

Testimony Of
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National Parks, Recreation and Public Lands Subcommittee
House Committee on Resources
Oversight Hearing

Mr. Chairman, committee members, thank you for inviting the National Park Hospitality Association to testify in today's oversight hearings on the concessions issues facing the National Parks. I request permission to submit my complete written statement and to revise and extend my remarks for the record.

The National Park Hospitality Association represents over 150 businesses and organizations that provide quality hospitality services to the millions of visitors who enjoy the national parks each year. Our members work in close partnership with the National Park Service to provide quality services to the national park visitor while supporting the shared goal to conserve and protect the parks' natural and cultural resources.

We appreciate the opportunity to discuss some of the key issues stimulated by the National Park Service Concessions Management Improvement Act, Public Law 105-391.

It is both evident and noteworthy that the NPHA and its members enjoy a much better relationship with the National Park Service since Fran Mainella has assumed the Director's role and assembled her staff. It is refreshing and heartening to hear that public access to our parks and the provision of quality services to park visitors is a priority of the NPS and that the NPS considers its partnership with concessioners to be among its most important strategic relationships.

The NPHA is confident that Director Mainella and other senior NPS leaders are committed as a matter of policy to attempt to solve the problems created by the NPS Regulations that were written to interpret the statute. In that regard, through the auspices of a task force assembled under the NPS Concessions Management Advisory Board, there have been a number of regulatory working group meetings and several subcommittee meetings to identify the problems and propose a framework for resolving them. Unfortunately, after several years, both NPS and the concessions industry are still short of final resolution.

Congress passed the National Park Service Concessions Management Improvement Act in 1998. Over the following two years the NPS drafted public regulations in regard to application of the law in park concession contracting. The NPS published the Final Concessions Contract Regulations in April, 2000. The regulations are embodied in 36 C. F. R. Part 51.

There were a number of important provisions in the regulations that NPHA felt were contrary to the original legislative intent of the '98 Act, and we submitted detail comments at that time explaining the issues. Association members believe revisions are needed to bring the proposed regulations in line with the original legislative intent of the statute.

These important regulatory provisions dealt with the proposed award and measurement of leasehold surrender interest (known by the acronym LSI); the 'Fifty Percent Rule' to accruing LSI wherein no LSI is granted for improvements to the asset unless the investment in the project exceeds 50% of the pre-rehabilitation value of the structure; valuation of LSI at the end of concessions contracts; transfers of interests in owners of concessions companies; and cross-collateralization of concessioner financing arrangements across multiple contracts. Certainly, the NPS statutory contract extension limit should be extended beyond the current three years, given the sizeable current backlog of contracts. The largest NPS/NPHA issue remaining for resolution is the application of the Leasehold Surrender Interest language.

The 1998 law preserved the right of the concessioner to receive a modest return on its invested capital by replacing the previous concept of possessory interest with a new valuation formula called "leasehold surrender interest" (LSI). LSI was designed to fix the compensation for the concessioner's investment in park improvements at cost as adjusted for changes in the consumer price index (CPI) and changes in physical depreciation. This formula was included in the law to encourage private investment and reduce the uncertainty and potential for disputes on the basis determination of the value of these assets.

The Concessions Advisory Board met in November, 2004 to hear the concessions regulatory working group recommendations and has subsequently made recommendations for regulatory changes to the National Park Service. We have been working diligently with both the NPS and the Advisory Board to address many of these issues.

There was preliminary agreement on most of the working group recommendations that dealt with eliminating the '50 Percent Rule', allowing cross-collateralization, and improvement and simplification of the rate approval process, and the source of funds issue as it relates to determining what investments qualify for LSI. As stated above, there remain areas of disagreement on the award and measurement of LSI values.

NPHA stresses that LSI should be tracked by the NPS on a facility-by-facility basis. This association is concerned that the current recommendation by NPS to allocate the LSI value down to component parts of a building by requiring tracking of capital investment and repair and maintenance expenditures by component parts which will create a management/administrative nightmare, as well as be very expensive. One of the primary purposes of the 1998 Act was to simplify measuring a concessioner's investment. Tracking component parts of a building does the opposite.

It must be emphasized that the statute calls for the LSI determination be made at the end of the contract. Thus far, NPS is moving to establish a mid-contract "true up" valuation process to establish LSI value. This is not the requirement of the '98 Act. NPHA understands the desire of NPS to be knowledgeable of the LSI values throughout the term of the contract, but the management aspiration of NPS should not be the concessioner mandate. A mid-contract valuation process that will result in multiple, expensive, time-consuming and distracting condition assessment/valuations mid-term of the contract is very costly. That cost should be absorbed by NPS as a condition in the original contract. If the NPS wants to assume the cost of this condition assessment/valuation process midterm for their management purposes -- providing it is not binding on the concessioner -- we would have no objection to this process.

To the basic LSI resolution issue, our association proposes the following:

- Redefine the scope of "capital improvements" for which concessioners receive LSI credit, by eliminating the 50% rule and giving credit for concessioners' investments that renovate or enhance the facilities – in addition to building them. This would bring the regulations in line with normal commercial accounting principles.
- Clarify and quantify the operation of the depreciation component of the LSI valuation equation and remove the uncertainty and confusion inherent in the existing Regulations. This requires, in part, that expenditures that prolong the life of LSI assets be taken into consideration in determining the physical depreciation of an LSI asset, regardless of the source of funds for these expenditures.
- Require the NPS to pay concessioners the LSI value before concessioners are required to vacate the LSI facilities. Giving the NPS up to a year to pay the LSI value could cause the concessioners serious financing problems.

In addition, we would urge modification of the Appropriations Committee provisions in the FY 2005 Consolidated Appropriations that gave the NPS, after binding arbitration with concessioners, the inequitable right to seek a de novo review of the value determination in the court of federal claims. This is patently unfair, creating two or three bites out of the LSI valuation apple.

In a positive vein, the association acknowledges the positive direction taken by the NPS and the Advisory Board in regards to improving the rate approval process for Food and Beverage and Retail through use of the core menu program for food and beverage, and open competitive market declaration pricing for retail.

As stated above, NPHA is heartened by the many areas of progress in the concessions program, but we are concerned that the necessary regulatory changes are still not in place. Despite the many conscientious efforts of the concessions industry, the National Park Service, the NPS Concessions Management Advisory Board, and industry consultants, the regulatory process has not come to a successful culmination, despite five years of effort.

Mr. Chairman, we strongly support all the efforts by the National Park Service and the NPS Concessions Advisory Board in addressing these matters. But it is seven years from the initial passage of the 1998 Act and these issues still are not resolved. The problem is that concessioners do not know the operating rules of their business, and as investments are made or bids are submitted for new concession contracts, concessioners do not know if/when they are getting credit for their investments.

NPHA believes it is necessary for the House National Parks Subcommittee and the full Resources Committee to evaluate these suggestions to fix these persistent problems.

NPHA is grateful to the committee to be here today and now will be happy to answer any questions the committee may have.

