

**MINUTES OF THE  
Concessions Management Advisory Board  
17th Meeting  
Washington, D.C.**

**TO:** All Board Members

**FROM:** Jo A. Pendry, Concession Program Manager

**SUBJECT:** Draft Minutes of Concessions Management Advisory Board Meeting March 7, 2007.

**1. Call to Order.**

The meeting was called to order by Acting Chair Jim Eyster at 8:30 a.m.

**2. Roll Call.**

Present were: Board Members Ramona Sakiestewa, Richard Linford, Burt Weerts and Jim Eyster.

Absent was: Phil Voorhees.

**3. Welcome.**

Jo Pendry announced that the meeting was held under the authority of Public Law 105-391.

Chairman Jim Eyster welcomed the attendees and asked everyone to introduce themselves. Introductions were made by all attendees of the meeting.

**4. Approval of the October 24 and 25, 2006 minutes.**

Board Member Linford moved, seconded by Board Member Weerts to adopt the October 24 and 25, 2006 minutes as adjusted. The motion carried unanimously.

## 5. OPENING REMARKS.

Jo Pendry announced that the meeting was held under the authority of Public Law 105-391. A new chairperson is being nominated for approval by the Secretary. All the current board members are being re-nominated to serve until the end of the term of the Board in 2008 in accordance with the law. There has been some question as to how to move forward with Board renewal and, whether or not to continue the Concessions Management Advisory Board.

It is the Park Service's desire to continue the Concession Management Advisory Board and there are two basic options. One option is to ask for legislative re-authorization which would require Congressional action in passage of a law to authorize the continuation of the Board. The other option is to re-establish the Board administratively.

Ms. Pendry stated she will be working with the leadership in the Park Service to determine which of those two methods to move forward with. She emphasized that the Park Service does see the importance of the Board and would like for it to continue. It is an excellent way to get input from the stakeholders, from the concessioners, from the staff, and also from this Board who has provided excellent advice over the course of the last eight years. The intention is to re-establish the Board after its sunset clause in the law.

Ms. Pendry listed some of the program's accomplishments and what is in the Concession Program plans for 2007. One of those is the development of a superintendent's training which will be held for the first time this year, helping superintendents understand their roles and responsibilities with the Concessions Program. Leasehold surrender interest regulations were drafted which will be published soon for public comment. In the area of technology, a couple of years ago there was no central database of concession

contracts, there now is a central database. The annual financial reports, which have historically been filled out by pen and ink, are in an automated format that is being tested right now. Work is also being done in an area of contracting and prospectus development on standardized tools to help team members develop prospectuses in a more timely manner.

In the area of facility management a facility asset manager was hired, Ms. Deborah Harvey. The processes for condition assessment and appraisals have been defined and it is exciting to have someone finally in that position. Progress was made in the area of construction projects and approval of construction projects as well as in the area of the environmental audits.

PricewaterhouseCoopers, the corporate advisor, helped with updating the insurance guidelines for those projects under 3 million dollars. For contracts over 3 million, a customized insurance analysis will be done.

In the area of leasing, a leasing Director's Order was issued with input and comments from the regional chiefs resulting in a leasing Reference Manual. There was a provision for leases that allows the government to retain the money at the park level for use in the park for visitor services.

Ms. Pendry reported her office had been able to finalize the handicraft regulations, and those are going to be published this year in final form.

Chairman Eyster commended Ms. Pendry and her staff for having made incredible strides this past year in moving forward in so many different areas.

## **6. CONCESSION CONTRACTING STATUS UPDATE.**

Kathy Fleming provided the Board with detailed information on contracting backlog. This included a summary of the contracts by region and the number of contracts by

region that remain in the backlog as of the end of February, showing a decrease from 309 contracts in the backlog to what is now 125 contracts in the backlog this February. It is anticipated that by the end of 2007 there will be 66 contracts in the backlog, and then, taking into account the contracts that will continue to expire, the December '08 backlog will be 29.

Ms. McLay presented an overview of activity in the Northeast Region.

Steve LeBel presented an overview of the National Capitol Region.

Cherrie Brice presented an overview of the Southeast Region and also an update on the status of the vacancy of the chief of concessions in that region.

Sandy Poole provided the Board with a report on the Midwest Region.

Tom Williamson provided a detailed report on the Intermountain Region activities.

Board Member Linford had a question regarding a very significant decrease in visitation at Carlsbad. Mr. Williamson had no explanation for that. With regard to a challenge of a Grand Canyon outfitter contract, that challenge was unsuccessful.

Craig Ackerman spoke in place of Anne Dubinsky on the Pacific West region. Ms. Pendry provided additional information on the contract for the Alcatraz cruises which has been awarded to Hornblower. She also spoke about the Service Contract Act, which is a law that was passed in the 1960s to provide prevailing wages to service workers on federal government contracts. In the 1980s the regulations were rewritten to narrow the exemption that the Park Service had. Previously, it was very broad in exempting all National Park Service contracts, and when it was re-written in the '80s it was narrowed to say only those contracts that were principally for certain services such as lodging, food,

newspapers, automobile fuel, souvenirs, and recreational equipment. The minimum benefits under the Service Contract Act this year are \$3.00 and a penny.

In the case of Alcatraz, it was ruled that the Service Contract Act applies. However, the previous concessioner had a collective bargaining agreement currently in place, and typically when there's a collective bargaining agreement in place the prevailing wage is the wage paid in the collective bargaining agreement. So the new concessioner is paying the wages that were being paid by the previous concessioner.

Kevin Apgar provided the Board with a report on his region by telephone.

#### **7. LEASEHOLD SURRENDER INTEREST TRACKING TOOL.**

Deb Harvey gave an update on some of the issues that have come up on LSI Tracking Tool and how they were addressed, and what the future path is now that the LSI Tracking Tool is in pilot phase since last September. She provided a short summary of what the LSI pilot is about and what the next steps are.

The Concession Management Advisory Board's recommendation was to go to Unifomat level 2 to track LSI. AST and the Unifomat level 2 is an industry-wide standard that is used in the asset management industry. Buildings are the main asset type that Unifomat currently addresses. The Park Service has a lot of other asset types that currently are not in Unifomat, such as marinas.

One of the main sources of information for the tool is the Reproduction Cost Report. A comprehensive condition assessment is performed on all assets assigned to the concessioner during prospectus development. As part of that process all assets with possessory interest liability are broken down further into components according to Unifomat II, Level 3. The cost new and depreciation per component is

estimated.

She pointed out the importance of standardizing this reproduction cost report across the service, so all LSI contracts and information going into the LSI Tracking Tool is allocated in the same method or manner. It is also important to remember these are just estimates, because the only binding valuations are at the beginning and end of the contract, this tool is only used to provide the Park Service with an estimate of LSI value. The five-year condition assessment requirement provides an opportunity to have an A&E firm estimate depreciation which provides the service with a point in time opinion of what depreciation and LSI liability is.

Three parks (one contract at each) were chosen to participate in the LSI pilot. The three parks were the Blue Ridge (Pisgah Inn,) the Grand Canyon (the Bright Angel Lodge contract,) and Gateway (the Aviator contract.) This will test the allocation of the LSI value to the component level and crediting of capital improvement project information into the tool. Ms. Harvey provided a more detailed analysis of each example.

Ms. Harvey then discussed some of the crediting key issues in the treatment of CPI in annual estimates, i.e. should it be compounded, should it be not compounded.

Gateway is the last of the three pilots to be implemented. Denali and Katmai National Parks were added to the pilot and will be implemented in April. Both of those are LSI contract parks. The plan is to have the tool and the guidance in place at five more parks before the end of the fiscal year, and then to roll it out to the rest of the parks with LSI contracts in fiscal year '08.

A further lengthy discussion ensued on this subject.

Chairman Eyster summarized that the end result ideally would be to not end up with these wide discrepancies that have occurred in the past on the value of possessory

interests or LSI. He said there obviously is the opportunity to discuss this along the way, whether there's a mandatory true-up, or an informal understanding of what the differences are.

A discussion followed on the assessment process.

Ms. Pendry pointed out that the regulation basically states that at the end of the contract term there will be a determination what the ending LSI value is. What the Park Service is doing is taking the responsibility seriously to track what it believes the ending value is, just as the concessioner takes it seriously to track the ending value of the LSI from their perspective.

What the Board recommended was to have mandatory regular true-ups of the LSI. What the Park Service is saying is there is no requirement for a mandatory regular true-up, but if a concessioner is willing to have a mandatory regular true-up the Service would be willing to modify the contract to incorporate that.

Geoff Baekey with PricewaterhouseCoopers explained that probably through these mandatory five year comprehensive condition assessments it will also reflect good practices as well as accelerated depreciation.

#### **8. SUPERINTENDENT'S TRAINING PROJECT UPDATE.**

Judy Bassett gave an update of the progress made since last October, where NPS Concession Program was preparing then for the first pilot of the superintendent's training course. The update included a quick background of the management training course, a project that was suggested by the Advisory Board.

The course starts with the planning phase of a concessions service, and all of the components that go into planning for that concessions, then moves to the award phase, which includes the evaluation of offers, selection,

and then actually transitions to that new contract, whether it be the existing concessioner moving into the new contract terms, or whether it is a brand new concessioner that would be transitioning into that operation with the park. Over the ten-year cycle of the contract the majority of the time is spent on the actual management of the operations of that concession.

The pilot test was conducted in Colorado where the course materials, modules, and instructional design were tested. The course was tested by a class of superintendents and concessions specialists. NPS received input from all course participants and instructors on the pilot course and modules. The feedback was reviewed. It was found to be helpful to have concession specialists, which was a Board recommendation, attend with the superintendents.

Chairman Eyster emphasized the Board's point of view, that it was important to have the team there from the park, both the superintendent and the concession specialist, at least one specialist. He further recommended to have two or three concessioners at the end of the session and have kind of a roundtable discussion of some of the issues that confront the relationship between the Park Service and the concessioners. He asked for a follow-up report to the Board on completion of the first course.

Ms. Bassett agreed and went on to detail steps to be taken to go to the next level on these particular cases. She suggested that the actual training course would launch in the winter of this year with fifteen superintendents and fifteen concession specialists undergoing the training.

## **9. NEW BUSINESS.**

Tod Hull with NPHA, National Park Hospitality Association reported on a conference where one of the key issues that many of the concessioners are facing now is the application of the Service Contract Act and how that

will affect their concessions operations. He urged the Concessions Advisory Board to become active in assessing and trying to come up with a possible solution.

Mr. Hull also asked that the Advisory Board consider the continuation of the current practice of holding the Board meetings in coordination with the two annual meetings of the NPHA. The concessioners really appreciated the co-location of the two meetings and allowed them the opportunity to participate in both meetings.

John Rutter with the Grand Teton Lodge Company, and also with the National Park Hospitality Association addressed the fact that it was very convenient for people who travel to be able to come to one location and have two meetings.

Ms. Pendry indicated it would be helpful if the Board meetings could be prior to the NPHA meetings. That would allow for sharing information with everyone at the same time, rather than the other way around.

Mr. Hull further indicated the Association would support the continuation or extension of the Concessions Advisory Board.

Bill Butts, at Forever Resorts discussed declining visitation in the parks, and everything associated with that, and what can be done to help in that regard.

Mr. Hull suggested that a letter from the Concessions Advisory Board to the appropriators on both the Senate and the House side indicating the need to increase the budget for tourism in order to try to boost some of the visitation in the national parks.

A lengthy discussion followed on the visitation subject.

Ms. Pendry introduced Dan Wenk, the new Deputy Director of the National Park Service. Dan was the Director of the Denver Service Center, and prior to that he was Superintendent at Mount Rushmore for quite a few years and

has a long history of service with the Park Service.

Mr. Wenk gave the Board a brief work history. It is his belief that there is a lot of positive press surrounding the National Park Service and Centennial Challenge initiative. This will have a positive impact on the numbers of people, hopefully, that are experiencing the national parks, reconnecting with the national parks. The initiatives that surround children, youth, that are inherent within the centennial challenge, speak to the relevancy in the future park visitors.

#### **10. INSURANCE.**

Kathy Fleming provided the background to this insurance presentation, the need to update the insurance minimums to reflect current business practices and emphasized this would still be a draft product. She explained that there would be a specific contract insurance exhibit developed for each of the prospective contracts, based on the concession visitor services provided, the risks associated with those, and tailor insurance exhibit requirements to that specific operation.

Geoff Baekey of PricewaterhouseCoopers then made the presentation on the National Park Service insurance assisted by Bill Kelly, who was influential in helping shape these proposed requirements. He stated that the purpose of presenting these draft proposals is to solicit feedback.

The insurance requirements have not been changed for twenty-plus years and there need to be adequate coverages in place with the appropriate quality of insurers to make sure that the concessioners are protected as well as the Park Service from the risks that are inherent in some of these operating businesses. The Park Service also must have the ability to defend any claim as a result of liability or the like. He pointed out that there will be a menu of options

that will be applied to the unique operating characteristics of concession contracts.

The focus of today's discussion was on contracts that generate less than 3 million in gross annual receipts. Larger, more complex contracts will require a more critical look.

The resulting draft is referred to as NPS 48 Insurance Chapter, which is the Concessions Guidance that the Park Service utilizes. In March of '06 that draft went through significant internal review, among a number of different stakeholders. This draft was also presented in a similar presentation this last September at the NPHA meeting, which also resulted in some great feedback from some of the smaller and mid-sized concessioners. At the Concessions Management Advisory Board at Glen Canyon National Recreation Area in October of 2006, constructive feedback was received from the attendees at that meeting as was the case when this was presented to America Outdoors in Salt Lake City in November, 2006 at their annual meeting. This resulted in revisiting some of the minimums that had originally been established, and verifying the marketability of some of the insurance requirements proposed.

Mr. Baekey proceeded with a slide presentation illuminating the various insurance minimums. The insurance requirements outlined include business interruption, general liability, completed operations (liability incurred by a contractor for bodily injury and/or property damage occurring after he has completed a job, that is a result of improperly performed work), workman's comp, and crime and innkeeper's liability.

On the commercial general liability side, the insurance required is still at a 2 million aggregate, 1 million practice and completed operations aggregate, and 1 million per occurrence.

It was felt that 100 percent of replacement value is

the appropriate requirement for real property. With regard to the workman's comp perspective there needs to be employees liability of \$1,000,000.

With respect to Environmental and pollution the minimums of \$3,000,000 per occurrence, and a \$5,000,000 aggregate are being considered. Crime and innkeepers \$100,000 per incident. The water craft hull liability and protection and indemnification insurance is an area that will be further scrutinized.

The intent here is not to place undue financial burden or pressure on the concession community or the CUAs, but there is a definite need to find the right balance of protection for the Park Service and for the concessioners at the right price that makes sense to sustain business.

A discussion was held on the cost of premiums, admitted carriers and the named insured issue.

Ms. Pendry concluded that there will be continued engagement with PricewaterhouseCoopers to look at the concerns that America Outdoors and the National Park Hospitality Association expressed. They will be doing the research and making changes to the draft guidelines based on those comments. The guidelines must be flexible enough to account for those types of exceptions and concerns that were addressed today.

#### **11. OUTFITTER AND GUIDE UPDATE ON PREFERRED OFFEROR.**

Tom Williamson reported on a meeting with six smaller revenue outfitter and guide types plus the bigger Glacier Park, Inc. The discussion generally was about the contents of a prospectus, and how proposals were evaluated. He described the general discomfort and uneasiness on the part of the smaller concessioners with respect to their ability to match the terms of the better offer and retain the contract.

A discussion followed on matching franchise fees and

any other elements that were proposed by the challenger who scored highest in order to retain a contract.

Another lengthy discussion followed on the size of the franchise fees.

Board Member Linford invited David Brown to address some of the other difficulties the outfitters encounter.

David Brown expressed concerns that after the contracting process there are put into place new layers of regulation that were not in the prospectus. There may have been some reference to it but the cost of it was certainly not reflected in the prospectus. The concern is that the small and medium sized concessioner just may not be able to bear that burden, regulatory overburden, in the long haul. When setting the fees and some of the requirements and some of the regulations, there needs to be taken into account the business environment that some concessioners face. One of the issues that has come up is the environmental management plan. Even though the overall the program has merit, and certainly has many worthwhile aspects to it, for small concessioners it is almost prohibitive. Examples were given: information and training on flammability and carcinogenicity of substances used; a written hazardous communication plan, emergency action plan, and fuel spills and HAZMAT, which is primarily petroleum. Respiratory protection program for spray-painting, grinding, cleaning, is an example of the difficulties in meeting all the requirements. Small concessioners have respirators, but they have to have respirator fit testing for employees, then documented medical evaluations to determine if the employees are eligible to use respirators plus the cost of regular medical evaluations for people who use respirators. There are additional requirements for approved landscaping plans, electricity and alternative energy sources plan with documentation of energy and water conservation measures,

including research on alternative energy sources. Pesticide use proposal for ant killer, D-Con, and permission from park integrated pest management coordinator before purchasing any pesticides. The contracts call for Pesticide Use Log to document the types and amount of pesticides used, as well as plans to reduce junk mail received by the concessioner.

Additional environmental best practices that are strongly suggested to be competitive for a new contract, includes: documented inventory of ozone-depleting substances; insure maintenance for a certified technicians; document environmentally preferable purchases, joining an environmental organization, or meeting Green Seal lodging standards, etc.

This is in addition to the quarterly reports, the other DOT regulations, the state regulations that a small operator has to deal with. The documentation that's required and the marginal incremental value of some of these things doesn't justify the overburden on the concessioner.

These things should be revealed at the outset in the prospectus as the rate increases very often are not covering the cost of these new regulatory burdens.

Wendy Berhman, NPS Concession Program responded that it is important to understand the distinction between Environmental management program and environmental compliance. Environmental Management Programs (EMPs) are required only under Category I and II contracts. EMPs are something embraced by businesses in the private sector and is becoming more frequent than not. In essence, an EMP is a business plan on how to manage the environmental impacts resulting from a particular business. It was decided early on that Category III contracts would be excluded from the requirement to have an EMP, and so this requirement is not in Cat III contracts, which typically includes outfitters/guides.

The Park Service in 1998, through a directive by the

Department of Interior, established an environmental audit program. Every bureau within the Department of Interior is required to have an environmental audit program in place for its own operations, as well as for key entities that operate on the federal properties.

The Park Service looked at some of the key liabilities and potential resource impacts, and obviously recognized that having 590 concessioners operating in its parks is potentially a large resource impact. This resulted in the establishment of an environmental audit program for concession operations.

The Park Service does not have enforcement authority for environmental regulations, per se. That falls under the enforcement authority of key regulatory agencies like EPA, OSHA, and DOT. The environmental audit program is an educational tool, to provide an opportunity to have an independent evaluation of a businesses operations and practices. The Park Service decided, as well as the Department of the Interior, to use the audits as an opportunity to identify industry best management practices for environmental management. Those are not a requirement under the audits, but simply a suggestion that could ultimately save a concessioner both time and money. However, the compliance findings identified during audits are not optional. Being in compliance with Applicable Laws is a key requirement of all concession contracts and an expectation for operating in a national park. Unfortunately, many of the environmental regulations do not have thresholds for small or large, so the regulations would apply whether you have 5 employees or 500 employees.

A further discussion on this subject followed.

David Brown indicated he saw a potential problem with the commercial use authorization issue that was authorized in the '98 act. The former director sent a memo with the interim guidelines suggesting that contracts should be

issued for all CUAs grossing over a hundred thousand. This could result in some unfair competition if, for example, you've got someone grossing ninety-five thousand operating under CUA with much lower fees and regulatory burden, versus somebody grossing a hundred and five thousand having to go to a contract.

Ms. Pendry indicated the final commercial use authorization guidelines had not been published yet and there will be an opportunity to take that into consideration.

## **12. ADJOURNMENT.**

The meeting was adjourned at 4:29 p.m.