

CHAPTER 6

Compliance with Federal or State Regulations

This chapter describes the key pieces of legislation that form the legal context for development of the Final Plan/EIS. These pieces of legislation have guided development of this document and would continue to guide its implementation.

National Park Service Enabling Legislation

Public Law 81-787, 1950

This Law established Grand Teton National Park as a 310,521-acre (125,663 ha) entity that includes portions of both the Teton Range and Jackson Hole. The legislation designated and opened rights of way over and across federal lands within the exterior boundary of the Park for the movement of persons and property to and from national forests and state and private lands adjacent to the Park. The rights of residents and others legally occupying and using lands within the Park in 1950 were also specified in the Law. The grazing rights protected by this Law have expired but are preserved by Public Law 105-81 (1997), the Open Space Study Act.

Organic Act, August 25, 1916 (National Park Service Organic Act), Public Law 64-235, 16 USC §1 et seq., as amended

On August 15, 1916, Congress created the NPS with the National Park Service Organic Act. This Act, as reaffirmed and amended in 1970 and 1978, establishes a broad framework of policy for the administration of national parks:

“...to promote and regulate the use of the...national parks...which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

National Park Service Organic Act, 16 U.S.C. 1.

General Legislation and Regulations

Americans with Disabilities Act, Public Law 101-336, 104 Stat. 327, 42 USC §12101

This Act states that all new construction and programs will be accessible to individuals with disabilities. Additionally, NPS Special Directive 83-3 states that accessibility will be proportional to the degree of development (i.e., areas of

intense development, such as visitor centers, museums, drive-in campgrounds, etc., will be entirely accessible and areas of lesser development, such as backcountry trails and walk-in campgrounds, may have fewer accessibility features). All development proposed must be consistent with this Act.

Architectural Barriers Act of 1968, Public Law 90-480, 82 Stat. 718, 42 USC §4151 et seq.

This Act establishes standards for design/construction or alteration of buildings to ensure that physically disabled persons have ready access to and use of such buildings. The Act excludes historic structures from the standards until they are altered. All development proposed must be consistent with this Act.

Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Parts 1500-1508)

The Council on Environmental Quality (CEQ) regulations for implementing NEPA establish the process by which federal agencies fulfill their obligations under the NEPA process. The CEQ regulations contain the requirements for environmental assessments and EISs that document the NEPA process. These regulations also define such key terms as “cumulative impact,” “mitigation” and “significantly” to ensure consistent application of these terms in environmental documents. This EIS was prepared as directed in the CEQ regulations.

Freedom of Information Act of 1966, Public Law 89-487, 80 Stat. 250, 5 USC §552

The Freedom of Information Act (FOIA) grants United States citizens the right to access government information upon request. FOIA only applies to records of the Executive Branch of the Federal Government. It does not apply to the Legislative or Judicial Branch of the Federal Government or to state governments, local governments, or private groups. FOIA gives members of the public the right to access any federal record unless the information in those records is protected by one of the nine exemptions and there is a sound legal basis to withhold them. A member of the public obtains records through



FOIA by submitting a written request to the appropriate department.

National Environmental Policy Act of 1970, Public Law 91-190, 83 Stat. 852, 42 USC §4341 et seq.

The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences and take actions that protect, restore, and enhance the environment. Regulations implementing NEPA are set forth by the CEQ.

Wilderness Act of 1964, Public Law 88-577, 78 Stat. 890, 16 USC §§1131-1136

The Wilderness Act directed the Secretary of the Interior, within 10 years, to (1) review every roadless area of 5,000 acres (2,023 ha) or more and every roadless island (regardless of size) within National Wildlife Refuge and National Park Systems and (2) to recommend to the President the suitability of each such area or island for inclusion in the National Wilderness Preservation System, with final decisions made by Congress. The Secretary of Agriculture was directed to study and recommend suitable areas in the National Forest System. The Act provides criteria for determining suitability and establishes restrictions on activities that can be undertaken on a designated area.

Natural Resources Legislation

Bald Eagle Protection Act of 1940, 54 Stat. 250, 16 U.S.C. 668-668d

This law provides for the protection of the bald eagle (the national emblem) and the golden eagle by prohibiting, except under certain specified conditions, the taking, possession, and commerce of such birds. The 1972 amendments increased penalties for violating provisions of the Act or regulations issued pursuant thereto and strengthened other enforcement measures. The 1978 amendment authorizes the Secretary of the Interior to permit the taking of golden eagle nests that interfere with resource development or recovery operations. A 1994 Memorandum from President Clinton to the heads of Executive Agencies and Departments sets out the policy concerning collection and distribution of eagle feathers for Native American religious purposes.

Clean Air Act, as amended, Public Law Chapter 360, 69 Stat. 322, 42 USC §7401 et seq.

Section 118 of the Clean Air Act requires all federal facilities to comply with existing federal, state, and local air pollution control laws and regulations.

Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) of 1977, 33 USC 1251 et seq.

The Clean Water Act provides for the restoration and maintenance of the physical, chemical, and biological integrity of the nation's waters. Section 404 of the Act prohibits the discharge of fill material into navigable waters of the United States, including wetlands, except as permitted under separate regulations by the ACOE and EPA. The placement of fill material in wetlands should be avoided if there are practicable alternatives. Compliance with Section 401 and 404 of the Clean Water Act will be completed, as necessary, prior to any new construction proposed in this Final Plan/EIS.

Clean Water Act Amendments of 1987

The 1987 amendments to this Act required that the EPA establish regulations for the issuance of municipal and industrial stormwater discharge permits as part of the National Pollutant Discharge Elimination System. The final regulations were published in November 1990. These regulations apply to any construction activities that disturb more than 5 acres (2 ha) of land.

Endangered Species Act of 1973, as amended, Public Law 93-205, 87 Stat. 884, 16 USC §1531 et seq.

The Endangered Species Act (ESA) protects threatened and endangered species, as listed by the USFWS, from unauthorized take and directs federal agencies to ensure that their actions do not jeopardize the continued existence of such species. Section 7 of the Act defines federal agency responsibilities for consultation with the USFWS and requires preparation of a biological assessment to identify any threatened or endangered species that is likely to be affected by the proposed action. The NPS initiated and maintained formal consultation with the USFWS throughout the planning process.

Migratory Bird Treaty Act of 1918, 40 Stat. 755, 16 USC §§703-712

The original 1918 statute implemented the 1916 convention between the United States and Great Britain (for Canada) for the protection of migratory birds. Later amendments implemented treaties between the United States and Mexico, Japan, and current day Russia, respectively. Specific provisions in the statute include an establishment of a



federal prohibition, unless permitted by regulations, to “pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird, included in the terms of this convention...for the protection of migratory birds... or any part, nest, or egg of any such bird” (16 U.S.C. 703). The statute also prohibits the interstate or international transport of a migratory bird, part of bird, nest of bird, or egg of bird that was taken or killed in violation of the law of the district where it was taken from or killed.

Cultural Resources Legislation

Antiquities Act of 1906, Public Law 59-209, 34 Stat. 225, 16 USC §432, and 43 CFR 3

This Act provides for the protection of historic or prehistoric remains, “or any antiquity,” on federal lands. It protects historic monuments and ruins on public lands. It was superseded by the Archeological Resources Protection Act of 1979 as an alternative federal tool for prosecution of antiquities violations in the National Park System.

Archeological Resources Protection Act of 1979, Public Law 96-95, 93 Stat. 712, 16 USC §470aa et seq., 43 CFR 7 (subparts A and B) and 36 CFR

This Act secures the protection of archeological resources on public or Indian lands and fosters increased cooperation and exchange of information between private, government, and the professional community in order to facilitate the enforcement and education of present and future generations. It regulates excavation and collection on public and Indian lands. It requires notification of Indian tribes who may consider a site of religious or cultural importance prior to issuing a permit. The Act was amended in 1988 to require the development of plans for surveying public lands for archeological resources and systems for reporting incidents of suspected violations.

National Historic Preservation Act of 1966, as amended, Public Law 89-665, 80 Stat. 915, 16 USC§470 et seq., and 36 CFR 18, 60, 61, 63, 68, 79, 800

The National Historic Preservation Act (NHPA) requires agencies to take into account the effects of their actions on properties listed in or eligible for listing in the National Register of Historic Places (NRHP). The Advisory

Council on Historic Preservation (ACHP) has developed implementing regulations (36 CFR 800), which allow agencies to develop agreements for consideration of these historic properties.

American Indian Religious Freedom Act, Public Law 95-341, 92 Stat. 469, 42 USC §1996

This Act declares policy to protect and preserve the inherent and constitutional right of the American Indian, Eskimo, Aleut, and Native Hawaiian people to believe, express, and exercise their traditional religions. It provides that religious concerns should be accommodated or addressed under NEPA or other appropriate statutes.

Native American Grave Protection and Repatriation Act, Public Law 101-601, 104 Stat. 3049, 25 USC §3001-3013

This Act assigns ownership or control of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony that are excavated or discovered on federal lands or tribal lands to lineal descendants or culturally affiliated Native American groups.

Executive Orders

Executive Order 11593: Protection and Enhancement of the Cultural Environment

This EO instructs all federal agencies to support the preservation of cultural properties. It directs them to identify and nominate cultural properties under their jurisdiction to the NRHP and to “exercise caution...to assure that any federally owned property that might qualify for nomination is not inadvertently transferred, sold, demolished, or substantially altered.”

Executive Order 11988: Floodplain Management

This EO requires federal agencies to avoid, to the extent possible, adverse impacts associated with the occupancy and modification of floodplains, and to avoid development in floodplains whenever there is a practical alternative. If a proposed action is found to be in the applicable regulatory floodplain, the agency shall prepare a floodplain assessment, known as a Statement of Findings.

Executive Order 11990: Protection of Wetlands

This EO established the protection of wetlands and riparian systems as the official policy of the federal government. It requires all federal agencies to consider

wetland protection as an important part of their policies and take action to minimize the destruction, loss, or degradation of wetlands and preserve and enhance the natural and beneficial values of wetlands. Should adverse impacts on wetlands be identified, a Wetland Statement of Findings would be prepared.

Executive Order 12902: Energy Efficiency and Water Conservation

This EO directs each agency involved in the construction of a new facility to design and construct it to use energy efficiently, conserve water, and employ renewable energy technologies. The requirements of this EO would be met during the design phase for any new facilities proposed.

Executive Order 13112: Invasive Species

This EO directs federal agencies to not authorize, fund, or carry out actions they believe are likely to cause or promote the introduction or spread of invasive species. Actions proposed in this Final Plan/EIS include measures to prevent the introduction and spread of invasive species.

Executive Order 13149: Greening the Government through Federal Fleet and Transportation Efficiency

The purpose of this EO is to reduce petroleum consumption by the government through improvements in fleet fuel efficiency and the use of alternative fuel vehicles and alternative fuels. The NPS is continuously striving to reduce petroleum consumption. The NPS will complete a business plan for a transit program that will address anticipated use, intermodal transfers, and other factors (i.e., vehicle type and fuel use). Any vehicles the Park may purchase as a result of this Final Plan/EIS will strive to meet this EO.

Department of the Interior — Director’s Orders

Director’s Orders provide guidance for implementing certain aspects of NPS policy. Copies of those completed Orders may be obtained by contacting the NPS Office of Policy or by accessing the NPS web site at www.nps.gov/refdesk/DOrders/.

The following Director’s Orders may be relevant to the planning process:

- 1 The Directives System.
- 2 Park Planning.
- 9 Law Enforcement Program.

- 16A Reasonable Accommodation for Applicants and Employees with Disabilities.
- 17 National Park Service Tourism.
- 18 Wildland Fire Management.
- 20 Agreements.
- 21 Donations and Fundraising.
- 28 Cultural Resource Management.
- 32 Cooperating Associations.
- 41 Wilderness Preservation & Management.
- 50B Occupational Safety and Health.
- 77-1 Wetland Protection.
- 83 Public Health National Park Service Guidelines.
- NPS-12 National Environmental Policy Act Guidelines.
- NPS-77 Natural Resources Management Guidelines.

Future Surveys and Regulatory Compliance Necessary to Implement the Project

Since the Draft Plan/EIS was written, amphibian and sensitive bird surveys have been conducted and a black bear study in the Moose-Wilson corridor is ongoing. An archeological inventory of 97 acres (39 ha) between Dornan’s and South Jenny Lake has also been completed.

Per NEPA, all federal actions that have the potential to affect the environment must undergo some type of analysis through an established process before a decision is made. This Final Plan/EIS represents the most comprehensive type of analysis described by NEPA and as such, fully analyzes all the potential impacts for all the actions proposed. Consequently, if the preferred alternative is selected, NEPA compliance will be considered complete for all actions proposed in that alternative (unless otherwise stated in the document), as outlined in the ROD that will follow. During specific design and construction phases, the Park’s NEPA interdisciplinary team will continue to review and monitor all implementation components of this Final Plan/EIS in order to ensure that all regulatory compliance is completed. The following is a list of additional studies that will need to be completed to implement the project once an alternative has been selected and the preliminary design has been initiated:



- Archeological surveys of areas where improvements are proposed will be needed to determine whether sites are present and/or eligible for listing in the NRHP.
- Ethnographic studies may be necessary because many of the areas that would be affected by the Final Plan/EIS are unsurveyed. The NPS will continue to consult with the Park's associated American Indian tribes. If these or other tribes subsequently identify the presence of ethnographic resources, appropriate mitigation measures will be undertaken in consultation with the tribes as well as the Wyoming SHPO.
- Hydraulic analysis for all bridge locations will be necessary as part of preliminary design and to determine the need for further permitting.
- Wetland surveys will be performed to provide more accurate locations of wetlands and open water habitats within the project area. Wetlands would be delineated (by qualified NPS staff or certified wetland specialists) and marked prior to construction. It is the intent of the NPS to avoid wetlands during construction using cantilevered bridge crossings wherever possible in areas where bridges already exist. However, should potential adverse impacts to wetlands be identified, a Wetland Statement of Findings would be prepared.
- A rare plant survey will be conducted and will provide more accurate locations of rare plants within the project area. This survey would be completed by qualified NPS staff, or certified specialists, and marked prior to construction.
- A wildlife research and monitoring program, designed to evaluate a variety of pathway effects, will be implemented by the Park in order to understand more precisely wildlife associated pathway impacts. Relevant concerns that have been identified include impacts to wildlife, impacts to wildlife viewers, and wildlife safety hazards for pathway users. Some ongoing studies will help provide information for this program. For example, monitoring of elk movements will continue by increasing relocation frequency of currently collared elk between the south boundary and North Jenny Lake Junction, and bear monitoring in the Beaver Creek to North Jenny Lake Junction corridor will be expanded.
- Nesting bird surveys will be conducted (per the Migratory Bird Treaty Act) prior to construction disturbances in order to minimize impacts to migratory birds and birds of special concern. Breeding bird surveys will also be conducted along proposed pathways, and sage-grouse surveys will be conducted in sagebrush habitat potentially impacted by pathways. These surveys would be completed by qualified NPS staff, or certified specialists, and marked prior to construction.

