



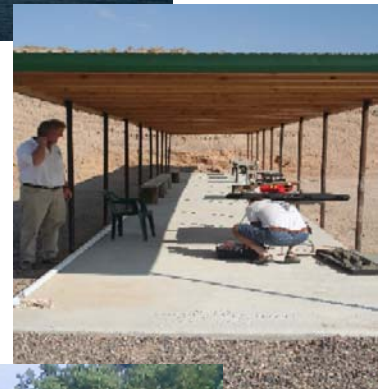
U.S. Department of the Interior Office of Inspector General

Audit Report



Private Use of Public Lands

**National Park Service
Bureau of Land Management**



**Report No. W-IN-MOA-0008-2005
April 2007**

Description of Cover Photographs – Clockwise from Top Left

- Water slides at Breezy Point Surf Club – *Photo Courtesy of Breezy Point Surf Club*
- Aerial view of Rockaway Point Yacht Club – *Photo Courtesy of Rockaway Point Yacht Club*
- Sage Pistol League shooting range canopy and concrete deck – *Photo Courtesy of Office of Inspector General*
- Chesapeake & Ohio Canal National Historic Park canal and towpath – *Photo Courtesy of Office of Inspector General*
- Cabanas at Silver Gull Beach Club – *Photo Courtesy of Silver Gull Beach Club*



United States Department of the Interior

Office of Inspector General

Western Region

Federal Building
2800 Cottage Way, Suite E-2712
Sacramento, California 95825

April 10, 2007
7430

Memorandum

To: Assistant Secretary, Fish and Wildlife and Parks
Assistant Secretary, Land and Minerals Management

From: Michael P. Colombo
Regional Audit Manager

Subject: *Private Use of Public Lands, National Park Service and Bureau of Land Management (Report No. W-IN-MOA-0008-2005)*

Attached is our final audit report on the National Park Service's (NPS) and Bureau of Land Management's (BLM) special-use permits that allow for the private use of public lands. Our objective was to determine whether NPS and BLM excluded the general public and/or damaged the environment by the permitting of public lands for private use.

We found that NPS has allowed private individuals or exclusive clubs to monopolize desirable locations near major metropolitan areas for decades to the exclusion of the general public, although we could not identify the extent of this permitting. Some of the clubs charge high membership fees or limit the number of people who can become members. NPS continues to renew the permits for these exclusive clubs and has kept the \$2.6 million in permit fees received over the 4-year period of our review instead of remitting the funds to the U.S. Treasury. Moreover, both NPS and BLM have allowed permits to be renewed without ensuring their compliance with the requirements of the National Environmental Policy Act (NEPA). We made four recommendations related to NPS to identify the extent of exclusive use, ensure full public access, and remit permit fees to the U.S. Treasury, and one recommendation to both NPS and BLM to comply with NEPA.

In its March 6, 2007 response to our draft report, NPS concurred with the five recommendations and stated that it would work closely with the "OIG, Department, and others to ensure that these actions help to achieve a transparent, legal, and efficient Special Park Uses program." In its February 9, 2007 response, BLM did not concur with our recommendation to develop a process to ensure field offices perform appropriate NEPA reviews before issuing special recreation permits. BLM stated that its current guidance was sufficient. Based on the responses, we have asked NPS to provide additional information and BLM to reconsider the one recommendation.

The legislation, as amended, creating the Office of Inspector General (OIG) requires that we report to Congress semiannually on all audit reports issued, the monetary effect of audit findings, actions taken to implement our audit recommendations, and recommendations that have not been implemented. Please see Appendix 1 for the monetary effect of the findings in this report.

Please provide a written response to this report by May 18, 2007. The response should supply the information requested in Appendix 5. We appreciate the cooperation shown by your bureaus during our review. If you have any questions regarding this report, please call me at (916) 978-5653.

Attachment

cc: Director, National Park Service

Director, Bureau of Land Management

Audit Liaison Officer, Assistant Secretary, Fish and Wildlife and Parks

Audit Liaison Officer, Assistant Secretary, Land and Minerals Management

Audit Liaison Officer, National Park Service

Audit Liaison Officer, Bureau of Land Management

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Acronyms

BLM.....	Bureau of Land Management
DOI	U.S. Department of the Interior
EA	Environmental Assessment
FWS	U.S. Fish and Wildlife Service
GAO.....	Government Accountability Office
IG	Inspector General
NEPA	National Environmental Policy Act
NHP.....	National Historic Park
NPS	National Park Service
NRA	National Recreation Area
NWR	National Wildlife Refuge
OGC	Office of General Counsel
OIG	Office of Inspector General
RM	Reference Manual for Special Park Uses
U.S.C.....	United States Code

INTRODUCTION

Background

Collectively, NPS and BLM manage 545 locations on 346 million acres of public lands. Both bureaus issue special-use permits¹ to individuals, private groups, or organizations for a variety of activities² on these lands, including off-highway vehicle races, athletic events, organized group outings, festivals, wedding ceremonies, commercial filming, and still photography.



Figure 1

*Special-use permitted activity at
Washington Canoe Club, District of Columbia*

Special-use permits are generally used to manage visitor use, protect and conserve natural and cultural resources, authorize special recreational use, and impose terms and conditions on the permittee. Other types of use authorizations include lease agreements, right-of-ways, and concession contracts.³ Permitting

¹ BLM refers to its permits as special recreation permits.

² Special-use permits are issued for a period not to exceed 5 years for NPS and 10 years for BLM.

³ Concession contracts allow private parties to provide facilities or services to the public.

guidance for NPS and BLM include criteria about when and where specific types of activities can occur. For example, the bureaus' policy guidance generally states that activities may be permitted if, among other things, they:

- Are not contrary to the purposes for which the area was established,
- Do not unreasonably interfere with visitation,
- Do not present a clear and present danger to public health and safety,
- Do not result in significant conflict with other existing uses, or
- Do not injure or damage the resources (primarily for NPS).

The National Park Service Organic Act of 1916 prohibits leasing, renting, or granting (through permits) of land and structures if such activity interferes with free public access to them. BLM regulations do not allow the permittee to obstruct or impede public visitation while engaged in activities covered under the permit. To adhere to their missions of preserving and protecting the nation's resources for the benefit of present and future generations, BLM and NPS, under NEPA, must consider the environmental impacts of proposed activities before issuing permits.

Objective and Scope

Our objective was to determine whether NPS and BLM excluded the general public and/or damaged the environment

by the permitting of public lands for private use. The scope of our audit included special-use permits issued during fiscal years 2002, 2003, 2004, and 2005 for selected sites (see Figure 2), which comprised only 1.3 percent of the 545 NPS (390) and

BLM (155) locations. We also reviewed special-use permits issued prior to 2002 that were still active (see Appendix 2).

RESULTS OF AUDIT

NPS has allowed private parties or exclusive clubs to monopolize desirable locations near urban areas for decades and has improperly retained millions of dollars that should have been remitted to the U.S. Treasury.



Figure 2

Private clubs operating along the east coast under a special-use permit

Further, both NPS and BLM have allowed permits to continue without ensuring environmental safety. These practices, identified in a limited review of sites, raise the question: *To what degree is the Department of the Interior (DOI) denying the public access to public lands and improperly using receipts?*

Exclusive Use

As permit holders, private parties and clubs have enjoyed exclusive rights to public lands through restrictive and costly memberships that deny the general public the same benefits. Our limited review uncovered five instances (see Appendix 3) where NPS has permitted groups to operate beach and surf clubs, boat moorings, canoeing facilities, and cabins to the exclusion of the general public. Moreover, some of these operations, located near major metropolitan areas, offer preferential access to beaches, waterways, and scenic nature areas. In some instances, NPS has authorized this exclusivity for 30 or more years.

- **Costly and restrictive memberships.** Some clubs charge high membership fees or limit the number of people who may become members. At the Gateway National Recreation Area (NRA)⁴ in New York, two private beach clubs, the Silver Gull Beach and Breezy Point Surf Clubs, charge membership fees, ranging from \$315 for a child to \$770 for an adult couple, for a 3-month summer season. In addition to these fees, members are typically required to pay a cabana rental fee, which ranges from a low of \$400 to a high of \$9,999,⁵ for the season.

⁴ Gateway NRA consists of three park areas or units—Jamaica Bay, Staten Island, and Sandy Hook. The surf clubs and yacht club operate within the Jamaica Bay Unit.

⁵ There is only one cabana priced at \$9,999. The seasonal cabana, cabanette, or bath cabin rental rates vary by type and location.

Minimum membership cost for a family of four at these private clubs is \$2,215 (Silver Gull) and \$1,800 (Breezy Point). The surf clubs offer a clubhouse, bathing beaches, swimming pools, cabanas, lockers, a cafeteria, bar and lounge, tennis and handball courts, and private parking (see Figures 3 and 4).



Figure 3
Silver Gull Beach Club



Figure 4
Cabanas at Breezy Point Surf Club

Other clubs have waiting lists and cumbersome membership processes. The Washington Canoe Club in the District of Columbia, for example, caps its dues-paying membership at 200 and has a waiting list of 35 people. This club also requires an applicant to have two member sponsors, a private interview, and

Board of Director approval for membership.

- **Lengthy permits.** NPS has renewed special-use permits that grant exclusive rights for decades. The Silver Gull Beach and Breezy Point Surf Clubs have operated under permits that began over 30 years ago. These renewals continue even though the 1979 General Management Plan for Gateway NRA states:

Existing cabana structures, which invade the beach, will be removed, but new cabana and seasonal locker facilities will be developed for use by the general public (no club memberships).

The intent to abolish club memberships was made clear in a 1984 memorandum from an NPS regional director who wrote that “current membership practices will have to be discontinued. Clubs will be opened to the public on an equal opportunity basis.” Another Gateway NRA club, the Rockaway Point Yacht Club, has operated on public lands for over 30 years and continues to operate, although the permit expired in 2004.

- **Lack of public access.** Private clubs have erected fences and created other impediments to preclude access to facilities or public lands described on the permits. For example, a chain-link fence topped with barbed wire surrounds NPS land used by the Washington Canoe Club within the Chesapeake & Ohio Canal National Historic Park (NHP). According to the permit, use of 22 cabins in the NHP is controlled



Figure 5

Fencing that can impede public access

by the Whites Ferry Sportsman's Club, even though NPS owns all the cabins. In addition, at Gateway NRA, monitored gates prevent public entry to lands on which the surf clubs operate.

A 1984 OIG audit report⁶ questioned the appropriateness of using special-use permits to allow private beach clubs to operate on federal lands and recommended that NPS "obtain a legal opinion from the Office of the Solicitor if NPS plans to continue using the beach clubs in a manner which restricts public access." We were told that Gateway NRA never formally requested a written legal opinion.

Beach and surf clubs, boat moorings, canoeing facilities, cabin rentals, a shooting range, and a water pump are all operated under permits we reviewed. In each instance, another type of legal instrument, such as a concession contract, lease, or right-of-way, may have been more appropriate to use rather than a special-use permit.

⁶ June 1984 OIG report, *Review of Gateway National Recreation Area, National Park Service* (E-FW-NPS-11-83). See Appendix 2.



Figure 6

Boat moorings at private yacht club

Retention of Fees

During our review of the special-use permits issued to the Silver Gull Beach and Breezy Point Surf Clubs, we noted that Gateway NRA improperly collected, for its own use and expenditures, an estimated \$2.6 million in permit fees.

NPS has specific statutory authority to recover costs associated with special-use permits and to retain the funds recovered at the parks issuing the permits to defray the costs of administering and monitoring the permits (16 U.S.C. §3a). However, the NRA lacked timekeeping records for processing permits and administering and monitoring permitted activities to specifically determine the actual costs incurred for managing the special park use. Since federal law requires fees collected in excess of actual costs to be deposited into the U.S. Treasury, the NRA should have deposited substantially all of the \$2.6 million. The OIG Office of General Counsel (OGC) opined:

NPS appears to have improperly augmented its appropriations by collecting fees well in excess of its actual costs in providing necessary services associated with Gateway [NRA] special use permits. In

addition, NPS seems to have wrongly retained such funds without any regard to the fiscal time and purpose limitations imposed on reimbursed costs by 16 U.S.C. § 3a and general reimbursement principles.⁷ To the extent that NPS has collected special use permit fees beyond necessary costs, these moneys should have been deposited ‘*as soon as practicable without deduction*’ in the Treasury general fund.⁸ In failing to do so, NPS does appear to have violated 31 U.S.C. § 3302(b) [the ‘miscellaneous receipts’ statute] and the fiscal rule against augmentation of appropriations.

OGC further advised that this matter should be referred to the Office of the Solicitor to determine the proper distribution of the \$2.6 million collected in excess of costs incurred to administer the permits.

Environmental Safeguards

In addition to precluding general public benefit, NPS and BLM have not lived up to the spirit of their own mission statements and environmental laws to conserve and protect our nation’s natural and cultural resources for the benefit of future generations and to strike a balance between the preservation and use of these resources. Out of the 26 permits reviewed, environmental reviews had been done on only 7.

Before issuing a permit, NPS and BLM are required to meet NEPA requirements in all instances when a federal resource may be affected. Under NEPA, federal agencies must integrate environmental values into the decision-making processes by considering the environmental impacts of proposed actions. NPS and BLM document the impacts through technical evaluations of individual permits. Both NPS and BLM, however, failed to adequately consider the environmental consequences inherent in the private use of public lands. Such consequences could include user impacts, such as population density, waste disposal, and hazardous material storage, on the flora and fauna at the site. Environmental consequences were not considered for 18 of the 20 NPS permits and for 1 of the 6 BLM permits reviewed. For example:

- The long-standing operations of private clubs at Gateway NRA have not undergone a NEPA review. NRA officials stated that such a review was probably not done because the clubs already existed in 1974, when the State of New York transferred club operations to NPS. We recognize that although Gateway NRA inherited these operations, it has consistently renewed club permits over the last 30 years without a NEPA review and has therefore not identified or considered potentially significant negative impacts to the environment.
- The Chesapeake & Ohio Canal NHP did not conduct an environmental review before issuing a special-use permit in 1968 to Bretton Woods Recreation Center to place a portable gasoline-powered water pump at the

⁷ Government Accountability Office’s (GAO) Principles of Federal Appropriations Law (Redbook), vol. 2, ch. 6, at 170, 174 (2006); 16 U.S.C. § 3a (2006).

⁸ 31 U.S.C. § 3302(b) (2006) (emphasis added).

edge of the Potomac River to pump water into an irrigation holding pond.

- The NEPA adequacy document completed by BLM's Ridgecrest Field Office in California for issuance of a 10-year special recreation permit to the Sage Pistol League (League) does not adequately reflect the use allowed under the permit. The permit allows the



Figure 7
Gun cleaning station

League to develop and maintain a shooting range on a sand and gravel pit located on public lands and to conduct organized competitive events and commercial instruction sessions. BLM completed an environmental assessment (EA) in May 1997 to support a permit for a one-time, 2-day match held by the League. The current 10-year permit allows for an unlimited number of matches. However, the NEPA adequacy document states that the new permit has “substantially the same action as previously analyzed” in the 1997 EA. The 1997 EA also stated that “lead shot embedded in the gravel bank . . . be removed before those specific areas could be mined.” We were told that the bullets, generally made of lead with brass casings, lodged in the gravel bank are not routinely removed.

During our visit to the shooting range, we observed bullet casings scattered on the ground. A BLM official told us that casings were cleaned up at various times during the year, but he did not know how often. Since sand and gravel mining may resume at any time, BLM needs to ensure that the League removes all the lead shots and cleans up any spent bullet casings.

Recommendations

We recommend that the Assistant Secretary for Fish and Wildlife and Parks and the Assistant Secretary for Land and Minerals Management take the following actions:

1. Determine the extent to which special-use permits limit long-term public access to public lands. (NPS only)
2. Direct NPS officials not to renew those special-use permits that limit long-term public access to public lands. (NPS only)
3. Open facilities having exclusive use to the general public and determine the appropriate legal instrument, such as concessions, leases, and right-of-ways, under which to operate. (NPS only)
4. Seek the advice of the Solicitor's Office to determine the proper disposition of the inappropriate \$2.6 million augmentation of NPS's appropriation. (NPS only)
5. Develop a process that ensures field offices and park units perform appropriate NEPA reviews prior to

the issuance of special-use and recreation permits and document the results of the reviews. (NPS and BLM)

Responses and OIG Reply

NPS Response. In its March 6, 2007 response to our draft report (Appendix 4), NPS concurred with the five recommendations and stated that it would work closely with the “OIG, Department, and others to ensure that these actions help to achieve a transparent, legal, and efficient Special Park Uses program.” NPS stated that as requested in Recommendation 1, it would initiate a study to address special-use permits within 3 months of issuance of our report.

Based on the results of the study, NPS will implement Recommendations 2 and 3. To address Recommendation 4, NPS will present the issue of Gateway NRA’s use of special-use fees to the Office of the Solicitor for a determination as to the proper disposition of these fees. NPS agreed to create a 5-year review rotation process to ensure NEPA compliance for park special-use permits (Recommendation 5).

BLM Response. In its February 9, 2007 response (Appendix 4), BLM did not concur with Recommendation 5 to develop a process to ensure field offices perform appropriate NEPA reviews before issuing special recreation permits. BLM stated that its Recreation Permit Administration Handbook provides the necessary guidance for state and field office personnel to perform appropriate reviews. BLM also stated that in 2006 it had developed and sent to its field offices a ‘Shooting Range Toolkit’ to

provide “guidance on reoccurring public health, safety, and resource management issues.” BLM also did not concur with our finding that the current permit for the League involves substantially different activities than those analyzed for the 1997 permit.⁹

OIG Reply. We are asking BLM to reconsider Recommendation 5 for the following reasons. First, we categorically reject BLM’s assertion that “tiering” documents can be used to approve a 10-year shooting-range permit based on a 1997 EA for a one-time, 2-day shooting match. Second, the Handbook alone does not constitute a process of active oversight of BLM’s permitting procedures. While this document and the Shooting Range Toolkit are guides and procedures for the offices to follow, they do not identify management’s oversight responsibility for ensuring compliance. Although our review found one instance of BLM’s noncompliance with NEPA, we also identified other Handbook compliance issues, such as improper calculations of fees and the failure to collect fees for at least 36 of the 103 special recreation permits reviewed. We disclosed this noncompliance to BLM under separate cover.

Accordingly, we believe that BLM needs to create a process of active oversight of its permitting procedures, since even one failure to comply with NEPA is not acceptable. We look forward to working with NPS to implement our recommendations and are asking NPS for the information shown in Appendix 5.

⁹ BLM attached the Handbook to its response. We did not include the Handbook in Appendix 4, however, because of its size.

Monetary Effect

Finding Area	Funds To Be Put To Better Use
Augmentation of NPS's Appropriation (Retention of Special-Use Permit Fees - Recommendation 4)	\$2.6 Million

Scope & Methodology, Prior Audit Coverage, and Sites Visited

Scope & Methodology

This self-initiated audit was included in the OIG fiscal year 2006 audit work plan. We conducted our fieldwork from January 2006 through June 2006. To accomplish the audit, we judgmentally selected and visited nine NPS park units, BLM field offices, and U.S. Fish and Wildlife Service (FWS) refuges (see “Sites Visited” on page 11). We focused our review on NPS and BLM permits granting, mostly for extended periods of time, special uses to private entities. We did not find these types of permits at the FWS refuges visited.

NPS and BLM do not maintain national data on the number of special-use permits granted to private parties for extended time periods. In the absence of this information, we selected NPS sites that were close to metropolitan areas and bodies of water and BLM sites that, comparatively speaking, generated a greater amount of special-use fees than other BLM field offices.

We conducted our audit in accordance with the *Government Auditing Standards*, issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures as we considered necessary under the circumstances. As part of our audit, we reviewed the following:

- Applicable laws, regulations, policies, procedures, and other criteria, including policy guidance found in NPS’s Reference Manual for Special Park Uses (RM-53) and BLM’s Handbook for Recreation Permit Administration (H-2930-1).
- Permit files, permitting practices, financial records, membership lists, NEPA, and other documents, as appropriate.
- DOI’s Annual Report on Performance and Accountability for fiscal years 2004 and 2005, which included information required by the Federal Manager’s Financial Integrity Act. We determined that none of the reported weaknesses directly related to our audit objective.
- DOI’s Strategic Plan for fiscal years 2003 to 2008, prepared in accordance with the Government Performance and Results Act, to determine the goals and measures related to special-use permits. We did not identify any goals that specifically related to special-use permits. However, we did identify two goals related to the use of natural and cultural resources to (1) enhance public benefit and promote responsible use and (2) provide for a quality recreation experience, including access and enjoyment. These goals, however,

did not specifically provide performance measures.

- Internal controls related to the renewing of special-use permits having exclusive use; performing of appropriate NEPA reviews and documenting the results of the reviews; and remitting of funds in excess of actual costs to the U.S. Treasury. Our recommendations, if implemented, should improve internal controls in these areas.

We also interviewed agency headquarters officials, field office and park unit managers, and other BLM and NPS staff and toured the operations of selected permitted activities.

Prior Audit Coverage

GAO. In the last 5 years, GAO issued one report *National Park Service: Revenues Could Increase by Charging Allowed Fees for Some Special Uses Permits* (GAO-05-410), May 2005, related to special-use permits. GAO reported that during fiscal year 2003, park units did not consistently apply NPS guidance for permitting special events, commercial filming, and still photography and often did not identify and recover costs associated with permitting such activities. GAO recommended that NPS identify and collect fees for administering and monitoring special events, commercial filming, and still photography and expedite implementing the requirement

to collect location fees and costs for such activities.

OIG. We have not issued any reports in the last 5 years related to special-use permits. However, a report *Review of Gateway National Recreation Area, National Park Service* (E-FW-NPS-11-83), issued in June 1984, is directly applicable to our audit. This report identified two private beach clubs, operating within Gateway NRA under special-use permits, whose operations appeared inconsistent with public use of an NRA, and questioned the appropriateness of using special-use permits to allow private beach clubs to operate on federal lands. The report also questioned the high membership costs of these clubs, which excluded a significant portion of the general public from the use of club facilities. The report recommended that NPS obtain a legal opinion from the Office of the Solicitor if NPS planned to continue using the beach clubs in a manner which restricted public access.

During our current review, we were told that Gateway NRA never formally requested a written legal opinion. In 1990, the Assistant Secretary for Policy, Management and Budget indicated that the former Inspector General (IG) concurred with the use of special-use permits for such operations. However, 22 years have passed since the 1984 audit report was issued, and we do not believe the former IG envisioned that the surf clubs' operations would continue to exclude the general public from facilities on federal lands for over two decades.

Sites Visited

NPS	State
Chesapeake & Ohio Canal NHP	Maryland
Gateway NRA	New York
Golden Gate NRA	California
Statue of Liberty National Monument and Ellis Island	New York
NPS Headquarters	District of Columbia
BLM	State
Barstow Field Office	California
Ridgecrest Field Office	California
Winnemucca Field Office	Nevada
BLM Headquarters	District of Columbia
FWS	State
Crab Orchard National Wildlife Refuge (NWR)	Illinois
Sacramento NWR	California
Private Clubs or Entities	Management Site
Breezy Point Surf Club	Gateway NRA
Potomac Fish and Game Club	Chesapeake & Ohio Canal NHP
Rockaway Point Yacht Club	Gateway NRA
Sage Pistol League	Ridgecrest Field Office
Silver Gull Beach Club	Gateway NRA
Washington Canoe Club	Chesapeake & Ohio Canal NHP

Appendix 3

Exclusive Use					
Attributes	Silver Gull Beach Club	Breezy Point Surf Club	Washington Canoe Club	Rockaway Point Yacht Club	Whites Ferry Sportsman's Club
Location	New York	New York	District of Columbia	New York	Maryland
Members/ Cap	3,008/ 4,000	3,574/ 5,000	200/200 ¹⁰	111/100	Unknown/22 cabins
Membership Process	Cabana fees	Cabana fees ¹¹	Three steps: (1) interview, (2) two member sponsors, and (3) Board approval.	Two member sponsors	Unknown
Minimum Membership Cost	For family of four: \$2,215	For family of four: \$1,800 ¹²	Application Fee: \$30 Membership Cost varies by type ¹³	Annual: \$490	Cabin rental as of 1992 ¹⁴ : \$700 per cabin per season
Annual Revenues	\$3 million	\$3.3 million	Unknown	As of 2003: \$71,500	Unknown
Annual Fee Paid to NPS	Average: \$296,000	Average: \$342,000	\$5,000	\$500	\$9,000
Permit Expiration	2007	2007	2007	2004	2007
Founded	1963	1937	1904	1909	Prior to 1970
Year Acquired by NPS	1974	1974	1971	1974	1974

¹⁰ This number represents dues-paying members only.

¹¹ Members residing at Breezy Point, New York, are not required to rent a cabana.

¹² This amount is for a family of four not residing at Breezy Point, New York.

¹³ Full: Entrance fee is \$300. Annual fees are \$400; Aquatics: Annual dues \$125; Nonresident: Annual dues are \$25.

¹⁴ Since 1992, this club has not publicly disclosed its cabin rental rates.

NPS and BLM Responses



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, D.C. 20240

MAR 05 2007

Memorandum

To: Inspector General

Through: Acting Assistant Secretary, Fish Wildlife and Parks *David M. Velle* MAR 05 2007

From: Director, National Park Service *Mary M. Bomar*

Subject: National Park Service Comments on Draft Report on Private Uses of Public Land (W-IN-MOA-0008-2005)

We appreciate the additional opportunity to comment on the Office of the Inspector General (OIG) Draft Report *Private Uses of Public Land, National Park Service and Bureau of Land Management (W-IN-MOA-0008-2005)*. The National Park Service (NPS) will ensure that problems identified in this report are addressed properly and expeditiously.

Our primary comments revolve around the actions we are prepared to take in relationship to the OIG recommendations. The following provides a brief synopsis on each recommendation. We will work closely with the OIG, Department, and others to ensure that these actions help to achieve a transparent, legal, and efficient Special Park Uses program.

1. Determine the extent to which special use permits limit long-term public access to public lands.

Within 3 months of the issuance of the final report, the NPS will undertake a survey of all park units, requesting they provide the Washington Office (WASO) Special Park Uses Program Manager a list of long-term special park use permits issued to an individual, group or organization that limit or have the potential of limiting public access to park lands. Each permit will be evaluated to determine if it has been issued pursuant to a valid legal authority and if the permit has the effect of limiting public access to park lands.

2. Direct NPS officials not to renew special use permits that limit long term public access to public lands.

Permits which have the effect of limiting public access to park lands will be reviewed to ensure valid legal authority exists for the requested activity. In the event that a valid legal authority does not exist, the permit will not be renewed.

3. Open exclusive use facilities to the general public and determine the appropriate legal instrument, such as concessions, leases, and right-of-ways, under which to operate.

NPS officials and park management will work with the Department of the Interior Solicitors and NPS Realty Specialists to determine the legal status of the park lands subject to long term permits that limit or

have the potential of limiting public access to such lands. Park management will move expeditiously to open these areas to the public and to grant public access through an appropriate and legal authorization.

4. Seek the advice of the Solicitor's Office to determine the proper disposition of the inappropriate \$2.6 million augmentation of NPS budgetary appropriation.

The Northeast Region will present this issue to the Office of the Solicitor. In order to properly document cost recovery in the future, the Northeast Region will immediately take action to ensure that all costs incurred are documented properly and funds collected under the subject permits are deposited to the correct accounts. All personnel at GATE, including the Superintendent, will attend special training sessions that cover the areas of concern identified in the report: appropriate authorities, proper cost recovery accounting and procedures, maintaining an administrative record and NEPA compliance. A directive will be issued to ensure that GATE and other parks in the region immediately treat as miscellaneous receipts funds collected for use and occupancy of federally owned facilities and lands.

5. Develop a process that ensures field offices and park units perform appropriate NEPA reviews prior to the issuance of special use and recreation permits and document the results of the reviews.

On March 31, 2006, Deputy Director Steve Martin signed a memo to NPS Regional Directors directing them to implement an audit program for special park use programs in their regions. Twenty percent of parks will be audited each year, ensuring all parks are audited once every 5 years. Most audits are done electronically, though several regions will do one or more audits of larger programs in person. The audits will stress the importance of conducting and documenting environmental and cultural compliance.

The Fundamentals of Special Park Uses course offered twice a year by the NPS includes a session on NEPA compliance. The Environmental Quality Division also teaches NEPA compliance with the Planning, Environment and Public Comment system (PEPC). In the future, both will continue to stress not only the necessity of performing NEPA analysis, but the importance of documenting compliance in the administrative record.

Again, thank you for the opportunity to respond.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
<http://www.blm.gov>

JAN 31 2007

In Reply Refer To:
1245 (830)

Memorandum

To: Assistant Inspector General for Audits
Through: C. Stephen Allred
Assistant Secretary – Land and Minerals Management
From: Kathleen Clarke
Director, Bureau of Land Management
Subject: Response to Draft Report "Private Uses of Public Land, National Park Service and Bureau of Land Management" (W-IN-MOA-0008-2005)

FEB - 9 2007

Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) draft report "Private Uses of Public Land, National Park Service and Bureau of Land Management," which documents work performed by the OIG under assignment number W-IN-MOA-0008-2005.

The Bureau of Land Management (BLM) recognizes that there are opportunities to improve resource management, and offers the following general and specific comments on the draft report's findings and recommendations.

General Comments

The OIG initiated assignment number W-IN-MOA-0008-2005 in November 2005, focusing their review on special use permits for commercial filming, still photography, and special events on land administered by the Department of the Interior. The draft report focuses on National Park Service (NPS) permits that allow private uses that exclude the general public in the Northeast.

During this assignment, the OIG visited 3 BLM Field Offices (out of more than 150) and reviewed 6 BLM Special Recreation Permits (SRP) out of more than 3,600 active permits. The OIG had concerns with only 1 BLM SRP.

Specific Comments

BLM's Ridgecrest SRP

The 1 BLM SRP questioned by the OIG was issued by the BLM's Ridgecrest Field Office in California to the Sage Pistol League (page 7). The OIG found that the BLM did not do an appropriate National Environmental Policy Act (NEPA) review for this SRP.

The BLM completed an Environmental Assessment (EA) for the original Ridgecrest SRP in 1997. As allowed under NEPA, subsequent to the 1997 permit, the BLM issued NEPA tiering documents to permit additional substantially similar activities at the same site by the same group. The BLM completed an Administrative Determination to issue a multi-year SRP for Fiscal Year (FY) 2000 through FY 2004 and completed a Determination of NEPA Adequacy (DNA) in 2004 for a 10-year permit. The BLM used documents tiered to the original EA because the agency determined that the direct and indirect environmental impacts were not significantly different from the initial analysis. This SRP is unique because the shooting range is located within an area previously disturbed by a sand and gravel mine pit. The natural character of the land had already been altered significantly and the authorized use was determined to neither exclude the general public nor damage the already altered environment.

In the draft report, the OIG states that mining operations could "resume at any time" and that the lead shot cleanup schedule might impact the immediate resumption of sand and gravel mining (page 7). It is not known if the mining of sand and gravel will ever take place at this site again. However, if a request to re-establish mining operations is made to the BLM, a NEPA environmental review would be required and conducted for the proposed mining operation.

In 2006, the BLM developed and sent to its Field Offices a "Shooting Range Toolkit." The toolkit provides guidance on reoccurring public health, safety, and resource management issues for managing shooting areas on BLM-administered public land. The toolkit also includes a review of shooting range best management practices. The BLM continues to work with its Field Offices to ensure that public health and safety are protected.

BLM's NEPA Compliance

The OIG makes 4 recommendations for the NPS and 1 recommendation for both the BLM and NPS. That recommendation is for the BLM and the NPS to "Develop a process that ensures field offices and park units perform appropriate NEPA reviews prior to the issuance of special-use and recreation permits and document the results of the reviews."

The BLM's Recreation Permit Administration (Public) Handbook - H-2930-1 (attached), which provides guidance to all BLM State and Field Offices, clearly states that issuing an SRP is subject to NEPA analysis. The BLM believes that it analyzes SRPs consistent with the guidance in the handbook and completes the appropriate NEPA analysis – an Environmental Impact Statement, an EA, a DNA, or a Categorical Exclusion.

Conclusion

The BLM appreciates the OIG's work to improve resource management in the Department of the Interior, including this review of private uses of public land. However, we do not concur with the finding and recommendation specific to the BLM in the OIG's draft report. We hope that the information presented above will be useful in preparation of the final report.

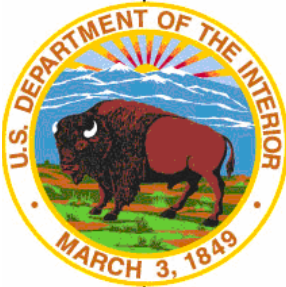
We look forward to working with you and your staff as they consider our comments and prepare the final report. If you have any questions or would like to discuss the BLM's comments, please contact Andrea Nygren, BLM Audit Liaison Officer, on 202-452-5153.

Attachment

Status of Audit Recommendations

Recommendation	Status	Action Required
NPS		
1-5	Management Concurs; Additional Information Needed	Provide the titles of responsible officials and target dates for implementation.
BLM		
5	Unresolved	Reconsider the recommendation and provide a plan identifying actions to be taken, target dates for completion, and the title of the official responsible for implementation.

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