United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

(2410)

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Memorandum

To: Associate Directors
Regional Directors

From: Deputy Director, Opertaions Peggy O'Dell

Subject: Guidance for Requesting 20 Percent Concession Franchise Fees for Payment of Possessory Interest (PI) or Leasehold Surrender Interest (LSI)

The purpose of this memo is to establish a policy for the use of 20 percent Concession Franchise Fees (CFF) and other national funds for the purchase of PI or LSI. The Budget Executive Committee (BEC) of the National Leadership Council recently met to discuss the significant PI/LSI financial obligations that must be "bought down" in order for the next concessioner to have a fair opportunity for a profit in a future contract. Regions have estimated these needs at over $90 million between FY 12 and FY 17. Twenty percent funds are insufficient to fund all of these requirements.

In order to ensure funding is available to buy down PI/LSI, the BEC recommended a policy that requires parks to exhaust all possible park and regional fund sources before requesting national 20 percent CFF funds. This memo establishes the BEC recommendations as policy and provides background and guidance for requesting national funds.

Background

PI and LSI are compensation given to concessioners who have constructed improvements to real property within the terms of their concession contract. Under the 1965 concessions law, concessioners earned PI, and under the 1998 concession law, concessioners earn LSI. As 1965-era law contracts are released for competition, the PI value is "determined" (typically via a negotiation) and a new contract is awarded, often granting the successor concessioner LSI equal to the value of the negotiated PI. In some cases, the PI is settled at a value higher than what the next concessioner can afford to pay under the terms of the contract. By law concessioners must have a reasonable opportunity for profit. When PI/LSI obligations are too high, an incoming concessioner may not have a reasonable opportunity for a profit, and the contract is not feasible unless the National Park Service (NPS) buys down some of the PI/LSI obligation. The NPS conducts a rigorous financial feasibility analysis to determine a particular contract's feasibility. Historically, contracts are "bought down" only to the point they become financially viable (typically to a 1 percent franchise fee).

Parks/regions have identified 21 contracts that may require $90 million in PI buy-down over the next 5 years. Buy-down requests are primarily based on estimated needs – actual dollar amounts are not known until the final PI or LSI has been negotiated with the concessioner.

The Commercial Services Program projects that the 20 percent franchise fee fund will earn about $90 million between FY 12 and the end of FY 17. Of this funding, $25 million is required for prospectus development, condition assessments, environmental audits, insurance assessments and Servicewide training. Another $3 million is required to support regional Commercial Services programs with term staffing, travel, legal support, and panel expenses. (See the attached chart for details.) The remaining $62 million is insufficient to meet the $90 million need identified by the regions. These funding limitations make it necessary to implement a more strategic approach to the use of 20 percent CFF funds for PI/LSI buy down.

Guidance

Requests for PI/LSI payments using 20 percent franchise fee funds must be submitted through the Regional Director to the Director for approval, and must include the results of a thorough analysis of the park's funding sources as outlined below. Requests should be sent to the attention of the Chief, Commercial Services Program, who will analyze the request with the assistance of the Office of the Comptroller and make a recommendation for approval to the Associate Director for Business Services, Comptroller and Deputy Director. The use of national fund sources will only be approved to the extent necessary to achieve a viable contract (e.g., a 1 percent minimum franchise fee). In the rare cases where a concession contract is being converted to a lease, 20 percent funds may not be used.

Funding PI/LSI to the extent necessary for the next concessioner to have a fair opportunity for a profit is a mandatory requirement and must be given the highest priority over other park needs. Parks must evaluate, in the order below, the availability of the following fund sources prior to requesting 20 percent CFF funds. Partial funding can be identified from one or more sources.

1. **Contract Proceeds.** A financial analysis of the contract must be developed (using an estimate for the PI/LSI value if a negotiated value has not been determined). If the analysis shows the contract is viable (a franchise fee greater than 0 percent), no further analysis is required and the park is not eligible for national funding sources. The WASO Commercial Services Program is available to assist with this analysis.

2. **Park's 80 percent franchise fee funds.** If, after completing the review in Option 1, the contract is not projected to be viable, a park must use its own franchise fees to buy down the PI/LSI. Mandatory PI/LSI obligations must be the park's first priority for use of franchise fees, and parks should reprioritize and postpone other projects as necessary. Parks with financially troubled contracts should be saving franchise fees for the purchase of PI/LSI and such efforts should be documented in their 5-year plans. Parks who have approval to fund permanent salaries from franchise fees may fund those expenses first. Parks that are unable to reprioritize or postpone projects to pay for PI/LSI must provide a thorough justification for why this cannot be done prior to requesting 20 percent funds. Parks with special accounts should use a similar

evaluation process. It may be necessary to save special account funds until the expiration of the current contract in order to buy down PI/LSI.

3. **Franchise fee loan from other parks within the region.** If, after analyzing Options 1 and 2, the contract is still in need of funds, parks must work with their region to identify parks within the region that could loan franchise fees to the troubled contract. Loans must be paid back over the term of the new contract from funds generated by the contract.

4. **Park's 80 percent recreation fee fund.** If, after analyzing Options 1, 2 and 3, the contract is still in need of funds, parks must make the purchase of PI/LSI a high priority for 80 percent entrance fees. Parks with financially troubled contracts should be saving recreation fees for the purchase of PI/LSI and should evaluate whether it is possible to reprioritize or postpone projects to pay for PI/LSI. Parks that are unable to make recreation fees available to pay for PI/LSI must provide a thorough justification for why this cannot be done prior to requesting 20 percent funds. Under separate guidance, high-revenue recreation fee parks are required to evaluate the feasibility of using 80 percent recreation fees for capital investment projects, prior to submitting these projects for line-item construction funding. Parks with PI/LSI obligations should prioritize these needs above proposed capital investment projects.

If, after a thorough analysis of these steps, the park determines 20 percent funds are needed, the regional office must review the request. If the regional office agrees with the park's analysis it should submit the results of the park fund source analysis along with a request for 20 percent funds to WASO for review. If WASO agrees that national funds are required, it will use the following hierarchy to determine the source of funds to be used to pay the PI/LSI:

1. National 20 percent franchise fees.
2. National 20 percent recreation fees.
3. Construction funds.

It is imperative that parks and regions carefully analyze all available funding sources and make the payment of contingent PI/LSI obligations of the Federal Government a top priority. The NPS does not have the option to delay these obligations, as concessioners have contractual rights to be paid within a reasonable period of time once the contract transitions. Failure to do so is potentially a breach of contract. I ask that all superintendents with PI/LSI buy down needs discuss a funding solution with their Regional Director and take whatever steps necessary to find funding within the park or region. Formal requests and justifications for 20 percent funds needed in FY 13 must be received within 30 days of the date of this memorandum. Regions are also requested to provide an updated listing (park and estimated dollar amount) of FY 14-17 needs within 30 days. In updating the PI/LSI buy-down needs estimates, regions should go through the steps outlined above with their parks. The estimated requests should reflect the number the region anticipates requesting <u>after all other fund sources have been exhausted.</u>

If you have any questions regarding this guidance, please contact Lena McDowall, Associate Director, Business Services at 202/208-5651, or Jo Pendry, Chief, Commercial Services Program at 202/513-7156.

Attachment

DRAFT - REGIONAL 20% REQUESTS FIVE YEAR PLAN - DRAFT

20% FRANCHISE FEE FUNDS - 6 YEAR PLANNING ANALYSIS

			2012	2013	2014	2015	2016	2017
Prior Year Carryover			9,000,000	12,509,667	21,311,867	22,095,707	3,011,443	(15,431,981)
Projected Revenues		+	13,800,000	14,200,000	14,600,000	15,100,000	15,500,000	16,000,000
Programmed/Requested Expenditures		-	10,290,333	6,397,800	13,816,160	34,184,264	33,943,424	4,480,596
Total - 20% Funds Available		=	12,509,667	20,311,867	22,095,707	3,011,443	(15,431,981)	(3,912,577)
[redacted]								
	Condition Assessments Quality Assurance/Control*		$ 1,468,630					
	Environmental Assessments (audits at the park level)		$ 924,683					
	FAR Contracting Support		$ 315,976					
	Insurance Evaluations (for prospectus development)		$ 190,684					
	Standards, Evaluation, and Rate Approval Consulting Support		$ 300,000					
	Commercial Services System Implementation		$ 127,953					
	US Public Health Consultant		$ 114,000					
	IT Systems Support (sharepoint, etc.)		$ 79,046					
			[redacted]					
	*$368,631 funded for FY13 due to contracting blackout			(assume 2% inflation for out years)				
[redacted]								
AKR	Travel & Training Support		10,000	15,000	15,000	15,000	15,000	15,000
AKR	Term position			50,000	52,000	54,000	56,000	58,000
IMR	Travel & Training Support		20,000	20,000	20,000	20,000	20,000	20,000
IMR	Dedicated Solicitor - IMR		100,000	100,000	100,000	100,000	100,000	100,000
MWR	Travel & Training Support		15,000	15,000	15,000	15,000	15,000	15,000
MWR	Leasing Appraisal Support			50,000	-	-	-	-
MWR	Term Position		128,500	-	-	128,500	128,500	-
NCR	Travel & Training Support		10,000	10,000	10,000	10,000	10,000	10,000
NCR	Term Position			42,500	43,860	45,264	-	-
NER	Travel & Training Support		10,000	10,000	10,000	10,000	10,000	10,000
NER	Term Position			-	-	-	-	-
PWR	Travel & Training Support		18,000	18,000	18,000	18,000	18,000	18,000
PWR	Term position		127,000	127,000	127,000	127,000	127,000	127,000
SER	Travel & Training Support		10,000	10,000	10,000	10,000	10,000	10,000
SER	Term solicitor		29,875	35,300	35,300	35,300	35,300	35,300
			[redacted]					

Parks Needs		2012	2013	2014	2015	2016	2017
Region	**Purpose/Park**						
AKR	Total requests (for FY12, total funded)	$ 10,000	$ -	$ 30,000	$ 15,000	$ 15,000	$ 165,000
IMR	Total requests (for FY12, total funded)	$ 130,000	$ 1,000,000	$ 4,500,000	$ 3,000,000	$ 10,000,000	$ -
MWR	Total requests (for FY12, total funded)	$ 50,000	$ 520,000	$ -	$ 60,000	$ -	$ 100,000
NCR	Total requests (for FY12, total funded)	$ 1,000,000	$ -	$ 2,500,000	$ -	$ 3,500,000	$ -
NER	Total requests (for FY12, total funded)	$ 3,780,986	$ 950,000	$ 910,000	$ 7,500,000	$ -	$ -
PWR	Total requests (for FY12, total funded)	$ 860,000	$ 150,000	$ 2,000,000	$ 19,900,000	$ 16,700,000	$ 550,000
SER	Total requests (for FY12, total funded)	$ 460,000	$ 275,000	$ 360,000	$ -	$ -	$ -
FY12 = TOTAL FUNDS OBLIGATED/TRANSFERRED/SEQUESTERED; FY13-FY17 = REQUESTS		**$ 6,290,986**	**$ 2,895,000**	**$ 10,300,000**	**$ 30,475,000**	**$ 30,215,000**	**$ 815,000**