping	$ 3.95
French Chocolate Silk Pie	$ 4.00
with almonds, strawberries & ice cream	$ 5.50

Coffee, Decaf, Tea, Milk, Soft Drinks (free refills on all beverages) $ 1.25

Appetizers

Fresh Fruit Cocktail
An assortment of seasonal fresh fruits and berries.
$2.95

Soup Du Jour
A hearty, homemade soup, prepared daily
$2.75

French Onion Soup
Thick with onions and sealed with selected cheeses.
$3.95

Smoked Trout Fillet
Local Mountain Trout, filleted and smoked over hickory.
Served with capers, red onion and a sour cream dill sauce.
$6.95

Sautéed Mushrooms
Fresh mushrooms, sautéed with garlic, shallots, tarragon, and parsley. Finished with Cream Sherry.
$4.95

Fried Chicken Tenders
Deep Fried boneless chicken tenders. Served with honey mustard for dipping.
$4.95

Mozzarella Sticks
Creamy Mozzarella, lightly breaded and deep fried. Served with marinara for dipping.
$4.95

Breaded Fried Mushrooms
Lightly breaded whole mushrooms, deep fried and served with Ranch sauce for dipping.
$4.95

Friday and Saturday Nights
We proudly feature Roast Prime Rib of Beef
10 ounce $13.95 **14 ounce $15.95**

We invite you to enjoy a selection from our "Front Page" nightly features, our chef's delight in creating varied and unique items to tempt your culinary curiousity.

Main Courses

Fresh Mountain Trout $11.95

A Pisgah Inn Specialty. Served baked in lemon butter, or charbroiled, and filleted tableside (or in kitchen upon request).

Chopped Beef Steak $8.95

A full 10 ounces of USDA Choice lean beef, charbroiled and served with mushroom sauce.

Ribeye Steak 10 oz. $10.95 / 14 oz. $13.75

Hand trimmed in our kitchen. This USDA choice Ribeye is charbroiled to your specification.

Filet Mignon $18.50

Eight ounces of USDA Choice Beef Tenderloin. Hand cut daily in our kitchen. Charbroiled to your order. Allow extra time for well done.

Half Fried Chicken $9.75

The Inn's own recipe, specially seasoned and deep fried to a golden brown.

Chicken Cordon Bleu $11.95

A Boneless, skinless breast of chicken, stuffed with imported ham and swiss cheese. Lightly breaded and oven baked. Topped with a white wine cream sauce.

Twin Country Ham Steaks $9.95

A pair of man-sized, boneless Country ham steaks, grilled. This ham is a regional dish and may be too salty for some tastes.

Salmon Fillet $10.95

A delicate fillet of Salmon, grilled and served with a lemon butter.

All entrées are served with a house salad, fresh vegetable, potato or rice, rolls and butter.

Pisgah Inn's Famous Fettucini $10.95

A platter of steaming Fettucini tossed with grilled chicken strips, fresh spinach, tomatoes, and mushrooms in a garlic butter sauce.

Vegetarian Fettucini $8.95

A platter of steaming Fettucini tossed with fresh vegetables and homemade marinara sauce.

Our pasta dishes are served with a house salad, homemade rolls and butter.

Sandwiches and Salads

All American Burger	$5.25
with Cheddar	$5.75
with Bacon and Swiss	$6.50
Fried Chicken Breast Sandwich	$5.50
Fried Fillet of Fish Sandwich	$5.25
Grilled, Marinated Chicken Breast Sandwich	$6.50
with Bacon & Cheddar	$6.95
Veggie Burger	$5.95

All our sandwiches are topped with lettuce, tomato and red onion, and are served with french fries and a kosher dill pickle.

Sandwich of the Day	
Served with choice of Soup, Salad, or Fries	$4.75
Served with Potato Chips	$3.95
House Salad	$2.95
Chef's Salad	$6.50
Cottage Cheese and Fruit	$5.95
Grilled Chicken Salad	$6.95
Grilled Shrimp Salad	$7.95

Desserts

Homemade Fruit Cobbler	$2.25
with ice cream	$2.95
Assorted Pies	$2.75
with ice cream	$3.45
Ice Cream or Sherbet	$2.50
Homemade Cheesecake	$3.50
with fresh strawberries	$3.95
French Chocolate Silk Pie	$4.50
with Almonds, Ice Cream & Strawberries	$5.50

Beverages

Coffee, Tea, Milk, Soft Drinks (free refills on all beverages)	$1.25

~ Champagnes and Sparkling Wines ~

Bin #		Bottle
320	Möet & Chandon White Star (France)	$59.00
321	Mumm Cuvee Napa Brut Prestige (Napa Valley)	$36.00
322	Domaine Ste. Michelle Brut (Washington)	$19.00

~ White Wines ~

Chardonnay

323	Kendall-Jackson Vintner's Reserve Chardonnay - (California)	$22.00
324	Estancia Pinnacles Chardonnay (Monterey County)	$20.00
325	Clos Du Bois Chardonnay (Sonoma County)	$19.00
326	Fetzer Sundial Chardonnay (California)	$17.00
327	Columbia Crest Chardonnay (Washington)	$15.00
328	Lindemans Chardonnay (Australia)	$14.00

Sauvignon Blanc

329	Rodney Strong Charlotte's Home Vineyard Sauvignon Blanc (Northern Sonoma)	$19.00
330	Clos Du Bois Sauvignon Blanc (Sonoma County)	$18.00

Other White and Blush Wines

331	Chateau Ste. Michelle Johannisberg Riesling (Washington)	$17.00
332	Schmitt Söhne Blue Riesling (Germany)	$16.00
333	Cavit Pinot Grigio (Italy)	$14.00
334	Beringer White Zinfandel (California)	$12.00

~ Red Wines ~

Cabernet Sauvignon

335	Estancia Cabernet Sauvignon (California)	$26.00
336	Bonterra Cabernet Sauvignon (North Coast)	$23.00
337	Robert Mondavi Coastal Cabernet Sauvignon (North Coast)	$21.00
338	Columbia Crest Grand Estate Cabernet Sauvignon (Washington)	$19.00
339	Beringer Founders' Estate Cabernet Sauvignon (North Coast)	$17.00

Merlot

340	Rodney Strong Merlot (Sonoma County)	$25.00
341	Sterling Vintner's Collection Merlot (Central Coast)	$20.00
342	Meridian Merlot (California)	$18.00
343	Fetzer Eagle Peak Merlot (California)	$17.00
344	Lindemans Merlot (Australia)	$14.00

Pinot Noir

345 Rodney Strong Pinot Noir (Russian River Valley) $26.00
346 Anapamu Pinot Noir (California) $19.00

Other Red Wines

347 Banfi Chianti Classico Riserva (Italy) $24.00
348 Rosemount Shiraz (Australia) $20.00
349 Georges Duboeuf Beaujolais Villages (France) $15.00

~ Biltmore Estate Wines ~

350 Biltmore Estate Chardonnay $17.00
351 Biltmore Estate Cabernet Sauvignon $18.00
352 Biltmore Estate Merlot $18.00
353 Biltmore Estate White Zinfandel $14.00

~ Wines by the Glass ~

Kendall-Jackson Vintner's Reserve Chardonnay (California) $6.25
Columbia Crest Chardonnay (Washington) $5.00
Clos Du Bois Sauvignon Blanc (Sonoma County) $5.00
Cavit Pinot Grigio (Italy) $4.50
Chateau Ste. Michelle Johannisberg Riesling (Washington) $5.00
Beringer White Zinfandel (California) $4.00
Columbia Crest Grand Estate Cabernet Sauvignon (Washington) $5.50
Meridian Merlot (California) $5.50
Rosemount Shiraz (Australia) $5.50

~ House Wines by the Glass ~

Livingston Cellars $3.50
Chardonnay, Cabernet Sauvignon, Merlot, White Zinfandel

~ Beer List ~

Craft & Imported Beers - $3.00

Sierra Nevade Pale Ale
Bass Ale
Guinness Stout
Red Stripe
Highland Gaelic Ale

Domestic Beers - $2.50

Budweiser
Bud Light
Michelob
Michelob Light
Miller Lite
O'Doul's

EXHIBIT C
NONDISCRIMINATION

Section I: Requirements Relating to Employment and Service to the Public

A. EMPLOYMENT

During the performance of this CONTRACT the Concessioner agrees as follows:

1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.

2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.

3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed $50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.

5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this CONTRACT or with any of such rules, regulations, or orders, this CONTRACT may be canceled, terminated or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

B. CONSTRUCTION, REPAIR, AND SIMILAR CONTRACTS

The preceding provisions A(1) through A(8) governing performance of work under this CONTRACT, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this CONTRACT, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this CONTRACT, and for that purpose the term "CONTRACT" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contacts by the Concessioner.

C. FACILITIES

(1) Definitions: As used herein:

a) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner;

b) Facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from:

a) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition;

b) discriminating by segregation or other means against any person.

Section II: Accessibility

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No disabled person shall, because a Concessioner's facilities are inaccessible to or unusable by disabled persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

A. DISCRIMINATION PROHIBITED

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of a disability:

1) Deny a qualified disabled person the opportunity to participate in or benefit from the aid, benefit, or service;
2) Afford a qualified disabled person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
3) Provide a qualified disabled person with an aid, benefit, or service that is not as effective as that provided to others;
4) Provide different or separate aids, benefits, or services to disabled persons or to any class of disabled persons unless such action is necessary to provide qualified disabled persons with aid, benefits, or services that are as effective as those provided to others;
5) Aid or perpetuate discrimination against a qualified disabled person by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;
6) Deny a qualified disabled person the opportunity to participate as a member of planning or advisory boards; or
7) Otherwise limit a qualified disabled person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

B. EXISTING FACILITIES

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by disabled persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by disabled persons.

EXHIBIT D
ASSIGNED LAND AND REAL PROPERTY IMPROVEMENTS
(CONCESSION FACILITIES)

LAND ASSIGNED:

The location points listed below are shown in numerical order as points which can be identified on the enclosed land assignment map. The map depicts the boundaries of the land being assigned to the Concessioner.

Location Points:

#1 Parkway road edge (Parkway left) 30 feet south of the entrance to the kitchen service entrance road.

#2 Parkway road edge (Parkway left) at the point it meets the right side (looking southeast) of the access road leading to the water tank and employee quarters.

#3 Fire hydrant located just off the access road edge at the 90-degree left curve where the road turns north toward the water tank.

#4 Fire hydrant located approximately 50 feet from the northeast corned of Motel Unit "C".

#5 Point thirty feet southeast of the northeast corner of Motel Unit "C".

#6 Point thirty feet southeast of the southern corner of Office / Motel Unit "A"

#7 Point thirty feet southeast of the southern corner of the dining room ("Café").

#8 Point thirty feet southeast of the mountain view side of the loop road.

Assignment:

- Running the Parkway road edge ("Parkway left") from Point #1 north on the Parkway to Point #2
- Running the right edge of the access road (looking southeast) to Point #3
- A straight line between Point #3 and Point #4.
- A straight line between Point #4 and Point #5.
- A straight line between Point #5 and Point #6.
- A straight line between Point #7 and Point #8.
- A straight line between Point #8 and Point #1.

REAL PROPERTY IMPROVEMENTS ASSIGNED:

The following real property improvements are assigned to the concessioner for use in conducting its operations under this CONTRACT:

Building Number	Description	Area (sq. ft.)	Insurance Full Replacement Costs as of July 2003
241A	Commercial Building	8,134	$1,949,720
241B	Building A	3,638	$519,575
242	General Store	1,956	$129,720
495	Building B	9,479	$1,327,724
564	Maintenance Shop	1,560	$103,147
754	Building C	8,900	$1,246,623
816	Dorm 1	1,460	$167,759
817	Dorm 2	1,863	$211,305
818	Dorm 3	1,863	$211,305
827	Dorm 4	1,863	$211,305
Total Cost:		**40,716**	**$6,078,183**

Dated on this 12th day of August 2004.

CONCESSIONER

BY: Phyllis Prevost

TITLE: Pres

DATE: 08/11/04

DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

BY: [illegible]

TITLE: SUPERINTENDENT

DATE: 8/12/04

REAL PROPERTY IMPROVEMENTS ASSIGNED:

The following real property improvements are assigned to the concessioner for use in conducting its operations under this CONTRACT:

Building Number	Description	Area (sq. ft.)	Insurance Full Replacement Costs as of July 2003
241A	Commercial Building	8,134	$1,949,720
241B	Building A	3,638	$519,575
242	General Store	1,956	$222,925
495	Building B	9,479	$1,327,724
564	Maintenance Shop	1,560	$103,147
754	Building C	8,900	$1,246,623
816	Dorm 1	1,460	$167,759
817	Dorm 2	1,863	$211,305
818	Dorm 3	1,863	$211,305
827	Dorm 4	1,863	$211,305
Total Cost:		**40,716**	**$6,171,388**

Map 1 -

Map 1 - Site Plan

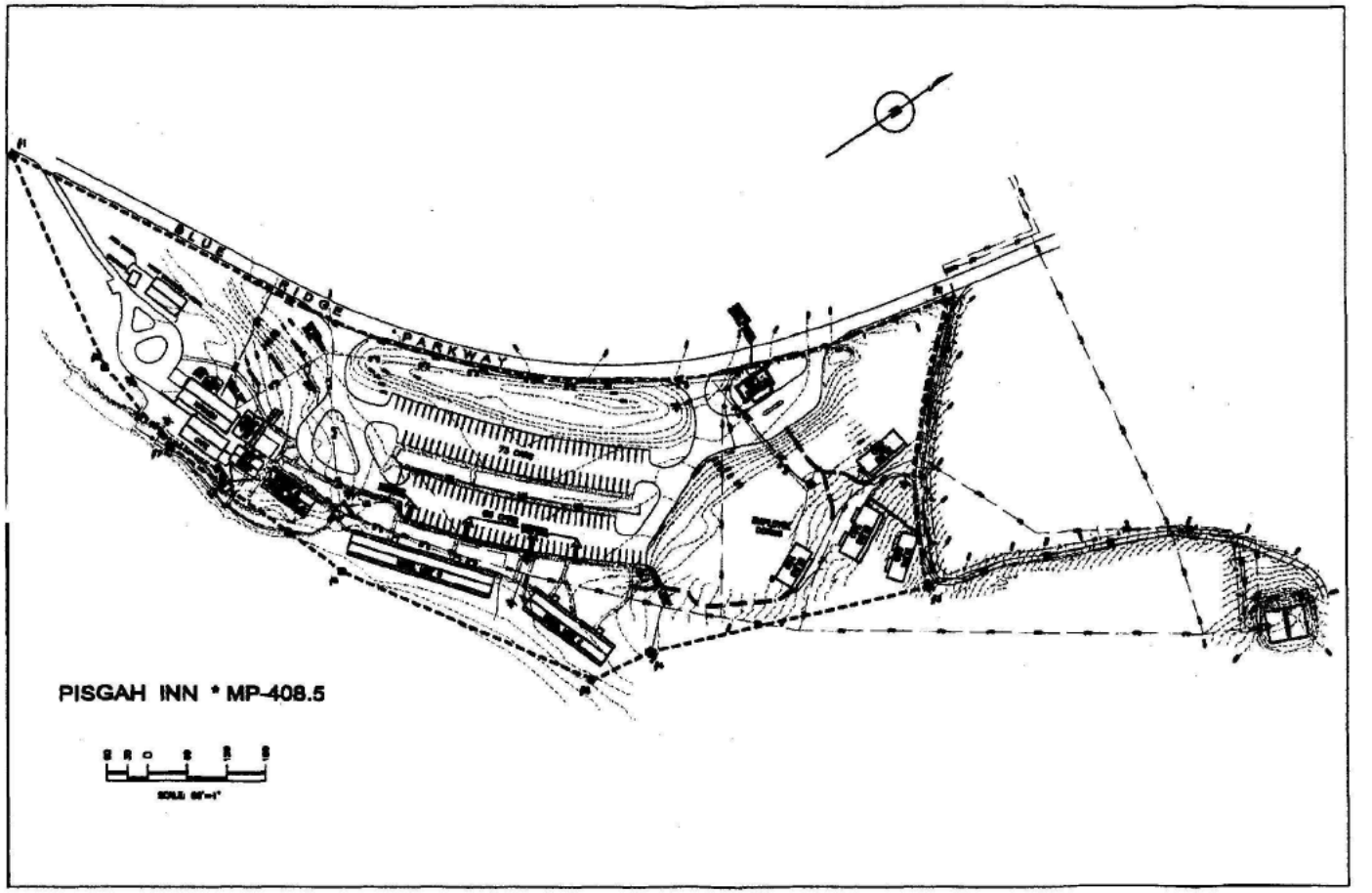


EXHIBIT E
ASSIGNED GOVERNMENT PERSONAL PROPERTY

Government personal property is assigned to the Concessioner for the purposes of this CONTRACT as follows:

Property Number	Description of Item
None	

Effective this 12th day of August, 2004.

CONCESSIONER	DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE
BY: Phyllis Prevost	BY: [illegible]
TITLE: Pres	TITLE: SUPERINTENDENT
DATE: 08/11/04	DATE: 8/12/04

EXHIBIT F

CONCESSIONER CONSTRUCTION, MAJOR REHABILITATION, AND REPAIR AND MAINTENANCE PROJECT PROCEDURES

A. Introduction

This exhibit presents step-by-step procedures for the administration of Concessioner building projects (construction, major rehabilitation, and repair and maintenance projects) within the park Area. Important terms are defined first. Project planning and design are presented second, guidelines for project supervision are presented third. All projects undertaken by the Concessioner require a coordinated effort between the Concessioner and the Superintendent. This exhibit applies to the building of new structures or facilities, major rehabilitations, and the repair and maintenance ("R&M projects") of existing Concession Facilities that change the nature, appearance or value of existing Concession Facilities. Rehabilitation projects that are not major rehabilitations as defined in the Contract are considered as R&M projects. Facility operations, custodial and preventive maintenance and maintenance needed for facility operations are not considered R&M projects subject to these procedures. Repair and maintenance is also not to be considered as a project subject to these procedures when the activity does not change the nature, appearance or value of existing Concession Facilities. All projects must be proposed, approved, and accomplished under these procedures. In the event of any inconsistency between this exhibit and the main body of this CONTRACT and Exhibit A, the main body of the CONTRACT and Exhibit A will prevail.

In accordance with the Contract, only certain new construction and major rehabilitation projects may qualify for leasehold surrender interest (LSI). Following these administrative procedures for all projects will enable the NPS to approve LSI in accordance with these contact terms.

In addition, these procedures will enable the appraisal of LSI to occur in an orderly way. The documentation collected and organized by the use of these guidelines will provide a record of decision or "paper trail" of project development and implementation that will assist the park and concessioner in future planning and facility appraisal.

All project activities shall be directed and managed as presented in the "Annual Construction and Repair and Maintenance Management Plan" (CMP). In addition to these activities, the CMP is also to present scheduled project development and implementation, as presented below under Item C, Project Planning and Design, paragraph 1. Individual projects included in the CMP will be authorized by NPS through an approved Project Statement (PS).

Projects may be required to be reviewed under the National Environmental Policy Act (NEPA) of 1969, as amended. Projects within historic and culturally significant areas may require certain building management methods established under the National Historic Preservation Act of 1966, as amended. All construction shall comply with codes and building requirements adopted by NPS, including without limitation and where applicable, the most recent International Building

Code (IBC), National Fire Protection Association (NFPA) codes, the Americans with Disabilities Act (ADA) requirements, the Historic Preservation Act of 1966, and NPS management policies.

The Concessioner is responsible for all aspects of project development and implementation. The role of the NPS is to provide direction, authorization and oversight. The Concessioner and the Park staff must work closely together to successfully complete construction projects in a manner that achieves the goals and objectives of the park Area and the NPS.

B. Definition of Terms

"Annual Construction and Repair and Maintenance Management Plan" (CMP): A written document presenting all construction, major rehabilitation and R&M projects to be undertaken by the Concessioner during the following calendar year after the final submittal date.

"Approved Project Documents": Project drawings and specifications approved by the Park Superintendent and used by the Concessioner to direct a contractor in the type, size and quality of projects.

"Change Order": A written agreement between the "Construction Supervisor" and the Contractor or Consultant that changes the contract documents or scope of project work as agreed upon contractually.

"Construction": The removal or assembly of a building, road, utility or any other facility part or material that changes the nature, appearance, or value of that facility.

"Construction Supervisor": A Concessioner employee designated to administer and coordinate day-to-day projects representing the interests of the Concessioner and NPS and assuring quality work is performed that meets the design and specifications of the project. This person must have the authority to direct the contractor in any way that may change the contractual agreement between the Concessioner and the contractor.

"Conventional Design-Bid-Build Methods": Construction developed and implemented under several separate agreements managed and coordinated directly by the Concessioner.

"Contact Person": A Concessioner employee designated as the person to contact with regard to a specific matter, concern, or issue.

"Facilitator": A Concessioner employee designated to have the role of providing structure and agendas for meetings with NPS and who records meeting discussions and outcomes.

"Guaranteed Maximum Price Design-Build Construction Methods": An industry recognized type of construction where project consultants and contractors form an agreement to work as one entity providing facility construction in response to a developed request for proposal issued by the Concessioner. (Reference: Design Build Institute of America).

"Licensed Contractor": An entity performing construction shall be certified or licensed by a valid governmental authority to perform construction services.
"Major Rehabilitation": (Defined in the CONTRACT).

"Project Coordinator": A Concession employee vested with the authority to direct consultants and contractors in the expenditure of construction and R&M funds.

"Project Statement" (PS): An agreement between NPS and the Concessioner approved by the Park Superintendent that authorizes the development and implementation of individual projects identified in a CMP.

"Registered Technical Professionals": Architects, engineers, or any subject area expert either certified or licensed by the State to perform specialized services or certified by a widely recognized industry regulator held responsible for quality and standard application of technical subject matter.

"Substantially Complete": (Defined in the CONTRACT).

"Total Project Cost": The total of all actual project expenditures (invoiced and paid) for completion of a project.

"Total Project Price": The total of all estimated project expenditures for completion of a project.

C. Project Planning and Design

(1) Submit an Annual Construction and Repair and Maintenance Plan (CMP). Before approval to proceed with any project is granted by NPS, the Concessioner must submit a CMP for implementation the following year. Some projects may require several years of planning and design before construction. The purpose of the plan is to identify the need and tentative scope of projects a complete year in advance of actual work to allow adequate time to prepare for project commencement. The CMP should include any intended projects. Projects shown in the plan must include at least a project title; project concept description; a brief statement of justification; and anticipated NEPA and Section 106 planning and compliance established in collaboration with NPS staff.

(2) Notify NPS of Intent-to-Proceed. The Concessioner shall formally notify the Park Superintendent in writing of intent to proceed with any facility planning, design and/or projects. The project must be identified in the CMP the calendar year before to assist the NPS in sequencing and scheduling necessary support staff. The time of notification shall be sufficiently in advance of any Concessioner budget formulation to assure the requirements of the Park Superintendent are included in the project scope before the project is funded.

(3) Identify a Project Coordinator. The Concessioner project coordinator must be identified for each project. This person should have the authority to obligate project expenditures and hire and direct consultants and contractors, and concessioner support staff.

(4) Prepare a proposed Project Statement (PS). Arrange and facilitate a project planning conference with NPS staff and prepare a proposed PS to be submitted to the Park Superintendent for review. The conference should be performed on the proposed project site, if needed.

(a) Conference goal and product. The primary goal of the conference is to clearly identify the project concepts and scope at sufficient detail to carry the project through to completion without significant deviation from an approved PS. The product of the conference should be an approved PS prepared by the Concessioner resulting from collaboration between the Concessioner and the Park Superintendent.

(b) Project Statement Content. The PS shall include the following as a minimum: Project description; justification; scope of work, including NEPA and Section 106 planning and compliance; estimated Total Project Price; proposed schedule; milestones of NPS design review and third party project inspection and certification. The elements of the PS will function as check points of accountability and will vary in frequency and scope, contingent upon the nature, complexity and scope of the proposed project.

(c) Leasehold Surrender Interest. If the Concessioner seeks leasehold surrender interest as a result of a construction project, the Concessioner must request and receive the written approval of the proposed construction project by the Park Superintendent in accordance with the terms of this leasehold surrender interest concession contract. An estimate of the amount of leasehold surrender interest shall be identified in advance if the Concessioner requests leasehold surrender interest. The estimated leasehold surrender interest costs shall be separately identified as part of the Total Project Price and substantiated, if requested, with written and competitively acquired price proposals or construction contracts. Not all projects qualify for LSI. LSI is only granted under the terms of this CONTRACT, including, without limitation, its Exhibit A.

(d) Methods of Establishing the Expected Value of Leasehold Surrender Interest. A number of methods are available to estimate the Concessioner's leasehold surrender interest as long as eligible direct and indirect costs are specified. The methods of identifying the expected value of leasehold surrender interest include guaranteed maximum price design-build construction methods, conventional design-bid-build methods, and construction price estimates professionally prepared by subject area experts.

(e) Professional Services and Construction. The Concessioner must assure the park in its project statement that for any project requiring professional services, such services shall be acquired from appropriate registered technical professionals. Licensed contractors shall perform all project work unless otherwise approved in writing by the Superintendent. The Concessioner shall provide for registered technical professionals to perform project inspection and/or facility certification, or any other service needed for project implementation at the request of the Park Superintendent.

(f) NPS Operations. Any aspect of the proposed project where the scope of work interfaces with NPS operations such as utility service connections or road maintenance operations must be clearly identified in the PS.

(5) Submit Resource Compliance Documents for Review and Approval. During development of the project statement, responsibility for compliance work will be established. The Concessioner must request the participation of NPS staff early in project planning to assure uninterrupted project implementation. Development of compliance documentation must occur as soon as possible. Every effort shall be made to perform compliance document preparation tasks concurrently with project planning and design.

(a) Historic/cultural compliance. Historic and cultural compliance document approval is required for property listed in or eligible for inclusion in the National Register of Historic Places. Any undertaking affecting property listed shall be performed in accordance with The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings". The Concessioner must document proposed actions using the "XXX Form" (available from the National Park Service) before any work occurs for any project that may affect a historic structure, historic district, cultural landscape, archeological site or historic object or furnishing. Compliance will usually require the preparation of at least "assessment of effect" drawings and specifications to the level of final documents if required. Compliance shall carry through to submission of the "Construction or R&M Completion Report" for many projects where significant changes are made to the historic structure and/or landscape. Therefore, compliance document approval usually will not occur until after submission of project documents. In-park historic compliance review and approval will require at least several weeks from date of submittal. Where submittal is made to the State Historic Preservation Officer or the Advisory Council on Historic Preservation, additional time will be required before approval may be given. This may be performed concurrently with approval of project documents.

(b) Ground disturbance. Where ground disturbance will take place submittal of drawings that show area and depth of proposed ground disturbance will be required. Submittal of this document early in project planning is recommended. All project documents that include soil disturbance shall have the following specification included within them:

"Petroglyphs, artifacts, burial grounds or remains, structural features, ceremonial, domestic, and archeological objects of any nature, historic or prehistoric, found within the project area are the property of and will be removed only by the Government. Should Contractor's operations uncover or his/her employees find any archeological remains, Contractor shall suspend operations at the site of discovery; notify the Government immediately of the findings; and continue operations in other areas. Included with the notification shall be a brief statement of the location and details of the findings. Should the temporary suspension of work at the site result in delays, or the discovery site require archeological studies resulting in delays of additional work for Contractor, he/she will be compensated by an equitable adjustment under the General Provisions of the contract."

(c) Archeological Monitoring. Monitoring project activity is a requirement of cultural compliance when significant ground disturbance occurs during project work. Any cultural resource monitoring required shall be performed under the direction of the NPS. The NPS shall be notified sufficiently in advance of the need for a monitor and will assist the Concessioner in making arrangements for the services of an archeological monitor at the expense of the Concessioner, if the NPS is unable to provide the expertise.

(d) National Environmental Policy Act (NEPA) compliance. NEPA compliance document approval is required before any construction or R&M project occurs for any project that has an impact on the environment. Projects requiring compliance will be identified by the NPS early during project planning. The actual review period length may vary widely depending on the nature, scope, and complexity of the project elements that relate to resource compliance. Projects that have no measurable impacts on park resources usually require a "categorical exclusion" determination--a process that may require sufficient extended lead-time from submittal of review documents. Projects that have potential significant impacts on park resources or projects that are not part of other NEPA compliance documentation will require additional environmental analysis and may also require a longer period of implementation.

(6) Submit Project Statement for NPS Review. The proposed PS shall be submitted in written correspondence from the Concessioner to the Park Superintendent requesting review. A PS signed by the Park Superintendent constitutes official authority for the Concessioner to continue further project development to the level specified in written correspondence from the Superintendent. The Concessioner may obtain authority to complete a project when sufficient planning and design has been completed to meet the interests of the park. Projects that do not have the level of required planning are likely to receive only conceptual approval with authorization to proceed with further planning and/or design as required to assure park objectives are met.

(a) Project Statements Containing Claims for Leasehold Surrender Interest. A PS must present an estimate of project expenditures to be claimed for LSI purposes. The eligibility of any expenditures for LSI will not be identified until all project planning is complete to the satisfaction of the Park Superintendent, including NEPA and Section 106 compliance, if required. An approved PS serves only as a guide for further project development to the level specified in the PS. The Park Superintendent shall only approve final LSI costs after project completion and written project close-out.

(b) Design Required for Leasehold Surrender Interest Eligibility and Value. The Park Superintendent may require an appropriate level of design to determine whether a project is eligible for LSI, and if so, its estimated cost. The level of project planning and design required may include completion of concept design, schematic design, or preliminary engineering design, to clearly identify the elements eligible for LSI. Some projects may require the completion of construction drawings and specifications before the proposed LSI is documented to the satisfaction of the Park Superintendent. All improvements for which LSI is claimed must be defined in record "as-built" construction drawings and specifications when the Concessioner submits its request for LSI at Project Close-out.

(7) Establish a Project File. A file of all project documents shall be held by the Concessioner as a chronological audit trail of all project decision-making activity for each project from concept development to completion and NPS acceptance. Each project shall be identified with a unique project number assigned by the Park. All documents entered into the file should have the project identification number clearly displayed on it as part of document identity.

(a) Leasehold Surrender Interest Project File. The Project File will become an LSI project file when the Concessioner requests approval of LSI. It shall be established and maintained by the Concessioner and shall include all of the documents identified in section 6(C) of this Exhibit. This file shall be submitted at the time of Project Close-out to the Park Superintendent as the basis for the leasehold surrender interest request. As part of this file, the Concessioner must maintain auditable records of all expenditures attributable to each project and have them available for review if requested by NPS personnel. Invoices shall contain sufficient information to identify the tasks completed or products delivered as agreed upon in contracts presenting a full scope of work. The file shall clearly provide a "paper trail" between expenditures eligible for LSI purposes and the payment of those expenses.

(b) Typical Project File. The organization of a typical project file is presented in the following sections:

Section A. Project Statement. The approved PS, scope of work, and a copy of the notice-to-proceed letter, authorizing planning and design, sent to the Concessioner by the Park Superintendent should be filed in this section.

Section B. Planning. This section should contain documents pertaining to any project planning. Typical documents include those produced for NEPA and Section 106 compliance. Also contained in this section should be any concept design, preliminary design, or schematic design correspondence and documents. When the Park Superintendent grants approval for any of the above stages of project development, correspondence from the Park Superintendent should be filed in this section.

Section C. Assessment. This section should contain a record of any assessment performed during project implementation. Soil, vegetation, floodplain, structural, electrical assessments, for example, should be filed in this section. Any other existing site or facility investigative reports, and all quality assurance documents such as third party project inspection, testing and certification should also be filed in this section.

Section D. Design. This section should contain a record of documents produced and decisions made during the design phase of a project. The design phase typically occurs when project activity has shifted from conceptual discussion to organizing detailed direction provided to a contractor for construction. Correspondence from the Park Superintendent providing design approval should be in this section.

Section E. Project Work. This section should contain a record of decisions made during project work. The letter from the Park Superintendent granting notice-to-proceed with the project should be in this section. All contractor proposals, change-orders, design modification documents, daily construction activity records, weekly meeting minutes, etc. should be in this section. Documentation for larger projects should be organized according to subcontractor activity or standard specification enumeration. The final document filed in this section should be the NPS correspondence sent to the Concessioner providing project acceptance and close-out.

Section F. Financial. This is a very important section where a copy of all contracts and contract modifications should be filed. It is important to assure that all expenditures are accounted for. All expenditures must have sufficient supporting documentation cross-referenced with documents in other file sections, if necessary. Monthly financial detail reports shall be prepared and filed in this section with copies of all project budget documents. This section must contain all correspondence supporting LSI with appropriate cross-reference to other sections for clarity of the LSI "paper trail." (For example, cross reference tabs). Also contained in this section shall be a copy of the project acceptance and close-out letter from the Park Superintendent that specifies the amount of leasehold surrender interest, if any, applicable to the project.

Section G. Photo Documentation. Complete documentation, including before-and-after photos, records of any special situations or conditions requiring changes, documentation of methods used, etc., should be kept to support requests for LSI and to assist future maintenance and/or appraisal efforts. Photographic documentation is also usually required for modifications to "listed" historic structures. To be most useful, photos should be filed with the documents they support.

(8) Submit Project Documents (PDs) for Review and Approval. The Concessioner shall submit PDs for review and approval to establish project activity for approval by the Superintendent. Approved PDs establish the full scope of the project and the quality of work to be performed by the Concessioner. The scope of the documents required will be identified in the PS. The scope and detail of the documents will vary depending on the nature and complexity of the project. "Manufacturer's cut-sheets" may be all that is required for some R&M projects, and for others, complete detailed drawings and specifications may be required. The Concessioner is responsible for the technical accuracy and completeness of PDs and shall provide the technical review as needed to assure compliance with all applicable federal, state and local statutes, codes, regulations and appropriate industry standards. Any exception to this will be by written authorization from the Superintendent.

(9) Submit a Project Estimate and Schedule. An estimate of the Total Project Price and completion schedule shall be submitted to the Superintendent before work begins. This is a revision of the Total Project Price and completion schedule estimated in the Project Statement. It is based on the best information available identified during project planning and design.

D. Project Management Procedures

(1) Identify a Project Supervisor. A Project Supervisor shall be identified and vested with the authority to direct the contractor on behalf of the Concessioner. The NPS will direct its communication concerning the nature and progress of day-to-day project activity to this person. This person should have full responsibility for assuring that all construction complies with the approved Project Documents and specified code compliance. The NPS should not take any responsibility for projects until Project Close-out and Acceptance when the NPS receives certification of completed work performed in compliance with Project Documents and all specified codes.

(2) Submit a Total Project Price for Review.

(a) All projects completed under the terms of this Contract where LSI is requested shall include submittal of a Total Project Price in writing to the Superintendent for review.

(b) Where no LSI is requested, the Total Project Price is provided as an informational item. Formal approval by the Superintendent is not required.

(3) Notice-to-Proceed with a Project. A "Notice-to-Proceed"' with a project will be issued when all submittals requested by the Park Superintendent have been reviewed and approved. The Notice-to-Proceed must be received by the Concessioner in writing before any project work occurs.

(4) Hold a Pre-Project Conference with the Contractor. The Concessioner shall arrange and facilitate a pre-project conference as needed or as requested by the NPS with the Contractor. The purpose of the conference is to provide the NPS the opportunity to meet the Contractor and confirm that the Contractor has full understanding and knowledge of all work to be performed. In addition, the conference provides the opportunity to confirm established communication linkages between the Concessioner, the Contractor and the NPS. Any questions the Contractor may have regarding any matter of the project or anything about Area access, rules and regulations may also be discussed.

(5) Submit Project Activity Reports (as required). A record of project activity shall be provided by the Concessioner on all approved projects. The scope and frequency of performing this documentation shall be identified upon submittal of PDs for Park approval. The Concessioner is responsible for the accuracy and completeness of all design and completed projects.

(a) Content. Project activity reports shall summarize daily project activity recording important observations and decisions. It shall also identify project expenditures to date if required for leasehold surrender interest purposes. The reports shall identify any changes to the approved PDs either by change order or any other variance from approved PDs. The NPS shall be notified immediately, if a change is likely to occur in the Total Project Price where the project involves LSI. (See discussion below for review and approval of change orders and contract modifications.)

(b) Regulatory code compliance and project inspection (as required). Inspection reports specifically addressing regulatory code compliance and adherence to PDs will be required, at the request of the Superintendent, during certain stages of the work. Independent industry certified inspectors or registered professional subject area experts shall perform all inspections and project component certification. Inspection reports shall be prepared that include all findings and results of code compliance inspection. Section and paragraph of applicable codes shall be referenced when deficiencies are noted. Recommendations presenting remediation shall accompany line item deficiencies in the report. All inspection reports shall be included in the final project completion report submitted before project acceptance by the Superintendent.

(6) Submit Requests for Changes in Approved Project Documents. The Superintendent's approval will be required before any significant changes are made to the project scope during the completion of projects, as identified in the approved PDs. The Concessioner shall provide the NPS with written notification immediately upon identifying the need for a change in project scope that effects any of the items listed below. The written notification shall include a request for change in the approved PDs complete with justification and explanation of effect of change on all other aspects of project design and work. Requests for any significant changes in the approved PDs shall be reported in project activity reports with attachment of any documentation requested. Changes in approved project scope during the work that will require review and approval of the Superintendent include the following:

(a) Changes affecting natural, cultural and/or historic resources;

(b) Changes in designated visual appearance;

(c) Changes in the interface with NPS utility and/or road facility maintenance operations;

(d) Changes in project scope and/or the estimated leasehold surrender interest, as required for facility improvement projects.

(e) Proposed changes where natural or cultural/historic resources are involved may require a significant period of review depending on the complexity of the concern.

(7) Submittal of Change Orders for Review and Approval (for Leasehold Surrender Interest only). When one of the five factors listed above exists, the Concessioner shall submit, for the review and approval of the Park Superintendent, documentation justifying the proposed changes. The Concessioner shall also submit a revised Total Project Price for each proposed change, as needed, indicating the proposed change in estimated LSI. All change orders or any other means of directing the Contractor that may have the effect of increasing the Total Project Price will require the Park Superintendent's review and approval, if the project has LSI implications.

(8) NPS Project Inspection. The project will be inspected periodically by a representative of the Park Superintendent. The purpose of these inspections is not in lieu of or in any way a substitute for project inspection provided by the Concessioner. The responsibility to assure safe, accountable project activity and for providing the contractor with direction to fulfill the full scope of approved work is the responsibility of the Concessioner.

(9) Project Supervision Documents. Project drawings and specifications must be kept on the project site complete with any design or project modifications, in a well-organized form. The Construction Supervisor shall keep a current "red-line" copy of approved PDs updated daily showing any changes. In addition, a well-organized file of submittals required in the approved PDs and approved where required by professional Architects and/or Engineers must also be kept on the project site with the PDs for periodic inspection by NPS staff.

(10) Substantial Completion Inspection and Occupancy. Joint inspection by the NPS and the concessioner will occur upon notification that the project is substantially complete. A "punch

list" of work items will be formulated and performed to "close-out" the project. The Superintendent, in writing will accept the project, when the "punch-list"" items are completed. The Concessioner is not to occupy the facility until authorized in writing by the Park Superintendent.

(11) Requesting Approval of Leasehold Surrender Interest. Upon substantial completion of a project, as determined by the Park Superintendent, the Concessioner must provide the Superintendent a written schedule of requested LSI eligible costs incurred, which becomes the Concessioner's request for LSI approval. The project file, containing actual invoices and the administrative record of project implementation, must support these expenditures and shall be submitted to the Park Superintendent for review with the request. If requested by the Park Superintendent, the Concessioner shall also provide written certification from a certified public accountant regarding the LSI costs. The certification must comply with the requirements of Exhibit A of this Contract.

(12) Project Completion Report. Upon completion of any project, the Concessioner shall submit a Project Completion Report to the NPS. The completion report shall include the Total Project Cost; before-and-after photo documentation; warranties; operation and maintenance manuals, if required; all inspection and certification reports; and "as-constructed" drawings (see item section C(13) below). Projects where LSI is requested may require the submittal of any other similar documents deemed by the NPS necessary to establish complete project documentation. The level of documentation requested may also include adequate photo-documentation provided during construction to record significant unforeseen site and construction conditions resulting in changes to approved PDs and the approved Total Construction Price.

(13) "As-Constructed Drawings". The "as constructed"" drawings (as-builts) included with the Project Completion Report for all projects shall be full-size archival quality prepared in accordance with NPS management policies and must be submitted before project acceptance by the National Park Service. At least two half-size sets of drawings shall also be provided, in addition to a copy of the drawings on a CD in AutoCAD format. The drawings establishing LSI shall provide a full and complete record of all "as-constructed" facilities including reproduction of approved submittals and manufacturer's literature documenting quality of materials, equipment and fixtures in addition to a record set of project specifications approved for construction.

(14) Request Project Acceptance and Close-out by the Superintendent. The Concessioner shall request project acceptance by the Park Superintendent either at the time of submittal of the Project Completion Report or at any time thereafter. Project acceptance will be contingent upon fulfillment of all requested project completion work tasks and submittal of all project documentation in accordance with these guidelines and as requested by the NPS. Until receiving formal written project acceptance and close-out from the Park Superintendent, the Concessioner retains full responsibility for all project construction activity and liability for both completed and uncompleted work. For LSI projects, the project close-out letter issued by the Superintendent will specify the granted amount of LSI value resulting from the project.

Dated on this 12th day of August, 2004.

CONCESSIONER

BY: Phyllis Prevost

TITLE: Pres

DATE: 08/11/04

DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

BY: [illegible]

TITLE: SUPERINTENDENT

DATE: 8/12/04

EXHIBIT G

LEASEHOLD SURRENDER INTEREST AS OF THE EFFECTIVE DATE OF THIS CONTRACT

Pursuant to Section 9(c)(2), the Concessioner's leasehold surrender interest in real property improvements as of the effective date of this CONTRACT, if any, is as follows:

Building Number / Description

564 Maintenance Building
241A Commercial building with restaurant and gift shop
241B Building A – Lodge office, 4 rooms, one suite
495 Building B – 26 lodge rooms
754 Building C – 20 lodge rooms
242 Country Store (former gas station)
816 Employee dormitory building
817 Employee dormitory building
818 Employee dormitory building
827 Employee dormitory building

Total: $1,570,000.00

Exhibit G Approved Effective 1 SEP 2004

CONCESSIONER

BY: Phyllis Prevost
President
Parkway Inn, Inc.

UNITED STATES OF AMERICA

BY: Patricia A. Hooks
Regional Director, Southeast Region
National Park Service

EXHIBIT H

MAINTENANCE PLAN

1) GENERAL STANDARDS FOR NATIONAL PARK CONCESSIONER FACILITIES 1

2) ASSIGNED AREAS 1

3) CONCESSIONER RESPONSIBILITIES 1

A) GENERAL 1
B) PLANS, REPORTS AND INSPECTIONS 4
C) FACILITY MAINTENANCE 6
D) UTILITIES 8
E) SIGNS 9
F) SOLID WASTE 10
G) RECYCLING AND CONSERVATION 10
H) FUEL STORAGE TANKS, HAZARDOUS MATERIALS AND HAZARDOUS WASTE PROGRAM 11
I) GROUNDS, LANDSCAPING, AND PEST MANAGEMENT 13
J) ROADS, TRAILS, PARKING AREAS, AND WALKWAYS 14

4) CONCESSIONER RESPONSIBILITY (BY LAND USE) 15

A) OVERNIGHT LODGING 15
B) RESTAURANT/GIFT SHOP BUILDING 16
C) GENERAL STORE 16
D) FURNITURE AND REMOVABLE EQUIPMENT 17

5) PARK RESPONSIBILITIES 17

A) SERVICE RESPONSIBILITIES 17

INTRODUCTION

This Maintenance Plan between Parkway Inn, Inc. (Pisgah Inn) (hereinafter referred to as the "Concessioner") and Blue Ridge Parkway, National Park Service (hereinafter referred to as the "Service") will serve as a supplement to Concession Contract CC-BLRI003-04 (hereinafter referred to as the "Contract"). It describes specific maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within Blue Ridge Parkway that are assigned to the Concessioner for the purposes authorized by the Contract.

In the event of any apparent conflict between the terms of the Contract and this Maintenance Plan, the terms of the Contract, including its designations and amendments, shall prevail.

This plan shall remain in effect until superseded or amended. It will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent. Revisions may not be inconsistent with the terms and conditions of the main body of the Contract. Revisions must be reasonable and in furtherance of the purposes of the Contract.

1) General Standards for National Park Concessioner Facilities

The National Park Service Concessions Management Guideline (D.O.48A), pending approval and issuance, offers general direction, expectations and standards on all aspects of concession operations (see Appendix D). The standards for interior and exterior maintenance as amended, supplemented or revised, are hereby incorporated by reference.

The Concessioner is required by the terms of the Contract to maintain the facilities used in a manner that is acceptable to the Service. It is the purpose of this Maintenance Plan to help define the necessary standards and to define the maintenance relationship between the Concessioner and the Service. Both the Concessioner and the Service have specific responsibilities as outlined in the Contract and this plan.

2) Assigned Areas

The land assigned under the Contract is within the boundary identified on the land assignment map with detailed text (See Exhibit D).

3) Concessioner Responsibilities

A) General

(1) The Concessioner will be responsible for all maintenance and repairs to all Concession structures, facilities, and personal property. The Concessioner will correct any deficiencies and complete this work on a timely basis to achieve the basic goals described in the most current Concession Management Guidelines, relative to lodging, food and beverage, and retail.

(2) Any Service-approved change resulting from construction of buildings, modification of buildings, or changes to land use within the Concessioner's land assignment will result in a corresponding change in the land assignment maps and must be noted by revision to the Land Assignment Maps in Exhibit D.

(3) All maintenance will be conducted in compliance with all Applicable Laws, the following referred sections of the 2000 version of the International Property Maintenance Code ("IPMC"), and the manufacturer's recommendations/specifications. The following sections of the IMPC are adopted by the Maintenance Plan and incorporated herein by reference. In the event of any conflict between Applicable Laws and the IMPC, Applicable Law(s) will prevail. (The International Code Council's website is http://www.bocai.org/index.html, and a copy of these codes may be purchased for $22.00.)

(a) In the referenced sections, the terms "property owner," "owner," and "occupant" refer to the Concessioner.

(b) In the referenced sections, the term "code official" shall be changed to "Superintendent."

(c) Reference Chapter 1, Section 102; Applicability, the following paragraphs: 102.3 through 102.8.

(d) Reference Chapter 1, Section 105; Approval, the following paragraphs: 105.2 through 105.4.

(e) Reference Chapter 3, Section 301; General.

(f) Reference Chapter 3, Section 302; Exterior Property Areas.

(g) Reference Chapter 3, Section 303; Exterior Structure, the following paragraphs: 303.1 – 303.2, 303.4 – 303.17 (in paragraph 303.14; the following shall be changed in the first sentence; replace "During the period from [DATE] to [DATE]" with "During the operating period."

(h) Reference Chapter 3, Section 304; Interior Structure.

(i) Reference Chapter 3, Section 305; Rubbish and Garbage, the following paragraphs: 305.1, 305.2 (not including 305.2.1) and 305.3 (not including 305.3.1).

(j) Reference Chapter 3, Section 306; Extermination, the following paragraph: 306.1.

(k) Reference Chapters 4 through 7.

(l) In reference to Chapters 4 through 7, in circumstances that existing buildings do not meet the minimum requirements the Service and Concessioner will mutually agree to projects that would bring the building into compliance where deemed necessary. When areas are found that do not meet the minimum requirements, the Concessioner will document this and submit to the Service.

(m) In reference to paragraphs 401.2, 501.2, 601.2 and 701.2, if the requirements are not met, the Service and Concessioner will determine if the building may be occupied.

(n) The exception under paragraph 403.3 shall be changed to "Where specifically approved in writing by the Superintendent."

(o) Paragraph 604.3, the "code official" shall be changed to "Service."

(p) Reference Chapter 8.

(4) The Concessioner will integrate energy efficiency, environmental protection, and sustainable design practices into its maintenance activities.

(5) *Definitions*

In addition to all the defined terms contained in the Contract, Exhibit A, and Exhibit F, the following definitions apply to this Maintenance Plan:

(a) **Operations** refer to all aspects of Concessioner activity authorized under the Contract. Operations include all services provided to the public and also include all non-public measures necessary to support those authorized services.

(b) **Exterior** refers to structures, the foundations, exterior walls and surfaces, roofs, porches, stairways, and other structural attachments. This includes all the equipment, sidewalks, walkways, parking lots, landscaping, utilities, and related components within the Concessioner's land assignments.

(c) **Interior** refers to the area of structures inside the external walls and under the roof, including door and window frames. This also includes all equipment, appurtenances, and utility systems that penetrate the walls, roof, or foundation.

(d) **Maintenance** is the preservation and repair of concession facilities, to the greatest practical extent, to the originally constructed condition or its subsequently improved condition. Maintenance includes operational cyclic repair and rehabilitation to address health, life and safety, and provide a positive environment for park visitors and employees.

- **Cyclic Maintenance** is work activities that reoccur on a periodic cycle of greater than one year but less than seven years.
- **Preventative Maintenance** is planned, scheduled servicing; inspection; adjustment; and replacement that results in continued service, fewer breakdowns and prevents premature replacement of equipment and materials.
- **Repair** is correcting an unsatisfactory or substandard physical or operational condition. Repair is an aspect of maintenance and the objective of repair is the same as the objective of the general act of maintenance as defined above.
- **Replacement** is an aspect of repair and may be a necessary and/or an economically sound approach to repairs.

(e) See Section 2 of the Contract for additional definitions.

(6) *Environmental Practices.* The Concessioner will seek ways to develop quality facilities and services. The Concessioner will encourage companies and businesses it does business with, to provide cleaner technologies and safer alternatives to toxic and hazardous materials and to develop innovative technology.

(a) Energy Efficiency. The Concessioner will consider energy efficiency in all maintenance practices and integrate energy conserving measures whenever feasible. Energy efficient products will be installed to replace less efficient products and to minimize energy consumption.

(b) Sustainable Design. The Concessioner will incorporate sustainable design practices to the maximum extent practical. These practices will be consistent with the National Park Service Guiding Principles of Sustainable Design (September 1993) and other approved guidance as provided to the Concessioner.

(c) Universal Design. The Concessioner will incorporate sustainable design practices to the maximum extent practical.

(d) Environmental Protection. Where feasible and available, the Concessioner will utilize products or materials that are less toxic, contain post-consumer recycled content, are naturally or minimally processed products, and/or use other materials that have additional environmentally preferable attributes.

(7) Facility Maintenance Management System ("FMMS"). The Concessioner will implement a FMMS. This system will schedule and track completion of all preventive, cyclic, scheduled and unscheduled maintenance items for assigned facilities/areas and associated expenditures.

B) Plans, Reports and Inspections

(1) Annual Maintenance Plan. The Concessioner will provide the Service with an updated "Annual Maintenance Plan" that covers all facilities, buildings, personal property, and assigned areas. The Plan will be delivered to the Superintendent on or before December 1. The Superintendent will provide written response within 45 days from receipt. The plan will include:

(a) Preventive Maintenance ("PM") Schedules. PM schedules will be developed by the Concessioner and included in the plan to ensure that all property assigned to the Concessioner is properly maintained. At a minimum, PM schedules will include detailed PM schedules for each building system (including but not limited to roofs, building envelopes and mechanical equipment). At a minimum, the PM schedules will adhere to manufacturers' recommendations, when available. The PM schedule will list what PM tasks will be completed and their frequency. The PM schedules will be included in the FMMS. Also included in the plan will be the Concessioner's quality control process to ensure that the PM's are being completed as scheduled.

(b) Cyclic Maintenance Schedules. Programmed cyclic maintenance items will be included in the plan. Typical items in this category include carpet and paint.

(c) Scheduled and Unscheduled Maintenance Items. A plan will be developed to schedule other (deferred maintenance, etc.) maintenance requirements during the year. The plan will include a service call procedure and method to prioritize service calls for unscheduled maintenance items. An inspection plan will be included that describes the process in which the Concessioner will ensure that the buildings are being maintained properly and that deferred maintenance items are being corrected in a timely manner.

(d) Furniture and Removable Equipment Schedules. The planned systematic replacement of furniture and removable equipment for the following year.

(e) The previous FMMS reports will be submitted to the Service with the annual maintenance report (the previous years' report).

(f) Proposed expenditures to accomplish the items in the Annual Maintenance Plan.

(2) *Repair and Maintenance Reserve Plan.* The Concessioner is to provide the Service with an updated "Repair and Maintenance Reserve Plan" that covers all assigned structures and facilities. The plan will be delivered to the Superintendent on or before December 1. The Superintendent will provide written response within 45 days from receipt. The plan will include:

(a) A forecast, by year, of projects that will use Repair and Maintenance Reserve funds over the remaining life of the Contract.

(b) A three-year plan showing what projects are scheduled to be completed with Repair and Maintenance Reserve funds.

- The plan will describe what year projects are scheduled to be designed (if needed) and constructed. An estimated cost will also be included in the plan.

(c) Projects that are scheduled to be complete during the next year.

- These projects should have a detailed scope, schedule on when construction will begin, and cost estimate. Written approval from the Service is required before these projects may begin.

(d) The Service reserves the right to require the Concessioner to replace any component or building system at the end of its useful life or when the item presents a quality, safety, or environmental issue.

(3) *Cyclic Maintenance Plan.* The Concessioner is to provide the Service with an updated Cyclic Maintenance Plan that includes all buildings assigned to the Concessioner. Cyclic items are items that have a life-cycle expectancy of seven years or less.

(a) The plan shall be delivered to the Superintendent on or before December 1. The Superintendent will provide written response within 45 days from receipt. The plan will include:

- A seven-year plan showing the scheduled replacement of items that need to be replaced cyclically (cyclical items include but are not limited to carpet and paint/stain).

- Projects that are scheduled to be completed during the upcoming year that are estimated to cost in excess of $5,000. These projects should have a detailed scope, schedule on when construction will begin, and cost estimate.

(4) *Reports.* The FMMS shall have the capability of exporting electronic files. These files will contain a record of all maintenance items completed (PM, cyclic,

scheduled, and deferred maintenance items) and expenditures for each item. At a minimum, these reports shall be submitted to the Service with the annual maintenance plan (the previous years report).

(5) *Deferred Maintenance Report.* Within 90 days of the effective date of Contract execution, an initial list of all maintenance deficiencies and items of deferred maintenance will be formulated and documented by the Service and reviewed with the Concessioner. Within 45 days of this review, the Concessioner will develop a program to address all such items, including a timeline and cost to cure.

(6) *Annual Inspection.* Subsequent to the aforementioned initial inspection and annually thereafter, the Service reserves the right to conduct inspections and reviews of the assigned Concession facilities. The purpose of these inspections and reviews is to verify that the facilities are being properly maintained and that the facilities comply with the requirements set forth in this maintenance plan. These inspections and reviews will occur on a schedule to be submitted to the Concessioner. Based upon the identified needs, the Service and the Concessioner will develop a timeline to cure the noted deficiencies.

(7) *North Carolina Permits and Requirements.* The Concessions will provide the Service with copies of all permits and correspondence with the State of North Carolina relating to utilities and underground storage tanks, as necessary.

SUMMARY OF REPORTING REQUIREMENTS
INITIAL AND RECURRING DUE DATES

Title	Schedule	Due Date	Reference
Environmental Management Program	Initial	Within 60 days of the effective date of contract execution	CONTRACT
Deferred Maintenance Plan	Initial	Within 90 days of the effective date of contract execution	Maintenance Plan, Section 4.B.5
Landscape Plan	Annual	Within 120 days of the effective date of contract execution	Maintenance Plan, Section 4.I.1.a
Annual Maintenance Report	Annual	On or before December 1 of each year.	Maintenance Plan, Section 4.B.1
Repair and Maintenance Reserve Plan	Annual	On or before December 1 of each year.	Maintenance Plan, Section 4.B.2
Cyclic Maintenance Plan	Annual	On or before December 1 of each year.	Maintenance Plan, Section 4.B.3
Annual Inspection Reports	Annual	To Be Determined by Concessioner and Service	Maintenance Plan, Section 4.B.b.
Integrated Pest Management and Pesticide Use Report	Annual	On or before December 31 of each year.	Maintenance Plan, Section 4.I.1.a

C) Facility Maintenance

The following are guidelines in addition to the IPMC:

(1) *Qualified Personnel.* All maintenance and repair work will be done by qualified personnel as defined by applicable codes.

(2) *Specifications.* Repairs or replacements will be done in accordance with National Park Service specifications and industry standards.

(3) *Access to Concession Facilities.* The Superintendent or designated representatives will have access to all concession facilities on the Blue Ridge Parkway to conduct evaluations and other required inspections.

(4) *New Construction and Capital Improvements*

(a) Plans for new construction, additions to structures, major renovation, and all other capital improvements must be prepared and stamped by licensed architects and engineers in accordance with NPS-10-Drafting Guidelines. Five sets of plans must be submitted for Service review and approval. The Service will attempt to review and comment on plans within 30 days. The Service will not review or approve plans that are not stamped.

(b) The Concessioner will hire a qualified independent inspector to inspect all new construction or significant project work during construction and upon completion. An inspection report verifying code compliance must be submitted to the Service prior to using or occupying the improvements. Computer generated "as built" drawings in the current version of AutoCAD and a project completion report, which includes total project costs, will be supplied to the Service within 60 days of completion of work on the project.

(c) Any proposed action that requires review under the National Environmental Policy Act, Section 106 of the National Historic Preservation Act and Director's Order #12 will be submitted to the Superintendent. The Service will determine what environmental compliance is required. The Concessioner may be required to contract for preparation of an environmental assessment or environmental impact statement depending upon the priorities of the Park Planning Office. The Service will advise the contractor on proper process and procedure. The Superintendent must approve the proposed action in writing before any work commences.

(5) *Painting.* Unless required more frequently per the manufacturer's recommendation or the IPMC, paintable surfaces shall be painted on a regular cycle, exteriors of not less than five (5) years, and interiors not less than seven (7) years. Paint products shall be of a "best quality" from a major manufacturer and a type and color that is readily available on the open market. Any changes to paint colors from the color range provided by the Superintendent must be approved by the Superintendent. Whenever possible, the Concessioner will utilize reprocessed, low volatile organic content (VOC), latex coatings when technically feasible and appropriate. When oil based paints are used, minimize solvent use by means of thinner settling and reuse whenever possible.

(6) *Carpet.* Unless required more frequently per the manufacturer's recommendation, carpeting shall be replaced at a minimum of seven (7) years.

(7) *Exterior Lighting.* All lights must be shielded to cast light downward only to protect night skies (exterior lighting shall provide the minimum necessary lighting

for visitor safety and security of facilities). The National Park Service must approve new installations.

(8) *Asbestos.* The Concessioner is responsible for maintaining health and safety standards in the presence of asbestos in all assigned buildings and areas. Any repair, or replacement of asbestos containing surfaces will be performed with the written approval of the Superintendent.

(9) *Telephone.* The Concessioner will repair and maintain on-premises telephone equipment and wiring on the user side of the connections and panels.

(10) *Winter Closures.* The Concessioner will ensure that buildings are adequately winterized and secured while unoccupied. Shutters, where appropriate, and bracing will be installed to protect unoccupied buildings. Roofs will be kept free of heavy snow loads.

D) Utilities

The Concessioner is responsible for contracting with independent suppliers to provide year-round telephone service, electrical service, and propane. The Concessioner is responsible for direct payment to these suppliers.

(1) *Electrical.* The Concessioner shall maintain all secondary electrical lines and equipment (conduit, fuses, panels, switches, transformers, lines, etc.) within the assigned areas, including all fixtures (lamps, cord and equipment) affixed to secondary electrical lines.

(a) The Concession will repair or replace any electrical system damage within the assigned areas and/or damage occurring beyond the Concessioner assigned areas that results from negligence of the Concessioner's employees or contractors.

(b) The Concessioner is responsible for electricity and fixtures in assigned parking lots that service only their facilities.

(c) The Concessioner will ensure that all electrical circuits under its control meet or exceed the standards of the National Electric Code.

(2) *Water*

(a) The Concessioner will maintain and repair the water system starting at the meters. This maintenance and repair will include, but not be limited to water pipes, water heaters, faucets, and spigots. The Concessioner will activate, deactivate, and winterize system components as necessary, as part of normal maintenance.

(b) The Concessioner is responsible for purchasing,installing and maintaining flow prevention devices for new construction and new building assignments, as well as for existing facilities.

(c) The Concessioner will repair or replace any water system damage within its assigned areas and/or damage occurring beyond the Concessioner's assigned areas which results from negligence, the Concessioner, the Concessioner's agents, and/or its employees while working or operating equipment.

(d) The Concessioner agrees to install water conserving fixtures or irrigation systems to all new construction, and when existing fixtures or irrigation systems need replacements. Water conservation in buildings includes using aerators on all sink faucets, low-flow shower heads (not exceeding maximum flow of 1.5 gallons per minute at 20 p.s.i. or 2.8 gallons per minute at 80 p.s.i.) and low-flow toilets (not to exceed 1.6 gallons/flush at 20 p.s.i. or 1.9 gallons/flush at 80 p.s.i.).

(e) The Concessioner is responsible for the following procedures prior to opening any facility that has been closed:

- Waterlines will be super chlorinated before initial use.
- In cases where super chlorination is not possible, lines will be thoroughly flushed with potable water. After lines are flushed, a steady stream of water must flow from spigots until demand creates a constant flow.

(f) The Concessioner is responsible for having approved back flow devices on all outside spigots.

(g) The Concessioner is responsible for testing for leaks within its assigned area and repairing leaks.

(h) The Concessioner will provide the Service with facility occupancy dates for activation and deactivation of systems when opening and closing dates are submitted for approval

(3) *Sewage.* The Concessioner will maintain lines throughout their facilities from the junction to each building.

(4) *Grease Traps.* The Concessioner will be responsible for maintaining grease traps. Grease traps must be pumped on a regular basis with documentation provided to the concessions management office, and the grease disposed of outside the park. In the event of failure of a grease trap, the Concessioner will be charged any labor, equipment and materials cost the Service incurs to pump grease traps on an emergency basis.

(5) *Exhaust Hoods.* The Concessioner will be responsible for maintaining kitchen exhaust hoods. Exhaust hoods must be cleaned monthly with documentation provided to the Concessions Management Office. In the event of a fire, the concessioner will contact the local fire department or 911 immediately and request assistance. The Parkway Communications Center will then be contacted. If it is not operational, the incident needs to be reported to 1-800- PARKWATCH.

E) Signs

(1) The Concessioner is responsible for ensuring that its signs are compatible with Service sign standards as determined by the Superintendent. The Superintendent shall approve all new sign installations in advance. No handwritten or typed signs will be permitted within the Concessioner's assigned areas.

(2) Public signs for which the Concessioner is responsible must be appropriately located, accurate, attractive, and well maintained. Signs of a permanent nature shall

be prepared in a professional manner, consistent with Service standards, and appropriate for the purpose they serve.

(3) The Concessioner will be responsible for the installation, maintenance, and replacement of all interior and exterior signs relating to its operations and services within the assigned areas. Examples of this responsibility are signs identifying the location of functions (when attached to Concessioner-operated buildings or on grounds assigned to the Concessioner), signs identifying operating services and hours, and signs identifying the Concessioner's rules or policies.

F) Solid Waste

(1) Guidelines

(a) The Concessioner will develop, promote and implement a litter abatement program that fully supports and is compatible with the Park's litter abatement program. Support will include, but is not limited to, participating in Park-wide litter clean-up events, implementing land assignment litter clean-up days, providing litter bags at predetermined and convenient locations and providing litter free messages on appropriate materials and in appropriate locations.

(2) Responsibilities

(a) The Concessioner will be responsible for the collection of all litter and garbage and for its disposal within the assigned areas at the proper county or other landfill areas. All assigned areas will be kept free of litter, garbage, and abandoned equipment/vehicles.

(b) All materials generated as solid waste, untreated wood, and tree branches, must be removed from the Park at the Concessioner's expense and disposed of outside the Park.

(3) Receptacles

(a) All trash containers should be screened from public view by a trash enclosure or other means as approved by the Service. Garbage cans and dumpsters must be bear proof and painted approved colors.

(b) The Concessioner will be responsible for the placing and daily cleaning of cigarette receptacles in assigned areas.

(c) Receptacles will be waterproof, vermin-proof, and covered with working lids.

(d) All receptacles will be kept clean, well-maintained and serviceable.

G) Recycling and Conservation

(1) Recycling Program

(a) The Concessioner will develop, promote and implement a recycling program that fully supports the efforts of the Service. A third-party vendor, with the approval of the Service, may provide these services. Recycling areas will be made available to service concession facilities, public, commercial, and employee areas. Recyclable containers placed outside must be bear proof. Interim storage of all recyclable materials must be indoors to prevent access by bears and other vermin.

Products to be recycled include but are not limited to paper, newsprint, cardboard, bimetals, fluorescent tubes, plastics, aluminum, glass, waste oil, waste fuel, antifreeze, and batteries. Such program will include, but not be limited to the following:

- Provide collection bins.
- Provide processing and compaction equipment for the materials collected.
- Removal of all material from the park area and transport to an authorized recycling center. Recycling containers must be bear resistant.
- Provide access to and use of the recycling program to the Service.

(2) *Use of Recycled Products.* The Concessioner will implement a source reduction program designed to minimize its use of disposable products in its operations. Reusable and recyclable products are preferred over single-service items. Polystyrene and plastics will be used as little as possible and then only polystyrene not containing chlorofluorocarbons may be used. Where disposable products are needed, products will be used which have the least impact on the environment. Use of post-consumer recycled products is encouraged whenever possible. The Concessioner will purchase and incorporate environmentally preferred products or services for use and for sale.

(3) *Environmentally Safe Products*

(a) Where practical, the Concessioner will use environmentally safe "green" products and practices that enhance sustainable operations and development and promote use of recycled oils, tires (re-treads), construction materials, etc. The Concessioner will develop, a list of "green" products acceptable alternatives to utilize for all operations concerned with auto fleet/rental fleet lubricants and coolants; chemical additives to toilets; and construction materials. The list will be made available for Service review.

(b) Materials. Where disposable products are needed, products will be used which have the least impact on the environment. The use of post-consumer recycled products is encouraged whenever possible.

(4) *Water and Energy Conservation.* The Concessioner will implement water and energy conservation measures for each of its operations. As new technologies are developed, the Concessioner will explore the possibility of integrating them into existing operations where there is potential for increased efficiency, reduced water or energy consumption, or reduced impacts on the environment. The Concessioner is expected to attain the highest level of sustainability in all levels of operation.

(5) *Alternative Fuel Vehicles.* The Concessioner should consider using alternative fuel vehicles where applicable.

H) Fuel Storage Tanks, Hazardous Materials and Hazardous Waste Program

(1) *General*

(a) The Concessioner will implement hazardous material reduction to minimize and eventually eliminate use of hazardous chemicals in their operation.

(b) The Concessioner will maintain health and safety standards and take necessary mitigative and corrective measures to assure healthy working and living environments in all assigned concession facilities.

(c) In accordance with this Contract, the Concessioner will develop and submit an Environmental Management Program ("EMP") to the Director that will account for all activities with potential environmental impacts, including hazardous waste management, for review and approval within 60 days of the effective date of Contract execution.

(d) Training. The Concessioner's designated employees will attend hazardous materials and waste management training as made available by the park or through outside sources. Training will include Hazardous Communication Standard for employees who may be exposed to chemical hazards on the job site and Hazardous Waste Operations and Emergency Response Standard for employees who may be exposed to hazardous substances in certain specific job-related duties.

(2) Underground and Above Ground Fuel Storage Tanks. The Park must approve all plans for any work involving underground and above ground fuel storage tanks, tracer probes, monitoring wells, removal of contaminated soil, ground water remediation work, etc. The Concessioner must comply with all Federal, State and local laws, regulations and policies regarding fuel storage tanks.

(3) Hazardous Material

(a) Hazardous materials will be handled in accordance with OSHA 29 CFS, 1910 and 1926.

(b) As part of the EMP, the Concessioner will submit a Facility and Vessel Response Plan, which will include:

- An Emergency Response Action Plan that prioritizes calls and establishes a time threshold based on the type of call; and,
- A Spill Prevention Control and Countermeasure ("SPCC") Plan that is in accordance with regulations in Title 40 CFR, Part 112.

(4) Hazardous Waste

(a) The Concessioner will properly mitigate and remedy all unauthorized discharges of hazardous materials or non-hazardous chemical and biological products released from fleet and public service vehicles and/or stationary sources.

- Response will be consistent with guidelines established within applicable Federal, State, and local laws, regulations, and policies and as outlined within the Concessioner's EMP.
- The Concessioner will notify the Park's Communications Center without delay when a release of hazardous or non-hazardous chemical or biological product occurs. Proper corrective, cleanup, and safety actions must be implemented immediately.

(b) Individual fleet and public service vehicles with a load rating greater than two tons should carry, at minimum, enough absorbent materials to effectively immobilize the total volume of fluids contained within the vehicle. Vehicles and operators transporting hazardous materials must be Department of Transportation (DOT) certified and/or registered, and operators must be knowledgeable of local emergency response and personal safety protocol.

I) Grounds, Landscaping, And Pest Management

(1) Guidelines

(a) The Concessioner will be responsible for landscaping, grounds care (watering, mowing, weeding, fertilizing, pruning, etc.) and improvement of the assigned areas, as defined on the maps at Exhibit D. Plans for such landscaping must have the prior approval of the Service, and all plant species used in landscaping must have prior Service approval. As such, the concessioner is required to submit to the Superintendent on or before December 31 of each year a Landscape Plan that outlines all landscaping initiatives planned for the next operating season.

(b) The Concessioner will be responsible for maintaining landscaping around structures to Park approved standards for wildland-urban interface clearing. The Park Landscape Architect will consult with the Concessioner to determine appropriate application of the standards within the Concessioner's land assignments. Initial clearing should be done within 12 months of contract execution. The Concessioner will continue to maintain landscaping to the approved standards. Disposal of refuse, debris, and salvageable material from clearing is subject to Service regulations and policy.

(c) The Concessioner will be responsible for the placing and daily cleaning of cigarette receptacles in the assigned areas. The Concessioner will be responsible for keeping the assigned areas free and clear at all times of safety hazards (broken glass, sharp objects, etc.).

(d) The Service and the Concessioner will agree to an Integrated Pest Management Program, (IPMP) that will define the nature and frequency of treatment, approved chemical lists, etc. Concessioner applying any herbicide, pesticide, or engaging in any pest control or non-native species activity in buildings, residences, or in grounds/landscape materials will be in accordance with the IPMP. As such, the concessioner is required to submit to the Superintendent on or before December 31 of each year an Integrated Pest Management and Pesticide Use report outlining all pest management and pesticide application plans for the next operating season.

- A permit is required from the U.S. Fish and Wildlife Service before bird nests can be removed. Nests may only be removed before eggs have been laid or after the young have fledged. Netting or other deterrents should be put on buildings with recurrent bird nesting problems.
- The control of weeds and pests by chemical and other means is subject to Service approval. The Concessioner will review specific issues with the Park's integrated pest management coordinator.

- The Concessioner is responsible for extermination within all its areas/buildings. Paragraphs 306.2, 306.3, 306.4 and 306.5 in the IPMC do not apply to this Contract.

(e) The Concessioner will conduct its business and daily activities in such a manner as to minimize impacts on the natural scene. This will involve protecting native vegetation and controlling erosion.

(f) A licensed pest control contractor will inspect all buildings/structures assigned for use under this Contract on a regular cycle not less than every five (5) years, after an initial inspection. The initial inspection is to be performed within one year of the awarding of this Contract. The inspection report will be submitted to the Superintendent.

(g) The Concessioner will emphasize water conservation in landscaping operations.

(h) Adequate steps will be taken to prevent the introduction and importation of exotic plants and species into the Park.

(2) Hazard Tree Removal. The Concessioner is not authorized to remove hazard trees from its assigned areas without the specific approval of the Superintendent or his designated representative. Approval will be granted in accordance with the established Park policy for hazard tree removal. The Concessioner is responsible for removing trees after receiving Service approval. Salvageable material will be disposed of in accordance with Service regulation and policy.

J) Roads, Trails, Parking Areas, and Walkways

(1) Guidelines

(a) The Concessioner is responsible for grading, resurfacing, surface repair, patching; striping, and debris and hazard removal; from roads, parking areas, trails, and walkways within its land assignments.

(b) At the request of the Concessioner, the Service may perform some of the work that is the Concessioner's responsibility on a cost-reimbursable basis, depending upon other priorities. An estimate of labor and equipment charges will be provided in advance.

(c) The Concessioner is responsible for complying with the Uniform Federal Accessibility Standards (UFAS) in its assigned areas.

(2) Trail Maintenance. Projects must have written approval of the Superintendent or his/her designee before any work commences.

(3) Snow Removal

(a) The Concessioner is responsible for removing snow from the roofs, entrances, porches, and walkways of concession facilities. Ice buildup on walkways will be sanded or removed for safety. Any chemical used for removing ice must be approved in advance by the Service.

(b) The Concessioner is responsible for marking fire hydrants with snow stakes and for removing snow from around hydrants in assigned areas.

(c) The Concessioner is responsible for all snow removal on parking lot areas within its assigned areas.

(d) Special requests by the Concessioner for assistance with snow removal will be made through the Concessions Management Office or the Chief of Maintenance.

4) <u>Concessioner Responsibility</u>

A) Overnight Lodging

(1) General Maintenance

(a) <u>Public Areas</u>

- <u>Signage</u>: All signage should be well maintained and accurate. Any signs that have been defaced or removed shall be replaced within seven days. If the sign addresses a life safety issue, it will be replaced immediately with a professional looking temporary sign.
- <u>Restrooms</u>: All restrooms will be well maintained and cleaned as needed and a minimum of two times per day. Hourly inspections of restrooms, during operating hours, are to be conducted. Fixtures and equipment will be fixed immediately upon notification of problem. No bathroom fixture will be left out of order for more than 24 hours.
- <u>Cleaning</u>: All public areas will be well maintained and cleaned at the minimum twice per day. The area will be kept free of clutter and debris at all times.

(b) <u>Guest Rooms</u>

- FF&E repair/replacement
  - **Case goods**. Case goods will be well maintained and repaired to ensure a pleasant and safe guest experience. Any scratches and/or defacement of the case goods will be fixed or the piece of furniture will be replaced prior to the room being rented.

    All case goods will be replaced at least every 15 years or sooner if the furnishing is not up to the standards of a three diamond property.
  - **Soft goods**: Soft goods will be clean and free from any stains, holes or tears. An adequate inventory of replacement soft goods will be kept on hand in order to replace damaged soft goods prior to renting the guest room. Soft goods will be replaced every five years.
  - **Mattresses**: Mattresses will be replaced every 10 years or sooner if the condition warrants it.
  - **Fire Protection and Safety**: All smoke detectors must be routinely tested.

    Guest unit entrance and sliding glass door locking devices should be well maintained and tested routinely to ensure effectiveness.

B) Restaurant/Gift Shop Building

(1) General Maintenance

(a) Public Areas

- Signage: All signage should be well maintained and accurate. Any signs that have been defaced or removed shall be replaced within seven days. If the sign addresses a life safety issue, it will be replaced immediately with a professional looking temporary sign.
- Restrooms: All restrooms will be well maintained and cleaned as needed. A minimum of three complete cleanings will be conducted daily, and one complete cleaning is to be conducted at the start of the scheduled hours of operation for each meal period, i.e., breakfast, lunch and dinner. Hourly inspections of restrooms, during operating hours, are to be scheduled, conducted and documented; immediate corrective action will be taken to correct noted deficiencies. Fixtures and equipment will be fixed immediately upon notification of problem. No bathroom fixture will be left out of order for more than 24 hours.
- Windows: There are a substantial number of windows in the food and beverage dining area. These windows shall be kept clean and neat in appearance to such a level that visitors within the building may clearly view the area outside the concessions building. Smudges, cobwebs, bugs, etc. will be removed immediately if found.
- Cleaning: All public areas will be well maintained and cleaned at the minimum twice per day. The area will be kept free of clutter and debris at all times.

(b) Kitchen

- Cleaning: Floors, walls and all equipment will be cleaned continuously and following each meal period. Industry accepted sanitation regulations for recommended ware washing temperatures and the use of chemical sanitizers will be observed.
- Safety: Areas will be kept free from hazardous conditions and materials. Storage of all cleaning supplies will be in non-food areas.

C) General Store

(1) General Maintenance

(a) Public Areas

- Signage: All signage should be well maintained and accurate. Any signs that have been defaced or removed shall be replaced within seven days. If the sign addresses a life safety issue, it will be replaced immediately with a professional looking temporary sign.
- Restrooms: All restrooms will be well maintained and cleaned as needed and a minimum of two times per day. Hourly inspections of restrooms,

during operating hours, are to be conducted. Fixtures and equipment will be fixed immediately upon notification of problem. No bathroom fixture will be left out of order for more than 24 hours.

- Cleaning: All public areas will be well maintained and cleaned at the minimum twice per day. The area will be kept free of clutter and debris at all times.

D) Furniture and Removable Equipment

(1) All Concessioner operated appliances, machinery, and equipment; including parts, supplies, and related materials will be maintained, serviced, and repaired per manufacturers' recommendations, and replaced as necessary.

(2) The Concessioner is also responsible for:

(a) Annually cleaning and inspecting active chimneys and exhaust ducts.

(b) Inspecting range/grill hoods monthly and cleaning as required.

(c) Inspecting, cleaning, and tuning boilers annually, or more often, as condition warrants.

5) Park Responsibilities

The Park assumes no responsibility for the execution of operations or physical maintenance work or replacement of Government buildings, structures, facilities, or areas assigned to the Concessioner except as stated below. The Park will assist the Concessioner in its maintenance program by assuming and executing the following responsibilities subject to the availability of appropriated funds.

A) Service Responsibilities

(1) *Roads, Trails, Parking Lots, and Walkways.* The Service will maintain all elements outside the Concessioner's land assignment, as shown on the land assignment maps (see Exhibit D to this Contract).

(2) *Snow Removal.* The Service is responsible for all snow removal for roads outside the boundaries of the Concessioner assigned areas.

(3) *Utilities*

(a) Electrical

- The Service will repair or replace any damage occurring to all utility systems assigned to the Concessioner within its land assignment, which is due to the negligence of the Park and/or its employees.
- The Service, or the utility company with the easement, will be responsible for all utility systems running through, but not providing service to Concessioner facilities within the Concessioner's land assignments.

(b) Water

- The Service will maintain water systems and lines to meter junction points.

- The Service will maintain water meters on new and existing concession facilities.
- The Service will maintain, replace, repair, and paint fire hydrants.
- The Service will provide bacteriological monitoring and chemical analysis of potable water as required. The Service will perform major rehabilitation on the storage and distribution system, subject to available funding.

(4) Signs

(a) The Service is responsible for all regulatory, traffic control, or information signs that serve the interest of the Government; examples include information signs along roadways, directional signs along Park trails, and interpretive signing.

(b) The Service will install, maintain and replace the main entrance signs, major junction signs.

(c) The Service will provide bear warning signs to be placed on garbage cans and dumpsters.

(5) Solid Waste. The Service is responsible for trash collection outside of the Concessioner assigned area of responsibility.

(6) Grounds, Landscaping, And Pest Management

(a) The Service will periodically monitor and identify hazardous trees in the Park. The Service will remove hazardous trees that are outside the Concessioner's land assignment.

(b) The Service will review the Concessioner's landscaping plans, provide standards as needed, review and approve proposed work, and monitor Concessioner landscaping projects.

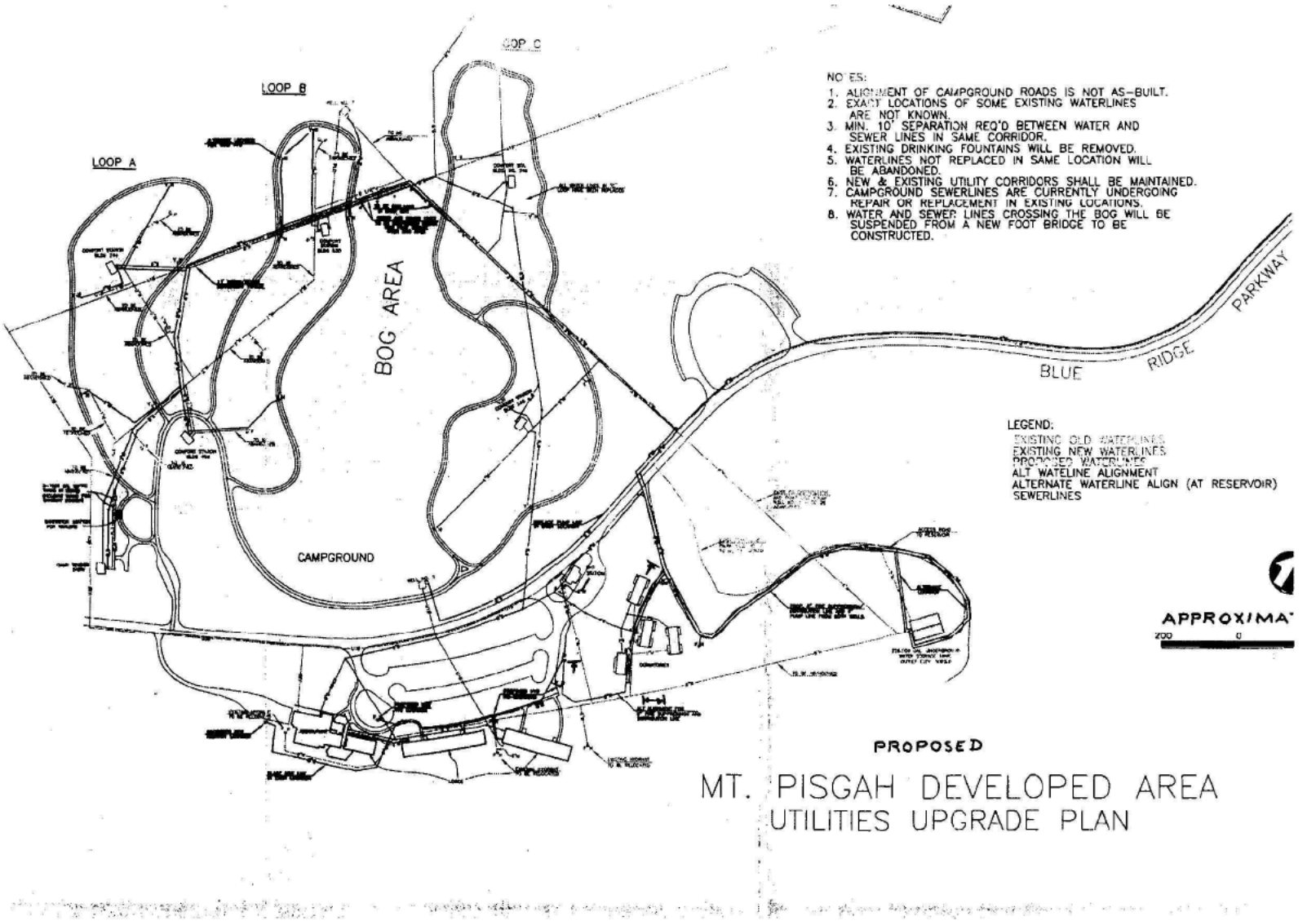
(c) The Service will coordinate hazardous tree removal with the Concessioner, except in those instances where an imminent hazard precludes such prior coordination.

(7) The Service reserves the right to require the Concessioner to replace furniture and removable equipment at the end of its useful life or when the item presents a quality, safety, or environmental issue.

(8) Exterior Fire Equipment

(a) Fire Hydrants. The Park will maintain all fire hydrants within the Concessioner's land assignment, including the maintenance, repair, replacement, testing, and painting of all fire hydrants on water mains within the Concessioner's land assignment.

Map 1 - Utilities Map



CONCESSIONER	DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE
BY: Phyllis Prevost	BY:
TITLE: Pres	TITLE: SUPERINTENDENT
DATE: 8/11/04	DATE: 8/12/04

EXHIBIT I
INSURANCE REQUIREMENTS

I. INSURANCE REQUIREMENTS

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 the CONTRACT.

With the exception of statutory Workers' Compensation insurance protection, the National Park Service shall be named as an additional insured under all insurance policies issued or arranged in support of this agreement. The coverage provided for the benefit of the National Park Service is not to be impaired by any act of the Concessioner, its agents, servants or employees. The National Park Service shall, solely for its benefit, be provided ***an unconditional 30 day advance*** notice of cancellation, non-renewal or material change in coverage or policy terms. The term National Park Service shall by definition and where appropriate and legally permissible, also include the term United States Government/United States of America.

The amounts of insurance and coverage terms ***indicated are not intended as a limitation*** of the Concessioner's responsibility or liability under this agreement, but rather an indication as to the minimum amount and minimum scope of insurance that the National Park Service considers necessary to allow the operation of the concession facilities at its park. Nevertheless, if the concessioner purchases insurance in addition to the limits illustrated herein, the National Park Service is to receive benefit of the additional amounts of insurance without additional cost to the National Park Service.

II. LIABILITY INSURANCE

The following Liability Coverages are to be maintained at a minimum, all of which, unless noted herein, are to be written on an occurrence form of coverage by an **insurance company licensed to do business within the State of North Carolina** and **having an A.M. Best's rating of no less than A- and a financial category rating of no less than VII**. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or "Umbrella" Liability. (See item #3 excess or umbrella liability insurance policy).

A) Commercial General Liability Insurance

1) Coverage will be provided for bodily injury, property damage, personal or advertising injury liability including contractual liability arising out of personal injury and advertising injury liability) and products/completed operations liability insurance protection. The following minimum limits of liability * are to be provided:

Bodily Injury and Property Damage Limit

(1) General Aggregate $10 million

(2) Products & Completed Operations Aggregate	$10 million
(3) Per Occurrence	$10 million
(4) Personal Injury & Advertising Injury Liability	$10 million
(5) Medical Payments	$5,000
(6) Fire Damage Legal Liability "per fire"	$50,000

***or those minimum limits required by the Umbrella/excess liability insurer**

2) The liability coverages may not contain the following exclusions/limitations:

(a) Athletic or Sports Participation

(b) Products/Completed Operations

(c) Personal Injury or Advertising Injury exclusion or limitation

(d) Contractual Liability limitation

(e) Explosion , Collapse and Underground Property Damage exclusion

(f) Total Pollution exclusion

(g) Watercraft limitations affecting the use of watercraft in the course of the concessioner's operations (unless separate Watercraft coverage is maintained)

3) The pollution exclusion may be amended so that it does not apply to the smoke, fumes, vapor or soot from hostile fires.

4) If the policy insures more than one location, the General Aggregate limit must be amended to apply separately to each location, or, at least, separately to the appropriate NPS location(s).

B) Automobile Liability Insurance

Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of "any auto," Symbol 1. (Where there are no owned autos, coverage applicable to "hired" and "non-owned" autos, "Symbols 8 & 9," shall be maintained.)

Bodily Injury and Property Damage (combined) $10,000,000 per occurrence *.

***or those minimum limits required by the Umbrella/excess liability insurer**

C) Liquor Liability (if applicable)

Coverage will be provided for bodily injury or property damage including damages for care, loss of services, or loss of support arising out of the selling, serving or furnishing of any alcoholic beverage.

Each Common Cause Limit	$3 million
Aggregate Limit	$5 million

D) Watercraft Liability (or Protection & Indemnity) (Not Applicable)

Coverage will be provided for bodily injury or property damage arising out of the use of any watercraft.

Each Occurrence Limit	$_____

E) Aircraft Liability (Not Applicable)

Coverage will be provided for bodily injury or property damage arising out of the use of any aircraft.

Each Person Limit	$_____
Property Damage Limit	$_____
Each Accident Limit	$_____

F) Garage Liability (Not Applicable)

This coverage is not required, but may be used in place of Commercial General Liability and Auto Liability coverages for some operations. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability arising out of garage operations (including products/completed operations and contractual liability) as well as bodily injury and property damage arising out of the use of automobiles.

Each Accident Limit – Garage Operations	$_____
Auto Only	$_____
Other Than Auto Only	$_____
Personal Injury & Advertising Injury Limit	$_____
Fire Damage Legal Liability "per fire"	$_____
Aggregate Limit – Garage Operations	$_____
Aggregate Limit – Garage Operations	$_____
Other Than Auto Only	$_____

If owned vehicles are involved, Liability coverage should be applicable to "any auto" ("Symbol 1") otherwise, coverage applicable to "hired" and "non-owned" autos ("Symbols 8 & 9") should be maintained.

G) Excess Liability or Excess "Umbrella" Liability

Minimum Limits: Bodily Injury & Property Damage $10 million/occurrence & aggregate

This coverage is not required, but may be used to supplement any of the above Liability coverage policies in order to arrive at the required minimum limit of liability. If maintained, coverage will be provided for bodily injury, property damage, personal or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess "Umbrella" Liability policy.

Note: An excess or "umbrella" liability policy may be used to achieve the commercial general liability and automobile liability limits outlined above. However, if a lower limit of liability is used for a subordinate policy, then the limit of liability under the umbrella policy must be that limit necessary to achieve the full limit of liability required for the subject policy. For instance, the General Liability policy requires a $10 million limit of liability. If the limit of liability provided under the General liability policy is $1 million, then the umbrella policy must provide a limit of at least $9million to provide the total requirement of $10 million. Since the Umbrella/Excess policy applies over both the automobile and the commercial general liability policy, a single limit under the excess policy is all that will be required.

The umbrella liability policy coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess ``Umbrella" Liability policy. If the coverage afforded by the excess or umbrella policy results in limits greater than the limits required hereunder, then the greater limit shall be available to the NPS in the event of a loss.

H) Environmental Impairment Liability

Coverage will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/off site).

Each Occurrence or Each Claim Limit	$1 million
Aggregate Limit	$3 million

I) Special Provisions for Use of Aggregate Policies

If at any time the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the Concessioner may be required to reinstate such limit or purchase additional coverage limits. The General Aggregate under the Commercial General Liability policy must

apply on a "per location" basis. The Certificate of Insurance required herein will note compliance with this aggregate provision.

J) Self-Insured Retentions

Self-insured retentions on any of the above described Liability insurance policies (other than Excess "Umbrella" Liability, if maintained) may not exceed $10,000 without prior approval of the Director.

K) Workers Compensation & Employers' Liability

Coverage will comply with the statutory requirements of the state(s) in which the Concessioner operates. The State of North Carolina must be specifically addressed within the policy. Employers liability insurance must be at least $500,000/insuring agreement

III. PROPERTY INSURANCE

A) Building(s) and/or Contents Coverage

1. Amount of Insurance (Building) $100% of replacement value as listed in Exhibit D
2. Amount of Insurance (Contents) $100% of replacement value
3. Amount of Insurance (Inventory) $100% inventory value

1) Insurance shall cover buildings, structures, improvements & betterments and/or contents for all Concession Facilities, as more specifically described in Exhibit D of this CONTRACT.

2) Coverage shall apply on an "All Risks" or "Special Coverage" basis.

3) The policy shall provide for loss recovery on a Replacement (new for old) Cost basis.

4) The amount of insurance, except for the inventory, should represent no less than 100% of the Replacement Cost value of the sum total of all insured property. Inventory shall be insured at 100% of the inventory value of the products held for sale.

5) The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.

6) Coverage is to be provided on a blanket basis, real and personal property.

7) The Vacancy and unoccupancy restriction, if any, must be eliminated for property that will be vacant or unoccupied beyond any time period specified in the policy.

8) Earthquake Coverage shall be maintained with a limit of not less than the building replacement costs listed in Exhibit D.

9) Ordinance or Law, demolition and increased cost of construction Coverage shall be maintained with a limit of not less than the building replacement costs listed in Exhibit D.

B) Boiler & Machinery Coverage

1) Insurance shall apply on the "comprehensive" basis of coverage including all objects within the Concession Facilities.
2) The policy shall provide for loss recovery on a Replacement (new for old) Cost basis.
3) The amount of insurance should represent no less than 90% of the Replacement Cost value of the sum total of all insured property.
4) The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
5) Coverage is to be provided on a blanket basis.
6) If insurance is written with a different insurer than the Building(s) and Contents insurance, both the Property and Boiler insurance policies must be endorsed with a joint loss agreement.
7) Ordinance or Law, demolition and increased cost of construction Coverage shall be maintained with a limit of not less than the building replacement costs listed in Exhibit D.

C) Builders Risk Coverage

1) Insurance shall cover new buildings or structures under construction at the Concession Facilities, and include coverage for property that has or will become a part of the project while such property is at the project site, at temporary off-site storage and while in transit. Coverage should also apply to temporary structures such as scaffolding and construction forms.
2) Coverage shall apply on an "All Risk of loss" or "Special Coverage" basis.
3) The policy shall provide for loss recovery on a Replacement Cost basis.
4) The amount of insurance should represent no less than 90% of the Replacement Cost value of the insured property.
5) The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
6) Any occupancy restriction must be eliminated.
7) Any collapse exclusion must be eliminated.
8) Any exclusion for loss caused by faulty workmanship must be eliminated.
9) Earthquake Coverage shall be maintained with a limit of not less than $_____.

D) Business Interruption and/or Expense (See formula below)

1) Business Interruption insurance and extra expense insurance is to cover the loss of income and continuation of fixed expenses in the event of damage to or loss of

Concession Facilities, including, without limitation and with respect to the interests of the National Park Service, the loss (or reduction) of franchise fee payments to the National Park Service by the Concessioner. Extra Expense insurance shall cover the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property. The coverage to be provided shall be at least that calculated as follows:

Anticipated annual Gross revenue from operations	$_____
Less non-continuing expenses	($_____)
Total:	$_____
Times exposure (# of days of operations/365)	X
Business Interruption limit	$_____

E) <u>Deductibles</u>

Property Insurance coverages described above may be subject to deductibles as follows:

1) Direct Damage deductibles shall not exceed the lesser of 10% of the amount of insurance or $25,000 (except Flood & Earthquake coverage may be subject to deductibles not exceeding $50,000).
2) Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed $25,000.

F) <u>Required Clauses</u>

1) Loss Payable Clause:

A loss payable clause similar to the following must be added to Buildings and/or Contents, Boiler and Machinery, and Builders Risk policies:

"In accordance with Concession Contract No. _____ dated _____, between the United States of America and [*the Concessioner*] payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed directly to the Concessioner without requiring endorsement by the United States of America."

IV. CONSTRUCTION PROJECT INSURANCE

Concessioners entering into contracts with outside contractors for various construction projects, including major renovation projects, rehabilitation projects, additions or new buildings/facilities will be responsible to ensure that all contractors retained for such work maintain an insurance program that adequately covers the construction project.

The insurance maintained by the construction and construction-related contractors shall comply with the insurance requirements stated herein (for Commercial General Liability, Automobile Liability, Workers' Compensation and, if professional services are involved, Professional Liability). Except for the workers' compensation insurance coverage, the interests of the Concessioner and the United States shall be covered in the same fashion as required in the

Commercial Operator Insurance Requirements. The amounts/limits of the required coverages shall be determined in consultation with the Director taking into consideration the scope and size of the project.

V. INSURANCE COMPANY MINIMUM STANDARDS

All insurance companies providing the above described insurance coverages must meet the minimum standards set forth below:

1) All insurers for all coverages must be rated no lower than A- by the most recent edition of Best's Key Rating Guide (Property-Casualty edition).
2) All insurers for all coverages must have a Best's Financial Size Category of at least VII according to the most recent edition of A.M. Best's Key Rating Guide (Property-Casualty edition).
3) All insurers must be admitted (licensed) or approved in the state in which the Concessioner is domiciled.

VI. CERTIFICATES OF INSURANCE

All certificates of Insurance required by this CONTRACT shall be completed in sufficient detail to allow easy identification of the coverages, limits, and coverage amendments that are described above. In addition, the insurance companies must be accurately listed along with their A.M. Best Identification Number ("AMB#"). The name, address and telephone number of the issuing insurance agent or broker must be clearly shown on the certificate of insurance as well.

Due to the space limitations of most standard certificates of insurance, it is expected that an addendum will be attached to the appropriate certificate(s) in order to provide the space needed to show the required information.

In addition to providing certificates of insurance, the Concessioner, upon written request of the Director, shall provide the Director with a complete copy of any of the insurance policies (or endorsements thereto) required herein to be maintained by the Concessioner.

The Certificate of Insurance **shall contain a notation that the insurance coverage represented therein complies with the provisions of this agreement as outlined in Exhibit I.**

The **notice of cancellation provision** of the certificate shall have any and all qualifying language such as: *"We will endeavor to provide"* or *"failure to provide said notice will not place any liability upon the company or its representative"* deleted from its terms.

VI. STATUTORY LIMITS

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit is to be considered the minimum to be maintained.

CONCESSIONER	DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE
BY: _____	BY: _____
TITLE: _____	TITLE: SUPERINTENDENT Blue Ridge Parkway
DATE: _____	DATE: _____

BLUE RIDGE PARKWAY
CONCESSION CONTRACT BLRI003-04

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36 CFR Part 51	Appendix C
NPS Management Policies, Chapter 10	Appendix D
Other Property	Appendix E
Existing Contract CC-BLRI003-84	Appendix F
Concession Management Rate Approval Guide September 2002	Appendix G

APPENDIX A

Historical Financial Information
from
Concession Annual Financial Reports

	2002	2001	2000
Gross Receipts:			
Restaurant	$1,259,382	$1,295,019	$1,262,540
Lodging	831,105	817,654	794,644
Retail	465,960	536,041	525,407
Fuel	97,448	112,246	121,333
Franchise Fees	151,092	156,395	153,253
Merchandise Inventories	32,572	30,753	23,016
Depreciable Fixed Assets	2,480,896	2,550,132	2,495,855
Net Depreciable Fixed Assets	773,635	836,865	918,600

APPENDIX B

CONCESSION FACILITIES IMPROVEMENT PROGRAM

The Contract requires the concessioner to perform improvements during the term of the new concession contract. To execute these improvements, the Concessioner shall undertake and complete an improvement program (hereinafter referred to as the "Concession Facilities Improvement Program" or "CFIP"). This program is to be carried out in the early term of the contract. Particular projects included in this program are identified in this section, including the estimated timing and project costs.

PISGAH INN AREA DEVELOPMENT PROGRAM - SUMMARY

The Concession Facilities Improvement Program is based on renovating existing facilities at the Pisgah Inn. Additionally, existing deficiencies shall be cured in these buildings. Planning objectives for the development of the area include the following:

- preserving the natural resources and enhancing the qualities of the existing property;
- keeping within limits that do not exceed the present land development; and,
- providing improved guest services and support facilities to meet visitors' needs.

The resulting CFIP meets four key areas of concern, namely:

- increasing the capacity of the dining space to give more diners views of the Park;
- improving retail services to Parkway visitors;
- providing improved lodging accommodations within the existing buildings; and,
- correcting existing deficiencies within the dining, lodging, and retail facilities.

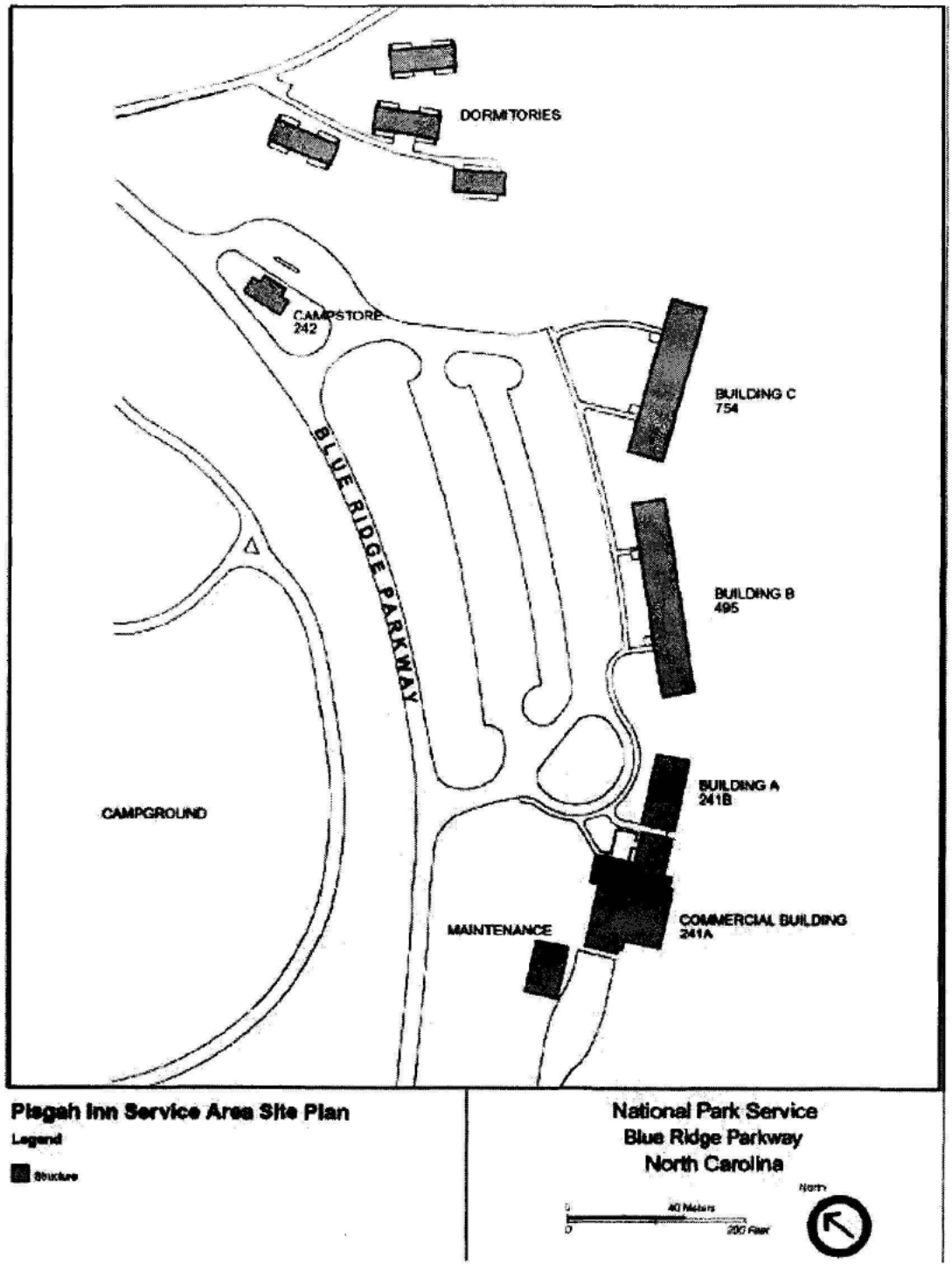
SUMMARY DESCRIPTION OF PROJECTS

The Contract will require the concessioner to undertake and complete certain projects for the Pisgah Inn. The program includes six projects that respond to the priority concerns discussed above. These projects are:

• Deferred Maintenance and Fire Safety	Correction of Existing Deficiencies
• Restaurant/Gift Shop Building, 241A:	Increase Dining Area and Relocate Retail
• Camp Store, Building 242:	Improve Retail Services
• Lodging – Building A, 241B:	Refurbish Rooms
• Lodging – Building B, 495:	Refurbish Rooms and Increase Views
• Lodging – Building C, 754:	Refurbish Rooms, Increase Views, and Improve Entries

The locations of these projects are identified on the following Site Plan.

Table 1 - Pisgah Inn Site Plan



Source: National Park Service

PROJECT PHASING AND PRIORITIES

Renovation projects are expected to begin immediately upon the conclusion of the 2004 operating season and be completed prior to the 2005 operating season. Deferred maintenance shall be cured during the first year of operations. The schedule for these projects is offered in Exhibit 2.

Table 2 - Required CFIP Projects

PROJECT	ESTIMATED COST OF PROJECT	START DATE	COMPLETION DATE
Deferred Maintenance & Fire Safety	$57,000	2004	2005
Building A Guestroom Renovation	$182,000	2004	2005
Building B Guestroom Renovation	$683,000	2004	2005
Building C Guestroom Renovation	$747,000	2004	2005
Restaurant/Gift Shop Building Redesign	$616,000	2004	2005
Camp Store Redesign	$458,000	2004	2005
TOTAL REQUIRED CFIP PROJECTS	**$2,743,000**		

Note: Presented in 2003 dollars

Source: National Park Service

SCOPE AND COSTS OF PROJECTS

The following descriptions indicate the scope of work required to meet the needs of the visitors to the Blue Ridge Parkway. A cost estimate is included for each scope of work that will establish the limit of obligatory expenditures in meeting those needs. While the particulars of these projects are described in the following sections, they all must adhere to National Park Service planning standards including the following conditions:

- Construction of all facilities should harmoniously integrate with their surrounding environments. The architectural style, design elements, and construction materials should reflect the park location and its history.
- Construction codes to be followed are nationally applicable codes such as the Uniform Building Code and the National Fire Protection Association codes. Regional and local codes are to be followed where they meet a higher standard.
- Before work commences, the Parkway Superintendent must approve, in writing, plans and specifications for these projects.

Projects should be executed in keeping with recent National Park Service policies such as:

- Construction should be made energy efficient by meeting the LEED standards as developed by the U.S. Green Building Council.
- Facilities should be designed to make innovative use of natural materials, to take advantage of the features of their natural settings, and should reflect the traditional styles of buildings in the Park and of the region.

The costs associated with each project were developed to allow for the meeting of the above standards and the particular scope and qualities described in the following section. The costs are tabulated in a format used by the National Park Service and contain applicable multiples as noted. The costs also take into account the following assumptions:

- The construction costs do not include escalation. They are quoted using current cost data, tabulated by sources as current for the year 2003. The costs should be adjusted to meet the projected schedule in accordance with the appropriate indexes of the Department of Labor's CPI-U Index.
- The construction costs are based on unit costs derived from national databases, such as the Building Construction Cost Data, as provided by RS Means and are modified to reflect the costs in the local park area.
- The costs include all site work associated with the project. The site work is to include utility costs for connecting to nearest adequate source, for developing access to the site, demolition of existing facilities, protection of the environment as required by government regulations, and any special bearing conditions.
- The costs include the provision of needed furnishings and equipment that are required to establish operations.

PROJECT: DEFERRED MAINTENANCE AND FIRE SAFETY

Purpose: Correct Existing Deficiencies

The facilities assigned to the concessioner at the commencement of the Contract are generally older facilities with deferred maintenance and fire safety upgrades. The primary purpose of this project is to correct them immediately.

Scope

The Parkway will direct the Concessioner as to the timing of these upgrades. Immediately following the award of the Contract, the new concessioner and Parkway officials will coordinate a definitive plan to address any maintenance issues of an immediate nature as determined by the Parkway.

PROJECT: RESTAURANT/GIFT SHOP BUILDING, 241A

Purpose: Increase Dining and Relocate Retail

The primary purpose of this project is to increase the dining area on the south side of the facility because most diners wish to have seats that give access to the magnificent views to the south. This is to be accomplished by removing the retail from the south side and replacing it with dining service. The retail will then be moved to the area occupied by the function space (the Rhododendron Room), utilizing the adjacent kitchen areas for storage. Additional improvements include improving the circulation to the new dining space by widening the area between the existing retail space and the present dining area. Egress is to be improved by adding an exit door at the east end of the building and bringing up to code standards the exit door hardware, stairways, and railings.

At the time this work is accomplished, the deficiencies summarized in the scope shall be corrected.

Scope

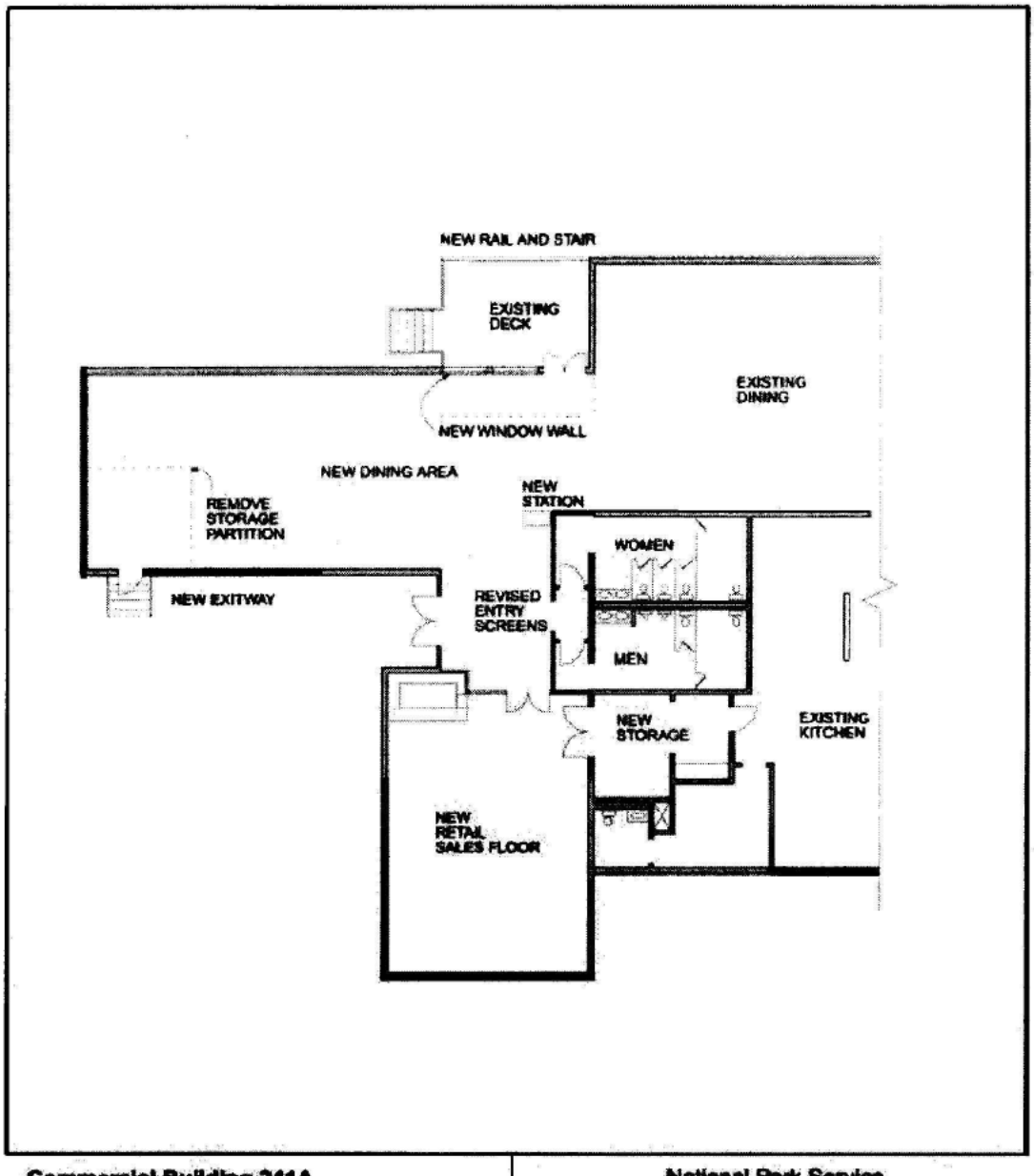
The project will consist of the following items:

- Remedy deficiencies, including:
  - replacing select asphalt shingles, exterior doors, frames and steel pipe stair railing;
  - adding and replacing panic hardware;
  - replacing sprinkler fire protection system, fire alarm control panel, manual pull station, system strobe and horn with ADA compliant product(s);
  - painting interior and exterior;
  - replacing exhaust fans, refrigerator condensers, electrical and lighting system, and plumbing system; and,
  - installing new asphalt shingles (end of useful life estimated 2012).
- Move the retail area from its present location to the Rhododendron Room. This project includes:
  - installing commercial display fixtures;
  - constructing a glass wall between the entry and retail areas;
  - relocating the cash register and head waitress station;
  - reconfiguring the screens at the bathroom entries; and,
  - adding storage in the kitchen area adjacent to the Rhododendron Room.
- Add restaurant seating (approximately 60 seats) in the former retail space, including:
  - removing the storage area partitions; and,
  - refinishing the space with fixtures and finishes that match those of the main dining area.

- Increase the size of the dining area by widening it onto the existing deck, to approximately the southern edge of the existing roof. This increases the space for service and guest circulation. Such work will include:
  - constructing a glass wall that is in line with that of the present retail space;
  - extending the exterior wall to meet the existing roof; and,
  - extending the finished floor construction.
- Improve emergency egress:
  - adding an exit door at the east end of the former retail space;
  - installing emergency exit hardware on the new east door and the door providing egress to the deck shall also have emergency exit hardware;
  - constructing new stairs and railings that meet egress codes; and,
  - making secure the pathways from the stairs, particularly from on the south side, with handrails and consistently paved pathways.

The proposed floor plan and estimated project cost are offered in the following exhibits.

Table 3 - Proposed Restaurant/Gift Shop Building Floor Plan



Commercial Building 241A
Proposed Floor Plan

Legend

Existing

Proposed

National Park Service
Blue Ridge Parkway
North Carolina

0 5 Meters
0 25 Feet

North

Source: National Park Service

Table 4 - Estimated Project Cost for Restaurant/Gift Shop Building

Direct Costs		
Building Reconfiguration:		$75,000
Site Development:		
handrails and planings at deck, added east emergency entry, main entry		$10,000
Deficiency Items:		$253,000
Subtotal		**$338,000**
NPS Class C estimate additions		
Overhead (10%) & Profit (30%)	40%	incl. above
General Conditions	8%	incl. above
Design Contingency	20%	$68,000
Net Construction Cost		**$405,000**
Construction Supervision	8%	$32,000
Construction Contingencies	10%	$41,000
Gross Construction Cost		**$478,000**
Pre-Design Services	5% of NET	$20,000
Supplemental Services	2% of NET	$8,000
Design Services	10% of NET	$41,000
Total Project Cost - Unadjusted for Location		**$547,000**
NPS Regional Factor		incl. above
NPS Park Factor		incl. above
Location Adjustments		**$0**
FF&E - restaurant	125 seats	$10,000
FF&E - retail	840 sf	$59,000
Total Project Cost		**$616,000**
Totals may not add due to rounding		inflation not included: costs 2003 dollars

Source: National Park Service

PROJECT: CAMP STORE, 242

Purpose: Improve Retail Services

The camp store is to become a retail space that encompasses the design and character of the "old" western North Carolina's general stores and wayside stands. Retail items offered should include traditional western North Carolina and mountain goods, supplemented by contemporary convenience store products.

The project will consist of reconfiguring the exterior of the facility into a more traditional structure and renovating the interior to serve as retail space (allowing the bathroom space to continue to serve motorists and campground patrons). The project also includes adding a new coin operated laundry unit accessible from the exterior.

The site is to be reconfigured both to allow for parking and sitting areas for the store patrons, both on added porches and in picnic facilities immediately adjacent to the facility.

At the time this work is accomplished, the deficiencies summarized in the scope shall be corrected.

Scope

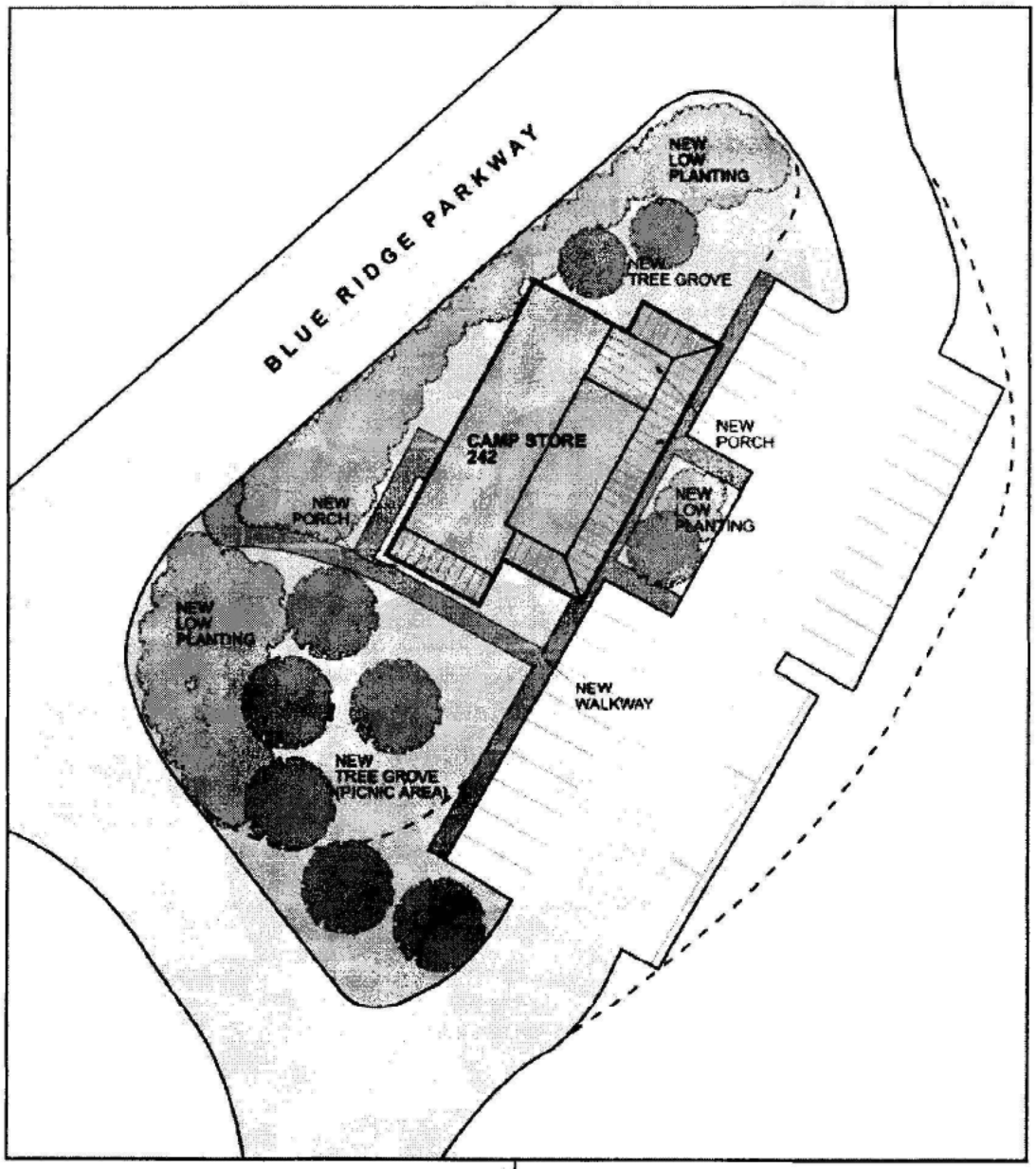
The project will consist of the following items:

- Remedy deficiencies, including:
  - painting the interior, including toilet area, and exterior;
  - replacing unit heaters and select asphalt shingles; and,
  - replacing electrical, heating, and plumbing distribution systems.
- Add a stacked coin-operated clothing washer-dryer unit in the toilet area in the vicinity of the existing mechanical space, including adding a roll-down security screen. The unit should be accessible from the outside.
- Remove all of the existing furnishings and interior partitions in the camp store space (allowing the toilet areas to remain as at present).
- Renovate the existing wall finishes and fittings to be suitable for a retail operation that offers locally produced items – including manufactured goods (such as rural decorations and small furnishings), local produce, and regional food products.
- Reconfigure the space to serve the retail operation, installing a cashier counter, delivery and inventory storage space, and commercial grade merchandising equipment.
- Reconfigure the exterior for use as a country store, including:
  - adding exterior features that reinforce the retail function and image;
  - adding porch roofs around the east side with wood framing carpentry details (such as brackets at the top of the new columns), extending the pavement to provide seating areas;
  - adding windows as appropriate to display retail items;
  - installing local design elements such as operable wood shutter; and,.

  - reconfiguring the landscape to make safe places for visitors to sit and have picnic events.
- Refurbish the landscaping in the area to provide shade to the visitors and a rustic setting for the building.
- Delineate parking for trailers and cars (at least 20 spaces, including handicap).

The proposed camp store site plan, floor plan and estimated project cost are offered in the following exhibits.

Table 5 - Proposed Camp Store Site Plan



Pisgah Inn Service Area Campstore Proposed Site Plan

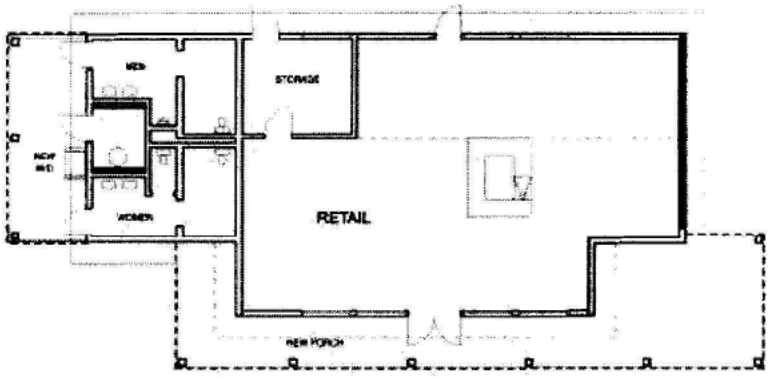
Legend

— — Existing Limit of Pavement

National Park Service
Blue Ridge Parkway
North Carolina

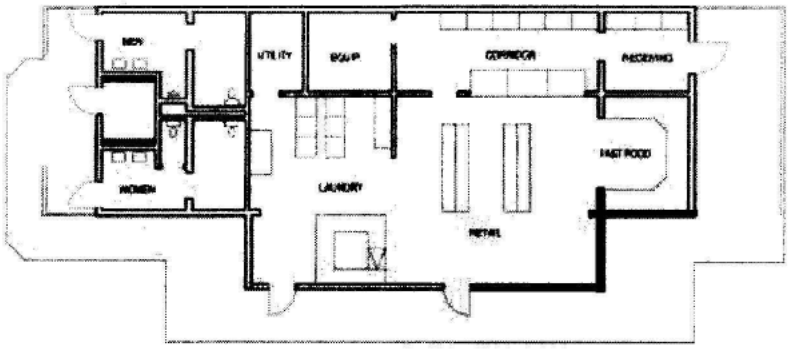
Source: National Park Service

Table 6 - Proposed Camp Store Floor Plan



PROPOSED

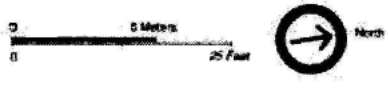
NOTE: ALL DOORWAYS AND WINDOWS IN RETAIL AREA HAVE BEEN RECONFIGURED



EXISTING

Pisgah Inn Service Area Bldg. 242
Existing/Proposed Campstore Plans

National Park Service
Blue Ridge Parkway
North Carolina



Source: National Park Service

Table 7 - Estimated Project Cost for Camp Store

Direct Costs		
Building Reconfiguration:		$93,000
Site Development:		
paving demolition		$1,000
repaving roadways		$4,000
parking area		$78,000
landscaping		$12,000
Deficiency Items:		$28,000
Subtotal		**$216,000**
NPS Class C estimate additions		
Overhead (10%) & Profit (30%)	40%	incl. above
General Conditions	8%	incl. above
Design Contingency	20%	$43,000
Net Construction Cost		**$259,000**
Construction Supervision	8%	$21,000
Construction Contingencies	10%	$26,000
Gross Construction Cost		**$305,000**
Pre-Design Services	5% of NET	$13,000
Supplemental Services	2% of NET	$5,000
Design Services	10% of NET	$26,000
Total Project Cost - Unadjusted for Location		**$349,000**
NPS Regional Factor		incl. above
NPS Park Factor		incl. above
Location Adjustments		**$0**
Retail Equipment	1548 sf	$108,000
Porch and landscape chairs and tables		$2,000
Total Project Cost		**$459,000**
Totals may not add due to rounding		inflation not included: costs 2003 dollars

Source: National Park Service

PROJECT: LODGING – BUILDING A, 241B

Purpose: Refurbish Rooms

Lodging Building A houses four deluxe units and one suite. The scope of work is to refurnish and improve them by adding unit air conditioners (to be installed in a new vertical wall chase).

At the time this work is accomplished, the deficiencies summarized in the scope shall be corrected.

Scope

The project will consist of modifying all four rooms and one suite in the lodging facility, including the following items:

- Remedy deficiencies, including:
  - painting interior and exterior;
  - replacing doors, wall partitions, and dry wall with new fire rating standards;
  - installing new carpets; and,
  - replacing concrete slabs, electrical and lighting system, room and hot water heaters, baseboard heaters, and plumbing system and fixtures.
- Provide new soft goods (room furnishings and décor items) to match the present quality.
- Install air conditioning units in a newly constructed vertical chase (with potential asbestos abatement measures taken during construction).
- Refinish the bathroom and sink areas, including the installation of a new vanity counter.

The estimated project cost is offered in the following exhibit.

Table 8 - Estimated Project Cost for Lodging Building A

Direct Costs		
Building Reconfiguration:	5 keys	$14,000
Deficiency Items:		$74,000
Additional Deficiency Items:		
REPLACE 2ND FLOOR DOORS WITH 20 MINUTE FIRE RATING		$2,000
REPLACE CONCRETE FLOOR SLAB BETWEEN MECH. ROOM AND OFFICE		$2,000
PLACE SHEETROCK IN UTILITY ROOMS FOR FIRE SEPARATION		$2,000
Subtotal		**$95,000**
NPS Class C estimate additions		
Overhead (10%) & Profit (30%)	40%	incl. above
General Conditions	8%	incl. above
Design Contingency	20%	$19,000
Net Construction Cost		**$114,000**
Construction Supervision	8%	$9,000
Construction Contingencies	10%	$11,000
Gross Construction Cost		**$134,000**
Pre-Design Services	5% of NET	$6,000
Supplemental Services	2% of NET	$2,000
Design Services	10% of NET	$11,000
Total Project Cost - Unadjusted for Location		**$153,000**
NPS Regional Factor		incl. above
NPS Park Factor		incl. above
Location Adjustments		**$0**
Soft Goods - rooms	4 keys	$22,000
Soft Goods - suite	1 key	$7,000
Total Project Cost		**$182,000**
		inflation not included: costs 2003 dollars

Totals may not add due to rounding

Source: National Park Service

PROJECT: LODGING – BUILDING B, 495

Purpose: Refurbish Rooms and Increase Views

Lodging Building B houses 26 deluxe units. The scope of work is to refurbish the units, including improving the vanity counters and adding better access to views to the south through installing sliding glass doors on the balcony side – including adding unit air conditioners (to be installed in a vertical chase).

At the time this work is accomplished, the deficiencies summarized in the scope shall be corrected.

Scope

The project will consist of modifying all 26 rooms of the lodging facility, including the following items:

- Remedy deficiencies, including:
  - painting interior and exterior;
  - installing new carpets;
  - replacing doors, wall partitions, and dry wall with new fire rating standards; and,
  - replacing electrical and lighting system, room and hot water heaters, baseboard heaters, plumbing system and fixtures, and select asphalt shingles.
- Provide new soft goods (room furnishings and décor items) to match the present quality.
- Refinish the bathroom and sink areas, including the installation of a new vanity counter.
- Reconfigure the existing exterior southern wall of each unit and install a glazed sliding door and an air conditioning unit, placed in a newly constructed vertical chase (with potential asbestos abatement measures taken during construction).

The estimated project cost is offered in the following exhibit.

Table 9 - Estimated Project Cost for Lodging Building B

Direct Costs		
Building Reconfiguration:	26 keys	$168,000
Deficiency Items:		$165,000
Additional Deficiency Items:		
PLACE SHEETROCK IN UTILITY ROOMS FOR FIRE SEPARATION		$1,000
Subtotal		**$334,000**
NPS Class C estimate additions		
Overhead (10%) & Profit (30%)	40%	incl. above
General Conditions	8%	incl. above
Design Contingency	20%	$67,000
Net Construction Cost		**$400,000**
Construction Supervision	8%	$32,000
Construction Contingencies	10%	$40,000
Gross Construction Cost		**$472,000**
Pre-Design Services	5% of NET	$20,000
Supplemental Services	2% of NET	$8,000
Design Services	10% of NET	$40,000
Total Project Cost - Unadjusted for Location		**$540,000**
NPS Regional Factor		incl. above
NPS Park Factor		incl. above
Location Adjustments		**$0**
Soft Goods	26 keys	$143,000
Total Project Cost		**$683,000**
Totals may not add due to rounding		inflation not included: costs 2003 dollars

Source: National Park Service

PROJECT: LODGING – BUILDING C, 754

Purpose: Refurbish Rooms, Increase Views, and Improve Entries

Lodging Building C houses 20 standard units. The scope of work is to upgrade each unit, effectively to the level of the deluxe lodging units in Building B. This is to be accomplished by reconfiguring the entry areas and providing an improved configuration of furnishings and finishes. The entry is to be opened by removing the wing wall to the vanity area and improving the appearance of the furnishings in the area. Guest storage areas should be provided in newly constructed closets that back up to the bathroom area. This construction will decrease the depth of the room but still provide space for a queen-sized bed and sitting area. Additionally, guest's views to the south will be augmented by installing sliding glass doors on the balcony side – including adding unit air conditioners (to be installed in a vertical chase).

At the time this work is accomplished, the deficiencies summarized in the scope shall be corrected.

Scope

The project will consist of modifying all 20 rooms of the lodging facility, including the following items:

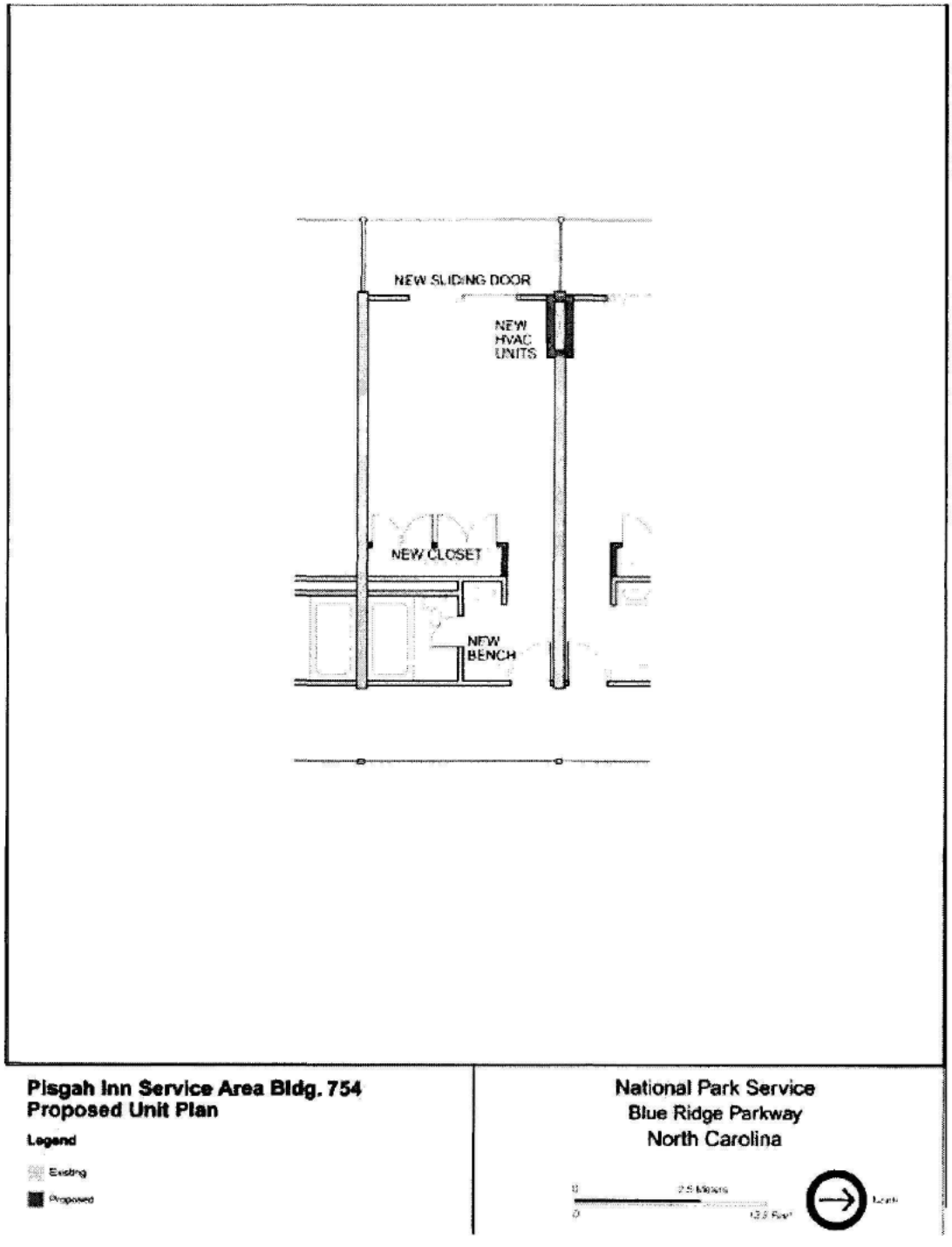
- Remedy deficiencies, including:
  - installing new asphalt shingles, stairway hand railings, carpets and vinyl floor tile;
  - painting interior and exterior;
  - replacing doors, wall partitions, and dry wall with new fire rating standards;
  - replacing electrical and lighting system, sheet rock, room and hot water heaters, bathtub/shower exhaust fans, baseboard heaters, toilets, plumbing system and fixtures, and select asphalt shingles; and,
  - installing new asphalt shingles (end of useful life estimated 2012).
- Provide new soft goods (room furnishings and décor items) to upgrade them to match the fittings package of Building B (including televisions and refrigerators). The rooms should be furnished with a queen size bed and a seating area, to include a durable pull out sofa-bed unit.
- Refinish the bathroom and sink areas, including the installation of a new vanity counter.
- Improve the finishes in the unit by removing the existing wall board and installing sheet-rock covered with finishes to match the quality of those in Building B.
- Improve the entry area by:
  - removing the wing wall at the outside wall between the entry and sink areas;
  - installing a low bench and wall decoration in the area facing the vanity; and,

  - building a closet with sliding doors on the south side of the wall separating the bathroom from the unit.

- Reconfigure the existing exterior southern wall of each unit and install a glazed sliding door and an air conditioning unit, placed in a newly constructed vertical chase (with potential asbestos abatement measures taken during construction).

The proposed room design and estimated project cost are offered in the following exhibits.

Table 10 - Proposed Room Design for Lodging Building C



Source: National Park Service

Table 11 - Estimated Project Cost for Lodging Building C

Direct Costs		
Building Reconfiguration:	20 keys	$239,000
Deficiency Items:		$150,000
Additional Deficiency Items:		
SHEETROCK IN UTILITY ROOMS		$1,000
STAIRWAY HAND RAILING		$2,000
SHEETROCK TO EXTERIOR WALLS		$1,000
Subtotal		**$393,000**
NPS Class C estimate additions		
Overhead (10%) & Profit (30%)	40%	incl. above
General Conditions	8%	incl. above
Design Contingency	20%	$79,000
Net Construction Cost		**$472,000**
Construction Supervision	8%	$38,000
Construction Contingencies	10%	$47,000
Gross Construction Cost		**$557,000**
Pre-Design Services	5% of NET	$24,000
Supplemental Services	2% of NET	$9,000
Design Services	10% of NET	$47,000
Total Project Cost - Unadjusted for Location		**$637,000**
NPS Regional Factor		incl. above
NPS Park Factor		incl. above
Location Adjustments		**$0**
Soft Goods	20 keys	$110,000
Total Project Cost		**$747,000**
Totals may not add due to rounding		inflation not included: costs 2003 dollars

Source: National Park Service

APPENDIX C

Federal Register

Monday,
April 17, 2000

Part III

Department of the Interior

National Park Service

36 CFR Part 51
Concession Contracts; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN 1024–AC72

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends 36 CFR Part 51, the National Park Service (NPS) regulations concerning NPS concession contracts, to comply with the requirements of Title IV of the National Parks Omnibus Management Act of 1998 (the 1998 Act). The 1998 Act provides new legislative authorities, policies and procedures for the solicitation, award and administration of concession contracts by NPS. This rule was published as proposed for public comment in the **Federal Register** as a matter of policy on June 30, 1999. NPS provided a 60-day public comment period on the proposed rule. This was extended by 45 days upon public request. NPS has fully considered all public comments received and considers this final rule to be lawful, consistent with the policies of Congress as expressed in the 1998 Act, and as accommodating to the concerns of commenters as possible in light of the legal and administrative responsibilities of NPS under the 1998 Act and other applicable authorities.

EFFECTIVE DATE: May 17, 2000.

FOR FURTHER INFORMATION CONTACT: Wendelin Mann, Concession Program, National Park Service, 1849 C Street, NW, Washington, DC 20240 (202/565–1219).

SUPPLEMENTARY INFORMATION: The 1998 Act has established a new statutory framework for the solicitation, award and administration of NPS concession contracts. Concession contracts are the form of governmental authorization used to permit persons (concessioners) to provide accommodations, facilities, and services to visitors to areas of the national park system. These services include, for example, lodging, food, merchandising, transportation, outfitting and guiding, and similar activities.

NPS has been awarding and administering concession contracts for this purpose in various forms since 1916 under the terms of 16 USC 1 *et seq.*, the NPS "Organic Act." In 1965, Congress formally established by the Concession Policies Act of 1965, 16 USC 20 *et seq.* (the 1965 Act), a number of policies and procedures regarding concession contracts. NPS regulations contained in 36 CFR Part 51 implemented the 1965 law. On November 13, 1998, the Congress substantially revised these policies and procedures by passage of the 1998 Act. Many of the policies and procedures adopted by NPS in 36 CFR Part 51, as amended, and standard NPS concession contracts developed under the 1965 Act are reflected in the terms of the 1998 Act.

The Congress had two primary objectives in revising the 1965 Act: making the NPS concession management program more efficient and enhancing competition in NPS concession contracting.

The first objective is reflected in provisions of the 1998 Act that call, among other matters, for contracting to private businesses certain aspects of NPS concessions management and the establishment of an NPS Concessions Management Advisory Board to advise NPS on the conduct of its concessions management program. These provisions, although very important, will be implemented administratively by NPS rather than through program regulations.

The second objective, enhancement of competition in NPS concession contracting, is reflected in the 1998 Act in a number of ways. Primarily, however, the 1998 Act achieves greater competition in two ways.

First, to achieve greater competition, the 1998 Act repealed, except for smaller and outfitter and guide concession contracts, the "preference in renewal" provision of the 1965 Act. The 1965 Act's preference in renewal provision required NPS to give existing satisfactory concessioners a preference in the renewal of their concession contracts, if the contract was to be continued after its expiration. This preference required NPS to permit existing satisfactory concessioners to meet the better terms and conditions of the best competing proposal for the renewal of its concession contract. Because of this preference, NPS estimated in 1993 that since 1965 over 99.9% of the renewals of NPS concession contracts had been awarded to the existing concessioner. In fact, from 1965 to 1993, only seven NPS concession contracts out of approximately 1900 awarded were not awarded to the incumbent concessioner (where the incumbent sought the contract). True competition simply did not exist.

The legislative history of the 1998 Act states as follows in connection with the repea1 of the preference in renewal:

> Under the 1965 Act, all satisfactory concessioners are entitled to preference in renewal of their concession contracts or permits. However, in light of the current circumstances of units of the National Park System and in recognition of present business conditions, the Committee considers that generally there is now no need to continue to provide a preferential right of renewal to concessioners in order to obtain qualified operators. Accordingly, to foster appropriate competition in the award of National Park Service concession contracts, the preferential right of renewal provided as a statutory right to existing satisfactory concessioners is repealed by the S. 1693 [the bill that became the 1998 Act]. S. Rep. No. 105–202, at p.31 (1998).

The 1998 Act's other primary means to enhance competition in concession contracting was its reform of the 1965 Act's "possessory interest" concept. Under the 1965 Act, a concessioner that constructed real property improvements on park area lands under the terms of a concession contract obtained a compensable interest in the improvements in the form of a "possessory interest." The value of the possessory interest as of the date of the expiration or other termination of the concession contract was the "sound value" of the improvements to which the possessory interest related, but, not to exceed the "fair market value of the improvements," unless NPS and the concessioner agreed to an alternative value.

The Congress in considering S. 1693 noted that possessory interest under the 1965 Act was frequently criticized as "anti-competitive" because "the value of an existing concessioner's possessory interest was difficult to establish, thereby discouraging submittal of competitive offers for renewal of concession contracts." S. Rep. No. 105–202, at p. 35 (1998).

The 1998 Act reformed the possessory interest provisions of the 1965 Act through the leasehold surrender interest concept. Instead of obtaining a possessory interest in real property improvements as provided by the 1965 Act, the 1998 Act provides a "leasehold surrender interest" in "capital improvements" a concessioner constructs on park area lands "under the terms of a concession contract." The legislative history states as follows about the purposes of leasehold surrender interest:

> The Committee considers that the leasehold surrender interest described by this section will provide concessioners with adequate security for investments in capital improvements they make. This will assist in encouraging such investment in visitor facilities in the National Park System. However, the value of a leasehold surrender interest, i.e., the original construction cost, less depreciation as evidenced by physical

condition and prospective serviceability, plus what amounts to interest on the investment based on the Consumer Price Index, should accurately reflect the real value of the improvements and should not result in undue compensation to a concessioner upon expiration of a concession contract. Additionally, the value of the leasehold surrender interest will be relatively easy to estimate so that a prospective new concessioner and the Secretary [of the Interior] can accurately calculate the amount for purposes of competitive solicitation of concession contracts. *Id.*

This final rule has three major purposes. The first is to set forth procedures as to how concession contracts are to be solicited and awarded by NPS under the 1998 Act. With certain exceptions, the 1998 Act requires competitive award of concession contracts. In some circumstances, an existing satisfactory concessioner may have a right to match the terms of a better competing proposal for a new concession contract. In fact, although the preference in renewal was the most mentioned issue in the comments received, more than 75% of the some 630 current NPS concessioners will continue to benefit from a preference in the renewal of their concession contracts. This is because the 1998 Act extends a preference in renewal to concessioners with contracts that have gross receipts of less than $500,000 or are outfitter and guide concessioners (more than 75% of the total).

Second, unlike the existing 36 CFR Part 51, the final rule sets forth in detail the nature of the compensatory interest in capital improvements a concessioner may construct on park lands under the terms of a concession contract. This leasehold surrender interest is defined in general terms in the 1998 Act. This rule establishes appropriate specific terms and conditions for leasehold surrender interests under the authority of the 1998 Act. Clarity as to the scope of leasehold surrender interest is important to both NPS and concessioners. Accordingly, the leasehold surrender interest subpart of this rule is lengthy. However, concession contracts will be proportionately shorter as for the most part they will refer to this rule with respect to leasehold surrender interest terms and conditions.

Finally, the rule descibes a number of provisions that concession contracts will contain in implementation of the 1998 Act.

The final rule reflects NPS's interpretation of the various provisions of the 1998 Act to appropriately administer the Act's requirements and purposes that are suitable for regulatory implementation. Section 417 of the 1998 Act requires NPS to promulgate regulations "appropriate for its implementation."

A. Response to Public Comments

NPS responds to public comments as follows. The symbol "****" under a section heading indicates that no (non-duplicative) comments requiring a response expressly addressed the section.

Scope of Comments

NPS received 125 public comments on the proposed rule. Of these, the vast majority were from existing concessioners, attorneys representing existing concessioners, or existing concessioner organizations. Several organizations with members that are existing NPS concessioners commented on the proposed regulations. Most of these organizations are generally interested in "outfitter and guide" concession contracts. One organization, referred to in the discussion below as the "general concessioner organization," is an organization with more than 150 existing concessioner members (according to its comment). Several of the members of this organization submitted separate comments that endorsed the comments of the general concessioner organization. Where NPS states below that the general concessioner organization or other organizations made comments, this refers collectively to the comments of the organization and comments separately submitted in support of the organization's views.

Only a handful of "non-incumbent concessioner" individuals and groups commented on the proposed regulations. The vast majority of comments received were from existing concessioners or concessioner organizations. Nonetheless, NPS has taken into account in developing the final rule the interests of the general public and non-incumbent concessioners, *i.e.*, persons that may now seek to become concessioners under the more competitive terms of the 1998 Act. NPS has an obligation to consider these interests under the mandates of the 1998 Act and 16 U.S.C. 1 *et seq.*, the NPS Organic Act, which requires NPS to preserve the resources of the national park system and to provide for their enjoyment by visitors by such means as will leave them unimpaired for the enjoyment of future generations.

1. General Comments

Repeal of the 1965 Act's Preference in Renewal

The major concern of existing concessioners was the 1998 Act's repeal of the 1965 Act's preference in renewal. Some existing concessioners consider it unfair (and illegal) to deprive them of a preference in the renewal of their existing contracts or permits (1965 Act concession contracts). Many commenters criticized NPS in this regard, although the repeal of the preference in renewal was by statute. The basis for this criticism is the perception that NPS has discretion to determine that the 1998 Act's repeal of the 1965 Act's preference in renewal is not applicable to the renewal of 1965 Act concession contracts. This is not the case.

Section 415(a) of the 1998 Act expressly repealed the 1965 Act, including its Section 5 (16 U.S.C. 20d) which required NPS to give existing satisfactory concessioners a preference in renewal of their contracts. In addition, Section 403(7) of the 1998 Act states that, except as provided in the express circumstances set forth in the 1998 Act, NPS "shall not grant a concessioner a preferential right to renew a concession contract, or any form of preference to a concession contract."

NPS has fully reviewed the legal arguments made by existing concessioners and their attorneys. NPS considers, however, that nothing contained in these arguments provides it with a reasonable basis to conclude that the 1998 Act's repeal of the 1965 Act's preference in renewal is not applicable to NPS 1965 Act concession contracts or permits. NPS also points out that a contrary interpretation would be in direct conflict with the 1998 Act's purpose of enhancing competition in concession contracting.

In this connection, one commenter on the proposed regulations, a major existing concessioner (that looks forward to the opportunity to compete freely for additional NPS concession contracts) submitted an opinion of counsel along with its comments on the regulations. The opinion of counsel supports the views of NPS on this issue.

The NPS position is based on the express terms of the 1998 Act and the fact that standard 1965 Act concession contracts do not refer to a preference in renewal.

In this connection, Section 415(a) of the 1998 Act states that the Act is applicable to 1965 Act concession contracts, as follows:

(a) Repeal.—Public Law 89–249 (commonly known as the National Park Service Concession Policy Act; 16 U.S.C. 20 *et seq.*) is repealed. The repeal of such Act shall not affect the validity of any concessions contract or permit entered into under such Act, but the provisions of this title shall apply to any such contract or permit except to the extent such provisions are inconsistent with the terms and conditions of any such contract or permit. References in this title to concessions contracts awarded under authority of such Act also apply to concessions permits awarded under such authority.

Accordingly, unless the provisions of the 1998 Act are "inconsistent with the terms and conditions" of a 1965 Act concession contract, the 1998 Act applies in full to 1965 Act concession contracts.

NPS points out that standard 1965 Act concession contracts make no reference to a preference in renewal. The reason for this is that the preference in renewal provision contained in the 1965 Act did not establish the preference in renewal as a contract right. Section 5 of the 1965 Act states as follows in pertinent part:

The Secretary shall encourage continuity of operation and facilities and services by giving preference in the renewal of contracts or permits and in the negotiation of new contracts or permits to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary.

This provision does not state that an existing satisfactory concessioner has a right to a preference in renewal of an existing concession contract as a contract right or otherwise. It also does not authorize NPS to grant such a contract right. Rather, it imposes a statutory obligation on NPS (acting for the Secretary of the Interior) to give preference in the renewal of concession contracts to existing satisfactory concessioners.

In contrast, other provisions of the 1965 Act state that they authorize NPS to grant contract rights. Section 3(a) of the 1965 Act states that the Secretary "may include in [concession] contracts * * * such terms and conditions as, in his judgment, are required to assure the concessioner of adequate protection against loss of investment * * * resulting from the discretionary acts, policies, or decisions of the Secretary occurring after the contract has become effective. * * *" (Emphasis added.)

In addition, Section 4 of the 1965 Act states that the Secretary "may grant to such concessioners a preferential right to provide such new or additional accommodations, facilities or services as the Secretary may consider necessary or desirable for the accommodation and convenience of the public." (Emphasis added.) Prior to 1979, standard NPS concession contracts contained an express provision that provided a preferential right to additional services.

The 1965 Act, accordingly, clearly distinguished among its provisions that were intended to authorize the establishment of contract rights and provisions that were intended to impose a statutory obligation on the Secretary without establishing a contract right. In furtherance of these authorities and this distinction, existing 1965 Act concession contracts contain a number of contractual provisions authorized by Section 3(a) and Section 4 of the 1965 Act, but make no reference to a preference in contract renewal.

In this connection, NPS notes that, although not required by law to do so, NPS published for public comment in both 1979 and 1992 revisions to its standard concession contract, and, published the final new standard concession contracts in the **Federal Register**. Neither of these standard concession contracts includes a term or condition regarding preference in renewal or even refers to a preference in renewal. Prior standard concession contracts, going back to the passage of the 1965 Act, also do not refer to a preference in renewal.

Accordingly, the 1998 Act's repeal of the 1965 Act's preference in renewal is not "inconsistent with the terms and conditions" of NPS standard concession contracts. Rather, the 1998 Act repeals a statutory requirement obliging the government to give concessioners a preference in renewal.

There is also the matter of congressional understanding of the application of Section 415(a) of the 1998 Act to the 1965 Act's preference in renewal. The legislative history of the 1998 Act set forth above (from both the Senate and House of Representatives) expressly describes the 1965 Act's preference in renewal as a "statutory right" and states that it is repealed by S. 1693. There is no suggestion in the 1998 Act's legislative history that the repeal does not apply to existing concession contracts.

In this connection, Congress must be presumed to know that the 1965 Act described the preference in renewal as a statutory obligation for the Secretary to perform and that 1965 Act concession contracts, formally published in the **Federal Register** in 1979 and 1993, do not provide or refer to a preference in renewal.

The fundamental argument of incumbent concessioners as to why they retain a preference in renewal of their existing contracts is that the contracts contain an implied term granting a preference in renewal. NPS has duly this position. NPS considers this position wrong for three basic reasons.

First, it is firmly established that a "promise" contained in a statute is not binding on the government (or analogous to a contractual promise), since it is presumed that laws are always susceptible to change by future legislatures. As the Supreme Court has put it, the presumption is that a "law is not intended to create private contractual vested rights, but merely declares a policy to be pursued until the legislature shall ordain otherwise." *National R.R. Passenger Corp.* v. *Atchinson Topeka and Santa Fe Ry. Co.*, 470 U.S. 451, 466 (1985) (quoting *Dodge* v. *Board of Education*, 302 U.S. 74, 79 (1937)).

This well-established presumption is grounded in the elementary proposition that the principal function of the legislature is not to make contracts, but to make laws that establish the policy of the state. Policies, unlike contracts, are inherently subject to revision and repeal, and to construe laws as contracts when the obligation is not clearly and unequivocally expressed would be to limit drastically the essential powers of the legislative body. National RR Passenger Corp., 470 U.S. 451, 465 (internal citations omitted).

The Supreme Court has consistently rejected the argument that the statutory or regulatory regime existing at the time of contract formation is implicitly written into the contract by force of law. To the contrary, the Court has always insisted that, regardless of the state of the law at the time of the contract, the contract itself must affirmatively promise future regulatory treatment in order to create an enforceable obligation against the government to provide such future treatment. As stated in *Bowen* v. *Public Agencies Opposed to Social Sec. Entrapment*, 477 U.S. 41, 52–53 (1986), with respect to commercial contracts, absent an "unmistakable" contract provision, "contractual arrangements, including those to which a sovereign itself is a party, 'remain subject to subsequent legislation' by the sovereign." **Id.** at 52 (quoting *Merrion* v. *Jicarilla Apache Tribe*, 455 U.S. 130, 147 (1982)).

NPS also notes that the 1965 Act's preference in renewal imposed a statutory obligation on the Secretary to give existing concessioners a preference in renewal. Section 5, however, unlike Sections 3(a) and (4) of the 1965 Act, makes no mention of any authority to grant concessioners a preference in renewal as a contract right. Authority for a government official to turn a statutory obligation of the official into a contractual right must be provided by

the legislative branch in clear and unmistakable terms. *Home Telegraph & Telephone Co.* v. *Los Angeles*, 211 U.S. 265, 277 (1908). Section 5 of the 1965 Act by no means meets this test.

Finally, even if these considerations are not controlling law, the argument that an implied provision of NPS concession contracts gives the concessioner a contractual right to a preference in renewal is inconsistent with the express terms of almost all current NPS concession contracts and permits with annual gross receipts in excess of $500,000. Almost all of such contracts expressly state (or state in analogous terms) that:

> This Contract [or permit] and the administration of it by the Secretary shall be subject to the laws of Congress governing the Area and rules, regulations and policies whether now in force or hereafter enacted or promulgated. (Emphasis added.)

Accordingly, almost all NPS concession contracts and permits with annual gross receipts in excess of $500,000 expressly state that they are subject to changes in law. The existing concessioners' implied contractual right argument, even if it were otherwise of legal merit, fails under these express terms of NPS concession contracts and permits.

NPS notes that the comments of the general concessioner organization point out that the version of Section 415 of S. 1693 (the bill that became the 1998 Act) that initially passed the Senate referred to "express" terms and conditions of 1965 Act concession contracts while the bill as reported out of the House of Representatives and ultimately enacted did not contain the word "express." The comments suggest that this means that Congress intended Section 415 of the 1998 Act to apply to implied, as well as express, terms of 1965 Act concession contracts.

NPS notes, however, that the legislative history of the 1998 Act provides no guidance as to the intentions of the Congress in deleting the word "express" from S. 1693. In fact, Senator Thomas, the principal author of S. 1693, in commenting on the competitive results of the bill after the unexplained deletion of the word "express," stated as follows:

> We have eliminated the preferential right of renewal so that there is competition for those services as they are renewed. Cong. Rec., S. 12540, Daily Ed., October 14, 1998. (Emphasis added.)

Clearly, Senator Thomas considered that S. 1693's repeal of the preference in renewal was of immediate and comprehensive effect.

NPS also notes Section 419 of the 1998 Act (described in the 1998 Act as a "savings provision"). Section 419 was included in S. 1693 at the same time the word "express" was deleted from Section 415. Section 419(a) "grandfathered" certain existing prospectuses for cruise ship concession permits for Glacier Bay National Park, requiring their award "under provisions of existing law." Section 419(b) then requires that:

> Notwithstanding any provision of this title, the Secretary, in awarding future Glacier Bay cruise ship concession permits for which a preferential right of renewal existed prior to the effective date of this title, shall provide for such cruise ship entries a preferential right of renewal, as described in subparagraphs (C) and (D) of section 403(7). (Emphasis added).

This "savings" provision clearly indicates that the 1965 Act's preference in renewal no longer existed as of the passage of the 1998 Act. Moreover, if 1965 Act concession contracts had an implied contractual right of preference in renewal, as argued by existing concessioners, there would have been no need for the Congress to include Section 419(b) in the 1998 Act, that is, to provide a further preference in renewal after the effective date of the 1998 Act for concession contracts that were to be awarded "under provisions of existing law." The general concessioner organization's argument as to the intention of Congress in deleting the word "express" from S. 1693 is contradicted by the terms of Section 419.

For these reasons, NPS concludes that it is not authorized under the 1998 Act to promulgate concession regulations that implement a preference in renewal except as expressly authorized by Sections 403(7) and (8) of the 1998 Act. However, the final rule, generally tracking a similar provision in the proposed rule, permits any existing concessioner holding a 1965 Act concession contract that makes express reference to a preference in renewal to request the Director to determine whether such express reference may result in a continuing preference in renewal by operation of law. This right of appeal is discussed further under Section 51.116.

Evaluation of Proposals

Another general concern of commenters was the method contained in the proposed regulations for evaluating concession contract proposals and selecting the best proposal. The commenters objected to the lack of a numerical evaluation method and to the fact that environmental considerations and the amount of franchise fee offered were "tie-breakers" in the evaluation system. The commenters argued that these provisions were in conflict with the intent of Congress that consideration of revenue to the United States is subordinate to protection of resources and providing quality visitor services.

NPS does not agree with these perceptions of the consequences of the proposed rule. NPS, however, in the final rule, has accommodated these concerns through several incremental changes, including incorporation of a numerical scoring system into the narrative evaluation methodology contemplated by the proposed rule and by changing the "tie-breaker" provision to track the terms of the 1998 Act. The modifications are discussed below in the section-by-section analysis.

Leasehold Surrender Interest

A further general concern was the terms and conditions of leasehold surrender interest. Commenters considered several of the provisions of the proposed regulations to be inconsistent with the 1998 Act and to give NPS too much authority to determine the scope of a concessioner's leasehold surrender interest. NPS, in the final rule, has made a number of incremental changes to the leasehold surrender interest provisions of the regulations to accommodate the commenters' concerns. These are also discussed in the section-by-section analysis. The general concessioner organization and others also made the point that it is not clear which provisions of the regulations regarding leasehold surrender interest will be incorporated as terms and conditions of concession contracts and not be subject to modification by amended regulations or changes in law. The new NPS standard concession contract will make this clear.

2. Section by Section Analysis of Public Comments and Description of Changes in the Final Rule

Subpart A—Authority and Purpose

Section 51.1 What Does This Part Cover?

(a) This subsection has been modified to more closely track the language of the 1998 Act with regard to the purpose of concession contracts and, in response to comments, to reference Section 415(c) of the 1998 Act which states that the 1998 Act does not supersede the requirements of 16 USC 3101 in regard to revenue producing visitor services in Alaska park areas.

(b) A number of comments mentioned commercial use authorizations as described by Section 418 of the 1998 Act and stated that the regulations should have encompassed them. However, the proposed regulations referenced the separate authority of NPS to issue commercial use authorizations. NPS is in the process of drafting regulations for commercial use authorizations and intends to publish proposed regulations for public comment as a matter of policy. These regulations will also address the scope of the statutory exemption granted non-profit organizations by Section 418 of the 1998 Act, an issue mentioned in several comments.

A comment also stated that the term "incidental visitor services" should be defined. NPS considers incidental visitor services to be supporting services that must be provided to program participants in order to conduct a related interpretive program.

An individual expressed concern that NPS should not allow non-profit organizations to compete with concessioners. However, some competition of this nature does exist and the 1998 Act does not preclude non-profit organizations from being concessioners. In fact, several existing NPS concessioners are non-profit organizations.

An individual commented on the sentence in this section that states that the Director may not authorize the conduct of visitor services by any means other than a concession contract except as may otherwise be authorized by law. The individual interprets this to mean that under this section visitor services may not be authorized under an historic lease entered into pursuant to Section 111 of the National Historic Preservation Act, as amended. The individual objects to this result. However, the sentence to which the individual objects reflects an express statutory requirement contained in Section 403 of the Act. NPS points out that many historic buildings in areas of the national park system are utilized for visitor service purposes by concessioners. NPS also notes that it is in the process of drafting regulations for the leasing of property under Section 802 of the 1998 Act. These regulations, which NPS intends, as a matter of policy, to publish for public comment, will address the scope of activities that may be authorized under NPS leases as opposed to concession contracts.

This subsection also has been modified to more closely track the language of the 1998 Act with respect to the fact that, unless otherwise authorized by law, concession contracts are to be utilized to authorize the provision of necessary and appropriate accommodations, facilities and services to park area visitors ("visitor services").

Section 51.2 What Is the Policy Underlying Concession Contracts?

A comment stated that the policies for permitting visitor services in park areas should require a "balanced and diverse mix" of prices for services. NPS supports the concept that visitor services should encompass a mix of services (*e.g.*, moderate and low cost accommodations in addition to more expensive facilities). However, Section 51.2 as written paraphrases the statutory policies on visitor services set forth in Section 402 of the Act. NPS considers that decisions as to the scope of services to be authorized under concession contracts should be developed on a case-by-case basis through planning under the general guidance of Section 402 of the Act.

Another comment stated that Section 51.2 should require consideration of the factors specific to the park area to be affected. NPS considers that this thought is implicit in Section 51.2, as the findings required by Section 402 of the Act necessarily must be made on a park-by-park basis.

An individual commented that removal of concession facilities from a park area might damage the park more than leaving the facility there. Again, NPS considers that determinations as to what are necessary and appropriate visitor services, including the possible removal of existing facilities, must be made on a case-by-case basis.

A comment stated that there is no clear definition of visitor services contained in the regulations. However, NPS considers that the visitor services definition (as modified) contained in Section 51.3 in the final rule provides a clear definition of visitor services. The comment also states that a United States Post Office should be considered as providing visitor services and therefore, apparently must be awarded a concession contract. NPS, however, does not consider Post Offices as concession operations within the meaning of the 1998 Act. Finally, the comment states that non-profit cooperating associations that provide visitor services should be subject to the requirements of Section 51.2. NPS notes that all visitor services provided in park areas under the authority of the 1998 Act are subject to the requirements of Section 51.2.

Subpart B—General Definitions

Section 51.3 How Are Terms Defined in This Part?

A number of comments were made concerning the definition of terms used in the regulations. Some of these comments, however, in fact were directed at underlying substantive issues, particularly the repeal of the 1965 Act's preference in renewal (discussed under General Comments) and the scope of a preference in renewal under the 1998 Act (discussed under Subpart E). The comments that specifically concerned the wording of the definitions *per se* are as follows.

The "1965 Act"

A comment stated that the words "as amended" should be added. However, the 1965 Act, although repealed by the 1998 Act, was never amended.

"Concession Contract (or Contract)"

The general concessioner organization requested clarification of this definition with respect to when a concession contract can be something other than a written agreement. NPS has deleted the phrase "unless otherwise indicated in this part" in response to this comment.

The general concessioner organization also asked NPS to clarify its position regarding circumstances where an existing concessioner may continue to operate after the expiration of a concession contract. Particularly, the comment requested NPS to make clear that (i) an incumbent concessioner is not required to continue to operate after the expiration of its contract; (ii) that if the concessioner does not choose to continue to operate, NPS must honor the obligations of the expired contract; (iii) that if the concessioner does continue to operate the continuation is to be on the same terms and conditions as the expired contract unless otherwise agreed by the parties; and (iv) the concessioner, if it continues to operate, "shall not be placed in any worse economic position upon the commencement of the new contract than the concessioner would have been had the new contract commenced upon the original expiration date of the prior contract."

NPS considers that the first three statements must be examined in the context of particular contracts and need no amplification in the regulations. The last point seems to suggest that a concessioner that continues to operate after the expiration or other termination of a concession contract may be harmed economically by this action. However, as a concessioner is not obliged to continue operations upon the expiration

or other termination of a concession contract (unless the terms of a concession contract otherwise provide), a concessioner's decision to continue operations would seem to obviate any concerns about possible "economic harm" resulting from the continued operations. In any event, NPS does not consider that changes to the definition of "concession contract (or contract)" are warranted on the basis of these comments. (NPS points out that it uses the phrase "expiration or other termination" of a concession contract in this paragraph as the 1965 Act utilizes this terminology. Under the 1965 Act, the "expiration" of a concession contract is considered a form of contract termination.)

Several comments also objected to the statement in this definition that concession contracts are not contracts within the meaning of 41 USC 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.

NPS has fully considered these views and disagrees with their conclusions. The Contract Disputes Act, by its terms, applies to procurement contracts. A procurement contract is a contract under which the government bargains for, pays for, and receives goods or services. *YRT Services Corporation* v. *United States*, 28 Fed. Cl. 366, 392, n.23 (1993).

The court in YRT Services concluded that an NPS concession contract for lodging facilities "did not constitute a procurement" as NPS is not paying for the [concessioner's] services but is "collecting fees in exchange for granting a permit to operate a concession business." Id.

Several comments on this issue discussed a series of Interior Department Board of Contract Appeals (IBCA) decisions that held that NPS concession contracts are subject to the Contract Disputes Act as procurement contracts. However, several General Accounting Office decisions take a contrary view. NPS has reviewed the IBCA decisions and notes that all but one preceded the decision of the Court of Claims in YRT Services, and all concern 1965 Act concession contracts, not 1998 Act concession contracts. (This final rule, issued under the terms of the 1998 Act, supercedes these IBCA decisions.)

NPS points out that the 1998 Act, unlike the 1965 Act, contains an express statement as to the purposes of NPS concession contracts:

> In furtherance of the findings and policy stated in Section 402, and except as provided by this title 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 units of the national park system. (Section 403 of the 1998 Act. Emphasis added.)

This statutory provision tracks the reasoning in YRT Services as to why 1965 Act concession contracts are not procurement contracts. The purpose of concession contracts is not to procure goods or services for the government. Furthermore, NPS notes that the existing 36 CFR Part 51, the NPS regulations that implemented the 1965 Act, expressly state that concession contracts "are not Federal procurement contracts or permits within the meaning of statutory or regulatory requirements applicable to Federal procurement actions." (36 CFR 51.1.) The Congress, in passing the 1998 Act, must be presumed to have been aware of this regulatory interpretation and the decision of the court in YRT Services. In fact, it appears that the inclusion of the sentence in Section 403 of the 1998 Act to the effect that concession contracts are contracts that "authorize a person to provide accommodations, facilities and services" to park area visitors is a direct confirmation of the position of the court in YRT Services and the NPS interpretation of the 1965 Act contained in the existing 36 CFR Part 51.1. NPS concession contracts do not procure services for the government; rather, they authorize third parties to provide services to park area visitors.

The NPS Organic Act, 16 USC 1 *et seq.*, also expressly recognizes this distinction. 16 USC 17b provides that the Secretary of the Interior is authorized to contract with persons that provide services or other accommodations to the public in national parks to furnish such services or accommodations to the Government without compliance with the 41 USC 5. 41 USC 5 is the title of the United States Code that establishes procurement contract requirements. Accordingly 16 USC 17b makes clear that if the government contracts with a concessioner to provide services and accommodations to the Government (that the concessioner is authorized to provide to the public), the contract is a procurement of services to the government otherwise subject to 41 USC 5. In addition, by implication, this authority also makes clear that a concessioner's authorization to provide goods and services to park visitors is not a procurement contract as the goods and services are not provided to the Government.

NPS, in reviewing this issue, did consider the fact that concession contracts in one sense could be argued to result in "services" to the government, *i.e.*, that concession contracts may require the concessioner to repair and maintain government property assigned to a concessioner under the terms of a concession contract. However, these services (repair and maintenance of government property) flow from the assignment (the equivalent of a lease of government property) of property to a concessioner for use in concession operations.

In this connection, the 1998 Act expressly exempts NPS concession contracts from the application of Section 321 of the Act of June 30, 1932 (40 USC 303b), "relating to the leasing of buildings and properties of the United States," thereby permitting NPS to accept the repair, maintenance and improvement of government property from a concessioner instead of collecting cash rent for the use of the property. The legislative history of the 1965 Act (and a related 1962 law) indicates that this provision was included in the 1965 Act (and a related 1962 law) in response to a Comptroller General Opinion that concession contracts are leases. Accordingly, to the extent that the repair and maintenance of assigned property may be considered as "services" to the government, these services are recognized by the 1998 Act as an authorized function of the assignment of government property under concession contracts, not as a procurement of services for the government.

For these reasons, NPS does not consider that NPS concession contracts are subject to the Contract Disputes Act or to other statutes that apply only to federal procurement contracts. Accordingly, it has left this statement in the final rule. NPS also points out that it does not consider the solicitation of NPS concession contracts to be subject to the Competition in Contracting Act ("CICA") as it applies to procurement contracts. YRT Services at p. 392. In any event, even if it were determined that NPS concession contracts are subject to CICA, the express provisions of the 1998 Act describing mandatory NPS concession contracting procedures make CICA inapplicable to NPS concession contract under its own terms. 41 USC 253(a)(1)(1988).

A comment asked whether the term "concession contract" refers to "concession permits" awarded under the 1965 Act. It does, as indicated in the definition of "concession contract."

A sentence has been added to this definition in the final rule to clarify that concession contracts must include terms and conditions as are required by law, this part, or are otherwise appropriate in furtherance of the purposes of this part and the 1998 Act.

"Concessioner"

The definition of concessioner has been modified in the final rule to track the terms of the 1998 Act.

A comment submitted by a municipality that holds a concession contract suggested that this definition be modified to make clear that municipalities may be concessioners. This is clear under the definition in the final rule. The municipality also offered to pay a higher than minimum franchise fee in consideration of not being required to compete for the award of concession contracts. NPS has not accepted this suggestion, as it is impermissible under the terms of the 1998 Act.

"Director"

The term "Director" has been modified in the final rule in response to comments that expressed concern that the "Director" would be the decision-maker on an appeal from a decision of the "Director." The term Director as used in the regulations applies to the Director personally and duly delegated subordinates of the Director. In circumstances where the rule calls for an appeal to the Director, the appeal must be to a higher authority than the initial deciding official.

"Franchise Fee"

Several comments requested that the term "and rights" be included in this definition after the word "privilege." NPS has not made this change as the definition of franchise fee contained in the final rule tracks the terms of the 1998 Act.

"Offeror"

The definition of the term "offeror" has been modified in order to make clear that an organization does not have to be formally in existence as of the time of submission of a proposal for a concession contract in order for the proposal to be considered by NPS.

"Possessory Interest"

A comment took issue with the sentence of this definition that states that possessory interest does not include any interest in personal property even though a prior concession contract may have provided a compensable interest in personal property described as "possessory interest." The comment makes the point that "this is true only to the extent that such property does not come within the definition of possessory interest" as set forth in the 1965 Act. NPS agrees with this latter statement and has modified the definition accordingly. The comment also suggests that the regulations address the circumstances of the disposition of personal property when a new concessioner is selected for award of an existing concession contract. NPS has done this in Section 51.68 of the final rule.

Other comments objected to the fact that NPS generally does not intend to include in new concession contracts provisions that require a new concessioner to purchase the personal property of a prior concessioner. NPS considers that such provisions in concession contracts are a barrier to competition as a new concessioner is required to buy equipment that it may not need and that may not be in good condition. NPS considers that the marketplace should control in this situation. A prior concessioner may sell its personal property to a new concessioner on a mutually agreeable basis. If agreement cannot be reached, the prior concessioner is free to sell its personal property on the open market. A commenter stated in this connection that the 1965 Act required that new concessioners purchase the personal property of prior concessioners. This was not the case.

"Preferred Offeror"

The general concessioner organization stated that the words "the Director has determined" should be stricken from this definition. The basis of the comment is that the existence of a concessioner's status as a preferred offeror is not always subject to the Director's discretion. However, NPS considers that the definition is accurate. The main body of the regulations describes the circumstances under which the Director may determine an existing concessioner to be a preferred offeror. A comment asked whether there ever may be more than one preferred offeror for a qualified concession contract. The answer is no as only one entity can be a concessioner under the terms of a concession contract as of its termination or expiration.

"Prior Concession Contract" and "Prior Concessioner"

Several comments suggested changes to these definitions. However, in consideration of these comments, NPS has determined that these definitions are not needed to understand the final rule. The definitions have been deleted in the final rule.

"Qualified Concession Contract"

NPS has included in the general definitions section of the final rule for the sake of clarity the definition of a "qualified concession contract" as set forth in the text of the regulation.

"Qualified Person"

One comment suggested adding the word "conserve" to the phrase "protect and preserve" as used in this definition. The request is based on the statement that the word "conserve" reflects language of the 1998 Act and also points out that hunting and fishing, authorized uses in certain park areas, are not considered by some to be consistent with the concept of "preservation." NPS has not made this change as this definition tracks the statutory description of a qualified person contained in Section 403(4)(B) of the 1998 Act. In any event, NPS considers that the statutory language was not intended to alter park area uses such as hunting and fishing where such uses are otherwise permissible.

The definition of "qualified person" in the final rule has been modified in accordance with the changes to the definition of the term "concessioner" and shortened without changing its meaning.

"Right of Preference"

NPS has modified the definition of "right of preference" to more closely track Section 403(7)(C) of the 1998 Act in response to comments concerning the right of preference as described in the proposed regulations.

A comment suggested deletion of the last sentence of this definition, stating that it suggests that NPS can "defeat" a right of preference by changing contract terms and conditions. NPS has not made the requested change. The questioned sentence only states that a right of preference does not give a preferred offeror the right to establish or negotiate the terms of a new concession contract. See the discussion under Section 51.33 with respect to the right of NPS to establish the terms and conditions of new concession contracts.

"Visitor Services"

A comment asked NPS to explain why this definition is limited to accommodations, facilities and services that are provided for a fee or charge as this limitation suggests that services provided free to guests are not permissible. This was not the intention of the definition and it has been clarified accordingly. The definition

also has been clarified to state that activities that are "necessary and appropriate" are to be determined by the Director under the guidance of Section 402 of the Act. The definition has been further modified to more closely track the terms of the 1998 Act and to clarify that NPS itself may provide "visitor services," *e.g.*, operate campgrounds for visitors, as indicated in this section in the proposed regulations.

Another comment suggested that the regulations should contain language that advises NPS managers as to how the courts have interpreted the term "necessary and appropriate" as used in this definition in litigation concerning the 1965 Act. NPS has not accepted this suggestion. Decisions as to what visitor services are "necessary and appropriate" for a particular area are necessarily made on a case-by-case basis by NPS with public participation in planning processes as appropriate. NPS takes into account relevant judicial decisions in its planning decisions. However, planning decisions are fact driven. Every park area is different with respect to resources and the types of visitors and visitor needs and desires.

"Responsive Proposal"

NPS has moved the definition of "responsive proposal" from Section 51.15 of the proposed regulations to the general definitions section of the final rule for the sake of clarity. It has also modified the definition of "responsive proposal" to make clear that the determination is made by the Director.

Subpart C—Solicitation, Selection and Award Procedures

Section 51.4 How Will the Director Invite the Public To Apply for the Award of a Concession Contract?

One comment suggested that the regulations should include procedures and guidelines regarding the contents and scope of a prospectus. NPS considers that the regulations, in accordance with the requirements of the 1998 Act, adequately describe the contents of prospectuses.

This section, in response to a comment from an attorney who argued that rights of an existing concessioner may be impacted by the issuance of a prospectus, has been modified by NPS to clarify that the determinations contained in prospectuses and/or in proposed concession contracts published with prospectuses do not become final NPS administrative decisions until such time as a concession contract is awarded in accordance with this part. NPS also notes that Section 51.47 in the final rule provides an appeal right for concessioners regarding preferred offeror status. Finally, the final rule precludes issuance of a prospectus for a new concession contract earlier than eighteen months prior to the expiration of an existing concession contract that the new contract is to replace, thereby assuring that an existing concessioner does not have to compete for a new contract in circumstances where assessment of the feasibility of the terms and conditions of the new contract would be unduly speculative.

Section 51.5 What Information Will the Prospectus Include?

The general concessioner organization requested that the words "and enhancement" be deleted from this section for the reasons discussed in the commenter's statements under sections 51.20 and 51.21. In those sections, the commenter generally objected to the use of environmental enhancement measures as a factor in the selection of concession contract proposals. For the reasons discussed by NPS under those sections, NPS does not agree with the position of the commenter. However, NPS has modified this section to delete references to environmental "enhancement."

The general concessioner organization objected to the use of the term "minimum" as to the capital investment required by an offeror as referred to in Subsection (a)(5) on the grounds that the 1998 Act does not contain this modifier and its use suggests that NPS is providing itself discretion, "contrary to the law," to accept proposals that offer a higher capital investment than the "minimum."

The comment is correct in stating that the 1998 Act does not contain the word "minimum." Rather, the Act states as follows in pertinent part: "any facilities, services, or capital investment required to be provided by the concessioner." NPS does not consider that this section of the Act, referring to capital investment required to be provided by the concessioner, may reasonably be interpreted as forbidding NPS from taking into account in the selection of proposals for a concession contract the relative amount of capital investment an offeror may be willing to provide. Moreover, the amount of capital an offeror is prepared to invest in the park is demonstrably an appropriate proposal selection concern. The level of concessioner investment in many cases may directly relate to the quality of the visitor facilities to be provided or measures to be taken with respect to the protection, conservation and preservation of the resources of the park area.

NPS has included the phrase "if any" in the final rule in response to a comment that stated that many NPS concession contracts do not require capital investment by the concessioner.

A comment suggested that the term "fixed" be included with respect to "minimum" franchise fees. NPS has not made this change. A franchise fee can be in the form of a fixed fee, a percentage of gross receipts, or other measures as may be described in a concession contract. The regulation does not need to amplify this further.

A comment suggested that the word "ensure" be changed to "assure" in Section 51.5(a)(4). NPS has not made this change as the word "ensure" comes from Section 403 of the 1998 Act.

A comment stated that subsection (e) should make clear that any subfactor set forth in a prospectus must be a subset of the principal selection factor to which it relates. NPS agrees with this comment but considers the regulation is clear in this regard.

A comment suggested that subsection (f) be clarified to acknowledge that some information provided to the Director by concessioners is not subject to public release as confidential. NPS has not accepted this suggestion for the reasons discussed under section 51.113. However, NPS has amended this subsection to fully track Section 403(3)(G) of the 1998 Act that requires NPS to include in concession contract prospectuses:

> Such other information related to the proposed concession operation as 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.

In addition, NPS has moved to this subsection from Section 51.113 (which has been deleted in the final rule), certain information that NPS considers is necessary (where applicable) to allow for the submission of competitive proposals.

A comment suggested that the "estimate" of leasehold surrender interest value to be contained in a prospectus should be provided by the existing concessioner. NPS has not accepted this suggestion. It would be an obvious conflict of interest for an existing concessioner to estimate the value of its own leasehold surrender interest for competitive selection purposes.

A comment suggested that prospectuses should set forth all of the fees a concessioner may be required to pay, not just franchise fees. NPS

considers that this section, which refers to franchise fees and other forms of consideration to be paid to NPS under the new contract, meets the concerns of this comment.

NPS has modified this section in the final rule to make clear that concession contracts may contain terms, where appropriate, incorporating measurable performance standards as suggested in general terms by commenters.

Section 51.6 Will a Concession Contract be Developed for a Particular Potential Offeror?

A law firm suggested a change to this section. However, as the comment refers to the "last paragraph" of this section and the section only contains one sentence, it appears that the reference to Section 51.6 was in error. NPS was not able to identify the section to which the comment was intended to apply.

A comment suggested that this section be amended to make clear that it does not preclude consultation with an existing concessioner as to the proposed content of a prospectus. NPS has amended this section to indicate that consultations with an existing concessioner may occur but that the concessioner may not be provided any information as to the content of a proposed or issued prospectus that is not available to the general public.

A comment suggested that the phrase "as they relate to the visitor services to be provided" be added after "requirements of the Director" in this section. NPS has not made this change. The term "requirements" as used in this section is not limited to visitor services requirements.

Section 51.7 How Will Information Be Provided to a Potential Offeror After the Prospectus Is Issued?

A comment suggested that NPS should hold meetings with potential offerors as a means to ensure that information is equally shared. NPS, in fact, routinely does hold offeror information meetings after the issuance of concession contract prospectuses, particularly with respect to larger contracts. This practice will continue under the final rule, subject to applicable administrative guidelines.

Section 51.8 Where Will the Director Publish the Notice of Availability of the Prospectus?

A comment suggested that NPS should also provide notice "directly to the existing concessioner, both because such concessioner is a logical bidder and because a smooth bidding process requires the incumbent to be apprised of the timing and particulars of the offering."

NPS is unaware of any occasion where an existing concessioner was not aware of the issuance of a prospectus concerning the continuation of the concessioner's operations. NPS, therefore, does not see a need to make this change even if it was otherwise considered appropriate.

A comment suggested that the word "may" in this section be changed to "shall" in order to ensure even-handed solicitation practices. NPS has not made this change as the decision is discretionary.

A comment suggested that notice of the concession opportunity also be included in the **Federal Register**. NPS has not accepted this suggestion. Federal Register publication is expensive and may not significantly increase public awareness of the concession offering. The costs of publication outweigh the limited benefits of publication.

A comment suggested that NPS should maintain a list and notify persons who have expressed interest in concession opportunities. NPS does this now and intends to continue to do so as a matter of administrative practice.

Section 51.9 How Do I Get a Copy of the Prospectus?

A comment suggested that the word "may" in this section be changed to "shall." NPS has not accepted this suggestion as it generally intends to impose a fee for prospectuses only when it anticipates that a large number of requests for copies of a prospectus will be received.

Section 51.10 How Long Will I Have To Submit My Proposal?

A comment suggested that this section should contain guidance as to what constitutes circumstances that would make a shorter than normal response time appropriate. As circumstances may vary greatly, NPS has not made this change. However, in general, a shorter time period is appropriate for smaller concession contracts where potential offerors are likely to be local to the park area and familiar with the circumstances of the concession opportunity.

A comment also suggested that the sixty-day usual response time for submission of proposals be changed to ninety days. Another comment recommended one hundred and twenty days. NPS has not accepted these suggestions as it considers that sixty days is a reasonable response time for routine NPS concession contracting opportunities and does not wish to unduly expand the length of the concession contracting process. In addition, NPS may, under the terms of this section, increase the time if determined appropriate.

Section 51.11 May the Director Amend, Extend, or Terminate a Prospectus or Solicitation?

Several comments addressed this section. They criticize the fact that the Director's right to cancel a concession contract solicitation at any time prior to award of the contract contains no guidelines as to when such a cancellation may occur and that an explanation of a cancellation is not required. One suggested that a cancellation should be only "for cause." The comments also requested an "appeal right" in the event of a cancellation. In response to these comments, NPS has included in this section a sentence describing the circumstances under which a concession contract solicitation may be cancelled. NPS has not accepted the suggestion of an "appeal right." NPS does not consider that any person has an entitlement to the issuance of a concession contract solicitation and that, therefore, the cancellation of a solicitation in and of itself, a discretionary decision by NPS as indicated in the final rule, does not affect the rights of any person. (NPS has changed the term "termination" of a solicitation to "cancellation" in the final rule as "cancellation" is the usual terminology.)

Section 51.12 Do I Have Any Rights If the Director Amends, Extends or Terminates a Prospectus or Solicitation?

Several comments addressed this section. One suggested that an amendment to a concession contract solicitation should only be for "cause." This, of course, is the case. An amendment would be made by NPS only if circumstances called for an amendment. Another comment suggested that the phrase "except for any existing rights" be included at the beginning of this section. However, NPS does not consider that this section as written could be construed as affecting the existing legal rights of any person, as discussed under the previous section.

The final rule has combined Section 51.12 with Section 51.11 for the sake of clarity. Section 51.12 has been deleted in the final rule.

Section 51.13 (Section 51.12 in the final rule) Are There Any Other Procedures That I Must Follow or That Apply to the Solicitation or to the Selection of the Best Proposal?

Several comments expressed concern that NPS, by referencing a lottery system in this section, intended to generally select concessioners by lottery. This is not the case. The use of a lottery was intended to apply only in very limited circumstances. However, in light of other changes made in the regulations with respect to selection procedures (discussed in the next several paragraphs), NPS does not consider that mention of a lottery system is appropriate in the final rule. Reference to it has been deleted from the regulations.

A number of comments criticized NPS for not including in the proposed regulations "simplified procedures for small, individually-owned, concession contracts" as called for by Section 403(1) of the 1998 Act. This section of the proposed regulations, however, did incorporate such simplified procedures, stating that the Director will include simplified solicitation and/or information requirements in prospectuses for concession contracts that are likely to be awarded to a sole proprietorship. NPS notes that, because of the express statutory requirements of the 1998 Act prescribing concession contract solicitation procedures, it is not possible to establish in general a greatly simplified regulatory solicitation procedure for smaller concession contracts. NPS does not consider that Section 403(1) was intended to repeal by implication the numerous statutory requirements regarding the selection process set forth in the 1998 Act. Rather, NPS considers that the simplified procedures referred to in the 1998 Act relate to administrative practices utilized by NPS and any regulatory procedures NPS may adopt in furtherance of the 1998 Act. In any event, NPS considers that the basic elements of the 1998 Act with respect to solicitation procedures, *i.e.*, issuance of a prospectus, evaluation of proposals under specified criteria, and selection of the best proposal, necessarily have to be contained in any selection process, whether or not legally required. Accordingly, the greatest opportunity for simplified procedures is with respect to the information requirements of prospectuses.

NPS, in the development of prospectuses for smaller concession contracts, intends to limit as appropriate the information that needs to be submitted by offerors and the number of subfactors and related information requirements applicable to the principal selection factors. In this way, although the solicitation process will follow the statutory requirements for concession contracting, the paperwork burden will be significantly reduced for smaller concession opportunities.

In addition, NPS has provided for the possible elimination with respect to smaller concession contracts of the secondary selection factor (quality of environmental program) contained in Section 51.17(b)(1) of the final rule, thereby simplifying the selection procedures for smaller concession contracts. NPS has made corresponding changes to Section 51.12 in the final rule to make clear its intentions with respect to simplified procedures for smaller concession contracts.

A municipality that holds a concession contract suggested that the term sole proprietorship be amended to include local governments. NPS does not consider this lawful under the Act as the term "individually owned" clearly refers to a business, not a governmental unit.

Section 51.14 (Section 51.13 in the final rule) When Will the Director Determine If Proposals Are Responsive?

A comment suggested that a time limit be adopted as to when NPS must determine a proposal to be non-responsive. NPS has not accepted this suggestion in light of the varying complexity of concession contract proposals. This section has been changed in the final rule to make clear that a determination of responsiveness must be made prior to or as of the selection of the best proposal.

Section 51.15 (Deleted in the final rule) What Is A "Responsive Proposal?"

A comment suggested that the definition of a responsive proposal needs to be more clearly articulated. NPS has made a change to the definition (discussed under Section 51.3). The commenter's real concern, however, appears to be that the commenter considers that the requirement for submission of a responsive proposal deprives offerors of the ability to object to any of the terms of the solicitation or to submit a conditional proposal. The commenter objected to this as it wishes to have the right to disagree with the terms of the solicitation or the new concession contract, in other words, to disagree with the minimum requirements of the prospectus. NPS does not agree with this point of view. NPS determines the nature and scope of proposed new concession opportunities. They are not a matter of negotiation with prospective offerors. This is made clear by Section 403(3)(A) of the 1998 Act that states that a prospectus shall include the "minimum requirements" of the solicited contract. The 1998 Act also describes certain of these "minimum requirements" in Section 403(3).

However, NPS, in response to this comment, has added a sentence to Section 51.15 in the final rule that makes clear that offerors are permitted to suggest changes to the terms and conditions of a concession contract so long as they agree to be bound by the terms and conditions of the solicitation.

NPS has moved the definition of "responsive proposal" in the final rule to the general "definitions" section, Section 51.3, and deleted this section in the final rule.

Section 51.16 (Section 51.14 in the final rule) What Happens If No Responsive Proposals Are Submitted?

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Section 51.17 (Section 51.15 in the final rule) May I Clarify, Amend or Supplement my Responsive Proposal After It Is Submitted?

A comment suggested that this section be amended to delete the word "responsive." The word has been eliminated from the first sentence. NPS considers, in agreement with the comment, that the Director should have the discretion (but not the obligation) to allow an offeror to clarify a non-responsive proposal. NPS has added a sentence to this section explaining that "clarification" of a proposal refers to making clear any ambiguities that may have been contained in a proposal, not a right to substantively amend or supplement the terms of a proposal.

A comment suggested that permitting amendment of proposals after the submission date may lead to an auction of concession contracts. NPS has not changed the regulation in response to this comment as the overall terms of the regulations preclude an "auction" of concession contracts. However, in response to this comment, NPS has added a sentence to clarify that permitted amendments of proposals are limited to correcting aspects of proposals resulting from a general failure of offerors to understand requirements of the prospectus or to generally fail to submit required information. Amendments are not permitted for the purpose of allowing a particular offeror or offerors to correct proposal deficiencies that were not generally common to all proposals received.

Section 51.18 (Deleted in the final rule) How Will the Director Select an Offeror for Award of the Concession Contract?

As discussed in the response to "General Comments," a number of comments were received that criticized the evaluation and selection process that was contained in the proposed regulations. The comments generally focused on three concerns. The first was that the evaluation was not based on a numerical rating system. The second was that the "tie-breaker" concept was inappropriate and inconsistent with the intentions of the 1998 Act with respect to franchise fees. The third was that the proposed regulations gave environmental aspects of proposals undue weight in the selection process. NPS has modified the regulations to accommodate all of these concerns as discussed below.

In this connection, Section 51.18 has been deleted in the final rule. The method under which the Director will select the best proposal in response to a prospectus is contained in Section 51.16 in the final rule (as discussed further under Section 51.21).

A comment suggested that NPS should not permit members of evaluation panels to be NPS officials that are acquainted with the incumbent concessioner. NPS has not accepted this suggestion. NPS evaluation panels usually include officials from the applicable park area in order to ensure that the circumstances of the park area are understood in the evaluation process. The fact that an official may be acquainted with the existing concessioner is not considered inappropriate by NPS. The contract is awarded to the offeror that submits the best overall proposal.

Section 51.19 (Deleted in the final rule) How Will the Director Select the Best Proposal?

This section also has been deleted in the final rule. Section 51.16 of the final rule describes the method for selecting the best proposal.

Section 51.20 (Section 51.17 in the final rule) What Are the Five Principal Selection Factors?

Several comments objected to the fact that this section and other sections refer to five principal selection factors instead of four as mentioned in the 1998 Act.

The regulations encompass five principal selection factors because one of the statutory factors, Section 403(5)(i), is, in fact, a double factor. This selection factor in the 1998 Act refers to "the responsiveness of the proposal to the objectives of protecting, conserving, and preserving resources of the unit of the National Park System and of providing necessary and appropriate facilities and services to the public at reasonable rates." (Emphasis added). There are unmistakably two distinct factors here, resource preservation and appropriate visitor services. For the sake of clarity, the regulations separate them. To the extent that the commenters may consider that this clarification somehow results in a change to the relative weight of the selection factors, NPS notes that the 1998 Act gives NPS discretion to weight the principal selection factors. NPS could have achieved the same result as splitting selection factor (1) into two factors by doubling the weight given to principal selection factor one so that both of its distinct elements would be of equal weight to the other selection factors. NPS considers, however, that better clarity is achieved by separating principal selection factor (1) into two factors. NPS has changed this section to refer to selection factors in general to conform to changes made to the secondary factor section of the proposed rule in response to public comments.

This section has also been changed in the final rule to delete reference to environmental enhancement as an element of principal selection factor (1) as requested by several comments. As discussed below, the matter of the "environmental enhancement" content of proposals is an element of a secondary factor in the final rule, also as requested by several commenters. See Section 51.17(b)(1). NPS has also made a change to this secondary factor by permitting it to be excluded from prospectuses in certain circumstances. See the discussion under Section 51.13. It has also rephrased the term "environmental enhancement" programs for clarification purposes. NPS considers that a secondary selection factor that is concerned with the conservation of resources in general is appropriate. Park areas are not immune from general environmental impacts. Progressive environmental management practices such as energy conservation and recycling ultimately assist in the preservation of park resources as well as in general environmental enhancement.

This section has also been changed in the final rule to delete the word "quality" in selection factor two as suggested by a commenter as the word "quality" is not contained in the related statutory provision. NPS, however, does not consider that this change results in any change in the meaning of the selection factor.

NPS, in response to a comment, included the phrase "if any," after the term franchise fee in the text of principal selection factor (5) to reflect the fact that it is possible that a concession contract will not call for a franchise fee in special circumstances. NPS did not add the phrase "and/or other forms of financial consideration" to the last two sentences of this selection factor as requested by a commenter as this would be inconsistent with the statutory provision concerning franchise fees.

A comment requested that the word "facilities" be included in the selection factor concerning past experience. NPS has not made this change as the term used in the regulation, "visitor services," is defined in Section 51.3 as including "facilities."

NPS has modified Section 51.20(a)(5) (Section 51.17(a)(5) in the final rule) to delete its last two sentences as unnecessary in light of the terms of principal selection factor (5) (which repeat the statutory mandate of Section 403(5)(iv) of the 1998 Act regarding consideration of franchise fees in awarding concession contracts).

A comment suggested that the term "park area" is ambiguous as used in this section, i.e., that it is not clear whether it refers to areas outside of park boundaries. NPS has not made a change in response to this comment. The term is generally intended to apply to property within park boundaries.

A commenter suggested that an offeror should be rated on its commitment to further the goals of the park area and to operate in a manner that is supportive of the ideals of the park. NPS considers that these interests are implicit in the established selection criteria.

Finally, several comments requested changes in the wording of the principal selection factors to reflect particular interests such as historic preservation, environmental enhancement and the circumstances of particular park areas. NPS, however, has retained the terms used by the statute as appropriate for the general regulations. Particular prospectuses can address special concerns and the circumstances of the applicable park area through subfactors or secondary factors.

Section 51.21 (Section 51.16 in the final rule) How Will the Director Apply the Five Selection Factors and Select the Best Proposal?

This section has been modified by NPS to incorporate a numerical scoring system while retaining the basic approach of evaluating on the basis of narrative analysis. A numerical scoring system was recommended by a number of commenters (discussed under

"General Comments"). Under the numerical scoring system, the first four principal selection factors may score as high as five points each. The fifth principal selection factor, the franchise fee offered, may only receive up to four points, reflecting that, pursuant to the 1998 Act, revenue to the United States is 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. The secondary factor concerning "environmental enhancement" activities (rephrased for clarification in the final rule) may receive up to three points. Any additional secondary factors contained in a prospectus may not have an aggregate score of more than three total points.

One comment suggested that the basis of a numerical point score system should be 100 points. However, NPS considers that evaluation of proposals on the basis of such a large scale results in scores that are difficult to explain, e.g., why did this proposal get rated as 74 while this one received a score of 76? NPS believes that scoring proposals on a lower scale such as contained in the final rule, based on the required narrative explanation of the basis for the score, leads to more credible, objective evaluations. However, the point score system described in the final rule does permit an evaluation panel to award whole number or fractional points, e.g., 2 points, 2.5 points, etc., as appropriate in the circumstances of a particular evaluation. A comment suggested that the same member of an evaluation panel evaluate all proposals with respect to particular selection factors. NPS has not accepted this suggestion. To the contrary, it may be better to have several persons evaluate varying elements of a proposal.

Another comment suggested that the franchise fee offered not be considered in an evaluation of proposals unless two or more proposals were determined as substantially equal. This suggestion has not been accepted as contrary to the intentions of the 1998 Act.

Section 51.22 (Deleted in the final rule) When Will the Director Apply Secondary Factors?

This section has been deleted from the final regulations as unnecessary in light of the changes made to sections 51.20 and 51.21. However, the last sentence of this section has been included in Section 51.17(b)(2) in the final rule. In addition, NPS has included reference to minority and women-owned businesses in this section in the final rule consistent with NPS policy and in response to a suggestion to this effect from a commenter. In connection with this section, NPS recognizes that minority, women and Native American-owned businesses are severely under-represented in the concessioner community. To remedy this, NPS strongly encourages minority, women and Native American-owned businesses to apply for concession contracts. In order to encourage this, NPS will provide interested persons and firms maximum allowable information and assistance by:

(1) Making reasonable efforts to include on all source lists of potential concessioners, minority, women and Native American-owned firms that have expressed interest in becoming a concessioner;

(2) Seeking the advice and assistance of the Minority Business Development Agency in locating and counseling these firms, as well as providing public information on concession opportunities to these firms; and

(3) Providing advice and counseling to these firms on how to participate in concession contract opportunities.

Section 51.23 (Deleted in the final rule) How Will the Director Select the Best Proposal If Two or More Proposals Are Assessed as Substantially Equal after the Director Has Applied the Principal and Secondary Factors?

This section has been deleted from the final regulations in light of the changes made to Sections 51.20 and 51.21. Section 51.16(c) of the final rule describes how the Director will select the best proposal in the event that two or more proposals receive the same highest score after evaluation under Section 51.16(a) and (b).

NPS notes, as discussed in "General Comments," that a number of comments objected to the "tie-breaker" concept contained in this and other sections of the proposed regulations. A concern in this connection was that the tiebreaker concept might lead to franchise fee bidding. The tiebreaker concept has been deleted from the final rule, both with respect to environmental enhancement and franchise fee considerations. In the event that two or more proposals receive the same highest numerical score after evaluation by NPS, the final rule provides that the Director will select as the best proposal the proposal (among those with the same highest score) that the Director considers will, on an overall basis, best achieve the purposes of the 1998 Act. This change is consistent with Section 403(5) of the 1998 Act that calls for NPS to select the best proposal after considering the statutory principal selection factors and any secondary factors that may be included in a prospectus.

Section 51.24 (Section 51.18 in the final rule and retitled) What Happens If a Proposal Is Rated as "Unacceptable" Under Any of the First Four Principal Selection Factors or If the Offeror Is Not a Qualified Person?

A comment suggested that this section should expound upon or give examples as to when a proposal may be considered unacceptable.

NPS, in response to this and other criticisms, has modified this section in the final rule to delete its first sentence and to add to it the balance of the provisions of Section 403(4)(B) of the 1998 Act, i.e., that a proposal must be rejected if it is not responsive to the general objectives of resource protection and proper visitor service. The modified provision, in addition to inclusion of the responsive proposal requirement, contains only the requirements of Section 403(4)(B) of the 1998 Act. NPS does not consider that further amplification of this statutory provision is necessary.

Section 51.25 (Section 51.19 in the final rule) Must the Director Award the Concession Contract That Is Set Forth in the Prospectus?

A comment made the point that the 1998 Act does not permit material amendments to the terms and conditions of a concession contract as set forth in the prospectus. NPS has amended this section in the final rule to reflect this comment.

Section 51.26 (Section 51.20 in the final rule) Does This Part Limit the Authority of the Director?

Several comments expressed concern about this section, asserting that the Director should not have unconditioned authority to determine when to solicit or award a concession contract, to cancel a solicitation, or to terminate a concession contract in accordance with its terms. NPS, however, considers that the provision is a proper statement of its authority and responsibility for the administration of concession contracts under the terms of the 1998 Act. Section 404(10) of the 1998 Act states that "nothing in this title 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 title."

Section 51.27 (Section 51.21 in the final rule.) When Must the Selected Offeror Execute the Concession Contract?

A comment suggested that the time frame for execution of the concession contract by the concessioner should be specified as thirty days in all cases. NPS does not agree with this, as, given the varying type and scope of concession contracts, it needs to retain flexibility as to the time for execution by the selected offeror.

A comment suggested that if the selected concessioner does not receive a concession contract from NPS within ninety days from the date of the selection of the best proposal, or within ten days of the commencement of the contract period, whichever is later, it should have the right to withdraw its proposal. NPS has not included the ninety-day suggestion in the final rule because there may be circumstances in which NPS would not be able to issue a final contract in the specified time.

Section 51.28 (Section 51.22 in the final rule and retitled.) After the Selected Offeror Executes the Concession Contract, When May the Director Execute the Concession Contract?

A comment asked whether the gross receipts referred to in this section are the gross receipts of the concessioner or the franchise fees received by NPS from concessioners. The gross receipts referred to in this section are the gross receipts of the concessioner.

A sentence has been added to this section in the final rule stating that the NPS may execute a concession contract that is not required to be submitted to the Congress at any time after selection of the best proposal and execution by the concessioner.

Subpart D—Non-Competitive Award of Concession Contracts

Section 51.29 (Section 51.23 in the final rule) May the Director Extend an Existing Concession Contract Without a Public Solicitation?

A comment stated that this section should not be used to delay competitive bidding for existing contracts that have already been extended. NPS notes, however, that it does not intend to unduly delay competitive solicitations of concession contract proposals for a concession contract and that the extension authority provided by this section is limited as to when it may be exercised, *i.e.*, that the extension is necessary to avoid interruption of visitor services. NPS, however, has added a sentence to this section making clear that extensions under the 1998 Act in excess of an aggregate of three years are not permissible. It has also added a sentence requiring that notice of an extension be must published in the **Federal Register** thirty days in advance of the award of the extension (except in emergency situations).

Another comment suggested that this section be amended to provide the public with an opportunity to comment on the proposed extension of any concession contract. NPS notes that the 1998 Act does not require public notice in these circumstances. Moreover, NPS considers that public comment is not appropriate in light of the limited term of extensions and the limited circumstances in which a concession contract may be extended non-competitively.

Section 51.30 (Section 51.24 in the final rule) May the Director Award a Temporary Concession Contract Without a Public Solicitation?

A comment made the same point discussed above regarding public notice of an intention to extend concession contracts. NPS has also accepted the suggestion of requiring public notice of an intention to award a temporary concession contract. A sentence to this effect has been included in the final rule.

NPS has also clarified this section to make clear that that temporary concession contracts cannot be extended and may be issued for only a three year term in the aggregate with no ability to issue further temporary contracts for the continuation of the related visitor services. In addition, this section has been clarified to make clear that temporary concession contracts may not be awarded to continue to authorize the continuation of visitor services provided under an extended concession contract.

However, Subsection (b) of this section in the final rule makes a special exception to this latter requirement. It permits the Director to award a temporary concession contract to continue the visitor services provided by an extended concession contract if the concession contract was in effect as of November 13, 1998, and had been extended by that date or was due to expire by its terms by December 31, 1998, and was subsequently extended. This special rule is needed because more than 280 NPS concession contracts in effect as of November 13, 1998, were already extended or were due to expire by December 31, 1998. Due to limited resources, it may not be possible for NPS to award new concession contracts to replace all of these extended contracts within the three year extension period permitted by the 1998 Act. The Director, however, may not award a temporary concession contract in these circumstances unless the Director personally determines that the award is necessary to avoid interruption of visitor services and that all reasonable alternatives to the award of the temporary contract have been considered and found infeasible. The section in the final rule also requires the Director to follow the notice procedures set forth in 51.29 in the final regulations before awarding a temporary concession contract in these circumstances

The general concessioner organization objected to the last sentence of this section that concerns the status of the holder of a temporary concession contract with respect to a preference in renewal. The comment stated that this section should be amended to state that if a "permanent" concessioner is extended on a temporary basis by a temporary concession contract that its right of preference, if any, will be recognized when the temporary contract expires. NPS concurs with this suggestion (except for its anomalous reference to a "permanent" concessioner) and has amended this section accordingly.

Section 51.31 (Section 51.25 in the final rule) Are There Any Circumstances in Which the Director May Award a Concession Contract Without Public Solicitation?

A comment stated that NPS should include a substantive discussion as to how it intends to interpret and administer this section. NPS notes in this connection that the language of the section tracks a related statutory provision, Section 403(11)(C) of the 1998 Act. Given that it is impossible to describe prospectively what "extraordinary circumstances" may exist under which "compelling and equitable considerations" require the award of a concession contract to a particular person in the public interest, thereby permitting the non-competitive award of a full term concession contract, NPS does not believe that further regulatory guidance is generally practicable. However, NPS notes that the legislative history of the related statutory provision makes clear that the occasions when NPS determines that compelling equitable circumstance warrant award of a concession contract to a particular party should be extremely rare. The legislative history further states that "indisputable equitable concerns are to be the determinant of such circumstances." S. Rep. No.105–202, at p. 33 (1998).

NPS has included this last sentence in the final rule. It has also made a change

to clarify that the required notice must identify the person to whom the contract is to be awarded. In addition, it has changed the notice period in the final rule to sixty days. Finally, the final rule requires that the Secretary of the Interior approve any such contract award in addition to the Director.

A local government that is a concessioner (along with numerous comments from individuals in support of the position of the local government) suggested that this section be amended to permit non-competitive awards of concession contracts to governmental entities. NPS does not consider this to be within its legal authority under the Act even if otherwise appropriate.

Another comment requested that this section be clarified to make clear what official initiates a determination to award a concession contract under this authority. Under current internal delegations, the initiating official generally would be the Superintendent of the park area in question. However, no amendment is needed in this regard, as the regulations make clear that the term "Director" applies to subordinates of the Director with appropriate delegated authority.

One commenter requested that a clear direction be given as to whom it should contact in order to obtain the award of a concession contract under this section. The comment implies that a person has a right to a non-competitive award of a concession contract. This is not the case. The award of a contract under this section is in the discretion of NPS under the limited circumstances described in this section.

Subpart E—Right of Preference

As discussed above, a number of comments were received concerning this subpart to the effect that it fails to recognize that existing concessioners have a contractual right to a preference in renewal under 1965 Act concession contracts. The following discussion of comments relates only to the substance of procedures relating to a right of preference under the 1998 Act, not as to whether existing satisfactory concessioners under 1965 Act concession contracts have a contractual right of preference in renewal (discussed under "General Comments").

NPS has added in the final rule for clarity a new section (Section 51.27) explaining what a right of preference is under the 1998 Act (in accordance with the definitions in Section 51.3). NPS has also split Subpart E of the proposed regulations into two subparts in the final rule, Subpart E concerning the operation of a right of preference and Subpart F describing how a concessioner obtains a right of preference. NPS has also rearranged the order of the sections as contained in the proposed regulations to conform to the content of the new subparts as contained in the final rule. These changes are editorial, not substantive.

Section 51.32 (Section 51.50 in the final rule and retitled) Does the Existence of a Preferred Offeror and a Possible Right of Preference Limit the Authority of the Director to Establish the Terms of a Concession Contract?

A comment stated that this section gives NPS unilateral authority to modify the terms of existing concession contracts. NPS considers this an obvious misreading of this section but has added the word "new" to this section to resolve any ambiguity in this connection.

Section 51.33 (Section 51.36 in the final rule) What Three Conditions Must Be Met Before the Director Determines That a Prior Concessioner is a Preferred Offeror?

Several comments expressed concerns about this section to the effect that it provides NPS the ability to deprive a concessioner of a right of preference by amending the facilities and services authorized by a new concession contract to materially differ from those authorized by the prior concession contract. Although this was not the intention of NPS, the concern has been addressed in the final rule.

To understand the issue, the relevant provisions of the 1998 Act must be examined. The 1998 Act states as follows in pertinent part about the right of preference:

> As used in this title, the term preferential right of renewal ["right of preference" as defined in the proposed regulations and final rule] means that the Secretary of the Interior, subject to a determination by the Secretary that the facilities or services authorized by a prior concession contract continue to be necessary and appropriate within the meaning of section 402, shall allow a concessioner qualifying for a preferential right of renewal the opportunity to match the terms and conditions of any competing proposal which the Secretary determines to be the best proposal for a proposed new concession contract which authorizes the continuation of the facilities and services provided by the concessioner under its prior contract. Section 403(7)(c) of the 1998 Act. (Emphasis added).

In addition, Section 403(10) of the 1998 Act states:

> (10) Nothing in this section shall be construed as limiting the authority of the Secretary of the Interior to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this title.

Accordingly, a right of preference under the 1998 Act only exists if the new concession contract "continues" the facilities and services provided under a prior concession contract. In this connection, NPS clearly has the authority under Section 403(10) of the 1998 Act to establish the terms and conditions of new concession contracts in furtherance of the purposes of the 1998 Act, even if any changes made may mean that the facilities and services authorized under a prior concession contract are not continued under a new concession contract. The concern of the commenters is that NPS will abuse this authority in order to deprive incumbent concessioners of a right of preference.

The proposed regulations state in Section 51.33(a) that in order for an otherwise eligible prior concessioner to obtain a right of preference to a new concession contract, the new concession contract must provide only for the continuation of the visitor services authorized under the prior concession contract. In addition in this connection, the proposed regulations state that the visitor services to be continued under the new contract may be expanded or diminished in scope but may not materially differ in nature and type from those authorized under the prior concession contract. NPS considers that this section properly reflects the intentions of the 1998 Act and properly reflects the discretion vested in NPS under the 1998 Act in this connection.

However, in response to the comments of existing concessioners, NPS has deleted the word "only" from Section 51.33(a) in conformance with Section 403(7)(C) of the 1998 Act.

This change appears in Section 51.37 in the final rule. NPS, for editorial purposes, has moved the right of preference condition regarding continuation of visitor services in a new concession contract from this section to Section 51.37. This is because the nature of the new concession contract (*i.e.*, whether it "continues" the previous visitor services) is more logically an element of determining what contracts are qualified new concession contracts. Moving this requirement to Section 51.37 in the final rule did not alter its meaning with respect to the circumstances in which an existing concessioner is entitled to a right of preference.

As a conforming amendment, Section 51.36 in the final rule has been clarified to state affirmatively that to be a preferred offeror the applicable new concession contract must be a qualified

concession contract. NPS has also modified this section in the final rule to clarify that a qualified prior concession contract for purposes of this section refers only to whether the prior concession contract was an outfitter and guide concession contract in accordance with the terms of the 1998 Act, not to the level of its gross receipts. It is possible that a prior concession contract with annual gross receipts in excess of $500,000 may be estimated to have less than $500,000 in annual gross receipts under the new concession contract, thereby providing a right of preference to the holder of the prior contract if otherwise qualified.

The general concessioner organization requested that a 50% test be incorporated into the regulations, *i.e.*, that if the new contract authorized the continuation of no less than 50% of the facilities and services of the prior concession contract, that the right of preference would obtain. NPS does not consider this suggestion to be within its authority under the 1998 Act as the 1998 Act states that there must be a continuation of the facilities and services, not a continuation of half of the facilities and services. Even if this change were within its authority under the 1998 Act, however, NPS considers that it would be inappropriate in light of the policies of the 1998 Act regarding competitive award of concession contracts.

NPS considers that the changes made to Section 51.33(a) in the final rule duly accommodate the concerns of the commenters.

Section 51.34 (Section 51.37 in the final rule) How Will the Director Determine That a Concession Contract Is a Qualified Concession Contract?

One comment suggested that the $500,000 figure contained in this section be subject to upward adjustment based on inflation as measured by the Consumer Price Index. However, the 1998 Act states the $500,000 figure with no reference to inflation while elsewhere the Act specifies that inflation is to be taken into account in the calculation of certain figures. NPS considers that adding an inflation adjuster to the $500,000 figure is not authorized by the 1998 Act. If it were authorized, NPS considers that such a change would be inappropriate in light of the competitive award objectives of the 1998 Act.

Another comment stated that the term "first calendar year" as used in this section is ambiguous, *e.g.*, if a contract is awarded mid-year, one may construe the period for calculating the gross annual receipts to be less than one full year. The comment suggested that the term the "first twelve months" be used instead of the "first calendar year." NPS has made this change.

Two comments were concerned about the fact that the period for which the $500,000 figure will be determined is the first year of the new contract rather than the entirety of the term of the new contract. The 1998 Act provides no express guidance in this connection. NPS has considered this comment but continues to believe that, in light of the difficulty in accurately projecting future revenues, limiting the determination of gross receipts to the first year of the new contract is reasonable.

The comments also suggest that if a concession contract that is to be continued under a new concession contract had gross revenues in excess of $500,000 in its last year, that it automatically should be considered that the new concession contract will have revenues in excess of $500,000 in the first year of a new contract. NPS considers that, although the revenues of a prior contract must be taken into account in determining the projected revenues of the new contract, the 1998 Act clearly indicates that the $500,000 figure relates to the revenues of the new concession contract, not to the revenues of the prior concession contract.

Another comment suggested that the $500,000 figure is arbitrary. NPS notes that the figure was set by the 1998 Act. The same comment objected to the fact that NPS is to determine whether prospective concession contract will have gross receipts in excess of $500,000, suggesting that the decision should be based on submittals to NPS under the prior concession contract. Further, the comment suggested that an existing concessioner should be consulted by NPS and provided an appeal if the concessioner disagrees with the decision of NPS. NPS has not accepted these suggestions in general, although it notes that a concessioner has an appeal right under Section 51.47 in the final rule as to a determination, among other matters, that a new contract will have gross receipts in excess of $500,000. In addition, a major basis of determining the gross receipts of a new concession contract will be the annual financial reports submitted under the previous concession contract. NPS considers that the procedures set forth in the final rule are appropriate and that further procedures regarding the determination of the gross receipts of a new concession contract are unnecessary.

Section 51.35 (Section 51.38 in the final rule) How Will the Director Determine That a Concession Contract Is an "Outfitter and Guide" Concession Contract?

Several comments expressed a concern about this section. One asked why outfitters and guides have a preference in renewal. Outfitters and guides have a preference in renewal under Section 403(8) of the 1998 Act.

Other comments focused on the phrase "solely authorizes" in this section. The comments suggest in general that minor or incidental services additional to outfitter and guide services should be permitted by NPS without loss of a right of preference by an outfitter and guide concessioner. However, NPS notes that Section 403(8) of the1998 Act contains the "solely authorizes" phrase which is merely repeated in the regulations. NPS, accordingly, has not made the suggested changes. However, a further discussion of a related issue is contained under Section 51.37.

Section 51.36 (Section 51.39 in the final rule) What Are Some Examples of Outfitter and Guide Concession Contracts?

A comment suggested that these examples include educational activities conducted by non-profit organizations. NPS has not accepted this suggestion as the examples given are of activities that are applicable whether or not the concessioner is a profit or non-profit organization.

Other comments suggested that guided mountain biking, float trips and other activities be added to the list of examples of outfitter and guide concession contracts. NPS has not done this, as the listed activities are only examples and not meant to be exclusive. Inclusion or exclusion of an activity as an example does not necessarily indicate that a particular related concession contract will be determined to be an outfitter and guide contract.

Section 51.37 (Deleted in the final rule) What Facts and Circumstances Will the Director Take Into Account When Determining if a Concession Contract Is an Outfitter and Guide Concession Contract?

A number of comments criticized this section with respect to its third and fourth sentences. Rather than modify these two sentences, NPS has deleted this section in light of the description of outfitter and guide concession concession contracts contained elsewhere in this subpart.

A concern was also expressed that activities of an outfitter and guide

concessioner outside of a park area should not be relevant in determining whether the concession contract is an outfitter and guide concession contract. NPS notes, however, that the relevant test is not whether activities take place outside of park area boundaries but whether activities are authorized by a concession contract. In any event, this issue is academic in light of the deletion of this section in the final rule.

Section 51.38 (Section 51.40 in the final rule and retitled) What Are Some Circumstances That Will Indicate That Outfitter and Guide Operations Are Conducted in the Backcountry?

A commenter was concerned that ferry boat service to an island in an urban setting might be considered as a "backcountry activity" within the meaning of this section as the service occurs in an area "remote from roads." The comment requested clarification in the regulations in this respect. NPS does not consider that this section needs clarification as it is meant to be applied on a case-by-case basis.

Another comment suggested that this section be changed to state that if an activity met any one of the factors stated in this section that it should be considered as a backcountry activity. NPS has not accepted this suggestion. The determination of whether outfitter and guide operations are conducted in the backcountry of a park area must be made on a case-by-case basis. There are no precise definitions of backcountry. Accordingly, while the regulations provide some factors that generally indicate that outfitter and guide operations are conducted in the backcountry of a park area, none of these factors can be considered as individually determinative of the issue. This section also has been modified to make clear that the determination of "backcountry" is to be made on a park-by-park basis taking into account the particular geographical circumstances of the relevant park area and the general factors identified.

The same comment suggested that the phrase that operations occur "in areas remote from roads and developed areas" be changed to "in areas not readily accessible to the public." NPS did not accept this suggestion as it considers that the term backcountry as used in the 1998 Act relates to more remote areas of a park rather than areas "not generally accessible to the public."

The same comment also suggested that a sentence be added to this section to the effect that a concession contract's operations may be determined to be conducted in the backcountry even if none of the circumstances specified in this section were met. NPS considers that the section makes this clear, particularly as amended in the final rule.

A comment stated that the term "backcountry" might describe an experience rather than actual physical setting, suggesting that rock climbing in a front country location should be considered as a backcountry activity. NPS has not made this change as NPS considers that the 1998 Act's reference to backcountry relates to physical location, not the nature of an experience.

Another comment suggested three revisions to this section:

1. The phrase regarding search and rescue should be deleted on the basis that search and rescue could be necessary even in park areas next to a parking lot;

2. The section should state that the health and safety of park visitors is more readily ensured by the supervision of experienced outfitter and guide services, regardless of the proximity to developed areas of a park; and

3. The role of outfitters and guides in protecting park resources by supervising visitation and reducing impacts should be recognized by adding the statement "the operations assist in dispersing visitors away from signature resources, features and other areas of intense visitation."

NPS has not accepted these suggestions. With respect to the first, although it is true that in certain cases search and rescue many be necessary even in close proximity to a parking lot, this is not relevant to the meaning of backcountry in this part.

NPS considers the second two suggestions to be policy positions that are not relevant to the determination of what is backcountry within the meaning of the 1998 Act.

Section 51.39 (Section 51.41 in the final rule) 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?

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Section 51.40 (Section 51.42 in the final rule) Are There Exceptions to This Compensable Interest Prohibition?

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Section 51.41 (Section 51.43 in the final rule) Who Will Make the Determination That a Concession Contract Is an Outfitter and Guide Contract?

A comment objected to the fact that only the Director personally, or a Deputy or Associate Director, may make the determination as to what concession contracts are outfitter and guide concession contracts. The commenter suggests that these decisions should be made at the field level under appropriate guidance. NPS, however, has not accepted this change. Given the varied nature of each park area and the judgmental factors that must be considered in making these determinations, NPS considers that making them on a national level is necessary for the sake of consistency. The term "Director" has been deleted from this section in the final rule to make clear that the Director is able to consider appeals under this section.

Section 51.42 (Section 51.44 in the final rule) How Will the Director Determine If a Prior Concessioner Was Satisfactory for the Purposes of This Part?

A number of comments were received in response to this section. The majority of the comments, including several from existing concessioners, supported the general intention of this section to the effect that a track record of satisfactory operations by an incumbent concessioner is a necessary precondition to entitlement to a right of preference. This intention reflects the requirements of Sections 403(8)(B)(ii) and 403(8)(C)(i) of the 1998 Act which states that an incumbent concessioner, if otherwise qualified, is entitled to a right of preference only if "the Secretary of the Interior has determined that the concessioner has operated satisfactorily during the term of the contract (including any extensions thereof)." Several comments stated that NPS has no authority under the 1998 Act to condition a right of preference on satisfactory performance. This view is clearly in conflict with the terms of the 1998 Act.

A comment objected to the phrase "and other relevant facts and circumstances" in subsection (a) and "among other considerations" in subsection (b) as being too vague. NPS has deleted the second phrase in the final rule in response to this comment but has left the first phrase. This is because there may be occasions when NPS becomes aware of actions of a concessioner that may result in a determination of less than satisfactory performance that were not revealed in a annual evaluations.

The general concessioner organization objected to subsection (b) on the grounds that a concessioner can be found to be less than satisfactory for any two years of the term of the contract and therefore lose its potential right of preference without an opportunity to

recapture the opportunity. To the contrary, another concessioner organization stated that this provision is "reasonable and promotes diligence to achieve acceptable performance standards." Another concessioner organization stated that the provision is "fair and appropriate to both the goals of performance-based renewal and provision of quality services."

Several comments suggested that two years of less than satisfactory performance should not automatically mean that a concessioner is determined as not satisfactory for purposes of a right of preference, *i.e.*, that the concessioner should be given an opportunity to correct less than satisfactory performance. NPS has not made this change as less than satisfactory annual evaluations are not a surprise to concessioners. There is ample opportunity to correct deficiencies that may result in less than satisfactory performance.

NPS, however, in this section in the final rule, also has made clear that the determination of unsatisfactory operation that automatically results from two or more less than satisfactory annual evaluations is not to be applied retroactively. This does not necessarily mean that a concessioner that had less than satisfactory evaluations prior to the effective date of the final rule may not be determined to have operated unsatisfactorily over the term of its contract. Rather, it only means that such a result is not required.

One comment suggested that "unsatisfactory" performance be defined as an unsatisfactory rating that is not corrected and, that, during the term of the prior concession contract, the overall rating as satisfactory or unsatisfactory be determined by averaging each year's performance rating. NPS considers these suggestions inappropriate, as they would encourage marginal or unsatisfactory performance by concessioners.

For these reasons, NPS has not changed the two-year track record requirement of this section in the final rule.

However, a number of comments particularly objected to the requirement of subsection (b) to the effect that less than satisfactory performance in either of the last two years of the term of a concession contract results in the loss of a right of preference. The comments considered this unfair. NPS has deleted the final sentence of this section in the final regulations. It agrees that the two-year less than satisfactory performance requirement should be the same with respect to all years of a contract.

A comment from a concessioner organization stated that, "overall, the Park Service has done an admirable and dedicated job" with respect to its annual performance evaluations. However, the comment, and others, suggested that the regulations should provide guidance as to the standards to be applied in annual concessioner evaluations. NPS has not accepted this suggestion. It would not be practical to include in the regulations generic standards for annual evaluations beyond the statutory standard of satisfactory performance under the terms of the applicable concession contract. NPS does point out, however, that its annual evaluation program permits a concessioner that receives a less than satisfactory rating to appeal this determination to the applicable NPS Regional Director.

NPS also notes that it is the process of considering revisions to its existing evaluation program in light of the 1998 Act and in light of NPS's intention to implement further "performance-based" contracting with respect to concession contracts.

Section 51.43 (Section 51.45 in the final rule) Will a Prior Concessioner That Has Operated for Less Than the Entire Term of a Concession Contract Be Considered a Satisfactory Operator?

A number of comments objected to this section and several questioned its legal basis.

The legal basis for this section is found in Sections 403(8)(B)(ii) and 403(8)(C)(i) of the Act which require as a condition to a right of preference that the Secretary determine that "the concessioner has operated satisfactorily during the term of the contract (including any extensions thereof)." The intention of these sections is clear. A right of preference, which amounts to a statutory right to have greater rights to the award of a government contract than the general public, must be earned through satisfactory performance. If NPS adopted the position espoused by several of the commenters, a business could purchase a concession contract on the very last day of the term of a concession contract and thereby obtain the statutory right of preference with no demonstration whatsoever of satisfactory performance. NPS does not consider this to be the intention of the 1998 Act or sound public policy.

NPS, however, in response to these comments, has made changes to this section in the final rule. Particularly, instead of requiring that a new concessioner operate satisfactorily for two years under a contract with a term of ten years or less or four years under a contract with a term of more than ten years, NPS has reduced these "track record" periods to one year for concession contracts with a term of five years or less and two years for concession contracts with a term of more than five years. NPS notes that the final rule in this respect is less restrictive than the comparable rule contained in 36 CFR 51.5(a) in effect prior to this final rule.

NPS considers that these changes will alleviate concerns about the ability to sell concession contracts toward the end of a contract term (in accordance with Section 408 of the 1988 Act) while providing a sufficient demonstration of satisfactory performance upon which to base a determination of a right of preference.

One comment suggested that the "track record" period of satisfactory performance under this section should not apply to contract extensions. However, the sections of the 1998 Act quoted above clearly reference extensions in this connection. In addition, the existing 36 CFR 51.5 contains these same types of "track record" requirements regarding the granting of a preference in renewal to existing concessioners. Congress must be presumed to have been aware of these existing requirements while considering the legislation that became the 1998 Act.

The same comment suggested that this section be amended to state that the first day of operation for purposes of the section be changed from the date of approval of the assignment of the concession contract until the first day of actual operations by the new concessioner. NPS has not made this change as a new concessioner lawfully cannot begin to operate prior to the approval of a contract assignment by NPS and, once the assignment is approved, the new concessioner automatically is the lawful operator of the concessioner. The final rule has also been clarified by expressly stating that the two-year track record requirement applies to new concessioners that result from assignments, including assignments of controlling interests in concessioners, as defined in this part.

Section 51.44 (Section 51.46 in the final rule) May the Director Determine That a Prior Concessioner Has Not Operated Satisfactorily After a Prospectus Is Issued?

A comment suggested that NPS delete this section, and, if NPS determines that performance has substantially degenerated after a prospectus is issued, that NPS terminate the contract and bring in an operator on a temporary basis. NPS, however, considers that this

section is necessary for the reasons stated in the next several paragraphs, and, with respect to the latter suggestion, considers it impracticable in light of the time it takes to terminate a contract for unsatisfactory performance. Other comments repeated the position that any requirement regarding satisfactory performance in order to obtain a right of preference is unlawful. NPS disagrees for the reasons discussed in the previous several paragraphs.

The intention of this section is to permit a determination that a concessioner has not operated satisfactorily after the date a prospectus is issued and prior to the award of a contract. It was intended to apply to situations where, after a prospectus is issued, a second less than satisfactory annual evaluation is made that precludes a preference in renewal, or, previously unknown information becomes available which causes NPS to withdraw a previous determination of satisfactory performance. The provision is necessary to avoid a less than satisfactory concessioner from exercising a right of preference by virtue of fortuitous timing of performance evaluations or by lack of knowledge by NPS of relevant information.

However, NPS has changed this section in response to the comments received to make clear the limited circumstances in which it is meant to apply.

As part of this change, NPS has included a provision that permits a performance evaluation for right of preference purposes after issuance of a prospectus on the basis of a shortened operating year if necessary to make a last evaluation of satisfactory performance for right of preference purposes prior to the selection of the best proposal submitted in response to a prospectus.

Section 51.45 (Section 51.48 in the final rule) What Happens to a Right of Preference in Case of Termination of a Concession Contract for Unsatisfactory Performance or Other Breach?

One commenter provided combined comments directed to this section and Section 51.44 but it appears that the comments were in fact directed to Sections 51.42 and 51.43. They have been responded to under those sections.

A comment requested that the last sentence of this section be "conformed in accordance with our comments on Section 51.44." NPS reviewed those comments but considers that the last sentence of Section 51.45 is necessary to make clear that termination of a concession contract is normally a "last resort" remedy for NPS and that, therefore, the fact that NPS may not have terminated a concession contract for unsatisfactory performance does not limit the authority of NPS to determine that a concessioner nonetheless operated less than satisfactorily.

Section 51.46 (Section 51.49 in the final rule) May the Director Grant a Right of Preference Except in Accordance With This Part?

The last two sentences of this section have been deleted as unnecessary.

Section 51.47 (Section 51.29 in the final rule) How Will I Know If a Preferred Offeror Exists?

The final regulation contains a new section 51.28 that describes when NPS will determine that a preferred offeror exists.

Section 51.48 (Section 51.26 in the final rule) What Solicitation, Selection and Award Procedures Described in This Part Will Apply to the Solicitation?

One comment was directed to this section but it clearly pertained to Section 51.84, not 51.48.

Section 51.49 (Section 51.30 in the final rule) What Must a Preferred Offeror Do Before He or She May Exercise a Right of Preference?

The general concessioner organization took the position that an existing concessioner under a 1965 Act concession contract not only has a "continuing contractual right of preference" but also has a contractual right to exercise the right of preference even if the concessioner chooses not to submit a responsive proposal in response to a prospectus. The organization makes this argument despite the fact that Sections 403(8)(B)(iii) and 403(8)(C)(ii) of the 1998 Act expressly state that in order for an incumbent concessioner to exercise a right of preference it must have "submitted a responsive proposal for a proposed new concession contract which satisfies the minimum requirements established by the Secretary pursuant to paragraph (4)." The commenter does not explain the basis of its position, other than to say that the requirement for submission of a responsive proposal was not included in the 1965 Act.

NPS considers this position baseless for several reasons in addition to the fact that it is in direct contradiction of the express terms of the 1998 Act.

The first reason is that the responsive proposal requirement of the 1998 Act reflects the terms of 36 CFR part 51 in effect prior to the passage of the 1998 Act. 36 CFR part 51 required, prior to this amendment, the submission of a responsive proposal by an existing satisfactory concessioner in order to be given a preference in renewal by NPS under the 1965 Act. In fact, the 1998 Act codifies the prior 36 CFR Part 51 in this respect.

In 1995, an incumbent concessioner challenged the validity of the responsive proposal requirement of 36 CFR part 51 after refusing to meet the minimum investment requirements of a prospectus for a new concession contract. *Hotcaveg* v. *Kennedy*, 883 F. Supp. 428, (E.D. Mo. 1995), *aff'd*, 72 F. 3rd 133 (8th Cir. 1995). The district court in *Hotcaveg* held that the responsive proposal requirement was not a violation of the 1965 Act, stating that:

> Requiring concessioners to meet minimum standards to improve the quality of facilities in national parks is a reasonable interpretation of the role of the National Park Service. The Secretary is carrying out his duty mandated by statute. *Id.* at 429.

Congress must be presumed to have been aware of the NPS regulatory requirement regarding submission of responsive proposals when it was considering the 1998 Act and also aware of the fact that the 8th Circuit had upheld this requirement in 1995 as an appropriate implementation of the 1965 Act. NPS points out that the general concessioner organization filed an *amicus* brief in Hotcaveg on behalf of the plaintiff and also objected to, as unlawful, the responsive proposal requirement of 36 CFR part 51 at the time it was proposed by NPS.

Secondly, 1965 Act concession contracts, of course, make no reference to a contractual right to not be obliged to submit a responsive proposal as a condition to being given a preference in renewal. Accordingly, NPS has rejected the commenter's position that the responsive proposal requirements of the 1998 Act do not apply to 1965 Act contracts because of Section 415 of the 1998 Act.

Further, such an interpretation would clearly frustrate the 1998 Act's goal of enhancing competition in concession contracting. If existing concessioners with a preference in renewal are not required to submit responsive proposals, prospective competitors will rightly conclude that submission of a competing proposal is a waste of time as the incumbent concessioner has a "lock" on the award of the new contract, evidenced by the fact that the incumbent, unlike the competitor, is not even required to submit a responsive proposal in order to compete for the contract.

Section 51.50 (Section 51.31 in the final rule) What Happens If a Preferred Offeror Does Not Submit a Responsive Proposal?

A comment repeated the argument regarding submission of a responsive proposal. This issue is responded to under Section 51.49.

Section 51.51 (Section 51.32 in the final rule) What Is the Process If the Director Determines That the Best Responsive Proposal Was Not Submitted by a Preferred Offeror?

One comment suggested that this section should make clear that NPS must advise the preferred offeror as to the specific areas in which it must amend its proposal to meet the better terms and conditions of the best proposal. NPS considers that this requirement is implicit in this section. However, NPS has made the requested change.

Section 51.52 (Section 51.33 in the final rule) What If the Preferred Offeror Does Not Timely Amend Its Proposal To Meet the Terms and Conditions of the Best Proposal or Is Not a Qualified Person To Carry Out the Terms of the Amended Proposal?

A comment was directed to Section 51.51 but NPS considers based on its content that it was intended to be directed to Section 51.52. The comment suggests that it is unlawful for the NPS to require "requalification" of a preferred offeror if it exercises a right of preference by matching the terms and conditions of a better proposal. NPS disagrees with this as Section 403(4)(B) of the 1998 Act states:

> (B) The Secretary shall reject any proposal, regardless of the franchise fee offered, if the Secretary determines that the person, corporation or entity is not qualified, is not likely to provide satisfactory service, or that the proposal is not responsive to the objectives of protecting and preserving resources of the unit of the National Park System and of providing necessary and appropriate facilities and services to the public at reasonable rates.

NPS considers that this section of law requires that an award of a concession contract, whether or not through the exercise of a preference in renewal, must be to a qualified person within the meaning of the statute. Congress could not possibly have intended the right of preference to require award of a concession contract to an unqualified entity.

However, NPS has modified this section in the final rule to delete express reference to the qualified offeror requirement of the 1998 Act as it would at best rarely occur that an amended proposal from a preferred offeror would need to be rejected by NPS on the basis of the qualified offeror requirement of the 1998 Act.

Section 51.53 (Section 51.34 in the final rule) What Will the Director Do If a Selected Preferred Offeror Does Not Timely Execute the New Concession Contract?

A comment appears to have been made in reference to this section. It suggests that it is not proper to require a preferred offeror to execute a concession contract within the period specified by the Director. The comment suggests that the language of the contract may differ from the prospectus or the proposal (an event not permissible under the statute and the regulations). NPS disagrees and notes that the requirement is equally applicable to all selected offerors, whether or not a preferred offeror.

Section 51.54 (Section 51.35 in the final rule,) What Happens to a Possible Right of Preference If the Director Receives No Responsive Proposals?

The general concessioner organization agreed with the intentions of this section but suggested that the word "different" be substituted for "more favorable" as it may be difficult to establish whether it is more or less favorable than the prior prospectus. NPS has not made the requested change to this section. This is because the new prospectus would necessarily be different from the old prospectus, *e.g.*, at the least, the commencement date of the new contract would very likely change in a new prospectus because of the passage of time.

Section 51.55 (Section 51.47 in the final rule and retitled,) How Do I Appeal a Decision That a Prior Concessioner Is Not a Preferred Offeror?

Several comments stated that thirty days is not sufficient time to prepare an appeal. (One comment suggested a sixty-day period.) In response to these comments, NPS has provided in the final rule that NPS may extend this period upon request by the concessioner if NPS determines that the concessioner demonstrates good cause for an extension. NPS has also included a requirement in the final rule that an appeal must specify the grounds for the appeal. In addition, in response to comments encouraging competition in concession contracting, NPS has expanded the administrative appeal right contained in the proposed regulations to permit a person an administrative appeal with respect to a determination by the Director that a concessioner is a preferred offeror. NPS considers, in light of the anti-competitive consequences of preferred offeror status, that potential competitors should have a right of administrative appeal with respect to such determinations.

A comment suggested that the appeal should not be considered by the Director personally (or a Deputy or Associate Director) as called for by this section. The concern is that these individuals may be too busy to timely consider an appeal. However, NPS considers that these officials will be able to make timely appeal decisions. Moreover, the fact that an appeal must be considered by the highest levels of NPS is for the benefit of concessioners as it ensures national consistency on the important issue of right of preference.

Another comment suggested, without amplification, that the appeal process contained in this section is "illusory." NPS disagrees. The Director (or a Deputy or Associate Director) will be fully accountable for their appeal decisions.

The general concessioner organization submitted extensive comments on this section. NPS responds below. However, NPS first notes that the underlying premise of the comments is that it is illegal for NPS to require concessioners that, allegedly, have a contractual right of preference under 1965 Act concession contracts, to submit a responsive proposal in order to exercise this right. As a consequence of this argument, the commenter describes a number of hypothetical consequential inequities resulting from this section. The issue of whether a concessioner with a "contractual right of preference" has to submit a responsive proposal as required by the statute is addressed under Section 51.49. NPS responds here only to other aspects of the comment's criticisms of this section.

The general concessioner organization's first specific point is that NPS must make the internal decision as to whether the existing concessioner is a "preferred offeror" before issuing a prospectus. This is not the case. NPS notes that in most cases an existing concessioner will know that it is a satisfactory concessioner for purposes of a preference in renewal in advance of the issuance of a prospectus. However, NPS will not necessarily make final decisions affecting the existence of a preferred offeror regarding the terms of the new concession contract (i.e., will it have gross receipts of less than $500,000, will it be an outfitter and guide contract, will it continue the previous visitor services), prior to the issuance of the prospectus.

The comment goes on to argue that submitting a responsive proposal is a heavy burden that a concessioner should not have to bear prior to a decision as to whether it is a preferred offeror. This argument is posited on the notion that a concessioner with an asserted "contractual right of preference" is not legally required to submit a responsive proposal in response to a prospectus in order to exercise a right of preference. As discussed under Section 51.49, this is not the law. The statutory requirement to submit a responsive proposal is not a burden imposed by this section. It is imposed by the 1998 Act.

Several commenters suggested in effect that the regulations should make clear that a right of appeal is to be provided not only with respect to a concessioner's status as a preferred offeror but also with respect to whether a new concession contract is a qualified concession contract for purposes of a right of preference. NPS agrees with this suggestion and has clarified this section and other sections in the final rule to make clear that an appeal regarding whether a concessioner is a preferred offeror includes appeal as to whether a new concession contract is a qualified concession contract. NPS has made several other conforming amendments to sections of the final rule to reflect an appeal right for a determination that a new concession contract is not a qualified concession contract.

NPS notes, however, that although the final rule expressly provides an appeal from a determination that a new concession contract is not a qualified concession contract, this does not establish an appeal with respect to the content of prospectuses or the terms and conditions of new concession contracts. The content of prospectuses and the terms and conditions of new concession contracts, except to the extent mandated by this part or the 1998 Act, are determined in the discretion of NPS. (See Section 403(10) of the 1998 Act: "Nothing in this title 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 title.")

In addition to these general comments, the general concessioner organization made a number of more specific arguments concerning this section, asserting for a variety of reasons that it is illegal. NPS responds to them as appropriate as follows.

In its first specific comment, the general concessioner organization misreads Section 51.32 of the proposed regulations to interpret it to mean that NPS may unilaterally modify the terms and conditions of existing concession contracts. Section 51.32, of course, does not give NPS the authority to do this. NPS has amended Section 51.32 in the final regulations to eliminate any ambiguity it may have contained in this regard.

The commenter states that although the NPS now attempts to justify these additional procedural burdens in order to ensure that a right of preference cannot "block policy," the commenter is "not aware of any significant bidding scenario in the history of the NPS concession program in which a right of preference was successfully used to promote such interference."

NPS notes that the quoted words do not appear in the proposed regulations or in their preamble.

The comments suggest that it is the intention of the proposed regulations that an appeal under this section is to be made to the initial decision-maker. This, of course, is not the case. The apparent confusion of the commenter is based on the fact that the regulations as a matter of form always refer to the "Director" as the responsible official. This is customary practice in NPS regulations and in many regulations of other federal agencies. In fact, it tracks the 1998 Act that always refers to the Secretary of the Interior as the responsible official even though, of course, the Secretary's responsibilities under the Act are delegated to subordinate officials. The proposed regulations were not intended to suggest that appeals from a deciding official would be directed to the deciding official. The proposed regulations state that the term "Director" means the Director of the National Park Service or an authorized representative of the Director, except where a particular official is specifically identified in this part.

The comments suggest that this section is illegal in violation of the Administrative Procedures Act on the premise that ajudicatory proceedings must be utilized in such an appeal. However, the Administrative Procedures Act does not require ajudicative procedures in the type of determination at issue in this section. The procedures provided meet all legal requirements.

The comments repeat the concern about an appeal to the deciding official and suggests that the appeal provided by this section fails to provide meaningful, timely relief. The basic argument is that it is improper for a solicitation to proceed while an appeal is ongoing. This argument, in turn, is premised on the notion that an incumbent concessioner with a "contractual right of preference" is not required to submit a responsive proposal (contrary to the express terms of the 1998 Act). The argument is that the existing concessioner in these circumstances, if the appeal is not determined prior to the release of a prospectus, will be required to take an action (submission of a responsive proposal), that it is not otherwise legally required to do. NPS has not made this change as the 1998 Act requires submission of a responsive proposal.

The comments assert that the fact that in this section the appellant only receives a "possible" right of preference if it wins an appeal does not "guarantee" that the concessioner will have a right of preference. But the term "possible" with respect to a right of preference only refers to the fact that a concessioner with a "possible" right of preference must submit a responsive proposal, as expressly required by the 1998 Act, in order to have an unconditional right of preference. However, to avoid confusion, NPS has deleted reference to a "possible" right of preference in the final rule except in circumstances where clarity requires use of the word.

The comments summarily allege that the appeal procedure contained in this section is illegal. NPS disagrees with this position. For the reasons discussed above, the administrative appeal provided by this section conforms with standard administrative practice, deprives no one of any constitutional rights, and is consistent with the purposes of the 1998 Act.

The last specific comment of the general concessioner organization under this section is a restatement of its prior arguments, particularly the argument that an incumbent concessioner with a "contractual right of preference" is not required to submit a responsive proposal to a concession contract prospectus in order to exercise the right of preference. The general concessioner organization's argument is baseless as discussed under Section 51.49.

Subpart F—Leasehold Surrender Interest (Subpart G in the final rule.)

Section 51.56 (Section 51.51 in the final rule.) What Special Terms Must I know To Understand This Part?

"Arbitration"

For the purposes of clarity, NPS has added a definition of "arbitration" and a description of arbitration procedures to this section in the final rule. This replaces the description of arbitration proceedings contained in Section 51.78 in the proposed regulations. See the

discussion under Section 51.78 as to how the final rule is changed with respect to arbitration procedures. Other references to arbitration in the final rule also refer to Section 51.51 of the final rule.

"Capital Improvement"

The general concessioner organization objected to this definition because it differed from the definition of "capital improvement" contained in the 1998 Act. The comment states that "NPS has no authority to use a different definition." This statement is incorrect. NPS, in drafting regulations to implement the 1998 Act, has clear authority to interpret the 1998 Act through appropriate definitions to set forth understandable and workable regulations consistent with the terms of the statute.

NPS, however, in order to accommodate the concerns of the organization in this connection, has amended this definition in the final regulations to track the 1998 Act's definition. This amendment does not result in a substantive change to the meaning of "capital improvement."

Several commenters suggested that this definition be clarified to make clear that it encompasses floating docks. NPS, because of the special circumstances of floating docks, has amended the definition of "fixtures" in this connection and has also added the term "barges" to the capital improvement definition to make clear that barges are not floating docks. Floating docks are considered to be non-removable equipment under this part for leasehold surrender interest purposes only. This change should not be construed as indicating that NPS necessarily considers that possessory interest may be obtained in floating docks.

"Construction Cost"

The general concessioner organization objected to the definition of "construction cost," stating that it does not cover all elements of construction cost. This comment is discussed below under "Eligible Direct and Indirect Costs."

The commenter also requested deletion of the reference to a concessioner's income tax returns with respect to construction cost. NPS has done this in the final rule. In addition, as suggested by the general concessioner organization, the final rule states that construction costs must be capitalized by the concessioner in accordance with Generally Accepted Accounting Principles (GAAP).

NPS did not remove the reference in this definition to "approval by the Director" as requested by a commenter. However, the approval process in the text of the final rule has been amended to reflect the commenter's concerns in this respect.

"Depreciation"

The general concessioner organization objected to the inclusion of certain terms in the definition of "depreciation" as contained in the proposed regulations, arguing that obsolescence should not be an element of depreciation with respect to leasehold surrender interest capital improvements. However, the common definition of depreciation as used in the appraisal industry states that it is the loss of value in property from "any cause" and further states, in regard to improvements, that depreciation encompasses both "deterioration and obsolescence." See the definition of "depreciation" in The Dictionary of Real Estate Appraisal, 3rd Edition (1993), published by the Appraisal Institute (hereinafter referred to as the "3rd Edition"). NPS does not consider that there are significant differences, if any, between the depreciation terms of the 1998 Act and the definition of depreciation contained in the 3rd Edition. In this connection, the commenter elsewhere refers to the Appraisal Institute as an appropriate source of definitions regarding leasehold surrender interest terms. In any event, NPS, in the final rule, has deleted the terms to which the commenter objected as unnecessary.

NPS notes that the House and Senate Committee Reports that accompanied S. 1693, in their general description of the bill, mention "wear and tear" depreciation but in their section-by-section analyses discuss depreciation in terms of deterioration and prospective serviceability. NPS considers that the reference to "wear and tear" depreciation was off-hand and not meant to modify the statutory description of depreciation.

Another commenter asked whether "depreciation" refers to depreciation for federal income tax purposes. It does not. It refers to the type of depreciation discussed above.

"Eligible Direct and Indirect Costs"

NPS was surprised that several comments objected to the scope of construction costs (direct and indirect) contained in the proposed regulations. This is because the proposed regulations, to the benefit of concessioners, utilized a significantly more expansive definition of "construction cost" than its usual meaning. Particularly, NPS included in the definition a number of indirect costs of a concessioner related to construction, e.g., architect's fees, environmental study costs, and on-site inspection expenses, even though the developer's costs related to construction are not generally considered to be "construction costs."

For example, *The Dictionary of Architecture & Construction*, Second Edition (1993), defines "construction cost" as:

> The cost of all the construction portions of a project, generally based upon the sum of the construction contract(s) and other direct construction costs; does not include the compensation paid to the architect and consultants, the cost of the land, right-of-way, or other costs which are defined in the contract documents as being the responsibility of the owner.

For another example, the 3rd Edition defines "construction cost" as:

> The cost to build, particularly an improvement; includes the direct costs of labor and materials plus the contractor's indirect costs. (Emphasis added.)

The comment from the general concessioner organization took the position that the definition of "construction cost" should be that which is utilized in Chapter 16 (page 346) of the Eleventh Edition of "*The Appraisal of Real Estate*" published by the Appraisal Institute (hereinafter referred to as the "11th Edition").

NPS has reviewed the elements of construction cost that are contained in the 11th Edition. However, NPS notes that the context of the term "construction cost" as used in Chapter 16 of the 11th Edition is for purposes of appraising the fair market value of real estate by the reproduction or replacement cost method. For this reason, several costs of the owner (such as marketing expenses and post-construction carrying costs) may be included as indirect costs for the purposes of a fair market value appraisal. The fact that "construction cost" has this broader meaning in Chapter 16 is apparent from the fact that the 3rd Edition, referenced above, the American Appraisal Institute's dictionary of appraisal terms, defines "construction cost" as the cost to build, including indirect costs of the contractor. No reference to the costs of the owner is made. The 3rd Edition is cited as a reference in the 11th Edition.

Accordingly, NPS does not consider that the 11th Edition's description of "construction cost" for fair market value purposes is reflective of the meaning of the term as used in the 1998 Act. The following provision of the legislative history of the 1998 Act makes clear that

a "fair market value" definition of construction cost was not intended by the Congress:

The Committee considers that the leasehold surrender interest described by this section will provide concessioners with adequate security for investments in capital improvements they make. This will assist in encouraging such investments in visitor facilities in the National Park System. However, the value of a leasehold surrender interest, i.e., the original construction cost, less depreciation as evidenced by physical condition and prospective serviceability, plus what amounts to interest on the investment based on the Consumer Price Index, should accurately reflect the real value of the improvements and should not result in any undue compensation to a concessioner upon expiration of a concession contract. Additionally, the value of the leasehold surrender interest will be relatively easy to estimate so that a prospective new concessioner and the Secretary can accurately calculate the amount for purposes of competitive solicitation of concession contracts. S. Rep. No. 105–202, at p. 35 (1998).

NPS also notes that "fair market value" was an express element of the value of possessory interest under the 1965 Act. If Congress had intended the term construction cost to be construed in a fair market value context, it would have so stated consistent with the terms of the 1965 Act. NPS considers that the definition of construction cost and of the terms "eligible direct and indirect construction costs" as set forth in the proposed regulations are appropriate interpretations of the term "construction cost" as used in the 1998 Act.

However, in an effort to accommodate the reasonable concerns of the general concessioner organization, NPS in the final rule has included all the direct construction costs set forth in the 11th Edition. In addition, NPS has included in the final rule as many of the specific indirect costs mentioned in the 11th Edition as it considers reasonable in light of its understanding of the term "construction cost" as used in the 1998 Act.

NPS has not included in the final rule the following indirect costs mentioned in the 11th Edition: marketing expenses; sales commissions; leasing commissions; legal fees; title transfers; the cost of carrying the investment after completion of construction; and tenant improvements (tenant improvements may be eligible direct costs).

NPS also has not included as an indirect cost the cost of carrying the investment in land as mentioned in the 11th Edition, as a concessioner makes no investment in land.

NPS particularly would like to comment on a concessioner's administrative expenses related to construction. The 11th Edition mentions the "administrative expenses of the developer" as possible indirect costs for fair market value appraisal purposes. NPS has not included this very broad item of indirect costs in the final rule, but, consistent with the proposed rule, has included administrative expenses of the concessioner related to direct, on-site construction inspection. NPS notes that, unlike the administrative expenses of a "developer" as contemplated by the 11th Edition, a concessioner's administrative expenses flow from all of its business activities. In any event, NPS does not consider that additional administrative expenses of a concessioner are appropriate to include as eligible indirect construction costs for the reasons discussed in the preceding paragraphs.

The general concessioner organization also requested that "entrepreneurial profit" be treated as a construction cost. However, the 11th Edition describes "entrepreneurial profit" as the difference between the "cost of development" and the "value of the property" after completion." 11th Edition, p. 346. Accordingly, entrepreneurial profit is not a direct or indirect construction cost even as described by the 11th Edition for fair market value appraisal purposes.

NPS also has not accepted the commenter's suggestion that construction costs include "extra costs" associated with dealing with the NPS. The costs of the construction are what they are. Any "extra" construction costs that may exist (NPS does not agree that there are such "extra" costs) with respect to the fact that a concessioner's construction activities are subject to oversight by NPS are necessarily included within the actual construction cost.

The general concessioner organization questioned the portion of this definition that limits construction costs to "amounts no higher than those prevailing in the locality of the project." NPS considers this limitation necessary and has retained it in the final rule. This limitation is important in circumstances where construction work is performed directly by the concessioner, *i.e.*, force account work, or performed by an affiliate of a concessioner. In this connection, a comment suggested that construction costs should include the costs of the concessioner when the concessioner acts as a contractor, *e.g.*, constructs or installs a capital improvement with its own labor force. The definition of construction costs in the final rule makes this clear. NPS notes, however, that only actual expenses of the concessioner capitalized in accordance with Generally Accepted Accounting Principles are construction costs for leasehold surrender interest purposes.

Another commenter, in addition to making generally the same suggestions as discussed above, requested that the cost definitions be amended to make clear that a current concessioner is not required to pay for environmental studies that are to be used by NPS to develop a prospectus. NPS has not made any changes in this connection as it considers that the regulations cannot be read to require a concessioner to pay for environmental studies in these circumstances.

This commenter also suggested that costs of concessioner initiated studies that facilitate the work and enhance the environment should be eligible costs . NPS considers that the cost definitions in the final regulations achieve this objective to the extent consistent with the term "construction cost" as used in the 1998 Act.

"Fixtures and Non-Removable Equipment"

The general concessioner organization objected to the second sentence of this definition as being too restrictive as to the meaning of these terms. It also suggested an alternative test. NPS has adopted as appropriate the alternative test in the final regulations and has deleted the examples to avoid possible confusion. To avoid unnecessary discussion, NPS deleted the examples of fixtures and non-removable equipment as several commenters objected to one or more of them as being incorrect. Their deletion, however, should not be considered as indicating that NPS necessarily considers any of the examples to be incorrect.

"Ineligible Costs"

NPS has deleted this definition in the final rule as unnecessary. The deletion obviates concerns expressed about this definition.

"Leasehold Surrender Interest"

One commenter asked whether "related capital improvements" as used in this definition may refer to improvements a concessioner makes that are not related to its operations. The definition contained in the proposed regulations relates only to capital improvements built on park lands under the terms and conditions of a concession contract. If a concessioner makes capital improvements to park lands under some other form of authorization, no leasehold surrender interest would be obtained.

A comment (that attached a letter from a bank) suggested that banks will not lend money on the basis of a leasehold surrender interest under the limitations of the 1998 Act. NPS disagrees. The leasehold surrender interest concept will permit concessioners to obtain loans using leasehold surrender interest as collateral. NPS notes that the objections of the bank to leasehold surrender interest apply equally to possessory interest under the 1965 Act. Many lending institutions made loans to concessioners secured by possessory interest.

"Leasehold surrender interest value"

NPS has added to the definition of leasehold surrender interest value in the final rule reference to Section 405(a)(4) of the 1998 Act that permits a different valuation of leasehold surrender interest in certain circumstances effective nine years after the effective date of the 1998 Act. It has also clarified the proposed rule in the final rule to indicate that, in the event a concessioner ceases to utilize a related capital improvement under the terms of a concession contract prior to the termination or expiration of a contract (*e.g.*, where the Director takes a capital improvement out of service for resource protection purposes), the applicable depreciation and entitlement to payment of leasehold surrender interest value is established as of the date the concessioner ceases to utilize the related capital improvement.

"Major rehabilitation"

NPS has modified the definition of "major rehabilitation" in the final rule to adopt a 50% test rather than a 100% test as discussed under Section 51.75.

"Related Capital Improvement or Fixture"

* * * * *

"Structure"

A comment suggested that the term "structure" be amended to include landscaping and plantings that are installed as integral to the construction of a capital improvement. NPS has adopted this suggestion in the final rule to the extent that landscaping is an integral component of the construction of a structure. Landscaping includes necessary initial plantings but does not include "re-landscaping" (except as part of a major rehabilitation), landscape maintenance or subsequent plantings.

"Substantial Completion"

For the purpose of clarity, NPS has added a definition of "substantial completion" in the final rule. The definition tracks the definition of the term in the 3rd Edition. A commenter questioned the use of the term in the proposed regulations. The term is needed in order to establish the completion date of a capital improvement.

Section 51.57 (Renumbered as Section 51.52 in the final rule.) How Do I Obtain a Leasehold Surrender Interest?

The general concessioner organization objected to the second sentence of this section, stating that "NPS cannot qualify the right to leasehold surrender interest by contract, and to do so is inconsistent with the 1998 Act."

This position cannot be reconciled with the express language of Section 405 of the 1998 Act:

(a) Leasehold Surrender Interests Under New Concession Contracts.—On or after the date of enactment of this title, a concessioner that constructs a capital improvement upon land owned by the United States within a unit of the National Park System pursuant to a concession contract shall have a leasehold surrender interest in such capital improvement subject to the following conditions. * * * (Emphasis added).

Under this authority, the terms and conditions of a concession contract may detail leasehold surrender interest requirements so long as the provisions are consistent with the 1998 Act. In this connection, Section 403(10) of the 1998 Act states that "Nothing in this title 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 Title." (Emphasis added.) Further, Section 417 of the 1998 Act requires the Secretary to promulgate regulations appropriate for implementation of the 1998 Act. There is nothing in the 1998 Act that suggests that such regulations may not place appropriate conditions on leasehold surrender interest.

Section 51.58 (Deleted in the final rule) If a Concessioner Does Not Comply with the Requirements of This Part or the Terms and Conditions of a Concession Contract, What Happens?

The general concessioner organization objected to this section because "a concessioner is entitled to a leasehold surrender interest in all capital improvements it constructs on park lands." This statement, however, leaves out the phrase of the 1998 Act discussed under the previous section that grants a leasehold surrender interest for capital improvements that are constructed "pursuant to a concession contract." The commenter also argues that this section is vague in referring to the requirements of this part and the terms and conditions of the concession contract without further guidance. NPS does not consider that these regulations or its concession contracts are vague as to leasehold surrender interest requirements or otherwise. However, in consideration of comments in this connection, NPS has deleted this section in the final rule as unnecessary in light of the leasehold surrender interest terms of the 1998 Act, this part, and concession contract terms and conditions.

Another commenter suggested that this section improperly gives NPS the ability to deprive a concessioner of leasehold surrender interest by determining that the concessioner had failed to meet the requirements of its concession contract. NPS considers that the commenter misconstrued the meaning of this section. In any event, the section has been deleted in the final rule.

Section 51.59 (Section 51.53 in the final rule and retitled) Why May the Director Authorize the Construction or Installation of a Capital Improvement?

The general concessioner organization suggested in a comment on this section that the phrase "under the terms of a concession contract" be added after the first use of the word "concessioner" in this section. NPS has been made this change.

Section 51.60 (Section 51.54 in the final rule) What Must a Concessioner Do Before Beginning To Construct or Install Capital Improvements in Which The Concessioner Seeks a Leasehold Surrender Interest?

Several comments were received objecting to the ability of NPS to determine that construction costs are "unreasonable." In response to these comments, NPS has amended this section in the final rule to delete reference to disapproval of the construction of a capital improvement if NPS considers the costs unreasonable.

Another commenter suggested that approvals under this section should be delegable to the park area superintendent. See the changes to the definition of Director in Section 51.3.

Section 51.61 (Section 51.55 in the final rule) What Must a Concessioner Do After Substantial Completion of The Capital Improvement?

The general concessioner organization made several comments on this section.

The first sentence of its comment on this section appears to be incomplete. NPS thinks the comment meant to say

that, although construction invoices should be available and a certification by certified public accountant is appropriate, the invoices should not be submitted to NPS but only be made available to NPS for inspection for a period of three years after project completion. This suggestion, if NPS has accurately interpreted it, is not acceptable to NPS. Other commenters made similar suggestions. The existence of a leasehold surrender interest in effect places on the government a burden to pay a concessioner, or require a third party to pay a concessioner, the construction cost of a building perhaps twenty or more years after the building is completed. This obligation, in the view of NPS, requires submission to NPS of the information required by this section in order to properly fulfill NPS's administrative responsibilities for this financial obligation.

The comment also requested that the costs of obtaining the certified public accountant certification be a construction cost element for leasehold surrender interest purposes. NPS has not accepted this suggestion in light of the definition of "construction cost" set forth in Section 51.56.

NPS has modified this section in the final rule to clarify that the construction cost of a project incurred after substantial completion of a project are included as construction cost for leasehold surrender interest purposes.

Section 51.62 (Section 51.56 in the final rule) How Will the Director Determine the Construction Cost for Purposes of Leasehold Surrender Interest Value?

Several comments suggested in effect that this section provides NPS with undue latitude to define eligible construction costs for which a leasehold surrender interest will be obtained after construction is complete, thereby placing an undue risk on the concessioner. NPS has amended this section in the final rule to make clear that the review of constructions costs by NPS after project completion is limited to a determination that the construction costs claimed are eligible costs within the meaning of these regulations. NPS considers that this change will satisfy the concerns of the commenters in this connection. NPS feels strongly, however, that NPS review of submitted construction costs is an absolute requirement in light of the financial obligation leasehold surrender interest creates for the government or a successor concessioner.

A comment objected to the fact that this section imposes no time constraints on the Director with respect to approval of leasehold surrender interest construction costs. NPS has not changed this section in response to this comment as it is impossible to state a standard time period for the review of construction costs in light of the fact that some projects may be for as little as $10,000 and others in excess of $10 million. This is likewise true with respect to a time limit for appeals under Section 51.63.

Section 51.63 (Section 51.57 in the final rule and retitled) May the Concessioner Appeal the Director's Determination of Construction Cost?

Several comments objected to the appeal process provided by this section on the general grounds that it does not provide sufficient rights to the concessioner. NPS has changed this section in the final rule to make a dispute over construction cost subject to binding arbitration at the request of a concessioner.

Section 51.64 (Section 51.58 in the final rule) What Actions May or Must the Concessioner Take With Respect to a Leasehold Surrender Interest?

The general concessioner organization objected to subsection (c) of this section with respect to its statement that a concessioner may agree to an alternative value for leasehold surrender interest. While not necessarily agreeing with this comment, NPS has deleted the phrase regarding alternative values in the final rule. Other comments suggested that this section should state that NPS cannot require waiver of a leasehold surrender interest. NPS has not changed this section in this respect as it merely repeats an express term of the 1998 Act.

Section 51.65 (Section 51.59 in the final rule) Will Leasehold Surrender Interest Be Extinguished by Expiration or Termination of a Concession Contract or May It Be Taken for Public Use?

The general concessioner organization made a comment on this section that "only payment pursuant to the 1998 Act constitutes just compensation for any purpose." NPS considers that the payment terms of the final rule are consistent with the 1998 Act regarding leasehold surrender interest. The commenter also made an argument under this section as to when payment for leasehold surrender interest must be made. This argument is addressed under Section 51.67.

Section 51.66 (Section 51.60 in the final rule) How Will a New Concession Contract Awarded to a Prior Concessioner Treat a Leasehold Surrender Interest Obtained Under a Prior Concession Contract?

The general concessioner organization objected to this section on the same grounds as it objected to Section 51.65. NPS has modified this section (and Section 51.65) in the final regulations to delete as unnecessary the phrase "the new concession contract" and to replace it with "this part."

Section 51.67 (Section 51.61 in the final rule) How Is a Prior Concessioner That Is Not Awarded a New Concession Contract To Be Paid for a Leasehold Surrender Interest?

Several comments objected to this section with respect to the timing of payment for leasehold surrender interest, particularly to the fact that the section does not necessarily require payment for a concessioner's leasehold surrender interest immediately upon expiration or termination of the concession contract. Rather, the proposed section permits payment within one year of contract expiration or termination if a successor concessioner is to acquire the leasehold surrender interest and two years if the payment is to be made by NPS.

The comments of the general concessioner organization take the position that a concessioner has a right under the 1998 Act "to continue to operate the facilities under the terms of the concession contract until it is paid for its leasehold surrender interest, as required by the 1998 Act." This position suggests that a concessioner that is providing unsatisfactory service to the public, is not maintaining its buildings, or, that is engaged in environmentally damaging activity, among other possibilities, has a right, paramount to the preservation and protection of the park area and its visitors, to continue to operate until leasehold surrender interest payment is received.

This position is manifestly contrary to the purposes of the 1998 Act.

The position is also without legal merit. NPS points out that Section 405(a)(1) of the 1998 Act states that a concessioner has a leasehold surrender interest in capital improvements 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." (Emphasis added.) This provision makes no mention of a right to continue operations until the date of

payment as asserted by the general concessioner organization. NPS considers that such a right, that would be in stark conflict with the purposes of the 1998 Act as discussed further, cannot be read by implication into the 1998 Act as argued by the general concessioner organization.

In addition, Section 405(a)(2)(C) of the 1998 Act states that a leasehold surrender interest "shall not be extinguished by the expiration or other termination of a concession contract," a provision that is in direct conflict with the view that leasehold surrender interest value must be paid on the date of contract expiration or termination. (Emphasis added.) Finally, Section 405(c) of the 1998 Act states that, upon expiration of or termination of a 1998 Act concession contract, a concessioner shall be "entitled" under the terms of a concession contract to receive from the United States or a successor concessioner the value of any leasehold surrender interest. This value is to be calculated as of the date of expiration or termination. However, the statute does not state that the value must be paid on the date of termination or expiration of the contract. The statute also states that the entitlement is "under the terms of the concession contract."

The regulations expressly establish in the concessioner, as of the date of contract expiration or termination, an unconditional entitlement under the terms of the concession contract to be paid its leasehold surrender interest value. The regulations also call for the leasehold surrender interest depreciation deduction to be calculated as of the date of contract expiration or termination (or, if applicable, as of a prior relinquishment date). These provisions appropriately implement the requirements of the 1998 Act.

The general concessioner organization apparently reads the 1998 Act to mean that there is an absolute entitlement to payment of the leasehold surrender interest value on the date of expiration or termination, and, if payment is not received on that date, an entitlement to continue operations until payment is received. NPS disagrees with this interpretation on the basis of the text of the statute as discussed above. Further, such an interpretation of the 1998 Act flies in the face of the overwhelming thrust of the 1998 Act that preservation of park area resources and protection of park area visitors is the paramount mandate with respect to visitor services in areas of the national park system.

It is the primary responsibility of NPS to preserve and protect areas of the national park system and their visitors under both the NPS Organic Act (16 USC 1 *et seq.*) and the 1998 Act. The 1998 Act and the Organic Act state that the "preservation and conservation of park resources and values require that such public accommodations facilities and services as have to be provided within [park areas] should be provided only under carefully controlled safeguards against unregulated and indiscriminate use." (Emphasis added.) Section 402(b)(2) of the 1998 Act also states that:

> (b) Policy.—It is the policy of the Congress that that the development of public accommodations, facilities and services in units of the National Park System shall be limited to those accommodations, facilities, and services that 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.

It is indisputable that there may be circumstances in which NPS must immediately terminate the operations of a concessioner in order to fulfill its statutory responsibilities to park areas and visitors. For example, an area of a park may be found to be endangered species habitat, requiring immediate cessation of human activity, or, the threat of natural disaster such as a threatened volcanic eruption may require that a concession operation be immediately terminated in the interest of public safety. In addition, there may be circumstances where NPS is forced to immediately close a concession operation because of environmental damage such as sewage leakage into a threatened cave system. Finally, there may be circumstances where the performance of a concessioner in breach of contract is so bad (e.g., life/health/safety violations) that the concession operations and the concession contract must be immediately terminated in the interest of public health or safety.

The amount of money due the existing concessioner under a concession contract for a leasehold surrender interest could exceed available funds appropriated to NPS in any given fiscal year. It would not always be possible for NPS to obtain a new concessioner or make immediately available appropriated funds in these circumstances in order to pay leasehold surrender interest as a pre-condition to termination of the concession contract. NPS must have the ability to terminate concession contracts in order to carry out its statutory responsibilities to park areas and visitors.

NPS, however, is aware of the business needs of concessioners to obtain timely payment for leasehold surrender interests. This is why NPS, through the proposed regulations, placed limitations on the time for payment, one year with respect to payment by a new concessioner (it takes approximately a year to prepare for, solicit and award a new concession contract) and two years for payment by the government (the two year period reflecting the federal budget cycle).

Several other comments submitted by concessioners expressed concern about the timing of payment under this section but also made a practical suggestion. These comments suggested that the section be amended to provide interest during any period in which payment was delayed after the expiration or termination of a concession contract. NPS considers these suggestions as appropriate and has included an interest provision in this section in the final rule. NPS considers that the payment of interest (in addition to the CPI adjustment that continues until the date of payment) is fair and will be more than sufficient to encourage lenders to make loans against leasehold surrender interest, a concern raised by other comments in this connection. NPS notes that one commenter suggested that the timing of payments for leasehold surrender interest could result in a $100 million effect on the economy. NPS believes this assertion to be unfounded, but, in any event, considers that the changes in the final rule eliminate any concerns in this respect.

In addition, in order to further accommodate the concerns of commenters, NPS has modified this section in the final rule to state that the date of payment for a leasehold surrender interest, except in extraordinary circumstances beyond the control of NPS, is to be the date of expiration or termination of the concession contract. In addition, NPS has modified the final rule to require payment within one year of the expiration or termination of a concession contract.

Section 51.68 (Section 51.63 in the final rule) 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 the Purposes of a New Concession Contract?

A new sentence has been added to this section in the final rule to expressly require a new concessioner to pay the previous concessioner for any leasehold surrender interest value that is due.

Section 51.69 (Renumbered as Section 51.62 in the final rule) What Is the Process To Determine the Leasehold Surrender Interest Value When a New Concessioner Is To Pay a Prior Concessioner for a Leasehold Surrender Interest?

Several comments objected to elements of this section. The primary concern was that the arbitration to determine the leasehold surrender interest value when a new concessioner is to pay a prior concessioner for leasehold surrender interest was to be undertaken by the new concessioner and the prior concessioner. The commenters recommend that the arbitration be between the prior concessioner and NPS. NPS has concurred in this view. This section has been amended accordingly in the final regulations.

Another comment objected to the fact that the arbitration is limited to establishing the depreciation deduction for purposes of leasehold surrender interest value and does not permit arbitration of the prior determination of construction cost required by this part. NPS has limited the arbitration issues in this manner because the final rule calls for arbitration of the construction cost after construction is completed. However, NPS, in response to this comment, has changed this section to include the calculation of the CPI as an additional subject of arbitration in the event of disagreement by the concessioner and NPS. This issue, as well as depreciation, will be current as of the time of the arbitration proceedings.

Comments also stated that the arbitration should take place in advance of the expiration of the prior concession contract. NPS generally concurs in this suggestion but notes that it may not always be possible to conclude an arbitration prior to the expiration of a concession contract, and, of course, it is unlikely that an arbitration could be concluded prior to a termination of a concession contract for default (which could be immediate in certain circumstances). NPS has changed this section in the final regulations to provide for arbitration in advance of contract expiration or termination where possible.

Several comments objected to this section with respect to the type of arbitration procedures it calls for. This issue is addressed under Section 51.78.

Section 51.70 (Section 51.64 in the final rule and retitled) May the Concessioner Gain Additional Leasehold Surrender Interest by Adding to a Structure in Which the Concessioner Has a Leasehold Surrender Interest?

The general concessioner organization objected to this section by referencing related objections to other sections. Those objections are discussed under the relevant sections.

NPS has modified this section in the final rule to include "major rehabiliations" within its scope. This permits deletion of Section 51.72 of the proposed regulations in the final rule.

Section 51.71 (Section 51.65 in the final rule) May the Concessioner Gain Additional Leasehold Surrender Interest by Replacing a Fixture in Which the Concessioner Has a Leasehold Surrender Interest?

The general concessioner organization objected to this section and stated that it is not supported by law on the grounds that when an existing fixture is replaced by the concessioner there can be no reduction of leasehold surrender interest based on the removal of the existing fixture.

The flaw in this argument is apparent. Suppose a concessioner at the beginning of a concession contract with a twenty year term installs a furnace at a cost of $1,000. In ten years, the concessioner replaces the furnace with a new furnace, costing $1,200. At the expiration of the contract, the concessioner is entitled under this section and the 1998 Act to be paid for the value of its leasehold surrender interest. However, the replaced furnace is gone. The 1998 Act does not contemplate that a new concessioner will pay a prior concessioner for a fixture that no longer exists. Under Section 405(a)(3) of the 1998 Act, the leasehold surrender interest value in a capital improvement is the initial construction cost of the capital improvement, in this case the cost of purchasing and installing the furnace, plus a CPI adjustment up to the time of payment for the leasehold surrender interest, less depreciation of the capital improvement as evidenced by its condition and prospective serviceability in comparison with a new unit of like kind. Under any real property appraisal practice, the depreciation of a furnace that was replaced ten years ago is 100%. There is no value to be paid.

NPS has drafted this section carefully in order to fairly deal with the complicated circumstances of fixtures and non-removable equipment under the leasehold surrender interest concept. Under this section in the proposed regulations, if a concessioner replaces a fixture with a new fixture of like kind, there is no adjustment to the leasehold surrender interest in the fixture. Under the proposed regulations, the new fixture replaces the old one and the concessioner's leasehold surrender interest continues unchanged. However, if the new fixture is a substantial upgrade from the replaced fixture, and if the construction cost of the new fixture exceeds the construction cost of the fixture to be replaced, the increase is added to the concessioner's leasehold surrender interest.

This has been changed in the final rule in order to accommodate to the extent reasonable the concerns of commenters. In the final rule, the entire construction cost of a new fixture is added to the leasehold surrender interest and the construction cost of the replaced fixture is subtracted.

Section 51.72 (Deleted in the final rule) Will a Concessioner That Undertakes a Major Rehabilitation of an Existing Structure in Which the Concessioner Has a Leasehold Surrender Interest Increase Its Leasehold Surrender Interest?

Several comments objected to this section on the general grounds that additional leasehold surrender interest should be obtained for any additional construction work undertaken by a concessioner. NPS disagrees. This issue is discussed under Section 51.75.

One comment requested additional guidance as to what constitutes a major rehabilitation. For example, the commenter asked, does adding an additional bathroom to a cabin constitute a major rehabilitation? A major rehabilitation is defined in Section 51.51 of the final rule. The construction of a second bathroom under this definition could be a major rehabilitation if its cost exceeds fifty percent of the pre-rehabilitation value of the cabin. NPS considers that the definition of "major rehabilitation" is clear. NPS, however, deleted as unnecessary in the final rule the second sentence in paragraph (2) of the definition of major rehabilitation.

This section has been deleted in the final rule as its content is included in Section 51.64 of the final rule.

Section 51.73 (Section 51.66 in the final rule) In What Circumstances Will the Director Authorize a Concessioner To Obtain a Leasehold Surrender Interest in an Existing Capital Improvement in Which no Leasehold Surrender Interest Exists?

Several comments objected to this section on the same general grounds, that all additional construction should obtain additional leasehold surrender interest. This issue is discussed under Section 51.75.

The general concessioner organization also objected to the last sentence of this section which stated that when an existing building in which a concessioner has no leasehold surrender interest undergoes a major rehabilitation, depreciation for the purposes of the leasehold surrender interest value will apply to the entire building. NPS has amended this sentence in response to the comment. It states in the final rule that depreciation will only apply to the elements of the major rehabilitation.

Finally, for the sake of clarity, this section has been rephrased and split into two subsections in the final rule without a change in its meaning except as noted in the prior paragraphs.

Section 51.74 (Deleted in the final rule) Will a Concessioner Receive New or Additional Leasehold Surrender Interest as a Result of a Rehabilitation That Does Not Qualify as a Major Rehabilitation?

Several comments objected to this section because "all capital improvements qualify for leasehold surrender interest." This issue is discussed under Section 51.75. Section 51.74 has been deleted in the final rule as redundant in light of Section 51.64 in the final rule.

Section 51.75 (Section 51.67 in the final rule) Is a Concessioner Required To Repair and Maintain Capital Improvements, and, If So, Will the Concessioner Obtain Leasehold Surrender Interest as a Result?

Several comments objected to this and other sections of the proposed regulations because, allegedly, "all capital improvements qualify for leasehold surrender interest." In this connection, the general concessioner organization equates the construction of capital improvements with "any repairs and maintenance" of a building that are "capitalized under GAAP."

In essence, the commenters seek leasehold surrender interest for the capitalized costs of repair and maintenance of an existing structure in addition to leasehold surrender interest resulting from the construction of the structure.

Before discussing the fact that this position is inconsistent with the terms of the 1998 Act, NPS points out the administrative nightmare for both NPS and concessioners that would result if the commenters' position was adopted by NPS. Under the commenters' position, for example, every time a concessioner might replace a section of damaged drywall, or, replace missing shingles on a roof, a new leasehold surrender interest, including a new CPI calculation, would be established. For larger concession operations (one current operation utilizes almost 800 buildings), the number of these additional leasehold surrender interests could well be in the tens of thousands over the term of a twenty year concession contract. NPS does not consider that such a result, even if otherwise lawful, would be in the best interests of concessioners, NPS, or efficient management of the NPS concessions program.

NPS also notes that the expenditures that a concessioner may make for repair and maintenance of existing structures are not lost to the concessioner. To the contrary, repair and maintenance expenditures will necessarily be reflected in a lower depreciation deduction when the final leasehold surrender interest value for the structure is calculated. The concessioner, accordingly, will be compensated for its expenditures for repair and maintenance of existing structures even though the 1998 Act does not permit recognition of leasehold surrender interest as a result of repair and maintenance.

In any event, the view that additional leasehold surrender interest results from expenditures for repair and maintenance of existing structures is inconsistent with the express terms of the 1998 Act. Section 405(a) of the 1998 Act provides a leasehold surrender interest when a concessioner "constructs" a capital improvement upon land owned by the United States within a unit of the National Park System pursuant to a concession contract. The statute makes no mention of leasehold surrender interest resulting from the repair and maintenance of an existing capital improvement. "Construction" means "the process or manner of building an improvement." 3rd Edition, page 73. "Repairs" are "current expenditures for general upkeep of a property's condition and efficiency." 3rd Edition, p. 303. "Maintenance" means "keeping a property in condition to perform its function." 3rd Edition, p. 217.

In addition, Section 405(a)(1) of the 1998 Act states that a concessioner shall have a leasehold surrender interest in "each capital improvement" it constructs. Section 405(e)(2) of the 1998 Act in turn defines "capital improvement" as "a structure, fixture, or non-removable equipment." In other words, the 1998 Act only provides a leasehold surrender interest in "structures, fixtures, and non-removable equipment" that a concessioner "constructs," *i.e.*, builds, under the terms of a concession contract. The law does not suggest that the repair or maintenance of an existing structure results in leasehold surrender interest.

NPS notes in this connection that Section 405(a)(5) of the 1998 Act states that when a concessioner that 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 is to be added to the then current value of the concessioner's leasehold surrender interest. The proposed regulations and the final rule reflect this requirement by granting additional leasehold surrender interest for replacement of fixtures and non-removable property, additions to existing structures, and/or the major rehabilitation of existing structures. What the statute does not permit, however, is additional leasehold surrender interest for the repair and maintenance of existing structures (unless a repair and maintenance project is a major rehabilitation as defined in the final rule).

The position of the general concessioner organization, when reduced to its essentials, is that the 1998 Act, when stating that a leasehold surrender interest results from the "construction" of a "structure," means that every time a concessioner replaces a rotted beam or a damaged piece of drywall in a building, it has "constructed" a "structure" within the meaning of the 1998 Act. This position is not credible.

NPS considers, however, that providing leasehold surrender interest for the major rehabilitation of an existing structure is permissible under the terms of the 1998 Act as a major rehabilitation is defined in the final rule as a comprehensive rehabilitation of an existing structure the cost of which exceeds fifty percent of the pre-rehabilitation value of the structure. NPS, accordingly, considers that a major rehabilitation is tantamount to the construction of a new structure (or the addition of a new structure to an

existing structure) in which leasehold surrender interest may be obtained within the leasehold surrender interest limitations of the 1998 Act.

NPS notes that it changed the definition of major rehabilitation in the final rule. In the proposed regulations, the construction cost had to exceed one hundred percent of the pre-rehabilitation value of the structure. The final rule changes this to fifty percent of the pre-rehabilitation value. This change is intended to accommodate to the extent possible the concerns of commenters that seek leasehold surrender interest for repair and maintenance of structures, contrary to the terms of the 1998 Act. NPS considers that a rehabilitation of a structure where the cost exceeds fifty percent of the structure's pre-rehabilitation value is tantamount to construction of a new structure within the meaning of the 1998 Act and therefore eligible for leasehold surrender interest.

Likewise, the proposed regulations and final rule provide leasehold surrender interest for constructing an addition to an existing structure in which a concessioner has a leasehold surrender interest, *e.g.*, a new wing to an existing building or an extension of an existing sidewalk. An addition is treated as a new structure for leasehold surrender interest purposes.

The general concessioner organization suggested that this section be modified in effect to state that if a concession contract contains a repair and maintenance reserve provision that there would be no depreciation deduction for related leasehold surrender interest value. This suggestion is contrary to the 1998 Act's definition of the value of leasehold surrender interest (which requires a deduction for depreciation) and is not valid as a general business matter. The fact that a repair and maintenance reserve exists does not mean that a structure will not undergo deprecation. Even very well maintained buildings depreciate over time. However, NPS considers that the existence of a repair and maintenance reserve will lessen the depreciation deduction that will occur with respect to related leasehold surrender structures. The repair and maintenance reserve, accordingly, in addition to ensuring that concessioner facilities are well maintained, makes good business sense.

The general concessioner organization also stated that any repair and maintenance reserve should be at levels that are commercially reasonable. NPS agrees and considers that the solicitation process for new concession contracts will ensure that any repair and maintenance requirements of the new contract will be reasonable.

Finally, the general concessioner organization suggested that a repair and maintenance reserve provision contained in a concession contract should require that any balance in the reserve at the expiration of the contract should be retained by the incumbent concessioner. This matter will be addressed by NPS in the development of and consideration of public comments on its proposed standard concession contract.

This section has been changed in the final rule to delete references to the obligations of a concessioner to repair and maintain property. The references have been included in Section 51.81 in the final rule.

Subpart G—Possessory Interest (Subpart H in the final rule)

Section 51. 76 (Section 51.68 in the final rule). If a Concessioner Is Not Awarded a New Concession Contract, How Will a Concessioner That Has a Possessory Interest Receive Compensation for Its Possessory Interest?

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Section 51.77 (Section 51.70 in the final rule) If a Concessioner Is Awarded a New Concession Contract, What Happens to the Concessioner's Possessory Interest?

Several comments objected to this section with respect to the fact that it contemplates NPS determining the value of the prior concessioner's possessory interest. However, NPS notes that the intention of the section was that the determination of the value by NPS is subject to the arbitration proceedings called for by Section 51.78 of the proposed regulations. NPS has changed the section in the final regulations to reflect that a determination of value of a prior concessioner's possessory interest is, in the first instance, to be accomplished by mutual agreement of the parties, and, if that fails, through arbitration proceedings.

The general concessioner organization objected to the element of this section that calls for the value of a prior concessioner's possessory interest to be determined on a unit by unit basis on the grounds that this may impact the overall value of an existing concessioner's possessory interest. NPS, in consideration of this comment, has changed this section in the final regulations to require allocation of possessory interest on a unit by unit basis if not determined initially on such basis. If negotiation of the allocation is not successful, it will be subject to arbitration. Allocation on a unit by unit basis is necessary in order to provide for depreciation determinations and possible relinquishment of leasehold surrender interest in particular structures.

Section 51.78 (Section 51.71 in the final rule) 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?

Several comments objected to elements of this section on the grounds that the limitations it places on the arbitration proceedings are unfair and unlawful. NPS has changed this section in the final regulations. The thrust of the changes is to require binding arbitration under procedures that are to be determined by the arbitration panel. The arbitration panel will adopt procedures it deems appropriate in the circumstances of the dispute in order to treat each party equally and to give each party the opportunity to be heard and a fair opportunity to present its case. The arbitration panel will utilize adjudicative procedures such as cross-examination of witnesses if the arbitration panel determines that adjudicative procedures are necessary in the particular circumstances of the dispute. The arbitration panel may also adopt appropriate provisions regarding confidentiality of information provided by the parties to the panel or to each other in connection with the arbitration proceeding.

These changes are consistent with the commercial arbitration rules of the American Arbitration Association ("AAA") which permit arbitration panels flexibility to adopt appropriate arbitration procedures so long as each party is treated equally and each party has the opportunity to be heard and a fair opportunity to present its case.

NPS feels strongly that in most circumstances the establishment of the value of possessory interest or other related matters subject to arbitration under the regulations is best achieved with efficiency, economy, and fairness by informal proceedings rather that full-blown adjudicative procedures. NPS does not consider that it is in the best interests of concessioners, particularly smaller concessioners, or NPS, to have the arbitrated values of leasehold surrender or possessory interests influenced by the party with the more skillful attorneys rather than the party with the more persuasive appraisal. The final regulations, however, do not bind the arbitration panel in this matter. An arbitration panel may adopt whatever procedures it sees fit under the AAA

standard included in the regulations, including AAA or another arbitration organization's adjudicative procedures.

NPS also feels strongly that the members of the arbitration panel should be qualified appraisers to ensure a professional determination on the appraisal issue. The general concessioner organization agreed with this view. However, the final regulations have been changed in this connection to require that only the neutral arbiter be a qualified appraiser so that a party may select their party arbiter as they see fit. In addition, NPS has deleted the requirement of this section regarding judicial review of an arbitration proceeding. The scope of judicial review will be determined by applicable law.

Several comments suggested that it is unfair or unlawful for NPS to establish the terms of the arbitration without the agreement of the affected concessioner. The changes described above relieve those concerns as they provide that the arbitration panel will establish the procedures to be followed. In any event, the commenters are wrong in their presumption that the affected concessioner will not agree to the procedures. The procedures are only applicable under the terms of a concession contract a person may choose to enter into after the effective date of the final rule. They are not applicable to any existing concession contract.

NPS also points out that the procedures described above are consistent with the applicable standard provision of NPS concession contracts entered into over at least the last thirty years. The standard provision calls for a dispute over the value of possessory interest to be determined by a panel of three appraisers after giving both parties an opportunity to be heard. All existing concessioners with possessory interest contract provisions have agreed to this provision under the terms of their concession contracts.

Finally, several comments suggested that the proposed arbitration provisions are inconsistent with the terms of the Federal Arbitration Act, 9 U.S.C. 14 *et seq.*, and the Alternative Disputes Act, 5 U.S.C. 571 *et seq.* However, neither of these Acts by their terms is applicable to NPS concession contracts.

NPS, for the sake of clarity, has moved the description of arbitration proceedings to Section 51.51 of the final rule.

Section 51.79 (Section 51.72 in the final rule) If a New Concessioner is Awarded the Contract, What Is the Relationship Between Leasehold Surrender Interest and Possessory Interest?

Several comments suggested changing this section to eliminate reference to the possibility of the leasehold surrender interest being based on the actual payment to the prior concessioner by the new concessioner for the prior concessioner's possessory interest. NPS has made this suggested change in the final regulations.

Section 51.80 (Section 51.69 in the final rule) What Happens If There Is a Dispute Between the New Concessioner and a Prior Concessioner as to the Value of the Possessory Interest?

Several comments objected to the fact that this section requires a new concessioner to obtain NPS approval before agreeing to the value of possessory interest with a prior concessioner and to allow NPS to assist it in any procedures for resolution of the possessory interest value. The comments suggest that this interferes with the rights of the prior concessioner. NPS disagrees. The section imposes no obligations on the prior concessioner nor does it restrict its rights to receive payment for its possessory interest in accordance with the terms of its contract. Further, it certainly is within the rights of a new concessioner to agree that a third party has prior approval rights over a negotiated purchase price and/or to assist it in a dispute resolution process.

NPS notes that this provision is essential in order to ensure that the new concessioner negotiates or engages in dispute proceedings on an arm's length basis. Without the approval right of NPS or the right to assist in dispute proceedings, a new concessioner and a prior concessioner could collude to inflate the value of a possessory interest that NPS would indirectly be obliged to pay.

This is because the amount of money that a new concessioner has to pay for a prior concessioner's possessory interest directly affects the amount of money the new concessioner will be able to make available as a business matter under the terms of the new concession contract (for new improvements, new equipment, franchise fees, etc).

Several comments also suggested that a dispute about the amount of possessory interest compensation a concessioner is to obtain if it is not awarded a new concession contract should be resolved by the concessioner and NPS, not by the prior concessioner and the new concessioner. However, 1965 Act concession contracts call for dispute resolution between the new concessioner and the prior concessioner. NPS cannot change this provision without the agreement of the concessioner. NPS will consider resolving directly the value of a possessory interest with an existing concessioner at the request of the concessioner.

A new sentence has been added to this section in the final rule making clear that nothing in this part is to be construed as authorizing a new concessioner to refuse to pay a prior concessioner for possessory interest in accordance with the terms of a possessory interest concession contract.

Subpart H—Concession Contract Provisions (Subpart I in the final rule)

Section 51.81 (Section 51.73 in the final rule) What Is the Term or Length of a Concession Contract?

Several comments questioned the content of this section as changing the intent of Congress as expressed in Section 404 of the 1998 Act. In response, NPS has modified this section in the final rule to more closely reflect the terms of Section 404 and to make clear that it is NPS policy to establish the term of concession contracts to be as short as prudent in the circumstances of each concession contract. NPS considers that this policy is consistent with the purposes of the 1998 Act, particularly its purpose of enhancing competition in concession contracts. Long term concession contracts (where a need for a long term does not exist) equate to less competition.

A comment suggested that all outfitter and guide concession contracts should have a term of ten years on the basis of outside investments outfitter and guide concessioners may have to make. NPS has not accepted this suggestion. NPS will determine terms of outfitter and guide concession contracts on the same basis as other concession contracts, giving due consideration to the particular circumstances of each concession contract.

Section 51.82 (Section 51.74 in the final rule). When May a Concession Contract Be Terminated by the Director?

A comment requested clarification as to what termination procedures will be included in concession contracts. The standard NPS concession contract published for comment on September 3, 1999, contains the termination clause NPS proposes to use in standard concession contracts. The comment also

asked NPS to explain why the concessioner is not afforded a right of termination in the event of default by NPS. This is because a concessioner has legal rights to terminate a concession contract in accordance with general contract law in the event of a material breach by NPS.

Several comments objected to this section on the general grounds that it gives NPS too much authority to terminate concession contracts. NPS considers that having the ability to terminate a concession contract when necessary to achieve the purposes of the 1998 Act is necessary in order to properly carry out the purposes of the 1998 Act. NPS has changed this section in the final regulations to refer to the purposes of the 1998 Act rather than the purposes "of this part."

Another comment suggested changes to this section to require a right to cure in case of default or unsatisfactory annual evaluations. The standard concession contract published for public comment describes the right to cure provisions in its termination clause.

Section 51.83 (Section 51.75 in the final rule) May the Director Split or Combine Concession Contracts?

Several comments suggested that combining concession contracts should not be undertaken by NPS if the result would be the loss of a preference in renewal. NPS considers that the sentence to which the comments objected is appropriate. However, it has been deleted in the final rule as unnecessary.

One comment suggested that this section misstates Section 417 of the 1998 Act by imposing a blanket prohibition on segmenting concession contracts if the result would be a concession contract with gross receipts under $500,000. Another comment questioned why this segmentation rule was applicable to outfitter and guide concession contracts when Section 417 only addresses concession contracts with gross receipts under $500,000.

In response to these comments, NPS has amended this section to state that NPS will not segment concession contracts for the purpose of establishing a concession contract with gross receipts of less than $500,000.

Section 51.84 (Section 51.76 in the final rule) May the Director Include in a Concession Contract or Otherwise Grant a Concessioner a Preferential Right To Provide New or Additional Visitor Services?

A number of comments were received that addressed this section. Almost all misunderstood it. Accordingly, NPS has clarified it in the final regulations. However, the section did and does not do what the comments perceived. The section only precludes the inclusion of a contractual right in a contract that requires that any new or additional services be offered to the incumbent concessioner. This tracks the requirements of Section 403(9) of the Act. Several comments also asked for amplification of the term "new or additional services." NPS considers that further amplification is unnecessary in light of the clarifications made to this section in the final rule.

NPS also notes that several commenters understood this section to have application to a right of preference to a new contract. This is not the case. The section only concerns the addition of new services under the terms of an existing concession contract.

Several commenters understood this section to mean that a concession contract may not be amended to include additional services. This is not the case. NPS has added a sentence to this section in the final rule to permit by contract amendment minor additions to the visitor services authorized by a contract that are a reasonable extension of the existing services. This language tracks relevant legislative history. H.R. Rep. No.105–767 at p. 41(1998).

Section 51.85. (Section 51.77 in the final rule). Will a Concession Contract Provide a Concessioner an Exclusive Right to Provide Visitor Services?

Several comments objected to this section on the grounds that concession contracts are intended to grant exclusive rights to provide specified visitor services. This is not the case. NPS concession contracts authorize concessioners to provide specified visitor services but do not grant exclusive rights.

The general concessioner organization, although its comment indicated that it understood this section, objected to it on the grounds that it may be in the best interests of NPS to grant exclusive concession contracts. NPS does not consider this to be the case. An exclusive right establishes a monopoly situation that NPS considers contrary to the public interest.

Section 51.86 (Deleted in the final rule). Is There a Special Rule for Transportation Contracts?

This section has been deleted in the final rule as unnecessary in light of Section 412 of the 1998 Act.

Section 51.87 (Deleted in the final rule). Where Will the Director Deposit Franchise Fees and How Will the Director Use the Franchise Fees?

The general concessioner organization objected to the inclusion of "visitor support activities" as an authorized use for expenditure of franchise fees by NPS. It objected because this category is not specified in the 1998 Act, and, because "it could have a very broad meaning inconsistent with the intent of the 1998 Act." NPS disagrees with this view and notes that NPS may expend funds for needed visitor facilities in park areas from the franchise fee accounts established by the 1998 Act. This includes the construction of facilities (e.g., parking lots, access roads, and sewer systems) that directly support the operations of a concessioner. However, this section has been deleted in the final rule as unnecessary.

Section 51.88 (Section 51.78 in the final rule and retitled.) Will Franchise Fees be Subject to Renegotiation?

Several comments suggested that this section be clarified to make clear that either the concessioner or NPS may request an adjustment of the franchise fee. This change has been made in the final rule, and, consistent with this change, the final rule also clarifies that a determination as to the existence of extraordinary, unanticipated changes must be made mutually by the concessioner and NPS.

A commenter also objected to the last sentence of this section as it implies that a franchise fee adjustment is appropriate in all circumstances where an adjustment has been requested. This section has been clarified in the final regulations in accordance with these comments.

A comment suggested that the phrase "extraordinary, unanticipated changes" be defined in the final rule. NPS has not accepted this suggestion in light of the wide variety of circumstances that may trigger a request for an adjustment of a franchise fee under this section.

Another comment asked whether this section is applicable to 1965 Act concession contracts. It is not, as 1965 Act concession contracts have a different franchise fee adjustment clause under a differing provision of the 1965 Act.

NPS, in response to public comments, has also added a subsection (a) to this section to track the terms of Section 407(a) of the 1998 Act regarding franchise fees.

Section 51.89 (Section 51.79 in the final rule) May the Director Waive Payment of Franchise Fees or Other Payments?

Several comments objected to this section on the grounds NPS should have flexibility to waive franchisee fees.

NPS generally does not consider waiver of franchise fees appropriate, especially in light of Section 407 of the Act. However, it has added a phrase to this section in the final rule that permits a limited partial waiver of franchise fees if permissible under established administrative guidelines for the purpose of recognizing exceptional concessioners.

Section 51.90 (Section 51.80 in the final rule) How Will the Director Establish Franchise Fees for Multiple Outfitter and Guide Concession Contracts in the Same Park Area?

Several commenters objected to this section because it did not reflect their view that Section 411 of the 1998 Act exempts outfitter and guide concession contracts from competition under principal selection factor (5), the amount of the franchise fee offered in a concession contract proposal. However, Section 411 makes no mention of such an exemption. Rather, it states that where multiple outfitter and guide concession contracts are to be awarded in a particular park area concerning the same or similar services, NPS is to establish a comparable franchise fee for such contracts. NPS will do this on a park-by-park basis in the course of its development of franchise fees to be included in prospectuses for new concession contracts. This section was also criticized for failing to give sufficient guidance as to what services are the "same or comparable." This is a matter that is best determined on a case-by-case basis.

Section 51.91 (Section 51.81 in the final rule). May the Director Include "Special Account" Provisions in Concession Contracts?

The general concessioner organization, although not objecting to the concept of a repair and maintenance reserve as described in this section, repeated its objections directed to other sections to the effect that repair and maintenance of leasehold surrender interest capital improvements results in additional leasehold surrender interest. The commenter also reiterated its position that any expenditures from repair and maintenance reserves should be deducted from the depreciation element of leasehold surrender interest when valuing leasehold surrender interest. NPS disagrees for the reasons discussed under Section 51.75.

A comment objected to the concept of repair and maintenance reserves because they allegedly will become a means for direct fee bidding in the prospectus process. NPS does not agree with this view and notes that required maintenance and repair reserves are a standard practice in the commercial real estate industry.

A comment objected to the element of this section that requires the concessioner to repair and maintain all concessioner facilities assigned to it under the terms of the concession contract. The comment asked whether this includes infrastructure assigned to the concessioner and stated that basic infrastructure should be constructed and maintained by NPS. NPS notes that concessioners are assigned a variety of facilities for use in their operations, including, occasionally, basic infrastructure. This has been NPS practice for many years. NPS considers it appropriate that NPS concession contracts require a concessioner that utilizes government property in its business to maintain and repair the property.

A comment suggested that all "special accounts" be forbidden, e.g., "resource protection" funds, as they are a means for NPS to indirectly engage in franchise fee bidding. NPS has not accepted this suggestion. In circumstances where it is otherwise permissible under the 1998 Act or other law, a provision in a concession contract requiring the concessioner to make expenditures from its gross receipts for specified purposes is an appropriate means to carry out the purposes of the 1998 Act.

NPS has added to this section in the final rule the repair and maintenance obligations of concessioners set forth in Section 51.75 of the proposed regulations.

NPS has also added a sentence to this section in the final rule to make clear that repair and maintenance reserve provisions are not to be included in concession contracts in lieu of a franchise fee and funds from such reserves are to be expended only for the repair and maintenance of real property improvements assigned to the concessioner for use in the concessioner's operations.

Section 51.92 (Section 51.83 in the final rule.) Handicrafts [Reserved]

This section was reserved as NPS is in the process of developing regulatory guidelines for handicraft sales under Section 416 of the 1998 Act with the advice of the National Park Service Concessions Management Advisory Board established by Section 409 of the Act.

The general concessioner concessioner organization commented on this section, stating that it should have the right to comment on the proposed handicraft regulations prior to the finalization of the proposed general concession regulations. NPS has published these final regulations prior to the date of possible publication of proposed handicraft regulations. NPS did not consider it to be in the public interest to delay finalization of these general regulations as requested by the general concessioner organization. Numerous concessioners are currently operating under short term extensions of existing contracts. Any delay in the promulgation of the final general concession regulations would have a detrimental effect on not only park visitors but many concessioners as well.

Subpart I—Assignment or Encumbrance of Concession Contracts (Subpart J in the final rule)

Section 51.93 (Section 51.84 in the final rule) What Special Terms Do I Need To Know To Understand This Part?

The comments received did not directly address the proposed definitions contained in this section. Several comments expressed concerns about some of the definitions indirectly. These comments are addressed under the relevant sections of this subpart.

Section 51.94 (Section 51.85 in the final rule) What Assignments Require the Approval of the Director?

Comments stated that the 1998 Act does not allow approval of an encumbrance of a concessioner's revenue stream as contemplated by this section. NPS has deleted as unnecessary the reference to approval of revenue streams in the final rule. This section and other sections within this subpart have been amended accordingly. However, the treatment of revenue streams will necessarily be a consideration in the approval of encumbrances that must be approved in accordance with the requirements of this part under the final rule.

Several comments stated that the 1998 Act does not address approval of a controlling interest in a concession contract, requesting that reference to approval of controlling interests be deleted from this and other sections of the proposed regulations.

NPS has not made this requested change. Requiring approval of the assignment of controlling interests is essential in order to effectuate the purposes of the 1998 Act with respect

to its admonitions that only qualified persons are entitled to own NPS concessions.

In this connection, Section 408(a) of the 1998 Act states as follows:

(a) APPROVAL OF THE SECRETARY.—No concessions 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. (Emphasis added).

The "controlling interest" element of this section is generally directed to corporate concessioners. Basically, it recognizes that a concession contract may effectively be conveyed or pledged by a corporate concessioner ("otherwise conveyed or pledged" under the terms of Section 408(a)) without any legal transfer, assignment or sale of a concession contract *per se* held by a corporate concessioner.

If Section 408(a) of the 1998 Act were interpreted to forbid approvals of the transfer of a controlling interest in a corporation that holds a concession contract, only transfers of concession contracts that are held by individuals or partnerships would be subject to NPS approval. A corporate concessioner need only sell its stock to a new party (sale of a controlling interest) in order to effectuate a transfer of the concession contract. Congress did not intend such an anomalous result. Section 408(b) of the 1998 Act (set forth below) describes the statutory intentions for requiring the approval of the transfer of concession contracts by forbidding approval of a transfer by NPS if:

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

(2) such transfer or conveyance is not consistent with the objectives of protecting, conserving, and preserving the resources of the unit of the National Park System and of providing necessary and appropriate visitor services at reasonable rates and charges; or

(3) the terms of such transfer or conveyance are likely, directly or indirectly, to reduce the concessioner's opportunity for a reasonable profit over the remaining term of the contract, adversely affect 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 such facilities and services.

The position of the comments concerning transfer of controlling interests in concession contracts would nullify these congressional intentions. This is not a hypothetical concern. Many NPS concessioners are corporations that hold a concession contract as their exclusive business activity. In addition, almost all of the largest NPS concessioners are wholly owned subsidiaries of larger corporations. If NPS accepted the position of the commenters, NPS would have no right of approval of the transfer by sale of stock of the Yosemite, Yellowstone, Grand Canyon, Grand Teton, Glen Canyon, Glacier, and Mesa Verde National Park concession contracts, among others.

In any event, NPS considers that the phrase "or otherwise conveyed or pledged" directly encompasses the inclusion of controlling interests in this section. NPS also notes that the "controlling interest" concept was contained in 36 CFR Part 51 under the terms of the 1965 Act. Congress must be presumed to have been aware of this in considering the 1998 Act.

Another commenter made essentially the same argument with respect to inclusion in the regulations of a right to approve management contracts a concessioner might enter into. NPS considers it must have the ability to review management contracts for the reasons discussed with respect to controlling interests. Congress did not intend that the most qualified offeror be selected for award of a concession contract only to permit the selected qualified concessioner to turn over management to a third party with no right of NPS to determine that the third party is qualified. NPS considers that it has ample authority to require approval of arrangements under which a third party is to operate a concession under the 1998 Act and 16 USC 1 *et seq.*

NPS notes that Section 408(b) of the 1998 Act uses the word "and" instead of "or" between the second and third determinations that are required for approval of an assignment or encumberance. NPS has interpreted this in the regulations as "or" in light of the legislative history of this section and the fact that the word "and," perhaps, and anomalously, could be read as requiring NPS to approve transactions that are detrimental to the resources of the park area or to park area visitors. No commenters on the proposed regulations questioned this interpretation.

Section 51.95 (Section 51.86 in the final rule) What Encumbrances Require the Approval of the Director?

Several comments repeated under this section their similar objections directed to Section 51.94. The changes made to Section 51.94 have also been made to this section in the final regulations. In addition, NPS has deleted subsection (f) of this section in the final regulations in response to public comments.

Section 51.96 (Section 51.87 in the final rule) Does the Concessioner Have an Unconditional Right To Receive the Director's Approval for an Assignment or Encumbrance?

Several comments suggested that the preliminary language in this section be amended to more accurately reflect Section 408 of the 1998 Act, that approval of an assignment or encumbrance is to be granted by NPS unless NPS makes a determination that the approval conditions contained in Section 408 are not met. NPS has made this change in the final rule.

Several comments requested modification of the limitations on the purposes for which encumbrances may be approved. In this connection, Section 405(a)(2)(A) of the 1998 Act provides that 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 of the Interior pursuant to this section.

The limited purposes for which a leasehold surrender interest may be pledged were the primary basis of the encumbrance limitations contained in the proposed regulations. In response to comments, this section has been modified in the final regulations to broaden the purposes for which encumbrances may be made consistent with the purposes and requirements of the 1998 Act.

Section 51.97 (Renumbered as Section 51.88 in the final rule) What Happens If an Assignment or Encumbrance Is Completed Without the Approval of the Director?

NPS has deleted reference to concessioner revenues from this section in accordance with the discussion under Section 51.93.

Section 51.98 (Section 51.89 in the final rule) What Happens If There Is a Default on an Encumbrance Approved by the Director?

* * * * *

Section 51.99 (Section 51.90 in the final rule) How Does the Concessioner Get the Director's Approval Before Making an Assignment or Encumbrance?

Several comments suggested that this section's prior approval requirements insert NPS into a concessioner's business transactions before the transaction is completed. However, Section 408 of the 1998 Act requires written notification and approval before assignments and encumbrances are completed. The changes reducing the scope of transactions subject to NPS

approval under the final regulations will alleviate the concerns of the commenters.

Section 51.100 (Section 51.91 in the final rule) What Information Will the Director Require in the Application?

A number of commenters complained that the information requirements imposed by this section are too burdensome. NPS, in response to these comments, has reduced the information described in this section and has worded the section so as to require submission of information only to the extent requested by NPS as necessary in the circumstances of a particular transaction. NPS, in response to comments, has also modified the scope of the information requirements in a number of respects and has deleted subsection (c) in the final regulations. NPS considers that the remaining information requirements are necessary in order to assist in making the determinations required by Section 408 of the 1998 Act. A comment suggested that the word "reasonably" be included in this section to limit what information the Director may request. NPS has not made this change because under applicable law, NPS decisions made pursuant to this part must have an appropriate basis.

The general concessioner organization made a number of specific suggestions regarding the information requirements of this section. They are responded to as follows:

The commenter suggested that NPS should not be provided the actual transaction documents regarding an assignment or encumbrance but should rely on a narrative description of the transaction to be submitted by the concessioner. NPS considers that it must have access to the actual transaction documents in order to be able to make the determinations required by Section 408 of the 1998 Act.

The commenter requested that this section be limited to an opinion of counsel that only goes to the authority of the contracting party and the enforceability of the contract. NPS considers that the broader wording of this section is appropriate. If a proposed acquisition of a concession contract is unlawful, this impacts on the qualifications and ability of the acquiring party to satisfy the conditions of the concession contract within the meaning of Section 408.

The commenter suggested that the last clause of subsection (c) is duplicative. NPS has deleted it.

The commenter objected to the requirement of subsection (g) to the effect that a narrative description of the transaction is required. The commenter suggested that the narrative description of the financial aspects of the transaction as required by Subsection (c) should suffice for NPS purposes. NPS considers that aspects of a transaction beyond financial considerations are very relevant under the approval conditions of Section 408. This provision has not been changed in the final rule.

The commenter suggested changes and a clarification of subsection (h). This section has been clarified accordingly and the requirement for review by an independent accounting firm deleted as requested by the commenter.

The commenter objected to the allocations required by subsection (i). Subsection (i) has been edited in the final rule to delete a specific list of allocations. The general allocation information is needed in connection with the NPS responsibility to determine that the terms of the transaction will not reduce the concessioner's opportunity for a reasonable profit. It is usual practice when examining the financial implications of purchases of stock or assets to review the allocations of the purchase price among particular asset classes.

The commenter suggested several changes to the times included in subsection (j). NPS has generally made the commenter's requested changes in the final rule. The new times established are considered appropriate by NPS in the circumstances of NPS concession contracts.

The commenter requested deletion of subsection (k). It has been deleted in the final rule.

The commenter requested deletion of subsection (l). NPS has not deleted it. Given the variety of circumstances that may relate to assignment or encumbrance of NPS concession contracts, flexibility in requesting information must be retained.

Another commenter requested that the regulation make clear that the information submitted is confidential. NPS has not made a change to this section in this connection because the extent to which information submitted to NPS by a concessioner is available to the public is determined by the requirements of the Freedom of Information Act and related laws, including the 1998 Act.

Section 51.101 (Deleted in the final rule) May the Director Waive Any of These Documentation Requirements?

This section has been deleted in the final regulations in light of the changes made to Section 51.100.

Section 51.102 (Section 51.92 in the final rule) What Are Standard Proformas?

Several comments suggested that the standard proformas that are encouraged but not required to be submitted pursuant to this section do not conform to standard business practice because they call for loans to be amortized during the remaining term of the concession contract. NPS notes, however, that Section 408 of the 1998 Act states that an approval of assignments or encumbrances may not be granted if, among other matters, the transaction is "likely to reduce the concessioner's opportunity for profit over the remaining term of the contract."

NPS, nonetheless, in response to these comments, has made a change to this section in the final rule to the effect that a standard pro-forma, if it does not call for amortization of a loan over the remaining term of the contract, must explain why this fact is not inconsistent with the considerations stated in Section 51.87(h) of the final rule.

Another commenter suggested that the responsibility of the NPS to approve transactions with respect to a concessioner's opportunity for profit should be limited to circumstances where NPS determines that a negative effect would result from an unprofitable operation. This interpretation, however, is in conflict with the plain language of the statute.

NPS has also changed this section in the final regulations by deleting subsection (d) in response to comments.

Section 51.103 (Deleted in the final rule) If the Concessioner Submits a Non-Standard Proforma, Is the Director More Likely To Disapprove the Transaction?

Because of the changes made to Section 51.92 in the final rule, this section has been deleted in the final rule.

Section 51.104 (Section 51.93 in the final rule) If the Transaction Includes More Than One Concession Contract, How Must Required Information Be Provided?

* * * * *

Section 51.105 (Deleted in the final rule) In What Circumstances Will the Director Not Approve an Assignment or Encumbrance?

Several comments misunderstood subsection (a) to mean that a concessioner may not obtain a bank loan without NPS approval of the bank as qualified to operate a concession. This is not the case. However, in case of foreclosure, a new operator selected by

the bank would have to be approved by NPS as qualified. The final rule makes this clear in Section 51.87(c).

A comment requested that time limits for approval of a transaction be imposed in this section. NPS does not consider this to be practical given the scope and variety of transactions that are subject to approval under the terms of the 1998 Act.

Another comment suggested that NPS should rely on banks with respect to the reasonable opportunity for a profit aspect of a transaction approval. In other words, the comment suggested that if a bank will make a loan for a concession transaction, NPS should automatically agree that it does not reduce the concessioner's opportunity to make a reasonable profit. NPS has not accepted this suggestion. In the first instance, adopting such a rule would be an abrogation of its responsibilities under the 1998 Act. Moreover, the fact that a bank may choose to make a loan relating to a concession transaction by no means ensures that the terms of the transaction will not reduce a new concessioner's opportunity to earn a reasonable profit over the remaining term of the concession contract. The general test for a bank loan is whether the lender will receive the principal and interest on its loan. In addition, a loan may be secured by unrelated assets (personal guarantees, stock pledges, etc.) that make the loan secure but do not necessarily indicate that the concessioner has not reduced its reasonable opportunity for a profit in committing to the transaction. NPS in reviewing transactions will take into account the fact that a bank loan is involved.

NPS has deleted this section in the final rule and moved its content to Section 51.87 in the final regulation for the sake of clarity.

Section 51.106 (Section 51.94 in the final rule) What Information Will the Director Consider When Deciding To Approve a Transaction?

This section has been modified in the final rule to clarify that NPS may consider information other than that submitted by the concessioner in determining whether to approve an assignment or encumbrance.

Section 51.107 (Section 51.95 in the final rule) Does the Director's Approval of an Assignment or Encumbrance Include Any Representations of Any Kind?

A sentence has been added to this section in the final rule to clarify that approval of an assignment or encumbrance does not alter the terms of the applicable concession contract unless expressly so stated by NPS in writing.

Section 51.108 (Section 51.96 in the final rule) May the Director Amend or Extend a Concession Contract for the Purpose of Facilitating a Transaction?

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Section 51.109 (Section 51.97 in the final rule) May the Director Open To Renegotiation or Modify the Terms of a Concession Contract as a Condition of the Approval of a Transaction?

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Section 51.110 (Deleted in the final rule)—May the Director Charge a Fee for the Review of a Proposed Transaction?

NPS has deleted this section in response to comments.

Subpart J—Information and Access to Information (Subpart K in the final rule)

Section 51.111 (Section 51.98 in the final rule) What Records Must the Concessioner Keep and What Access Does the Director Have To Records?

Several comments objected to this section with respect to the fact that it applies to related records of parent or affiliated entities of a concessioner. In response, NPS has deleted the references except in circumstances where a concessioner parent or affiliate makes representations or commitments to NPS regarding its support or responsibilities to a concessioner. Access to records of the parent or affiliate in these limited circumstances is necessary in order for NPS to be able to reasonably rely on the representations or commitments.

Section 51.112 (Section 51.99 in the final rule) What Access To Concessioner Records Will the Comptroller General Have?

This section has been amended in accordance with the changes to Section 51.111.

Section 51.113 (Deleted in the final rule) What Information Will the Director Make Publicly Available About the Concessioner and the Concession Contract?

A number of comments raised confidentiality concerns about this section, arguing that it is in violation of the Freedom of Information Act. NPS has deleted this section in the final rule but moved certain of its information requirements to Section 51.5(f) in the final rule. The specific information requirements that are retained are those that were contained in 36 CFR Part 51 prior to this amendment. Other information listed in the proposed regulation has been deleted in the final rule in response to comments. Particularly, the reference to the existing concessioner's net profit has been deleted.

However, NPS considers that Section 403(3)(6) of the 1998 Act precludes NPS from exercising exemptions to the Freedom of Information Act with respect to release of information provided to NPS by a concessioner if NPS determines that the release of the information is necessary to allow for the submission of competitive proposals. NPS considers that the information requirements now contained in Section 51.5(f) in the final rule are necessary for this purpose. These specific information requirements (carried over from the existing 36 CFR Part 51) represent at least some of the information about the general scope of a business that a competitor needs in order to submit a competitive proposal.

Section 51.114 (Section 51.100 in the final rule) When Will the Director Make Proposals and Evaluation Documents Publicly Available?

This section has been edited by inserting the introductory phrase "in the interests of enhancing competition" to make clear its intentions. The purpose of this section is to avoid actions that may have anti-competitive results, *e.g.*, where, in the course of a contested selection of the best proposal submitted in response to a prospectus, a competitor seeks to obtain a copy of the best proposal that it may then utilize to enhance its proposal in the event a resolicitation of the contract opportunity is required. This is not only unfair to the offeror that submitted the best proposal in the first instance, but also inhibits legitimate competition in the award of concession contracts, contrary to the purposes of the 1998 Act.

One commenter, a municipality that holds a concession contract, suggested that all concession contract proposals be made public upon receipt as it is obliged to make its proposal public because of its status as a municipality. NPS has not accepted this suggestion for the reasons discussed above regarding the need to maintain the confidentiality of proposals.

Subpart K—The Effect of the 1998 Act's Repeal of the 1965 Act (Subpart L in the final rule)

Section 51.115 (Section 51.101 in the final rule) Did the 1998 Act Repeal the 1965 Act?

NPS has changed this section in the final rule to clarify that this part as well as the 1998 Act applies to 1965 Act concession contracts except to the extent that its provisions are inconsistent with particular terms and conditions of a 1965 Act concession contract.

Section 51.116 (Section 51.102 in the final rule) What Is the Effect of the 1998 Act's Repeal of the 1965 Act's Renewal Preference?

This section is discussed in the General Comments section. As stated, NPS considers that the 1998 Act's repeal of the 1965 Act, including its requirement in Section 5 that NPS give existing satisfactory concessioners preference in renewal of their contracts, applies to the holders of 1965 Act concession contracts. This section of the proposed regulations, however, permits a concessioner to appeal this decision to the Director if a 1965 Act concession contract expressly references a preference in renewal. In circumstances where a 1965 Act concession contract does not make express reference to a preference in renewal, it is the final administrative decision of NPS, based on the considerations discussed in the General Comments section, that the repeal of the 1965 Act's preference in renewal by the 1998 Act is applicable to holders of 1965 Act concession contracts.

This section has also been changed in the final rule to track the language of Section 415 so as to avoid any concern that NPS misinterpreted its meaning with respect to the phrase "inconsistent with the terms and conditions of any such contract or permit." Finally, in response to a comment discussed under Section 51.49 to the effect that a concessioner holding a 1965 Act concession contract not only has a continuing right to a right of preference in renewal, but, also, has a "right" to not submit a responsive proposal in response to a prospectus, a sentence has been added to the final rule to clarify that if an appeal is successful under this section, or if a court determines that a concessioner holding a 1965 Act concession contract does have a preference in renewal, that the otherwise applicable terms and conditions of this part regarding the exercise of a preference in renewal, including, without limit, the obligation to submit a responsive proposal, apply to any preference in renewal recognized with respect to holders of 1965 Act concession contracts. NPS considers that it has authority to adopt these requirements under the 1998 Act and, in addition, under 16 USC 1 *et seq.* (with particular reference to 16 USC 3).

By providing this appeal right, NPS does not seek to lead existing concessioners to believe that it is likely that they would qualify for an appeal under this section. To the best of the knowledge of NPS, no 1965 Act concession contract or permit with annual gross receipts of more than $500,000 references a preference in renewal. However, there may be exceptions in which case this section of the final rule will apply.

To avoid requiring concessioners to make administrative appeals that are likely to be unsuccessful, NPS has deleted the sentence in subsection (b) of this section in the proposed regulations that stated that a concessioner must make an appeal under this section in order to be considered as having exhausted administrative remedies with respect to denial of a renewal preference regarding 1965 Act concession contracts. In its place, a sentence has been added to the final rule making final the decision of NPS regarding the repeal of the 1965 Act's preference in renewal with respect to holders of 1965 Act concession contracts.

Section 51.117 (Deleted in the final rule) What Renewal Preference Exceptions Are Made for Glacier Bay Cruise Ships?

A comment asked why this section provides an exemption for Glacier Bay cruise ships and requested a similar exemption for other concessioners in "exceptional circumstances." The Glacier Bay exemption was established by Section 419 of the 1998 Act. NPS has no authority to grant similar exemptions from the requirements of the 1998 Act.

This section has been deleted in the final rule in light of Section 419 of the Act.

Subpart L—Information Collection [Subpart M in the final rule]

Section 51.118 (Section 51.104 in the final rule) Have Information Collection Procedures Been Followed?

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3. Additional Comments and Changes

In addition to this discussion of changes made to the proposed regulations, NPS points out that it has added several clarifying sections to the final rule, including new Sections 51.27 and 51.28, to set forth definitions of terms used in the final rule. It has also added a severability clause in new Section 51.103 of the final rule.

NPS has also added a new Section 51.81 regarding concessioner rate approvals. The new section reiterates most of the rate approval requirements of Section 406 of the 1998 Act. Although NPS administers concessioner rate approvals under administrative guidelines, it has included the text of Section 406 in the final rule so that the final rule is self-explanatory with respect to the nature of rate approvals. NPS considers that its rate approval process requires significant administrative flexibility and therefore is best managed under administrative guidelines, not regulations.

The general concessioner organization suggested that NPS adopt new rate approval policies and procedures without waiting for the advice of the National Park Concessions Management Advisory Board as is contemplated by Section 406(c) of the 1998 Act. NPS has not accepted this suggestion. The recommendations of the Advisory Board are critical to the development of an effective rate approval program under the policies expressed in 1998 Act.

A commenter requested that NPS consider its views and republish the proposed regulations for further public comment. NPS notes that it has accommodated many of the concerns of the commenter through incremental changes in the final rule. However, NPS has determined not to reissue the proposed regulations for further public comment. There is an urgent need to recommence concession contracting actions that were necessarily halted in November of 1998 in order to promulgate contracting regulations under the new law. More than 280 of the 630 NPS concession contracts are operating under contract extensions as of January 1999. Both the concessioners and NPS are in need for the contracting process to resume so that new full term concession contracts may be awarded. Concessioners in general dislike operating on extended contracts with no certainty as to the future.

Particularly, concessioners are reluctant to make capital investments under extended concession contracts and have difficulty in retaining experienced employees in light of the uncertainties created by contract extensions. In addition, the public has an obvious need for concession operations to be stabilized under new full term concession contracts. NPS published the proposed regulations for comment as a matter of policy. The regulations are exempt from mandatory publication as proposed regulations

under 5 U.S.C. 553(b)(B) as regulations relating to government agency contracts and public property. Even if the regulations were required to be republished as proposed, it is considered that this would be impractical and contrary to the public interest in light of the backlog of contracting actions that face NPS.

NPS also considers that solicitation of further public comments is unnecessary and not in the public interest. NPS has fully considered the public comments received and has made incremental modifications to the proposed rule that reflect these comments. The final rule, in the view of NPS, is a logical outgrowth of the proposed regulations in consideration of public comments. Further opportunity for public comment would be detrimental to concessioners and visitors to park areas, and, would not, in the view of NPS, significantly alter the content of the final rule. A delay in the commencement of concession contracting under the 1998 Act may make it impossible for NPS to award a number of expiring concession contracts this year (in light of the length of time required to solicit and award concession contracts), thereby requiring further, otherwise unnecessary, contract extensions.

An environmental consulting firm suggested including in numerous places in the proposed regulations specific references to environmental protection matters. NPS has not done this as references in the regulations to "protection of resources," etc., include by implication the commenter's environmental concerns.

Several comments objected to the fact that the proposed regulations do not include provisions regarding the NPS Concessions Management Advisory Board established by Section 409 of the 1998 Act. However, there is no need for regulations governing this Board. Its activities are described by Section 409 and the Board's administrative charter.

A comment asked why the regulations make no reference to NPS 48, the NPS internal guidelines for concessions management. The regulations do not mention NPS 48 as there is no need for them to do so. Administrative guidelines are necessarily subordinate to the content of the regulations.

Several comments asked NPS to rule in the final regulations on the status of particular concessioners or classes of concessioners under varying provisions of the regulations. NPS has not done this. The final rule establishes the framework for concession contracting decisions. Particular decisions must be made as the need arises after finalization of the regulations.

A comment criticized the proposed regulations for not describing how NPS intends to carry out Section 410 of the 1998 Act. Section 410 requires NPS, to the maximum extent possible, to contract with private entities to assist NPS in the conduct of elements of the NPS concessions management program that are considered to be suitable for non-governmental performance. NPS has not made changes to the regulations in light of this comment. Decisions as to what elements of NPS concessions management should be contracted to third parties are administrative in nature.

Several comments criticized the fact that NPS published for public comment its proposed new standard concession contract after publishing the proposed regulations for public comment. The comments suggested that it is difficult to fully comprehend the proposed regulations in the absence of the proposed new standard concession contract. NPS does not agree with this view as the standard concession contract is subordinate to the terms and conditions of the regulations. NPS also notes that it is under no obligation to publish its standard concession contract for public comment. It does so as a matter of policy. In any event, the proposed new standard concession contract was published for public comment almost six weeks in advance of the deadline for submitting public comments on the proposed regulations. Commenters had ample time to review the documents together.

The general concessioner organization criticized the preamble to the proposed regulations with respect to the fact that it concludes that the proposed regulations do not have takings implications within the meaning of Executive Order No. 12630. NPS has reviewed the position of the general concessioner organization in consultation with the Office of the Solicitor. The NPS and the Office of the Solicitor are of the view that the final rule does not have any takings implications as discussed further below.

Several comments stated that the question and answer format of the regulations is confusing. NPS disagrees. It considers that the question and answer format provides an effective means for readers to locate a particular section of the regulations and to understand its relationship to the other sections.

In addition to the changes made to the proposed regulations in the final rule, NPS has made a number of editorial and conforming changes, including, without limit, changing the introductory questions at the beginning of each section to reflect changed content of the section.

Drafting Information

The primary officials that authored this rule are Wendelin M. Mann, Concession Program, National Park Service, and Pamela L. Barkin, Office of the Solicitor, Department of the Interior.

Compliance With Laws, Executive Orders and Departmental Policy

Regulatory Planning and Review (E.O. 12866)

This rule is a significant rule under Section 3(f)(4) of Executive Order 12866 and accordingly has been reviewed by the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. In fact, NPS does not consider that the rule will have any measurable effect on the economy. The rule merely establishes the procedures for award of NPS concession contracts and the terms and conditions of NPS concession contracts. This rule will not result in increased costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions as the rule does not change the manner in which a concessioner's rates and charges to the public are established. Further, this rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. To the contrary, the rule enhances competition in the award of concession contracts. The primary effect of the proposed rule is to establish procedures for the solicitation, award and administration of National Park Service concession contracts required by the 1998 Act.

Regulatory Flexibility Act

The purpose of this rule is to describe procedures and terms for the solicitation, award and administration of NPS concession contracts in accordance with the 1998 Act. As such, it is not a rule that is required to be published as proposed for public comment by 5 U.S.C. 553 or other law. 5 U.S.C. 553 exempts from its application regulations that involve a "matter relating to agency management or personnel or to public property, loans, grants, benefits and contracts." The NPS regulations address NPS

concession contracts and public property (park areas). In addition, although Section 417 of the 1998 Act requires NPS to promulgate regulations for its implementation, it does not require that this be done through a general notice of proposed rulemaking. Accordingly, NPS does not consider that this regulation is subject to the Regulatory Flexibility Act as that Act, by its terms, only applies to rules and regulations that are required by 5 U.S.C. 553 or other laws to be promulgated after required publication of a general notice of proposed rulemaking.

On November 22, 1999, however, NPS published in the **Federal Register** a discussion of the proposed regulations that meet the spirit of the Regulatory Flexibility Act in the form of an initial regulatory flexibility analysis. The notice also asked for public comments on the suggestion of NPS that the Regulatory Flexibility Act may not apply to these regulations.

Only two comments were received in response to the notice, both from law firms representing incumbent concessioners. Both comments summarily concluded that the proposed regulations are subject to the Regulatory Flexibility Act. NPS does not agree with this view but considers the matter academic as NPS has fully complied with spirit of the Regulatory Flexibility Act in promulgating these regulations.

NPS also points out that the preamble to the proposed regulations states that it is likely that the number of NPS concession contracts and permits will decrease as a result of the proposed regulations. This statement was erroneously included in the preamble after it had been determined by NPS to be incorrect. The **Federal Register** notice regarding the initial regulatory flexibility analysis stated that this statement should be disregarded.

Upon consideration of public comments on its initial analysis, NPS has concluded that the proposed regulations and final rule, even if subject to the Regulatory Flexibility Act, will not have a significant impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act for the reasons discussed in the initial notice.

Nonetheless, NPS sets forth below the required elements of a final regulatory flexibility analysis in the spirit of the Regulatory Flexibility Act, as follows:

(1) A succinct statement of the need for, and objectives of the rule.

The final rule is needed to comply with Section 417 of the 1998 Act that requires promulgation of appropriate regulations for its implementation. The objectives of the rule are to provide appropriate procedures, terms and conditions for NPS concession contracting in furtherance of the purposes of the 1998 Act.

(2) A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

As stated, only two comments were received in response to the initial regulatory flexibility analysis. The NPS response to the issues raised by the comments on the initial regulatory flexibility analysis (except for restated arguments regarding the preference in renewal issue) are as follows:

a. *Comment.* The environmental requirements of the proposed rule go beyond statutory requirements and impose duties that should be borne by the government.

NPS disagrees with this comment. The environmental requirements of the proposed rules, i.e., that concessioners should undertake activities in the conduct of their operations that enhance the environment (such as recycling and energy conservation) are clearly reasonable operating conditions that NPS may place on a concessioner under the terms of a concession contract. Further, NPS does not understand why the commenter suggests that these type of programs should be borne by the government. NPS considers that concessioners should be responsible for conserving energy in its operations and recycling trash. Finally, the suggestion that a small business (defined by SBA as a business grossing less than $5 million dollars) cannot afford to undertake progressive environmental management practices such as recycling and energy conservation is not supported by practical experience. Not only are such practices commonplace in the United States, many of them are cost effective. In any event, NPS has modified the environmental requirements in the final rule as discussed above.

b. *Comment.* The restrictions on assignments and sales take the proposed regulations well beyond the statute.

NPS does not consider that the proposed regulations regarding sales and transfers exceeded reasonable implementation of the requirements of Section 408 of the 1998 Act. Section 408 did not exempt small businesses from its application. The information requirements set forth in the proposed regulations are necessary for NPS to carry out its responsibilities under Section 408. In any event, in the final rule NPS has made the information requirements discretionary in the circumstances of particular transactions. The smaller the business, the less information NPS will generally need in order to approve a sale or transfer. In addition, the final rule has eliminated reference to approval of encumbrances of net revenue as mentioned by the commenter as particularly burdensome to small businesses.

c. *Comment.* The section of the proposed rule that states that a purchaser of a concession does not have to buy the related personal property of an existing concessioner could cause losses to the small business concessioner.

NPS notes that the 1998 Act makes no mention of a requirement that an existing concessioner is entitled to have a new concessioner purchase its personal property. It is the position of NPS that concession contracts should not require an existing concessioner to sell its personal property to a new concessioner or to require a new concessioner to purchase the personal property of a previous concessioner. Both businesses are treated equally. NPS fails to understand why a contract that permits the contractor to sell its personal property on the open market upon contract expiration is burdensome to the contractor or in any way contrary to usual business practices in the United States. In fact, requiring a new concessioner to purchase the personal property of a prior concessioner may well be considered burdensome to small businesses.

d. *Comment.* The requirement in the proposed regulations that the purchaser of a concession operation has a year to pay a prior concessioner for its leasehold surrender interest is burdensome to small businesses.

NPS has discussed the need for this provision in the section-by-section analysis. However, NPS also notes that the final rule is changed in this connection, requiring the payment of interest and only permitting payment after the expiration of a contract in extraordinary circumstances beyond the control of NPS. NPS considers that these changes address any valid concerns of the commenter.

e. *Comment.* One hundred and forty two small businesses constitute a significant number of small businesses within the meaning of the Regulatory Flexibility Act.

The commenter made this assertion without explanation. NPS does not consider that there is any valid basis upon which to conclude that 142 businesses out of all the hotel, restaurant, outfitter and guide,

sightseeing, etc. businesses in the United States are a "significant" number of small businesses within the meaning of the Regulatory Flexibility Act.

f. *Comment.* The lottery system and the lack of regulations regarding rates to the public unduly affect small businesses.

Reference to a lottery system has been eliminated in the final rule. In addition, a section on rate approvals has been added. In any event, NPS rate approvals are accomplished under administrative guidelines, not regulations.

(3) A description of and an estimate of the number of small entities to which the rule will apply.

NPS notes that the vast majority of NPS concessioners (approximately 600 out of 630) are "small businesses" under applicable Small Business Administration guidelines (gross receipts of less than $5 million) and has developed the proposed regulations and final rule to accommodate to the extent possible the concerns of concessioners and prospective concessioners, almost all of which are small businesses.

There are some 630 existing NPS concessioners. Of these, approximately 75% will be provided a preference in renewal because of the 1998 Act. In addition, there are an unquantifiable number of businesses which may in the future seek to obtain a concession contract and thereby benefit from the 1998 Act's repeal of the preference in renewal as they will have a greater chance of successfully competing for a concession contract. The types of businesses that are generally NPS concessioners are hotel, restaurant, transportation, marina, sightseeing, outfitting, souvenir sales, etc., *i.e.*, businesses that provide necessary and appropriate visitor services in areas of the national park system.

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

All concessioners are subject to these requirements.

Sections 51.98 and 51.99 describe the records and recordkeeping requirements of the final rule. All concessioners are subject to these requirements under the 1998 Act and this part. The type of skills necessary include business, accounting, and, in limited circumstances, legal skills.

(5) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy and legal reasons for selecting the alternatives adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The previous discussion under the section-by-section analysis provides this information in detail, including a discussion as to why suggestions from concessioners were not adopted by NPS in the final rule. In general terms, the requirements of the final rule are necessary in order for NPS to properly carry out its responsibilities under the 1998 Act. However, NPS notes that it has made a number of incremental changes in the final rule that ameliorate impacts on smaller entities. For example, it has made the environmental management program elements of the proposed regulations discretionary with respect to businesses grossing less than $100,000 and has provided for lower information requirements for smaller concession contract solicitations. In addition, a number of changes have been made in the final rule that ameliorate impacts on all concessioners, *e.g.*, arbitration of construction cost, payment of interest on leasehold surrender interest not paid for as of contract expiration, inclusion of additional administrative appeal rights, and more limited, non-mandatory information requirements for assignments and encumbrances of concession contracts.

Unfunded Mandates Reform Act

The National Park Service has determined (for the reasons discussed above) and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, State, tribal governments or private entities. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12360, the rule does not have significant takings implications. The rule has no effect on private property. Existing concessioners are entitled to payment for any real property improvements they may have upon expiration or termination of existing concession contracts in accordance with their terms. Other persons are not affected by the terms of concession contracts issued under the authority of this part unless the person chooses to enter into a concession contract.

Federalism

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule imposes no direct requirements on any governmental entity other than the National Park Service.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The collections of information contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et. seq.* and assigned clearance numbers 1024–0125 (Submission of Offers in Response to Concession Prospectuses) and 1024–0126 (Sales of Concession Operations). Additional reporting and recordkeeping requirements were identified in subpart F regarding appeal of a preferred offeror determination, subpart G regarding leasehold surrender interest and in subpart K regarding recordkeeping that are not covered under OMB approvals. An emergency information collection request to cover these requirements has been prepared and submitted to OMB for approval. These additional information collection requirements will not be implemented until OMB approves the emergency request. NPS will publish a **Federal Register** notice when OMB has approved these requirements.

National Environmental Policy Act

This rule does not constitute a major federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act is not required. The rule will not increase public use of park areas, introduce noncompatible uses into park areas, conflict with adjacent land ownerships or land uses, or cause a nuisance to property owners or occupants adjacent to park areas. Accordingly, this rule is categorically excluded from the procedural requirements of the National Environmental Policy Act by 516 DM 6, App. 7.4A(10).

Clarity of This Rule

Executive Order 12866 requires federal agencies to write regulations that are easy to understand. Comment is invited on how to make this rule easier to understand, including answers to the following questions: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain undefined technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid in or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more but shorter sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could be done to make the rule easier to understand?

Please send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240.

NPS notes that comments stated that the rule contains technical language and should be shorter. However, the 1998 Act itself is replete with technical language that must be defined in the rule. NPS also considers that the requirements of the rule are stated as clearly as possible.

List of Subjects in 36 CFR Part 51

Concessions, Government contracts, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Part 51 is hereby revised to read as follows:

PART 51—CONCESSION CONTRACTS

Subpart A—Authority and Purpose

Sec.
51.1 What does this part cover?
51.2 What is the policy underlying concessions contracts?

Subpart B—General Definitions

51.3 How are terms defined in this part?

Subpart C—Solicitation, Selection and Award Procedures

51.4 How will the Director invite the general public to apply for the award of a concession contract?
51.5 What information will the prospectus include?
51.6 Will a concession contract be developed for a particular potential offeror?
51.7 How will information be provided to a potential offeror after the prospectus is issued?
51.8 Where will the Director publish the notice of availability of the prospectus?
51.9 How do I get a copy of the prospectus?
51.10 How long will I have to submit my proposal?
51.11 May the Director amend, extend, or cancel a prospectus or solicitation?
51.12 Are there any other additional procedures that I must follow to apply for a concession contract?
51.13 When will the Director determine if proposals are responsive?
51.14 What happens if no responsive proposals are submitted?
51.15 May I clarify, amend or supplement my proposal after it is submitted?
51.16 How will the Director evaluate proposals and select the best one?
51.17 What are the selection factors?
51.18 When must the Director reject a proposal?
51.19 Must the Director award the concession contract that is set forth in the prospectus?
51.20 Does this part limit the authority of the Director?
51.21 When must the selected offeror execute the concession contract?
51.22 When may the Director execute the concession contract?

Subpart D—Non-Competitive Award of Concession Contracts

51.23 May the Director extend an existing concession contract without a public solicitation?
51.24 May the Director award a temporary concession contract without a public solicitation?
51.25 Are there any other circumstances in which the Director may award a concession contract without public solicitation?

Subpart E—Right of Preference to a New Concession Contract

51.26 What solicitation, selection and award procedures apply when a preferred offeror exists?
51.27 Who is a preferred offeror and what are a preferred offeror's rights to the award of a new concession contract?
51.28 When will the Director determine whether a concessioner is a preferred offeror?
51.29 How will I know when a preferred offeror exists?
51.30 What must a preferred offeror do before it may exercise a right of preference?
51.31 What happens if a preferred offeror does not submit a responsive proposal?
51.32 What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?
51.33 What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?
51.34 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?
51.35 What happens to a right of preference if the Director receives no responsive proposals?

Subpart F—Determining a Preferred Offeror

51.36 What conditions must be met before the Director determines that a concessioner is a preferred offeror?
51.37 How will the Director determine that a new concession contract is a qualified concession contract?
51.38 How will the Director determine that a concession contract is an outfitter and guide concession contract?
51.39 What are some examples of outfitter and guide concession contracts?
51.40 What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?
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?
51.42 Are there exceptions to this compensable interest prohibition?
51.43 Who will make the determination that a concession contract is an outfitter and guide contract?
51.44 How will the Director determine if a concessioner was satisfactory for purposes of a right of preference?
51.45 Will a concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?
51.46 May the Director determine that a concessioner has not operated satisfactorily after a prospectus is issued?
51.47 How does a person appeal a decision of the Director that a concessioner is or is not a preferred offeror?
51.48 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?
51.49 May the Director grant a right of preference except in accordance with this part?
51.50 Does the existence of a preferred offeror limit the authority of the Director to establish the terms of a concession contract?

Subpart G—Leasehold Surrender Interest

51.51 What special terms must I know to understand leasehold surrender interest?
51.52 How do I obtain a leasehold surrender interest?
51.53 When may the Director authorize the construction of a capital improvement?
51.54 What must a concessioner do before beginning to construct a capital improvement?
51.55 What must a concessioner do after substantial completion of the capital improvement?
51.56 How will the construction cost for purposes of leasehold surrender interest value be determined?
51.57 How does a concessioner request arbitration of the construction cost of a capital improvement?
51.58 What actions may or must the concessioner take with respect to a leasehold surrender interest?
51.59 Will leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender

interest concession contract or may it be taken for public use?
51.60 How will a new concession contract awarded to an existing concessioner treat a leasehold surrender interest obtained under a prior concession contract?
51.61 How is an existing concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?
51.62 What is the process to determine a leasehold surrender interest value when the concessioner does not seek or is not awarded a new concession contract?
51.63 When a new concessioner pays a concessioner for a leasehold surrender interest, what is the leasehold surrender interest in the related capital improvements for purposes of a new concession contract?
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?
51.65 May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?
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?
51.67 Will a concessioner obtain leasehold surrender interest as a result of repair and maintenance of real property improvements?

Subpart H—Possessory Interest

51.68 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?
51.69 What happens if there is a dispute between a new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest?
51.70 If a concessioner under a 1965 Act concession contract is awarded a new concession contract, what happens to the concessioner's possessory interest?
51.71 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?
51.72 If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?

Subpart I—Concession Contract Provisions

51.73 What is the term of a concession contract?
51.74 When may a concession contract be terminated by the Director?
51.75 May the Director segment or split concession contracts?
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?
51.77 Will a concession contract provide a concessioner an exclusive right to provide visitor services?
51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?
51.79 May the Director waive payment of a franchise fee or other payments?
51.80 How will the Director establish franchise fees for multiple outfitter and guide concession contracts in the same park area?
51.81 May the Director include "special account" provisions in concession contracts?
51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director?
51.83 Handicrafts. [Reserved]

Subpart J—Assignment or Encumbrance of Concession Contracts

51.84 What special terms must I know to understand this part?
51.85 What assignments require the approval of the Director?
51.86 What encumbrances require the approval of the Director?
51.87 Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance?
51.88 What happens if an assignment or encumbrance is completed without the approval of the Director?
51.89 What happens if there is a default on an encumbrance approved by the Director?
51.90 How does the concessioner get the Director's approval before making an assignment or encumbrance?
51.91 What information may the Director require in the application?
51.92 What are standard proformas?
51.93 If the transaction includes more than one concession contract, how must required information be provided?
51.94 What information will the Director consider when deciding to approve a transaction?
51.95 Does the Director's approval of an assignment or encumbrance include any representations of any nature?
51.96 May the Director amend or extend a concession contract for the purpose of facilitating a transaction?
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?

Subpart K—Information and Access to Information

51.98 What records must the concessioner keep and what access does the Director have to records?
51.99 What access to concessioner records will the Comptroller General have?
51.100 When will the Director make proposals and evaluation documents publicly available?

Subpart L—The Effect of the 1998 Act's Repeal of the 1965 Act

51.101 Did the 1998 Act repeal the 1965 Act?
51.102 What is the effect of the 1998 Act's repeal of the 1965 Act's preference in renewal?
51.103 Severability.

Subpart M— Information Collection

51.104 Have information collection procedures been followed?

Authority: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly, 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391).

Subpart A—Authority and Purpose

§ 51.1 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.

§ 51.2 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.

Subpart B—General Definitions

§ 51.3 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:

The *1965 Act* means Public Law 89–249, commonly known as the National Park Service Concession Policies Act of 1965.

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

The *1998 Act* means Title IV of Public Law 105–391.

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.

Subpart C—Solicitation, Selection and Award Procedures

§ 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.

§ 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.

§ 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.

§ 51.7 How will information be provided to a potential offeror after the prospectus is issued?

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.

§ 51.8 Where will the Director publish the notice of availability 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.

§ 51.9 How do I get a copy of the prospectus?

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.

§ 51.10 How long will I have to submit my proposal?

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.

§ 51.11 May the Director amend, extend, or cancel a prospectus or solicitation?

The Director may amend a prospectus and/or extend the submission date prior to 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.

§ 51.12 Are there any other additional procedures that I must follow to apply 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.

§ 51.13 When will the Director determine if proposals are responsive?

The Director will determine if proposals are responsive or non-responsive prior to or as of the date of selection of the best proposal.

§ 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.

§ 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.

§ 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.

§ 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;

(2) 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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, or, pursuant to

§ 51.24(b), the Director must submit the concession contract to the Committee on 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.

Subpart D—Non-Competitive Award of Concession Contracts

§ 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).

§ 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 award non-competitively 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 not be awarded to continue visitor services provided under an extended concession contract except as permitted by paragraph (b) of this section.

(b) Notwithstanding the last sentence of paragraph (a) of this section, the Director may award a temporary concession contract for consecutive terms not to exceed three years in the aggregate to authorize the continuing conduct of visitor services that were conducted under a concession contract that was in effect as of November 13, 1998, and that either had been extended as of that date or was due to expire by December 31, 1998, and was subsequently extended. The Director must personally approve the award of a temporary concession contract in these circumstances and may do so only if the Director determines that the award is necessary to avoid interruption of visitor services and that all reasonable alternatives to the award of the temporary concession contract have been considered and found infeasible. The Director must publish a notice of his intention to award a temporary concession contract to a specified person under this paragraph and the reasons for the proposed award in the **Federal Register** at least 60 days before the temporary concession contract is awarded. In addition, the Director must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives of the proposed award of a temporary concession contract under this paragraph at least 60 days before the temporary concession contract is awarded. A temporary concession contract awarded under the authority of this paragraph will be considered as a contract extension for purposes of determining the existence of a preferred offeror under § 51.44.

(c) A concessioner holding a temporary concession contract will not be eligible for a right of preference to a qualified concession contract which replaces a temporary contract unless the concessioner holding the temporary concession contract was determined or was eligible to be determined a preferred offeror under the extended concession contract that was replaced by the temporary concession contract under paragraph (b) of this section.

§ 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 determinant 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.

Subpart E—Right of Preference to a New Concession Contract

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

Subpart F—Determining a Preferred Offeror

§ 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.

§ 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.

§ 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.

§ 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.

§ 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 that are inaccessible by motorized vehicle;

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

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

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 51.46 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) May 17, 2000, 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.

§ 51.47 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.

§ 51.48 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.

§ 51.49 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.

§ 51.50 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.

Subpart G—Leasehold Surrender Interest

§ 51.51 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.

§ 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.

§ 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.

§ 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.)

§ 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.

§ 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 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 amend a construction cost determination (subject to arbitration under § 51.57) if the Director determines that it was based on false, misleading or incomplete information.

§ 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. If a timely request is not made, the Director's determination of construction cost under § 51.56 shall be the final determination of the construction cost. 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.

§ 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.

§ 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.

§ 51.60 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.

§ 51.61 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.

§ 51.62 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 arbitration as to the leasehold surrender interest values upon request of the Director or the concessioner. The arbitration procedures are described in Section 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.

§ 51.63 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 § 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.

§ 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.

§ 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.

§ 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.

§ 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.

Subpart H—Possessory Interest

§ 51.68 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.

§ 51.69 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.

§ 51.70 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.

§ 51.71 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.

§ 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.

Subpart I—Concession Contract Provisions

§ 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).

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 51.83 Handicrafts. [Reserved]

Subpart J—Assignment or Encumbrance of Concession Contracts

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 51.89 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.

§ 51.90 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.

§ 51.91 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.

§ 51.92 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

(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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

Subpart K—Information and Access to Information

§ 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).

§ 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).

§ 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.

Subpart L—The Effect of the 1998 Act's Repeal of the 1965 Act

§ 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.

§ 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.

§ 51.103 Severability.

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

Subpart M—Information Collection

§ 51.104 Have information collection procedures been followed?

(a) The Paperwork Reduction Act provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The information collection for submission of proposals in response to concession prospectuses contained in this part have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0125, extended through May 30, 2000. An information collection for proposed transfers of concession operations is covered by OMB Approval No. 1024–0126 effective through August 31, 2002.

(b) The public reporting burden for the collection of information for the purpose of preparing a proposal in response to a contract solicitation is estimated to average 480 hours per proposal for large authorizations and 240 hours per proposal for small authorizations. The public reporting burden for the collection of information for the purpose of requesting approval of a sale or transfer of a concession operation is estimated to be 80 hours. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Officer, National Park Service, 1849 C Street, Washington, DC 20240; and to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

(c) Additional reporting and recordkeeping requirements were identified in subpart F regarding appeal of a preferred offeror determination, subpart G regarding leasehold surrender interest and in subpart K regarding recordkeeping that are not covered under OMB approval. An emergency information collection request to cover these requirements has been prepared and submitted to OMB for approvals. These additional information collection requirements will not be implemented until OMB approves the emergency request. The Director will publish a **Federal Register** notice when OMB has approved these requirements.

Dated: April 10, 2000.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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APPENDIX D

10 Commercial Visitor Services

Public accommodations, facilities, and services must be consistent to the highest practicable degree with the preservation and conservation of park resources and values.

The National Park Service will provide, through the use of concession contracts, commercial visitor services within parks that are necessary and appropriate for visitor use and enjoyment. Concession operations will be consistent with the protection of park resources and values and demonstrate sound environmental management and stewardship.

10.1 General

Commercial visitor services will be authorized through concession contracts or commercial use authorizations, unless otherwise provided by law. Section 10.2 addresses concession authorizations. Section 10.3 addresses commercial use authorizations.

(Also see Director's Orders #48A: Concessions Management, and #48B: Commercial Use Authorizations)

10.2 Concessions

10.2.1 Concession Policies

Concession operations are subject to the provisions of the National Park Service Concessions Management Improvement Act of 1998; National Park Service regulations published at 36 CFR Part 51; this chapter of NPS Management Policies; and Director's Order #89A: Concession Management, and other specific guidance that may be issued under the Director's authority.

10.2.2 Commercial Visitor Services Planning

Commercial visitor services planning will identify the appropriate role of commercial operations in helping parks to achieve desired visitor experiences, and will be integrated into other plans and planning processes.

Concession management plans or commercial services plans will support a park's purpose and significance, exceptional resource values, and visitor experience objectives, and will be consistent with enabling legislation. These plans will also determine whether proposed concession facilities and services are necessary and appropriate, and will consider alternatives. Proposed concession operations must be economically feasible and generally supported by a feasibility study prepared by a qualified individual.

Any concession facilities improvement program, or any service authorized in a concession contract, will be in conformance with the appropriate approved plan(s) for the area being considered. A decision to authorize a park concession will be based on a determination that the facility or service:

- Is necessary and appropriate for the public use and enjoyment of the park in which it is located, and identified needs are not, nor can they be, met outside park boundaries;
- Will be provided in a manner that furthers the protection, conservation, and preservation of the environment, and park resources and values;
- Incorporates sustainable principles and practices in planning, design, siting, construction, utility systems, selection and recycling of building materials, and waste management; and
- Will enhance visitor use and enjoyment of the park without causing unacceptable impacts to park resources or values.

The number, location, and sizes of sites assigned for necessary facilities will be the minimum necessary for proper and satisfactory operation of the facilities, emphasizing compatibility of design; preservation of esthetic values, and natural and cultural resources; and integration of sustainable design concepts.

For information about leasing historic structures for concession purposes, see Director's Order #38: Real Property Leasing.

10.2.3 Concession Contracting

Approved standard contract language will be used in all National Park Service concession contracts.

10.2.3.1 Terms and Conditions of Contracts

Concession services will be authorized under concession contracts, unless otherwise authorized by law. The term of a concession contract will generally be 10 years or less. However, the Director may award a contract for a term of up to 20 years if the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. In this regard, the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, resource protection, visitor needs, and other factors that the Director may deem appropriate.

10.2.3.2 Modifications

Concession contracts may be modified only by written amendment. Amendments developed after the issuance of a concession contract must be consistent with current National Park Service policies and orders. Unless otherwise authorized by the contract, a concession contract may be amended to provide additional visitor services only if the services are minor and comprise a reasonable extension of the existing services.

10.2.3.3 Extension

Concession contracts may be extended only in accordance with the requirements of 36 CFR Part 51, subpart D. The signature authority for contract extensions or amendments must be consistent with delegations of authority from the Director.

10.2.3.4 Competition

In order to obtain the best service provider and maximize benefits to the government, the National Park Service encourages competition in the awarding of concession contracts. The National Park Service also encourages, through outreach, the participation of American Indian, minority and women-owned businesses when new business activities occur.

10.2.3.5 Third-party Agreements and Sub-concessions

Unless specified in the contract, sub-concession or other third-party agreements, including management agreements, for the provision of visitor services that are required and/or authorized under concession contracts are not permitted. The NPS may also advertise for a new concession contract to provide these additional services.

10.2.3.6 Multi-park Contracts

Concessioners operating in more than one park unit must have separate contracts for each park unit. An exception may be made in the case of those park units having common National Park Service management or where service is provided in contiguous park areas (for example, a pack trip that crosses the boundary of two adjoining parks).

10.2.3.7 Termination

The Service may terminate concession contracts for default and under any other circumstances specified in the concession contract.

10.2.4 Concession Operations

10.2.4.1 Operating Plans

The operating plan is an exhibit to the concession contract, and will describe operative responsibilities authorized in the contract between the concessioner and the NPS. The plan is reviewed and updated annually by the Service, in accordance with the terms of the contract. Operating plans are considered an integral part of a concessioner's contractual performance compliance.

10.2.4.2 Service Type and Quality

It is the objective of the National Park Service that park visitors be provided with high-quality facilities and services. Where appropriate, the concession contract will specify a range of facility, accommodation, and service types that are to be provided at reasonable rates.

10.2.4.3 Evaluation of Concession Operations

Concession operations will be evaluated to ensure that park visitors are provided with high-quality services and facilities, which are safe and sanitary, and meet National Park Service environmental, health, safety, and operational standards. As outlined in the Concessioner Operational Evaluation Program, the evaluation results will provide a basis for NPS management to determine whether to continue or terminate a concession contract, and whether a concessioner is eligible to exercise a right of preference in the award of a qualified new concession contract.

10.2.4.4 Interpretation by Concessioners

Concessioners will be encouraged to train their employees and, through their facilities and services, to instill in their guests an appreciation of the park, its purpose and significance, its proper and sustainable management, and the stewardship of its resources. When the provision of interpretive services is required by the contract, concessioners will provide formal interpretive training for their employees, or will participate in formal interpretive training that is either offered by the NPS or co-sponsored by the concessioner.

Instilling appreciation of the park in visitors can be accomplished in many ways. For example, it can be accomplished through guided activities; the design, architecture, landscape, and decor of facilities; educational programs; interpretive menu design and menu offerings; and involvement in the park's overall interpretive program. Gift shop merchandise and displays also present opportunities to educate visitors about park history; natural, cultural, and historical resources; and sustainable environmental management.

Concession contracts will require the concessioner to provide all visitor services in a manner that is consistent with, and supportive of, the interpretive themes, goals, and objectives articulated in each park's planning documents, mission statement, and/or interpretive prospectus.

(See Chapter 7: Interpretation and Education)

10.2.4.5 Merchandise

The National Park Service will approve the nature, type, and quality of merchandise to be offered by concessioners. Although there is no Service-wide list of specific preferred merchandise, priority will be given to those sale items that interpret, and foster awareness and understanding of, the park and its resources. Merchandise should have interpretive labeling, or include other information to indicate how the merchandise is relevant to the park's interpretive theme(s).

Each park with concession activities will have a gift shop mission statement, based on the park's concession service plan or GMP. Concessioners will develop and implement a merchandise plan based on the park's gift-shop mission statement. The merchandise plan must be satisfactory to the Director, and should ensure that merchandise sold or provided reflects the significance of the park, and promotes the conservation of the park's geology; wildlife; plantlife; archeology; local Native American culture; local ethnic culture; historical significance; and other park resources and values. The plan should also integrate pollution prevention and waste-reduction objectives and strategies for merchandise.

Merchandise must be available at a range of prices. Theme-related merchandise manufactured or handcrafted in the United States—particularly in a park's geographic vicinity—will be emphasized. The revenue derived from the sale of United States Indian, Alaska native, native Samoan, and native Hawaiian handcrafts is exempt from any franchise fee payments. Foreign merchandise is not encouraged, but will not be prohibited.

10.2.4.6 Artifacts and Specimens

Concessioners will not be permitted to sell any merchandise in violation of laws, regulations, or National Park Service policies. Some merchandise may be determined by the park superintendent to be locally sensitive or inappropriate for sale, and may, at the discretion of the superintendent, be prohibited for retail sale. The sale of original objects, artifacts, or specimens of a historic, archeological, paleontological, or biological nature is prohibited. Replicated historic, archeological, paleontological, or biological objects, artifacts, or specimens may be sold if they are obvious replicas and clearly labeled.

Any geological merchandise that is approved for sale or exhibit by concessioners must be accompanied by appropriate educational material and a written dis claimer clearly stating that such items were not obtained from inside park boundaries. The proposed sale of any replicas, or of geological merchandise, must be addressed in the gift shop merchandise plan.

10.2.4.7 Rates

The National Park Service must approve all rates charged to visitors by concessioners. The reasonableness of a concessioner's rates and charges to the public will, unless otherwise provided in the contract, be judged primarily on the basis of comparison with current rates and charges for facilities and services of comparable character under similar conditions. Due consideration will be given to length of season, provision for peak loads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Director.

10.2.4.8 Risk Management Program

Concession contracts require each concessioner to develop a risk management program, which is approved by the superintendent, and is in accord with the Occupational Safety and Health Act and the National Park Service Concession Risk Management Program.

Concessioners are responsible for managing all of their operations in a manner that minimizes risk and controls loss due to accident, illness, or injury. To ensure compliance, the Service will include a risk management evaluation as part of its standard operational review of concession operations.

10.2.4.9 Natural and Cultural Resource Management Requirements

Concessioners are required to comply with applicable provisions of all laws, regulations, and policies that apply to natural and cultural resource protection. The use, maintenance, repair, rehabilitation, restoration, or other modification of concession facilities that are listed on or eligible for the National Register of Historic Places are subject to the applicable provisions of all laws, Executive orders, regulations, and policies pertaining to cultural properties.

The National Park Service will assist concessioners in understanding and complying with regulations for the protection of historic properties (36 CFR Part 800) promulgated by the Advisory Council on Historic Preservation. Historic structures and their contents and museum objects that are in the control of concessioners will be treated in accordance with the appropriate standards contained in National Park Service guidance documents.

(See Chapter 4, Natural Resource Management: Use of Historic Structures 5.3.5.4.7. Also see Reference Manual 24: the Museum Handbook, and 28: the Cultural Resource Management Guideline; Director's Order #38: Real Property Leasing, and #48A: Concessions Management)

10.2.4.10 Environmental Program Requirements

In the operation of visitor services, concessioners will be required by contract to meet environmental compliance objectives by:

- Complying with all applicable laws pertaining to the protection of human health and the environment; and
- Incorporating best management practices (BMPs) in all operations, construction, maintenance, acquisition, provision of visitor services, and other activities under the contract.

Concessioners will be required by contract to develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive, written environmental management program (EMP) to achieve environmental management objectives. The EMP must be updated at least annually, and must be approved by the Director.

The EMP must 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.

Superintendents are encouraged to require the EMP to be submitted as part of the prospectus package. The National Park Service will review concessioner compliance with the EMP under the contract. The National Park Service will also conduct environmental compliance audits of all commercial visitor services at least every three years in accordance with the concessions environmental audit program. The concessioner will be responsible for corrective actions required by law, and identified during the environmental compliance audits.

The National Park Service will assist concessioners in understanding environmental program requirements, and will also include an environmental management evaluation as part of its annual standard operational reviews of concession operations.

(See Compensation for Injuries to Natural Resources 4.1.6; Compensation for Damages 5.3.1.3; Integrated Pest Management Program 4.4.5.2; Overnight Accommodations and Food Services 9.3.2. Also see Director's Order #83: Public Health)

10.2.4.11 Insurance

Concession contracts will identify the types and minimum amounts of insurance coverage required of concessioners in order to:

- provide reasonable assurance that concessioners have the ability to cover bona fide claims for bodily injury, death, or property damage arising from an action or omission of the operator;
- protect the government against potential liability
- protect the government against potential liability for claims based on the negligence of the operators; and
- enable rapid repair or replacement of essential visitor facilities located on park lands that are damaged or destroyed by fire or other hazards.

Concessioners will not be permitted to operate without liability insurance. Under limited conditions, concessioners may operate without property insurance, as described in Director's Order #48A: Concession Management.

10.2.4.12 Food Service Sanitation Inspections

Concessioners who prepare food on or off park lands, or serve food on park lands will be subject to inspection for compliance with all applicable health and sanitation requirements of local and state agencies, the U.S. Public Health Service, and the Food and Drug Administration.

(Also see Director's Order #83: Public Health)

10.2.4.13 Smoking

Generally, all NPS concession facilities will be smoke free. The only exceptions will be specifically designated smoking areas and rooms. The sale of tobacco products through vending machines is prohibited.

(See Executive Order 13058 (Protecting Federal Employees and the Public from Exposure to Tobacco Smoke in the Federal Workplace))

10.2.5 Concessions Financial Management

Concession contracts must provide for payment to the government of a franchise fee, or other monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such 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 is subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for visitors at reasonable rates.

10.2.5.1 Franchise Fees

The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concession contract must be specified in the concession contract and may only be modified to reflect extraordinary unanticipated changes from the conditions anticipated as of the effective date of the contract. Contracts with a term of more than five years will include a provision that allows reconsideration of the franchise fee at the request of the Secretary or the concessioner in the event of such extraordinary unanticipated changes. Such provision will provide for binding arbitration in the event that the Secretary and the concessioner are unable to agree upon an adjustment to the franchise fee in these circumstances.

10.2.5.2 Franchise Fee Special Account

All franchise fees and other monetary considerations will be deposited into a Department of the Treasury special account. In accordance with the NPS Concessions Management Improvement Act of 1998, twenty percent (20%) will be available to support activities throughout the national park system, and eighty percent (80%) will be available to the park unit in which it was generated, for visitor services and funding high-priority and urgently necessary resource management programs and operations.

10.2.5.3 Record-keeping System

All concessioners will establish and maintain a system of accounts and a record-keeping system that utilize written journals and general ledger accounts to facilitate the preparation of annual concessioner financial reports.

10.2.5.4 Annual Financial Reports

Concessioners will be required to submit an annual financial report that reflects only the operations that they are authorized to pursue.

10.2.5.5 Donations to the NPS

The National Park Service will not solicit or accept donations or gifts from entities that have, or are seeking to obtain or establish a contract, lease, or other business arrangement with the Service. Nor will the NPS require any concessioner to donate or make contributions to the Service under any circumstance, including the incorporation of such a requirement in concession contracts. Further guidance on donations is available in Director's Order #21: Donations and Fundraising.

10.2.6 Concession Facilities

10.2.6.1 Design

Concession facilities will be of a size and at a location that the Service determines to be necessary and appropriate for their intended purposes. All concession facilities must comply with applicable federal, state, and local construction codes, and meet accessibility requirements as set forth in applicable accessibility guidelines. Proposed concession facilities must conform to NPS standards for sustainable design, universal design, and architectural design. Concession development or improvement proposals must undergo review for compliance with NEPA and section 106 of NHPA (16 USC 470f), and be carried out in a manner consistent with applicable provisions of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, and other applicable legal requirements.

In addition to general park design requirements, the NPS will apply value analysis during the design process to analyze the functions of facilities, processes, systems, equipment, services, and supplies. Value analysis must be used to help achieve essential functions at the lowest life-cycle cost, consistent with required performance, reliability, environmental quality, and safety criteria and standards.

(See Facility Planning and Design 9.1.1)

10.2.6.2 Accessibility of Commercial Services

Concessioners share the National Park Service's responsibility to provide employees and visitors with the greatest degree of access to programs, facilities, and services that is reasonable, within the terms of existing contracts and agreements. Applicable laws include, but are not limited to (1) regulations issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended (43 CFR Part 17), which prohibits discrimination on the basis of disability in programs or activities conducted by federal executive agencies; and (2) the Architectural Barriers Act of 1968, which requires physical access to buildings and facilities. Where there is no specific language identifying applicable accessibility laws in an existing concession contract, the NPS will address the issue of compliance in the annual concession operating plan.

(See Physical Access for Persons with Disabilities 5.3.2; Accessibility for Persons with Disabilities 8.2.4 and 9.1.2. Also see Director's Order #42: Accessibility for Visitors with Disabilities)

10.2.6.3 Maintenance

Concession contracts will require concessioners to be responsible for all maintenance and repair of facilities, lands, and utility systems assigned for their use, in accordance with standards acceptable to the Service. Exceptions will be made only in extraordinary circumstances, as determined by the Director. All concession contracts must include a current maintenance plan as specified in the concession contract. Maintenance plans are an exhibit to the concession contract and will be considered an integral part of a concessioner's contractual performance compliance.

Maintenance of historic properties and cultural landscapes will be carried out in a manner consistent with applicable provisions of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

10.2.6.4 Utilities and Services

Utilities include, but are not limited to, electricity, fuel, natural gas, water, disposal of wastewater and solid waste, and communication systems. The Service may provide utilities to the concessioner for use in connection with the operations required or authorized under the contract, when available, at rates to be determined in accordance with applicable laws. If the Service does not provide utilities to the concessioner, the concessioner will, with the written approval of the Director, and under any requirements prescribed by the Director, (1) secure necessary utilities at its own expense from sources outside the area; or (2) install the utilities within the area, subject to conditions mentioned in the contract.

(Also see Director's Order #35B: Sale of Park Utilities and Services to Support Activities Within Parks)

10.2.6.5 Closure of Commercial Operations During Government Shutdown

The Anti-Deficiency Act requires federal agencies to suspend all non-essential activities whenever there is a failure to enact an appropriations bill or adopt a continuing resolution. All concessioner-operated programs and services must cease, and visitors must be asked to leave within 48 hours.

All commercial facilities and services in a park will be closed in order to protect the safety of visitors and the integrity of park resources. Exceptions to this policy include concessions that are required for health and safety purposes or protection of the environment, or necessary to support park operations that are deemed essential, such as law enforcement.

Commercial facilities located on through-roads (roads or public highways that begin and end outside of a park, plus parkways) and public highways may remain open if doing so does not result in additional costs to the park (for example, the staffing of entrance stations). These commercial facilities may include operations such as service stations, food services, stores, and lodging, or portions of such operations that will not contribute to additional park expenses. The commercial facility in question should have access directly from the road or highway, and not require the re-opening of park roads having other destinations.

More specific aspects of closures may be guided by a Service-wide shutdown plan.

10.2.7 Concessioner Employees and Employment Conditions

10.2.7.1 Non-discrimination

Concessioners will comply with all applicable laws and regulations relating to nondiscrimination in employment and the provision of services to the public.

10.2.7.2 Substance Abuse

In compliance with state and federal regulations condemning substance abuse, the NPS prohibits the unlawful possession, use, or distribution of illicit drugs and alcohol. The Service also prohibits the unlawful manufacture, cultivation, processing, or transportation of illicit drugs. This policy applies to concessioners and their employees, at any facility or in any activity taking place on National Park Service lands. Concessioners are required to provide and advise employees about the availability of Employee Assistance Programs addressing substance abuse problems.

10.2.8 National Park Service Employees

10.2.8.1 Accepting Gifts and Reduced Rates from Concessioners

National Park Service employees may not receive concessioner goods or services at a discount unless it is in connection with official business, is to the government's advantage, and is provided for under the terms of a concession contract. However, employees may accept reduced rates or discounts offered by the concessioner when those same reduced rates or discounts are available to the general public.

National Park Service employees may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a concessioner or other person who conducts operations and activities that are regulated by the Department of the Interior. Employees should consult with their assistant ethics counselor regarding the limited exceptions to the general prohibition on accepting gifts from outside sources.

10.2.8.2 Employment of NPS Personnel or Family Members by Concessioners

Federal law prohibits government employees from making recommendations, decisions, or approvals relating to applications, contracts, controversies, or other matters in which the employee or the employee's spouse or minor child has a financial interest. Park employees may not make decisions, approvals, or recommendations related to concession activities when their spouse or dependent child is employed by a park concessioner in that particular park. For example, the spouse or dependent child of the superintendent, assistant superintendent, concession staff, environmental manager, or public health specialist may not be employed by a concessioner in the specific park in which the NPS employee works.

(Also see Director's Order #37: Home Businesses in Parks)

10.2.8.3 NPS Employee Ownership or Investment in Concession Businesses

Department of the Interior policy prohibits employees and their spouses and minor children from acquiring or retaining for commercial purposes any permit, lease, or other rights granted by the Department for conducting commercial services on federal lands. Therefore, no National Park Service concession contract or commercial use authorization to conduct commercial services in a park will be issued to

National Park Service employees or their spouses and minor children who are owners, partners, corporate officers, or general managers of any business seeking such a contract in federal land managed by the Department of the Interior. Further, to avoid the appearance of partiality and conflicts of interest, and to comply with ethics laws that apply to all federal employees, National Park Service employees may not work on any matter involving a business in which they, their spouse, or their minor children have a financial interest.

10.2.8.4 Concession Management Personnel Qualifications

To effectively carry out the concession management program, managers and supervisors will make every effort to ensure that personnel selected for positions meet the essential competencies established for the position being filled. When concession management personnel lack the full complement of essential competencies or require refresher training for their position, managers and supervisors will ensure that those employees are trained and certified as competent. All personnel vacancy announcements issued for concession management must include program competencies.

10.3 Commercial Use Authorizations

Commercial Use Authorizations (CUAs) may be issued under the authority of 16 USC 5966. CUAs are not considered concessions contracts.

As of the date of publication of this edition of *Management Policies*, the NPS has not yet issued policies or regulations for the administration of CUAs. However, the applicable provisions of law are quite prescriptive and should be carefully considered. A more detailed discussion of CUAs will be included at a later date in implementing regulations and Director's Order 48B: Commercial Use Authorizations.

[redacted]

National Park Service
Blue Ridge Parkway - Pisgah Inn
Parkway Inn, Inc.
As of December 31, 2002
Inventory Detail

Item Description	Quantity	Site Location
Chair, Dining, Wood, w/ Cushion	64	Overflow Dining Room - Commercial Building
Chair, Dining, Wood, w/ Cushion	64	Overflow Dining Room - Commercial Building
Chair, Arm, Wood, with Cushion	26	Room 123 - Deluxe Room - Building B
Bed, Double	26	Room 123 - Deluxe Room - Building B
Chair, Arm, Wood, with Cushion	26	Room 119 - Deluxe Room - Building B
Bed, Double	26	Room 119 - Deluxe Room - Building B
Bed, Twin	16	Dorm 2 - Room 201
Bed, Twin	16	Dorm 3 - Room 306
Chair, Dining, Wood, with Cushion	19	Dining Area - Commercial Building
Chair, Rocking, Wood	26	Room 123 - Deluxe Room - Building B
Chair, Outdoor, Wood	16	Dorms Exterior
Chair, Dining, Wood, with Cushion	19	Dining Area - Commercial Building
Bed, Twin	12	Dorm 1 - Room 100
Dresser, Pressed Wood, 6 x 1 1/2 x 2	13	Room 123 - Deluxe Room - Building B
Table, Dining, 5 x 2	7	Overflow Dining Room - Commercial Building
Chair, Rocking, Wood	26	Room 119 - Deluxe Room - Building B
Curtain, 7 x 4	13	Room 123 - Deluxe Room - Building B
Chair, Arm, Wood, with Cushion	20	Room 127 - Standard Room - Building C
Table, Dining, 4 x 2	7	Overflow Dining Room - Commercial Building
TV, RCA, 20"	13	Room 123 - Deluxe Room - Building B
Table, Dining, 3 1/2 x 2	9	Dining Area - Commercial Building
Bed, Twin	16	Dorm 4, Room 400
Nightstand, Pressed Wood, 1 x 1 x 2	13	Room 123 - Deluxe Room - Building B
Dresser, Pressed Wood, 6 x 1 1/2 x 2	13	Room 119 - Deluxe Room - Building B
Chair, Dining, Wood, with Cushion	19	Dining Area - Commercial Building
Table, End, Wood, 2 x 1 x 2	16	Dorm 4, Room 400
Bed, Double	20	Room 127 - Standard Room - Building C
Curtain, 7 x 4	13	Room 119 - Deluxe Room - Building B
Table, Dining, 2 1/2 x 2 1/2	9	Overflow Dining Room - Commercial Building
Chair, Dining, Wood, w/ Cushion	10	Overflow Dining Room - Commercial Building
TV, RCA, 20"	13	Room 119 - Deluxe Room - Building B
Chair, Dining, Wood	16	Dorm 2 - Room 201
Chair, Dining, Wood	16	Dorm 3 - Room 306
TV, RCA, 20"	10	Room 125 - Standard Room - Building C
TV, RCA, 20"	10	Room 127 - Standard Room - Building C
Table, Dining, 3 1/2 x 2	9	Dining Area - Commercial Building
Print, 2 1/2 x 2	13	Room 123 - Deluxe Room - Building B
Table, Dining, 2 1/2 Dia	8	Dorm 4, Room 400
Nightstand, Pressed Wood, 1 x 1 x 2	13	Room 119 - Deluxe Room - Building B
Sofa, Reclining	1	Pisgah Room - Building A
Drawer, Wood, 7 x 2	6	Dorm 1 - Room 100
Table, Dining, 2 1/2' Dia	8	Dorm 3 - Room 306
Chair, Dining, Wood	12	Dorm 1 - Room 100
Table, Dining, 4' Dia	3	Overflow Dining Room - Commercial Building
Table, Veneer, 2 1/2' Diameter	13	Room 123 - Deluxe Room - Building B
Chair, Rocking, Wood	20	Room 127 - Standard Room - Building C
Print, 2 1/2 x 2	13	Room 119 - Deluxe Room - Building B
Armoire, wood, 5 x 1 1/2 x 7	1	Pisgah Room - Building A
Drawer, Wood, 7 x 2	8	Dorm 2 - Room 201
Drawer, Wood, 7 x 2	8	Dorm 3 - Room 306
Drawer, Wood, 7 x 2	8	Dorm 4, Room 400
Chair, Dining, Bamboo, with Wheels	8	Room 103 - Deluxe Room - Building A
Curtain, 12 x 7	2	Room 103 - Deluxe Room - Building A
Stand, TV, Metal, Wall Mount	13	Room 123 - Deluxe Room - Building B
Dresser, Pressed Wood, 6 x 1 1/2 x 2	10	Room 127 - Standard Room - Building C
Chair, Task, Arm	2	Front Desk - Building A
Loveseat, Reclining	1	Pisgah Room - Building A
Table, Dining, 2 1/2' Dia	6	Dorm 1 - Room 100
Table, Dining, 2 1/2' Dia	8	Dorm 2 - Room 201
Table, End, Wood, 2 x 1 x 2	8	Dorm 3 - Room 306
Table, Veneer, 2 1/2' Diameter	13	Room 119 - Deluxe Room - Building B
Chair, Dining, Bamboo, with Wheels	8	Room 204 - Deluxe Room - Building A
Curtain, 12 x 7	2	Room 204 - Deluxe Room - Building A
Desk, Wood, 5 x 2 x 5	1	Front Lobby - Building A
Stand, TV, Metal, Wall Mount	13	Room 119 - Deluxe Room - Building B
Table, End, Wood, 2 x 1 x 2	8	Dorm 2 - Room 201
Mirror, 2 x 3 1/2	13	Room 123 - Deluxe Room - Building B
Table, End, Wood, 2 x 1 x 2	6	Dorm 1 - Room 100
Table, Dining, Bamboo, with Glass Top, 3 1/2' Diameter	2	Room 103 - Deluxe Room - Building A
Lamp, Table, Metal, 2'	13	Room 123 - Deluxe Room - Building B
Chair, Dining, Wood, Wicker Seat	6	Dining Area - Commercial Building
Bed, Queen	2	Room 103 - Deluxe Room - Building A
Bench, Wicker, 4'	2	Dining Area - Commercial Building
Stand, Hostess, 1 1/2 x 1 1/2 x 5	5	Dining Area - Commercial Building
Sofa	1	Front Lobby - Building A

National Park Service
Blue Ridge Parkway - Pisgah Inn
Parkway Inn, Inc.
As of December 31, 2002
Inventory Detail

Item Description	Quantity	Site Location
Lot, Display Fixtures	1	Gift Shop - Commercial Building
Nightstand, Wood, 1 1/2 x 1	4	Room 103 - Deluxe Room - Building A
Chair, Arm, Wood, with Cushion	20	Room 125 - Standard Room - Building C
Mirror, 2 x 3 1/2	13	Room 119 - Deluxe Room - Building B
Lamp, Floor, Metal, 5'	13	Room 123 - Deluxe Room - Building B
Chair, Dining, Wood	16	Dorm 4, Room 400
Glass Racks, Plastic	20	Overflow Dining Room - Commercial Building
Cabinet, Holding, S/S, 5' High	1	Kitchen - Commercial Building
Table, Dining, Bamboo, with Glass Top, 3 1/2' Diameter	2	Room 204 - Deluxe Room - Building A
Picnic table, all in one	4	Loading Dock
Chair, Rocking, Wood	4	Room 103 - Deluxe Room - Building A
Chair, Uph, with Ottoman	1	Front Lobby - Building A
Lamp, Table, Metal, 2'	13	Room 119 - Deluxe Room - Building B
Bed, Double	20	Room 125 - Standard Room - Building C
Bed, Queen	2	Room 204 - Deluxe Room - Building A
Nightstand, Wood, 1 1/2 x 1	4	Room 204 - Deluxe Room - Building A
Stand, Tray, Metal	14	Overflow Dining Room - Commercial Building
Recliner	1	Pisgah Room - Building A
Chair, Uph	2	Room 103 - Deluxe Room - Building A
Lamp, Floor, Metal, 5'	13	Room 119 - Deluxe Room - Building B
Bench, 4'	1	Exterior - Commercial Building
Bookcase, Wood, 5 x 1 x 5	4	Gift Shop - Commercial Building
Blind, Vertical, 12 x 6	1	Pisgah Room - Building A
Chair, Dining, Arm, Wood, with Cushion	4	Pisgah Room - Building A
Nightstand, Pressed Wood, 1 x 1 x 2	10	Room 127 - Standard Room - Building C
Safe, Sentry, A3750	1	Administrative Office - Building A
Speaker, Wall Mount	6	Dining Area - Commercial Building
Chair, Desk, Wood, with Cushion	1	Pisgah Room - Building A
Chair, Rocking, Wood	4	Room 204 - Deluxe Room - Building A
File Cabinet, 2-Drawer, Letter	3	Administrative Office - Building A
Bench, Wood, 4'	1	Gift Shop - Commercial Building
TV, RCA, 20"	2	Maintenance Shop
Bench, Wood, 4'	1	Pisgah Room - Building A
Dresser, Pressed Wood, 3 Drawer, 3 x 1 1/2 x 2	2	Room 103 - Deluxe Room - Building A
Chair, Uph	2	Room 204 - Deluxe Room - Building A
Bench, wood, 6'	1	Camp Store/Service Station
Dresser, Wood, 3 Shelf, 5 x 1 1/2 x 3	1	Front Lobby - Building A
Bed, Queen	1	Pisgah Room - Building A
Dresser, Pressed Wood, 6 x 1 1/2 x 2	1	Pisgah Room - Building A
Nightstand, Pressed Wood, 1 x 1 x 2	2	Pisgah Room - Building A
Chair, Wood	2	Room 103 - Deluxe Room - Building A
Nightstand, Pressed Wood, 2 x 1 x 2	2	Room 103 - Deluxe Room - Building A
Chair, Rocking, Wood	20	Room 125 - Standard Room - Building C
Planter, Wood, 2 1/2' Diameter	2	Dining Area - Commercial Building
Table, Dining, Wood, 2 1/2 x 2 1/2	1	Pisgah Room - Building A
Chair, Task, with Arms, Vinyl	1	Administrative Office - Building A
Stereo, Aiwa, CX-NAJ20	1	Gift Shop - Commercial Building
Chair, Task	1	Front Lobby - Building A
Mirror, 2 x 4	8	Dorm 3 - Room 306
TV, RCA, 20"	2	Room 103 - Deluxe Room - Building A
Dresser, Pressed Wood, 6 x 1 1/2 x 2	10	Room 125 - Standard Room - Building C
Table, Dining, 2 1/2 x 2 1/2	2	Dining Area - Commercial Building
Table, Dining, Wood, 7 x 2 x 3	1	Dining Area - Commercial Building
Chair, Rocking, Wood	2	Pisgah Room - Building A
Desk, Pressed Wood, 4 x 1 1/2	1	Pisgah Room - Building A
Chair, Wood	2	Room 204 - Deluxe Room - Building A
Dresser, Pressed Wood, 3 Drawer, 3 x 1 1/2 x 2	2	Room 204 - Deluxe Room - Building A
Table, Veneer, 2 1/2' Diameter	10	Room 127 - Standard Room - Building C
Nightstand, Pressed Wood, 2 x 1 x 2	2	Room 204 - Deluxe Room - Building A
Chair, Task, with Arms, Cloth	1	Administrative Office - Building A
Table, Banquet, 7 x 1	3	Front Lobby - Building A
TV, GE, 27"	1	Pisgah Room - Building A
Bear Trash Cans	8	Dorms Exterior
Mirror, 2 x 4	6	Dorm 1 - Room 100
Table, Coffee, Bamboo, with Glass Top, 5 x 1 1/2	1	Front Lobby - Building A
Table, Dining, 2 1/2 x 2 1/2	1	Overflow Dining Room - Commercial Building
Blind, Vertical, 6 x 6	1	Pisgah Room - Building A
TV, RCA, 20"	1	Pisgah Room - Building A
Nightstand, Pressed Wood, 1 x 1 x 2	10	Room 125 - Standard Room - Building C
Curtain, 6 x 2	10	Room 127 - Standard Room - Building C
TV, RCA, 20"	2	Room 204 - Deluxe Room - Building A
Cabinet, Fire, 30 Gallon	1	Maintenance Shop
Print, 2 x 1 1/2	10	Room 127 - Standard Room - Building C
Print, 2 x 1 1/2	10	Room 127 - Standard Room - Building C
Table, wood, 4 1/2 x 2	1	Administrative Office - Building A

National Park Service
Blue Ridge Parkway - Pisgah Inn
Parkway Inn, Inc.
As of December 31, 2002
Inventory Detail

Item Description	Quantity	Site Location
Blind, Vertical, 6 x 5	1	Pisgah Room - Building A
Blind, Vertical, 6 x 5	1	Pisgah Room - Building A
Blind, Horizontal, 1 1/2 x 3	16	Dorm 2 - Room 201
Blind, Horizontal, 1 1/2 x 3	16	Dorm 3 - Room 306
Cabinet, Computer, wood, 2 1/2 x 1 1/2 x 6	1	Front Desk - Building A
Bear Trash Cans	6	Maintenance Shop
Print, 2 x 2 1/2	1	Overflow Dining Room - Commercial Building
Stand, TV, Metal, Wall Mount	2	Room 103 - Deluxe Room - Building A
Time clock, Simplex	1	Kitchen - Commercial Building
Desk, Single pedestal	1	Chef's Office - Kitchen - Commercial Building
Lamp, Table, Wood, 12"	8	Dorm 4, Room 400
Mirror, 2 x 3 1/2	10	Room 127 - Standard Room - Building C
Chair, Dining, Wood, with Cushion	1	1st Floor Corner Office - Building A
Fixture, Display, Wood, 4 x 1 1/2 x 6	4	Gift Shop - Commercial Building
Cabinet, Metal, 3 x 1 1/2 x 6	1	Maintenance Shop
Table, Dining, 4 x 2	1	1st Floor Corner Office - Building A
File Cabinet, 4 Drawer, Legal	1	Administrative Office - Building A
Table, Pressed Wood, 5 x 1 1/2	1	Administrative Office - Building A
Cage, Wire, 3 1/2 x 1 1/2 x 6, Eagle	1	Chef's Office - Kitchen - Commercial Building
Desk, Double Pedestal, pressed wood	1	Chef's Office - Kitchen - Commercial Building
Blind, Horizontal, 1 1/2 x 3	12	Dorm 1 - Room 100
Chair, Rocking, with Cushion	1	Front Lobby - Building A
Chair, Wood, Cushion	2	Housekeeping Office - Building C
Lot, Wood Shelving	1	Housekeeping Office - Building C
Stand, TV, Metal, Wall Mount	1	Pisgah Room - Building A
Table, Coffee, wood with Metal Base, 4 x 2	1	Pisgah Room - Building A
Lamp, Table, Metal, 2'	10	Room 127 - Standard Room - Building C
Stand, TV, Metal, Wall Mount	2	Room 204 - Deluxe Room - Building A
Table, End, Wood, with Metal Base, 1 1/2 x 2	1	Pisgah Room - Building A
Table, Veneer, 2 1/2' Diameter	10	Room 125 - Standard Room - Building C
Table, Wood, 3 x 3	1	2nd Floor Corner Office - Building A
File Cabinet, 4 Drawer, Letter	1	Administrative Office - Building A
Crib, Wood	3	Building B - Miscellaneous
Bear Trash Cans	4	Camp Store/Service Station
Bear Trash Cans	4	Dorm 2 - Exterior
Lamp, Floor, 6'	1	Gift Shop - Commercial Building
Cabinet, Fire, 45 gallon	1	Maintenance Shop
Print, 1 1/2 x 1 1/2	2	Room 103 - Deluxe Room - Building A
Print, 1 1/2 x 2 1/2	2	Room 103 - Deluxe Room - Building A
Lamp, Floor, Metal, 5'	10	Room 127 - Standard Room - Building C
Locker, Set of 8, 1 x 1 1/2 x 6	2	Kitchen - Commercial Building
Print, 2 x 2	1	Pisgah Room - Building A
Lamp, Table, 12"	4	Room 103 - Deluxe Room - Building A
Curtain, 6 x 2	10	Room 125 - Standard Room - Building C
File Cabinet, 2-Drawer, Letter	1	1st Floor Corner Office - Building A
Desk, Double Pedestal	1	Administrative Office - Building A
Fixture, Display, Metal Pegboard, 3 x 1 x 5	4	Camp Store/Service Station
Fixture, Display, Metal Pegboard, 4 x 2 x 5, double sided	4	Camp Store/Service Station
Fixture, Display, Wood/Dowel, 2 1/2 x 1 x 6	1	Camp Store/Service Station
Safe, Floor, 2 x 2 x 2	1	Front Desk - Building A
File Cabinet, 4 Drawer, Legal	1	Housekeeping Office - Building C
Lamp, Floor, Metal, 5'	2	Room 103 - Deluxe Room - Building A
Print, 2 x 1 1/2	10	Room 125 - Standard Room - Building C
Print, 2 x 1 1/2	10	Room 125 - Standard Room - Building C
Print, 1 1/2 x 1 1/2	2	Room 204 - Deluxe Room - Building A
Print, 1 1/2 x 2 1/2	2	Room 204 - Deluxe Room - Building A
Fixture, Display, Postcard, 1 x 1 x 6	2	Camp Store/Service Station
Cabinet, Pressed wood, 1 x 1 x 2	1	Chef's Office - Kitchen - Commercial Building
Chair, Arm, Wood, with Cushion	1	Housekeeping Office - Building C
Table, Dining, 4 x 2	1	Maintenance Shop
Lamp, Table, Ceramic, 18"	2	Pisgah Room - Building A
Mirror, 1 1/2 x 2 1/2	2	Room 103 - Deluxe Room - Building A
Blind, 1 1/2 x 1 1/2	13	Room 123 - Deluxe Room - Building B
Mirror, 2 x 3 1/2	10	Room 125 - Standard Room - Building C
Lamp, Floor, Metal, 5'	2	Room 204 - Deluxe Room - Building A
Lamp, Table, 12"	4	Room 204 - Deluxe Room - Building A
File Cabinet, 2-Drawer, Letter	2	Chef's Office - Kitchen - Commercial Building
Print, 1 1/2 x 1 1/2	1	Front Lobby - Building A
Mirror, 2 x 3 1/2	1	Pisgah Room - Building A
Print, 1 1/2 x 1 1/2	1	Pisgah Room - Building A
Print, 1 1/2 x 2 1/2	1	Pisgah Room - Building A
Lamp, Table, Metal, 2'	10	Room 125 - Standard Room - Building C
Bear Trash Cans	2	Building B - Miscellaneous
Bear Trash Cans	2	Building C - Exterior
Lamp, Table, Wood, 12"	8	Dorm 2 - Room 201

National Park Service
Blue Ridge Parkway - Pisgah Inn
Parkway Inn, Inc.
As of December 31, 2002
Inventory Detail

Item Description	Quantity	Site Location
Lamp, Table, Wood, 12"	8	Dorm 3 - Room 306
Table, Wood, 3 1/2 x 1 1/2	1	Housekeeping Office - Building C
Desk, Double Pedestal, Wood	1	Maintenance Shop
Lamp, Floor, Wicker Design, 5'	1	Pisgah Room - Building A
Blind, 1 1/2 x 1 1/2	13	Room 119 - Deluxe Room - Building B
Lamp, Floor, Metal, 5'	10	Room 125 - Standard Room - Building C
Mirror, 1 1/2 x 2 1/2	2	Room 204 - Deluxe Room - Building A
Time clock, Wall mount, Acruprint	1	Housekeeping Office - Building C
Chair, Task	1	Chef's Office - Kitchen - Commercial Building
Stand, Hostess, 2 x 1 1/2 x 3 1/2	1	Dining Area - Commercial Building
Lamp, Table, Wood, 12"	6	Dorm 1 - Room 100
Blind, 1 1/2 x 3	8	Dorm 4, Room 400
Chair, Wood	2	Housekeeping Office - Building C
Table, Card, Folding	1	Building C - Housekeeping/Laundry
Fixture, Display, Wire, 3 x 1 x 5	1	Camp Store/Service Station
Box, Fireplace, wood, 2 x 1 x 2	1	Pisgah Room - Building A
Table, Veneer, 3' Diameter	1	Building B - Miscellaneous
Fixture, Display, Metal Pegboard, 3 x 1 x 5	1	Camp Store/Service Station
Fixture, Display, Wire, 2 x 1 x 6	1	Camp Store/Service Station
Fixture, Display, Wire, 4 x 1 x 6	1	Camp Store/Service Station
Ash Can, Small	1	Exterior - Commercial Building
File Cabinet, 4-Drawer, Letter	1	Maintenance Shop
Wastebasket, Small	20	Room 125 - Standard Room - Building C
Wastebasket, Small	20	Room 127 - Standard Room - Building C
TV, Emerson, 13"	1	Administrative Office - Building A
Chair, Folding, Metal	1	Building C - Housekeeping/Laundry
Chair, Folding, Metal	3	Camp Store/Service Station
Chair, Folding, Metal	3	Housekeeping Office - Building C
Blind, 1 1/2 x 1 1/2	2	Pisgah Room - Building A
Wastebasket, Small	1	Pisgah Room - Building A
Blind, Horizontal, 1 1/2 x 1 1/2	2	Room 103 - Deluxe Room - Building A
Subtotal - Furniture/Fixtures		

National Park Service
Blue Ridge Parkway - Pisgah Inn
Parkway Inn, Inc.
As of December 31, 2002
Inventory Detail

Item Description	Quantity	Site Location
Oven, Convection, Southbend, Single	2	Kitchen - Commercial Building
Steamer, Groen, Groen generation 3, w/ 10 quart kettle	2	Kitchen - Commercial Building
Dishwasher Station, S/S, c/o: Hobart CRS-66 6' Conveyor dishwasher (serial #12-038-191),	1	Kitchen - Commercial Building
Washer, Wascomat, FL244, 75#	1	Building C - Housekeeping/Laundry
Dryer, Alliance Laundry, Gas, Model NUG419WF	2	Camp Store/Service Station
Freezer, Beverage Air, Double Glass Door, CF48-5, 5 x 2 1/2 x 6	1	Camp Store/Service Station
Ice Machine, Manitowac, Model 5570	1	Kitchen - Commercial Building
Ice Machine, Hoshizaki, KM1300 SAF	1	Camp Store/Service Station
Ice Machine, Hoshizaki, KM-500 HRF	1	Building C - Housekeeping/Laundry
Refrigerator, Traulsen, 6 1/2 Door, 7 x 2 1/2 x 6	1	Kitchen - Commercial Building
Refrigerator, Beverage Air, Reach Thru, Sliding Glass Door, MT45SRL, 5 x 2 1/2 x 6	1	Camp Store/Service Station
Freezer, Delfield, Single Door, 2 x 2 1/2 x 6	1	Kitchen - Commercial Building
Workstation, S/S, c/o: 2 basin warmer, ice bin (4 x 1 1/2), 3 undercounter refrigerators, dual	1	Kitchen - Commercial Building
Refrigerator, Beverage Air, Reach Thru, Sliding Glass Door, MT45SRL, 5 x 2 1/2 x 6	1	Camp Store/Service Station
Cart, Powerwagon, Country Home Products	1	Loading Dock
Refrigerator, Beverage Air, Reach Thru, Sliding Glass Door, MT45SRL, 5 x 2 1/2 x 6	1	Camp Store/Service Station
Refrigerator, S/S, w/ two doors, 5 x 2 x 7	1	Kitchen - Commercial Building
Rack, Wire, 5 x 1 1/2 x 6	8	Kitchen - Commercial Building
Washer, Extract-O-Matic, P12	2	Camp Store/Service Station
Stove, Wolf, 3-burner w/ 3 flat-top burners	2	Kitchen - Commercial Building
Lawn Tractor, Snapper, 42 inch	1	Maintenance Shop
Washer, Wascomat, Selecta 28, 40#	1	Building C - Housekeeping/Laundry
Ice Machine, Manitowac, Top Section	1	Camp Store/Service Station
Braising Pan, 48 quart	1	Kitchen - Commercial Building
Refrigerator, McCall, Single Door, 2 x 2 1/2 x 7	1	Kitchen - Commercial Building
Rack, Tray, 1 1/2 x 2 1/2 x 6	3	Kitchen - Commercial Building
Refrigerator, True, Prep, 4 x 2 1/2	1	Kitchen - Commercial Building
Warming Cabinet, Alto-Sham, 1000-TH-I	1	Kitchen - Commercial Building
Refrigerator, McCall, Single Door, 2 x 2 1/2 x 7	1	Kitchen - Commercial Building
Mixer, Hobart, D-300	1	Kitchen - Commercial Building
Refrigerator, True, Sliding Glass Doors, 4 x 2 x 6	1	Kitchen - Commercial Building
Ice Machine	1	Building B - Miscellaneous
Floor Cleaner, Apuance, Micromatic 14E	1	Kitchen - Commercial Building
Lawn Tractor, Stiga, Park, 42 inch	1	Maintenance Shop
Toaster, Conveyor, Wyatt APW	1	Kitchen - Commercial Building
Warming Cabinet, Epco, 1 1/2 x 2 1/2 x 6	1	Kitchen - Commercial Building
Washer, Speed Queen, Coin Operated	2	Camp Store/Service Station
Ice Machine, Manitowoc, Series 400	1	Kitchen - Commercial Building
Stove, Flat-top, Vulcan, 4 x 2 1/2	1	Kitchen - Commercial Building
Ice bin, S/S, 2 x 2 x 3	1	Kitchen - Commercial Building
Refrigerator, undercounter, single door	1	Kitchen - Commercial Building
Table, S/S w/ ice bin (1 1/2 x 1 1/2), undercounter cabinets, 7 x 2 x 3	1	Kitchen - Commercial Building
Slicer, Hobart	1	Kitchen - Commercial Building
Refrigerator, Beverage Air, undercounter, single door	1	Kitchen - Commercial Building
Ice Bin, Scotsman, Bottom Section	1	Camp Store/Service Station
Table, S/S, 7 x 2	4	Kitchen - Commercial Building
Two Way Radio, with Charger, Motorola Radius P110	4	Front Desk - Building A
Rack, Wire, 4 x 1 1/2 x 6	5	Camp Store/Service Station
Rack, Wire, 5 x 1 1/2 x 6	5	Kitchen - Commercial Building
Refrigerator, Hobart, undercounter, single door	1	Kitchen - Commercial Building
Refrigerator, Mini, Whirlpool	13	Room 123 - Deluxe Room - Building B
Rack, Wire, 5 x 1 1/2 x 6	4	Kitchen - Commercial Building
Hot Chocolate dispenser, Grindmaster, Model PIC3	1	Camp Store/Service Station
Rack, Wire, 5 x 1 1/2 x 6	3	Kitchen - Commercial Building
Rack, Metal, 3 1/2 x 1 x 6	5	Gift Shop - Commercial Building
Freezer, Ice Cream, S/S, Masterbilt	1	Kitchen - Commercial Building
Refrigerator, Mini, Whirlpool	13	Room 119 - Deluxe Room - Building B
Rack, Metal, 3 1/2 x 1 x 6	5	Gift Shop - Commercial Building
Generator, Briggs and Stratton, 8 HP	1	Camp Store/Service Station
Fryer, Single basket	3	Kitchen - Commercial Building
Freezer, Universal Nolin, 3 Sliding Door, 8 x 2 1/2 x 3	1	Camp Store/Service Station
Rack, Metal, 5' x 2' x 6'	2	Kitchen - Commercial Building
Toaster, Savory, 4 Slot	1	Overflow Dining Room - Commercial Building
Warmer, Toastmaster, 2 1/2 x 1 1/2	1	Dining Area - Commercial Building
Maid Carts	5	Building C - Housekeeping/Laundry
Washer, Wascomat Junior W73, 20#	1	Building C - Housekeeping/Laundry
Rack, Metal, 6 x 1 1/2 x 6	2	Kitchen - Commercial Building
Microwave, commercial, Amana RC5820MPLW	1	Kitchen - Commercial Building
Microwave, Sunbeam, Commercial	1	Kitchen - Commercial Building
Refrigerator, Mini	8	Dorm 4, Room 400
Rack, Tray, 1 1/2 x 2 1/2 x 5	1	Kitchen - Commercial Building
Rack, Can, S/S	1	Kitchen - Commercial Building
Refrigerator, Mini	8	Dorm 3 - Room 306
Dryer, Heubsch, 75#	2	Building C - Housekeeping/Laundry
Dryer, Wasco, 75#	1	Building C - Housekeeping/Laundry

National Park Service
Blue Ridge Parkway - Pisgah Inn
Parkway Inn, Inc.
As of December 31, 2002
Inventory Detail

Item Description	Quantity	Site Location
Snake, Electric, Electric Eel	1	Maintenance Shop
Refrigerator, Mini	8	Dorm 2 - Room 201
Table, S/S , 7 x 2	1	Kitchen - Commercial Building
Rack, Metal, 6 x 1 1/2 x 7	1	Gift Shop - Commercial Building
Coffeemaker, Bunn, Model STF-15	1	Camp Store/Service Station
Cart, Tray, 1 1/2 x 2 x 6	1	Kitchen - Commercial Building
Refrigerator, Mini	6	Dorm 1 - Room 100
Rack, Dunnage	2	Kitchen - Commercial Building
Microwave, Sharp, Carousel	1	Maintenance Shop
Table, S/S, 6 x 2, w/ drawer	1	Kitchen - Commercial Building
Tray Cart, Cambro, 3 x 2 x 3	1	Maintenance Shop
Warmer, 3-basin, w/ Top Shelf	1	Kitchen - Commercial Building
Warmer, Drawer, Hatco, Stacked w/ 2	2	Kitchen - Commercial Building
Dryer, Whirlpool, Gas, CSP2761AN2	2	Camp Store/Service Station
Cart, Tray, 1 1/2 x 2 1/2 x 6	2	Kitchen - Commercial Building
Radio, Two-Way, w/ charger, Motorola HT-90	1	Maintenance Shop
Table, S/S, w/ sink (1 1/2 x 1 1/2), 8 x 2	1	Kitchen - Commercial Building
Table, S/S, 2 1/2 x 2 1/2, w/ shelf	1	Kitchen - Commercial Building
Table, S/S, 6 x 1	1	Kitchen - Commercial Building
Table, S/S, 6 x 2	1	Kitchen - Commercial Building
Table, S/S, 7 x 2	1	Kitchen - Commercial Building
Warmer, Hat Glo, 8'	2	Kitchen - Commercial Building
Table, S/S, 8 x 2 x 2	1	Kitchen - Commercial Building
Cart, Laundry, 5 x 2 x 3	2	Building C - Housekeeping/Laundry
Lawnmower	2	Maintenance Shop
Radio, Two-Way, w/ charger, Motorola SP50	1	Maintenance Shop
Two Way Radio, with Charger, Motorola Radius P110	1	Camp Store/Service Station
Table, S/S, 4 x 2	1	Kitchen - Commercial Building
Table, S/S, 5 x 2	1	Kitchen - Commercial Building
Sink, S/S, w/ 3 basin (1 1/2 x 1 1/2), 7 x 1 1/2	1	Kitchen - Commercial Building
Table, S/S, 6 x 1 1/2	1	Kitchen - Commercial Building
Rack, Wire, 4 x 1 1/2 x 6	1	Kitchen - Commercial Building
Cart, Laundry, 2 1/2 x 1 1/2	4	Building C - Housekeeping/Laundry
Pressure Washer	1	Maintenance Shop
Fan, Floor, Heavy Duty	2	Kitchen - Commercial Building
Ingredient Bins, Plastic	4	Kitchen - Commercial Building
Table, S/S, 4 x 2	1	Kitchen - Commercial Building
Weedwacker, Gas	4	Maintenance Shop
Trash Can, Medium	20	Maintenance Shop
Stove, Wolf, 4-burner	1	Kitchen - Commercial Building
Sink, 4-basin (2 x 2) w/ Table, 12 x 2	1	Kitchen - Commercial Building
Rack, Wire, 5 x 1 x 6	1	Kitchen - Commercial Building
Sink, S/S, w/ Single Basin and Table, 6 x 2	1	Kitchen - Commercial Building
Coffeemaker, 4 Cup	13	Room 123 - Deluxe Room - Building B
Laminator, Ibico, GL-9	1	Administrative Office - Building A
Warmer, Hatco, Stacked, 2 1/2 x 1 1/2 x 5	1	Overflow Dining Room - Commercial Building
Heater, Kerosene	5	Maintenance Shop
Refrigerator, Danby, Model DCR122BL	1	Pisgah Room - Building A
Rack, Wire, 5 x 1 1/2 x 6	1	Kitchen - Commercial Building
Rack, Wire, 7 x 1/2 x 6	1	Kitchen - Commercial Building
Rack, Metal, 3 x 1 1/2 x 6	1	Maintenance Shop
Two Way Radio, with Charger, Motorola HT 90	1	Front Desk - Building A
Two Way Radio, with Charger, Motorola HT90	1	Camp Store/Service Station
Cart, S/S, Lakewood	1	Kitchen - Commercial Building
Freezer, Kenmore, 19.6 Cubic Foot	1	Camp Store/Service Station
Floor Dryer, Windsor	1	Kitchen - Commercial Building
Stepladder	2	Building B - Miscellaneous
Cart, Laundry, 5 x 2	1	Building B - Miscellaneous
Refrigerator, Mini, Whirlpool	2	Room 103 - Deluxe Room - Building A
Coffeemaker, 4 Cup	13	Room 119 - Deluxe Room - Building B
Cart, Rubbermaid, 3-Shelf	2	Kitchen - Commercial Building
Refrigerator, Mini, Whirlpool	2	Room 204 - Deluxe Room - Building A
Trash Can, Large	7	Kitchen - Commercial Building
Wet Vac, Shop Vac, 9 Gallon	1	Camp Store/Service Station
Pantograph, Scott, Model SM300	1	Maintenance Shop
Cart, Rubbermaid, 2-Shelf, 4 x 2	1	Overflow Dining Room - Commercial Building
Compressor, Sears, 1HP	1	Maintenance Shop
Ladder, Aluminium, 20'	1	Maintenance Shop
Cart, Laundry, 4 x 2	1	Housekeeping Office - Building C
Rack, Plastic, 4 x 1 x 6	1	Kitchen - Commercial Building
Blower, Stihl, Gas	1	Maintenance Shop
Heat Lamp, Set of 2	2	Maintenance Shop
Key Cutting Machine, Ilco, Model 025	1	Maintenance Shop
Rack, Plastic, 3 x 1 x 6	1	Kitchen - Commercial Building
Dryer, Speed Queen, Commercial, Coin Operated	2	Camp Store/Service Station

National Park Service
Blue Ridge Parkway - Pisgah Inn
Parkway Inn, Inc.
As of December 31, 2002
Inventory Detail

Item Description	Quantity	Site Location
Tray Cart, 1 1/2 x 2 1/2 x 6	1	Kitchen - Commercial Building
Serving Cart, Cambro, 5 x 1 1/2 x 5	1	Kitchen - Building A
Steam Cleaner, Citation	1	Maintenance Shop
Warmer, Coffee, Grindmaster, BW2	1	Front Lobby - Building A
Cart, Tray, 2 x 2 1/2 x 3	1	Kitchen - Commercial Building
Coffeemaker, 4 Cup	2	Room 204 - Deluxe Room - Building A
Serving Cart, Cambro, w/ ice bin, 6 x 1 1/2 x 5	3	Maintenance Shop
Clock, Wall, 12"	1	Front Lobby - Building A
Coffeemaker, 4 Cup	2	Room 103 - Deluxe Room - Building A
Irons	6	Administrative Office - Building A
Trash Can, Medium	4	Kitchen - Commercial Building
Ladder, 4'	1	Kitchen - Commercial Building
Fan, Floor, Oscillating	1	Building C - Housekeeping/Laundry
Trash Can, Large	2	Housekeeping Office - Building C
Ladder, Fiberglass, 6'	1	Maintenance Shop
Serving Cart, Rubbermaid, with 4 Basin Warmer	1	Dining Area - Commercial Building
Ladder, Step	1	Building C - Housekeeping/Laundry
Trash Can, Large	1	Building C - Housekeeping/Laundry
Trash Can, w/ top, Medium	2	Bathrooms - Building A
Coffeemaker, 4 Cup	1	Pisgah Room - Building A
Shelf, S/S, 2 tier, 15 x 1	1	Kitchen - Commercial Building
Router, Craftsman, 10"	1	Maintenance Shop
Router, Handheld	1	Maintenance Shop
Shelf, 6'	2	Kitchen - Commercial Building
Shelf, S/S, 5'	2	Kitchen - Commercial Building
Fireplace Tools, Set	1	Pisgah Room - Building A
Dolly	1	Building C - Housekeeping/Laundry
Sander, Makita	1	Maintenance Shop
Power Booster, Schumacher, 52-12-50	1	Maintenance Shop
Dolly	3	Maintenance Shop
Heater, Floor, Markel	1	Housekeeping Office - Building C
Chargriller, Anets, 3 x 2 1/2	1	Kitchen - Commercial Building
Vacuum, Eureka	1	Overflow Dining Room - Commercial Building
Vacuum, Hoover	1	Maintenance Shop
Drill, Black and Decker	1	Maintenance Shop
Grinder, Bench, Sears, 1/3 HP	1	Maintenance Shop
Stepladder	1	Kitchen - Commercial Building
Shelf, S/S, 3'	1	Kitchen - Commercial Building
Saw, Circular	1	Maintenance Shop
Saw, Compound, Makita, 10"	1	Maintenance Shop
Saw, Sawz all	1	Maintenance Shop
Dolly	1	Camp Store/Service Station
Dolly	1	Kitchen - Commercial Building
Dolly	1	Kitchen - Commercial Building
Jack, 2-Ton	1	Maintenance Shop
Subtotal - Machinery and Equipment		
Cash Register, POS, With Cash Drawer, Sharp, UP5000 Series	3	Front Lobby - Building A
Cash Register, POS, With Cash Drawer, Sharp, UP5000 Series	2	Front Lobby - Building A
Cash Register, Sharp, ER-A450T	1	Camp Store/Service Station
Cash Register, TEC, MA-206	2	Gift Shop - Commercial Building
Phone Switch, Nortel Meridian, NNTM040A9J0H	1	Boiler Room - Building A
Server, Compaq Presario, 5838	1	Administrative Office - Building A
Server, HP, Netserver E60	1	Front Desk - Building A
PC, Gateway, Model E4600, with Monitor	1	Front Lobby - Building A
Printer, Slip, Epson, M119B	4	Front Lobby - Building A
Printer, Xerox, 5614	1	Administrative Office - Building A
Printer, All in One, HP, OfficeJet D145	1	Administrative Office - Building A
Printer, Slip, Epson, M119B	4	Front Lobby - Building A
Printer, Panasonic, KX-P2123	1	Front Desk - Building A
Printer, HP, LaserJet 1200 Series	1	Administrative Office - Building A
Server, Antec/TSA Choice	1	Front Lobby - Building A
Server, AST, Adventure 8090P, Lodgemate System	1	Administrative Office - Building A
UPS, APC, 650	1	Front Desk - Building A
UPS, APC, Back Up UPS - Office 350 VA	2	Front Lobby - Building A
Monitor, Compaq, 15"	1	Front Desk - Building A
Monitor, GTX, 15"	2	Front Desk - Building A
Monitor, Proview Technology, Pro-550	1	Administrative Office - Building A
UPS, APC, 650	1	Chef's Office - Kitchen - Commercial Building
Printer, HP, C8403A	1	Front Lobby - Building A
Phone, M/L	2	Front Desk - Building A
Monitor, NEC, 15", Multisync 2V	1	Front Desk - Building A
Monitor, Optiquest, Q51	1	1st Floor Corner Office - Building A
PC, Packard Bell	1	Front Desk - Building A
Message System, Valcom, V-9980A	1	Boiler Room - Building A
Printer, Okidata, Microline 320 Turbo	2	Front Desk - Building A

National Park Service
Blue Ridge Parkway - Pisgah Inn
Parkway Inn, Inc.
As of December 31, 2002
Inventory Detail

Item Description	Quantity	Site Location
UPS, APC, 280	1	Front Lobby - Building A
Phone, M/L	1	Administrative Office - Building A
10 Key	2	Administrative Office - Building A
10 Key	2	Front Desk - Building A
UPS	1	Boiler Room - Building A
Monitor, 15"	1	2nd Floor Corner Office - Building A
Monitor, Security, ULTRAK, Model KO6140Q	1	Camp Store/Service Station
Fax, HP, Fax 750	1	Administrative Office - Building A
Printer, Epson, LQ-570e	1	Front Desk - Building A
10 Key	1	Camp Store/Service Station
10 Key	1	Housekeeping Office - Building C
UPS, APC, 350VA	1	Kitchen - Commercial Building
UPS, APC, 500	1	Overflow Dining Room - Commercial Building
Camera, Security, ULTRAK, Model KC-3P	1	Camp Store/Service Station
10 Key	1	Camp Store/Service Station
10 Key	1	1st Floor Corner Office - Building A
Subtotal - Office Equipment		
2002 Dodge Durango	1	Vehicles
1993 Dodge Ram Pick-up	1	Vehicles
1990 Dodge Pick-up	1	Vehicles
Golf Cart, EZ-Go	1	Maintenance Shop
1987 Chevrolet Pick-up	1	Vehicles
Subtotal - Vehicles		
Grand Total - Pisgah Inn		

Young, Deirdre R

From: Neubacher, Patricia <patty_neubacher@nps.gov>
Sent: Wednesday, October 02, 2013 12:27 PM
To: Lena McDowall
Subject: Fwd: Cliff House

---------- Forwarded message ----------
From: **Frank Dean** <frank_dean@nps.gov>
Date: Wed, Oct 2, 2013 at 9:23 AM
Subject: Re: Cliff House
To: "Neubacher, Patricia" <patty_neubacher@nps.gov>
Cc: Aaron Roth <aaron_roth@nps.gov>, Trystan Stern <trystan_stern@nps.gov>, Scott Wanek <Scott_Wanek@nps.gov>, Craig Dalby <craig_dalby@nps.gov>, Jessica Carter <jessica_carter@nps.gov>

Patty,

Thanks for considering this unusual situation. We informed the Cliff House and they will be shutting down.

Frank

On Oct 2, 2013, at 8:45 AM, "Neubacher, Patricia" <patty_neubacher@nps.gov> wrote:

> I received a phone call from Bruce Sheaffer and Lena McDowall this am. Your briefing paper and arguments were discussed at today's WASO morning meeting and the final decision is that the Cliff House must close down...like all concessions across the nation. (It turns out that Hot Springs has a somewhat similar situation -- with authority to lease/buildings next to each other - some with concessions some with leases)
>
> (b) (5) [redacted]
>
> Sorry.
>
> --
> Patty Neubacher
> Deputy Regional Director
> Pacific West Region
> (415) 623-2105 work
> (510) 604-9998 cell

--
Patty Neubacher
Deputy Regional Director
Pacific West Region
(415) 623-2105 work
(510) 604-9998 cell

Young, Deirdre R

From: Bruce Sheaffer <bruce_sheaffer@nps.gov>
Sent: Tuesday, October 01, 2013 8:19 PM
To: Neubacher, Patricia
Cc: Jon Jarvis; Lena McDowall; Margaret O'Dell; Scott Wanek; Craig Dalby; Frank Dean; Aaron Roth
Subject: Re: Cliff House

(b) (5)

Sent from my iPad

On Oct 1, 2013, at 7:23 PM, "Neubacher, Patricia" <patty_neubacher@nps.gov> wrote:

Dear Fellow travelers:

The folks at Golden Gate have raised a question about the appropriateness of closing down the Cliff House - which is technically a concessions contract. However, as outlined in their briefing paper, they correctly point out that the 1970's era legislation established authority for it to be managed as a lease. In 1998 a concessions contract was issued that will be due in 2018. (a long concessions contract due to the amount of funding that the concessionaire had to invest in improvements. -- the NPS will have purchased all the possessory interest in 2018)

In 2018, the property will be competed as a lease. Other complications, include the proximity of another former concessions contract property that is now under a lease (Louis' Restaurant.) make the decision sensitive.

We'd appreciate you reviewing the park's briefing paper and giving us advice on how to proceed. Its an awkward situation and we wanted to consult with you on the best way to move forward. Thanks for your help and advice.

-

--
Patty Neubacher
Deputy Regional Director
Pacific West Region
(415) 623-2105 work
(510) 604-9998 cell

--

Frank Dean
General Superintendent
Golden Gate
National Recreation Area
San Francisco, CA 94123
(415) 561-4720

--
Patty Neubacher
Deputy Regional Director
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Frank Dean
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--
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Deputy Regional Director
Pacific West Region
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<Cliff House open in event of Government Shutdown - Rationale.pdf>

Young, Deirdre R

From: Neubacher, Patricia <patty_neubacher@nps.gov>
Sent: Tuesday, October 01, 2013 7:24 PM
To: Jon Jarvis; Lena McDowall; Bruce Sheaffer; Margaret O'Dell
Cc: Scott Wanek; Craig Dalby; Frank Dean; Aaron Roth
Subject: Fwd: Cliff House
Attachments: Cliff House open in event of Government Shutdown - Rationale.pdf

Dear Fellow travelers:

The folks at Golden Gate have raised a question about the appropriateness of closing down the Cliff House - which is technically a concessions contract. However, as outlined in their briefing paper, they correctly point out that the 1970's era legislation established authority for it to be managed as a lease. In 1998 a concessions contract was issued that will be due in 2018. (a long concessions contract due to the amount of funding that the concessionaire had to invest in improvements. -- the NPS will have purchased all the possessory interest in 2018)

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-

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Why keep the Cliff House open in event of Government Shutdown?

- The National Park Service's contingency plan for Lapse in Appropriation specifies that concession operations will close but lessees remain open. **The Cliff House should be exempt from closure as it functions more like a lessee than a concession.** This was the case in the 1995 shutdown.
- The enabling legislation of the park specifically addresses the Cliff House property. The language and congressional intent provides NPS the discretion to treat it as a leased property.

  16 USC SUBCHAPTER LXXXVI—*GOLDEN GATE NATIONAL RECREATION AREA §460bb–3*

  Administration ***(f) Certain rental proceeds; crediting; management contract***

  Notwithstanding any other provisions of law, in the administration of those parcels of property known as Haslett Warehouse, Cliff House Properties and Louis' Restaurant, the Secretary...may, if he deems appropriate, enter into a contract for the management (including rental or lease) of said properties with such terms and conditions as will protect the Government's interest, with excess funds being used as set forth above.

- The Cliff House does not rely on support from the NPS/Appropriated Funds in any operational facet. Water, wastewater, electricity, refuse, collection, parking, and Alcoholic Beverage Control are all provided directly by the City of San Francisco, its subsidiary or an independent utility.
- The NPS does not exercise its right to approve Cliff House pricing. We rely on competitive market declaration, that is, we allow the Cliff House to set its own pricing. Although we do inspect the Cliff House and conduct annual reviews per concessions policy, our inspections are fairly in-frequent because it is not a high priority for inspection. Therefore, the Cliff House may routinely operate for a month or two without an inspection or oversight from us. As far as Public Health, we do oversee that aspect, however we also do that for leasing. Since Public Health employees are excepted, this is not a determining factor.
- Although the Cliff House is technically a concession, because the NPS utilized a Concession contract in 1998 to authorize it, this was a time when the NPS was not completely versant on how to issue a lease. It is difficult to see how the Cliff House, a $12M. 30,000 square foot restaurant in a busy urban location, could be considered a "necessary" service for the Golden Gate National Recreation Area. When this concession contract expires, the Park will most certainly pursue a lease as its next authorizing instrument, both because it is not a necessary service and also because the Park has clear legislative authority to do so and a lease would more closely resemble our oversight approach to this restaurant.
- Lastly, consistency is an issue. We have Louis Restaurant, only a few hundred feet away. It has the exact same operational model as the Cliff House and very similar level of oversight. This was a concession converted to a lease around 2010, simply because it was an expired concession contract. It is arbitrary that in 2013, Cliff House happens to be authorized by Concession Contract and Louis by a lease, even though the relevant legislation is exactly the same.

Cliff House with Louis Restaurant in the Background (building upper left)

Louis Restaurant with the Cliff House in the Background (building on lower left)

Young, Deirdre R

From: Mark Woods <mark_woods@nps.gov>
Sent: Friday, October 04, 2013 6:10 PM
To: McDowall, Lena
Cc: Reynolds, William; Shawn Benge; Michael Litterst; Melissa Lackey
Subject: Re: Change to talking points re: sufficient notice

Thank you.

Mark H. Woods
Superintendent
Blue Ridge Parkway

Sent from my iPad

On Oct 4, 2013, at 6:08 PM, "McDowall, Lena" <lena_mcdowall@nps.gov> wrote:

> Bill -
>
> Melissa Lackey in SOL (b) (5) [redacted] (b) (5) [redacted] Please let me know if you have any questions.
>
> Thanks,
>
> Lena
>
> --
> Lena McDowall
> Associate Director, Business Services
> Ph: (202) 208-5651
> Cell: (202) 641-1814
> Email: Lena_McDowall@nps.gov
>
> <BLRI - Pisgah Inn Tlk Pts - 100413 rev (2)_mlackey.docx>

Young, Deirdre R

From: McDowall, Lena <lena_mcdowall@nps.gov>
Sent: Friday, October 04, 2013 6:08 PM
To: Reynolds, William
Cc: Shawn Benge; Mark Woods; Michael Litterst; Melissa Lackey
Subject: Change to talking points re: sufficient notice
Attachments: BLRI - Pisgah Inn Tlk Pts - 100413 rev (2)_mlackey.docx

Bill -

Melissa Lackey in SOL (b) (5) [redacted]
(b) (5) [redacted]
(b) (5) [redacted] Please let me know if you have any questions.

Thanks,

Lena

--
Lena McDowall
Associate Director, Business Services
Ph: (202) 208-5651
Cell: (202) 641-1814
Email: Lena_McDowall@nps.gov

Blue Ridge Parkway – Pisgah Inn
DRAFT Talking Points
October 3, 2013

(b) (5)

[redacted]

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(b) (5)

[redacted]

(b) (5)

[redacted]

Comment [ML1]: (b) (5) [redacted]
(b) (5) [redacted]

Comment [ML2]: (b) (5) [redacted]
(b) (5) [redacted]

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Young, Deirdre R

From: Androff, Blake <blake_androff@ios.doi.gov>
Sent: Friday, October 11, 2013 8:30 PM
To: Boling, Edward
Cc: Kelly, Katherine; Waldron, Suzanne; mike litterst; Nicole Buffa; Kevin Haugrud
Subject: Re: Ted says DOJ has edits to Pisgah
Attachments: Proposed DOI Statement.doj comments.docx

Ted -

Attached is the last thing I saw on an if asked statement re: concessions but you said there were still some SOL issues to work out. Can you let us know where that stands?

On Thu, Oct 10, 2013 at 3:29 PM, Boling, Edward <ted.boling@sol.doi.gov> wrote:
Attached are the edits and comments. (b) (5) [redacted]
(b) (5) [redacted]

For present purposes, [redacted]

(b) (5) [redacted]

How's that?

Ted Boling
Deputy Solicitor -- Parks & Wildlife
U.S Department of the Interior
1849 C Street NW
Washington, DC 20240
202-208-4423 (main)
202-208-3125 (direct)
202-208-5584 (fax)
Ted.Boling@sol.doi.gov

On Thu, Oct 10, 2013 at 3:23 PM, Kelly, Katherine <kate_kelly@ios.doi.gov> wrote:
if you've already shared with people - that's fine. Ted - pls share the edits asap

On Thu, Oct 10, 2013 at 3:22 PM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
hold on the statement????

On Thu, Oct 10, 2013 at 2:30 PM, Kelly, Katherine <kate_kelly@ios.doi.gov> wrote:

Please hold til we get those back.

--

Kate Kelly
Director of Communications
Department of the Interior
(202) 208 2409
kate_kelly@ios.doi.gov

--

Sue Waldron
Assistant Director, Communications
National Park Service
(202) 208-3046
Visit us at www.nps.gov

The National Park Service cares for special places saved by the American people so that all may experience our heritage.

EXPERIENCE YOUR AMERICA

--

Kate Kelly
Director of Communications
Department of the Interior
(202) 208 2409
kate_kelly@ios.doi.gov

--

Blake Androff
Deputy Director of Communications
U.S. Department of the Interior
Office: (202) 208-6416 | Cell: (202) 725-7435

On the record:

With the lapse in funding appropriated by Congress, all 401 national parks are closed to the public and nearly 20,000 National Park Service employees have been furloughed. (b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted] The National Park Service, however, has determined that resumption of operations at (b) (5) [redacted] [name of property] can be allowed at this time consistent with the (b) (5) [redacted] prohibitions in the Anti-Deficiency Act.

(b) (5) [redacted]

On background:

The Anti-Deficiency Act prohibits the NPS from spending federal resources during the government shutdown excep (b) (5) [redacted]

The approval for resumption of operations will be revisited if the operator:

(b) (5) [redacted]

Comment [DOJ1]: (b) (5) [redacted]

Comment [DOJ2]: (b) (5) [redacted]

Comment [DOJ3]: (b) (5) [redacted]

Comment [DOJ4]: (b) (5) [redacted]

Comment [DOJ5]: (b) (5) [redacted]

Comment [DOJ6]: (b) (5) [redacted]

Young, Deirdre R

From: Waldron, Suzanne <sue_waldron@nps.gov>
Sent: Wednesday, October 09, 2013 9:42 AM
To: Mummart, Jennifer
Cc: Lisa Mendelson; Mike Litterst; Alex Romero
Subject: Re: quick review - claude moore and pisgah

call to discuss

On Wed, Oct 9, 2013 at 9:39 AM, Mummart, Jennifer <jennifer_mummart@nps.gov> wrote:
Can we make the intro to the bullets less legalese and say - (b) (5) [redacted]
And, what are the conditions under which they (b) (5) [redacted] Are those conditions included in this statement? If not, it begs the question.

I agree with Mike about all the unintelligible legal stuff in the first paragraph.

Also note that the statement still includes the line: (b) (5) [redacted]
(b) (5) [redacted]

Jennifer Mummart
Director of Communications
National Park Service - National Capital Region
(202) 619-7174
www.nps.gov

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To: Edward Boling <ted.boling@sol.doi.gov>
Cc: "Kelly, Katherine" <kate_kelly@ios.doi.gov>, "Waldron, Suzanne" <sue_waldron@nps.gov>, Jon Jarvis <Jon_Jarvis@nps.gov>, Maureen Foster <Maureen_Foster@nps.gov>, Lena McDowall <Lena_McDowall@nps.gov>, Cam Sholly <Cam_Sholly@nps.gov>, Barry Roth <barry.roth@sol.doi.gov>, Lisa Mendelson <lisa_mendelson-ielmini@nps.gov>, Jennifer Mummart <jennifer_Mummart@nps.gov>, Bruce Sheaffer <Bruce_Sheaffer@nps.gov>, Mike Litterst <Mike_Litterst@nps.gov>, Blake Androff <Blake_Androff@ios.doi.gov>

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Young, Deirdre R

From: Mummart, Jennifer <jennifer_mummart@nps.gov>
Sent: Wednesday, October 09, 2013 9:39 AM
To: Waldron, Suzanne
Cc: Lisa Mendelson; Mike Litterst; Alex Romero
Subject: Re: quick review - claude moore and pisgah

Can we make the intro to the bullets less legalese and say - (b) (5) [redacted]
And, what are the conditions under which they have been allowed to reopen? Are those conditions included in this statement? If not, it begs the question.

I agree with Mike about all the unintelligible legal stuff in the first paragraph.

Also note that the statement still includes the line: (b) (5) [redacted]
(b) (5) [redacted]

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Young, Deirdre R

From: Litterst, Michael <mike_litterst@nps.gov>
Sent: Wednesday, October 09, 2013 9:32 AM
To: Mummart, Jennifer
Cc: Waldron, Suzanne; Lisa Mendelson; Alex Romero
Subject: Re: quick review - claude moore and pisgah

Not sure most folks will know what the Anti-Deficiency Act is; I've suggested some clarifying language (which probably proves I don't know what it is either).

(b) (5) [redacted]

Mike

~~~~~~~~~~~~~~~~~~~~

Mike Litterst
Chief Spokesperson (acting)

National Park Service
1849 C Street NW
Washington, DC 20240
Ph: (202) 513-0354
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Young, Deirdre R

From: Kelly, Katherine <kate_kelly@ios.doi.gov>
Sent: Wednesday, October 16, 2013 8:56 AM
To: Suzanne Waldron; Androff, Blake J; jon jarvis; mike litterst
Subject: might be worth a quick read before the hearing

GOP asks: Why were national parks shut down, anyway?

Aamer Madhani, USA TODAY *9:46 p.m. EDT October 15, 2013*

National Park Service director called to testify at joint hearing Wednesday.

WASHINGTON — House Republicans plan to take aim at the Obama administration on Wednesday for temporarily shuttering properties managed by the National Park Service during the federal government shutdown, spotlighting what has become an emotional battleground in the grinding impasse.

Interior Department Secretary Sally Jewell agreed last week to allow states to cover the costs of operating the country's 401 Park Service properties. But Republican lawmakers and local community officials in some communities affected by the shutdown are raising questions about why it took 10 days for the Interior Department to agree to such a plan, when a precedent for such arrangements was set during the 1995 and 1996 government shutdown.

The issue will be subject of a joint hearing called by Rep. Darrell Issa, R-Calif., chairman of the House Oversight and Government Reform Committee, and Rep. Doc Hastings, R-Wash., chairman of the House Natural Resources Committee. They plan to quiz National Park Service Director Jonathan Jarvis, who was subpoenaed to testify at the hearing.

The National Park Service made clear ahead of the latest shutdown, which began Oct. 1, that more than 400 national parks and properties would be shuttered as nearly all of the National Park Service employees would face furloughs.

But the NPS quickly found itself facing criticism from Republicans, including Issa and Hastings, who have pointed to the agency setting up barricades at open-air monuments such as the World War II Memorial and placing traffic cones along highway viewing areas outside Mount Rushmore as unnecessary and provocative steps meant to underscore the pain and visibility of the government shutdown.

The Obama administration critics also note that during the second government shutdown of 1995-96, the Interior Department allowed some national parks — including the South Rim of the Grand Canyon — to reopen at the expense of state governments, which were eventually reimbursed when the federal government reopened.

"If they set precedent in 1995-96, why couldn't that precedent be followed today?" said Gregory Bryan, mayor of the town of Tusayan, Ariz., near the Grand Canyon. "I have a hard time believing it took them 10 days to figure out a new policy."

Blake Androff, an Interior Department spokesman, said Tuesday that officials worked quickly to find ways to minimize the pain caused to communities that were feeling the pinch of the park closure caused by the government shutdown.

"After securing the 401 closed national parks and furloughing 20,000 National Park Service employees, the NPS worked expeditiously where possible with extremely limited resources to find temporary and practical solutions to lessen the pain of this shutdown," Androff said.

Bryan, who will testify at Wednesday's hearing, said he and other officials in his community began raising questions on Oct. 1 with the National Park Service superintendent for the Grand Canyon about Tusayan and the state of Arizona covering costs during the shutdown but were told it was against National Park Service policy to reopen national parks with third-party funding. Meanwhile, Tusayan and surrounding communities estimated they were losing hundreds of thousands of dollars each day because of lost tourism.

The town enlisted the help of Rep. Ann Kirkpatrick, D-Ariz., and Republican Sens. John McCain and Jeff Flake, but none were able to get a legal explanation of why NPS was prohibited from using their money to reopen the park. Arizona Republican Gov. Jan Brewer's office said they were also being told that third-party funding could not be used.

But on Oct. 10, the Interior Department announced it would open negotiations with states willing to cover costs of reopening NPS-operated sites. The next day, Arizona, Colorado, New York, South Dakota and Utah all announced they had come to agreements with the Interior Department to reopen NPS-operated properties in their states.

"The administration just wanted the American people to feel the pain of the shutdown in a very visible way," Bryan said.

Anna Eberly, managing director of Claude Moore Colonial Farm in McLean, Va., which is on National Park property but operates independently of the Park Service, said she struggled to get a satisfactory answer for why the service closed the farm for most of the first nine days of the shutdown. The farm was not closed in the 1995-96 shutdowns, she said.

"I don't know if Obama said go and [annoy] the American people," said Eberly, who is also scheduled to testify at Wednesday's hearing. "But there was a shutdown less than 20 years ago. People remember that and what happened then. This situation is just bone-headed."

In a letter to Jarvis on Tuesday, Issa and Sen. Chuck Grassley, R-Iowa, wrote that the "NPS response to the partial government shutdown appears to be ad-hoc, inconsistent, and without sensible guidance to states, local communities and the public at large."

Rep. DeFazio, D-Ore., accused Republicans of causing "a sideshow" by calling the hearing in the midst of the fiscal crisis and demanding the appearance of Jarvis, who had asked for such a hearing to be delayed until after the shutdown was resolved.

"We are more than two weeks into an unnecessary and irresponsible government shutdown and the same Republican obstructionists that caused the shutdown are threatening the full faith and credit of the United States," he said. "And yet on the eve of this calamity, House Republicans insist on a hearing on park closures."

--

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Young, Deirdre R

From: Waldron, Suzanne <sue_waldron@nps.gov>
Sent: Tuesday, October 15, 2013 3:48 PM
To: Androff, Blake; Lena McDowall
Cc: Edward Boling; Kelly, Katherine; mike litterst; Nicole Buffa; Kevin Haugrud; Tim Fullerton
Subject: Re: Ted says DOJ has edits to Pisgah

updated:

On the record:

With the lapse in Congressional appropriations on October 1, 20,000 National Park Service employees were furloughed, 401 national parks were closed, and all activities within those parks halted. As the shutdown has dragged on, the National Park Service has undertaken -- at the written request of several concessioners and partners -- a comprehensive review of their specific circumstances. Where the NPS determines that the re-opening of a facility will not compromise NPS compliance with the Anti-Deficiency Act, operations will be allowed to resume.

On background:

(b) (5) [redacted]

(b) (5) [redacted]

On Tue, Oct 15, 2013 at 1:03 PM, Androff, Blake <blake_androff@ios.doi.gov> wrote:
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On background:

(b) (5)

On Fri, Oct 11, 2013 at 9:17 PM, Edward Boling <ted.boling@sol.doi.gov> wrote:
Blake - (b) (5)

Sent from my iPhone

On Oct 11, 2013, at 8:29 PM, "Androff, Blake" <blake_androff@ios.doi.gov> wrote:

Ted -

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On Thu, Oct 10, 2013 at 3:29 PM, Boling, Edward <ted.boling@sol.doi.gov> wrote:
Attached are the edits and comments. (b) (5) (b) (5)

For present purposes, DOJ would be fine with this statement:

(b) (5)

How's that?

Ted Boling
Deputy Solicitor -- Parks & Wildlife
U.S Department of the Interior
1849 C Street NW
Washington, DC 20240
202-208-4423 (main)
202-208-3125 (direct)
202-208-5584 (fax)
Ted.Boling@sol.doi.gov

On Thu, Oct 10, 2013 at 3:23 PM, Kelly, Katherine <kate_kelly@ios.doi.gov> wrote:
if you've already shared with people - that's fine. Ted - pls share the edits asap

On Thu, Oct 10, 2013 at 3:22 PM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
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On Thu, Oct 10, 2013 at 2:30 PM, Kelly, Katherine <kate_kelly@ios.doi.gov> wrote:
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U.S. Department of the Interior
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<Proposed DOI Statement.doj comments.docx>

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For present purposes, DOJ would be fine with this statement:

(b) (5) [redacted]

How's that?

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<Proposed DOI Statement.doj comments.docx>

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Young, Deirdre R

From: Androff, Blake <blake_androff@ios.doi.gov>
Sent: Tuesday, October 15, 2013 1:03 PM
To: Edward Boling
Cc: Kelly, Katherine; Waldron, Suzanne; mike litterst; Nicole Buffa; Kevin Haugrud; Tim Fullerton
Subject: Re: Ted says DOJ has edits to Pisgah

Thanks, Ted.

Tim will post the policy on the website this afternoon. I will forward him the version named SOL Final.

Sue - do you have an updated statement that we can used if asked on the policy (b) (5) [redacted] (b) (5) [redacted] Copied below is the most recent version for the case-by-case analyses:

On the record:

With the lapse in funding appropriated by Congress, all 401 national parks are closed to the public and nearly 20,000 National Park Service employees have been furloughed in compliance with federal law. The National Park Service, however, has determined that resumption of operations at [name of property] can be allowed at this time consistent with the prohibitions in the Anti-Deficiency Act.

On background:

(b) (5) [redacted]

On Fri, Oct 11, 2013 at 9:17 PM, Edward Boling <ted.boling@sol.doi.gov> wrote:
Blake - (b) (5) [redacted]

Sent from my iPhone

On Oct 11, 2013, at 8:29 PM, "Androff, Blake" <blake_androff@ios.doi.gov> wrote:

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Young, Deirdre R

From: Nicole Buffa <nicole_buffa@ios.doi.gov>
Sent: Friday, October 11, 2013 10:08 PM
To: Suzanne Waldron
Cc: Blake Androff; Edward Boling; Kelly, Katherine; mike litterst; Kevin Haugrud; McDowall Lena
Subject: Re: Ted says DOJ has edits to Pisgah

Almost. Yes.

On Oct 11, 2013, at 9:51 PM, Suzanne Waldron <sue_waldron@nps.gov> wrote:

> Who needs sleep?
>
> So there is a final policy?
>
> Sue Waldron
> Assistant Director, Communications
> National Park Service
>
> Sent from my iPad
>
> On Oct 11, 2013, at 9:19 PM, Blake Androff <blake_androff@ios.doi.gov> wrote:
>
> > Thanks. Will leave that in Sue's capable hands. After she gets some sleep.
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> > Deputy Director of Communications
> > U.S. Department of the Interior
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<Proposed DOI Statement.doj comments.docx>

Young, Deirdre R

From: Suzanne Waldron <sue_waldron@nps.gov>
Sent: Friday, October 11, 2013 9:51 PM
To: Blake Androff
Cc: Edward Boling; Kelly, Katherine; mike litterst; Nicole Buffa; Kevin Haugrud; McDowall Lena
Subject: Re: Ted says DOJ has edits to Pisgah

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Sue Waldron
Assistant Director, Communications
National Park Service

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Young, Deirdre R

From: Suzanne Waldron <sue_waldron@nps.gov>
Sent: Friday, October 11, 2013 3:49 PM
To: Androff, Blake
Cc: Boling, Edward; Kelly, Katherine; mike litterst; Lena McDowall
Subject: Re: Ted says DOJ has edits to Pisgah

Where did this land on status of this? Blri is getting hammered

Sent from my iPhone

On Oct 10, 2013, at 5:21 PM, "Androff, Blake" <blake_androff@ios.doi.gov> wrote:

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Sent: Thursday, October 10, 2013 3:30 PM
To: Kelly, Katherine
Cc: Waldron, Suzanne; Androff, Blake J; mike litterst
Subject: Re: Ted says DOJ has edits to Pisgah
Attachments: Proposed DOI Statement.doj comments.docx

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On the record:

With the lapse in funding appropriated by Congress, all 401 national parks are closed to the public and nearly 20,000 National Park Service employees have been furloughed. (b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted] The National Park Service, however, has determined that resumption of operations at ~~this facility~~[name of property] can be allowed at this time consistent with the (b) (5) [redacted] prohibitions in the Anti-Deficiency Act.

(b) (5) [redacted]

On background:

The Anti-Deficiency Act prohibits the NPS from spending federal resources during the government shutdown except (b) (5) [redacted]

The approval for resumption of operations will be revisited if the operator:

(b) (5) [redacted]

Comment [DOJ1]: (b) (5) [redacted]

Comment [DOJ2]: (b) (5) [redacted]

Comment [DOJ3]: (b) (5) [redacted]

Comment [DOJ4]: (b) (5) [redacted]

Comment [DOJ5]: (b) (5) [redacted]

Comment [DOJ6]: (b) (5) [redacted]

Young, Deirdre R

From: Waldron, Suzanne <sue_waldron@nps.gov>
Sent: Thursday, October 10, 2013 11:54 AM
To: Kate Kelly; Blake Androff; Mike Litterst
Subject: ser reqio has request for comment from reuters on psigah

just confirming that this is the final, approved statement (

With the national closure in place, the National Park Service has undertaken a thorough review of unique circumstances at the request of the [concessioner/cooperative agreement operator]. The National Park Service has determined that resumption of operations can be allowed at this time consistent with the existing contractual arrangement and the Anti-Deficiency Act.

The National Park Service will review the implementation of the closure order in regard to similarly situated partner facilities in national parks.

On background:

The operator must comply with their existing contractual agreements, and without any significant NPS management or assistance until the shutdown is over.

--
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Young, Deirdre R

From: Paul Lewis <paul.lewis@theguardian.com>
Sent: Wednesday, October 09, 2013 9:03 PM
To: mike_litterst@nps.gov
Subject: Guardian story

Hi Mike,

I'm the Guardian's Washington correspondent - currently in Asheville, North Carolina.

I'm working on a big story for the Guardian about the impact of the shutdown on the Park Service - particularly businesses dependent upon federal land.

I am at Pisgah Inn (writing to you from one of the rooms), which has just re-opened after, they tell me, they petitioned a restraining order against the Park Service/ IoS for forcing their closure.

They had been closed since Friday last week. Done quite a bit of on the ground work on this so it would be great to talk to you about this. Particularly keen to know whether this will set a precedent for other so-called concession businesses and to get a formal response from the Park Service.

As you may know, the Guardian is the second most read quality newspaper in the world - with a readership of 14 million here in the US.

My deadline 4pm Thursday.

Paul

Washington Correspondent
The Guardian

Cell: +1 (202) 360 5651 / Office: +1 (202) 223 2488

Twitter: @paullewis / Instagram: @paullewisreporter

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Young, Deirdre R

From: Litterst, Michael <mike_litterst@nps.gov>
Sent: Wednesday, October 09, 2013 2:45 PM
To: Dalby, Craig; Lena McDowall
Subject: Re: Explanation for Concession Closures

Looping in Lena MacDowall, the AD for Business Services. Her fact sheet and Q&As are on the InsideNPS shutdown page and address concessions, saying "All facilities and services operating under concessions contract, regardless of physical location, must cease operations in the event of a shutdown."

As for WHY they have to close, I know in the first few days of the shutdown she was (b) (5) [redacted] (b) (5) [redacted]

LENA - Did you ever get anything back on that subject, or is there a basic explanation you can share? (b) (5) [redacted] (b) (5) [redacted]

Mike

~~~~~~~~~~~~~~~~~~

Mike Litterst
Chief Spokesperson (acting)

National Park Service
1849 C Street NW
Washington, DC 20240
Ph: (202) 513-0354
Cell: (202) 306-4166

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On Wed, Oct 9, 2013 at 2:38 PM, Dalby, Craig <craig_dalby@nps.gov> wrote:
Mike,

GOGA is looking for some standard language on why concessions have to close. (One guess as to why.) Is there something that's been prepared?

Craig Dalby
Chief, Public Information
Pacific West Region
~~~~~~~~~~~~~~~~~~

National Park Service
206-220-4261

Young, Deirdre R

From: Mummart, Jennifer <jennifer_mummart@nps.gov>
Sent: Wednesday, October 09, 2013 9:50 AM
To: Waldron, Suzanne
Cc: Lisa Mendelson; Mike Litterst; Alex Romero
Subject: Re: quick review - claude moore and pisgah

I don't really need to know. Just providing comments.

Jennifer Mummart
Director of Communications
National Park Service - National Capital Region
(202) 619-7174
www.nps.gov

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On Wed, Oct 9, 2013 at 9:42 AM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
call to discuss

On Wed, Oct 9, 2013 at 9:39 AM, Mummart, Jennifer <jennifer_mummart@nps.gov> wrote:
Can we make the intro to the bullets less legalese and say - (b) (5) [redacted]
And, what are the conditions under which they have been allowed to reopen? Are those conditions included in this statement? If not, it begs the question.

I agree with Mike about all the unintelligible legal stuff in the first paragraph.

Also note that the statement still includes the lin(b) (5) [redacted]
(b) (5) [redacted]

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On Wed, Oct 9, 2013 at 9:33 AM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
amending it to reflect comments form lena/bruce that I just sent around, so would read: if this works for you guys will send to teh whole group

With the national closure in place, the National Park Service has undertaken a thorough review of unique circumstances at the request of Friends of Claude Moore Colonial Farm. The National Park Service has determined that resumption of operations can be allowed at this time consistent with the existing agreement and the Anti-Deficiency Act.

Since 2001, the friends group has received National Park Service funding of almost $1.3 million. Recently the NPS expended several hundred thousand dollars to design a new sewer system for the farm, and the NPS provides ongoing support such as safety and food inspections, trash removal, and shared road maintenance. (b) (5) [redacted] (b) (5) [redacted] The United States Park Police will continue to provide patrol coverage for the area.

(b) (5) [redacted]

On Wed, Oct 9, 2013 at 9:27 AM, Mummart, Jennifer <jennifer_mummart@nps.gov> wrote:
Here is our proposal:

With the national closure in place, the National Park Service has undertaken a thorough review of unique circumstances at the request of Friends of Claude Moore Colonial Farm. The National Park Service has determined that resumption of operations can be allowed at this time consistent with the existing agreement and the Anti-Deficiency Act.

Since 2001, the friends group has received National Park Service funding of almost $1.3 million. Recently the NPS expended several hundred thousand dollars to design a new sewer system for the farm, and the NPS provides ongoing support such as safety and food inspections, trash removal, and shared road maintenance. The group will need to operate without this support until the end of the shutdown. The United States Park Police will continue to provide patrol coverage for the area.

The National Park Service will review the implementation of the closure order in regard to similarly situated partner facilities in national parks.

Jennifer Mummart
Director of Communications
National Park Service - National Capital Region
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On Wed, Oct 9, 2013 at 8:23 AM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
lisa/jennifer what else do you want to add to this for claude moore?

---------- Forwarded message ----------
From: **Margaret O'Dell** <peggy_o'dell@nps.gov>
Date: Tue, Oct 8, 2013 at 9:19 PM
Subject: Re: quick review - claude moore and pisgah
To: Edward Boling <ted.boling@sol.doi.gov>
Cc: "Kelly, Katherine" <kate_kelly@ios.doi.gov>, "Waldron, Suzanne" <sue_waldron@nps.gov>, Jon Jarvis <Jon_Jarvis@nps.gov>, Maureen Foster <Maureen_Foster@nps.gov>, Lena McDowall <Lena_McDowall@nps.gov>, Cam Sholly <Cam_Sholly@nps.gov>, Barry Roth <barry.roth@sol.doi.gov>, Lisa Mendelson <lisa_mendelson-ielmini@nps.gov>, Jennifer Mummart <jennifer_Mummart@nps.gov>, Bruce Sheaffer <Bruce_Sheaffer@nps.gov>, Mike Litterst <Mike_Litterst@nps.gov>, Blake Androff <Blake_Androff@ios.doi.gov>

So more conversation in morning. Thank you all for sticking with is during a trying and very busy day.

Sent from my iPhone

On Oct 8, 2013, at 9:12 PM, Edward Boling <ted.boling@sol.doi.gov> wrote:

(b) (5)
[redacted]

Sent from my iPhone

On Oct 8, 2013, at 8:50 PM, Margaret O'Dell <peggy_o'dell@nps.gov> wrote:

(b) (5)
[redacted]

Sent from my iPhone

On Oct 8, 2013, at 7:42 PM, "Kelly, Katherine" <kate_kelly@ios.doi.gov> wrote:

Here is the updated SOL-approved version:

With the national closure in place, the National Park Service has undertaken a thorough review of unique circumstances at the request of the [concessioner/cooperative agreement operator]. The National Park Service has determined that resumption of operations can be allowed at this time consistent with the existing contractual arrangement and the Anti-Deficiency Act.

The National Park Service will review the implementation of the closure order in regard to similarly situated partner facilities in national parks.

On background:

The operator must comply with their existing contractual agreements, and without any significant NPS management or assistance until the shutdown is over.

On Tuesday, October 8, 2013, Waldron, Suzanne wrote:
ignore this - another version under review by sol which is revising - so guess we will reconnect tomorrow

leaving!

On Tue, Oct 8, 2013 at 6:59 PM, Waldron, Suzanne <sue_waldron@nps.gov> wrote:
if we get calls....

--
Sue Waldron
Assistant Director, Communications
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Kate Kelly
Director of Communications
Department of the Interior
(202) 208 2409
kate_kelly@ios.doi.gov

--
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STATE OF SOUTH DAKOTA
DENNIS DAUGAARD, GOVERNOR

September 30, 2013

Jonathan Jarvis
National Park Service Director
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

VIA EMAIL: jon_jarvis@nps.gov
VIA FAX: 202.219.0910

Dear Director Jarvis,

I'm writing about the possibility of a federal government shutdown, and the effect that would have on the Mount Rushmore National Memorial.

If the federal government is unable to keep Mount Rushmore open, the State of South Dakota will provide state personnel and resources to keep the Memorial open. I am confident state government could work with the federal government and private vendors to securely and competently manage Mount Rushmore during a federal shutdown. I hope we are able to work with you and your staff to this end. I have attached to this letter some suggested means to operate Mount Rushmore during a federal government shutdown.

I hope a federal shutdown can be averted. Mount Rushmore is a national treasure and is a special location for South Dakotans and citizens across the country.

Sincerely,

Dennis Daugaard

Dennis Daugaard

DD:nn

Enclosure

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Keeping Mount Rushmore Open to the Public

State of South Dakota Logistical Addendum

Security – If existing federal personnel are unable to continue to provide security, state personnel will provide security.

Parking – It is my understanding that the contract for the operation of the parking system is held by a non-government entity called Mount Rushmore National Memorial Society, the employees of which are not federal personnel. As such, the Mount Rushmore National Memorial Society could continue to operate the parking facility.

Visitor Center – The visitor center would not be open for operations.

Concessions and Gift Shop – The concessions and gift shop at the Memorial are operated by Xanterra Parks and Resorts. The employees for Xanterra are not federal personnel, and could continue to run those operations. A shutdown to prohibit Xanterra from operating would unfairly penalize this contractor and its employees by forcing the closure of their business.

Lighting – I am prepared, as was done in the government shutdown of 1995, to raise private funds to pay for lighting on the Memorial for the duration of a federal shutdown.

Highway 244 – We will keep Highway 244 open, and state and local law enforcement officials will coordinate to provide appropriate law enforcement in that area.