

**APPENDIX B
SERVICE-WIDE MANDATES AND POLICIES PERTAINING TO
CUMBERLAND GAP NATIONAL HISTORICAL PARK**

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SERVICE-WIDE MANDATES AND POLICIES PERTAINING TO CUMBERLAND GAP NATIONAL HISTORICAL PARK

Laws and executive orders that apply to the management of the Cumberland Gap National Historical Park are provided below.

NATIONAL PARK SERVICE ENABLING LEGISLATION

Act of August 25, 1916 (National Park Service Organic Act); Public Law 64-235; 16 United States Code Section 1 et seq. as amended

Reorganization Act of March 3, 1933; 47 Stat. 1517

General Authorities Act, October 7, 1976; Public Law 94-458; 90 Stat. 1939; 16 United States Code 1a-1 et seq.

Act amending the Act of October 2, 1968 (commonly called Redwoods Act), March 27, 1978; Public Law 95-250; 92 Stat. 163; 16 United States Code Subsection(s) 1a-1, 79a-q

National Parks and Recreation Act, November 10, 1978; Public Law 95-625; 92 Stat. 3467; 16 United States Code 1 et seq.

OTHER LAWS AFFECTING NPS OPERATIONS

Accessibility

Americans with Disabilities Act; Public Law 101-336; 104 Stat. 327; 42 United States Code 12101

Architectural Barriers Act of 1968; Public Law 90-480; 82 Stat. 718; 42 United States Code 4151 et seq.

Rehabilitation Act of 1973; Public Law 93-112; 87 Stat. 357; 29 United States Code 701 et seq. as amended by the Rehabilitation Act Amendments of 1974; 88 Stat. 1617

Cultural Resources

American Indian Religious Freedom Act; Public Law 95-341; 92 Stat. 469; 42 United States Code 1996

Antiquities Act of 1906; Public Law 59-209; 34 Stat. 225; 16 United States Code 432; 43 Code of Federal Regulations 3

Archeological and Historic Preservation Act of 1974; Public Law 93-291; 88 Stat. 174; 16 United States Code 469

Archeological Resources Protection Act of 1979; Public Law 96-95; 93 Stat. 712; 16 United States Code 470aa et seq.; 43 Code of Federal Regulations 7, subparts A and B; 36 Code of Federal Regulations 79

Indian Sacred Sites. Executive Order 13007. 3 Code of Federal Regulations 196 (1997).

National Historic Preservation Act as amended; Public Law 89-665; 80 Stat. 915; 16 United States Code 470 et seq.; 36 Code of Federal Regulations 18, 60, 61, 63, 65, 79, 800

Protection of Historic and Cultural Properties, Executive Order 11593; 36 Code of Federal Regulations 60, 61, 63, 800; 44 Federal Register 6068

Public Buildings Cooperative Use Act of 1976; Public Law 94-541; 90 Stat. 2505; 42 United States Code 4151-4156

Surface Mining Control and Reclamation Act of 1977; 30 U.S.C. §§ 1234-1328; 30 CFR Part 700 et seq.

Natural Resources

Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing the National Environmental Policy Act; E.S. 80-3, 08/11/80, 45 Federal Register 59109

Clean Air Act as amended; Public Law Chapter 360; 69 Stat. 322; 42 United States Code 7401 et seq.

Coastal Zone Management Act of 1972 as amended; Public Law 92-583; 86 Stat. 1280; 16 United States Code 1451 et seq.

Endangered Species Act of 1973, as amended; Public Law 93-205; 87 Stat. 884; 16 United States Code 1531 et seq.

Executive Order 11988: Floodplain Management; 42 Federal Register 26951; 3 Code of Federal Regulations 121 (Supp 177)

Executive Order 11990: Protection of Wetlands; 42 Federal Register 26961; 3 Code of Federal Regulations 121 (Supp 177)

Executive Order 11991: Protection and Enhancement of Environmental Quality

Executive Order 12898: Environmental Justice

Federal Caves Resource Protection Act of 1988

Federal Insecticide, Fungicide, and Rodenticide Act; Public Law 92-516; 86 Stat. 973; 7 United States Code 136 et seq.

Federal Water Pollution Control Act (commonly referred to as Clean Water Act); Public Law 92-500; 33 United States Code 1251 et seq. as amended by the Clean Water Act; Public Law 95-217

Fish and Wildlife Coordination Act of 1958 as amended; Public Law 85-624; 72 Stat. 563; 16 United States Code 661 et seq.

Migratory Bird Conservation Act; Public Law Chapter 257; 45 Stat. 1222; 16 United States Code 715 et seq.

Migratory Bird Treaty Act of 1918; Public Law 186; 40 Stat. 755

Magnuson-Stevens Fishery Conservation and Management Act

National Environmental Policy Act of 1969; Public Law 91-190; 83 Stat. 852; 42 United States Code 4321 et seq.

National Park System Final Procedures for Implementing Executive Order. 11988 and 11990 (45 Federal Register 35916 as revised by 47 Federal Register 36718)

Protection and Enhancement of Environmental Quality; Executive Order 11514 as amended, 1970; Executive Order 11991; 35 Federal Register 4247; 1977; 42 Federal Register 26967)

Resource Conservation and Recovery Act; Public Law 94-580; 30 Stat. 1148; 42 United States Code 6901 et seq.

Rivers and Harbors Act of 1899; 33 United States Code Chapter 425, as amended by Public Law 97-332, October 15, 1982 and Public Law 97-449; 33 United States Code 401-403

Water Resources Planning Act of 1965 (Public Law 89-80; 42 United States Code 1962 et seq.) and Water Resource Council's Principles and Standards; 44 Federal Register 723977

Watershed Protection and Flood Prevention Act; Public Law 92-419; 68 Stat. 666; 16 United States Code 100186

Other

Administrative Procedures Act; 5 United States Code 551-559, 701-706

Concessions Policy Act of 1965; Public Law 89-249; 79 Stat. 969; 16 United States Code 20 et seq.

Department of Transportation Act of 1966; Public Law 89-670; 80 Stat. 931; 49 United States Code 303

Energy Supply and Environmental Coordination Act of 1974

Executive Order 12003: Energy Policy and Conservation; 3 Code of Federal Regulations 134 (Supp 1977); 42 United States Code 2601

Executive Order 12088: Federal Compliance with Pollution Control Standards

Executive Order 12372: Intergovernmental Review of Federal Programs; 47 Federal Register 30959

Farmland Protection Policy Act PL-97-98

Forest and Rangeland Renewable Resources Planning Act; Public Law 95-307; 92 Stat. 353; 16 United States Code 1600 et seq.

Freedom of Information Act; Public Law 93-502; 5 United States Code 552 et seq.

Intergovernmental Cooperation Act of 1968; Public Law 90-577; 40 United States Code 531-535 and 31 United States Code 6501-6508

Intergovernmental Coordination Act of 1969; 42 United States Code 4101, 4231, 4233

Noise Control Act of 1972 as amended; Public Law 92-574; 42 United States Code 4901 et seq.

Outdoor Recreation Coordination Act of 1963; Public Law 88-29; 77 Stat. 49

Payment in Lieu of Taxes Act; Public Law 94-565; 90 Stat. 2662; 31 United States Code 6901 et seq.

Surface Transportation Assistance Act of 1982; 96 Stat. 2097; 23 United States Code 101; and many others

Wildfire Disaster Recovery Act; Public Law 101-286

SERVICEWIDE LAWS AND POLICIES

This section summarizes the most appropriate of the legal and administrative mandates that apply to managing all units of the national park service. These are measures that the National Park Service must strive to meet, regardless of the alternative selected for the long-term management of the Cumberland Gap National Historical Park.

The National Park Service Organic Act and the Redwood Act Amendment to the National Park Service General Authorities Act

One of the most important statutory directives for the National Park Service (NPS) is provided by the interrelations of the NPS Organic Act of 1916 and the Redwood Act Amendment to the NPS General Authorities Act of 1970. The Organic Act mandates that the National Park Service “shall promote and regulate the use of Federal areas known as national parks, monuments, and reservations by such means and measures as conform to the fundamental purpose of said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife 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.”

The General Authorities Act amends the Organic Act to broaden the types of areas that are included in the national park system, such as national seashores, recreation areas, and parkways. The Redwood Act further amends the General Authorities Act to reassert system-wide the high standard of protection set forth in the Organic Act. In the Redwood Act, “Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the Nation Park System shall be consistent with and founded in the purpose established by the first section of the Act of August 25, 1916, to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity on the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.”

Both the Organic Act and the General Authorities Act, as amended by the Redwood Act, define a single standard for the management of the park service: to safeguard the units of the national park system, conserving resources and values for enjoyment of all people of the United States and prohibiting impairment. Director’s Order 55, Interpreting the National Park Service Organic Act, serves as the NPS interpretation of the meaning of the Organic Act and the General Authorities Act, as amended.

National Historic Preservation Act

The National Historic Preservation Act of 1966 authorized the Secretary of the Interior to “expand and maintain a national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture.” Section 106 of the act requires federal agencies to consider the effects of their undertakings on National Register properties and to allow the Advisory Council on Historic Preservation “a reasonable opportunity to comment” on such undertakings. The National Register of Historic Places was expanded from the original roster of historic landmarks and areas of the National Park System to a comprehensive inventory of historic properties nationwide. National Park Service actions affecting properties listed on the National Register of Historic Places are subject to review by state historic preservation officers and the Advisory Council.

Section 110 requires among other things that the park to "establish a preservation program to protect and preserve historic properties in consultation with others" and that this program ensure "that historic properties under the jurisdiction or control of [the National park Service], are identified, evaluated, and nominated to the National Register." Further, Section 110 requires "that such properties under the jurisdiction or control of [the park] as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archeological, architectural, and cultural values in compliance with section 106 of this Act and gives special consideration to the preservation of such values in the case of properties designated as having National significance." Section 112 requires that studies or other actions taken with regards to historic properties be done by personnel or contractors who meet appropriate professional qualifications standards developed by the Secretary of the Interior. It also requires that the park maintain data from historic properties studies in an appropriate database available to prospective researchers.

National Environmental Policy Act

The National Environmental Policy Act of 1969 states as policy that federal agencies must assess the environmental impacts of any proposed action that they fund, support, permit, or implement. It specifically directs federal agencies to document the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the proposed action be implemented, and alternatives to the proposed action.

The act also established the Council on Environmental Quality, which is charged with the implementation and oversight of the National Environmental Policy Act. The Council on Environmental Quality subsequently developed the legal requirements (40 Code of Federal Regulations 1500-1508) that all federal agencies must follow in evaluating the environmental effects of proposed actions. These procedures involve three levels of documentation: categorical exclusions; environmental assessments; and environmental impact statements. In the National Park Service, construction activities, natural or cultural resource management projects, and park plans trigger the majority of National Environmental Policy Act documents. The National Environmental Policy Act enables the National Park Service to integrate compliance with other legal mandates and provides a format for public involvement. Director's Order 12 sets forth the policy and procedures by which the service will comply with the National Environmental Policy Act.

Clean Air Act

The Clean Air Act provides a legal framework for the National Park Service to preserve and protect parks' air quality related values. The act establishes national ambient air quality standards for certain criteria pollutants. Major provisions of the act are intended to set a goal for cleaner air by setting national primary and secondary ambient air quality standards. Primary standards define levels of air quality necessary to protect public health, while secondary standards define levels necessary to protect public welfare from any known or anticipated adverse effects of a pollutant.

Under the Clean Air Act, the U.S. Environmental Protection Agency is required to set new source performance standards, based on best-demonstrated technology and to establish national emission standards for hazardous air pollutants. The U.S. Environmental Protection Agency is also required to develop programs for prevention of significant deterioration of air quality in attainment areas. Air pollution permits in attainment areas mandate installation of pollution controls that represent the best available control technology.

The Clean Air Act also requires states to develop and submit a state implementation plan for achieving national ambient air quality standards within each state. The state implementation plan must establish state air quality control regions and specify emission limits, schedules, and timetables for compliance

from both stationary and mobile sources. The Clean Air Act requires federal facilities to comply with state air pollution requirements. The Clean Air Act reinforces the NPS Organic Act role as a protector of natural and cultural resources within the national park system. Under the Clean Air Act, the National Park Service is responsible for protecting air quality within park unit boundaries, and for taking appropriate action to do so, when reviewing emission sources within and outside of the park system.

Clean Water Act

The Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act and the Water Quality Act of 1987, forms the legal framework to support maintenance and restoration of water quality. The Clean Water Act establishes the National Pollutant Discharge Elimination System as the regulatory mechanism to achieve water quality goals by regulating pollutant discharge to navigable streams, lakes, and rivers. Through standards promulgated by individual states, the Clean Water Act requires the NPS to protect its water resources from point and nonpoint sources of pollution. Many NPS construction activities are regulated by the Clean Water Act under stormwater permitting requirements.

Endangered Species Act

The Endangered Species Act of 1973, amended in 1982 and 1987, is intended to prevent the further decline of endangered and threatened plant and animal species and to help in the restoration of populations of these species and their habitats. The Endangered Species Act, jointly administered by the Department of Commerce and the Department of the Interior, requires that each federal agency consult with the U.S. Fish and Wildlife Service to determine whether endangered or threatened species are known to exist or have critical habitats on or in the vicinity of the site of a proposed action.

Section 7(c) of the Endangered Species Act authorizes the U.S. Fish and Wildlife Service to review proposed major federal actions to assess the potential impacts to listed species. In accordance with Section 7 (c), the National Park Service, in consultation with the U.S. Fish and Wildlife Service, must identify and promote the conservation of all federally listed species and their critical habitat within park boundaries.

Executive Orders on Wetlands and Floodplains

Executive Order 11988, Floodplain Management (May 24, 1977), requires federal agencies to evaluate the potential effects of actions in floodplains to avoid adversely impacting floodplains wherever possible. Executive Order 11988 also requires federal agencies to ensure that planning programs and budget requests reflect consideration of flood hazards and floodplain management, including the restoration and preservation of such land areas as natural undeveloped floodplains, and to prescribe procedures to implement the policies and procedures of this executive order.

Executive Order 11990, Protection of Wetlands (May 24, 1977), requires federal agencies to take action to avoid adversely impacting wetlands wherever possible, to minimize wetlands destruction, and to preserve procedures to implement the policies and procedures of this executive order. It is the intent of these executive orders that, wherever possible, federal agencies implement the floodplains/wetlands requirements through existing procedures, such as those internal procedures established to implement National Environmental Policy Act. The National Park Service often integrates compliance with the executive orders with other legal mandates, such as National Environmental Policy Act.

Wilderness Act

The Wilderness Act of 1964 established the National Wilderness Preservation System, composed of federal lands designated as wilderness areas. Wilderness areas are to be administered “for the use and enjoyment of the American people in such a manner as will leave them unimpaired for future use and enjoyment as wilderness.” The law states that “the designation of any area of any park, monument, or other unit of the national park system as a wilderness area shall in no manner lower the standards evolved for the use and preservation of such park, monument, or other unit of the national park system.”

Except as specifically provided by law, permanent roads are prohibited within any wilderness area. Except as needed for administrative purposes, temporary roads or use of motorized vehicles or equipment are forbidden within any wilderness area. The following exceptions are permitted: where the use of motorboats is already established, it may be permitted to continue subject to management restrictions; all wheelchairs, including motorized wheelchairs, are allowed in NPS wilderness areas; measures necessary to control fire, insects, and diseases may be taken; and certain mining activities are permitted.

Management Policies 2006

This is an update to the 2001 Management Policies. The policies are derived from the laws that have been enacted to establish and govern the NPS and the National Park System. This document serves as the basic, Servicewide policy manual used by park superintendents and other NPS managers to guide their decision-making. The manual prescribes policies which enable the NPS to preserve park resources and values unimpaired for the enjoyment of future generations, as required by law. The policies have been updated to keep pace with new laws that have been enacted, changes in technology and American demographics, and new understandings of the kinds of actions that are required to best protect the natural and cultural resources of the parks. The policies stress the importance of: using the parks for educational purposes; demonstrating environmental leadership in the parks; managing park facilities and resources in ways that will sustain them for future generations of Americans to enjoy; and working with partners to help accomplish the NPS mission. The new Management Policies is available on the NPS World Wide Web site at <http://www.nps.gov/policy/MP2006.pdf>.

Director’s Order #12

Director’s Order #12 describes the policy and procedures by which the National Park Service will comply with the National Environmental Policy Act. The Council on Environmental Quality, part of the Executive Office of the President, is the “caretaker” of National Environmental Policy Act. The National Park Service is required to abide by all National Environmental Policy Act regulations (40 Code of Federal Regulations 1500-1508) and any other procedures and requirements imposed by other higher authorities, such as the Department of the Interior.

Director’s Order #24

Director’s Order #24: Museum Collections Management Director’s Order 24 lays the foundation by which the National Park Service meets its responsibilities toward museum collections. This Director’s Order provides policy guidance, standards, and requirements for preserving, protecting, documenting, and providing access to, and use of, National Park Service museum collections.

Director's Order #28 (NPS 1998e)

Director's Order #28, issued pursuant to 16 United States Code (1 through 4), addresses cultural resource management. The National Park Service will protect and manage cultural resources in its custody through effective research, planning, and stewardship and in accordance with the policies and principles contained in the National Park Service Management Policies 2006.

Director's Order #28A

Director's Order #28A: Archeology provides a management framework for planning, reviewing, and undertaking archeological activities and other activities that may affect archeological resources within the National Park System.

Director's Order # 47

Director's Order #47, Soundscape Preservation and Noise Management, articulates National Park Service operational policies that will require, to the fullest extent practicable, the protection, maintenance, or restoration of the natural soundscape resource in a condition unimpaired by inappropriate or excessive noise sources.

Directors Order #77-1

Directors Order #77-1, Wetland Protection, establishes National Park Service (NPS) policies, requirements, and standards for implementing Executive Order (E.O.) 11990: "Protection of Wetlands" (42 Fed. Reg. 26961). E.O. 11990 was issued by President Carter in 1977 in order "...to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative...."

Directors Order #77-2

Directors Order #77-2, Floodplain Management, applies to all NPS proposed actions, including the direct and indirect support of floodplain development, that could adversely affect the natural resources and functions of floodplains, including coastal floodplains, or increase flood risks. This Director's Order also applies to existing actions when they are the subjects of regularly occurring updates of NPS planning documents.

This Director's Order does not apply to historic or archeological structures, sites, or artifacts whose location is integral to their significance or to certain actions as specifically identified in Procedural Manual 77-2.

Ban on Personal Watercraft

Personal watercraft use is a relatively new recreational activity that has been observed in approximately 32 of the 87 units of the national park system that allow motorized boating. The NPS is proposing regulations that will prohibit personal watercraft in units of the national park system unless the NPS determines that such use is appropriate for a specific unit based on that unit's enabling legislation, resources and values, other visitor uses, and overall management objectives.

The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. §§ 1234-1328; promulgated in 30 CFR Part 700 et seq.) was the first Federal law to regulate the environmental effects of strip mining and to require reclamation of damaged land and water. The Act created two major programs for joint implementation by the states and the Federal government. The first was an environmental protection

program to establish standards and procedures for approving permits and inspecting active coal mining and reclamation operations for surface — as well as the surface impacts of underground — mining. The second was a reclamation program, financed by fees paid by active coal operators, to restore land and water at abandoned mines. Congress included provisions for prohibiting mining in sensitive areas, requirements that coal companies obtain bonds to cover the costs of reclamation in case the companies failed to meet their obligations, and provisions for citizen participation in mine permitting, inspection and enforcement.

The Act created two programs: one for regulating active coal mines and a second for reclaiming abandoned mine lands. SMCRA also created the Office of Surface Mining, an agency within the Department of the Interior, to promulgate regulations, to fund state regulatory and reclamation efforts, and to ensure consistency among state regulatory programs.

The Surface Mining Control and Reclamation Act of 1977

The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. §§ 1234-1328; promulgated in 30 CFR Part 700 et seq) was the first Federal law to regulate the environmental effects of strip mining and to require reclamation of damaged land and water. The Act created two programs: one for regulating active coal mines and a second for reclaiming abandoned mine lands. SMCRA also created the Office of Surface Mining, an agency within the Department of the Interior, to promulgate regulations, to fund state regulatory and reclamation efforts, and to ensure consistency among state regulatory programs.

Section 522 (e)(3) states that after the enactment of the Act and subject to valid existing rights, no surface coal mining operations except those which exist on the date of enactment of the Act shall be permitted which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site.

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