

Wilderness Stewardship Plan: Commercial Services – Related Laws, Policies, and Guidance

National Park Service
U.S. Department of the Interior

Sequoia and Kings Canyon National Parks
California



Commercial services aid many people in experiencing wilderness on the public lands in a variety of appropriate ways. However, there are a number of laws, policies, and court orders that require the park to focus on commercial services in wilderness in this Wilderness Stewardship Plan. The following is a summary of related laws, policies, and litigation that require us to evaluate the types and amounts of support that commercial service providers offer visitors in the parks' wilderness (also known as the Extent Necessary Determination).

The Wilderness Act

The Wilderness Act in its Prohibition of Certain Uses section (§ 4(c)) lists some specific prohibited uses, or practices. There are absolute prohibitions on commercial enterprise and permanent roads, and also general prohibitions, with qualified exceptions, on: temporary roads; use of motor vehicles; motorized equipment and motorboats; landing of aircraft; mechanical transport; and structures and installations.

Under the Special Provisions section of the Act, in §4(d)(5), it states that "Commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas." The "purposes" referred to in §4(d)(5) are those enumerated in §4(b), which states that "...wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use."

The National Park Service Omnibus Management Act of 1998

Commercial services may be authorized only if the Secretary of the Interior determines the services will have minimal impact on resources and values of the unit of the National Park System and are consistent with the purpose for which the unit was established and with all applicable management plans and park policies and regulations.

Section 418 of the National Parks Omnibus Management Act of 1998, Public Law 105–391 (Section 418), authorizes (but does not require) NPS, upon request, to issue commercial use authorizations (CUAs) to persons (referring to individuals, corporations and other entities) to provide commercial services to park area visitors in limited circumstances. CUAs, although used to authorize commercial services to park area visitors, are not concession contracts. They are intended to provide a simple means to authorize suitable commercial services to visitors in park areas in the limited circumstances described below."

Issuance of Commercial Use Authorizations

CUAs may be issued in the following conditions:

(1) The authorization is issued to a qualified person to permit the provision of suitable commercial services to park area visitors. (A qualified person is a person that the superintendent determines has the ability to satisfactorily carry out the terms of the commercial use authorization);

(2) The superintendent determines that the commercial services: (a) will have minimal impact on the park area's resources and values; (b) are consistent with the purposes for which the park area was established; and, (c) are consistent with all applicable park area management plans, policies and regulations;

(3) For in-park services, the annual gross receipts are estimated to be less than \$25,000; and The superintendent determines that the terms and conditions of the authorization require the commercial services and related activities to be undertaken in a manner that is consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area. The authorization may include, when appropriate, terms and conditions designating use of a limited portion of a park area and/or visitor use limitations (entrance, user days, or similar use allowances).

The Sequoia and Kings Canyon Backcountry Access Act

The Secretary of the Interior is required to complete an analysis and determination on commercial services in wilderness in accordance with the Wilderness Act by June 5, 2015.

National Park Service Management Policies 2006

Wilderness-oriented commercial services that contribute to public education and visitor enjoyment of wilderness values or that provide opportunities for primitive and unconfined recreation may be authorized if the activities conform to NPS concessions management policies and the Wilderness Act, and if they are consistent with the park's wilderness management objectives.

Directors Order-41: Wilderness Stewardship, Section 7.3 Commercial Services

Parks must make a documented determination of the types and amount of commercial services necessary to realize wilderness purposes in a given area at a given time. There are two specific legal requirements for allowing commercial services from the Wilderness Act. The first requirement of the Wilderness Act is a determination that a certain activity is necessary in wilderness. For activities that are necessary to realize the wilderness purposes, the second requirement is an evaluation of the minimum amount of commercial service that is necessary to achieve these purposes. Commercial services may only be allowed in wilderness if wilderness character is preserved. Commercial services may be limited to preserve opportunities for primitive recreation or other aspects of wilderness character.

High Sierra Hikers Association v. U.S. Department of the Interior (848 F. Supp. 2d 1036 [N.D. Cal. 2012])

The court found that the parks' GMP was deficient for failing to contain a specialized finding of necessity regarding the type and amount of commercial services that may be performed in park-managed wilderness. The court directed the National Park Service to include such a finding in a wilderness plan.

Where can I find more information?

The Extent Necessary Determination and the proposed changes to commercial services in park wilderness are addressed as Element 11 in each alternative and in detail in appendix B of the Wilderness Stewardship Plan / Draft Environmental Impact Statement. For background information on commercial services, see Chapter 3: Affected Environment in the *Visitor Use* and *Commercial Services* sections. The effects from implementing limits are described in Chapter 4: Environmental Consequences, in the *Wilderness Character* and *Visitor Use* sections.

*... to secure for the American people of present and future generations
the benefits of an enduring resource of wilderness.*

