

~~AD~~

4/29

Stephanie Hague in
Adela Backel's 720-7173
office is looking
into it. I spoke
to her for a
while today.



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The national voice of the outfitting industry.

March 15, 1994

Brian Burke
Senior Policy Analyst
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Washington, D.C. 20503

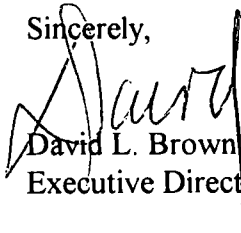
Dear Mr. Burke:

Thank you again for meeting with us March 4 to discuss the issue of standardization of permitting policy among federal agencies. Enclosed is the matrix that you requested. As you can see from the Status column, many of the policies are under some form of review or have expired.

We believe the BLM policy and the old Forest Service policy with adequate performance evaluations is the best policy for the relatively short term 5 to 7 year permits issued to recreation service providers. Renewable and transferable permits are keys to retaining investment under these terms.

Thank you again for taking time to review this material. I look forward to hearing from you once a course of action has been decided.

Sincerely,



David L. Brown
Executive Director

Recreation Permitting Policies of Various Federal Agencies

March 1994

Agency	Type Permit	Awarded by	Renewable	Transferable	Term	Status
National Park Service	Concessions contract	Prospectus	Yes	Yes	15 yrs. 5 to 7 yrs	Revised in 1992. Currently subject to change by legislation in Congress. Recreation permits limited to 5 - 7 yr. terms.
National Park Service	Limited concessions permit	Prospectus	Yes	Yes	up to 5 yrs.	Limited to concessions with gross revenues under \$50,000. Currently under revision.
National Park Service	Commercial Use License	Application	No	No	1 yr.	Used widely for recreation permits. Some changes reportedly in progress.
Bureau of Land Management	Special recreation permit for commercial use	Application	Yes	Yes	5 yrs.	Functional.
USDA Forest Service	Special Use Permits	Application	Yes (?)	Yes	5 yrs.	Expired 7/27/93. Forest Service may be making changes.
U.S. Fish and Wildlife Service	Special Use Permits	Bid and prospectus	No	No	5 yrs.	Revised in 1993.
Bureau of Reclamation	Concessions contract	Bid or application	May be.	Subject to contract terms.	Variable	Currently being revised.

Compiled by America Outdoors

THE WHITE HOUSE

WASHINGTON

April 11, 1994


MEMORANDUM FOR ADELLA BACKIEL

FROM: BRIAN BURKE
HOPE SCHMELTZER 
SUBJECT: OUTFITTER AND GUIDE SPECIAL USE PERMITTING

As we discussed on Friday, please find enclosed the proposed draft provisions for the Forest Service Handbook (FSH) and the authorizing Code regulations. Our concern is that there is no method by which an outfitter or guide can renew its permit prior to expiration of the initial permit, assuming the permittee has performed satisfactorily. Under FSH Section 41.53f, permits may be issued when an existing permit ends, not before. The ability to renew permits would give outfitters more fiscal continuity and security. In addition, it would enable them to promote activities and enroll participants in advance of the new permit start date.

In our conversation with John Shilling, he mentioned that the Forest Service lacks the legal ability to renew permits. However, at first glance it appears that the authorizing regulations contemplate renewability. Specifically, CFR Sections 251.56(b) and 251.64 (attached) discuss circumstances under which the Forest Service may renew special use authorization.

We appreciate the Forest Service's need to issue its Handbook revisions as quickly as possible. Nevertheless, we would greatly appreciate the opportunity to discuss this matter with you before the revised Handbook is issued.

Enclosures

John Shilling - FS -

Special use permits - not renewable, but not unusual to ~~renew~~ reissue. ~~FS~~ Often own key assets like ski areas - issue new permit to owner of improvement

Vary terms - days to 40 yrs if own improvements (ski)
Outfitters → yr to yr: up to 5 yrs if perform satisfactorily. Only legal rt to 1 yr. ~~FS~~

Major BUS:

Ski Areas: 145 (?) of them

Resorts, marinas - 1915 Versailles act, stores, mom + pop

Outfitters: renew to them up to 5 yrs

Pwr lines, rts of way, org. camps

36 CFR 251 pt B, see also §216

most spec. uses fall under APA + show up in FR

out ~~soon~~ - O + G policy, around since 1984, last issued by interim directive + expired. Badly written so rewritten - J.S. opinion is no substantive change but written much better. So no doubt that not renewable → J.S. thinks never renewable + still not. Industry thought past policy could be interp. that renewable but not now. Deadline for it came + gone.

Permit grp: FS not really involved. ^{it attended} Lujan's baby - died w/ Bush admin. JS thinks imperative to be involved. Lee Davis - head of concessions office wants to recover but hasn't yet.
↳ @ where? BLM?

• Nat'l Ski Federation?

~~0+G~~
↑

They think lost it of renewable - JS says no legal auth. to grant.

They do have pref. factors → econ. impact on licensee holder, knowledge of area, etc.

→ Skootch Panakin - Nat'l Forest Recreation Assoc. + A.O.

~~They're~~ FS has talked to the 2 grps, involved.
Ski permitting fees

JS: doesn't make sense to have diff.s btw agencies for 0+G permits. Tried to get cross-over permits so just one for FS + BLM but no legal authority.

→ area of liabil. insur., it now aligned w/ NPS but don't like it. Gotter very paternalistic in reg.s for 0+G's + what clients have to sign -- holding too many hands.

Recreation summit - w/ky grp or insul. liab.

→ Hyatt Regency; Amer. Rec. Coal. - Derrick Candell
↳ mostly mfgs

THE WHITE HOUSE
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HOPE SCHMELTZER *HS*

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Enclosures

-----SPEED MEMO-----

TO: Brian Burke
Domestic Policy Counsel Staff

FROM: USDA-FOREST SERVICE

John Shilling, Branch Chief for Concessions and Winter Sports. 205-1426

Janet Kurman, Concessions and Winter Sports Specialist
205-1145

(FAX: 202-205-1145)

DATE: April 5, 1994

SUBJECT: USDA-Forest Service Concessions/Recreation Special Use
Permits

Per our discussion Monday, enclosed please find the following information on the Forest Service's concession program:

1. "White Paper" overview of the program.
2. Proposed Forest Service Handbook (on special uses) Chapters 37 and 41 providing direction on fee determination and permit issuance and administration of special use permits for outfitting and guiding on National Forest System lands, and
3. A summary of changes and clarifications made in the pending final amendment from the interim directive which has expired. the summary statements correlate to the phrases or paragraphs in Chapter 37 and Chapter 41 highlighted in bold-face text.

If you have any questions or need more information, please feel free to call either of us. We'd be happy to assist you in any way.

41.53 - OUTFITTERS AND GUIDES. (For related authorities, policies, responsibilities and definitions see FSM 2340 and FSM 2701-2705).

Administer permits for outfitters and guides operating on National Forest System lands in accordance with the direction in sections 41.53a through 41.531. Outfitting/guiding services include but are not limited to packing, hunts, float trips, canoe or horse liveries, ski touring, helicopter skiing, jeep tours, boat tours, and fishing trips.

41.53a - Objectives.

1. Provide public recreation services as identified in forest land and resource management plans, that promote public health and safety, and foster small businesses.

2. Encourage skilled and experienced individuals, organizations, and companies to conduct outfitting and guiding activities in a manner that ensures that National Forest visitors receive services of high quality and that protects environmental resources.

41.53b - Policy. (FSM 2340.3, 2703).

1. Authorize only outfitting and guiding activities that are consistent with forest land and resource management plans.

2. Do not authorize any development or permanent improvements on National Forest System lands for outfitter and guide services, except for temporary structures or improvements or installations with negligible value, such as corrals, pack stations, tent frames, and shelters.

3. The authorized officer may authorize temporary structures or improvements or installations in wilderness only when needed for the protection of wilderness resources. Do not authorize any development or improvement or installation in wilderness for the purpose of convenience to the holder or the holder's clients.

4. Work with other federal agencies, State and local authorities, outfitters, and outfitter/guide organizations to ensure that outfitting and guiding activities are consistent with applicable laws and regulations and to identify unauthorized outfitting and guiding activities. Follow procedures in FSM 5300 in investigating and managing unauthorized outfitter uses or activities.

5. Do not issue a separate permit for outfitting and/or guiding activities, such as cross country skiing, horseback riding and so forth, to a holder of a permit or term permit for a commercial service site, such as a lodge or resort, when the outfitting and/or guiding operations are part of commercial service site operations. Include the outfitting and guiding activities in the commercial service site's annual operating plan. Attach the annual operating plan to the commercial service site permit or term permit and consider it part of the permit or term permit. See section 37.03 for additional direction.

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41.53c - Definitions. See section 37.05 for additional definitions on assigned site, average adjusted service day client charge, gross revenue, non-use, sales exclusions, and service day.

Guiding. Providing services or assistance for **pecuniary remuneration or other gain** such as supervision, protection, education, training, packing, transportation, subsistence, interpretation or otherwise assisting individuals or groups in their pursuit of a natural resource based outdoor activity. The term "guide" includes the holders' employees, agents, and/or instructors.

Holder. An applicant who has received a special use authorization to conduct outfitting and/or guiding activities.

Incidental Use. Annual use that is proposed to be 50 service days or less and anticipated to have little to no significant impacts on public health and safety, the environment, or other authorized uses and activities.

Outfitting. Providing through rental or livery, in the ordinary course of business, any saddle or pack animal, vehicle or boat, tents or camp gear, or similar supplies or equipment, for **pecuniary remuneration or other gain**. The term "outfitter" includes the holders' employees, agents, and instructors.

Priority Use. Authorization of use for a term not to exceed five years. The amount of use is based on the holder's past use and performance, and on forest land and resource management plan allocations.

Service Day. A day or any part of a day on National Forest System lands for which an outfitter or guide provides goods and/or services including transportation to an individual.

Temporary Use. An amount of use assigned the holder of a permit with a term of one season or less.

Transportation Livestock. Pack and saddle animals authorized in connection with an outfitter/guide permit and expressed in animal months, and by class of animal (FSM 2234.11).

41.53d - When Permits Are Required.

1. Individuals or organizations conducting outfitting and/or guiding activities on National Forest System lands must have a permit unless the authorized officer issues a temporary permit for incidental use (Sec. 41.53e).

2. Outfitters based off National Forest System land who rent equipment or livestock to the public for use on National Forest System land must obtain a permit if they, their employees, or agents occupy or use National Forest System land or related waters in connection with their rental programs. For example, a permit is required if a boat livery operator provides service, including delivery or pickup of boats, at National Forest sites. No permit is necessary if the operator's customers transport the rented equipment to and from the National Forest locations.

41.53e - Incidental Use. When the proposed annual use is 50 service days or less and is expected to have little or no significant impact on public health and safety, the environment, revenues to the Government, or other authorized uses and activities on National Forest System lands, the use may be authorized by a temporary permit, Form FS-2700-25 (sec. 54.6). The following activities and uses shall not be authorized by a temporary permit and shall be authorized only by a permit, Special Use Permit Form FS-2700-4: white-water travel, use of firearms, use of livestock, use of aircraft, or all-terrain and off-highway vehicle travel.

41.53f - Applications and Issuance of Permits.

1. **Applications.** Provide applicants with Form FS 2700-3, Special Use Application and Report, to describe the services to be performed, the number of service days, description or map of the lands to be occupied, modes of transportation, season of use, scheduling, and so forth. Application and authorization procedures established in Title 36 Code of Federal Regulations, section 251.54 are fully applicable to outfitter and guide applications. The procedures/requirements of FSM 2712 regarding special use applications are also applicable.

Conduct environmental analyses for outfitter and guide applications in accordance with procedures in FSH 1909.15, National Environmental Policy Act Handbook.

2. **Issuance.** Outfitting and guiding permits may be issued when:

- a. An increased allocation, capacity, or public need is identified through the forest planning process;
- b. An existing permit terminates or is revoked;
- c. There is a reduction of service days by an existing holder or holders that makes additional service days available;
- d. Competitive interest in an area, unit, or activity arises where no previous authorized use exists and where it is compatible with objectives in forest land and resource management plans; or
- e. An application has been submitted to provide outfitter and guide services in an area or for an activity that has not previously been authorized.

For situations fitting paragraphs (a) through (d), solicit applicants by issuing a prospectus and contacting all parties who have expressed an interest. See FSM 2712.2 for additional direction on issuing a prospectus.

For subparagraph (e), document the determination of no competitive interest and then issue a permit to the first qualified applicant. In issuing the permit classify authorized use as temporary use until the holder has performed acceptably for at least two consecutive years.

When determining best qualified applicants, consider past experience and knowledge of the area, financial capability, economic viability of existing holders, performance record, return to the Government, and other factors. Classify the use as priority if the selected applicant has a two-year record of acceptable performance as a holder whose outfitting and guiding operation is similar to the proposed use. Process requests to expand current holder's operations as application for temporary use under section 41.53g. For a selected applicant with no previous record, classify the use as temporary.

Issue temporary permits and permits under the authority of the Land and Water Conservation Fund Act of September 3, 1964, on Form FS 2700-25, and on Form FS 2700-4, Special Use Permit (section 54.6) respectively.

3. Change of Ownership or Control of the Business Entity.

a. Upon notification by the holder that a change of ownership of or controlling interest in the business entity is being considered, the authorized officer shall inform the holder of the following:

(1) The permit is a privilege and is not transferable, either upon the sale of the business entity or the sale of a controlling interest in the business entity;

(2) The use authorized by a permit assigned priority is a privilege acquired by demonstrated acceptable performance and is not transferrable;

(3) The permit is not property or a property interest and cannot be used as collateral;

(4) Upon consummation of a change of ownership of or controlling interest in the business entity, the holder's permit terminates;

(5) The party who acquires ownership of or a controlling interest in the business entity must submit an application for a permit on Form FS-2700-3 Special Use Application and Report; and,

(6) The party who acquires ownership of or a controlling interest in the business entity may be issued a permit if eligible. See paragraph 2 of this section for permit eligibility criteria.

b. Form FS-2700-3a Request for Termination of and Application for Special Use Permit, for relinquishment of the permit must be submitted by the holder before an application for a permit from the prospective holder can be accepted. An application as well as documentation of change of ownership or control must then be submitted by the prospective holder.

For a change of ownership, the prospective holder must submit properly executed documents showing a bona fide conveyance of the equipment or other assets previously used by the business.

If the business is based on private land, the prospective holder must submit properly executed documents showing a bona fide conveyance of the real and personal property used by the business. For a change of control, the prospective holder must submit properly executed documents showing a bona fide change of a controlling interest in the business entity.

c. If the change of ownership or control is not consummated and the original holder has relinquished the permit, the authorized officer may reissue the permit to the original holder. Prior to reissuance, the original holder must submit to the authorized officer documentation establishing ownership or control of the business entity.

41.53g - Assignment and Management of Temporary Use.

1. Eligible Applicants. All qualified applicants, including institutional and semi-public entities and holders of permits assigned priority use, are eligible to receive temporary use assignments. Current holders assigned priority and proposing to expand their use may also submit an application. Approved additional use may be assigned as temporary use.

2. Assigning Temporary Use. If capacity is available, temporary use may be authorized if the need for the use exists and is authorized by forest land and resource management plans (FSM 1920). If forest land and resource management plans do not address the use and/or capacity levels, assignments shall be at the discretion of the authorized officer subject to the requirements of the National Environmental Policy Act (FSH 1909.15). A temporary use assignment does not commit the Forest Service to authorizing that use for a similar number of service days in the future.

3. Conversion to Priority Use. A holder authorized for at least two years may be eligible for priority assignment if it is in the best interest of the Forest Service and the use is compatible with forest land and resource management plans. Assignment of use shall be based on documented acceptable performance by the holder for two consecutive years. The amount of use authorized may be based on the previous two-year average permitted use which was actually used. See paragraph 2c, of section 41.53h, for limitation on conversions.

41.53h - Assignment and Management of Priority Use.

1. Eligible Applicants. Previously authorized outfitters or guides who have made their services available to all members of the public and who have performed acceptably for the previous two consecutive years, may be eligible for a priority term.

Outfitters or guides who provide services only to private or restricted clientele are not eligible to receive priority use assignment. See section 41.53i for additional direction on semi-public outfitting and guiding.

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2. Assigning Priority Use. The assignment of priority term and use shall be at the discretion of the authorized officer and consistent with forest land and resource management plans. Base any assignment of priority term and use on the capacity or standards and guidelines as established in forest land and resource management plans.

a. Use may be based on the average of the highest two years of actual use authorized during the previous five years.

b. Record the following on the permit:

(1) The amount of use in terms of service days, the season, months, weeks, people-at-one-time (PAOT), or similar time factors which may apply;

(2) The nature of the permitted service or activity (big game hunting, white water rafting, fishing trips, and so forth);

(3) The resource area (wilderness, river, administrative unit, and so forth) within which the service or activity is to be authorized; and

(4) The various modes of transportation to be used, and such other special factors necessary to define the quality and scope of the activity.

3. Managing Priority Use.

a. Establish use in terms of service days. Where recreation use levels are planned and managed in terms of launches and people per launch, camps and people per camp, or trips and people per trip, specify numbers of launches, campsites, and/or trips authorized with those service days.

b. When a permit has expired and the holder has applied for a new permit, the assignment of priority term and use for the new permit shall be at the discretion of the authorized officer and consistent with forest land and resource management plans.

Consider that general market and other economic fluctuations, availability of state hunting licenses, and natural phenomena may adversely affect the ability of the holder to utilize the authorized use fully. The authorized officer may assign priority term and use consistent with the level of use utilized effectively under the former permit. If capacity is available, and when environmental analyses are completed, authorize the amount of additional use that has been effectively used during the temporary use period. Base the amount of use recorded in the new permit as described in the preceeding paragraph

2.b.(2). Reduce authorized use if the holder has utilized less than 70 percent of the assigned amount in at least 2 of the past 5 years. Make no reductions in use assignment if use under the permit was temporarily withheld by the Forest Service in accordance with the following paragraph 4.

4. Deviations from Assigned Amounts of Priority Use. Prior to allowing the holder to operate, the authorized officer must approve a holder's annual proposed itinerary and requests for amendments to operating plans. The authorized officer must authorize any deviations from assigned amount of use, referred to as "authorized non-use." Authorized officers must document the basis for withholding or waiving use and provide a copy to the holder. The holder shall not be responsible for fee payment on authorized non-use.

Authorize and assign use except as follows:

- a. Withhold authorization for all or part of the assigned use to protect natural resources, public health and safety, or to prevent conflicts with other authorized uses of National Forest System lands and related waters.
- b. When requested by a permit holder, the authorized officer may waive a holder's obligation to exercise all or part of the assigned use when such a request is made sufficiently in advance to allow the authorized officer to reassign, if appropriate, the waived use to other holders.

41.53i - Reductions.

1. Amendments to or revisions of forest land and resource management plans may establish a level of outfitting and guiding that could result in a reduction of a holder's use or service days. When considering renewal of the use, the authorized officer has three options available:

- a. Request holder(s) to reduce use voluntarily;
- b. Proportionally reduce use for holders;
- c. Reassign the amount of use through solicitation for proposals and issuance of a prospectus. Limit solicitation to current holders who are assigned priority term. Base assignment of use on services proposed and performance.

2. When reassigning use or service days, consider the holder's performance, experience and knowledge of the area, financial capability, performance record, return to the Government, economic viability of other holders, and other appropriate factors.

41.53j - Permit Terms and Conditions.

1. For new applicants, authorize use for periods not to exceed one year. For holders of permits with assigned priority, a term length of up to 5 years may be authorized. To the extent possible, issue permits with a length coinciding with time periods in forest land and resource management plans, as appropriate.

2. For applicants who have a limited record or no record of performance, a one-year permit subject to a conditional one-year renewal may be issued to provide a performance evaluation period. Renew the use and amend the permit term, unless during the first year the holder

evidences a willful failure to comply with the terms and conditions of the permit.

3. Use the standard mandatory clauses for outfitter and guide service as defined in Chapter 52. Include standard clauses from Chapter 53 as appropriate.

4. Enter the total number of service days in each use category on the permit. Specify in the permit, operating plans, and annual itineraries all of the various modes of transportation authorized. Show amounts and class of use. If applicable, enter the number of launches and people per launch, or camps and people per camp, or trips and people per trip associated with the use.

5. Require an annual operating plan for the period of the permit and approval of an annual itinerary as a provision of the permit.

6. Indicate in the permit the amount of livestock used for transportation of people and equipment, and the amount authorized in connection with the activity, and specify if the livestock may graze. Do not issue a separate livestock use permit. Include a clause that requires the holder to record and report the amount of livestock grazing use which will actually occur with the outfitting/guiding use. Report livestock grazing use in the annual grazing statistical report (FS 2200-j), Annual Grazing Statistical Report. Do not report occupancy by animals which were not authorized to graze.

7. Proposed use of specific assigned sites should be specified and described in operating plans and annual itineraries.

8. Establish fees based on FSH 2709.11, Chapter 37.

9. Include a clause that requires holders to provide accurate information through an actual use report within 30 days of the close of the operating season.

10. Include a clause that requires holders to maintain accounting records in accordance with generally accepted accounting principles, to make those records available to the Forest Service for review, and to retain them for a minimum of five years.

11. If applicable as in FSM 2713.32, include clauses that require the holder to have public liability insurance. The holder's insurance must name the U.S. Forest Service as an additional insured.

41.53k- Permit Administration. Monitor authorized operations to verify compliance with permit terms and conditions during the season of use.

1. Performance Review and Evaluation. Conduct a performance review and evaluation of the holder's operations at mid-season and at the end of the operating season. See FSM 2716.5 for additional direction.

a. For holders of permits assigned priority:

(1) Forest Supervisors shall develop specific performance standards for inclusion in each permit and/or operating plan in

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consultation with District Rangers, holders, outfitter and guide licensing agencies, advisory councils, and other state and federal land management agencies. At a minimum, these standards shall include the degree of compliance with conditions of the permit and operating plans and itineraries; customer satisfaction; and protection of the natural resources.

(2) The holder's overall performance shall be evaluated using three performance ratings: Acceptable, Probationary, and Unacceptable. These ratings must be linked to the specific performance standards.

(3) Conduct a mid-season review and evaluation. Notify the holder in writing of the results of this mid-season review and evaluation; include:

- (a) Any deficiencies or items of noncompliance;
- (b) A copy of the mid-season rating; and
- (c) A timeframe for remedying deficiencies and correcting noncompliance.

(4) Conduct a final review and evaluation at the end of each operating season. Notify the holder in writing of the results of this final review and evaluation; include:

- (a) Any deficiencies or items of noncompliance identified at mid-season and not remedied or corrected;
- (b) Any deficiencies or items of noncompliance identified during the final review;
- (c) A copy of the final rating; and
- (d) Notification of the holder's right to appeal.

(5) If a holder receives a final rating of Probationary at the end of the permit year, reduce the term of the permit to no more than one additional year. If at the end of that period the holder receives a final rating of Probationary or Unacceptable, the authorized officer shall not renew the use and shall allow the permit to terminate. If at the end of that period the holder receives a final rating of Acceptable, the authorized officer may renew use for no more than one additional year.

(6) If a holder receives a final rating of Unacceptable, the permit shall be revoked. In the case of a permit which is about to expire, it shall be allowed to terminate.

(7) Holders may appeal final ratings of Probationary and Unacceptable. Termination of a permit is not subject to appeal.

b. For holders of permits not assigned priority:

(1) Forest Supervisors shall develop specific performance standards for inclusion in each permit and/or operating plan in consultation with District Rangers, holders, outfitter and guide licensing agencies, advisory councils, and other state and federal land managing agencies. At a minimum, these standards shall include the degree of compliance with conditions of the permit and operating plans and itineraries; customer satisfaction; and protection of the natural resources. Performance standards developed for permits with assigned priority may be used.

(2) The holder's overall performance shall be evaluated using two performance ratings: Acceptable and Unacceptable. These ratings must be linked to the specific performance standards.

(3) As appropriate, conduct a mid-season review and evaluation. Notify the holder in writing of any deficiencies or items of noncompliance and include a copy of the mid-season rating. In that notice provide the holder with a timeframe for remedying deficiencies and correcting noncompliance.

(4) Conduct a final review and evaluation at the end of each operating season. Notify the holder in writing of the results of this final review and evaluation; include:

(a) Any deficiencies or items of noncompliance identified at mid-season and not remedied or corrected;

(b) Any deficiencies or items of noncompliance identified during the final review;

(c) A copy of the final rating; and

(d) Notification of the holder's right to appeal.

(5) If a holder receives a final rating of Acceptable at the end of the permit year, the authorized officer may renew the use for no more than one additional year. If at the end of that period the holder receives a final rating of acceptable at the end of the permit year, then the holder may be eligible for priority assignment. See section 41.53g for additional direction on conversion to priority use.

(6) If a holder receives a final rating of Unacceptable, the permit shall be revoked or allowed to terminate.

(7) Holders may appeal a final rating of Unacceptable. Termination of a permit is not subject to appeal.

2. Assignment of Use. Do not approve requests to assign all or part of the authorized use to others. If a holder is unable or unwilling to provide the services authorized in the permit, revoke or reduce the use.

If appropriate, assign the amount of use to others in accordance with procedures in section 41.53h.

41.53l - Permits for Institutional and Semi-Public Outfitting and Guiding. Permits may be issued to institutional and semi-private outfitting and guiding applicants consistent with forest land and resource management plan direction for commercial uses and group size. Schedules and services may fluctuate from season to season or year to year. Applicants may include a variety of membership or limited constituency institutions such as religious, conservation, youth, fraternal, service club, and social groups; educational institutions such as schools, colleges and universities; and similar common interest organizations and associations. This category may also include applicants who operate commercially on a limited, intermittent, or irregular basis in providing service to selected customer clientele rather than to the public at large.

1. Issue permits when the use can be accommodated without causing unacceptable conflict or resource impacts and is in the public interest. The permitted activities must be consistent and compatible with applicable laws, regulations, and forest plans. See 36 CFR 251 Subpart B for additional direction on when a permit is required.

2. Outfitting and guiding activities conducted by institutional or semi-public groups may be authorized without regard to whether a participant fee, charge, or other consideration is collected from the individual participants.

3. Applicants must demonstrate financial and technical capability to fulfill the terms of the permit.

4. Issue a temporary permit, Form FS 2700-25 Temporary-Use Permit, for either a one-time trip or for a duration of one year or less when the use involves several trips. See section 41.53e for direction on incidental use.

5. Do not assign priority to institutional or semi-public holders.

6. Require an operating plan for permits issued for continuing intermittent use. A plan may also be necessary for single-trip permits if in the judgment of the authorizing officer the nature, scope, and complexity of the trip merits an operating plan to ensure public safety and resource protection.

7. Documented performance evaluation as described in section 41.53k is optional.

8. Determine fees and fee waivers based on FSH 2709.11, chapter 30.

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37 - Outfitter and Guide Fees. (For related direction on special use permit administration see sec. 41.53).

37.01 - Authority. (Sec.30.1; FSM 2701.1).

37.03 - Policy. (Sec. 31; FSM 2715.03)

1. Require payment of fees according to the direction in sections 37.21 to 37.25 for outfitter/guide activities authorized as a distinct activity.

2. Use the graduated rate fee system (GRFS) (FSM 2715.11) to determine fees for outfitter/guide activities, such as cross country skiing, horseback riding and so forth, authorized by the Forest Service in connection with an authorized commercial public service site, such as a resort or lodge. Where applicable, require holders under GRFS to pay additional fees for site assignment (sec. 37.21e) and livestock grazing use (sec. 37.21f).

37.04 - Responsibility. (FSM 2704.13).

37.05 - Definitions. See section 41.53c for additional definitions on guiding, holder, incidental use, outfitting, priority use, temporary use and transportation livestock.

Assigned Site. A site assigned by the Forest Service to the holder for authorized operations during a specified period of occupancy. Examples may include, but are not limited to, base and drop camps, picnic sites, loading facilities, boat launches, and helispots.

Average Adjusted Service Day Client Charge. The total gross revenue divided by the total number of service days.

Duration of the Outfitted/Guided Trip. The period of time that begins when the client first comes under the care and supervision of the outfitter or guide, including departure from the holder's headquarters or local community, and ends when the client is released from such care and custody. Trip duration is used in calculating service days and the on- and off-Forest adjustment.

Gross Revenue. The total amount of receipts from sales that are derived from goods or services sold by the holder which are related to authorized outfitting and/or guiding operations on National Forest System lands. Sales include:

1. Revenue received by the holder and the holder's employees or agents;

2. Revenue from goods or services sold on non-National Forest System lands and waters, unless specifically excluded;

3. Revenue received during or prior to arrival or after departure from the holder's headquarters or local community;

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4. The value of goods and services that are donated or traded-off for goods and services received (bartering); and

5. Gratuities, which are goods, services, or privileges that are donated or provided without charge or at discount to organizations or individuals such as employees, owners, and officers or immediate families of employees, owners, and officers and that are not available to the general public.

Fees are assessed against all receipts from sales unless specifically excluded.

Non-use. Authorized use the holder did not use. When the holder has not properly requested and received waiver of use, it is unapproved non-use.

Revenue Exclusions. The following items are excluded from gross revenue or receipts:

1. Revenue derived from goods and services sold on private land which are not directly related to outfitting and guiding operations conducted on National Forest System lands, such as souvenirs, lodging, transportation, telephone toll charges and accident insurance sales;

2. Amounts paid or payable to a government licensing authority or recreation administering agency from sales of hunting or fishing licenses and recreation fee tickets;

3. Revenue derived from the sale of operating equipment, rental equipment, capitalized assets or other assets used in operations. Examples are such items as horses, riding tack, watercraft, or rental skis and boots, which are sold periodically and replaced.

Service Day. A day or any part of a day on National Forest System lands, for which an outfitter or guide provides goods and/or services including transportation, to an individual.

37.21 - Fees

37.21a - Fee for Commercial Use. Calculate and collect a fee for commercial outfitting/guiding on National Forest System lands.

Upon the authorized officer's approval of the prospective holder's application for a special use permit, advise the applicant to select one of the options, A or B (para. 1 and 2) to be used in calculating the fee. Include the selected method as a condition of the permit issued to the holder, and use that method to calculate the fee for the period authorized.

1. Option A. The fee is based on an average service day client charge using the following schedule of rates.

Schedule of Rates

Outfitter's Average Service

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<u>Day Client Charge</u>	<u>Service Day Fee</u>
Less than \$ 8.00	\$.25
8.01 - 20.00	.40
20.01 - 35.00	.80
35.01 - 50.00	1.30
50.01 - 75.00	1.90
75.01 - 100.00	2.60
100.01 - 125.00	3.40
125.01 - 150.00	4.10
150.01 - 175.00	4.90
175.01 - 200.00	5.60
200.01 - 250.00	6.75
250.01 - 300.00	8.25
300.01 - 400.00	10.00
Over 400.00	Use 3 percent of the average service day client charge

Calculate the fee as follows:

- a. Determine the number of service days for each trip and the total number of service days. See section 37.21b for additional direction.
- b. Multiply the client charge per trip by the number of clients for each trip. This figure in dollars represents gross receipts.
- c. Divide the gross receipts by the total number of service days determined in step a. of this section. This figure is the average service day client charge.
- d. Refer to the Schedule of Rates and use the average service day client charge to determine the service day fee.
- e. Multiply the total number of service days by the service day fee.

Example: In one operating season, the holder offers two trips:

July 27-29 for 3 people, \$450/person
August 18-21 for 7 people, \$500/person

3 days x 3 people = 9 service days
+ 4 days x 7 people = 28 service days
37 total service days

3 people x \$450 = \$1,350
+ 7 people x \$500 = \$3,500
\$4,850 gross receipts

\$4850 gross revenue divided by 37 total service days = \$131
average service day client charge.

\$131 average service day client charge = \$ 4.10 service day fee.

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37 total service days x \$4.10 service day fee = \$151.70 fee for commercial use.

2. Option B. The fee is 3 percent of the annual gross revenue (sec. 37.05).

Example: For one year, the holder has an annual gross revenue of \$4850.

$\$4850 \times 0.03 = \$145.50$ fee for commercial use.

37.21b - Calculating Service Days. Charge any full or fractional day the customer receives service as a full service day. When livery, rental, supply, or drop-off service to customers is provided, count only the day on which the outfitter or guide provides service and/or goods. When the outfitter/guide provides drop-off service and returns another day to retrieve the customers, count one service day for drop-off service and one service day for pick-up service. When the outfitter/guide provides drop-off service and pick-up service, and the customers occupy an outfitter's assigned site, and/or the outfitter/guide furnishes equipment and supplies, count one service day for drop-off, one service day for pick-up services, and one service day for each day between drop-off and pick-up.

37.21c - Fee for Nonprofit Organizations. The fee is 3 percent of annual gross revenue. Include the amount of donations and grants as gross revenue if the holder requires the customer or client to make a donation or grant as a condition of receiving the service. Do not consider donations or grants made voluntarily by customers to support the programs or activities of the holder.

37.21d - Fee for Educational Institutions. The fee is 3 percent of annual gross revenue.

1. Credited Programs. Exclude tuition and other payments made by the students which are unrelated to the use of National Forest lands and related waters if the program provided under the permit is recognized for credit toward graduation or a degree in a recognized school system or educational institution.

2. Include all payments made by students for the authorized service if the program provided under the permit is not recognized for credit toward graduation or a degree.

37.21e - Fee for Assigned Site.

1. Require payment of fees for the occupancy of National Forest System sites assigned for use by the holder during a specified period of occupancy. The minimum annual fee for each assigned site is \$140. Using 1993 as a base year, the Washington Office, Director of Recreation, Cultural Resources and Wilderness Management adjusts the minimum annual fee for each assigned site every 3 years based on the Consumer Price Index. This fee is in addition to the minimum permit fee and other

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required fees, such as the fee required for commercial outfitting and guiding (sec. 37.21a).

2. Do not prorate assigned site fees. Apply the full minimum annual fee for each assigned site.

3. Do not authorize refunds or credits for assigned site fees.

4. The Regional Forester may establish higher fees if necessary to obtain fair market value.

37.21f - Fee for Grazing Livestock. Assess livestock grazing fees when the Forest Service authorizes the holder to graze transportation animals while on the National Forest. Do not assess a fee when the animals travel on the National Forest but the holder is not authorized to graze them. Charge fees in accordance with current direction in FSM 2238 which annually establishes grazing fees. Do not make refunds or give credits for planned and authorized, but unused, transportation livestock grazing use.

37.21g - Fee for Additional Use. If the holder requests in advance approval of additional use and if capacity is available, the authorized officer may approve the request and collect any additional estimated fees. When Option A (sec. 37.21a) is used to calculate a fee for commercial use, use the schedule of rates to calculate the additional fee. When Option B (sec. 37.21a) is used to calculate a fee for commercial use, estimate the additional gross revenue associated with the approved additional use and include it in the calculation of the estimated and final fees (sec. 37.23 - 37.24). See sections 41.53g and 41.53h for additional direction.

37.21h - Payment for Non-Use. Charge the holder for unapproved non-use when the holder did not properly request and receive a waiver for use. When either Option A or B is used to calculate a fee for commercial use, use the schedule of rates and procedures under Option A (sec. 37.21a) to calculate the amount due for unapproved non-use. Add the calculated amount to the final fee total.

37.21i - Fee For Incidental Use. When commercial outfitting and guiding is authorized by a temporary permit, Form FS 2700-25 Temporary Use Permit, collect a minimum fee. The authorized officer may only waive the minimum fee if the use meets the criteria and circumstances listed in 36 Code of Federal Regulations 251.57.

37.21j - Minimum Fee. The minimum fee for outfitting/guiding on National Forest System lands is \$70 annually per permit for 1993-1996. Using 1993 as a base year, the Washington Office, Director of Recreation, Cultural Resources and Wilderness Management adjusts the minimum fee every 3 years based on the Consumer Price Index.

37.22 - Adjustment for Off-Forest Use. Reduce the fee or estimated fee based on the percentage of time the customers occupy National Forest System lands and related waters in relation to the total duration of the outfitted trip. Apply the following rate of reduction in calculating fees:

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<u>Percentage of Time on National Forest Lands and Waters</u>	<u>Fee Reduction</u>
Less than 5 percent	80 percent
5 - 60 percent	40 percent
Over 60 percent	None

The holder must provide trip duration, itinerary, or such other information as may be required by the authorized officer to support a request for fee reductions based on off-forest use.

37.23 - Estimated Fee.

1. Calculate the total estimated annual fee, including use fee, assigned sites, and transportation livestock grazing, on a fee determination statement (FSM 2715) prior to the operating season.
2. Consult with the applicant/holder to estimate the anticipated number of service days or adjusted gross revenues as applicable. Use financial and related documents furnished by the applicant including records of the previous year's business activity, planned customer rate schedules, trip itineraries, and the amount of use to be authorized. Retain documents used for fee calculations in the case folder.
3. Establish due dates for all payments prior to the start of the operating season.
4. Calculate the total estimated fee as a single amount, to be deposited to recreation use (FSM 6530). Require payment of the estimated fee in advance of the use either in full before the start of the season or periodically during the season of operation and bill the holder as follows:
 - a. When the total annual estimated fee is less than the minimum fee collect the minimum fee in advance.
 - b. When the total annual estimated fee is \$500 or less, collect the total annual estimated amount in advance.
 - c. When the total annual estimated fee is more than \$500, but less than \$2500, collect one half of the amount in advance and the remainder by midseason.
 - d. When the estimated annual fee is more than \$2,500, collect one third in advance and the remainder in two equal payments by midseason.

37.24 - Final Fee. Record in the holder's operating plan a date established by the authorized officer with the holder by which the holder must submit financial and actual use records required to calculate the final fee.

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In calculating the final fee, follow the procedure described in section 37.23 paragraph 1. Use the record of actual use including client name and type and dates of services provided, and financial records as appropriate for the fee option selected (sec. 37.21a) to calculate the final fee.

Determine the difference between the previously paid estimated fee and the final fee, and collect any balance due.

37.25 - Billing and Refunds. Calculate the final fee, then apply the adjustment for off-Forest use, if applicable.

1. When the final fee exceeds the paid estimated fee, bill the holder for the balance due.

2. When the final fee is less than the paid estimated fee and more than the minimum fee, refund the amount to the holder. If the holder is authorized to operate with a priority assignment, at the holder's request credit the overpayment toward the next year's fee. If the holder is authorized to operate with a priority assignment and the authorization is due to expire that year, refund the amount to the holder.

3. When the total final fee is calculated to be less than the minimum fee (sec. 37.21j), document the calculation and notify the holder in writing that the final fee did not exceed the minimum fee (sec. 37.23) and that no balance is due the Forest Service by the holder.

Following billing and refund procedures found in FSH 6509.11k. Under the authority of the Land and Water Conservation Fund Act of 1964 [16 U.S.C. 4601 - 6(c), (i)(1).], deposit fees into the Land and Water Conservation Fund. (FSM 2701.1 paragraph 12.).

USDA-FOREST SERVICE

CONCESSIONS

I. ORIGINS AND HISTORIC PERSPECTIVE

Resorts, hotels, camps, ski areas, stores, gas stations and similar developments offering accommodations and services, such as outfitting and guiding, are permitted on National Forest lands under a special use permit. The authorities for issuing special use permits for recreation concessions are described below in section II.

Rules and regulations established under the Organic Act of 1897 and issued by the General Land Office in 1902, stated that permits could be secured for the building and maintenance of sanitariums and hotels at mineral and other springs, and that land (Forest Reserves) could be leased there for a fee for certain periods of time. In 1905 the U.S. Forest Service was created for the management and administration of the Forest Reserves, which were later named National Forests. These lands were transferred to the Forest Service from the General Land Office. At this time the new agency decided to retain the rules and regulations that granted permits for use of the National Forest lands for hotels and sanitariums. Summer recreation residences were also added to the list.

A 1913 annual report noted that thousands of such recreation permits issued included pleasure resorts and boathouses (marinas). "During this time the Forest Service had recognized the need to allow recreation structures, with its permit policy. However, the lack of a long-term permit policy discouraged construction of major permanent facilities. The Term Occupancy Act of 1915, strongly supported by the Forest Service, permitted it to allow private use and development of public forest lands for terms of up to 30 years by persons¹ or organizations wishing to erect summer camps, hotels or other resorts."

"The most noteworthy controversy regarding National Forest recreation centered around the proposed development of a privately financed resort and tramway on Mt. Hood (on Mt. Hood National Forest) and not around one of the Service's own proposals... As early as 1921 the Forest Service had been aware of plans for the² construction of a modern resort hotel in the vicinity of Mt. Hood." In 1926, plans were submitted to the Forest Service by a private developer and included a lodge at timberline, and a ski club and mountain climbing club chalets. At the same time another private company submitted plans for hotel and a tramway to the top of Mt. Hood. After much controversy and public debate, a special use permit was issued in 1930, to the second company whose proposal included the tramway. However, company did not have financial backing and capability and the facilities were not constructed. The plans and idea were resurrected by the Forest Service when funding became available through the Public Works Administration. The construction of the Timberline Lodge was completed in

1937, and the ownership and administration of the facilities transferred to the Forest Service. At present, Timberline Lodge and lift(s) are operated and maintained by a concessioner under special use permit, issued under Granger-Thye Act authority.

The 1930's introduced downhill skiing and winter sports resorts as a use of National Forest lands. While the construction of ski jumps was popular in the National Forests in New England during this period, the first ski lift on a National Forest is reputed to have been constructed on the north shore of Lake Tahoe, California, in 1913. With the introduction of the internal combustion engine, rope tow systems powered by automobile engines could transport skiers upslope. Between 1933 and 1940, many ski areas were established both on private land and on National Forest lands. In 1941 the Chief of the Forest Service noted 254 winter sports areas, as part of recreation facilities and services the agency had provided to the public. While there were some ski lifts and baselodges operated by the Forest Service, most of them were permitted to private corporations or organizations under the 1897 Act or 1915 Act authorities. Today, 145 alpine ski areas operate on National Forest lands and are permitted either under the 1915 Act or the 1986 Act authorities.

II. STATUTORY AUTHORITY, LEGAL BASIS, POLICIES & PROCEDURES

A. STATUTORY AUTHORITY AND PRINCIPLE LAWS

1. Organic Administrative Act of June 4, 1897.

Provides for the Secretary of Agriculture to issue rules to regulate occupancy and use. Permits issued under this authority are not compensable if the United States revokes them for reasons other than breach.

Provides that jurisdiction, both civil and criminal, over persons within the National Forests shall not be affected or changed. This is the basis for State and local laws being in effect on National Forests, including public health, safety and police powers.

2. Term Permit Act of March 4, 1915.

Authorizes term permits for structures or facilities on National Forest System land, limited to maximum of 80 acres and 30 years. Permits issued under this authority are compensable if the United States revokes them for reasons other than breach.

3. Section 7 of Granger-Thye Act of April 24, 1950.

Provides for issuing permits to use structures and improvements which are under the administrative control of the Forest Service. Also provides that as all or partial payment of the fee, the permit holder may be required to recondition and maintain the improvements.

4. Section 4(c) of Land and Water Conservation Fund Act of 1965.

Provides for issuing recreation permits for such uses as recreation events. The Forest Service has not yet used this authority but is considering using it for the Outfitter and Guide permits and for Recreation Events. By doing this, the fees, approximately \$2 million, would go to L&WCF and not the Treasury. Funds may be appropriated to the agency.

5. National Forest Ski Area Permit Act of 1986.

Allows for the issuing of term permits up to 40 years for ski areas. No acreage limitations. States that permits under this act shall require a fee based on fair market value.

There are 13 Acts which provide authorities, including the ones above. Regulations for issuing land use permits are found at 36 C.F.R. 251 Subpart B.

B. POLICY AND PROCEDURES

The Forest Service Manual (FSM) and Handbooks (FSH) provide written policy and directions, including procedures for program implementation and administrative processes. Policy and procedures for recreation special-uses (concessions) are covered in the recreation management and lands management resource areas of the Forest Service.

1. FSM 2340 PRIVATELY PROVIDED RECREATION OPPORTUNITIES

This portion of the Manual describes the objectives for recreation managers, when considering private business (concessions) as a means for providing recreation goods and services: " To provide under special-use authorization, sufficient, suitable, facilities and services that supplement or complement those provided by the private sector, State, and local government on private lands and the Forest Service on National Forest land to meet public needs, as determined through land and resource management planning. To facilitate the use, enjoyment, understanding, and appreciation of the National Forest, natural resource, setting."

2. FSM 2721 RECREATION SPECIAL USES

This portion of the Manual provides direction on considering use of National Forest lands and authorizing those uses. The policy and procedures here reflect 36 CFR 251, Special-Uses and authorities permitting certain uses of National Forest lands. Direction that specifically refers to the objectives for recreation special-use is: " To issue and administer special-use permits for recreation uses that serve the public, promote public health and safety, and protect the environment.

III. CURRENT CONCESSIONS OPERATIONS

Based on the 1989 data collected for the General Accounting Office, there were 4,135 special use permits authorizing concessioners to provide recreation goods and services on National Forest System lands.

The Forest Service recognizes over 25 types of recreation special-uses (concessions). Of the 4135 concessions, over 2800 were outfitting and guiding services. There were over 440 permits issued for "recreation events", such as fishing contests and races (animal, vehicle, etc.) where entry fees were collected by the permit holder. There were almost 300 picnic area and campgrounds operating under concessions. While not the most numerous of permits, 200 special-use permits were issued for the operation of ski areas (alpine and nordic) return the greatest amount to the Treasury, and are the most complex and challenging permits to administer.

Forty percent of all the alpine ski areas in the United States are wholly or in part on National Forest lands. Permit administration includes, not only an understanding of provisions of the permit as fee structure and determination, but an understanding of tramway engineering, avalanche control and customer services.

IV. FINANCIAL INFORMATION

Approximately 145 alpine ski area operations bring in over \$16 million (1992-1993 season) of returns to the Treasury in fees. Outfitters and guides make up the majority of concessions, at about 2800 permits and over \$2 million collected in fees. The next type of use is resorts and lodges, returning almost \$2 million.

V. ORGANIZATION AND RESOURCES ASSOCIATED WITH CONCESSIONS MANAGEMENT.

National Headquarters Organization

Listed below is the organization of the U.S. Forest Service national office staff, including the Recreation Management staff and those positions administering the recreation concessions (Special Use Permits) program. Specific positions are distinguished by the number of Full Time Equivalents (FTE = 2080 hours/year) associated with concessions management and administration.

Chief

Deputy Chief for National Forest System

Associate Deputy Chief

Director of Recreation, Cultural Resources and Wilderness

Assistant Director for Recreation Management (1/2 FTE)

Branch Chief, Concessions and Winter Recreation (1 FTE)

Special Uses Assistant (1 FTE)

Recreation Appeals Coordinator (1/2 FTE)

Deputy Chief for Administration
Associate Deputy Chief
Director of Fiscal and Public Safety
Assistant Director, Fiscal Policy & Analysis (1/4 FTE)
Branch Chief, Audit and Evaluation (1/2 FTE)
Chief, External Audit and Evaluation (1/4 FTE)

Regional/Forest Personnel

Within each of the 9 Regional offices there are at usually 2 specialists managing the recreation special-uses program, and at least 1 accounting specialist whose duties include concessions fee determination and auditing. For each of the 156 Forests, the management and the administration of the recreation special-uses program is included in the recreation management program. Usually one staff member subordinate to the Forest line officer is assigned these responsibilities.

VI. RECORDKEEPING SYSTEMS

1. FLUR (Forest Land Use Report). This is a centralized database of all permitted land uses, including nonrecreation-oriented land uses (communication sites, transmission right-of-ways, pipelines etc.) The database is an inventory of information based on types of uses by Region, Forest, District and permit holder, and permit information like date issued, length of term, and expiration date. Holder information and fiscal accounting data is limited. The data input and maintenance is conducted at the Forest level and some information can be accessed at the National level. Completion of several "fields" of information is optional and most administrators do not. Final fee input is an optional field.
2. IMSS (Information Support Structure). The Forest Service (FS) is in the process of developing a centralized resources reporting and accounting database that would include receipts from special-use permits. At present, these receipts are difficult to track back to the original unit or by a specific use. The development of IMSS is receiving strong management support due to the need to comply with the Chief Financial Officer Act.

VII SIMILARITIES TO OTHER ORGANIZATIONS' CONCESSIONS OPERATIONS

1. The outfitting and guiding program was closely coordinated with the Bureau of Land Management (BLM). We collect fees which are 3 percent of sales and issue permits with specified service days, locations, designated camps, launch schedules, etc. plus additional fees for the use of reserved campsite and livestock (grazing). We would like to have the two agencies to have inter-agency authority in order to issue one permit when an O/G operates on both BLM and NF lands. This will require changes in our Regulations.

2. Possessory interest. Permit holders continue to own their improvements. They may sell them, will them, etc, however, the FS is not obligated to issue a permit to the new owner. The permit is not transferrable. The buyer must be "technically and financially qualified" before they can be issued a permit. This does not cause as many problems as one might expect. In the fee system, the FS does not recognize a possessory interest. Only capitalized assets are recognized. Further, permit value is created by the government, who should not have to pay for the things it creates. [See United States vs. Fuller, 409 US 488 (1973)]
3. Fees collected go to the Treasury without any direct return to the Agency with two exceptions:
 - A. When the improvements are owned by the United States, the fee may be applied to structure repairs or maintenance. (see Granger-Thye Act above)
 - B. Organization sites such as Scout Camps may do work that benefits the programs of the Forest Service which is equal to their fees. We do not consider organization camps as concessions.

VIII. DIFFERENCES FROM OTHER CONCESSIONS OPERATIONS

1. Rights, Title and Interest. The Agency has held the position that the permit is a license. It is not a lease. Limited rights are conveyed. The Agency is pondering the impacts of a recent (June 20, 1991) law suit which states that the permit "is like a contract."
2. Deciding to issue permits. These decisions should be made in Forest Land Management and Resource Plans. In actuality, most proposals are brought forward by the private sector. If a determination is made that the proposed use is compatible with the Forest Plan and the purposes for which the National Forest System was created, a scoping exercise would be done to see if there was any competitive interest. If none, a permit could be issued. If there was any competitive interest, a prospectus would be issued to solicit applications. Selective criteria would not include a bid on fees. Site-specific operating and development plans are evaluated and analyzed for environmental impacts through National Environmental Policy Act procedures.
3. Fee Waiver. Fees are not waived except for another Federal Agency. See 36 CFR 251.57. There are other strict provisions where a fee waiver could be considered. None have been found to apply to concessions.

4. Graduated Rate Fee System. (GRFS) This fee system is unique to the Forest Service and is usually applied to ski areas, resorts and marinas. (The system was adapted by the Corps of Engineers to determine fees for their concessions operations.) It is a variation of a percentage rent. Because businesses do not make a profit until a break-even point is reached, GRFS uses a schedule of rate that progress with sales. The brackets for the rates are established by the amount of the capital investment the permit holder has made in facilities. Additionally when operations occur over an area of mixed ownership of private and NF lands, the final fee is prorated by the percent of sales generated on National Forest lands. For ski areas operating on a mixed land-ownership, the proration adjustment is calculated as a function of lift capacity.

For example: Assume a small ski area with only one rope tow which cost \$150,000. The break-even point for ski lifts (including school) is 20 percent. The fee rates are 1, 3, and 5 percent of sales. Therefore, on the first \$30,000 in sales [$\$150,000 \times 20\%$] the fee is \$300 [1% of \$30,000]. On the next \$30,000 the fee is \$900 and 5% of sales over \$60,000.

Break-even points and fee rates have been established for nine business classes these are:

	BE	<BE	BE to 2BE	>BE
Grocery	70	0.375	1.13	0.85 (1.13)
Food Service	70	0.625	1.88	1.50 (1.88)
Car Service	70	0.650	1.95	1.60 (1.95)
Merchandise	70	0.74	2.25	1.80 (2.25)
Liquor Service	60	0.90	2.70	2.15 (2.70)
Otftrs/Gds	50	1.00	3.00	2.65 (3.00)
Lodging	40	2.00	6.00	5.30 (6.00)
Rntls, Srv	30	2.25	6.75	5.95 (6.75)
Lifts	20	1.00	3.00	5.00 (same)

The rates in the right-hand column, called the balance of sales rates, were not progressive except for lifts. The rates shown in parenthesis are new, progressive rates. They are the same as the rates at the next lower bracket. This means that eventually there will be only two rates for each sales category except ski lifts. Few business are solely one sales category. We use a weighting by revenue to make a composite fee.

The rates were established from empirical data in about 1970. They were to provide the concessioner with a 15 percent return on investment when sales reached twice breakeven. Except for making top eight progressive, they have never been changed.

IX. CURRENT PROBLEMS

1. GRFS has had its share of critics and detractors. Some of the complaints are:

Its too complicated.

It requires too much auditing, particularly of assets.

It appears to assess a fee on business which are on private land if they are within the development boundary. The private/agency land issue may be unique to the FS.

It does not guarantee that fair market value is obtained.

The position of the FS is that GRFS is complex in an effort to be fair. It has historically obtained fair market value considering the strict limitations in the permit (very limited rights) and the mission of the agency to provide for recreation by attracting private capital.

In the face of mounting criticism, the FS is developing an alternative fee system for ski areas, who return over 90 percent of fees collected via GRFS.

2. National Environmental Policy Act (NEPA) compliance. Because proposed new uses and reissuance or renewal of permits for current uses often include actions that may environmentally affect National Forest lands and resources, these actions are subject to the Forest Service NEPA process and regulations established under the National Forest Management Act of 1976. Generally, a proponent (concessioner) applies for a special use permit, in hopes of receiving authorization to conduct business on National Forest lands. Before a permit can be granted, the proposed use (the concessioner's proposal) is subject to two levels of analysis through the NEPA process: an analysis to determine whether the new use is compatible with the governing Forest Plan and an analysis to determine whether the site-specific actions of the proposed use will impact the land and other natural resources. These analyses under the FS's NEPA process can be very time-consuming and decisions based on these analyses are subject to appeal. This process is also applied to proposed changes to existing concessioner's operations that might affect the environmental resources. For example, the FS has been analyzing a current permit holder's proposal to expand their ski area operations, for over 3 years. The same NEPA processes are employed before the FS solicits for bidders' proposals to operate a concession on National Forest.

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X. IMPROVEMENT EFFORTS

Improvements to the special use permit administration program currently underway include:

1. developing and implementing improved recordkeeping systems (FLURS, IMSS), including Service-wide access and reporting at the national level;
2. continuing development of training for permit administrators, including college-level correspondence courses, and regional certification in administration; and
3. updating permit clause language to reflect current business and financial practices, and for conformity in fee determination and permit administration.
4. seeking an alternative fee system for ski areas.

1. U.S. Department of Agriculture, Forest Service, A History of Outdoor Recreation Development in National Forests 1891-1942, p. 3, circa 1975.
2. Ibid. p.14.

CHAPTER 37

per litigation
Settlement
of
Wilderness
Watch v.
F. Dale Robertson
(1993)

- * deleted all references to CACHES
- * globally replaced all references to Reserved Sites and Reservation with ASSIGNED SITES and ASSIGNMENT
- * added AUTHORITIES, POLICIES & RESPONSIBILITIES references
- * clarified in POLICY section when to use GRFS
- * deleted ADJUSTED GROSS REVENUE definition
- * added ASSIGNED SITE definition
- * added GRATUITIES as GROSS REVENUE
- * expanded definition of GROSS REVENUE and added REVENUE EXCLUSIONS
- * added NON-USE definition
- * added FEE FOR COMMERCIAL USE (OPTION A, OPTION B) section
- * included fee calculation EXAMPLES for OPTION A & OPTION B
- * changed the sequence of FEES section
- * clarified how to count SERVICE DAYS, including drop-off & pick-up situations
- * added THE FEE IS 3% OF ANNUAL GROSS REVENUE to fee for use by NONPROFIT ORGANIZATIONS and EDUCATIONAL INSTITUTIONS
- * changed Fee for Nonuse to PAYMENT FOR NONUSE and clarified when and how to charge for nonuse
- * added FEE FOR INCIDENTAL USE
- * established the MINIMUM FEE and included directions on collecting fee in ESTIMATED FEE, FINAL FEE and BILLING & REFUNDS
- * added collection of fees under L&WCF.

CHAPTER 41

- * deleted all references to CACHES
- * globally replaced all references to Reserved Sites and Reservation with ASSIGNED SITES and ASSIGNMENT
- * added L&WCF as the authority for permit issuance
- * expanded POLICY section to reflect WILDERNESS WATCH V. F.DALE ROBERTSON ET AL. on authorizing structures or improvements or installations in wilderness
- * expanded POLICY section to include when o/g is conducted as part of a permitted resort or lodge
- * retained PECUNIARY REMUNERATION OR OTHER GAIN in GUIDING and OUTFITTING definitions
- * clarified PRIORITY USE definition as meaning a term NTE 5 years
- * clarified the section on INCIDENTAL USE; included use of FS 2700-25 TEMPORARY PERMIT
- * changed the sequence of and clarified APPLICATION/ISSUANCE section; emphasized 36 CFR 251.54 APPLICATION procedures
- * clarified ISSUANCE situations
- * clarified and expanded section on CHANGE OF OWNERSHIP to CHANGE OF OWNERSHIP OR CONTROL OF THE BUSINESS ENTITY
- * (1) The permit is is a privilege and is not transferable.
- * (2) Priority is a privilege acquired by demonstrated acceptable performance and is not transferable.
- * (3) The permit is not property or a property interest and cannot be used as collateral.
- * (4) Upon consummation...the holder's permit terminates.
- * (5) The party who acquires ownership...must submit an application for permit.
- * (6) The party who acquires ownership...may be issued IF ELIGIBLE (refer to 36 CFR 251.54 & ISSUANCE section).
- * changed "substantial proportion of the private land" to REAL AND PERSONAL PROPERTY USED BY THE BUSINESS
- * clarified that only holders who have PERFORMED ACCEPTABLY...MAY BE ELIGIBLE FOR A PRIORITY TERM

- * assignment of PRIORITY TERM and USE is at authorized officer's discretion and must be consistent with...resource management plans
- * clarified REDUCTIONS section
- * TERMS & CONDITIONS: permit with priority term NTE 5 YEARS
- * TERMS & CONDITIONS: reference to standard mandatory clauses Chap. 52
- * TERMS & CONDITIONS: require operating plan and annual itinerary
- * TERMS & CONDITIONS: use of assigned sites specified and described in operating plan
- * TERMS & CONDITIONS: require insurance per FSM 2713.32
- * specified actions for conducting PERFORMANCE REVIEWS & EVALUATIONS
- * DOCUMENTED
 - * performance standards
 - * mid-season review & evaluation (priority assignment)
 - * final review & evaluation (priority, temporary)
- * INSTITUTIONAL/SEMI-PUBLIC:
 - * permits may be issued
 - * use of temporary permit FS-2700-25
 - * fees based on Chap. 30 & 37

USDA-FOREST SERVICE

CONCESSIONS

I. ORIGINS AND HISTORIC PERSPECTIVE

Resorts, hotels, camps, ski areas, stores, gas stations and similar developments offering accommodations and services, such as outfitting and guiding, are permitted on National Forest lands under a special use permit. The authorities for issuing special use permits for recreation concessions are described below in section II.

Rules and regulations established under the Organic Act of 1897 and issued by the General Land Office in 1902, stated that permits could be secured for the building and maintenance of sanitariums and hotels at mineral and other springs, and that land (Forest Reserves) could be leased there for a fee for certain periods of time. In 1905 the U.S. Forest Service was created for the management and administration of the Forest Reserves, which were later named National Forests. These lands were transferred to the Forest Service from the General Land Office. At this time the new agency decided to retain the rules and regulations that granted permits for use of the National Forest lands for hotels and sanitariums. Summer recreation residences were also added to the list.

A 1913 annual report noted that thousands of such recreation permits issued included pleasure resorts and boathouses (marinas). "During this time the Forest Service had recognized the need to allow recreation structures, with its permit policy. However, the lack of a long-term permit policy discouraged construction of major permanent facilities. The Term Occupancy Act of 1915, strongly supported by the Forest Service, permitted it to allow private use and development of public forest lands for terms of up to 30 years by persons¹ or organizations wishing to erect summer camps, hotels or other resorts."

"The most noteworthy controversy regarding National Forest recreation centered around the proposed development of a privately financed resort and tramway on Mt. Hood (on Mt. Hood National Forest) and not around one of the Service's own proposals... As early as 1921 the Forest Service had been aware of plans for the construction of a modern resort hotel in the vicinity of Mt. Hood."² In 1926, plans were submitted to the Forest Service by a private developer and included a lodge at timberline, and a ski club and mountain climbing club chalets. At the same time another private company submitted plans for hotel and a tramway to the top of Mt. Hood. After much controversy and public debate, a special use permit was issued in 1930, to the second company whose proposal included the tramway. However, company did not have financial backing and capability and the facilities were not constructed. The plans and idea were resurrected by the Forest Service when funding became available through the Public Works Administration. The construction of the Timberline Lodge was completed in

1937, and the ownership and administration of the facilities transferred to the Forest Service. At present, Timberline Lodge and lift(s) are operated and maintained by a concessioner under special use permit, issued under Granger-Thye Act authority.

The 1930's introduced downhill skiing and winter sports resorts as a use of National Forest lands. While the construction of ski jumps was popular in the National Forests in New England during this period, the first ski lift on a National Forest is reputed to have been constructed on the north shore of Lake Tahoe, California, in 1913. With the introduction of the internal combustion engine, rope tow systems powered by automobile engines could transport skiers upslope. Between 1933 and 1940, many ski areas were established both on private land and on National Forest lands. In 1941 the Chief of the Forest Service noted 254 winter sports areas, as part of recreation facilities and services the agency had provided to the public. While there were some ski lifts and baselodges operated by the Forest Service, most of them were permitted to private corporations or organizations under the 1897 Act or 1915 Act authorities. Today, 145 alpine ski areas operate on National Forest lands and are permitted either under the 1915 Act or the 1986 Act authorities.

II. STATUTORY AUTHORITY, LEGAL BASIS, POLICIES & PROCEDURES

A. STATUTORY AUTHORITY AND PRINCIPLE LAWS

1. Organic Administrative Act of June 4, 1897.

Provides for the Secretary of Agriculture to issue rules to regulate occupancy and use. Permits issued under this authority are not compensable if the United States revokes them for reasons other than breach.

Provides that jurisdiction, both civil and criminal, over persons within the National Forests shall not be affected or changed. This is the basis for State and local laws being in effect on National Forests, including public health, safety and police powers.

2. Term Permit Act of March 4, 1915.

Authorizes term permits for structures or facilities on National Forest System land, limited to maximum of 80 acres and 30 years. Permits issued under this authority are compensable if the United States revokes them for reasons other than breach.

3. Section 7 of Granger-Thye Act of April 24, 1950.

Provides for issuing permits to use structures and improvements which are under the administrative control of the Forest Service. Also provides that as all or partial payment of the fee, the permit holder may be required to recondition and maintain the improvements.

4. Section 4(c) of Land and Water Conservation Fund Act of 1965.

Provides for issuing recreation permits for such uses as recreation events. The Forest Service has not yet used this authority but is considering using it for the Outfitter and Guide permits and for Recreation Events. By doing this, the fees, approximately \$2 million, would go to L&WCF and not the Treasury. Funds may be appropriated to the agency.

5. National Forest Ski Area Permit Act of 1986.

Allows for the issuing of term permits up to 40 years for ski areas. No acreage limitations. States that permits under this act shall require a fee based on fair market value.

There are 13 Acts which provide authorities, including the ones above. Regulations for issuing land use permits are found at 36 C.F.R. 251 Subpart B.

B. POLICY AND PROCEDURES

The Forest Service Manual (FSM) and Handbooks (FSH) provide written policy and directions, including procedures for program implementation and administrative processes. Policy and procedures for recreation special-uses (concessions) are covered in the recreation management and lands management resource areas of the Forest Service.

1. FSM 2340 PRIVATELY PROVIDED RECREATION OPPORTUNITIES

This portion of the Manual describes the objectives for recreation managers, when considering private business (concessions) as a means for providing recreation goods and services: " To provide under special-use authorization, sufficient, suitable, facilities and services that supplement or complement those provided by the private sector, State, and local government on private lands and the Forest Service on National Forest land to meet public needs, as determined through land and resource management planning. To facilitate the use, enjoyment, understanding, and appreciation of the National Forest, natural resource, setting."

2. FSM 2721 RECREATION SPECIAL USES

This portion of the Manual provides direction on considering use of National Forest lands and authorizing those uses. The policy and procedures here reflect 36 CFR 251, Special-Uses and authorities permitting certain uses of National Forest lands. Direction that specifically refers to the objectives for recreation special-use is: " To issue and administer special-use permits for recreation uses that serve the public, promote public health and safety, and protect the environment.

III. CURRENT CONCESSIONS OPERATIONS

Based on the 1989 data collected for the General Accounting Office, there were 4,135 special use permits authorizing concessioners to provide recreation goods and services on National Forest System lands.

The Forest Service recognizes over 25 types of recreation special-uses (concessions). Of the 4135 concessions, over 2800 were outfitting and guiding services. There were over 440 permits issued for "recreation events", such as fishing contests and races (animal, vehicle, etc.) where entry fees were collected by the permit holder. There were almost 300 picnic area and campgrounds operating under concessions. While not the most numerous of permits, 200 special-use permits were issued for the operation of ski areas (alpine and nordic) return the greatest amount to the Treasury, and are the most complex and challenging permits to administer.

Forty percent of all the alpine ski areas in the United States are wholly or in part on National Forest lands. Permit administration includes, not only an understanding of provisions of the permit as fee structure and determination, but an understanding of tramway engineering, avalanche control and customer services.

IV. FINANCIAL INFORMATION

Approximately 145 alpine ski area operations bring in over \$16 million (1992-1993 season) of returns to the Treasury in fees. Outfitters and guides make up the majority of concessions, at about 2800 permits and over \$2 million collected in fees. The next type of use is resorts and lodges, returning almost \$2 million.

V. ORGANIZATION AND RESOURCES ASSOCIATED WITH CONCESSIONS MANAGEMENT.

National Headquarters Organization

Listed below is the organization of the U.S. Forest Service national office staff, including the Recreation Management staff and those positions administering the recreation concessions (Special Use Permits) program. Specific positions are distinguished by the number of Full Time Equivalents (FTE = 2080 hours/year) associated with concessions management and administration.

Chief

- Deputy Chief for National Forest System

- Associate Deputy Chief

- Director of Recreation, Cultural Resources and Wilderness

- Assistant Director for Recreation Management (1/2 FTE)

- Branch Chief, Concessions and Winter Recreation (1 FTE)

- Special Uses Assistant (1 FTE)

- Recreation Appeals Coordinator (1/2 FTE)

Deputy Chief for Administration
Associate Deputy Chief
Director of Fiscal and Public Safety
Assistant Director, Fiscal Policy & Analysis (1/4 FTE)
Branch Chief, Audit and Evaluation (1/2 FTE)
Chief, External Audit and Evaluation(1/4 FTE)

Regional/Forest Personnel

Within each of the 9 Regional offices there are at usually 2 specialists managing the recreation special-uses program, and at least 1 accounting specialist whose duties include concessions fee determination and auditing. For each of the 156 Forests, the management and the administration of the recreation special-uses program is included in the recreation management program. Usually one staff member subordinate to the Forest line officer is assigned these responsibilities.

VI. RECORDKEEPING SYSTEMS

1. FLUR (Forest Land Use Report). This is a centralized database of all permitted land uses, including nonrecreation-oriented land uses (communication sites, transmission right-of-ways, pipelines etc.) The database is an inventory of information based on types of uses by Region, Forest, District and permit holder, and permit information like date issued, length of term, and expiration date. Holder information and fiscal accounting data is limited. The data input and maintenance is conducted at the Forest level and some information can be accessed at the National level. Completion of several "fields" of information is optional and most administrators do not. Final fee input is an optional field.
2. IMSS (Information Support Structure). The Forest Service (FS) is in the process of developing a centralized resources reporting and accounting database that would include receipts from special-use permits. At present, these receipts are difficult to track back to the original unit or by a specific use. The development of IMSS is receiving strong management support due to the need to comply with the Chief Financial Officer Act.

VII SIMILARITIES TO OTHER ORGANIZATIONS' CONCESSIONS OPERATIONS

1. The outfitting and guiding program was closely coordinated with the Bureau of Land Management (BLM). We collect fees which are 3 percent of sales and issue permits with specified service days, locations, designated camps, launch schedules, etc. plus additional fees for the use of reserved campsite and livestock (grazing). We would like to have the two agencies to have inter-agency authority in order to issue one permit when an O/G operates on both BLM and NF lands. This will require changes in our Regulations.

2. Possessory interest. Permit holders continue to own their improvements. They may sell them, will them, etc, however, the FS is not obligated to issue a permit to the new owner. The permit is not transferrable. The buyer must be "technically and financially qualified" before they can be issued a permit. This does not cause as many problems as one might expect. In the fee system, the FS does not recognize a possessory interest. Only capitalized assets are recognized. Further, permit value is created by the government, who should not have to pay for the things it creates. [See United States vs. Fuller, 409 US 488 (1973)]
3. Fees collected go to the Treasury without any direct return to the Agency with two exceptions:
 - A. When the improvements are owned by the United States, the fee may be applied to structure repairs or maintenance. (see Granger-Thye Act above)
 - B. Organization sites such as Scout Camps may do work that benefits the programs of the Forest Service which is equal to their fees. We do not consider organization camps as concessions.

VIII. DIFFERENCES FROM OTHER CONCESSIONS OPERATIONS

1. Rights, Title and Interest. The Agency has held the position that the permit is a license. It is not a lease. Limited rights are conveyed. The Agency is pondering the impacts of a recent (June 20, 1991) law suit which states that the permit "is like a contract."
2. Deciding to issue permits. These decisions should be made in Forest Land Management and Resource Plans. In actuality, most proposals are brought forward by the private sector. If a determination is made that the proposed use is compatible with the Forest Plan and the purposes for which the National Forest System was created, a scoping exercise would be done to see if there was any competitive interest. If none, a permit could be issued. If there was any competitive interest, a prospectus would be issued to solicit applications. Selective criteria would not include a bid on fees. Site-specific operating and development plans are evaluated and analyzed for environmental impacts through National Environmental Policy Act procedures.
3. Fee Waiver. Fees are not waived except for another Federal Agency. See 36 CFR 251.57. There are other strict provisions where a fee waiver could be considered. None have been found to apply to concessions.

4. Graduated Rate Fee System. (GRFS) This fee system is unique to the Forest Service and is usually applied to ski areas, resorts and marinas. (The system was adapted by the Corps of Engineers to determine fees for their concessions operations.) It is a variation of a percentage rent. Because businesses do not make a profit until a break-even point is reached, GRFS uses a schedule of rate that progress with sales. The brackets for the rates are established by the amount of the capital investment the permit holder has made in facilities. Additionally when operations occur over an area of mixed ownership of private and NF lands, the final fee is prorated by the percent of sales generated on National Forest lands. For ski areas operating on a mixed land-ownership, the proration adjustment is calculated as a function of lift capacity.

For example: Assume a small ski area with only one rope tow which cost \$150,000. The break-even point for ski lifts (including school) is 20 percent. The fee rates are 1, 3, and 5 percent of sales. Therefore, on the first \$30,000 in sales [$\$150,000 \times 20\%$] the fee is \$300 [1% of \$30,000]. On the next \$30,000 the fee is \$900 and 5% of sales over \$60,000.

Break-even points and fee rates have been established for nine business classes these are:

	BE	<BE	BE to 2BE	>BE
Grocery	70	0.375	1.13	0.85 (1.13)
Food Service	70	0.625	1.88	1.50 (1.88)
Car Service	70	0.650	1.95	1.60 (1.95)
Merchandise	70	0.74	2.25	1.80 (2.25)
Liquor Service	60	0.90	2.70	2.15 (2.70)
Otftrs/Gds	50	1.00	3.00	2.65 (3.00)
Lodging	40	2.00	6.00	5.30 (6.00)
Rntls, Srv	30	2.25	6.75	5.95 (6.75)
Lifts	20	1.00	3.00	5.00 (same)

The rates in the right-hand column, called the balance of sales rates, were not progressive except for lifts. The rates shown in parenthesis are new, progressive rates. They are the same as the rates at the next lower bracket. This means that eventually there will be only two rates for each sales category except ski lifts. Few business are solely one sales category. We use a weighting by revenue to make a composite fee.

The rates were established from empirical data in about 1970. They were to provide the concessioner with a 15 percent return on investment when sales reached twice breakeven. Except for making top eight progressive, they have never been changed.

IX. CURRENT PROBLEMS

1. GRFS has had its share of critics and detractors. Some of the complaints are:

Its too complicated.

It requires too much auditing, particularly of assets.

It appears to assess a fee on business which are on private land if they are within the development boundary. The private/agency land issue may be unique to the FS.

It does not guarantee that fair market value is obtained.

The position of the FS is that GRFS is complex in an effort to be fair. It has historically obtained fair market value considering the strict limitations in the permit (very limited rights) and the mission of the agency to provide for recreation by attracting private capital.

In the face of mounting criticism, the FS is developing an alternative fee system for ski areas, who return over 90 percent of fees collected via GRFS.

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3. Personnel. The business and financial aspects of special use permit administration of concessions have become very complex. The majority of the permit administrators have a strong background in natural resource management, while they are most competent in resolving environmental issues of concessions administration, they lack the skills and knowledge needed to ensure the business and financial provisions of the permit are met. Special use permit administration has traditionally been included as "other duties as assigned" in recreation management positions. Often the administrator has other recreation programs requiring his/her immediate attention, to meet the public needs, such as daily operations and maintenance, and management of trails, wilderness, and recreation facilities.

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2. continuing development of training for permit administrators, including college-level correspondence courses, and regional certification in administration; and
3. updating permit clause language to reflect current business and financial practices, and for conformity in fee determination and permit administration.
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1. U.S. Department of Agriculture, Forest Service, A History of Outdoor Recreation Development in National Forests 1891-1942, p. 3, circa 1975.
2. Ibid. p.14.

37 - Outfitter and Guide Fees. (For related direction on special use permit administration see sec. 41.53).

37.01 - Authority. (Sec.30.1; FSM 2701.1).

37.03 - Policy. (Sec. 31; FSM 2715.03)

1. Require payment of fees according to the direction in sections 37.21 to 37.25 for outfitter/guide activities authorized as a distinct activity.

2. Use the graduated rate fee system (GRFS) (FSM 2715.11) to determine fees for outfitter/guide activities, such as cross country skiing, horseback riding and so forth, authorized by the Forest Service in connection with an authorized commercial public service site, such as a resort or lodge. Where applicable, require holders under GRFS to pay additional fees for site assignment (sec. 37.21e) and livestock grazing use (sec. 37.21f).

37.04 - Responsibility. (FSM 2704.13).

37.05 - Definitions. See section 41.53c for additional definitions on guiding, holder, incidental use, outfitting, priority use, temporary use and transportation livestock.

Assigned Site. A site assigned by the Forest Service to the holder for authorized operations during a specified period of occupancy. Examples may include, but are not limited to, base and drop camps, picnic sites, loading facilities, boat launches, and helispots.

Average Adjusted Service Day Client Charge. The total gross revenue divided by the total number of service days.

Duration of the Outfitted/Guided Trip. The period of time that begins when the client first comes under the care and supervision of the outfitter or guide, including departure from the holder's headquarters or local community, and ends when the client is released from such care and custody. Trip duration is used in calculating service days and the on- and off-Forest adjustment.

Gross Revenue. The total amount of receipts from sales that are derived from goods or services sold by the holder which are related to authorized outfitting and/or guiding operations on National Forest System lands. Sales include:

1. Revenue received by the holder and the holder's employees or agents;
2. Revenue from goods or services sold on non-National Forest System lands and waters, unless specifically excluded;
3. Revenue received during or prior to arrival or after departure from the holder's headquarters or local community;

4. The value of goods and services that are donated or traded-off for goods and services received (bartering); and

5. Gratuities, which are goods, services, or privileges that are donated or provided without charge or at discount to organizations or individuals such as employees, owners, and officers or immediate families of employees, owners, and officers and that are not available to the general public.

Fees are assessed against all receipts from sales unless specifically excluded.

Non-use. Authorized use the holder did not use. When the holder has not properly requested and received waiver of use, it is unapproved non-use.

Revenue Exclusions. The following items are excluded from gross revenue or receipts:

1. Revenue derived from goods and services sold on private land which are not directly related to outfitting and guiding operations conducted on National Forest System lands, such as souvenirs, lodging, transportation, telephone toll charges and accident insurance sales;

2. Amounts paid or payable to a government licensing authority or recreation administering agency from sales of hunting or fishing licenses and recreation fee tickets;

3. Revenue derived from the sale of operating equipment, rental equipment, capitalized assets or other assets used in operations. Examples are such items as horses, riding tack, watercraft, or rental skis and boots, which are sold periodically and replaced.

Service Day. A day or any part of a day on National Forest System lands, for which an outfitter or guide provides goods and/or services including transportation, to an individual.

37.21 - Fees

37.21a - Fee for Commercial Use. Calculate and collect a fee for commercial outfitting/guiding on National Forest System lands.

Upon the authorized officer's approval of the prospective holder's application for a special use permit, advise the applicant to select one of the options, A or B (para. 1 and 2) to be used in calculating the fee. Include the selected method as a condition of the permit issued to the holder, and use that method to calculate the fee for the period authorized.

1. Option A. The fee is based on an average service day client charge using the following schedule of rates.

Schedule of Rates

Outfitter's Average Service

THIS DRAFT DOES NOT CONSTITUTE OFFICIAL FOREST SERVICE POLICY.
THIS MATERIAL REPRESENTS THE PROFESSIONAL OPINION OF THE AUTHOR.

<u>Day Client Charge</u>	<u>Service Day Fee</u>
Less than \$ 8.00	\$.25
8.01 - 20.00	.40
20.01 - 35.00	.80
35.01 - 50.00	1.30
50.01 - 75.00	1.90
75.01 - 100.00	2.60
100.01 - 125.00	3.40
125.01 - 150.00	4.10
150.01 - 175.00	4.90
175.01 - 200.00	5.60
200.01 - 250.00	6.75
250.01 - 300.00	8.25
300.01 - 400.00	10.00
Over 400.00	Use 3 percent of the average service day client charge

Calculate the fee as follows:

- Determine the number of service days for each trip and the total number of service days. See section 37.21b for additional direction.
- Multiply the client charge per trip by the number of clients for each trip. This figure in dollars represents gross receipts.
- Divide the gross receipts by the total number of service days determined in step a. of this section. This figure is the average service day client charge.
- Refer to the Schedule of Rates and use the average service day client charge to determine the service day fee.
- Multiply the total number of service days by the service day fee.

Example: In one operating season, the holder offers two trips:

July 27-29 for 3 people, \$450/person
August 18-21 for 7 people, \$500/person

3 days x 3 people = 9 service days
+ 4 days x 7 people = 28 service days
37 total service days

3 people x \$450 = \$1,350
+ 7 people x \$500 = \$3,500
\$4,850 gross receipts

\$4850 gross revenue divided by 37 total service days = \$131
average service day client charge.

\$131 average service day client charge = \$ 4.10 service day fee.

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37 total service days x \$4.10 service day fee = \$151.70 fee for commercial use.

2. Option B. The fee is 3 percent of the annual gross revenue (sec. 37.05).

Example: For one year, the holder has an annual gross revenue of \$4850.

$\$4850 \times 0.03 = \$145.50$ fee for commercial use.

37.21b - Calculating Service Days. Charge any full or fractional day the customer receives service as a full service day. When livery, rental, supply, or drop-off service to customers is provided, count only the day on which the outfitter or guide provides service and/or goods. When the outfitter/guide provides drop-off service and returns another day to retrieve the customers, count one service day for drop-off service and one service day for pick-up service. When the outfitter/guide provides drop-off service and pick-up service, and the customers occupy an outfitter's assigned site, and/or the outfitter/guide furnishes equipment and supplies, count one service day for drop-off, one service day for pick-up services, and one service day for each day between drop-off and pick-up.

37.21c - Fee for Nonprofit Organizations. The fee is 3 percent of annual gross revenue. Include the amount of donations and grants as gross revenue if the holder requires the customer or client to make a donation or grant as a condition of receiving the service. Do not consider donations or grants made voluntarily by customers to support the programs or activities of the holder.

37.21d - Fee for Educational Institutions. The fee is 3 percent of annual gross revenue.

1. Credited Programs. Exclude tuition and other payments made by the students which are unrelated to the use of National Forest lands and related waters if the program provided under the permit is recognized for credit toward graduation or a degree in a recognized school system or educational institution.

2. Include all payments made by students for the authorized service if the program provided under the permit is not recognized for credit toward graduation or a degree.

37.21e - Fee for Assigned Site.

1. Require payment of fees for the occupancy of National Forest System sites assigned for use by the holder during a specified period of occupancy. The minimum annual fee for each assigned site is \$140. Using 1993 as a base year, the Washington Office, Director of Recreation, Cultural Resources and Wilderness Management adjusts the minimum annual fee for each assigned site every 3 years based on the Consumer Price Index. This fee is in addition to the minimum permit fee and other

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required fees, such as the fee required for commercial outfitting and guiding (sec. 37.21a).

2. Do not prorate **assigned site fees**. Apply the full minimum annual fee for each assigned site.

3. Do not authorize refunds or credits for **assigned site fees**.

4. The Regional Forester may establish higher fees if necessary to obtain fair market value.

37.21f - Fee for Grazing Livestock. Assess livestock grazing fees when the Forest Service authorizes the holder to graze transportation animals while on the National Forest. Do not assess a fee when the animals travel on the National Forest but the holder is not authorized to graze them. Charge fees in accordance with current direction in FSM 2238 which annually establishes grazing fees. Do not make refunds or give credits for planned and authorized, but unused, transportation livestock grazing use.

37.21g - Fee for Additional Use. If the holder requests in advance approval of additional use and if capacity is available, the authorized officer may approve the request and collect any additional estimated fees. When Option A (sec. 37.21a) is used to calculate a fee for commercial use, use the schedule of rates to calculate the additional fee. When Option B (sec. 37.21a) is used to calculate a fee for commercial use, estimate the additional gross revenue associated with the approved additional use and include it in the calculation of the estimated and final fees (sec. 37.23 - 37.24). See sections 41.53g and 41.53h for additional direction.

37.21h - Payment for Non-Use. Charge the holder for unapproved non-use when the holder did not properly request and receive a waiver for use. When either Option A or B is used to calculate a fee for commercial use, use the schedule of rates and procedures under Option A (sec. 37.21a) to calculate the amount due for unapproved non-use. Add the calculated amount to the final fee total.

37.21i - Fee For Incidental Use. When commercial outfitting and guiding is authorized by a temporary permit, Form FS 2700-25 Temporary Use Permit, collect a minimum fee. The authorized officer may only waive the minimum fee if the use meets the criteria and circumstances listed in 36 Code of Federal Regulations 251.57.

37.21j - Minimum Fee. The minimum fee for outfitting/guiding on National Forest System lands is \$70 annually per permit for 1993-1996. Using 1993 as a base year, the Washington Office, Director of Recreation, Cultural Resources and Wilderness Management adjusts the minimum fee every 3 years based on the Consumer Price Index.

37.22 - Adjustment for Off-Forest Use. Reduce the fee or estimated fee based on the percentage of time the customers occupy National Forest System lands and related waters in relation to the total duration of the outfitted trip. Apply the following rate of reduction in calculating fees:

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<u>Percentage of Time on National Forest Lands and Waters</u>	<u>Fee Reduction</u>
Less than 5 percent	80 percent
5 - 60 percent	40 percent
Over 60 percent	None

The holder must provide trip duration, itinerary, or such other information as may be required by the authorized officer to support a request for fee reductions based on off-forest use.

37.23 - Estimated Fee.

1. Calculate the total estimated annual fee, including use fee, assigned sites, and transportation livestock grazing, on a fee determination statement (FSM 2715) prior to the operating season.
2. Consult with the applicant/holder to estimate the anticipated number of service days or adjusted gross revenues as applicable. Use financial and related documents furnished by the applicant including records of the previous year's business activity, planned customer rate schedules, trip itineraries, and the amount of use to be authorized. Retain documents used for fee calculations in the case folder.
3. Establish due dates for all payments prior to the start of the operating season.
4. Calculate the total estimated fee as a single amount, to be deposited to recreation use (FSM 6530). Require payment of the estimated fee in advance of the use either in full before the start of the season or periodically during the season of operation and bill the holder as follows:
 - a. When the total annual estimated fee is less than the minimum fee collect the minimum fee in advance.
 - b. When the total annual estimated fee is \$500 or less, collect the total annual estimated amount in advance.
 - c. When the total annual estimated fee is more than \$500, but less than \$2500, collect one half of the amount in advance and the remainder by midseason.
 - d. When the estimated annual fee is more than \$2,500, collect one third in advance and the remainder in two equal payments by midseason.

37.24 - Final Fee. Record in the holder's operating plan a date established by the authorized officer with the holder by which the holder must submit financial and actual use records required to calculate the final fee.

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In calculating the final fee, follow the procedure described in section 37.23 paragraph 1. Use the record of actual use including client name and type and dates of services provided, and financial records as appropriate for the fee option selected (sec. 37.21a) to calculate the final fee.

Determine the difference between the previously paid estimated fee and the final fee, and collect any balance due.

37.25 - Billing and Refunds. Calculate the final fee, then apply the adjustment for off-Forest use, if applicable.

1. When the final fee exceeds the paid estimated fee, bill the holder for the balance due.

2. When the final fee is less than the paid estimated fee and more than the minimum fee, refund the amount to the holder. If the holder is authorized to operate with a priority assignment, at the holder's request credit the overpayment toward the next year's fee. If the holder is authorized to operate with a priority assignment and the authorization is due to expire that year, refund the amount to the holder.

3. When the total final fee is calculated to be less than the minimum fee (sec. 37.21j), document the calculation and notify the holder in writing that the final fee did not exceed the minimum fee (sec. 37.23) and that no balance is due the Forest Service by the holder.

Following billing and refund procedures found in FSH 6509.11k. Under the authority of the Land and Water Conservation Fund Act of 1964 [16 U.S.C. 4601 - 6(c), (d)(1).], deposit fees into the Land and Water Conservation Fund. (FSM 2701.1 paragraph 12.).

series of areas on National Forest System land to be known as experimental ranges, and the number and size to provide for the research necessary for the management of range land in each forest, when appropriate, to establish a series of natural areas, sufficient in size to illustrate and typify for research or other purposes, the important range types in each forest as well as other plant communities that have special or unique scientific interest. Research Natural Areas shall be retained in a virgin or near-virgin condition except where otherwise required to maintain a condition which the area is to represent. Within areas designated under this regulation, occupancy without a special-use permit shall not be required for the construction of permitted improvements. Permitted improvements required in connection with their experimental use shall be authorized by the Chief of the Forest Service.

Mar. 29, 1966]

PETERSBURG WATERSHED

Petersburg watershed.

as authorized in paragraph (c), access to lands within the Petersburg watershed, Tongass National Forest, as described in the October 17, 1940 (54 Stat. 1111) is prohibited.

Access to lands within the Petersburg watershed is hereby authorized without further written approval for the following routine purposes:

1. Discharge of official duties in the management of the Tongass National Forest by Federal employees or Forest Service contractors or agents;

2. Operation, maintenance, and repair of the municipal water supply system of the city of Petersburg;

3. Recreational use of the Raven's Roost Trail for access to and

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from the Raven's Roost public recreation cabin and the Alpine Recreation Area.

(c) Any person who wishes to enter upon the lands within the watershed for purposes other than those listed in paragraph (b) must obtain a permit that has been signed by the appropriate city official and countersigned by the District Ranger.

(d) Unauthorized entrance upon lands within the watershed is subject to punishment as provided in 36 CFR 261.1b.

(e) The Forest Supervisor of the Stikine Area of the Tongass National Forest may authorize the removal of timber from the watershed under the regulations governing disposal of National Forest timber (36 CFR part 223). In any removal of timber from the watershed, the Forest Supervisor shall provide adequate safeguards for the protection of the Petersburg municipal water supply.

[53 FR 26595, July 14, 1988]

Subpart B—Special Uses

AUTHORITY: 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761-1771.

SOURCE: Sections 251.50-251.64 appear at 45 FR 38327, June 6, 1980, unless otherwise noted.

§ 251.50 Special uses.

(a) All uses of National Forest System land, improvements, and resources, except those provided for in the regulations governing the disposal of timber (part 223) and minerals (part 228) and the grazing of livestock (part 222), are designated "special uses" and must be approved by an authorized officer.

(b) Nothing in this section prohibits the temporary occupancy of National Forest System land for the protection of life or property in emergencies, if a special use authorization for such use is obtained at the earliest opportunity.

(c) A special use authorization is not required for the noncommercial use or occupancy of National Forest System lands or facilities for camping, picnicking, hiking, fishing, hunting, horse riding, boating, or similar recreational

§ 251.51

activity, unless one or more of the following circumstances exists:

(1) Authorization of such use is required by an order issued pursuant to 36 CFR 261.50;

(2) Authorization of such use is required by a regulation issued pursuant to 36 CFR 261.70;

(3) The use is for a group event as defined in § 251.51 of this subpart.

(d) Unless otherwise required by order issued under § 261.50 or by regulation issued under § 261.70 of this chapter, the use of existing forest development roads and trails does not require a special-use authorization; however, any such use is subject to compliance with all Federal and State laws governing the roads or trails to be used.

[45 FR 38327, June 6, 1980, as amended at 49 FR 25449, June 21, 1984; 53 FR 16549, May 10, 1988]

§ 251.51 Definitions.

Applicant—any individual, partnership, corporation, association, or other business entity, and any Federal, State or governmental entity or agency which applies for a special use authorization.

Authorized officer—any employee of the Forest Service to whom has been delegated the authority to perform the duties described in this part.

Chief—the Chief of the Forest Service.

Distributing noncommercial printed material—disseminating, posting, placing, or erecting any notice, sign, handbill, petition, or other written and/or graphic material for noncommercial purposes.

Easement—a special use authorization for a right-of-way that conveys a conditioned interest in National Forest System land, and is compensable according to its terms.

Group event—an organized or publicized activity involving, or expected to attract, 25 or more persons and the use of National Forest System lands, resources, or facilities.

Holder—any applicant who has received a special use authorization.

Lease—a special use authorization which conveys a right of occupancy and use of National Forest System

land or facility for a specified period and purpose, and is both revocable and compensable according to its terms.

National Forest System land—all lands, waters, or interests therein administered by the Forest Service.

Noncommercial printed material—written and graphic material that does not advertise, offer, or otherwise attempt to buy, sell, or exchange a commodity, product, or service.

Permit—special use authorization which provides permission, without conveying an interest in land, to occupy and use National Forest System land or facilities for specified purposes, and which is both revocable and terminable.

Rights-of-way—land authorized to be used or occupied for the construction, operation, maintenance and termination of a project or facility passing over, upon, under or through such land.

Secretary—the Secretary of Agriculture.

Ski area—a site and attendant facilities expressly developed to accommodate alpine or nordic skiing and from which the preponderance of revenue is generated, the sale of lift tickets and fees for ski rentals, for skiing instruction, trail passes for the use of permitted maintained ski trails. A ski area may also include ancillary facilities directly related to the operation and support of skiing activities.

Special use authorization—a permit, term permit, lease, or easement which allows occupancy, use, rights, or privileges of National Forest System land.

Term permit—a special use authorization to occupy and use National Forest System land, other than rights-of-way under § 251.53(l) of this part, for a specified period which is both revocable and compensable according to its terms.

45 FR 38327, June 6, 1980, as amended at 49 FR 25447, June 21, 1984; 53 FR 16550, May 10, 1988; 54 FR 22593, May 25, 1989

§ 251.52 Delegation of authority.

Special use authorizations shall be issued, granted, amended, renewed, suspended, terminated, or revoked by the Chief, through delegation, by the Regional Forester, Forest Supervisor, District Ranger or other forest of-

ficer, and shall be in such form and contain such terms, stipulations, conditions, and agreements as may be required by the regulations of the Secretary and the instructions of the Chief (7 CFR 2.60; 36 CFR part 200, subpart B).

§ 251.53 Authorities.

Subject to any limitations contained in applicable statutes, the Chief of the Forest Service, or other Agency official to whom such authority is delegated, may issue special use authorizations for National Forest System land under the authorities cited and for the types of use specified in this section as follows:

(a) Permits governing occupancy and use, including group events and distribution of noncommercial printed materials, under the act of June 4, 1897, 30 Stat. 35 (16 U.S.C. 551);

(b) Leases under the Act of February 28, 1899, 30 Stat. 908 (16 U.S.C. 495) for public sanitariums or hotels near or adjacent to mineral springs;

(c) Permits under the Act of June 8, 1906, 34 Stat. 225 (16 U.S.C. 431, *et seq.*), for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity in conformity with the rules and regulations prescribed by the Secretaries of the Interior, Agriculture, and War, December 28, 1906 (43 CFR part 3);

(d) Term permits under the Act of March 4, 1915, 38 Stat. 1101, as amended, 70 Stat. 708 (16 U.S.C. 497) for periods not over 30 years and (1) for not over 80 acres for (i) hotels, resorts, and other structures and facilities for recreation, public convenience, or safety; (ii) industrial or commercial purposes, and (iii) education or public activities; and (2) for not over 5 acres for summer homes and stores;

(e) Easements for rights-of-way for pipeline purposes for the transportation of oil and gas and products thereof where no Federal land other than National Forest System land is required, and permits for the temporary use of additional National Forest System land necessary for construction, operation, maintenance or termination of a pipeline or to protect the natural environment or the public

safety under section 28 of the Mineral Leasing Act of 1920, 41 Stat. 449, as amended, (30 U.S.C. 185);

(f) Permits, term permits, and easements in the National Grasslands and other lands acquired or administered under title III, Act of July 22, 1937, 50 Stat. 525, as amended, (7 U.S.C. 1011(d));

(g) Permits under section 7 of the Act of April 24, 1950, 64 Stat. 84 (16 U.S.C. 580d) for periods not over 30 years for the use of structures or improvements under the administrative control of the Forest Service and land used in connection therewith;

(h) Permits, term permits, leases, or easements as authorized by the Act of September 3, 1954, 68 Stat. 1146 (43 U.S.C. 931c, 931d), to States, counties, cities, towns, townships, municipal corporations, or other public agencies for periods not over 30 years, at prices representing the fair market value, fixed by the Chief, through appraisal for the purpose of constructing and maintaining on such lands public buildings or other public works;

(i) Permits under the Wilderness Act of September 3, 1964, 78 Stat. 890 (16 U.S.C. 1131-1136) for temporary structures and commercial services and for access to valid mining claims or other valid occupancies and to surrounded State or private land within designated wilderness (see part 293 of this chapter);

(j) Temporary or permanent easements under the Act of October 13, 1964, 78 Stat. 1089 (16 U.S.C. 532-538) for road rights-of-way over lands and interests in land administered by the Forest Service (see § 212.10 of this chapter);

(k) Permits under the Land and Water Conservation Fund Act of September 3, 1964, 78 Stat. 897, as amended (16 U.S.C. 4601-6a(c)), for recreation events and other specialized recreation uses;

(l) Permits, leases and easements under the Federal Land Policy and Management Act of 1976, 90 Stat. 2776 (43 U.S.C. 1761-1771) for rights-of-way for:

(1) Reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems

for the impoundment, storage, transportation, or distribution of water;

(2) Pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) Pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) Systems and related facilities for generation, transmission, and distribution of electric energy, except that the applicant, in addition to obtaining a Forest Service special use authorization, shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act of 1935, as amended, 49 Stat. 838 (16 U.S.C. 791a, *et seq.*);

(5) Systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals and other means of communication;

(6) Roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities;

(7) Such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through National Forest System lands; and

(8) Any Federal department or agency for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any product produced therefrom;

(m) Permits under the Archaeological Resources Protection Act of 1979, 93 Stat. 721 (16 U.S.C. 470aa).

(n) Operation of nordic and alpine ski areas and facilities for up to 40 years and encompassing such acreage as the Forest Officer determines sufficient and appropriate as authorized by the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b).

[45 FR 38357, June 6, 1980; 45 FR 43167, June 26, 1980, as amended at 49 FR 25449, June 21, 1984; 53 FR 16550, May 10, 1988; 54 FR 22594, May 25, 1989]

§ 251.54 Special use applications.

(a) *Pre-application activity.* When occupancy and/or use of National Forest System land is desired, a proponent is encouraged to contact the Forest Service office(s) responsible for management of the affected land as early as possible so potential constraints may be identified, the proposal can be considered in land management plans, and processing of an application can be tentatively scheduled. The proponent will be given guidance and information about:

(1) Possible land use conflicts as identified by review of land management plan, landownership records, and other readily available information sources; (2) application procedures and applicable time requirements; (3) applicant qualifications; (4) fees, charges, bonding and security requirements; (5) necessary associated clearances, permits, and licenses; (6) environmental and management considerations; (7) special conditions; and (8) identification of on-the-ground investigations which will require temporary use permits requested by the proponent, the Forest Service officer will, to the extent reasonable and authorized by law, not disclose project and program information revealed during preapplication contacts.

(b) *Filing applications.* Applications for special uses will be filed with the District Ranger or Forest Supervisor having jurisdiction over the affected land (§ 206.2 of this chapter) except:

(1) Applications for projects on lands under the jurisdiction of two or more administrative units of the Forest Service may be filed at the most convenient Forest Service office having jurisdiction over part of the project and the applicant will be notified where subsequent communications should be directed;

(2) Applications for cost-share and other reimbursements to be issued under § 251.54(j) will be filed in accordance with regulations in § 212.10 (c) and (d) of this chapter; and

(3) Applications for oil and gas pipeline rights-of-way crossing Federal

lands under the jurisdiction of two or more Federal agencies shall be filed with the State Office, Bureau of Land Management, pursuant to regulations in 43 CFR part 2882.

(c) *Coordination of applications.* Authorizations for use of National Forest System land may be conditioned to require State, county, or other Federal agency license, permit, certificate or other approval document, such as Federal Communication Commission license, Federal Energy Regulatory Commission license, State water right, or county building permit. Applicants filing applications with such agencies for a project, will simultaneously file an application with the Forest Service under this section. To minimize duplication, pertinent information from the application made to the other agency can be attached and referred to in the Forest Service application.

(d) *Rights of applicants.* No rights or use privileges are conveyed without a special use authorization.

(e) *Application content.* As a minimum, applications shall include the information contained in paragraphs (e)(1) through (5) of this section.

(1) *Applicant identification.* Identification of the applicant shall be sufficient that the Government will know the true identity of the entity and/or individuals applying. The authorized officer shall give due deference to the findings of another agency such as a public utility commission, the Federal Energy Regulatory Commission, or the Interstate Commerce Commission, in lieu of another detailed finding. If this information is already on file with the Forest Service, it need not be refiled if reference is made to the previous filing date, place and case number. The applicant's name and address is required and, if the applicant is not an individual, the name and address of the applicant's agent who is authorized to receive notice of actions pertaining to the application. If called for by the authorized officer, an applicant in one of the following categories shall also furnish the additional information listed:

(i) A State and local government agency: a copy of the authorization under which the application is made;

(ii) A public corporation: the statute or other authority under which it was organized;

(iii) A Federal government agency: the title of the agency official delegated the authority to file the application;

(iv) A private corporation: (A) Evidence of incorporation and its current good standing; (B) if reasonably obtainable by the applicant, the name and address of each shareholder owning 3 percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; (C) the name and address of each affiliate of the entity; (D) in the case of an affiliate which is controlled by the entity, the number of shares and the percentage of any class of voting stock of the affiliate that the entity owns either directly or indirectly; or (E) in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, either directly or indirectly, by the affiliate; or

(v) A partnership, association or other unincorporated entity: a certified copy of the partnership agreement or other similar document, if any, creating the entity, or a certificate of good standing under the laws of the State.

(2) *Technical and financial capability.* Sufficient evidence will be required to satisfy the authorized officer that the applicant has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain, and terminate the project for which authorization is requested, and is otherwise acceptable.

(3) *Project description.* A project description, including map(s), shall be required in sufficient detail to enable the authorized officer to determine: the feasibility of the project or activity proposed, its impacts on the environment, any benefits provided to the public, the safety of the proposal, the lands to be occupied or used, the terms and conditions to be included, and whether the proposal will comply with applicable laws, regulations and orders.

(4) *Environmental protection plan.* The applicant's proposed measures and plans for the protection and rehabilitation of the environment during construction, operation, maintenance, and termination of the project shall be required.

(5) *Additional information.* The authorized officer may require any other information and data necessary to determine feasibility of the project or activity proposed; impacts on the environment; compliance with applicable laws, regulations, and orders; compliance with requirements for associated clearances, certificates, permits, or licenses; and suitable terms and conditions to be included in the authorization. Requests for additional information if needed will be in writing.

(f) *Processing applications.* The authorized officer will acknowledge receipt of the application in writing.

(1) The authorized officer will assess the applicant's qualifications; complete an environmental analysis, assessment and/or an environmental impact statement under the National Environmental Policy Act of 1969; determine compliance with other applicable laws, regulations and orders; consult with other agencies, local officials, or interested parties and hold public meetings upon reasonable notice when sufficient interest exists to warrant the time and expense; and take any other action necessary to fully evaluate and make a decision to approve or deny the application and to prescribe suitable terms and conditions.

(2) Federal, State, and local government agencies and the public will be given adequate notice and an opportunity to comment upon special use proposals in accordance with Forest Service practices established under the National Environmental Policy Act, and/or other pertinent direction.

(g) *Special application procedures.* (1) Oil and gas pipeline rights-of-way. These will include the citizenship of the applicant(s) and disclose the identity of its participants as follows:

(i) Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of the United States, shall not own an appreciable

interest in any oil and gas pipeline right-of-way or associated permit; and

(ii) The authorized officer shall notify the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources promptly upon receipt of an application for a right-of-way for a pipeline twenty-four (24) inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty (60) days (not counting days on which the House of Representatives or the Senate has adjourned for more than three (3) days) after a notice of intention to grant the right-of-way, together with the authorized officer's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committee, unless each committee by resolution waives the waiting period.

(2) *Electric power transmission lines 66 KV or greater.* Each application for authority to construct and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 66 kilovolts or higher under this section shall be referred to the Secretary of Energy for consultation.

(h) *Response to applications for the distribution of noncommercial printed material for a group event for the public expression of views.* An authorized officer shall grant an application for authorization of distribution of noncommercial printed material or for a group event for the purposes of public expression of views, unless the officer determines that:

(1) The planned event or use would conflict with another use which has been previously approved by special use authorization, contract, or approved operating plan, under this part or parts 221, 223, or 228 of this chapter; or

(2) The planned event or use would present a clear and present danger to public health or safety; or

(3) The planned event or use would be of such nature and duration that it could not reasonably be accommodated in the particular place and time applied for, considering such factors as damage to resources or facilities, interference with ongoing resource pro-

gram activities, or impairment of other public uses authorized for the area; or

(4) The application proposes activities that are prohibited by the rules at part 261 of this chapter or that violate the provisions of Federal or State criminal law.

(5) There is no person or entity authorized to sign a special use authorization on behalf of the group applying for an authorization and/or there is not person or entity willing to accept responsibility for the group's adherence to the terms and conditions of the permit.

(i) *Response to applications for all other special uses.* An authorized officer may deny issuance of an authorization for all other special uses, including group events not subject to paragraph (h) of this section, if that officer determines that:

(1) The proposed use would be inconsistent or incompatible with the purpose(s) for which the lands are managed, or with other uses; or

(2) The proposed use would not be in the public interest; or

(3) The applicant is not qualified; or

(4) The use would otherwise be inconsistent with applicable Federal and State laws; or

(5) The applicant does not or cannot demonstrate technical or financial capacity.

(6) There is no person or entity authorized to sign a special use authorization on behalf of the group applying for an authorization and/or there is no person or entity willing to accept responsibility for the group's adherence to the terms and conditions of the permit.

When an application is denied on the basis of paragraph (i)(1) or (i)(3) of this section, the authorized officer shall provide the applicant the opportunity to accept an alternative site or time selected by that officer.

[45 FR 38327, June 6, 1980; 45 FR 43167, June 26, 1980, as amended at 48 FR 29122, June 24, 1983; 49 FR 46895, Nov. 29, 1984; 53 FR 16550, May 10, 1988]

§ 251.55 Nature of interest.

(a) A holder is authorized only to occupy such land and structures and

conduct such activities as is specified in the special use authorization. The holder may sublet the use and occupancy of the premises and improvements authorized only with the prior written approval of the authorized officer, but the holder shall continue to be responsible for compliance with all conditions of the special use authorization.

(b) All rights not expressly granted are retained by the United States, including but not limited to (1) continuing rights of access to all National Forest System land (including the subsurface and air space); (2) a continuing right of physical entry to any part of the authorized facilities for inspection, monitoring, or for any other purposes or reason consistent with any right or obligation of the United States under any law or regulation; and (3) the right to require common use of the land or to authorize the use by others in any way not inconsistent with a holder's existing rights and privileges after consultation with all parties and agencies involved. When costs can be feasibly allocated and have not been amortized, a new holder may be required to compensate existing holders for an equitable proportion of the original costs or other expense associated with the common use.

(c) Special use authorizations are subject to all outstanding valid rights.

(d) Each special use authorization will specify the lands to be used or occupied which shall be limited to that which the authorized officer determines: (1) Will be occupied by the facilities authorized; (2) to be necessary for the construction, operation, maintenance, and full utilization of the authorized facilities or the conduct of authorized activities; and, (3) to be necessary to protect the public health and safety and the environment.

(e) The holder will secure permission under applicable law, and pay in advance, the value as determined by the authorized officer for any mineral and vegetative materials (including timber) to be cut, removed, used, or destroyed by the holder from the authorized use area or other National Forest System land. The authorized officer may, in lieu of requiring an advance payment, require the holder to stockpile or stack

the material at designated locations for later disposal by the United States.

§ 251.56 Terms and conditions.

(a) *General.* Each special use authorization shall contain: (1) Terms and conditions which will (i) carry out the purposes of applicable statutes and rules and regulations issued thereunder; (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment; (iii) require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or state law; and (iv) require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance if those standards are more stringent than applicable Federal standards; and

(2) Such terms and conditions as the authorized officer deems necessary to (i) protect Federal property and economic interests; (ii) manage efficiently the lands subject to the use or adjacent thereto; (iii) protect other lawful users of the lands adjacent to or occupied by such use; (iv) protect lives and property; (v) protect the interests of individuals living in the general area of the use who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; (vi) require siting to cause least damage to the environment, taking into consideration feasibility and other relevant factors; and (vii) otherwise protect the public interest.

(b) *Duration and renewability—(1) Requirements.* If appropriate, each special use authorization will specify its duration and renewability. The duration shall be no longer than the authorized officer determines to be necessary to accomplish the purpose of the authorization and to be reasonable in light of all circumstances concerning the use, including (i) resource management direction contained in land management and other plans; (ii) public benefits provided; (iii) cost and life expectancy of the authorized facilities; (iv) financial arrangements for the project; and (v) the life expectancy of associated facilities, licenses, etc. Except for special use authorizations

issued under the National Forest Ski Area Permit Act of 1986, authorizations exceeding 30 years shall provide for revision of terms and conditions at specified intervals to reflect changing times and conditions.

(2) *Ski area permits.* (i) For authorizations issued under the National Forest Ski Area Permit Act of 1986, the authorized officer normally shall issue a ski area authorization for 40 years, if, upon consideration of information submitted by the applicant, the authorized officer finds that the ski area development meets the following standards:

(A) In the case of an existing permit holder, existing on-site investment is of sufficient magnitude to justify authorization for 40 years;

(B) In the case of an existing permit holder, existing investment of capital is in ski-related facilities;

(C) Planned investment capital is directly related to development of ski area facilities and is not for financing regular, ongoing operation and maintenance costs;

(D) Ski facilities requiring long-term investment are, or will be, located predominately on land authorized under a permit;

(E) The number and magnitude of planned facilities, as detailed in a Master Development Plan, clearly require long-term financing and/or operation;

(F) The United States is not the owner of the principal facilities within the authorized ski area.

(ii) A term of less than 40 years shall be authorized for a ski area when the applicant requests a shorter term or when, in the authorized officer's discretion:

(A) Analysis of the information submitted by the applicant indicates that a shorter term is sufficient for financing of the ski area;

(B) The ski area development, whether existing or proposed, does not meet the standards of paragraph (2)(i)(A) through (F) of this section; or

(C) A 40-year authorization would be inconsistent with the approved forest land and resource management plan governing the area (36 CFR part 219).

(c) *Preconstruction approvals.* Forest Service approval of location,

design and plans (or standards, if appropriate) of all developments within the authorized area will be required prior to construction.

(d) *Liability.* Holders shall pay the United States for all injury, loss, or damage, including fire suppression costs, in accordance with existing Federal and State laws.

(1) Holders shall also indemnify the United States for any and all injury, loss, or damage, including fire suppression costs, the United States may suffer as a result of claims, demands, losses, or judgments caused by the holder's use or occupancy.

(2) Holders of rights-of-way for high risk use and occupancy, such as, but not limited to, powerlines, and oil and gas pipelines, shall be held liable for all injury, loss, or damage, including fire suppression costs, caused by the holder's use or occupancy without regard to the holder's negligence, provided that the maximum liability shall be specified in the special use authorization, but shall not exceed \$1,000,000 for any one occurrence. Liability for injury, loss or damage, including fire suppression costs, in excess of the specified maximum shall be determined by the laws governing ordinary negligence of the jurisdiction in which the damage or injury occurred.

(e) *Bonding.* The authorized officer may require the holder of a special use authorization to furnish a bond or other security to secure all or any of the obligations imposed by the terms of the authorization or by any applicable law, regulation, or order.

(f) *Special terms and conditions—*

(1) *Public service enterprises.* Special use permits authorizing the operation of public service enterprises shall require that the permittee charge reasonable rates and furnish such services as may be necessary in the public interest, except where such rates and services are regulated by Federal, State or municipal agencies having jurisdiction.

(2) *Common carriers.* Oil and gas pipelines and related facilities authorized under section 28 of the Mineral Leasing Act of 1920, 41 Stat. 449, as amended (30 U.S.C. 185), shall be constructed, operated and maintained as common carriers. The owners or oper-

ators of pipelines shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or nonfederal lands. In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported, or purchased. The common carrier provisions of this section shall not apply to any natural gas pipeline operated (i) by any person subject to regulation under the Natural Gas Act, 52 Stat. 821, as amended, (15 U.S.C. 717) or (ii) by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality. Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipeline companies is offered for sale, each pipeline company shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(g) *Conversion of Ski Area Authorizations.* (1) The Forest Service shall request that all existing permit holders convert existing authorizations for ski areas to a new authorization issued pursuant to the National Forest Ski Area Permit Act.

(2) Any current holder of a ski area permit who wishes to convert an existing permit to one issued pursuant to the National Forest Ski Area Permit Act must submit a written request for the new authorization to the authorized officer.

(3) With the consent of the holder, the authorized officer shall convert the authorization if:

(i) The holder is in compliance with the existing authorization;

(ii) All fees currently due under the existing authorization are paid in full; and

(iii) Any proposed modifications of terms and conditions of the existing authorization included in a request for

conversion meet the standards of paragraphs (2)(i) (A) through (F) of this section and the relevant requirements of this subpart.

(4) A holder retains the right to decline a new authorization offered pursuant to this paragraph and to continue to operate under the terms of the existing permit. However, pursuant to the rules at § 251.61 of this subpart, major modifications of existing permits shall require conversion to a permit issued under the authority of the National Forest Ski Area Permit Act, unless the holder provides compelling justification for retaining the existing permit.

[45 FR 38327, June 6, 1980, as amended at 49 FR 46895, Nov. 29, 1984; 54 FR 22594, May 25, 1989]

§ 251.57 Rental fees.

(a) Special use authorizations, except as otherwise provided in this part or when specifically authorized by the Secretary of Agriculture, shall require the payment in advance of an annual rental fee as determined by the authorized officer. The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles. When the annual fee is less than \$100, an advance lump-sum payment for up to five years may be required.

(b) All or part of the fee may be waived by the authorized officer, when equitable and in the public interest, for the use and occupancy of National Forest System land in the following circumstances:

(1) The holder is a State or local government or any agency or instrumentality thereof, excluding municipal utilities and cooperatives whose principal source of revenue from the authorized use is customer charges; or

(2) The holder is a nonprofit association or nonprofit corporation, which is not controlled or owned by profit-making corporations or business enterprises, and which is engaged in public or semi-public activity to further public health, safety, or welfare, except that free use will not be authorized when funds derived by the holder through the authorization are

used to increase the value of the authorized improvements owned by the holder, or are used to support other activities of the holder; or

(3) The holder provides without charge, or at reduced charge, a valuable benefit to the public or to the programs of the Secretary; or

(4) When the rental fee is included in the fees for an authorized use or occupancy for which the United States is already receiving compensation; or

(5) When a right-of-way is authorized in recompensation for a right-of-way conveyed to the United States; or

(6) For rights-of-way involving cost-share roads or reciprocal right-of-way agreements.

(c) No rental fee will be charged when the holder is the Federal government.

(d) Special use authorizations issued under § 251.53 (g) of this part may require as a part of the consideration the reconditioning and maintenance of the government-owned or controlled structures, improvements, and land to a satisfactory standard. The total consideration will be based upon the fair market value of the rights and privileges authorized.

(e) Special use authorizations involving government-owned or controlled buildings, structures, or other improvements which require caretakers' services, or the furnishing of special services such as water, electric lights, and clean-up may require the payment of an additional fee or charge to cover the cost of such services.

(f) Except where specified otherwise by terms of a special use authorization, rental fees may be initiated or adjusted whenever necessary: (1) As a result of fee review, reappraisal; or (2) upon a change in the holder's qualifications under paragraph (b) of this section; and (3) notice is given prior to initiating or adjusting rental fees.

(g) In addition to the fee waiver provisions of paragraph (b) of this section, the Forest Supervisor of the Mark Twain National Forest may, until December 31, 1990, waive rental fees for special use permits when all of the following conditions are met:

(1) The rental fee established for the use reflects the current market value for the use;

(2) The cost of collecting the rental fee would exceed either the amount of the rental fee itself, or the amount of any advance lump sum payment of the rental fee as specified in paragraph (a) of this section, and

(3) The Forest Supervisor has exhausted all other reasonable alternatives, such as consolidated billing or similar cost saving measures.

(h) Each ski area authorization issued under the authority of the National Forest Ski Area Permit Act shall include a clause that provides that the Forest Service may adjust and calculate future rental fees to reflect Agency revisions to the existing system for determining fees based on fair market value or to comply with any new fee system for determining fees based on fair market value that may be adopted after issuance of the authorization.

[45 FR 38327, June 6, 1980, as amended at 51 FR 16683, May 6, 1986; 54 FR 22594, May 25, 1989]

§ 251.58 Cost reimbursement. [Reserved]

§ 251.59 Transfer of special use privileges.

Except for easements issued under authorities other than § 251.53 (e) and (l) of this part, a special use authorization may be transferred upon application and the approval of the authorized officer. The transferee must qualify and agree to comply with and be bound by the terms and conditions of the authorization and such new conditions and stipulations as existing or prospective circumstances may warrant. If the holder, through death, voluntary sale, transfer, or through enforcement of a valid legal proceeding or operation of law, shall cease to be the owner of the authorized physical improvements, the authorization shall be subject to termination.

§ 251.60 Termination, revocation, and suspension.

(a) The authorized officer may suspend, revoke, or terminate any special use authorization except an easement issued pursuant to § 251.53 (e) and (l): (1) For noncompliance with applicable statutes, regulations, or terms and conditions of the authorization; (2) for

failure of the holder to exercise the rights and privileges granted; (3) with the consent of the holder; or (4) when, by its terms, a fixed or agreed upon condition, event, or time occurs.

(b) A permit may be suspended, revoked, or terminated, in the discretion of the authorized officer, for reasons in the public interest.

(c) A right-of-way authorization granted to another Federal agency will be limited, suspended, revoked, or terminated only with that agency's concurrence.

(d) A right-of-way authorization serving another Federal agency will be limited, suspended, revoked, or terminated only after advance notice to, and consultation with, that agency.

(e) Prior to suspension, revocation, or termination, the authorized officer shall give the holder written notice of the grounds for such action and reasonable time to cure any noncompliance.

(f) Immediate temporary suspension of a special use authorization, in whole or in part, may be required when the authorized officer determines it to be necessary to protect the public health or safety or the environment. In any such case, the superior of the authorized officer will, within 10 days of request of the holder, arrange for an on-the-ground review of the adverse conditions with the holder. Following this review the superior will take action to affirm, modify or cancel the temporary suspension as soon as possible.

(g) Except for suspension or termination of easements issued pursuant to § 251.53 (e) and (l) of this part all appeals from any decision of an authorized officer under this section shall be taken under 36 CFR part 211, subpart B of this chapter.

(h) The authorized officer may take actions to suspend, revoke, or terminate easements issued pursuant to § 251.53 (e) and (l) of this part under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under 7 CFR 1.130 through 1.151. No administrative proceeding shall be required if the easement, by its terms, provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time.

(i) The Chief may terminate any easement granted under the provisions of the Act of October 13, 1964, 78 Stat. 1089 (16 U.S.C. 534): (1) By consent of the owner of the easement, (2) by condemnation, or (3) upon abandonment after nonuse by the owner of the easement for a period of 5 years. Before any easement is terminated for nonuse or abandonment, the owner of the easement must be given notice and, upon his request made within 60 days after receipt of the notice, a hearing in accordance with the provisions of 36 CFR part 211, subpart B of this chapter.

(j) Upon termination of a special use authorization, the holder shall remove within a reasonable time the structures and improvements and shall restore the site to a condition satisfactory to the authorized officer, unless otherwise waived in writing or in the authorization. If the holder fails to remove the structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but that will not relieve the holder's liability for the removal and site restoration costs.

[45 FR 38327, June 6, 1980; 45 FR 43167, June 26, 1980, as amended at 48 FR 28639, June 23, 1983]

§ 251.61 Modifications.

(a) A holder shall file a new or amended application for a special use authorization to cover new, changed, or additional use(s) or area.

(1) In approving or denying changes or modifications, the authorized officer shall consider among other things, the findings or recommendations of other involved agencies and whether the terms and conditions of the existing authorization may be continued or revised, or a new authorization issued.

(2) Changes during construction, or at any other time, from the approved plans or the location shown in the application or authorization shall be allowed only with the prior approval of the authorized officer.

(b) A holder may be required to furnish as-built plans, map(s), or survey(s) upon completion of construction.

(c) A holder shall obtain approval of the authorized officer prior to maintenance or other activities that will impact the environment, other users, or the public.

§ 251.62 **Appealance.**

Except in an easement, a special use authorization shall become effective when signed by both the applicant and the authorized officer. The authorization must be signed by the applicant and returned to the authorized officer within 30 days of its receipt by the applicant, unless extended by the authorized officer. Refusal of an applicant to sign and accept a special use authorization within the time allowed, and before its final approval and signature by the authorized officer, shall terminate an application and constitute denial of the requested use and occupancy.

[53 FR 16550, May 10, 1988]

§ 251.63 **Right-of-way.**

If it is determined that a right-of-way shall be needed by the United States across nonfederal lands directly or indirectly owned or controlled by an applicant for a right-of-way across Federal lands, the authorized officer may condition a special use authorization to require the holder to grant the United States the needed right-of-way.

§ 251.64 **Renewals.**

(a) When a special use authorization provides for renewal, the authorized officer shall renew it where such renewal is authorized by law, if the project or activity is still being used for the purposes previously authorized and is being operated and maintained in accordance with all the provisions of the authorization. In making such renewal, the authorized officer may modify the terms, conditions, and special stipulations to reflect any new requirements imposed by current Federal and State land use plans, laws, regulations or other management decisions.

(b) When a special use authorization does not provide for renewal, it is discretionary with the authorized officer, upon request from the holder and prior to its expiration, whether or not

the authorization shall be renewed. A renewal pursuant to this section shall comply with the same provisions contained in paragraph (a) of this section.

§ 251.65 **Information collection requirements.**

(a) The rules of this subpart governing special use applications (§ 251.54) and modifications of special use authorizations (§ 251.61) specify the information that applicants for special use authorizations or holders of existing authorizations must provide in order for a Forest officer to act on a request. As such, these rules contain information requirements as defined in 5 CFR part 1320. These information requirements are assigned control number 0596-0082.

(b) Public reporting burdens for this collection of information is estimated to vary from a 30 minutes in very simple cases to several months for extremely complex requests for authorizations, with an average of 4 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief (2700) Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[54 FR 6893, Feb. 15, 1989]

Subpart C—Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands

AUTHORITY: 16 U.S.C. 472, 551.

SOURCE: 54 FR 3362, Jan. 23, 1989, unless otherwise noted.

§ 251.80 **Purpose and scope.**

(a) This subpart provides a process by which those who hold or, in certain instances, those who apply for written authorizations to occupy and use National Forest System lands, may

appeal a written decision by an authorized Forest Service line officer with regard to issuance, approval, or administration of the written instrument. The rules in the subpart establish who may appeal under these rules, the kinds of decisions that can and cannot be appealed, the responsibilities of parties to the appeal, and the various procedures and timeframes that will govern the conduct of appeals under this subpart.

(b) The rules in this subpart seek to offer appellants a fair and deliberate process for appealing and obtaining administrative review of decisions regarding written instruments that authorize the occupancy and use of National Forest System lands.

§ 251.81 **Definitions and terminology.**

For the purposes of this subpart, the following terms are defined:

Appeal. A request to a higher ranking officer for relief from a written decision filed under this subpart by an applicant for or a holder of a written instrument issued or approved by a Forest Service line officer.

Appeal decision. The written decision rendered by the Reviewing Officer on an appeal for relief under this subpart. The use of this term is limited to the final decision of a Reviewing Officer and does not refer to a stay decision or to any other determinations or procedural orders made on the conduct of an appeal (§ 251.99).

Appeal record. The documents submitted to the Reviewing Officer by an appellant, intervenor, or Deciding Officer (§ 251.98).

Appellant. An eligible applicant for or holder of a written instrument issued for the occupancy and use of National Forest System land (or their authorized agent or representative) who files an appeal pursuant to the provisions of this subpart (§ 251.86).

Deciding officer. The Forest Service line officer who makes a decision related to issuance, approval, or administration of an authorization to occupancy and use National Forest System lands that is appealed under this subpart.

Decisions regarding a written instrument or authorization to occupy and use National Forest System lands. A

broad, all inclusive phrase used throughout this subpart to connote the full range of actions and decisions a forest officer takes to issue written instruments, or to manage authorized uses of National Forest System lands, including, but not limited to, enforcement of terms and conditions, and suspension, cancellation, and/or termination of an authorization.

Forest Service line officer. The Chief of the Forest Service or a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions under this subpart. Specifically, for the purposes of this subpart, a Forest Service employee who holds one of the following offices and titles: District Ranger, Forest Supervisor, Deputy Forest Supervisor, Regional Forester, Deputy Regional Forester, Deputy Chief, Associate Deputy Chief, Associate Chief, or the Chief of the Forest Service.

Intervenor. An individual who, or organization that, is an applicant for or holder of the written instrument, or a similar instrument, issued by the Forest Service that is the subject of an appeal, and who has an interest that could be affected by an appeal, and who has made a timely request to intervene in that appeal, and who has been granted intervenor status by the Reviewing Officer (§ 251.96).

Issuance of a written instrument of authorization. Applies both to decisions to grant and to deny a written instrument or authorization.

Notice of appeal. The document prepared and filed by an appellant to dispute a decision subject to review under this subpart (§ 251.90).

Oral presentation. An informal meeting (in person or by telephone) at which an appellant, intervenor, and/or Deciding Officer may present information related to an appeal to the Reviewing Officer (§ 251.97).

Parties to an appeal. The appellant(s), intervenor(s), and the Deciding Officer.

Responsive statement. A written document prepared by a Deciding Officer that responds to the notice of appeal record by an appellant (§ 251.94).

Reviewing Officer. The officer at the next administrative level above that of

THE WHITE HOUSE

WASHINGTON

March 22, 1994

MEMORANDUM FOR JULIE FALKNER, DOI-BLM
MICHELLE ALTEMUS, DOI-FWS
SUSIE TREES, DOI-NPS
ADELLA BACKIEL, USDA-FS
LISA GUIDE, DOI-BOR

FROM:  BRIAN BURKE, WHITE HOUSE DOMESTIC POLICY COUNCIL
 HOPE SCHMELTZER, WHITE HOUSE DOMESTIC POLICY COUNCIL

SUBJECT: PERMITTING PROCEDURES FOR CONCESSIONERS ON PUBLIC
LANDS

It has come to our attention that permitting procedures for concessioners on public lands are in flux at the Forest Service, the National Parks Service and at the Bureau of Reclamation. We would like to seize this opportunity to review the permitting procedures among all the bureaus and encourage unification where possible, while recognizing individual agency needs. Of particular concern are the issues of permit length and renewability. We would like to meet on Monday, March 28, 1994, at 4:30 pm in the Old Executive Office Building to discuss these issues.

Senate Bill 208 (attached and summarized) addresses these matters for the National Parks Service. Senator Bumpers of Arkansas sponsored the legislation and opened it up for debate on the Senate floor on Monday, March 21. Any comments you have on the strategy proposed therein are welcome.

Please contact us as soon as possible at 456-5573 to confirm your availability for this meeting, and to arrange for clearance into the complex. We look forward to working with you.

encl.

SENATE BILL 208

The following summarizes the key provisions of Senate Bill 208 to reform the concessions policies of the National Parks Service (NPS), sponsored by Senator Dale Bumpers, and introduced on the Senate floor on Monday, March 21, 1994.

- Competitive Selection Process established for concessions contracts through NPS regulations to be promulgated within 180 days after enactment of the Act. NPS will solicit proposals by publishing a prospectus for the contract. The prospectus will incorporate the terms and conditions of the existing concessions contract, the facilities or services to be provided by the contract and the public services to be offered by NPS.
- Temporary Contracts may be approved by NPS to prevent service interruption.
- Minimum Requirements to win the selection process require NPS determination that the bidder will provide satisfactory services, protect and preserve the parks, pay the minimum acceptable franchise fees and provide needed capital investment. NPS may impose additional requirements.
- Preferential Right of Renewal will be granted only to outfitters and similar service providers who obtain no property interest in any park improvement and who operate satisfactorily during the previous contract term. There will be no preferential right to provide new or additional services.
- Contract Lengths will be set by NPS, not to exceed ten years generally, but up to twenty years if NPS deems it necessary. Temporary contracts may not exceed two years.
- Contract Transfers must be approved by NPS based on a determination that the transferee will satisfy all contract conditions, and protect and preserve the parks. In addition, the relevant House and Senate committees must be notified.

Name

Organization

Phone #

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Domestic Policy Council

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America Outdoors

American Recreation Coalition - Derrick Crandall *

National Forest Recreation Association

Natl Ski Area Association

PHOTOCOPY
PRESERVATION

Memorandum



P.O. Box 1348
Knoxville, TN
37901

615-524-4814
Fax 615-525-4765

March 21, 1994

To: Brian Burke, Senior Policy Analyst
Domestic Policy Council
From: David L. Brown, Executive Director, America Outdoors

Subject: Elimination of CUL's

Thank you for taking my telephone call this afternoon regarding the elimination of CUL's. You asked me to give you some idea of the impact this might have on outfitting businesses. After thinking through the question I do have a projection.

There are 360 CUL's issued to outfitters, according to the National Park Service. NPS is already eliminating them in many areas and not providing the outfitters with an alternative. In some cases, NPS has issued too many CUL's. Some are not being utilized. But the comment that there are a lot of resource impacts out there (as a justification for their elimination) presumes that the impacts are coming from outfitted trips.

As for the impacts on outfitters, some outfitters have simply been informed that no CUL would be issued for the 1994 season and were not given an alternative. If this is the option we are in big trouble. Trips have already been canceled, money refunded, and staffing needs readjusted. Wilderness Inquiry, a Minnesota based outfitter who specializes in trips for the disabled is a prime example. Their sea kayak trips on Lake Powell, (heavy impacts out there among all the motor boats) were eliminated. This may just be the beginning. It concerns us that there appears to be a bias at NPS against commercially provided recreation.

The CUL is not a very sound basis for doing business on NPS units, so we are not inalterably opposed to a change or modification. The term of a CUL is for only one year -- not a sufficient planning horizon for investment or even reservations for outfitters and, as this policy change points out, a risky permit upon which to base any level of investment. To convert all CUL's to concessions contracts is impractical.

Memorandum



P.O. Box 1348
Knoxville, TN
37901

615-524-4814
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From: David L. Brown, Executive Director, America Outdoors

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MANUAL TRANSMITTAL SHEET

Release

8-33

Date

9/9/87

Subject

H-8372-1 - SPECIAL RECREATION PERMITS FOR COMMERCIAL USE

1. Explanation of Material Transmitted: This release transmits a new Handbook which provides detailed instructional guidance for reviewing, issuing, administering, evaluating, and monitoring Special Recreation Permits (SRP's) for commercial uses on lands and related waters under the Bureau of Land Management administration. This guidance should be used as a ready reference by all BLM personnel.

This Handbook is being transmitted in response to Field requests, provide detailed instructions necessary to carry out policy and direction of associated regulations and Manual, and provide consistent SRP program guidance.

2. Reports Required: None.
3. Material Superseded: None.
4. Filing Instructions: File as directed below.

REMOVE:

None

INSERT:

H-8372-1

(Total: 19 Sheets)

Assistant Director, Land and Renewable Resources

SPECIAL RECREATION PERMITS FOR COMMERCIAL USE



H-8372-1- SPECIAL RECREATION PERMITS FOR COMMERCIAL USE

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CHAPTER 1 - ISSUANCE OF PERMITSI. Issuance of PermitsA. When Permits are Required

1. Special Recreation Permits (SRP's) are required for commercial recreational use of the public lands and related waters (43 CFR 8372.1-1) except in cases when the authorized officer determines permits are unnecessary where a use or event begins and ends on nonpublic lands or related waters, traverses less than one mile of public lands or one shoreline mile and poses no threat of significant damage to public land or water resource values (43 CFR 8372.1-3b). Commercial special recreation activities should not be sponsored or co-sponsored by the Bureau of Land Management (BLM). For concession related permits and/or leases refer to 43 CFR 2920 and related Manual Section.

2. In addition to the definition of "commercial" in 43 CFR 8372.0-5(a), commercial operations requiring a SRP include operators whose base of operations are off the public lands, but who rent equipment or livestock for use on public lands if they, their employees, or agents occupy or use public lands or related waters in connection with their rental program. For example, a SRP is required if a boat rental operator provides service, including delivery or pickup of boats, at public landing sites. No permit is necessary if the boat rental operator's customers transport the boats to and from the public lands and related waters. Similarly, operators who rent horses, livery equipment, or provide drop-off air taxi service without accompanying or providing additional guiding services would not need a permit.

B. Availability of Permits

1. SRP's may be issued on a first-come, first-served basis until the affected area's desired use level is reached. The desired use level is determined in resource management plans (RMP's), recreation area management plans (RAMP's), or, in their absence, through analysis of resources and visitor use for each area using the recreation opportunity spectrum (ROS), or limits of acceptable change (LAC) methods. When an area's desired use level has been reached, no additional permits will be issued. New permits may become available when:

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a. An area's desired use level is increased; for example, by changing management objectives to increase the number of allowable users within a use season or by lengthening the use season.

b. A permit is revoked or not renewed because of noncompliance.

c. A permittee voluntarily relinquishes a permit.

d. New areas for use become available.

2. In some situations SRP's may also be issued on a competitive basis. When new opportunities for obtaining a permit become available and the authorized officer determines there is enough interest, may invite interested parties to submit proposals for obtaining the available permits (see II. D. 3).

C. Application Procedures

1. Applications will be submitted on BLM Form 8370-1, up to one year, but not less than 120 days, in advance of the intended use, unless a shorter period is approved. See the Illustration 1 for the step-by-step process for issuing a commercial SRP.

D. Supplemental Information - Throughout the process the authorized officer may require the applicant to submit supplemental information in sufficient detail to evaluate the extent and impact of the proposed activity. Examples include:

1. Statements of financial capability.

2. Operating plan and associated maps.

3. Certificates of safety training.

4. List and condition of equipment and livestock that will be used.

5. Layout and description of facilities that will be used at requested reserved sites.

6. Samples of proposed advertising, brochures and customer rates.

7. An insurance policy, or where policy is on record, a certificate of insurance.

8. When required, a letter or permit granting permission to use other agency or private land in conjunction with public land.

9. Experience relating to the activity, and references.

10. Appropriate Federal, State or local licenses.

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E. Award of Permits - After completion of all procedures listed in the application procedures in I.C., the authorized officer will make a final decision to approve or disapprove the permit application and so notify the applicant. Prior to issuing a permit, the authorized officer must ensure the applicant has:

1. Submitted an operating plan.
2. Provided a copy of insurance policy for new permits or a certificate of insurance for annual validations.
3. Paid estimated fees in advance.
4. Obtained necessary Federal, State or local licenses.
5. Obtained bonds, if required.
6. Submitted other required information with the application that must be provided in advance of issuing the permit. This may include a list of names authorized to do business on behalf of the applicant and any limitations upon their authority.

F. Permit Duration - Commercial SRP's should generally be issued for 5 years; however, circumstances may warrant a shorter or longer period. Criteria used to determine appropriate permit length include management objectives, resource management planning timeframes, environmental risks involved, public demand for the intended use, and a permittee's past or current performance rating.

A multiyear permit must be validated annually which can only occur when the permittee has paid annual fees, submitted bonds if required, provided copies of any necessary policies, licenses, etc., and received an acceptable or probationary annual performance rating.

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Steps Required in Issuing a Commercial Special Recreation Permit

<u>Step</u>	<u>Responsible Official</u>	<u>When - Unless Otherwise Approved</u>	<u>Action</u>
1.	Authorized Officer	As appropriate	Notifies potentially affected users of permit requirements
2.	Authorized Officer	More than 120 days prior to the desired use date	In response to requests, mails or hands out SRP application forms and other information (maps, pamphlets, stipulations), and requirements for supplemental information.
3.	Applicant	120 days prior to the desired use date, unless a shorter period is approved	Submits completed application and required supplemental information to appropriate BLM office.
4.	Authorized Officer	Upon receipt of application	Checks application for completeness, prepares environmental assessment of proposed use unless it is a categorical exclusion, coordinates with other affected parties, evaluates proposed estimated payment, checks on past performance or bills due.
5.	Authorized Officer & Applicant	As appropriate	Discusses and coordinates any problems with the application; requests additional information.
6.	Authorized Officer	Within 30 days of receipt of application or 15 days before desired use date, whichever is earlier	Advises applicant of disapproval, or requests: insurance policy, certificate of insurance, or bonds if not submitted in Step 3, and payment of estimated fees.

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| 7. | Applicant | As appropriate before desired use date. | Provide to BLM: Policy or certificate of insurance (as appropriate), bond (if required), estimated payment, and other requested information. |
| 8. | Authorized Officer | As appropriate before desired use date. | Issue approved permit with stipulations signed by the Authorized Officer. Also issue required reporting forms (daily trip logs and post-use report). |

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CHAPTER 2 - ALLOCATION OF USEII. Allocation of UseA. When Use Must be Allocated

1. Specific allocation of the amount of commercial use may or may not be indicated on the permit. If not indicated, the permittee may be authorized as much use as applied for, however such use may need to be limited at some time in the future. Use is specifically allocated when an area has reached its maximum allowable use level (carrying capacity) as determined by recreation management objectives in the RMP and the planning process. Limitations may be imposed for other reasons. Examples may include:

a. A determination that no operator should receive more than a certain portion of the total allowable use within any one management area, or

b. A determination that a permittee is only capable of providing a specific amount of service after reviewing a permittee's operating plan and other supplemental information.

2. The following criteria should be considered in determining when an area's maximum allowable use is being approached:

a. User conflicts exist.

b. Evidence of resource impacts.

c. Recreation management objectives can no longer be attained (limits of acceptable change may be used).

d. Enforcement/compliance problems exist.

e. Safety problems exist.

f. Conflicts with adjacent landowners.

3. If any of the situations listed in II.A.2 above become evident, and preferably before they become evident, indirect allocation actions should be initiated and exhausted before direct allocation actions are used. These are described in II.B. and II.C. below.

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B. Indirect Allocation Actions - The following are examples of indirect allocation actions that can be initiated to satisfy the above criteria.

1. Control access and facility development - either limit or increase access to use areas, or limit or increase the amount of developed facilities. This may be done, for example, through construction, maintenance, or signing or lack thereof, or in some cases, site dismantling.

2. Information and education efforts to promote environmental awareness and protection - techniques could include: visitor contacts, news releases, signs, pamphlets, brochures or other handouts containing information on low impact uses, highly vulnerable resources, alternative locations, or times to avoid crowded conditions.

3. Improve site durability.

4. Provide extra protection for vulnerable resources - limit location or times of use, signing, fencing, or other mitigating measures.

5. Voluntary efforts by users to reduce resource impacts, visitor use conflicts, or potentially unsafe situations.

C. Direct Allocation Actions - When the need for more direct management methods is apparent, use opportunities may be allocated. This allocation consists of imposing limits on users who participate in similar types of activities. These limits may affect the: overall number of individuals, number of permittees, number of groups or parties, number of individuals per group, and/or number of users by sector (i.e., commercial, competitive, or individual/group use). These limits may be space or time-oriented. Where management agreements apply, allocation may be a joint Federal/State effort.

D. Methods of Allocating Use - Examples of methods to allocate use include, but are not limited to:

1. Lottery - After applicants are screened to meet minimum standards, e.g., safety and past performance, those remaining applicants may be awarded a permit by a lottery system.

2. Historical Use - Assign the number of user days according to historical use records. This is defined as the average of the highest two seasons in the preceding 5-year period.

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3. Competitive System - After standards for desired services are established, invitations to submit proposals either by open bid or matching bid by existing permittees are extended to all operators through news releases, Federal Register notices, and direct mailings. The proposals are then evaluated against the standards. Those who rank the highest are awarded a permit and a specific number of user days. Standards include, but are not limited to: (a) financial capability, (b) management experience, (c) employee's experience, (d) safety experience and training, (e) previous performance evaluations, (f) type and condition of equipment, (g) ability to meet desired user service needs, and others as appropriate.

In a competitive system the amount an applicant is willing to pay the government, either per user day, fair-market value, or a percent of receipts, should not be the only criterion. This may result in varying fee schedules among permittees and make billing administration more difficult. The total portfolio of the applicant should be taken into consideration. If a competitive system of allocating use is selected, an additional criterion the authorized officer may consider is a one time, initial bonus bid. Such a bid may be considered a tie-breaking criterion between applicants of essentially equal qualifications. The successful applicant would pay the one time amount in addition to the standard fees described in Chapter V. Other tie-breaking criteria of a nonmonetary nature may also be used.

In some situations, it may be beneficial to limit those eligible to submit proposals and bids to existing permittees. For example, the authorized officer may determine that the number of existing permittees is optimal for the area and additional user days or starts should be distributed only among existing permittees. Existing permittees could be given preference to match any proposal or high bid based on historical use, local expertise in providing visitor services, or other site-specific factors.

4. Common Pool - Assigning or adjusting use during the season may be accomplished by using a "common pool." When a permittee cannot use assigned user days, the permittee can return them to a common pool for allocation to others. Permittees shall not be allowed to trade or assign use among themselves. Allocations from this common pool may be reallocated to commercial or noncommercial users by the authorized officer periodically, continuously, or both. For instance, commercial use is normally assigned several months ahead of the use season in order for permittees to market that use. (Prior to the use season, or periodically during the season, the authorized officer may request permittees to turn in user days they do not think they can use, or allow permittees to ask for additional user days.) Excess user days can then be reallocated to those who want them on the basis of first-come, first-serve; lottery; or other method.

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A continuous method of reallocation could work as follows: First, establish a requirement that use must be confirmed so many days in advance. All use not confirmed by that date or otherwise turned back in would be put in the common pool. This available use would be reallocated continuously by a first-come, first-served, lottery, or other method. Noncommercial user days may also be added to or taken from the common pool.

When there are fewer user days available than the total number requested, no one individual or operator should be allocated more than the established party size for each particular area.

E. Methods of Reducing Use - If, through planning decisions or an environmental analysis, a reduction is required in the amount of commercial use, one of the following methods may be used:

1. Voluntary reduction.

2. Reduce use proportionally for all permittees (i.e., all permittees would take the same percent reduction).

3. Invite applications for the purpose of selecting the most qualified permittees, who collectively would provide a reduced level of use. Invitees could be limited to existing permittees. Standards for selection on this basis should include those listed in II.D.2. In making reductions using this method the authorized officer may consider the following options from existing permittees, which include: (a) divide the allowable use equally among permittees, (b) permittees could retain their entire existing allocation, or (c) permittees could retain a certain high percentage.

An individual permittee's use may also be reduced if allocated user days are consistently not used. New use levels should be assigned based on the amount of use the permit holder effectively used during the previous 5-year period. In determining new use levels, consider such factors as economic fluctuations, weather, or other natural phenomena which may have adversely affected the permittee's ability to make full use of the allocated amount.

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CHAPTER 3 - RENEWAL OF PERMITSIII. Renewal of Permits

A. When Permits may be Renewed - The authorized officer should consider the following factors when determining if a permit may be renewed:

1. The permittee has met all of the requirements for an initial permit application.
2. The permittee has applied for permit renewal within timeframes established by the authorized officer.
3. The permittee has satisfactorily met the requirements of previous Federal permits including an acceptable performance evaluation. The authorized officer may also consider conformance with applicable laws and regulations on all other Federal, State or county administered lands or related waters.
4. The permittee has a current insurance policy or Certificate of Insurance on file with the authorized officer (See Chapter VI.C., Insurance).
5. The permittee has paid all billing notices when due.
6. Continued use is consistent with the RMP and/or RAMP, and there are no overriding use authorizations.
7. The permittee has provided all requested data in a timely manner.

B. Process of Renewal - The application procedures for renewals are the same as described in Chapter I.C., Applications. The procedures for establishing permit duration are the same as described in Chapter I.F., Permit Duration.

The authorized officer should generally show preference to a permittee seeking renewal when the permittee is in full compliance under the current permit. When expired permits are renewed or reissued, the amount of use allocated in the new permit is at the discretion of the authorized officer, and in accordance with resource planning or recreation management plans. The objective is to allocate an amount consistent with available capacity and/or the level of use the holder was able to effectively use under the former permit. If a reduction in use is determined to be necessary, follow the procedures in II.E.

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CHAPTER 4 - TRANSFER OF PERMIT PRIVILEGES

IV. Transfer of Permit Privileges - If an existing permittee wishes to sell or otherwise terminate their business and desires that permit privileges be transferred to a new owner, the permittee must so notify the authorized officer in advance, in writing, and receive advance written approval for the permit transfer from the authorized officer. Failure to do so may lead to voiding transfer action. The existing permittee must advise the authorized officer in advance of any action that would ultimately result in a change in ownership or controlling business interest. The approval of a transfer is discretionary with the authorized officer. The prospective buyer should be given the first opportunity to seek the permit. The authorized officer should consider the following items in determining whether to allow the permit transfer:

1. Adequate documentation must be provided to the authorized officer that a bona fide business transfer or sale is intended. The transfer or sale must include a substantial portion of the equipment and other tangible assets needed to conduct a business. Any attempted transfer or sale of authorized use alone shall not be permitted.
2. The previous permittee should generally have operated at an acceptable standard for at least the past 2 years.
3. The proposed permittee should provide written description to the authorized officer the type of service to be offered, including any anticipated operational changes from the present permittee.
4. The proposed permittee must be able to meet all standards required in conformance with management plans, outfitter licensing requirements, and other regulations of Federal, State, or local agencies.
5. The proposed permittee must provide sufficient information and referrals for the authorized officer to assess the proposed permittee's qualifications to operate.
6. The proposed permittee must provide documentation of business agreements or contracts such as names of owners, partnership agreements, or articles of incorporation.
7. A permit that is transferred may contain terms and conditions, and/or an allocation which is entirely different from the original permit.

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CHAPTER 5 - FEESV. Fees

A. General Procedure - Fees for commercial use permits are intended to recover the cost of issuing and administering the permit, plus provide a fair return to the government for the opportunity to make a profit using Federal resources. Fees shall be established and maintained by the Director, and may be adjusted from time to time as appropriate. Changes in the fee schedule shall be published in the Federal Register and otherwise made generally available to the public.

Fees for commercial SRP's will be calculated by:

1. Totalling all customer payments received by the permittee, their employees, or agents for goods or services provided in connection with commercial activities authorized by the SRP; whether provided on public lands or related water, or not;
2. Adjusting the total customer payments by:
 - a. Subtracting allowable deductions.
 - b. Applying applicable discounts for off-public land use.
3. Multiplying the adjusted total by 3 percent. This is the amount due BLM and must be at least the minimum \$50 annual fee.

B. Deductions and Discounts (The authorized officer may request verification of these deductions and discounts.)

1. Deductions for Transportation and Lodging

From total customer payments, deductions shall be allowed for certain transportation and lodging costs before arrival at the beginning of a trip, and after departure at the end of a trip from a permittee's headquarters or local community. These deductions do not include costs incurred between the permittee's headquarters or local community and the public lands, or for costs incurred during the permitted activity or trip regardless of public or private land status.

- a. Transportation Deductions - For applicable transportation described above, the actual costs incurred may be deducted, provided they are reasonable and consistent with local area charges. Where specific amounts are determined by the Director, they shall be used.

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b. Lodging Deductions - Lodging costs paid for or borne by the permittee which are incurred on nonpublic lands, before or after the permitted activity, may be deducted up to the actual amount paid, to the extent they are consistent with local community rates. Costs incurred for lodging on nonpublic land during the trip shall not be deducted; however, the time spent on nonpublic land may be applied to the discount for nonpublic land use.

2. Discount for Nonpublic Land Use - A discount shall be allowed for time spent off public land or related waters which occurs between the time when a customer leaves a permittee's headquarters or local community at the beginning of a trip, and when they return at the end of a trip. (See Table 1). Make sure there is no overlap or double deduction with transportation costs in B.1. above.

Commercial permittees who rent equipment, deliver, and pick-up customers on public lands or related waters are not eligible for this nonpublic land use discount.

Table 1

<u>Percent of Total Time on Public Lands or Related Waters</u>	<u>Fee Reduction</u>	<u>Multiplication Factor</u>
Less than 1-5%	80%	.20
6-60%	40%	.60
61-100%	None	None

The permittee is required to provide trip, duration, itinerary, or such other information as may be specified by the authorized officer to support requests for fee reductions based on use of nonpublic lands or related waters. All deductions and discounts described in 1. and 2. above must be approved by the authorized officer. See Illustration 1 for a graphic example of eligible deductions and discounts.

C. Minimum Fee - The nonrefundable, minimum annual fee is \$50.

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D. Fee Collection - Fees due the government must be paid in advance of any authorized use. Prior to the use season an estimated fee should be paid, except that periodic payments may be allowed as provided under V.D.2. below.

1. Estimated Fees - In estimating fees prior to the use season the authorized officer may select one of the following two options:

a. Option 1 - Base estimated fees on the amount of fees paid the previous year, but not less than the minimum annual fee.

b. Option 2 - In consultation with the permittee, the authorized officer will estimate a permittee's adjusted seasonal revenue, and calculate the estimated fee based on 3 percent of that amount. The estimate should consider a permittee's financial documents, previous year's business activity, planned customer rate schedules, amount of use to be authorized, and any other related documents. Retain any documentation in a case file.

2. Periodic Payments - Subject to an administrative cost evaluation, periodic payments may be allowed for fees exceeding \$500. Generally, permittees whose estimated annual fee is greater than \$500 but less than \$2,500 may pay one-half the amount due in advance and the remainder at midseason. When the estimated annual fee exceeds \$2,500, a permittee may pay one-third in advance and the remainder in two equal payments during the season. Specific payment dates should be established.

E. Refunds and Non-Use Payments - Permit fees shall be nonrefundable where the amount of intended use is determined in the application allocation process or operating plan, except in allocated areas when notification of whole or partial cancellation is made in sufficient time to allow reassignment of use to others, or the authorized officer concludes the nonuse is beyond the permittee's control. The authorized officer should determine and notify permittees how far in advance is sufficient. To reduce administrative costs, any refunds due should be applied to the next year's estimated fees. In any case the minimum annual fee of \$50 per year is nonrefundable. In nonallocated areas, all but the minimum fee may be refunded, unless a greater amount is needed to recover administrative expenses.

F. Other Fees Associated with Permit

1. Site Reservation Fee - When determined necessary, as part of a permittee's plan of operation, resource management objectives identified through the planning process, and to eliminate potential use conflicts between operators, temporary use of a specific site on the public lands may be authorized in a SRP, and an additional annual fee of \$100 shall be charged for each site. Examples of such sites may include, but are not limited to, base and drop camps, caches, corrals and loading facilities, boat launches, and helicopter landing spots.

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Site and/or area reservations authorized by the BLM to commercial permittees, particularly base and drop camps, shall not exclude the general public, except for existing permits on the date of this Handbook, which may exclude other publics until changed through the planning process. Any such sites will be documented in the SRP.

It is important that these sites remain temporary in nature. Evidence of a reserved site should be removed at the end of each use season. Any requests for permanent facilities, long-term capital improvements, concession-related facilities, or special short term cases should be handled through a land use authorization (lease or permit) under authority of the regulations contained in 43 CFR 2920.

2. Livestock Grazing Fees - When authorized to use livestock in connection with a SRP, fees for that use will be based on rates prescribed for grazing in other Bureau directives. In determining whether grazing use can be authorized, the authorized officer must reference the allotment management plan and coordinate with affected grazing permittees. The privileges of a grazing permittee are not involuntarily precluded by a subsequently awarded SRP.

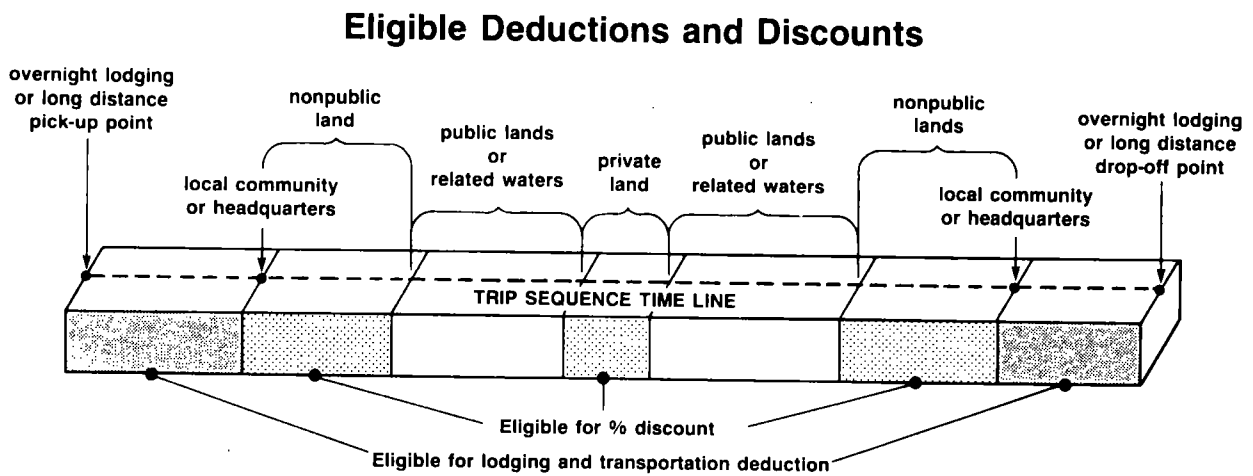
G. Approval to Waive or Vary Fees - Approval must be obtained in writing from the Director to waive or vary fees, or the method to determine them, from those prescribed in this Handbook.

The authorized officer may waive fees for commercial permits when the use is educational or scientific and is sponsored by an accredited institution of learning. Applicants for waiver of fees on this basis may be required to provide documentation of their official recognition as educational or scientific institutions by Federal, State, or local government bodies. The use must relate directly to scientific or educational purposes and shall not be primarily for recreational purposes. Although fees may be waived, applicants on this basis must compete for use allocations where applicable. Nonprofit status by itself is not a basis for waiving fees.

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EXAMPLE OF ELIGIBLE DEDUCTIONS AND DISCOUNTS



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EXAMPLE OF FEE CALCULATION

Step 1 - Total all customer payments received by the permittee
= \$100,000.

Step 2 - Subtract from the total in Step 1, all allowable transportation and lodging deductions when reported as part of total payments in Step 1.

\$ 100,000.
-5,000. (Transportation and lodging deductions)
\$ 95,000.

Step 3 - To the amount derived in Step 2, apply any applicable discounts for off-public land and related water use.

Use according to Table 1, in V.B.2.

\$ 95,000.
x.60 (Permittee used public lands and waters
\$ 57,000. 55% of the trip)

Step 4 - Multiply the amount derived in Step 3 by 3 percent to derive the amount due BLM.

\$ 57,000.
x x.03
\$ 1,710. = Amount Due BLM

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CHAPTER 6 - TERMS AND CONDITIONS OF USEVI. Terms and Conditions of Use

A. General Terms - If not already included on SRP permit Form 8370-1, the following general terms should be applicable to and made a part of all commercial special recreation permits.

1. The permittee shall comply with all Federal, State, and local laws, ordinances, regulations, orders, postings, or written requirements applicable to the area or operations covered by the special recreation permit. The permittee shall ensure that all persons operating under the authorization have obtained all required Federal, State, and local licenses or registrations. The permittee shall make every reasonable effort to ensure compliance with these requirements by all agents of the permittee and by all clients or customers under the permittee's supervision.

2. A SRP represents a nonexclusive privilege authorizing special uses of the public lands and related waters and, should circumstances warrant, the permit may be modified by the BLM at any time, including the amount of use. The authorized officer may suspend a SRP if necessary to protect public resources, health, safety, the environment, or noncompliance with permit stipulations.

3. No value shall be assigned to or claimed for the permit, or for the occupancy or use of Federal lands or related waters granted thereupon. The permit privileges are not to be considered property on which the permittee shall be entitled to earn or receive any return, income, price or compensation. The use of a permit as collateral is not recognized by the BLM.

4. A SRP only authorizes the use, for the time and in the area, as specifically described therein.

5. Unless expressly stated, the SRP does not create an exclusive right of use of an area by the permittee. The permittee shall not interfere with other valid uses of the Federal land by other users. The United States reserves the right to use any part of the area for any purpose.

6. The permittee may not assign or sublease any portion of the permit authorization or interest therein, directly or indirectly, voluntarily or involuntarily. However, contracting of equipment or services may be approved by the authorized officer in advance, if necessary, to supplement a permittee's operations. Permit use is not considered here to be a "service" and cannot be contracted. Such contracting should not constitute more than half the required equipment or services. If equipment or services (excludes use under permit) are contracted, the permittee shall continue to be responsible for compliance with all stipulations and conditions of the permit.

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7. All advertising and representations made to the public and the authorized officer must be accurate. Although the addresses and telephone numbers of the BLM may be included in advertising materials, official agency symbols may not be used. The permittee shall not use advertising that attempts to portray or represent the activities as being conducted by the BLM. The permittee may not portray or represent the permit fee as a special Federal users tax. The permittee must furnish the authorized officer with any current brochure and price list.

8. The permittee must assume responsibility for inspecting the permitted area for any existing or new hazardous conditions, e.g., land slides, avalanches, rocks, changing water or weather conditions, falling limbs or trees, submerged objects, hazardous wildlife, or other hazards that present risks for which the permittee assumes responsibility.

9. In the event of default on any mortgage or other indebtedness, such as bankruptcy, creditors shall not succeed to the operating rights or privileges of the permittee's SRP.

10. Training trips by the permittee must be reported in the same manner as commercial trips, and if conducted during a controlled use season will count towards the assigned allocation.

11. Unless specifically authorized, a SRP does not authorize the permittee to erect, construct, or place any building, structure, or other fixture on the public lands. Any use of the public lands is subject to the condition that upon leaving, the lands must be restored as nearly as possible to preexisting conditions.

12. The permittee must present or display a copy of the special recreation permit to a participant, authorized officer's representative, or law enforcement personnel upon request. If required, the permittee must display a copy of the permit or other identification tag on equipment used during the period of authorized use. (This will enable the authorized officer to validate use without making unnecessary contacts with the permittee.)

13. The authorized officer, or other duly authorized representative of the BLM, may examine any of the records or other documents related to the permit, the permittee or the permittee's operator, employee, or agent for up to 3 years after expiration of the permit.

14. Adequate insurance must be obtained by the permittee in order to protect the user, the permittee, and the U.S. Government against liability and litigation. (See VI.D.)

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B. Special Stipulations - In addition to the above general stipulations, the authorized officer may require the permittee to comply with any reasonable stipulations or conditions necessary to protect the lands or resources involved, reduce user conflicts, or minimize health and safety hazards. Any such stipulations will also be made part of the permit. BLM shall not stipulate or otherwise regulate matters that are the responsibility of other Federal, State, or local agencies as stated in VI.A.1.

C. Bonds - The authorized officer may require the posting of a cash or surety bond, irrevocable letter of credit, or other guarantee in such form and in such amount as the authorized officer determines to be sufficient to defray the costs of restoration, reclamation, or rehabilitation of the lands affected by the permitted use. Bonds and guarantees will be returned to the permittee upon satisfactory compliance with all permit stipulations, including any reclamation and/or rehabilitation requirements.

If approved by the authorized officer in advance, a payment bond or irrevocable letter of credit from a financial institution, or other guarantee may be used to pay estimated advance fee payments in excess of the minimum annual permit fee of \$50.

D. Insurance and Liability - A property damage, personal injury, and comprehensive public liability insurance policy is required of all commercial permittees to provide restitution for damage or injury to participants, spectators or both, or to privately owned resources, and to protect the United States from litigation resulting from actions taken or caused by the permittee or participants in a permitted use. The reviewing office should consult with the State insurance authority in determining the acceptability of standard or unique policy provisions, clauses and industry practices.

The minimum general liability limits are: \$100,000 per occurrence and \$300,000 annual aggregate for bodily injury, \$10,000 property damage per occurrence and \$25,000 annual aggregate, if the policy specifies aggregate limits. The authorized officer may require a larger amount as a condition of the permit. The insurance policy shall name the United States Government and the permittee as named, additional, or co-insured. All liability policies are to specify that the insurance company shall have no right of subrogation against the United States of America. If the insurance company declines to issue the waiver, the United States Government must be named as additional insured on the permittee's policy. The permittee shall indemnify and hold harmless the United States against any liability for personal injury, loss of life, or property damage arising in any way from activities under the permit.

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The permittee shall furnish a copy of the insurance policy directly to the authorized officer. The policy should stipulate the authorized officer should be notified 30 days in advance of the termination or modification of the policy. The name on the insurance policy must be the same as the name on the permit. For multiyear permits the insurance policy must be provided the first year, but on each subsequent year the authorized officer may accept a valid certificate of insurance. Those permittees holding insurance policies which only insure the permittee and not the permittee's employees must ensure that their employees also have the required insurance in effect, and that a certificate of insurance is furnished to the authorized officer. For multiyear permits, the insurance need only be valid during periods of actual use. Because of the importance of the time factor in filing claims, protection of the permittee, and visitors, permittees should be encouraged to immediately report to their insurance company any incident that could possibly result into a claim at a later date.

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CHAPTER 7 - PERMIT ADMINISTRATIONVII. Permit Administration

A. Monitoring for Compliance - Permits are monitored for compliance with stipulations, terms and conditions. The amount of such monitoring is commensurate with the resource values at risk, the permittee's past record of compliance, the ability to obtain monitoring services through other means such as local police, other permittees, the public, and other factors. The capability to monitor the terms and conditions of the permit by the authorized officer should not be a determining factor in issuing a permit. Failure to comply with stipulations or conditions may result in administrative penalties, civil suit, or criminal sanctions (see VII.C.).

B. Performance Evaluation - A performance evaluation is required of all commercial permittees. The purpose of a performance evaluation is to: evaluate a permittee's performance and compliance with the terms and conditions of the permit; determine if use complies with management plan objectives; review past year receipts to determine overpayment or underpayment; use the evaluation as a criterion in issuing a new permit or renewing an existing permit; or other purposes as defined by the authorized officer. At a minimum, an annual evaluation must be completed. Performance evaluations may also be conducted at the end of the permit term, when there are changes in operating plans or procedures, when violations of the permit occur, prior to the issuance of a new use authorization to an existing permittee, or prior to permit renewal.

The performance review standards are developed by the authorized officer in consultation with the permittee(s), and others as appropriate including State and Federal land managing agencies, State outfitter licensing boards, outfitter/guide associations, State fish and game agencies, and advisory councils. The performance standards should be included as a part of the SRP or operating plan.

Compliance with other Federal, State, local laws, or regulations is a key consideration in performance evaluations. However, BLM shall not conduct detailed inspections or evaluations to ensure compliance with other agency's regulations as part of the SRP administration process. BLM's role is to request or arrange for, as necessary, the other agency to carry out its responsibility. Certain exceptions may be outlined and provided for in cooperative agreements or memorandums of understanding.

Important considerations in the development of the evaluations are the degree of compliance with conditions of the permit and operating plans, the protection of resource values, and quality of services rendered to the public. Performance standards may be developed and adapted to meet local needs. The authorized officer should attempt to develop consistency in evaluation formats with other BLM offices whenever possible.

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Three different performance levels are recognized: acceptable, probationary, and unacceptable. An opportunity to address probationary or unacceptable performance items may be given to the permittee consistent with other stipulations in the permit, and prior to any decision regarding cancellation or other disciplinary measures. Ratings are confidential between the BLM and the permittee, except that to the extent allowable by law or regulation. If a permittee receives a probationary or unacceptable summary rating, notification of such rating may be forwarded to the State outfitter licensing board, and/or related outfitter/guide associations. A copy of the completed evaluation will be maintained in the permittee's permanent file.

A permittee given a probationary performance rating will only qualify for a permit not to exceed one year, and permits with remaining periods of more than one year will be so amended.

C. Violations and Penalties - Violation of the operating plan requirements, rules of conduct, or other Federal, State, or local regulations by a permittee or a permittee's employees or agents on any federally administered lands or related waters can result in administrative penalties issued against the permittee(s) by the authorized officer. Specific administrative penalties should be identified in a permittee's operating plan. These administrative penalties may be in addition to civil and criminal charges which may be brought against a permittee by the BLM.

Administrative penalties should be reciprocal, whenever possible, between BLM offices or other administering agencies. A memorandum of understanding should be developed that identifies the penalty policy, or specific penalties that would apply.

Permits shall be immediately suspended, and other appropriate penalties imposed, for violations of Federal, State, or local laws, regulations, or permit stipulations providing for the safety or health of the public. An example could be the lack of a required local license for food service.

Alleged violations will be brought to the attention of the involved permittee(s) by the authorized officer, either by telephone, personal contact, or in writing. Based upon available information, the authorized officer will notify the involved permittee(s), in writing (by registered mail if necessary), explaining the nature of the violation and any steps the permittee(s) must take to remedy the situation. If an adverse administrative penalty is to be assessed a permittee, the authorized officer should follow the procedures outlined in Chapter VIII, Protests and Appeals.

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The permittee must take immediate steps to rectify the situation to the satisfaction of the authorized officer. Depending upon the severity of the violation and/or the permittee's ability to rectify the violation, the authorized officer reserves the discretionary authority to impose specific penalties upon the permittee, including, but not limited to: permit privilege denial, probation, suspension, or revocation, in whole or in part, and without compensation. This action affects both those permittees who hold current authorized permittee status on the permitted area and those who do not. For example, permittees providing commercial services not authorized by their permit may have future requests for permit privileges denied on all other federally administered areas for 1 to 3 years. Outfitters serving court ordered probation for violation of Federal regulations pertaining to public lands and resources may similarly have permit privileges denied for the duration of the probation period.

All communications should be documented in the permittees' permanent file. Information on violations shall be made part of a permittees' annual performance evaluation.

A less than acceptable performance evaluation will result in probation, suspension, or revocation of all or a portion of the permit privileges as identified in the operating plan or related regulations. If the permittee receives a probationary level 2 years in a row, the authorized officer may suspend or terminate the permit and/or deny future permit applications.

D. Inspection of Records - The authorized officer, or other duly authorized representative of the BLM, may examine any of the records or other documents related to the permit, of the permittee or the permittee's operator, employee, or agent for up to 3 years after expiration of the permit. This should be done on an as needed basis.

E. Reporting Requirements - The authorized officer may establish reasonable reporting requirements for permittees. Information may be requested on the number of clients served, fees collected, and related matters. The authorized officer may establish reasonable time requirements for the submission of these reports such as on a daily basis, within 10 days of the end of the month, seasonally, or annually. For individual commercial events, the post use questionnaire contained in Form 8370-1 may be sufficient.

The authorized officer should ensure that the information collected from permittees is of sufficient detail to allow the preparation and submission of the BLM standard annual recreation report on a fiscal year basis.

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The permittee shall notify the authorized officer of any accident which occurs while involved in activities authorized by this permit which result in: death, personal injury requiring medical attention, or in property damage greater than \$200 (lesser amounts if established by State law). Reports should be submitted within 48 hours in the case of death or injury, or 10 days in accidents involving property damage. The authorized officer shall report accidents on Form DI 134 to WO-811.

Special recreation permit fees are deposited to the Land and Water Conservation Fund (Account Number 145005.4), except those collected in western Oregon which are deposited to the O & C Account (Number 145882). In fiscal year reporting of permit fee revenues, report only fees deposited during the applicable fiscal year. In the case of permits issued on a calendar year basis, report only those fees actually deposited during the applicable fiscal year.

F. Coordination and Joint Permits - Commercial recreation activities involving more than one jurisdiction (i.e., two resource areas, other agency lands, private lands, etc.) may require the development of joint permits. Local, State governing bodies, or private property owners may require separate permits or authorizations. However, the authorized officer should consider the development of memorandums of understanding, joint decision documents, or cooperative agreements to improve overall efficiency and effectiveness between managing agencies and/or the private sector. Should separate authorizations be necessary, the permittee is responsible for securing appropriate agency or private property owner clearances and/or permits, and provide proof on demand by BLM.

A primary consideration in multijurisdictional cases is improved public service through issuance of a single permit, and reduction in administrative costs both for the BLM and the permittee. Normally, the office having the the most significant portion of the activity (i.e., river mileage or acreage) should issue the permit. In the event of questionable jurisdiction, the next higher line management should designate the administering office. Commercial activities involving multiple agencies (e.g. BLM/USFS) may require the development of interagency agreements and/or permits. The agency having the most significant portion of the activity should process the application and issue the permit. Additionally, fee revenues should be distributed in accordance with agreed upon criteria (i.e., percent of use area) and deposited/reported in accordance with applicable agency procedures. One stop shopping and fee collection is encouraged where joint agencies are involved. Interagency transfer of permit processing fees should be avoided if possible when deposits are destined to the same account.

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CHAPTER 8 - PROTESTS AND APPEALS

VIII. Protests and Appeals - The decisions of the authorized officer regarding special recreation permits may be protested to the authorized officer and/or appealed to the Interior Board of Land Appeals in accordance with the following procedures:

A. Protests

1. Proposed decisions of the authorized officer may be protested (including published proposed decisions in the Federal Register or a newspaper of general circulation).

2. Protests shall be filed with the authorized officer and shall include convincing evidence that raises reasonable doubt about the correctness of BLM's proposed action.

3. Protests must be received by the authorized officer within 15 days of: (a) receipt of the proposed decision by the affected party, or (b) the published proposed decision in the Federal Register or a newspaper of general circulation. Protests received more than 15 days after notification of the proposed decision are not timely filed and do not have to be considered.

4. Upon filing of a protest, the authorized officer shall reconsider the decision to be implemented in light of the evidence submitted by the protestant, and in view of other information pertinent to the case. At the conclusion of the review of the protest, the authorized officer shall prepare a recommended decision on the protest, and it shall be reviewed by the next higher level authority. The decision of the higher level authority shall be the final decision of the BLM. This decision may be appealed. Final decisions on protests should be made within 15 days of receipt of protests.

B. Appeals

1. Any person whose interest is adversely affected by a final decision (including published decisions in the Federal Register or a newspaper of general circulation) of the authorized officer may appeal the final decision under Title 43 Code of Federal Regulations, Part 4.

2. A notice of appeal must be received by the authorized officer (a) within 30 days of receipt of the final decision, or (b) within 30 days of publishing the final decision in the Federal Register or a newspaper of general circulation. A notice of appeal received more than 30 days after notification of the final decision is not timely filed, and if not waived per 43 CFR 4.410, shall not be considered.

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3. Within 30 days after filing the notice of appeal with the authorized officer, the appellant must file a complete statement of reasons for the appeal with the Interior Board of Land Appeals, and provide a copy to the Regional Solicitor.

4. All final decisions of the authorized officer shall remain effective pending the appeal unless the Secretary rules otherwise. Petitions for stay of decisions may be made to the Secretary, through the Director, Office of Hearings and Appeals.

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Glossary of Terms

-A-

allocation: process to specifically assign use between and ration among competing users for a particular area of public lands or related waters. Allocation includes both indirect and direct methods.

assignment (subletting): the prohibited practice whereby a permittee assigns, subleases, sells, or otherwise transfers authorized use to another individual, group, or business who is not an employee or approved agent of the permittee.

authorized officer: any employee of the Bureau of Land Management authorized to perform the duties described herein.

-B-

bail schedule: a list of agency laws and violations with minimum fines assigned to each as set by the Chief Judge and the Judicial District. The process begins when the agency submits to the U.S. Attorney's Office a list of all laws, rules, and regulations for which criminal penalties exist. This list is referred to a committee of magistrates for discussion, consideration, and recommendation. The committee submits their recommended bail schedule to the Chief Judge for signature. The schedule then becomes an Exhibit of the Court. It should be noted that the bail schedule includes only an abbreviated description of the violation.

bond (cash, payment, surety): a cash bond is an amount of money deposited with the Government which can be drawn upon to defray the costs of restoration and rehabilitation of the lands affected by a permitted use. A payment bond is an amount of money deposited or a promissory arrangement entered into to guarantee payment of fees associated with a special recreation permit. A surety bond is a promissory note of a financial institution that guarantees payment of an amount of money to be used to defray the costs of restoration of the lands affected by the permitted use.

certificate of insurance: official documentation from a licensed insurance company that proves the applicant/permittee has a valid current insurance policy covering the activity or event specified in the special recreation permit, and that the United States is listed as a co-insured.

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-C-

commercial recreational use: any nonexclusive recreational use of the public lands or related waters for business or financial gain. When any permittee, employee, or agent of a permittee, operator, or participant makes or attempts to make a profit, salary, increase their business or financial standing, or supports, in any part, other programs or activities from amounts received from or for services rendered to customers or participants in the permitted activity as a result of having the special recreation permit, the use will be considered commercial. Subsistence activities of Alaska Natives (as defined in the Alaska Native Claims Settlement Act) in Alaska are not considered recreational use. The collection by a permittee or designated agent of any fee, charge, or other compensation which is not strictly a sharing of, or is in excess of, actual expenses incurred for the purposes of the activity or use shall make the activity or use commercial. Use by educational and therapeutic institutions is considered commercial when the above criteria are met. Commercial operations requiring a permit include activities whose base of operations are off the public lands, but who rent equipment or livestock for use on public lands if they, their employees, or agents occupy or use public lands or related waters in connection with their rental program. Profit-making organizations are automatically classified as commercial, even if that part of their activity covered by the permit is not profit-making. Nonprofit status of any group or organization under the Internal Revenue or Postal Laws or regulations does not in itself determine whether an event or activity arranged by such a group or organization is noncommercial. Any person, group, or organization seeking to qualify as noncommercial shall have the burden of establishing to the satisfaction of the authorized officer that no financial or business gain will be derived from the proposed use.

common pool: vehicle or mechanism to reallocate user days from those who cannot use previously assigned user days to those who desire new or additional user days. (See II.D.)

-H-

historical use: this is generally defined as the average of the highest two use seasons in the preceding 5-year period.

-I-

irrevocable letter of credit (ILC): a type of cash bond issued to BLM by a bank in an amount equal to the required advance fees or penal sum of a bond. An ILC is similar to a cash deposit, and the BLM may draw on the issuing bank up to the amount stated in the ILC (reference BLM Form 1822-4, Cash Bond).

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-L-

limits of acceptable change: the amount of human-caused change to biological, physical, or social components which are tolerable within an acceptable level without degrading the recreational experience.

-M-

maximum allowable use: the amount and type of recreational use an area can accommodate without altering either the environment or the users experience beyond the degree of change deemed acceptable by the management objectives for the area.

-O-

operating plan: an applicant's/permittee's plan to conduct their activity or event on public lands or related waters in conjunction with a special recreation permit. An operating plan will describe at a minimum: how services will be delivered; how an event will be conducted; and measures that will be implemented to protect resources and reduce safety hazards.

-P-

permittee: a person or group who has fulfilled all the requirements for and has been awarded a special recreation permit (SRP).

public lands and related waters: public lands are lands or interest in lands administered by the Bureau of Land Management. Related waters are waters which lie directly over or adjacent to public lands and require some management control to protect federally administered resources or to provide for enhanced visitor safety.

-R-

recreation opportunity spectrum: A continuum used to characterize recreation opportunities in terms of setting, activity and experience opportunities. See BLM Manual 8320 for more detailed discussion.

-U-

user day: any calendar day, or portion thereof, for each individual accompanied or serviced by an operator or permittee on the public lands or related waters.

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-V-

violation notice: the Violation Notice (Form 9260-9) is a process permitted by law and serves to bring the violator before the court without the necessity of an office immediately taking the arrested person before a magistrate. This method will be utilized only when sufficient probable cause exists that the violation occurred and that the subject apprehended is the violator. Authorized to issue violation notices is granted only to delegated special agents and rangers.



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MANUAL TRANSMITTAL SHEET

Release
8-50
Date
10/5/89

Subject

8390 - RECREATION CONCESSION LEASES AND VENDOR PERMITS

1. Explanation of Material Transmitted: This release transmits a new Manual Section which provides policy and instructions for reviewing, issuing, administering, evaluating, and monitoring recreation concession leases and vendor permits on lands and related waters under the Bureau of Land Management (BLM) administration. It provides the program staff specialist and line manager with overall policy parameters concerning the authorization of recreation concession leases and vendor permits issued for commercial recreation uses. Detailed guidance contained herein shall be used as a ready reference by applicable BLM personnel.

This Manual is transmitted in response to Field requests and to consolidate program guidance in order to avoid reissuance each year.

2. Reports Required: None.
3. Material Superseded: None.
4. Filing Instructions: File as directed below.

REMOVE:

None

INSERT:

8390

(Total: 29 Sheets)

Deputy Director

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8390 - RECREATION CONCESSION LEASES AND VENDOR PERMITS

.01 Purpose. This Manual provides Bureau of Land Management (BLM) policy and program direction for administering a recreation concession lease and vendor permit management program on the public lands, related waters, and supplements the regulations set forth in 43 CFR 2920 and 8372. In this Manual, the term concession includes only those recreation concessioners under lease. The term vendor includes businesses operating in association with recreational uses or activities, including certain special recreation permittees. More detailed procedures will be contained in the 8390 Recreation Concession and Vendor Manual Handbook Series.

.02 Objectives. The objectives of this guidance are to:

A. Standardize the administrative procedures for the issuance of leases and collection of fees related to the recreation concession management program, clarify procedures for issuance of recreation vendor permits, and provide for effective management on a Bureauwide basis in order to maintain a desired level of consistency and uniformity.

B. Provide the regulatory flexibility and predictability which will encourage a framework for the stability and financial success required of business operations.

.03 Authority.

A. Sections 302, 304, and 310 of the Federal Land Policy and Management Act of 1976, as amended, P.L. 94-579 (43 U.S.C. 1732 et seq.).

B. Land and Water Conservation Fund Act of 1965, as amended, P.L. 88-578 (16 U.S.C. 460 (1-6a) et seq.).

C. Federal Claims Collections Act of 1966, as amended and supplemented, (31 U.S.C. 3711 et seq.).

D. Independent Offices Appropriations Act of 1952, (31 U.S.C. 483 and 9701 et seq.).

E. Alaska National Interest Lands Conservation Act of 1980, P.L. 96-487 (16 U.S.C. 3101, et seq.).

F. Oregon and California Grant Lands Act of 1937, P.L. 75-876 (43 U.S.C. 1181a, et seq.).

G. Sikes Act of 1974, P.L. 93-452 (16 U.S.C. 670, et seq.).

H. National Environmental Policy Act of 1969, P.L. 91-190 (42 U.S.C. 4321, et seq.).

I. Title 4 CFR, Subpart 101 - Federal Claims Collection Standards.

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- J. Title 36 CFR, Subpart 71 - Recreation Fees.
- K. Title 43 CFR, Subpart 2808 - Reimbursement of Costs.
- L. Title 43 CFR, Subpart 2920 - Leases, Permits, and Easements.
- M. Title 43 CFR, Subpart 8372 - Special Recreation Permits, Other Than on Developed Recreation Sites.
- N. Departmental Manual, Part 346.
- O. Departmental Manual, Part 516, Chapter 6, Appendix 5 - Categorical Exclusion Review.

.04 Responsibility.

A. The Director, through the Deputy Director, Assistant Director, Lands and Renewable Resources, and the Chief, Division of Recreation, Cultural, and Wilderness Resources, shall:

1. Establish policy, goals, objectives, and procedures for managing recreation concession leases and vendor permits on public lands and related waters within the framework of public law and Departmental policy.
2. Provide direction, management, and leadership relating to establishing fees and the issuance of recreation concession leases and vendor permits on public lands and related waters. Handle requests for any waivers or requests to deviate from established policy or procedures.
3. Explain interrelationships and applicable policies between recreation management and lands programs with regard to recreation concessions and vendors programs.
4. Maintain liaison with other government agencies, permittees, user groups, and organizations on a national level concerned with recreation concession leases and vendor permits on public lands and related waters.

B. State Directors shall:

1. Implement policy and provide Statewide program coordination and guidance for managing recreation concession leases and vendor permits on public lands and related waters. Delegate signing authority commensurate with the complexity of the lease or permit.
2. Review, evaluate, and ensure accomplishment of approved Annual Work Plan items related to recreation concession leases, vendor permits, fees, planning, allocation, and administration.

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3. Provide program development and technical assistance to Field Offices as required to ensure recreation concession administration is adequately accomplished. Ensure that individuals assigned to administer recreation concession leases receive appropriate training in performance contracting and/or contract stipulations, negotiations, and other courses on dealing with various publics.

4. Maintain liaison with other government agencies, recreation concessioners, vendor permittees, user groups, and organizations concerned with recreation concessions/vendors in the respective States.

C. District Managers shall:

1. Provide for the appropriate consideration of recreation concessions/vendors within the Resource Management Planning (RMP) process.

2. Monitor, evaluate, and ensure accomplishment of the approved Annual Work Plan items related to coordinating and guiding recreation concessions/vendors and related operations.

3. Ensure that individuals assigned to administer recreation concession leases in the District receives appropriate training which should include training in performance contracting and/or contract stipulations, negotiations, and other courses on dealing with various publics. Local training courses should be pursued which will provide instruction on basic business terms, and how to review income statements, use of fund statements, and accounting balance sheets. Generally, personnel authorized to negotiate in good faith with a recreation concessioner is an official government representative. The authorizing officer can delegate signing authority commensurate with the complexity of the lease or permit.

4. Provide technical management assistance to Resource Areas where necessary to ensure timely issuance and accomplishment of the Annual Work Plan.

5. Maintain liaison with other government agencies, recreation concessioners, vendor permittees, user groups, and organizations concerned with concessions/vendors and related operations in the District.

D. Area Managers shall:

1. Ensure that recreation concessions/vendors and related operations are considered within the RMP process.

2. Manage recreation concession leases and vendor permits which are authorized and issued for uses on public lands and related waters including administering an effective and viable lease administration program.

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3. Monitor, evaluate, and ensure accomplishment of the approved Annual Work Plan items related to coordinating and guiding the recreation concessions/vendors program.

4. Develop, implement, and monitor actions related to recreation concessions/vendors. Ensure permittees and concessioners are in compliance with the terms and conditions of the vendor permit or recreation concession lease.

5. Maintain liaison with other government agencies, recreation concessioners, vendor permittees, user groups, and organizations concerned with concessions/vendors in the Resource Area.

.05 References.

A. BLM Manual 1323 - Cost Recovery for Reimbursable Projects/Activities.

B. BLM Manual 1601 - Bureau Planning System.

C. BLM Manual 1611 - Resource Management Planning Guidance.

D. BLM Manual 1619 - Activity Plan Coordination.

E. BLM Manual 1620 - Supplemental Program Guidance.

F. BLM Manual 1621 - Supplemental Program Guidance for Environmental Resources.

G. BLM Manual 1623 - Supplemental Program Guidance for Land Resources.

H. BLM Manual 1631 - Program Management.

I. BLM Manual 2920 - Leases, Permits, and Easements.

J. BLM Manual 8320 - Planning for Recreation Resources.

K. BLM Manual 8322 - Recreation Area Management Plan.

L. BLM Manual 8323 - Recreation Project Planning.

M. BLM Manual 8372 - Special Recreation Permits.

N. BLM Manual 9521 - Benefit Cost Analysis.

O. BLM Manual 9522 - Cost-Effectiveness Analysis.

8930 - RECREATION CONCESSION LEASES AND VENDOR PERMITS

P. BLM Handbook H-8372-1 - Special Recreation Permits For Commercial Use.

.06 Policy.

A. Recognizing the diverse mission of the BLM relative to providing opportunities consistent with multiple use management, the BLM may enter into recreation concession leases and authorize vendor permits in order to provide products, facilities, programs, management and/or visitor services, which will provide for the enhancement of visitors use and enjoyment, as well as visitor safety and convenience.

B. The BLM shall carry out this policy consistent with provisions in the Federal Land Policy and Management Act (FLPMA) and Land and Water Conservation Fund Act (LWCFA). Recreation concession leases involving developments, programs, or services shall be available to the general public and shall be compatible with resource management objectives and applicable planning documents. Opportunities for concessions shall be considered a part of the BLM's planning process. Recreation concession leases should not be approved under the assumption that only high revenue services will be provided. The concessioner should offer a diversity of opportunities whether they provide high revenues or not. Proposals, activities, and other uses not specific to recreation management (related to and meeting other multiple use objectives) will be evaluated under other existing authorities and/or regulations.

C. The BLM shall encourage and permit the private sector to provide goods and/or services, develop suitable sites on public lands and related waters under its administration for recreation purposes which best serve the public as an evident need, provided such uses are consistent as determined by management objectives outlined through the resource management planning (RMP) process.

D. The BLM shall encourage recreation concessioner partnerships and entrepreneurs on the public lands and related waters in order to provide better services to the recreation visitor and customer. While the BLM has no obligation to guarantee financial success, it is in the best interest of the BLM and the public for recreation concessioners to be able to provide high quality services and make a fair and reasonable profit. Such private sector initiatives will not create any financial burden or liabilities to the Federal Government, and whenever possible, shall reduce costs or generate revenues that aid in maintaining and expanding the recreation concession program.

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E. The BLM will not allocate or limit use only to reduce or eliminate competition among recreation concessioners. If and when the amount of commercial use needs to be allocated, there are a number of factors to keep in mind, e.g., carrying capacity as determined by recreation management objectives as outlined in the planning process.

F. Concession leases should be avoided where either Land Use Permits (LUP - 43 CFR 2920 authorizations) or Special Recreation Permits (SRP - 43 CFR 8372) are sufficient. Concession leases related to recreation are authorized under 43 CFR 2920 and the LWCFA provides authorization for collecting fees. Recreation concession leases shall be implemented where strong public demand for products or services can be documented and not for speculative purposes. Subleasing will not be permitted, except where justified in the public interest and only with State Director approval.

G. The BLM's resource management planning process is the primary instrument used to identify recreation concession opportunities. Broad consideration shall be given to the various ways in which needs of the public should be met. Land use decisionmaking relating to retention or disposal shall thoroughly consider recreation concession opportunities as an alternative in achieving various program objectives. Even if disposal of a specific tract is in the public interest, consideration of retaining key parcels in public ownership should be taken into account based on probability of future public needs. As public land stewards, the BLM provides for both current and future opportunities, including recreation concessions. Recreation concessions provide a viable alternative to meeting public needs often overlooked in the land disposal action process. In accordance with this policy, the BLM shall review all Bureau lands prior to sale, exchange, or leasing and should consider the following:

1. Allow for recreation concession development on public lands and related waters which are needed and demanded by the public in close coordination and consultation with existing type services.
2. Not intentionally create or allow undue or inequitable competition with existing and locally available private enterprise entities.
3. Require compliance with appropriate Federal, State, and local laws, rules and ordinances as a condition of lease agreement and permit issuance.

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H. The BLM shall develop procedures to determine when a recreation concession lease or vendor permit is necessary and/or desirable. Criteria shall include, but not be limited to the following:

1. Justified public demand or need for a recreation opportunity, service, or facility. (Reference 43 CFR 2741.39 - 2741.4 for specific language).
2. Provide the use, safety, convenience and enjoyment of public visitors.
3. Require applicants to provide all the necessary information in determining the need for such a recreation concession, business viability, market supply and demand, specific recreation concessioner requirements, feasibility and marketing studies, and other appropriate data.
4. Provide for the highest and best use of the land or related waters, particularly when they are marginal in nature.
5. Develop specific requirements for a business plan which could be a part of the application detailing all aspects of the proposed operation.
6. Provide for and encourage fair and healthy competition for recreation concession leases. Documentation, e.g., resource management planning data, public involvement, marketing studies, regional analysis, and other relevant sources of information should be used when considering issuance of a recreation concession lease. For Alaska, consideration must be given to resident preference when authorizing visitor services for Conservation System Units as provided for in the Alaska Native Interest Lands Conservation Act (ANILCA), Section 1307 (b)(2).
7. Off-site impacts, i.e., level of supporting facilities or services, recreational use patterns, and/or impacts to other recreation facilities, sites, areas, or programs. Proposals should be environmentally compatible with existing uses.
8. Impacts to existing local, area, State, or regional recreational opportunities. Consider how the proposed recreation concession may eliminate, limit or enhance existing recreational activities, uses, or opportunities. Consider how (if authorized) the recreation concession may create new recreational opportunities or how the recreation concession will promote the economic prosperity of the region.

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I. Once a decision has been reached to enter into a recreation concession lease, the BLM shall:

1. Specifically provide for operations conducted under terms of the recreation concession lease through adherence to management, development, operations, and maintenance plans as established as part of lease administration.

2. Establish evaluation and review procedures for recreation concession lessees, conduct periodic inspections, and annual documentation as a part of lease administration.

3. Establish criteria and prepare methodology for expansion and termination of the lease consistent with its terms, as part of lease administration.

4. Address exceptions such as the "local resident" preference for conservation system units as provided for in specific legislation, e.g., ANILCA, Section 1307 (b)(2).

J. Recreation concession leases will be awarded on a competitive bid basis utilizing a bid prospectus procedure in order to attract offers from the best qualified potential lessees. The criteria as outlined in Section .12B (Recreation Concession Leases) will be used to evaluate these bids.

.07 File and Records Maintenance. Case files for recreation concession leases and vendor permits are established and maintained in accordance with BLM Manual Section 1274. See the BLM Records Schedule for case file disposition. Cases are recorded in the Bureau's automated case recordation system.

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.08 Program Relationships. Since most of the BLM's resource programs are highly interdependent, require coordinated resource management, and efficient use of personnel, managers and program staff need to coordinate with various supporting program staffs, as well as outside publics and agencies involved with administering a recreation concession and vendor program. Familiarity with these relationships enables personnel assigned concession and vendor program responsibilities to better understand the ramifications of resource allocation and other management decisions in providing recreation concession opportunities on public lands and related waters.

A. Resource Management Planning. Specific proposals and potential areas for commercial development for recreation concession leases, on public lands and related waters, are described and analyzed in resource management plans and associated environmental impact statements (RMP/EISs). Public demand for such facilities and services are quantified to the extent possible. Areas for future expansion of approved recreation concessions are also addressed in the RMP when demand projections suggest a future need for additional commercial development. (BLM Manual Section 1623). The issuance and administration of recreation concession leases for activities on public lands and related waters must conform with associated RMP decisions and management prescriptions. More detailed direction and decisions are normally outlined in subsequent activity planning due to the difficulty in assessing site specific aspects, including public demand, associated with recreation concession leasing and permitting. Activity planning must also conform to the decisions of the RMP (BLM Manual Section 1617.32).

B. Recreation Activity Plans. Activity plans for recreation are completed as necessary to implement the decisions in the RMP. These plans must address the need for and accommodation of recreation concession leases and vendor permits. Specific recreation activity plans are subdivided into two levels as follows:

1. Recreation Area Management Plans. The recreation area management plan (RAMP) identifies the specific recreation management actions to be taken to implement the allocation decisions made in the RMP (or management framework plan, if not yet released). RAMPs precede recreation concession project plans and provide overall project parameters to guide the development of specific concession project plans.

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2. Project Plans. Recreation concession project plans are prepared for project work identified as desirable and necessary as a part of the RAMP prepared by the BLM.

a. Project plans, required of the lessee, must identify general locations of facilities for a site, design requirements, and parameters for the survey and design phase of planning.

b. Recreation concessioner proposed conceptual and project plans must document user requirements, visitor profiles, and design parameters to ensure that final project designs meet specified recreation management objectives.

c. Application content as outlined in 43 CFR 2922.2-2, terms and conditions under 43 CFR 2921.2, and 2920 Manual are integral parts of any development plan.

d. Project plans are the responsibility of the applicant to prepare, pay for, and submit to the BLM. These plans are often detailed development plans containing site specific information on utilities, engineering details, architectural drawings, landscaping, rights-of-ways, sanitation, health and safety, and water system requirements.

e. Project plans must also include operation and maintenance requirements. These requirements are to be included in the lease and these project plans are an integral part of lease administration.

C. Coordinated Activity Plans. One coordinated multiresource activity plan for a management area is preferable to many individual resource activity plans for the same area. Incorporation of recreation concession and vendor concerns and related recreation participation in multiresource activity planning efforts is encouraged. Standards and procedures for coordinated activity planning are set forth in BLM Manual Section 1619.

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.09 Lease Administration. A comprehensive lease administration program and compilation of special requirements is necessary to effectively administer and develop recreation concession leases. More detailed procedures will be contained in subsequent concession handbooks based on field experience, issuance of leases, and through program evaluation.

A. Effective lease administration ensures that visitor services and facilities are built consistent with good engineering practices and operated in a satisfactory, safe, and attractive manner resulting in a high quality recreation experience. Consideration for the handicapped must be taken into consideration when constructing facilities. Visitor and customer satisfaction should also be an important part of this objective.

B. Lease administration procedures should be developed at the field office level and provide overall operating guidelines for all recreation concession leases to ensure enforcement and compliance with lease provisions and provide a performance evaluation system. Procedures include, but are not limited to the following elements:

1. Financial (Quarterly and/or annual statements; insurance and liability; construction credits; maintenance fund procedures; comparability studies and rate approvals; fee payment procedures; annual review and appeal; and understanding of generally accepted accounting principles as promulgated by the American Institute of Certified Public Accountants).

2. Operations and Maintenance (Operations/Maintenance plans; periodic and routine inspections; facility inspection according to established specifications and checklists; use of State and local inspectors via memorandum of understanding; inspection guidelines; and annual review and appeal).

3. Improvements (Evaluation of concessioner for compliance with development plans; engineering review; real property inspections for construction; adherence resource management planning objectives; negotiated contract amendments and adaptations to development plans; and annual review and appeal).

4. Nondiscriminatory (Each lessee or designated operator shall be required to post notice to the effect that no discrimination in employment, accommodation, transportation based on race, creed, color, religion, national origin, or handicap will be allowed.

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.1 Authorizations.

.11 Application Procedure.

A. Pre-Application Consultation. Conferences, meetings, and pre-application consultations are required to review requirements and standards as outlined in 43 CFR 2922.1. Use and development of standard checklists for key items are encouraged for field office use in the pre-application consultation process.

B. Applications. Applications for recreation concession leases (plan of development and map) or vendor permits may be made in person, by letter or in the case of leases by bid in response to a prospectus. An approved lease or vendor permit is necessary prior to commencement of services. Standard lease and permit applications should be used.

C. Applicant Qualifications. The BLM will use established applicant standards under 43 CFR 2922 and/or 43 CFR 8372 to assess potential ability to successfully meet the terms and conditions of any recreation concession lease and/or vendor permit. For Alaska applicants, Section 1307(b)(2) of ANILCA should be considered.

.12 Recreation Concession Leases.

A. Definition and Description. Recreation concession leases are long term authorizations to possess and use public lands to provide recreation facilities and services for a fixed period of time authorized under 43 CFR 2920, 43 CFR 8372, and the Land and Water Conservation Fund Act (See Illustration 1). Recreation concession lease documentation should set forth the obligations each party (the BLM and the concessioner) has agreed to assume in order to provide the visiting public with those services and accommodations necessary for full enjoyment of the public lands and/or related waters.

B. Conditions for Lease Issuance. A recreation concession lease should be issued for commercial services when:

1. The proposed action conforms with decisions, terms, and conditions of resource management planning, along with associated objectives and recreation resource management policies.

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2. The recreation concessioner has plans to or is required to make a substantial capital investment.

3. The recreation concessioner will be required to acquire and/or construct real property facilities.

4. Use is environmentally compatible with existing uses.

C. Length of Lease. A large gap exists between permits and leases, or large and small entities. They can be administered by other authorizations, but often are difficult, and require full time administration and management. It is generally undesirable to authorize leases (containing possessory interest developments) for less than 20 years, and 40 years is more realistic compared to standard practices. Nonpossessory interest operations usually, of their own momentum invite sale, debt, or development if authorized for longer periods depending on the market. The term of the proposed authorization is for an extended use of the public lands and related waters and should be sufficient to provide reasonable amortization of the capital investment as provided for in an approved activity plan consistent with 43 CFR 2920. The authorizing officer should give equal consideration, in determining lease length, to conform with standard industry leases as found in the geographic area or leases typical to the specific authorized business. If amortization is the sole criteria of lease length, the applicant may be tempted to propose extensive or unrealistic improvements in order to secure a longer length of term. In addition, length of term necessary for amortization depends upon income realized over the number of years in operation.

D. Lease Award Process. Recreation concession leases will be awarded on a competitive bid basis. A bid prospectus shall be used as a means to attract offers from the potential best qualified applicants. For Alaska, consideration will be given to local residents per ANILCA, Section 1307 (b)(2). Recreation concession lease award shall not be solely determined by monetary bid but will be based on a complete assessment of the proposed recreation concessioner's portfolio including, but not be limited to:

1. Documented ability to provide quality services based on past history of management of similar operations or related activities.

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2. Financial stability and integrity documented through certified personal financial statements, credit history, and related documents.

3. Past or present record of performance as a recreation concessioner or Federal, State, or local concession lessee, permittee, or contractor. Performance in this case is the administrative record of mutual cooperation with government personnel, awareness of the agency's aims and mission, and effective response to public demands, preferences, and complaints, as well as the usual performance factors, e.g., fee payment, and compliance with contract stipulations.

4. Percentage of gross receipts paid per application.

5. Additional criteria significant to the area, to the business operated (new, small or disadvantaged businesses), or to public expectations, and preferences.

E. Resource Management Consistency. Every effort will be made to obtain the best qualified recreation concessioner and provide an equitable return to the United States in accordance with resource management objectives. Realty and appraisal specialists can be invaluable in qualifying the business potential of an area for a lease, often times after initial discussions of land exchange or purchase.

F. Opportunity Indicators. Indications must exist for a commercial opportunity. One reliable indicator could be bonafide proposals for business use being expressed to the local authorizing officer. Although leases are more expensive for the developer in the long term, they can often be more desirable than public sale because less money need be borrowed and less up front investment is required. Depreciation advantages are generally the same in leased lands as in land trades or sales. If the developer or proponent already is highly capitalized and no borrowing (debt) is intended, the small amount of up front money required (compared to a purchase) by a lease, frees cash assets of the proponent immediately for investment elsewhere. As a result, in many cases, the BLM can offer an advantage to the developer, in lieu of purchase, and therefore the ability to negotiate and secure significant advantages for the government and the management area.

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G. Lease Renewal Procedures. No later than 120 days prior to the end of the lease term the lessee shall apply for renewal. The lease shall be renewed in accordance with 43 CFR 2923.6-3 (consistent with the terms of the lease) if the recreation concessioner has successfully met performance stipulations, or, if the renewal shall occur on a modified competitive basis, with the incumbent concessioners allowed to match the highest bid from a qualified applicant or have the right of first refusal. For small businesses, the authorized officer may renew the lease every 3 years depending on the site-specific or individual situation.

.13 Vendor Permits. Vendors associated with recreational uses and activities will be authorized under 43 CFR 8372 (Special Recreation Permit - SRP) regulations as opposed to 43 CFR 2920 (Land Use Permit Authorization - LUP) or recreation concession leases.

A. Definition and Description. Vendor permits are temporary, short-term (not to exceed three years), nonexclusive, revocable authorizations without construction of permanent facilities authorized under 43 CFR 8372. Vendor permits are revocable at the discretion of the BLM authorized officer and do not grant preferential rights for renewal or any possessory interests in real property on the public lands or related waters. No right of residential occupancy shall be associated with a vendor permit. Vendors and/or peddlers associated with commercial or competitive events are typical permit authorizations, e.g., food, beverage, T-shirt sales, etc. which supplement the recreational experience or activity.

B. Authorizing Instrument. Authorizing vendors by SRP is more appropriate than a LUP due to the nature of vendors selling tangible products on a temporary occupancy basis along with associated recreational activities and events. Additionally, any fees charged for vendor permits under 43 CFR 8372 are retained as carryover funds in the recreation operations subactivity (Financial Management System) although they are subject to Congressional appropriation.

C. Conditions for Vendor Issuance. A vendor permit (under an SRP) is the appropriate authorization for small operations where many of the conditions for a recreation concession lease or similar agreement do not exist. These permits will authorize operations consistent with recreation opportunities identified in appropriate land use plans for areas administered by the BLM which are relatively minor in nature.

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D. Specific Requirements. No real property improvements may be made under these types of permit authorizations nor may the permittee acquire possessory interest, and the permit should so state. All property of the permittee is personal in nature and incidental to the operation of the business. Continuous occupancy or use is not authorized under these permits during the permit term. Vendors must remain mobile in nature, i.e., capable of moving on notice. Vendor permittees shall not be allowed to interfere with public access, use, or traffic. If the activity permitted is seasonal in nature, one season of operation may be allowed, perhaps on a trial basis, at the discretion of the authorized officer.

E. Vehicular Vendors. Vendors with trucks, trailers, or other vehicles may be permitted to operate on public lands or related waters, including recreation sites where the authorized officer determines there is a public need for services and whenever similar goods and services are not reasonably available within the local or regional travel area.

F. Vendor Services. Vendor permittees may be authorized to furnish the public with groceries, firewood, supplies and other types of services. Permittees shall specify general kinds of merchandise and services to be sold and restrictions placed on their use. They must also comply with applicable State and/or local laws. They will not be permitted to sell any items which a store (under State or local laws or regulations) would not be permitted to sell under similar circumstances. They may be permitted to provide necessary services such as minor vehicle repairs, equipment rentals, trash collection, etc. The market will be allowed to determine the price charged for goods and services. Only where necessary will the authorizing officer ensure that prices charged for goods and services are reasonable in relationship to prices charged for comparable goods and services in the immediate travel area.

G. Suspensions. Vendor permits may be suspended temporarily without advance notice in the overwhelming interest of the public, e.g., unsafe conditions.

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.2 Fees.

.21 Vendor Permits. All fees for vendor permits shall be handled in accordance with 43 CFR 8372, accompanying 8372 SRP Manual, SRP Handbook H-8372-1, and applicable recreation policy directives.

.22 Recreation Concession Leases.

A. Fee Overview. The BLM shall receive, in the form of fees, annually or as otherwise determined by the authorized officer, fees for recreation concessions based on fair market value (FMV), including rental, a recreation use fee for use of public lands or facilities, and cost reimbursement for required administrative costs. No lessee shall be exempt from paying these fees. Lessees will pay in one lump sum amount for ease in billing and collection by the BLM, although three separate portions make up the total fee which are deposited to separate Treasury accounts (see BLM Manual Section 1372). The authorized officer shall determine proportionally, the land use rental, recreational use fee, and cost reimbursement fee on the basis of procedures set forth herein, and those costs shall reflect the actual or estimated FMV using comparable commercial practices available at the time of the appraisal. The individual costs are as follows:

1. Land Use Rental. The scale for land use rental fees is determined in accordance with 43 CFR 2923.1-1. Rental must be based on FMV of the rights authorized in the lease or as determined by competitive bidding in accordance with 43 CFR 2923.1-2. This portion of the total fee is to be deposited in Treasury Receipt Account Number - 143220.

2. Recreational Use Fee. The scale for recreation related use of public lands, waters, or facilities is FMV as determined by competitive bidding in accordance with provisions of the FLPMA, LWCFA, 36 CFR 71, and Office of Management and Budget Circular A-25. Flexibility among individual recreation concession leases must be recognized to ensure a fair return to the government and protect the lessee's opportunity to make a reasonable profit. This portion of the total fee is to be deposited in Treasury Receipt Account Number - 145108.

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3. Cost Reimbursement. Cost reimbursement fees associated with processing, monitoring, and administration of recreation concession leases are to be deposited in Treasury Receipt Account 145017.2), according to the appropriate project numbers. Reimbursement of costs shall be in accordance with 43 CFR 2928.1, 2928.2-1, 2928.2-2, and 2928.3-1. (For additional guidance on expenditures and individual project numbers see Manuals 1323.18(C) and 2920).

B. Fee Evaluation and Adjustment. Fees for recreation concession leases will be evaluated and adjusted periodically (at a minimum of every 5 years) as determined by the authorized officer, to reflect current FMV. It is possible to secure increased rental, recreation use, or cost reimbursement fees at any time if significant changes in the development plan are proposed. Often it is more effective to secure such things as associated public amenities which complement the business rather than increasing or adjusting fees. Increased fees should involve negotiation with the recreation concessioner to avoid possible disincentives.

C. Fee Collection. Fees are payable when due. Late charges established by 43 CFR 2920 will be collected in accordance with BLM Manual 1372. Failure to pay fees in a timely manner is cause for termination of the authorization. However, termination does not relieve the lessee of any liability owed to the U.S. Government.

D. Fee Processing. Each request for renewal, amendment, or reassignment of a recreation concession lease will be accompanied by a non-refundable processing fee of \$25. (See 43 CFR 2923.6-3, 2923.6-4, 2928.1(a), 2928.2-1, and 2928.3-1). This fee may be waived or reduced by the authorized officer. Renewal of recreation concession leases is an excellent time to require a certified financial statement, e.g., certified public accountant statement, from the lessee to ensure that fees collected are the full amount due to the government.

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.3 Sale, Assignment, or Transfer. Any sale, and subsequent assignment and/or transfer shall be applicable only to recreation concession leases and not to vendor permits. Assignment and/or transfer of any recreation concession lease provides an opportune time to secure additional benefits for the lessee as well as the government. It is not merely a time when the lessee in effect signs a new agreement securing any interests at no further cost or obligation. It also provides an opportunity to significantly renegotiate any or all aspects of the lease, including authorized development, evaluation of services provided, and fees to be paid.

.31 Review and Approval. Assignment of recreation concession leases cannot be finalized without the review and approval of the Authorized Officer. Assignment of recreation concession leases should be very carefully handled to comply with State laws and terms of the lease. Additional criteria to evaluate the fitness of buyers should be developed as a part of lease administration. Entrepreneurs prefer having the terms of sale clearly indicated, since recreational developments often do not show a reasonable profit except through sale after a period of development.

.32 Additional Terms and Conditions. Assignment of any possessory interests under a recreation concession lease means the buyer becomes subject to all of the terms and conditions of the original lease. Additional requirements may be imposed at the discretion of the Authorized Officer when approving a lease assignment to meet new conditions. Great care must be exercised in the imposition, if any, of additional terms and conditions in order to avoid breach of lease authorization by the Government.

.33 Renegotiation Opportunity. Assignment of the lease is an opportune time to review and renegotiate lease terms in order to assess benefits to the lessee as well as better achieve resource management objectives for the area. It is not merely a time when the lessee in effect signs a new agreement securing rights in perpetuity at no further cost or obligation. Assignment is usually an opportunity to significantly renegotiate all aspects of the lease, including authorized development, evaluation of services provided, and fees to be paid.

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.4 Insurance and Liability..41 General Requirements.

A. A property damage, personal injury, and comprehensive public liability insurance policy is required of all recreation concession lessees and vendor permittees to provide restitution for damage or injury to: users, spectators, privately owned resources, or public land and its resources; and in order to protect the United States from litigation resulting from actions taken or caused by the lessee, permittee, or participants associated with their use.

B. The insurance policy shall stipulate that the Authorized Officer shall be notified 30 days in advance of the termination or any modification of the policy. The name on the insurance policy must be the same as the name on the lease and/or permit.

C. Due to the time factor in filing claims, protection of the government, the concessioner, permittee, and users, recreation concessioners and permittees shall immediately report to their insurance company any incident that could possibly result into a claim at a later date.

.42 Consultations.

A. The reviewing office should consult with the State insurance authority (State Insurance Commission) in determining the acceptability of standard or unique policy provisions, clauses, and industry practices.

B. The recreation concessioner shall furnish a copy of the insurance policy directly to the Authorized Officer. The insurance policy must be provided the first year before the lease or permit goes into effect, but for each subsequent year the authorized officer may accept a valid Certificate of Insurance.

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C. The BLM must be named as additional insured on the Certificate of Insurance. The recreation concession lessee and/or vendor permittee shall indemnify and hold harmless the United States Government against any liability for personal injury, loss of life, or property damage to him or his employees arising in any way from activities under the lease or permit. All liability insurance policies are to specify that the insurance company shall have no right of subrogation against the United States of America. If the insurance company declines to issue the waiver of subrogation, the United States Government must be named as additional insured on the lessee's or permittee's policy.

D. The reviewing office should also consult the agent for the recreational concessioner or permittee who issues the policy to determine how this insurance policy protects the general public, public land resources, the U. S. Government from liability.

.43 Minimum Liability Coverage Requirements.

A. Policies must meet the minimum State requirements that are common for the type of business.

B. Minimum BLM general liability limits, unless State minimum requirements are less, are: \$100,000 per occurrence and \$300,000 annual aggregate for bodily injury, \$10,000 property damage per occurrence and \$25,000 annual aggregate, if the policy specifies aggregate limits. The Authorized Officer may require larger amounts as a condition of the lease or permit.

C. Where the potential for risk or loss is high, or where the value of the business is jeopardized, greater limits should be required.

D. Those recreation concessioners and/or permittees holding insurance policies which only insure themselves and not their employees must ensure that their employees also have the required insurance in effect, and that a Certificate of Insurance for each employee is furnished to the Authorized Officer.

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.5 Performance Bonds.

.51 Purpose. The purpose of the performance bond is to secure performance and fulfillment of the recreation concessioner's obligations under the lease. The performance bond will be a written instrument executed by recreation concessioner and a surety to ensure fulfillment of the recreation concessioner's obligations to the Government. If the concessioner's obligations under the lease are not met, the surety bond will provide the funds necessary to complete performance.

.52 When Required. A performance bond may be required for any lease where Government property is provided to the recreation concessioner and when the lease requires construction, reconstruction, maintenance, rehabilitation, restoration, dismantling, demolition, or removal of improvements.

.53 Establishing Amount. The amount of the performance bond is generally to be a minimum of 20 percent of the value of the lease; however, actual amounts are discretionary with the Authorized Officer.

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.6 Termination/Administrative Appeals Procedures.

.61 Concession Leases. Process and procedures for handling decisions relative to termination or suspension of recreation concession authorizations is provided at 43 CFR 2923.3 and 2923.4. Administrative procedures for any hearings that may result from a notice of termination or suspension is set forth in 43 CFR 2924.1-2.

.62 Vendor Permits. Process and procedures for any person adversely affected by a decision of the authorized officer on Special Recreation Permits is provided at 43 CFR 8372.6.

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SAMPLE FLPMA LEASE

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Preamble.

This is Concession Lease Serial No. AZCA-12345, made and entered into this day of June 9, 1989, under the provisions of the Federal Land Policy and Management Act (FLPMA), of October 21, 1976 and the Code of Federal Regulations, Title 43, Part 2920 Leases, Permits and Easements. This lease is by and between the United States of America acting through the Bureau of Land Management (hereinafter BLM), and Wiltalmarpus Enterprises (hereinafter Concessioner). Wiltalmarpus Enterprises is an abbreviation based on the founding entrepreneurs (Wilson, Talbot, Marsh, and Puscher) headquartered out of Lake Havasu City, Arizona.

A. The Secretary of the Interior may enter into long term leases to regulate the use, occupancy, and development of the public land. Consistent with the FLPMA, the full public mission of the BLM, strong public demand, and fair business practices, the BLM shall provide for commercial and recreational development of its public lands in the Progressive District through concessions leases.

B. The BLM will utilize its Concessions Review Program in order to control, regulate, and administer concessions leases with the following intent: To protect public welfare and secure full value for commercial use of public lands, to safeguard the financial investment of Concessioners and provide continuity for their business operations, and to ensure that services and facilities used by the public are satisfactory. Compliance with the directives of the Concessions Review Program is contractually mandated as a condition of the acceptance of this lease.

C. The commercial and recreational services provided by the United States through its Concessioner under the jurisdiction of the BLM may include but are not limited to the construction, installation, maintenance, and use of facilities by the Concessioner as specified and described in the Concessioner's approved Development Plan.

D. The Concessioner shall provide services and opportunities to the public which may include the timely scheduling, commencement and completion of installations and facilities as approved by the BLM, subject to Federal statutes and regulations and specific terms of this lease.

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E. In consideration of the mutual promises expressed herein and with the understanding that where rights or privileges are granted in general terms, the use of such rights or privileges by the Concessioner shall be determined by the Authorized Officer. Therefore, the said parties agree as follows:

Article 1. Right to Use

The United States hereby grants to Concessioner the right to use, for the purposes set forth herein, the lands and improvements, if any, described in Appendix A, attached hereto, and by reference made a part hereof, and said use shall continue consistent with the rights of possessory interest and the preferential right described and vested herein.

Article 2. Development, Operations and Maintenance Plans.

A. Development Plan. A Development Plan shall be provided by the Concessioner and approved by the AO. At a minimum it shall define the location, scope, nature, and costs of structures and services provided for public patronage within the lease area.

The Development Plan shall provide a schedule of commencement and completion for construction and development of new facilities or improvements to old facilities. The AO must approve the schedule prior to any construction or installation and the AO may require the Concessioner to secure permits from state and local agencies.

When the Development Plan is approved the Concessioner shall be required to meet all stipulations therein, unless the Concessioner can clearly show that the business environment at large, and the public preferences and demands in general, have changed such that the required commercial developments have become an unacceptable business risk when assessed by industry standard methods and measurements. In such instance the Development Plan may be amended with the concurrence of the AO. The AO shall not be required to consider amendment of the Development Plan when the Concessioner has carried out poor or unwise business initiatives or failed to meet competitive demands of the business environment.

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Nothing in the development plan or this lease shall be construed to indicate that the Concessioner must make a profit from all activities, since some services or attractions may be for the public good, or for the profitability of the business as a whole: For example, laundry, parking, food service, gasoline, or Concessioner sponsored social activities. The AO, through the administration of this lease, shall, as far as practicable, merely provide an overall opportunity for the Concessioner to make a profit for business as a whole. For new development the AO shall consider any proposed operations necessary for the public enjoyment and appropriate to the multiple use mandate of the BLM.

The AO shall make inspections of Development Plan activities as necessary to assure compliance and be well informed as to construction progress. The AO may make use of personnel from cooperating agencies to carry out said inspections. The Predevelopment Plan is attached as Drawing 1 (reserved). Concessioner will submit finished Development Plan within 90 days of signing this lease.

B. Operations Plan. An annual Operations Plan shall be submitted by the Concessioner and approved by the AO. The plan shall clearly describe daily operating requirements, general personnel or staffing functions and periodic procedures and responsibilities related to ensuring that concession visitors encounter the highest possible quality in attractions and services offered by the Concessioner. In the Operations Plan the Concessioner will publish the retail rates charged for services or products specified by and subject to approval of the AO.

The AO may conduct surveys to develop a comparable range of appropriate prices based on similar business operations conducted under similar conditions. At his/her discretion, the AO may exempt all or part of the Concessioner's business from the rate approval process depending on the business economy of the area or the competitive situation of the concession. However, no rates or pricing practices may be implemented, changed, or used without authorization or exemption in writing from the AO.

Consistent with its Concessions Review Program the AO and Concessioner will together carry out regularly scheduled periodic inspections of Concessioner facilities. The results of these inspections will be used to ascertain compliance with the Operations Plan, assess the quality of operations conducted by Concessioners, and to develop indicators needed for maintenance and improvements if any.

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The current Operations Plan is attached as Appendix B.

C. Maintenance Plans. Annual and five year Maintenance Plans shall be submitted by the Concessioner and approved by the AO. The Annual Plan shall describe the immediate custodial needs, cyclic maintenance, repair and rehabilitation for all facilities used in the operation. It shall contain estimated costs and expenditures for the maintenance described.

The Concessioner shall create and manage a Maintenance Fund in support of the Maintenance Plan, so that preventive maintenance and preservation of facilities may be paid for, up to an amount specified herein. The AO shall approve Maintenance Fund expenditures, in order to ensure that capital improvements are not funded thereby. The maintenance priorities and order of expenditures shall be decided by the Concessioner, who shall be guided generally by those needs indicated in regular concession inspections held by the AO.

The annual and five year Maintenance Plans shall be renewed on their anniversaries but may be amended with the concurrence of the AO.

The AO may make inspections as needed to assure compliance with the Maintenance Plan. The current plans are attached as Appendix C.

D. Inspections. The AO may also carry out scheduled or unscheduled inspections, progress checks, or verifications of other Concessioner activities. Where desirable, the AO may utilize cooperative agencies or personnel. Thirty days before each anniversary date of the concessions lease, the AO will publish commentary and findings related to the results of all inspections and checks, and formally declare the Concessioner lease performance as Satisfactory, Unsatisfactory, or Marginal. This designation shall be known as the Annual Overall Rating. The AO may then carry out actions consistent with provisions herein and consistent with the Concessions Review Program.

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Article 3. Renewal

A. Renewal. Any concessioner with a Satisfactory Overall Rating in the final year of its term shall have a right to renew its lease, but the Government shall always secure no less than full fair market value for the value of the lease.

The Government shall conduct studies at the time of lease renewal or reassignment, in order to determine and document full fair market value for the opportunity to conduct business on the lease premises, and the Concessioner shall pay said value, in a manner prescribed by payment mechanisms in this lease, or by such means as at that time shall be approved by the BLM. The renewal shall be on a noncompetitive basis, as designated in CFR Title 43, 2923.6-4.

Any Unsatisfactory Annual Overall Rating promulgated by the AO at the end of any one year of operation shall constitute breach of lease and the concession lease shall immediately be subject to the provisions for termination and foreclosure listed herein, which at a minimum shall consist of 30 days notice of a show cause hearing, said notice delivered with Declaration of Unsatisfactory Performance, or and 30 days further notice of termination given at the hearing, except that no notice is required for temporary or partial closure, or termination from catastrophic events, consistent with Article 12, part B; and Article 13, part B, paragraph 3 herein. Any concession receiving a marginal designation by the AO for two years in a row may be subject to the provisions for termination listed above.

The AO may declare a concession Unsatisfactory at any time in the event of criminal acts by the concessioner, the unauthorized failure to pay fees required herein, or acts of gross breach or other circumstances created by the Concessioner which result in threats to public order, health or safety.

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Article 4. Term of Lease

The term of any lease shall be determined in order to meet the legislated mandate of the BLM, the financial requirements of the lender/lienholder if any, and the scope and nature of the business developments undertaken by the Concessioner and so approved in his Development and Operating Plans.

Subject to the conditions set forth herein, the term of this lease shall be a period of 40 years commencing on June 9, 1989, and ending on June 8, 2029, and renewable for a length equal to the previous term.

Article 5. Property Rights.

A. Federal Lands. Nothing contained in this lease vests in the Concessioner any property interests in the Federal lands described herein. No lien or encumbrance shall be placed upon said lands by the Concessioner, however, a lien or encumbrance may be placed against the value of the Concessioner's possessory interest, with the authorization of the AO and consistent with the review criteria contained in the Concessions Review Program.

B. Real Property. Real property shall not be removed, improved, or rehabilitated without the authorization of the AO, however, the Concessioner shall have the following lease rights relating to such property:

1. The exclusive right of possession and use of all real property during the term of the lease, subject to the regulatory provisions contained herein.

2. The right to salvage any such improvements of property in lieu of the compensation provided for in Article 13, as directed by the AO, or in instances of overwhelming public need or safety, when it has been determined by the AO that commercial operations on these lands will be discontinued. If this right to salvage improvements is exercised the Concessioner shall leave the lands in a condition satisfactory to the AO and consistent with an approved restoration plan if so required by the AO.

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In addition to the above, the Concessioner and all lienholders agree to hold harmless the United States and its agents against assertions of title or rights to possession of real property or improvements, and to indemnify the United States for any claims of any other parties based on assertion of title or rights to possession of any improvements or real property.

3. A preferential right to renew the lease, given acceptable performance by the Concessioner, as described in Article 3. Acceptable performance by the Concessioner shall be certified by the AO by the Annual Overall Rating of Satisfactory.

4. The right to sell and reassign his possessory interest for fair market value at any time to a qualified buyer. A qualified buyer is one who meets the criteria established by the BLM in its Concessions Review Program. Fair market value is any price or good faith offer the seller can reasonably secure. Possessory interest is the exclusive right to conduct business within the concession boundaries under the terms of the concessions lease. Possessory interest shall carry with itself the privileges of ownership, subject to the restrictions herein, except for title, which shall be held by the US Government. Possessory interest shall be valued by the Government, in the case of lease termination, as described in Article 11 and Article 13, Part B.

5. The right to establish lines of credit or secure loans for business operations located within the concession boundaries under whatever conditions exist in the loan market, using Concessioner's possessory interest as collateral, with the authorization of the AO, who shall approve the loan agreements from bona fide lending institutions, after due review to ascertain that the loan process and terms are normal, usual, and typical of the industry at the time of the loan.

6. The right to be reimbursed for possessory interest subject to the terms of this lease, as provided in Article 5, and Articles 11, 12, and 13.

7. The right to continue business operations, subject to the regulatory mechanisms of this lease and the Concessions Review Program, in perpetuity.

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Article 6. Maintenance

The Concessioner will physically maintain and repair all facilities and improvements used in the operation of his business, including maintenance of all leased lands and all necessary housekeeping activities associated with the operation to the satisfaction of the AO. In order that a high standard of physical appearance, operations, repair, and maintenance be maintained, appropriate inspections will be jointly carried out by the AO and the Concessioner, on a regular basis, as designated by the AO in the Concessions Review Program.

Article 7. Maintenance Fund

To partially meet the requirements of Article 6, the Concessioner shall provide the funds to accomplish the repairs and maintenance in an amount equal to 2 percent of gross receipts, at a minimum. (Gross receipts are any revenue generated on or within concession boundaries, and/or any revenue obtained using the concession lease as an attraction or asset). The percentage to be utilized shall be calculated based on the total gross receipts realized during the previous operating year.

These funds shall be deposited and controlled by the Concessioner. The funds shall be accrued quarterly by the Concessioner and deposited in a special interest bearing account named "Maintenance Fund for Repair, Rehabilitation, or Improvements to Government Owned Facilities." The Government shall not be an account holder. The Concessioner shall maintain and operate the fund consistent with the Maintenance Plan previously submitted and approved by the AO, as described Article 2, Part C, Maintenance Plans. Any administrative costs incurred by the Concessioner may be charged to the Maintenance Fund. The AO may require specified maintenance expenditures.

The considerations which shall generally guide the AO in his/her decision to approve expenditures from the Maintenance Fund shall be the intent to exclude from approval capital construction better planned and administered in the Development Plan, and the intent to exclude from approval property which is personal in nature belonging to the Concessioner.

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Any balance remaining in this account at time of sale of Concessioner's interest as described herein shall revert to the purchaser to be used under the same conditions stated above. At the discretion of the AO, funds may be allowed to accrue for up to five years, with a requirement that they be expended totally by the end of the fifth year. The AO may require that the funds be expended annually, as designated in the annual Maintenance Plan. The Concessioner shall be in breach of this lease if the accrued funds are not spent at the end of five years.

It is the intent generally of the Maintenance Fund to provide for repairs, maintenance, and replacement. The term repairs and maintenance shall generally be defined as that classification normally defined under generally accepted accounting principles, including building repairs, electrical and mechanical equipment repairs, furniture and equipment repairs, painting and decorating, plumbing, or others as designated by the AO. The term replacements shall be defined as to include furniture, and those fixtures realty in nature but excluding equipment or expendable items personal in nature, and excluding all capital improvements or construction called for in the Prospectus or Development Plan. Where conflicts exists as to the nature of property the AO will have it appraised in a standard manner and so direct or refuse the expenditure.

All items, realty in nature, are the property of the Government. All replacement items, personal in nature, are the property of the Concessioner.

In the case of business operations determined by the AO to already demonstrate high performance standards it shall be sufficient for the Concessioner to merely establish the fund, and generally inform the AO each year, by written letter, what expenditures have been made. However, all monies must be spent by the end of each five year cycle.

In the Annual Overall Rating of Concessioner's performance the AO will consider the timeliness of payments made into the fund and Concessioner compliance with the previously agreed expenditures included in the Maintenance Plan.

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Article 8. Fees

In consideration of the operations provided for in this lease, including the duration of the anticipated use, its impact on the land and resources, and the investment capital required; in conformance with BLM plans, policies, and objectives, consistent with lease addendum, Concessioner shall pay U.S. Government, Bureau of Land Management \$30,000. Within 30 days prior to the following four anniversary dates of the lease, Concessioner shall pay \$30,000 as land rent plus \$15,000 in cost recovery fees, and \$10,000 in recreation use fees to the Government, as notified by the AO.

Thereafter, the Concessioner shall pay as a lease fee 1 percent of total gross revenues or receipts derived annually from sale of fuel. Concessioner shall also pay 4 percent of gross revenues derived annually from all other products and services. No revenues shall be exempt from inclusion in the declared gross.

The lease fee shall be paid quarterly, within 60 days of the end of each quarter, in response to written notification or billing by the AO.

Concession lease fees shall be deposited in appropriate Treasury accounts by the AO. The fees include land use rental (no construction credits are authorized), cost reimbursement for associated lease monitoring costs, and recreation use. Fees are based on free-market value and appraisal.

In return for the rights and interests contained in this lease, including the guarantee that cost recovery fees can be increased only through the terms of this lease, the Concessioner agrees to forever waive the opportunity to appeal BLM cost recovery practices and decisions, and the right to request refund of cost recovery fees paid.

All payments are made directly to the AO quarterly, beginning with the anniversary date of the lease.

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During the construction phase of a new development, where no facilities yet exist to generate revenue, the AO may charge cost recovery fees to the Concessioner. In this occurrence the AO shall not charge more than two percent of the first years estimated gross after facilities are complete. The estimated gross figure used shall be the estimated first years gross amount submitted by the Concessioner, in his application or Development Plan. In cases of expansion of existing facilities, no cost recovery shall be charged, except as facilities are completed.

All Concessioners shall pay whatever fee is determined by the Bureau of Reclamation for water use in the manner prescribed by the Bureau of Reclamation.

An interest penalty will be assessed for late payments and the AO will consider the timeliness of payments made when promulgating the Concessioner's annual overall rating. Punctual payments are an item of lease compliance.

After each 5 years of business operations, the AO and the Concessioner may renegotiate the amount of fees paid, if either party states the intent to do so, in writing. However, nothing shall compel the AO to consider lower fees at any time, or to submit a proposal for lower fees to arbitration.

In all cases, the intent of the AO in approving or amending fees shall be that the Government receives full fair value in return for the exclusive opportunity to conduct business within the concession boundaries, considering the fair market value of leased lands, the extent of Government improvements, and the value of the method of renewal.

Any new fees will be evidenced by an amendment to the lease. All fee changes shall be at the mutual consent of the AO and the Concessioner. If the Concessioner does not agree to increased fees, no unreasonable practices may be carried out by Government in order to secure higher fees.

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Article 9. Accounting Records and Reports

A. Accounting Reports. The Concessioner shall maintain all accounting records necessary for verified administration of this lease, and shall keep records sufficient to enable a full audit of all Concessioner's business transactions for a period of five years previous to the commencement of an audit, or to meet any specific requirements which the AO may have. The Concessioner shall submit annual reports for each preceding calendar year, giving all necessary information required under this lease, which at a minimum shall consist of a reviewed financial statement by a licensed/certified accountant, in accordance with generally accepted accounting principles. However, no person with a financial interest in this lease may act as the Certified Public Accountant of Record.

Current annual reporting requirements are described in Appendix F.

The AO shall consider the timeliness, fullness, and correctness of accounting information submitted when promulgating Concessioner's Annual Overall Rating. With reasonable notice, the AO may audit, partially or in full, all financial records of Concessioner's operations.

B. Reporting Gross Receipts. When reporting of gross receipts is required by Concessioner, the term "gross receipts" as used herein is defined as any and all revenue generated on or within concession boundaries, or any revenue using the concession as an amenity or attraction. It shall be further defined as the total amount received, realized by, or accruing to the Concessioner from all sales including vending and coin devices, cash or credit, services, accommodations, materials and merchandise made pursuant to the rights granted in this lease, including the gross receipts of subconcessioners.

Gross receipts of subconcessioners shall be defined in the same manner as above for Concessioners. The subconcessioner shall report the full amount of all gross receipts to the Concessioner annually, or as designated by the AO.

No offices, storage, or warehouses or purchasing firms owned by the Concessioner may be located elsewhere for the purpose of purchasing or marketing concession attractions and services or supplies and recharging the concession business an artificially developed cost in order to manipulate the declared gross, nor may the Concessioner enter any other such agreement with any other parties for such purpose.

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Article 10. Subconcessions

Consistent with industry standard marketing practices the Concessioners may market some services and facilities through subassignments or subconcessioners, after review and approval by the AO and consistent with the Concessions Review Program. Total subconcession's gross cannot exceed 50 percent of the Concessioner's gross receipts.

Depending on the proposal submitted and business conditions affecting the concession, the Concessioner may pay for the opportunity of subconcession operation in a variety of ways, as indicated in the Concessions Review Program.

No subconcessioner may build or create improvements, or engage in any practice which results in a possessory interest, or an interest which may be transferred, reassigned, or sold. No subconcessioner shall engage in any pursuit which creates an interest reimbursable by the Government nor shall the Government be liable for any losses to the subconcessioner. A subconcessioner may possess personalty as is needed or required for business operations.

No subconcession lease may be for a term longer than two years, but the subconcessioner's lease shall be renewed at the request of the Concessioner provided subconcession activities satisfactorily meet the standards and requirements of the Concessions Review Program.

The Government will always receive full fair value for the subconcession operated, but the subconcessioner shall not be liable for lease fees or payments to the Government. The Government shall secure full fair value for the subconcession opportunity presented. The amount of any lease fees for subconcession operations, paid to the Government by the Concessioner, shall be determined on their own merits, without consideration for other fees agreed upon in this lease. They shall be stipulated by the AO, and accepted by the Concessioner, as part of the subconcession authorization. All lease fees for subconcession business operations shall be paid into the BLM cost recovery account.

The Concessioner shall provide insurance for subconcession operations or furnish proof that the subconcessioner has secured insurance.

The BLM shall be indicated on the Certificate of Insurance as Additional Insured as their interests may appear.

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The above Article 10. Subconcessions, may be amended with the mutual consent of the Concessioner, if substantial benefits accrue to the Government.

Article 11. Assignment of Sale or Interest

A. Authorization Required. With the exclusion of authorized lienholders, the collective term "Concessioner" or the plural term "Concessioners" is defined as any party authorized by the AO to hold an interest in an approved concession lease.

Concessioners shall not assign, sell, or transfer responsibilities under this lease, nor engage in mergers, partnerships, consolidations, reorganizations or other business combinations, or in any way change the nature of Concessioner's interest as defined herein, without the prior written approval of the AO. Failure to comply with this provision shall constitute a material breach. A Concessioner must have the written authorization of the AO to enter into a management lease.

Concessioner must advise the AO in writing of the need to change any interest assignments and the proposed transaction will be subject to review and response by the AO in 90 days. The AO shall review documents and make inquiries as to the nature of the proposal and the fitness of parties included consistent with the Concessions Review Program.

B. Possessory Interest. No mortgage or lien shall be executed, and no bonds, shares of stock, or other evidence of interest in, or indebtedness upon the possessory interest of the Concessioner shall be created or carried out except for the purposes of installing, enlarging, or improving facilities or equipment, or otherwise managing the facilities and conducting the businesses authorized herein.

However, it is provided that the possessory interest may be encumbered in an appropriate manner for the purposes of purchasing the rights authorized herein.

In the event of default on such an encumbrance, the creditor or any assignee thereof shall succeed to the interest of the Concessioner, and the creditor shall thereby acquire the same permanent operating rights, following the reasonable review and authorization of the AO. It is understood that a creditor, well reviewed, qualified and authorized by the AO, is a well qualified Concessioner.

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The assignee or creditor may reassign or sell the possessory interest acquired through default, subject to the same stipulations and requirements as the original Concessioner, at any time thereafter. The assignee must carry out all improvements and management provisions of the lease, as described herein, and is subject to the review and evaluation of the AO, consistent with the Concessions Review Program.

C. Transfer of Lien Interests to FLPMA Lease. Lienholders of leases formulated under the provisions of the Reclamation Project Act of 1939, section 10, or any legislative authority other than the FLPMA are an exception. Holders of lien interests acquired under authority other than FLPMA are subject to the provisions stipulated in those leases, and/or as carried over to this contract.

Article 12. Termination

A. This lease shall terminate upon the expiration of its term and the business opportunities contained herein, or other opportunities required by the AO, shall be advertised for competitive proposals with two exceptions:

In the face of overwhelming public need such as the requirement to maintain public order or safety the concession lands shall be returned to natural use, or:

If the Concessioner has made good faith attempts to meet the provisions contained herein and the directives of the AO made through the administrative channels of the Concessions Review Program, the lease shall be renewed. Acceptable good faith performance is certified through the inspection process and other elements of the Concessions Review Program resulting in a Satisfactory Overall Evaluation.

B. In the case of an overwhelming threat to public health, safety, or order; or in a case of material breach where termination of lease has not been declared and is not wanted by the Government, the temporary or partial suspension of business operations may be required by the AO, in lieu of declaration of default; such as Concessioner failure to properly install or safely operate facilities, or the building of unauthorized improvements, or the marketing of unapproved services or products, or when the operational standards specified in the Concessions Review Program are in substantial, continuing, and unremedied breach. In the above described or similar circumstances, provisions for partial or temporary suspension of business operations may be carried out immediately.

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C. In the event of proposed termination for default the AO shall be required to allow the Concessioner reasonable time for remedy and breach noted, and the AO shall schedule a show cause hearing for the Concessioner to have opportunity to show substantial success at remedying of breach. In the event of termination of this lease for default the compensation to the Concessioner shall be as described in Article 13. Compensation, but the AO shall in his decisions be guided by the need to protect the public welfare and the possessory interest of lienholders. Default may be declared for substantial, continuing, and unremedied breach.

D. In the event of any operations suspended due to breach by the Concessioner, or followed by termination, the US Government and/or its agents shall not be liable for any loss to any party except under the terms of Article 13 Compensation, and the same shall be true for suspended operations resulting from a need to protect the public, or because of the loss of available water from the Blue Sky River.

However, in exchange for fees paid and the considerations herein, the AO shall, as far as practicable, seek permanent water allocation for use by Concessioner, sufficient to meet Concessioner's needs consistent with needs of other Concessioners also operating under authority of the FLPMA, without consideration for fair market value for the water, but at whatever costs may be charged by the Bureau of Reclamation for the water to the Bureau of Land Management. This is an exception to cost recovery provisions indicated under Article 8. Fees.

E. This lease may be terminated upon mutual agreement between the parties. If so, termination is subject to compensation indicated in Article 13.

F. In the event of termination for breach the Concessioner shall operate the concession until a successor is chosen by the AO, except, in the case of authorized lienholders who shall immediately succeed to the interests and responsibilities of this lease, as their interests may be established or carried over. They shall have the right to seek fair market value through sale of the possessory interests in the lease, but may be required by the AO to cure any breach.

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Article 13. Compensation

A. Full and Just Compensation. A Concessioner in good standing with the AO shall at any time be allowed to sell his possessory interest for fair market value to any qualified buyer. Fair market value is any price the Concessioner can secure through legal sale. A qualified buyer is any party ruled fit by the AO after application of criteria established in the Concessions Review Program. The established criteria shall be formulated to reasonably assess the financial and managerial appropriateness of the proposed buyer but no other conditions shall be attached to the sale, with the understanding that the buyer succeeds to the interests and responsibilities described herein. In the case of substantial lease breach the AO may delay the review and approval of sale, if a sale is proposed, until the breach is cured, however, the AO may allow sale of the lease in order to protect the interests of lienholders and facilitate continued operations in the interests of the public.

B. Book Value. In the case of a lease terminated because of breach of performance, full and just compensation to the Concessioner, owed by the Government shall consist of book value. Book value is defined as replacement cost minus depreciation. Therefore, the AO shall appraise the improvements made by the Concessioner, calculate a replacement cost at time of termination, and depreciate the replacement cost to a status reflecting the actual condition of the improvements at time of termination. The U.S. Government shall have 1 year to pay the Concessioner book value of the improvements.

The Government shall not be obligated to lienholders for any value greater than book value. However, the AO shall, if necessary, make all reasonable attempts to facilitate sale of the lease for a full year after termination, for full market value, in order that the Concessioner may be paid book value, and in order that the full interests of the lienholders be reimbursed or carried on. The succeeding primary lienholder shall be responsible for the interests of remaining lienholders.

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In the case where concessions business activities are to be terminated in view of clear and present catastrophic hazard, or overwhelming threats to public health and safety, the Government shall owe no compensation. This provision applies generally to those exclusions ordinarily noted in Comprehensive General Liability Insurance policies, such as war, riot or public disorder, nuclear or other contamination or pollution, plague or other epidemic, or any other potential environmental or public catastrophe where the lessor must act to protect the public health, order, or welfare.

In the case of lost revenues or business operations or facilities reduced, rendered unusable, or removed due to provisions of the Blue Sky River Floodway Protection Act (P.L. 99-999), or any other Federal laws providing for water use or allocation, or any Federal laws pertaining to flood plain management use or habitation, or Federal laws pertaining to land use in areas subject to flood, no compensation whatsoever shall accrue to the lessee.

Article 14. Water

The Government shall have no obligations whatsoever in the case of laws made by the United States Congress applicable to water allocations or water use, or laws pertaining to flood plain developments.

Except as provided for herein, no water rights accrue to the lessee. Lessee may not provide water for commercial use outside concession boundaries. The Concessioner shall provide water for use by the public within the concession boundaries, and meter its use, as directed by the AO.

Article 15. Restoration

In the event that a Government improvement is removed, abandoned, demolished, prevented from use or substantially destroyed, the Concessioner shall at his expense return the site to natural conditions sufficient to be clear of hazards, at a schedule consistent with directives of the AO. If similar business activities are to be continued a new Development Plan shall be submitted by the lessee.

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A. Insurance. At no time will the Concessioner carry less comprehensive general liability insurance than an amount specified by the AO. The Concessioner may be required to carry casualty insurance of a type, and in amounts typical of similar business operations, for example, fire and named perils, as directed by the AO, and consistent with good business practices. The Concessioner will maintain a current original certificate of insurance and submit same to the AO, and the U.S. Government, Bureau of Land Management, will be named as Additional Insured, as their interests may appear, on a current certificate of insurance supplied to the AO by the Concessioner.

The Concessioner will provide 30 days notice of any change in insurance coverage to the AO.

Failure to meet the above provision will constitute substantial breach of lease by the Concessioner.

The Concessioner and all lienholders shall save, hold harmless, and indemnify the United States of America and its agents and employees for all losses, damages, judgments, or expenses arising from any peril, injury, death, or property damage in the use of any Government property or improvements, without exception.

The Concessioner shall be the loss payee for any damages not paid directly to injured parties. When that is the case the Concessioner will use the funds to fully restore concession operations in a manner directed by the AO.

Insurance shall be maintained at the sole expense of the Concessioner. The AO may require such coverage as product liability, lease liability, liquor liability, auto liability, and workers compensation; or fire and extended perils casualty insurance in the interests of the public.

No Concessioner shall have fire or casualty insurance without confirming notification of same with the AO.

Article 16. Compliance

A. Lease Fees. In the exercise granted under the rights of this lease the Concessioner shall pay all fees due, all cost charged by the AO, and comply with all applicable Federal, State, and local laws, ordinances, and regulations, as directed by the AO, not limited to the regulations herein, but as promulgated by the AO as part of the Concession Review Program.

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B. Right of Entry by AO or Designated Representative. The AO or his representative shall have the right at any time to enter upon any lands assigned hereunder for any purpose he may deem reasonably necessary for the administration of the area. This right shall include periodic and unscheduled inspections. However, since it is the general intent, in so far as practicable, of the formal, scored inspections conducted within the Concession Review Program, to increase the quality of concessions operations and to document compliance without disadvantage to the Concessioner, the AO shall make reasonable attempts to include the Concessioner in the inspection process, and to schedule problems for remedy, which if remedied in a rapid and conscientious manner shall result in no permanent unsatisfactory rating for the Concessioner.

The actual process of inspection and scoring shall integrate and carry out the principle stated above.

Article 17. Employment Practices.

A. Minimum Standards for Concession Employees. The concessions shall at all times require his/her employees to be knowledgeable, helpful, and courteous to all members of the visiting public, and shall take such remedial or disciplinary actions as are required in the case of employees who fail in this provision.

B. Discrimination. The Concessioner shall not practice discrimination of any kind in his relations with the public or employees. The Concessioner shall comply with all applicable Federal laws and regulations, Executive Orders and Acts in order to guarantee fair and equal treatment of employees and the public in his business operations. The Concessioner acknowledges the binding authority in the Special Provisions relating to nondiscrimination, made a part of this lease as described in Article 24.

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Article 18. Notice

Any notice, demand or request required by this lease shall be properly given if delivered or mailed prepaid to: Area Manager, Bureau of Land Management, Blue Sky Resource Area, 3020 Sweetbread Ave., Lake of the gods, Arizona 80001.

Any notice, demand, or request required to be given to the Concessioner shall be properly given if delivered to Wiltalmarpus Enterprises, Inc., Attn: Mike Wilson, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403. These addresses may be changed at any time if written notice is given.

Article 19. Bond and Lien

At his/her discretion the AO may require the Concessioner to furnish a surety bond acceptable to the BLM, conditioned upon the faithful performance of this lease, or of specific provisions herein, or for portions or all of the Development Plan authorized herein. Specific criteria to decide the requirement of surety or performance bonds may be included by the AO in the Concessions Review Program, but generally, the bond shall be limited to narrow ranges of lease performance considered critical to completion of the overall lease, or limited to short term construction developments, or to those areas of lease performance in which the lessee may have been weak or marginal or inexperienced in past similar efforts.

Article 20. Obligations of the United States.

A. Contingent Upon Appropriations. Obligations of the United States for the expenditure of any money herein provided for, which may require appropriations of money by Congress or the allotment of funds shall be contingent upon such allotments or appropriations being made.

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B. Environmental Hazards. In carrying out the purpose of this lease the U.S. and its agencies and agents shall not be liable for injury to persons or damage to improvements, assets, or personal property of the Concessioner, his agents, guests or tenants, or for any loss of the use of said properties or improvements; including loss due to environmental constraints within the lease area, or due to fluctuations or constraints on adjacent waters occasioned by fluctuations in the level of the Blue Sky River, and/or formation of diving hazards, the potential of the Blue Sky River to occasionally flood the concession area, loss of use or water from the Blue Sky River for reasons not covered herein, or any other unpredictable acts of God. The Concessioner shall comply with the Blue Sky River Floodway Protection Act (P.L. 99-999)

Article 21. Appeal Rights

Appeal rights or processes for any decisions or promulgations relating to lease performance which are adverse to the Concessioner shall be defined in the Concessions Review Program. However, the appeal process shall be consistent with Title 43, Code of Federal Regulations, Part 4, Subparts A, B, and E.

Consistent with the above, Concessioners may appeal any administrative measure of paramount importance, which if enacted or enforced, would substantially threaten the economic viability of the business.

In the case of declaration of termination appealed by the Concessioner, the Concessioner shall remain in custody or possession of the leased premises, and continue to operate same until the results of appeal are final.

Article 22. Officials Not to Benefit

No elected official or elected delegate to a lawmaking body, and no officer or agent of the Government may share in or accrue any benefit from the performance of this lease, but the use of accommodations, facilities, services, or donations are excluded from this provision.

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Article 23. Program Compliance

The Concessioner shall be obliged to comply with the directives, provisions, and policies of the Concessioner's Review Program, and compliance is binding on lease performance. The Program is both administrative and regulatory in nature, and may periodically be amended or supplemented to match the changes and growth in the Concessioner's business programs, the marketing demands of the public, and changing perceptions of public welfare, consistent with overall management initiatives of the BLM.

Article 24. General Provisions

There are general provisions attached hereto, and by reference made a part of this lease, and shall have the same force and binding authority as the lease provisions set forth herein. No changes or additions to the General Provisions may be made without the mutual consent of the Concessioner and the BLM.

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The United States of America

FLPMA Lease No. AZCA-12345

By _____ Date _____
Michael R. Ford
District Manager
Progressive District Office
Bureau of Land Management

_____ Date _____
Concessioner

Address: Wiltalmarpus Enterprises, Inc.
Attention: Mike Wilson
3189 Sweetwater Avenue
Havasü City, Arizona 86403

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UNITED STATES
DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT

General Provisions Applicable to Concessions
Leases Covering Blue Sky River Lands in the
States of Arizona and California

Article 1. Nondiscrimination.

A. Definitions: As used in Subarticles B, C, and D herein:

1. The term "Concessioner" shall mean the Concessioner and his employees, agents, lessees, and contractors and the successors in interest of the Concessioner.

2. The term "facility" shall mean any and all services, facilities, privileges, accommodations and activities available to the general public and permitted by this agreement.

B. The Concessioner shall not:

1. Publicize any facility 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, handicap, or national origin.

2. Discriminate by segregation or other means against any person because of race, color, religion, sex, age, handicap, or national origin in furnishing or refusing to furnish such person the use of any such facility.

C. The Concessioner shall post the following notice in such a manner where any facility is available so as to insure that its contents will be conspicuous to any person seeking employment or use of any facility. Such notice will be furnished the Concessioner by the Secretary.

NOTICE

THIS IS A FACILITY OPERATED IN AN AREA UNDER THE JURISDICTION OF THE UNITED STATES DEPARTMENT OF THE INTERIOR. NO DISCRIMINATION BY SEGREGATION OR OTHER MEANS IN THE FURNISHING OF ACCOMMODATIONS, FACILITIES, SERVICES OR PRIVILEGES ON THE BASIS OF RACE, COLOR, RELIGION, SEX, AGE, HANDICAP, OR NATIONAL ORIGIN IS PERMITTED IN THE USE OF THIS FACILITY. COMPLAINTS OF VIOLATIONS OF THIS PROHIBITION SHOULD BE ADDRESSED TO THE SECRETARY OF THE INTERIOR, WASHINGTON, D.C. 20240.

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D. The Concessioner shall require in all of its leases or other forms of agreement for the construction or operation of a facility pursuant to this agreement, inclusion and compliance with provisions identical with those stated in Subarticles A, B, C, and D herein.

E. The following provisions governing employment under Government leases and/or contracts, as set out in Section 202 of Executive Order 11246 of September 24, 1965, shall be applicable hereunder and for the purpose of this Subarticle, the term "Contract" shall be deemed to refer to this lease instrument, and the term "Contractor" shall be deemed to refer to the Concessioner. In connection with the performance of work under this lease, 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, handicap, or national origin. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, sex, age, handicap, or national origin. 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 Authorized Officer setting forth the provisions of this nondiscrimination clause.

2. The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, handicap, or national origin.

3. The Concessioner will send to each labor union or representative of workers with which he has a collective bargaining agreement or other lease or understanding, a notice, to be provided by the agency Authorized Officer, advising the labor union or workers' representative of the Concessioner commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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4. The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the leasing agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this lease or with any of such rules, regulations or orders, this lease may be cancelled, terminated or suspended in whole or in part, and the Concessioner may be declared ineligible for further Government leases and/or contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

7. The Concessioner will include the provisions of Paragraphs 1 through 7 in every sublease 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, so that such provisions will be binding upon each lessee. The Concessioner will take such action with respect to any sublease or purchase order as the leasing agency may direct as a means of enforcing such provision, including sanctions for noncompliance; Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a lessee as a result of such direction by the agency, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

Inclusion of the Equal Opportunity Clause may be by reference to Section 202 of Executive Order 11246, dated September 24, 1965. Subleases (subject to Manual Section .06F) below the second tier, other leases calling for construction work at the site of construction, are exempt from inclusion of the clause.