

Committee on Natural Resources  
Rob Bishop, Chairman  
Hearing Memorandum

September 14, 2018

To: Members of the House Committee on Natural Resources

From: Majority Committee Staff – Holly Baker and Terry Camp  
Subcommittee on Federal Lands (x6-7736)

Hearing: Full Committee field hearing titled, “*Historic Leasing in the National Park System: Assessing Challenges and Building on Successes*”  
**September 17, 2018, at 2:00 PM (CDT); Hot Springs City Hall, 133  
Convention Boulevard, Hot Springs National Park, Arkansas**

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The House Committee on Natural Resources will hold a field hearing titled “*Historic Leasing in the National Park System: Assessing Challenges and Building on Successes*” on Monday, September 17, 2018, at 2:00 PM CDT, in Hot Springs, Arkansas.

**Policy Overview**

- Leasing historic buildings allows the National Park Service (NPS) to leverage private financial resources to maintain publicly-owned historic structures for future generations. Leasing is a valuable part of an overall strategy to reduce the \$11.6 billion deferred maintenance backlog needs of park infrastructure.
- The historic building leasing program of the NPS has a demonstrated track-record of success in many parks; however, multiple administrative and regulatory roadblocks have prevented the rollout of a robust nationwide program.
- This field hearing will review the state of the NPS’s historic leasing program, its challenges and successes, and assess avenues for increased efficiency and expansion. The Committee will hear from witnesses who are currently leasing historic buildings from the NPS, those who support the use of historic leasing as a viable method to preserve historic structures, and a subject matter expert from the agency.

**Witnesses**

*Ms. Tracy Simmons*  
Chief of Commercial Services  
Midwest Region  
National Park Service  
U.S. Department of the Interior  
Omaha, Nebraska

*The Honorable Pat McCabe*  
Mayor  
City of Hot Springs  
Hot Springs National Park, Arkansas

*Mr. Cole McCaskill*  
Vice President  
Hot Springs Chamber of Commerce  
Hot Springs National Park, Arkansas

*Mr. Tom Cassidy*  
Vice President  
Government Relations and Policy  
National Trust for Historic Preservation  
Washington, DC

*Mr. Bob Kempkes*  
Owner  
Quapaw Bathhouse and Spa  
Hot Springs National Park, Arkansas

## **Background**

The National Park Service (NPS) is charged with protecting America’s scenic wonders, recreation areas, and historic treasures. Across its 417 units, the NPS is responsible for maintaining approximately 9,600 historic buildings that preserve the country’s treasured history.<sup>1</sup> This translates to a significant need for funding, expertise, and labor to rehabilitate and maintain these valuable structures. Fortunately, the NPS has a valuable tool at its disposal — Leasing Authority. Buildings that are not needed for the operation of a park may be leased to businesses, private individuals, non-profit organizations, or government entities.

The public-private partnership of the NPS’s historic leasing program is a win-win. When federally owned buildings are leased, a financial burden is lifted from American taxpayers. Lessees are responsible for the repair, routine maintenance, and often restoration of the properties they occupy. A successful historic leasing program is a critical tool that can be leveraged to reduce the \$11.6 billion deferred maintenance backlog in our national parks. Approximately \$4.5 billion of that total is attributable to the unmet needs of NPS structures that are listed on the National Register of Historic Places.<sup>2</sup> When lessees take on the cost of repairs, the NPS not only saves money, but also realizes a reduction in workload for park maintenance staff.

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<sup>1</sup> “Historic Leasing in the National Park System: Preserving History Through Effective Partnerships”. National Trust for Historic Preservation. September 2013. Page 4.

<https://forum.savingplaces.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=98fd09ff-b112-ec05-35ad-21eca5f99fc2>

<sup>2</sup> NTHP. 2013. Page 4.

Leasing historic buildings also enables the NPS to meet its preservation mandate. When buildings are occupied they are also cared for. The National Park Service Organic Act and National Historic Preservation Act require the NPS to preserve historic buildings.<sup>3</sup> In contrast to mothballing a structure or managing it as a ruin, putting buildings to use ensures they get the attention they need. In addition to performing routine maintenance and repairs, occupants are able to closely monitor the structural conditions of a building and address issues before they become insurmountable problems. Many leases stipulate that the lessee must rehabilitate the structure prior to occupancy. All work must be completed following the Secretary of the Interior's Standards for the Treatment of Historic Properties to preserve the historic character of the building.<sup>4</sup>

Another preservation pathway is the rental revenue generated for the NPS, which is deposited in a maintenance and preservation fund. The NPS can use these funds to perform necessary rehabilitation and repairs on leased and non-leased historic properties. These public-private partnerships have often meant the difference between preservation, or deterioration of our irreplaceable historic resources.

Finally, thriving businesses in national parks mean more services for park visitors and economic growth for gateway communities. Historic leasing in park units has been used to operate businesses, provide housing, educate students, and manage event spaces.<sup>5</sup> Jobs are created and revenue is reinvested in the local area when private enterprises enter into leases with park sites. Consequently, the leasing program can help strengthen the relationship between parks and their gateway communities.

### Leasing Authority and Regulations

The NPS's authority to lease historic structures dates to the Historic Sites Act of 1935.<sup>6</sup> The National Historic Preservation Act also authorizes the leasing of historic structures to support their preservation.<sup>7</sup> The National Parks Omnibus Management Act of 1998 (1998 law) authorized the NPS to lease non-historic buildings and provided detailed parameters for leasing authority in the NPS.<sup>8</sup> Unlike most other federal agencies, the NPS is able to execute leases under authority of this Act without having to go through the General Services Administration (GSA). Of particular interest, a provision in the 1998 law directs the Secretary of the Interior to *"simplify, to the maximum extent possible, the leasing process for historic properties with the goal of leasing available structures in a timely manner."*<sup>9</sup>

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<sup>3</sup> 54 USC §100101; 54 USC §306121

<sup>4</sup> "The Secretary of the Interior's Standards". Technical Preservation Services. National Park Service website. <https://www.nps.gov/tps/standards.htm>

<sup>5</sup> NTHP. 2013. pp 36-51.

<sup>6</sup> 54 USC §320102

<sup>7</sup> 54 USC §306121

<sup>8</sup> 54 USC §102102

<sup>9</sup> [Pub. L. 105-391, title VIII, §802\(b\), Nov. 13, 1998, 112 Stat. 3523](#)

In 2001, the agency updated its regulations based on the 1998 law: 36 CFR Part 18—Leasing of Properties in Park Areas.<sup>10</sup>

Major provisions of the 2001 update include:

- Only property that is not needed for the park’s own operations or administrative purposes can be leased
- Leases cannot result in degradation of the purposes and values of the park area
- Rent on leases must be at least fair market value; rehabilitation costs incurred by the lessee can be credited towards the rent
- Leases will be awarded through competition for commercial business activities; leases can be issued non-competitively to non-profit organizations and government entities
- Activities proposed under a lease can not be any that should be issued by a concession contract
- The lease will ensure the preservation of the historic property
- Leases are to be for as short of a term as possible

### Models of Success

The historic building leasing program of the NPS has a demonstrated track-record of success in many parks. The NPS has approximately 350 facilities under lease agreements, and in 2017 over \$9.3 million in revenue was generated through leasing.<sup>11</sup>

#### *Hot Springs National Park, Hot Springs, Arkansas*

The Quapaw Bathhouse had been vacant since the 1980s when a lessee stepped in and invested \$2.5 million to rehabilitate the property. Quapaw reopened as a luxury spa in 2008. The NPS is no longer responsible for utility bill or maintenance costs. The Superior Bathhouse Brewery opened in 2014 and uses thermal spring water in their beers made on site. The lessee improved the floor and electrical conduits, and added a glass wall so visitors could see the beer-making process, all without harming the historic fabric of the building.<sup>12</sup>

#### *Martin Luther King, Jr. National Historic Site, Atlanta, Georgia*

Martin Luther King Jr. National Historic Site includes a block of historic houses adjacent to Rev. King’s birth home to preserve the character and cultural integrity of Auburn Avenue. Revenue is generated from residential leases on 29 historic homes. This leasing program is so popular that there is a waiting list for tenants. The nearly \$200,000 in annual rental revenue collected through rental agreements is used to perform major maintenance and restoration in the historic district. Individual lessees are responsible for funding routine maintenance.<sup>13</sup>

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<sup>10</sup> [36 CFR Part 18—Leasing of Properties in Park Areas](#). (Federal Register 66 FR 66759, Dec. 27, 2001)

<sup>11</sup> Letter from DOI to the Honorable Rob Bishop, Chairman, Committee on Natural Resources. Dated August 28, 2018. Responses to questions received following the March 6, 2018 oversight hearing. Page 6.

<sup>12</sup> “Hot Springs National Park”. National Trust for Historic Preservation. White paper on Historic Leasing in National Parks. 2018.

<sup>13</sup> NTHP. 2013. Page 42.

### *Klondike Gold Rush National Historic Park, Skagway, Alaska*

The main thoroughfare in Skagway, Alaska is protected by the park service to preserve the cultural landscape of the 19<sup>th</sup> Century goldrush. The park began actively pursuing historic leasing in the late 1980s and seven historic leases have been extended to commercial businesses that provide services to tourists. The NPS receives over \$300,000 rent annually, which is used to fund historic property maintenance.<sup>14</sup>

### *Valley Forge National Historical Park, King of Prussia, Pennsylvania*

The Montessori Children's House signed a 40-year lease in 2009 to use buildings in the park for a school. The buildings were in serious disrepair and the school's restoration work and \$3 million in private investment preserved the historic integrity of key structures. The park benefits from annual rent and maintenance payments, and the school benefits by having a learning environment in a historic setting.<sup>15</sup>

### Challenges and Barriers

Despite the many benefits to the public, the NPS, and local communities, the NPS has not implemented historic leasing to the fullest extent possible. There exist regulatory and policy barriers, as well as opportunities for improving programmatic and procedural aspects of leasing.

### *Limits on lease length*

While not required by statute, agency regulations stipulate that leases “*shall have as short a term as possible.*”<sup>16</sup> Additionally, any lease over 10 years must be approved by the NPS Director.<sup>17</sup> At most, leases can be 60 years in length, though they were not found to be prevalent across the Service in a 2013 study.<sup>18</sup> Shorter-term leases are not attractive to potential tenants. The investment required to launch a business and the security of a long-term future necessitates longer leases. Tenants who wish to take advantage of the Historic Tax Credit need leases of at least 55 years.<sup>19</sup> The Historic Tax Credit is a significant incentive for potential lessees and was put in place to encourage the restoration of historic buildings. Further, leases may not be extended, and lessees are not entitled to automatic renewal. At the end of the lease term, there must be a new competitive process.

### *Concessions vs. Leasing*

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<sup>14</sup> NTHP. 2013. Page 49.

<sup>15</sup> NTHP. 2013. Page 37.

<sup>16</sup> [36 CFR Part 18—Leasing of Properties in Park Areas.](#)

<sup>17</sup> Director's Order 38: Real Property Leasing. National Park Service. January 2006. [https://www.nps.gov/policy/DOrders/DO\\_38.pdf](https://www.nps.gov/policy/DOrders/DO_38.pdf)

<sup>18</sup> NTHP. 2013. Page 16.

<sup>19</sup> 26 USC §168(c). The recovery period for nonresidential real property is 39 years. In practice, leases must be longer than 39 years to use the credit. Tax experts practicing in this area have advised that to satisfy the indicia of ownership test, a lease of 55 years is needed. See NTHP 2013 report, note 72, page 35.

Commercial activities in national park units are governed by concessions contracts, leases, or other limited-use authorization mechanisms. Because federal law states that leases cannot be issued for any activity that could be a concession contract,<sup>20</sup> it is important to clarify the difference in order not to unnecessarily discourage leasing.

Concessions activities provide essential visitor services that are not available within a reasonable distance from the park. The NPS must oversee the goods, facilities, and services provided by the operator to ensure a high quality visitor experience. Rates charged for these services must be approved by the NPS and concession operations are regularly inspected and evaluated. Concessions activities are those that are “*necessary and appropriate*.”<sup>21</sup>

Activities under a lease are not essential and are not necessarily geared toward park visitors. The patrons of the lessee are expected to be those who come to the park area only to utilize the lessee's services. Additionally, when a service is being provided outside of the park boundary, it is no longer considered essential, and then that service can be managed as a lease. A recent policy memo noted that if similar facilities opened outside of park boundaries, the superintendent could consider converting a concessions contract into a lease. The NPS does not closely oversee the services provided by lessees. Activities under a lease must be “*appropriate*,” but cannot be necessary.<sup>22</sup>

The phrase “*necessary and appropriate*” derives from Congress’ intent that commercial activities in national parks not degrade resources, lead to overbuilding of facilities, or the unregulated and indiscriminate use of a park.<sup>23</sup> The NPS has adopted “*necessary and appropriate*” as its test for when a concessions contract should apply, requiring that leases only be “*appropriate*” activities. While resource preservation should always be held to the utmost, in park units that have significant infrastructure and numerous buildings, a more nuanced interpretation of what should be a concession should be considered. Some park units come into the system with substantial development already in place. Instead of using the criteria of how readily available a particular type of service is outside of the park, perhaps the determination of concession versus lease should be made based on whether the service needs to be closely monitored and evaluated by the park service.

#### *Need for subject-specific expertise*

The intricacies of commercial leases are understandably complex and often outside of the expertise of park superintendents and field staff. One barrier to expansion of the leasing program in the park service is the lack of subject matter experts, training, and lack of available tools.<sup>24</sup> To execute leases, NPS staff must be well versed in concepts such as property assessment and rent

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<sup>20</sup> 54 USC §102102

<sup>21</sup> NPS Policy Memo: Guidance on Authorizing Commercial Services under Concession Contracts or Leases. April 18, 2016.

<sup>22</sup> *Id.*

<sup>23</sup> 54 USC §101912. See also [Pub. L. 105–391, title IV, §402, Nov. 13, 1998, 112 Stat. 3503-3504](#)

<sup>24</sup> “NPS Leasing Program Assessment, Final Report: Findings and Recommendations”. November 2010. Prepared for the NPS Commercial Services Program by the Center for Park Management (CPM), NPCA.

valuations, capital improvement needs and costs, various insurance requirements, amortization of investments, legal concepts and language, tax credits, negotiating lease terms, and evaluation of the financial soundness and business plans of prospective lessees. Some park units simply do not have the capacity to undertake and manage a leasing program, resulting in the unfortunate deterioration of historic structures which have the potential to be leased and preserved otherwise.

#### *No dedicated funding for administration of leasing program*

While the 1998 law requires all leasing revenue to be used to repair and maintain park buildings, the National Historic Preservation Act allows for leasing revenue to be used for the administration of historic leases.<sup>25</sup> The agency has written its regulations to match the 1998 law.<sup>26</sup> There may be an opportunity for Congress to clarify its intent or to amend the 1998 law to authorize that a small portion of revenue may be used for administrative costs. An increase in funding to support the leasing program would allow the NPS to invest in more qualified staff and resources in order to improve the program so that it would attract more lessees. Notably, the NPS is permitted to use fees collected from concessions activities on administration and oversight of concessions programs.<sup>27</sup>

#### *Rent Reconsideration*

Property values and leasing rates are based on an appraisal of the building's condition at the beginning of the leasing process. At this point, the building is often in a deteriorated condition, resulting in a lower rental rate. NPS practice is to reappraise the property, generally at ten-year intervals.<sup>28</sup> Following rehabilitation, the building appraises at a greater value and a rent increase occurs. This results in lessees paying twice—once for the investment in upgrading the property, and again by paying higher rent as a result of their own investment. These rent reconsiderations are not required by federal statutory law. To encourage greater private interest in historic leasing, the Park Service could consider longer intervals before reconsidering rent values.

#### *Significant Red Tape*

Unfortunately, the US government does not operate at the speed of business. The requirements for evaluating lease feasibility, developing criteria, drafting proposals, and negotiating a lease can often take many years.<sup>29</sup> For leases that involve capital improvements, extensive coordination is needed with federal, state, and local stakeholders regarding historic preservation requirements.<sup>30</sup> There are many varied steps in the leasing process which may not

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<sup>25</sup> 54 USC §306121, 54 USC §102102

<sup>26</sup> [36 CFR Part 18—Leasing of Properties in Park Areas](#).

<sup>27</sup> 54 USC §101912

<sup>28</sup> NTHP. 2013. Page 26.

<sup>29</sup> “NPS Leasing Program Assessment, Final Report: Findings and Recommendations”. November 2010. Prepared for the NPS Commercial Services Program by the Center for Park Management (CPM), NPCA.

<sup>30</sup> *Id.*

appeal to potential lessees. Further, the time involved does not allow the NPS to quickly respond to changes in the market when compared to the private sector.

### Examples of Challenges

The following case studies were taken from the National Trust for Historic Preservation's 2013 report on historic leasing in national parks:

#### *Cuyahoga Valley National Park*

A request for proposals for lease of the Packard-Dobbler House did not elicit a single response, likely because the RFP failed to adjust its appraisal of fair market value to take the housing market downturn into account. Had the RFP responded to market realities and offered a discount on rent in return for capital investment in the property, perhaps a proposal would have been made. The inflexibility of the appraisal process currently used by the Park Service makes a quick response to changes in the real estate market almost impossible.<sup>31</sup>

Regarding another historic property, the park's request to convert the operation of the George Stanford House from a concessions contract to a lease was not approved. The Stanford House did eventually re-open as a bed and breakfast, following a rehabilitation financed by the Conservancy for the Cuyahoga Valley National Park. The Conservancy is operating the business under a commercial use authorization. While this authorization has served to bring the building back into use, this arrangement is not ideal because commercial use authorizations limit the value of onsite activities to \$25,000 annually.<sup>32</sup>

#### *Gateway National Recreation Area*

In the Breezy Point Tip area located on the Rockaway peninsula, the National Park Service spent \$20 million in federal funds to restore the historic Bath House complex, and has sought to enter into a concessions agreement with a sole concessioner to operate the site. Unfortunately, taking on responsibility for the entire complex through a concessions contract has proven financially unattractive to sole private operators. Leasing smaller sections of the Bath House to multiple operators is financially viable, at least seasonally. However, negotiating seasonal rentals has proven problematic because the National Park Service has limited short-term leases to 60 days when the beach season is 120 days. Similarly, the NPS has unsuccessfully sought for a concessionaire to operate the historic riding stable at Fort Tilden. A long-term lease might present a viable solution by attracting non-federal investment.<sup>33</sup>

### The Path Forward

The NPS has recently issued memos to clarify the tools and authorities available to managers related to leasing, and now allows for a faster, alternative path for obtaining fair

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<sup>31</sup> NTHP. 2013. Page 46.

<sup>32</sup> NTHP. 2013. Page 45.

<sup>33</sup> NTHP. 2013. Page 40.



market rent values in certain situations.<sup>34</sup> The agency also established a leasing manager to oversee and expand the historic leasing program in 2015.<sup>35</sup> These steps are commendable but there remains more work to be done. As the lead agency responsible for the protection of historic resources, the NPS must do everything in its power to leverage historic leasing as a tool for maintaining them. The agency should evaluate its program and develop solutions to allow for more leases, attract more lessees, and make the leasing process easier.

Public-private partnerships like historic leasing are good for our national parks. They provide a method for the NPS to reduce expenses, create more revenue, attract new visitors, preserve irreplaceable treasures, and allow private business to create new jobs. Importantly, leasing contributes in a tangible way to the reduction of the agency's deferred maintenance backlog. Addressing barriers, streamlining procedures, and expanding leasing opportunities will benefit national parks, communities, and all Americans.

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<sup>34</sup> NPS Policy Memo: Waiver of Requirement for Obtaining Appraisals and Approval of Alternate Valuation Methodology and Process Estimating. July 3, 2013. [https://www.nps.gov/policy/NPS\\_Memo\\_Waiver\\_of\\_Appraisals\\_for\\_Leasing.pdf](https://www.nps.gov/policy/NPS_Memo_Waiver_of_Appraisals_for_Leasing.pdf); NPS Policy Memo: Guidance on Authorizing Commercial Services under Concession Contracts or Leases. April 18, 2016; NPS Policy Memo: Guidance on National Park Service Leasing to another Federal Agency. October 4, 2016.

<sup>35</sup> House Report 114-632 accompanying the Department of the Interior, Environment and Related Agencies Appropriation Bill, 2017.