**NPS Wilderness Extent Necessary Determination Guidance**

**Appendix E: Decision Document Template**

**WILDERNESS ACT**

 **EXTENT NECESSARY DETERMINATION**

**FOR COMMERCIAL SERVICES**

**IN (insert name) WILDERNESS**

**INTRODUCTION**

The purpose of this document is to determine the extent to which commercial services are necessary in the (insert name of wilderness) to realize the purposes for which the (insert name of wilderness area) was established.

The assessment begins with a review of law, policy and regulation to bring forth the criteria that will be used to measure the extent that commercial services are both necessary and appropriate in (wilderness area). Following a listing of these criteria, descriptions of the wilderness characteristics relative to the criteria are presented. This determination then identifies those activities that are necessary and proper for realizing the recreational and other authorized purposes of wilderness. Commercial services to support proper activities are evaluated in terms of their ability to preserve wilderness character and achieve desired conditions for wilderness. Finally, any other agency-specific analyses or requirements relative to wilderness planning and commercial services are also added to this decision-making process. The assessment includes with a finding of the amount of commercial services that is necessary and may be provided (under each alternative).

**The Wilderness Act and NPS Wilderness Policies**

The Wilderness Act of 1964 secured for our nation an enduring resource of wilderness. Wilderness areas included in the National Wilderness Preservation System are to be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness. The wilderness character of these areas is to be preserved.

In order to achieve these goals, the Wilderness Act includes a series of prohibitions related to particular activities. These prohibitions relate to mining, road construction, motorized equipment, landing of aircraft, installation of structures, and commercial services. With regard to commercial services in wilderness, Section 4(d)(5) of the Wilderness Act states, “Commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.” The “purposes” referred to in Section 4(d)(5) are those purposes enumerated in Section 4(b). Section 4(b) provides that “...wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.”

In addition to the Wilderness Act, the NPS’s management of wilderness areas is guided by the NPS *Management Policies 2006* (§6.4.4) and Director’s Order # 41. The Management Policies state that commercial services like guiding that “…contribute to public education and visitor enjoyment of wilderness values or provide opportunities for primitive and unconfined types of recreation may be authorized if they meet the “necessary and appropriate” tests of the National Park Service Concessions Management Improvement Act of 1998 and section 4(d)(5) of the Wilderness Act…, and if they are consistent with the wilderness management objectives contained in the park’s wilderness stewardship plan, including the application of the minimum requirement concept.” The application of the “minimum requirement” concept to commercial services is reemphasized in Director’s Order 41. Director’s Order 41 requires NPS to prepare a documented determination setting forth the types and amounts of commercial services that are necessary to realize wilderness purposes. This Extent Necessary Determination satisfies the requirement in Director’s Order 41. The Director’s Order also provides that allocations between commercial and non-commercial uses should be subject to public comment through a public planning process. This Extent Necessary Determination is being prepared in association with (insert name of planning document).

**Definitions of Wilderness Act Terms**

The Wilderness Act does not define the terms “activities,” “commercial services,” or “necessary.” When Congress does not include definitions of important terms in a statute, agencies may rely on commonly accepted definitions. The word “activities” is commonly defined as, “a pursuit in which a person is active”[[1]](#footnote-1), “a recreational pursuit or pastime”, or “actions taken by a group in order to achieve their aims.”[[2]](#footnote-2) In the wilderness context, it is understood as referring to the recreational or other active pursuits engaged in by wilderness visitors. The word “commercial” is commonly defined as (1) “[o]f or relating to commerce,” i.e., “[t]he buying and selling of goods, esp. on a large scale: business,” (2) “[e]ngaged in commerce,” (3) “[i]nvolved in work designed or planned for the mass market,” or (4) [h]aving profit as a primary aim.”[[3]](#footnote-3) The word “service” is commonly defined as “the organized system of apparatus, appliances, employees, etc., for supplying some accommodation required by the public” or “the performance of any duties or work for another.” For the purposes of this document, a commercial service is one that relates to or is connected with commerce wherein work is performed for another person or entity, and where the primary purpose is the experience of wilderness through support provided for a fee or charge and where the primary effect is that the wilderness experience is guided and shaped through the use of support services provided for a fee or charge.

The word “necessary” is defined in some dictionaries as meaning “absolutely needed.”[[4]](#footnote-4) Other dictionaries define it to mean “important in order to achieve a specific result, or desired by authority or convention.”[[5]](#footnote-5) The word necessary appears in many federal statutes.

For the purposes of this Extent Necessary Determination , the word necessary in relation to commercial services is defined to mean a service that is needed to achieve objectives for visitor use and enjoyment of wilderness in such a manner that the desired conditions for wilderness area are achieved, and wilderness character is preserved.

The language of the Act also contains two distinct but interrelated standards related to the terms “activities” and “commercial services.” First, the “activities” that may be supported by commercial services must be “proper for realizing the recreational or other wilderness purposes.” Second, “commercial services” can only be authorized “to the extent” that they are necessary for activities deemed proper. The U.S. Court of Appeals for the Ninth Circuit has concluded that this language requires agencies to make a specialized finding of necessity for commercial services and to determine the minimum amount of commercial use that can be allowed. Thus, both the type (i.e., “proper”) and necessity and amount (i.e., “extent”) of commercialsupport must be addressed in this Extent Necessary Determination.

The NPS Management Policies state that commercial services like guiding that “…contribute to public education and visitor enjoyment of wilderness values or provide opportunities for primitive and unconfined types of recreation may be authorized if they meet the “necessary and appropriate” tests of the National Park Service Concessions Management Improvement Act of 1998 and section 4(d)(6) of the Wilderness Act…” A general outline of the necessary and appropriate standards are as follows:

Necessary

A service that is necessary accomplishes one or more of the following:

* The service contributes to visitor understanding and appreciation of park purpose and significance
* The service enhances visitor experiences consistent with park area philosophies
* The service assists in managing visitor use and educating park visitors
* The service is an essential service not available within a reasonable distance from the park

Appropriate

A service that is necessary accomplishes all of the following:

* The service is consistent with the purpose and significance of the park
* The service is consistent with laws, regulations and policies
* The service does not significantly impact or impair park resources or values
* The service does not exclude the public from participating in limited recreational activities

 *(Note: The finding presented in this section should not differ from that made during the relevant concession contracting and/or CUA process. Park concession staff should therefore be consulted.)*

**Relationship to the (insert name of associated planning document)**

***Guidance from Director’s Order 41 indicates that an Extent Necessary Determination should be undertaken as part of a larger planning effort. This section of the END is intended to explain the relationship between the END and the associated planning effort. Relevant guidance and information from the plan (e.g., carrying capacity information, desired conditions, visitor use management goals, plan alternatives) should be discussed here.***

**Purposes for which (insert name of wilderness) was Established**

Section 4(d)(6) of the Wilderness Act states, “Commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the *recreational or other wilderness purposes of the areas*” (emphasis added.) Section 4(b) of the Act further provides that “...wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.”

The (insert name of wilderness) was established in (insert date) for recreational and other purposes, which include (insert other purposes for affected wilderness area.) *The rest of this discussion should be drawn from relevant legislation and legislative history to determine whether there are any additional purposes that apply to the affected wilderness area. Also review relevant planning documents to see how those purposes have been described and treated previously by the agency.*

 **DETERMINATION OF EXTENT TO WHICH COMMERCIAL SERVICES ARE NECESSARY IN WILDERNESS**

**Part 1: Activities that are proper for realizing the recreational or other purposes of wilderness**

For a commercial service to be considered as a necessary form of support for an activity, that activity must be proper for realizing wilderness purposes. Any activity that occurs in designated wilderness must first be of a type that does not violate the prohibitions of §4(c) on the use of motor vehicles, motorized equipment or motorboats, the landing of aircraft, or other forms of mechanical transport. NPS Management Policies 6.4.3 states that recreational uses in wilderness will be of a nature that:

* Enables the areas to retain their primeval character and influence;
* Protects and preserves natural conditions;
* Leaves the imprint of man’s work substantially unnoticeable;
* Provides outstanding opportunities for solitude or primitive and unconfined types of recreation; and
* Preserves wilderness in an unimpaired condition.

In other words, an activity must be subject to sufficient management control so as to preserve wilderness character, which is a fundamental purpose of managing visitor use in a wilderness area. These management controls are outlined and discussed in the activity descriptions below.

*Note: This section should also be used to reference any relevant guidance from the associated planning process that informs the process of determining whether a particular activity is appropriate in wilderness. Examples of relevant guidance include wilderness management goals and desired conditions for wilderness.*

*This section would then include a listing of each activity under consideration (e.g., backpacking, fishing, photography, stock use) and a brief discussion of the following issues: how extensive the activity is, how long it has been ongoing, and any existing restrictions on the activity to control its impacts. For each activity, draw a conclusion as to whether it is appropriate to realize wilderness purposes.*

**Part 2: Aspects of Wilderness Activities that May Necessitate Commercial Support**

The extent to which these forms of commercial service support are necessary depends on a number of factors. Factors that are considered in this analysis include what the parks seeks in terms of self-reliant experiences as opposed to novice or introductory experiences, and the range of social and environmental conditions that can be provided while preserving wilderness character. In the context of wilderness stewardship planning, these objectives for visitor use have been explored through the development of alternatives. Based on the analysis in this Extent Necessary Determination, the alternatives included in the plan incorporate different proposals for no commercial service and others with varying amounts of commercial services that are necessary to achieve desired conditions for wilderness character. This Determination represents a comparative and qualitative analysis of the relevant wilderness factors and determines whether commercial services are necessary and if so, the amount of commercial services that are necessary under each alternative.

To be conducted safely and in a manner that preserves wilderness character, wilderness activities often require specialized skills, knowledge, or equipment. Climbing and mountaineering, for example, involve technical skills that are necessary for ascent and descent, safety practices associated with exposure (e.g., fall hazards) and environmental factors (e.g., mountain weather), and special equipment that is employed for locomotion and safety. Stock packing involves special equipment, such as the stock and tack and skill in loading packs, riding saddle horses, leading pack mules, providing care for the animals, and mitigating stock-related environmental impacts. Wilderness visitors vary in their ability to conduct these more specialized or technical wilderness activities. Therefore, when parks choose to provide opportunities for these types of visitor activities, some level of commercial support may be necessary

Specialized Skills or Knowledge

For some wilderness visitors the need for, or lack of, specialized skills or knowledge can be a barrier to engaging in that activity. A commercial service may support a visitor activity by providing or teaching the skills or knowledge that are needed to engage in a proper wilderness activity. This may take the form of guiding, in which the outfitter/guide provides the necessary skills or knowledge to the individual or group that is participating in the activity. It may also take an instructional form, in which the outfitter/guide teaches an individual or group the necessary skills or knowledge so that they may independently participate in the activity in the future. In the latter case, the level of instruction may range from basic or introductory wilderness skills and knowledge to advanced technical skills and knowledge. Guides and instructors are also able to provide local knowledge that can make a wilderness trip safer and more rewarding for visitors who are unfamiliar with a particular wilderness area.

Specialized Equipment or Services

Wilderness activities may require specialized equipment or services that cannot be provided by all wilderness visitors who wish to engage in a particular activity. Regarding specialized equipment, the expense, care, or space required for that equipment may be too great for some wilderness visitors to provide without support from a commercial service provider. Visitors may wish to try out an activity before making the financial commitment to purchase equipment. Some visitor trips may require services, such as the transporting of equipment or supplies that cannot be provided without commercial support. For each activity that has been determined to be proper for the recreational or other purposes of wilderness, we will discuss the specialized equipment or services that may necessitate commercial support.

Special Safety Concerns

Wilderness activities may involve special safety concerns that cannot be managed by all wilderness visitors without commercial support. The NPS does not attempt to eliminate the risks inherent in wilderness travel or in participation in particular wilderness activities. However, for some visitors, a commercial provider may be a necessary means of managing those inherent risks or may be a means to acquire the requisite knowledge to manage those risks independently in the future. For each activity that has been determined to be proper for the recreational or other purposes of wilderness, we will discuss the special safety concerns that may necessitate commercial support.

Special Resource Concerns

Wilderness activities may involve the potential for impacts to wilderness resources. A commercial service provider may be a means to ensure that activities are conducted in appropriate locations and in a manner that mitigates or minimizes resource impacts. For each activity that has been determined to be proper for the recreational or other purposes of wilderness, we will discuss the special resource concerns that may necessitate commercial support.

Other Contributions that Support Wilderness Purposes

Commercial services most often support wilderness visitors in their recreational activities, but they may also independently or cooperatively support scenic, scientific, educational, historic, or conservation objectives.

Introductory Experiences

Commercial service providers can provide assistance to visitors who lack the experience or confidence to attempt a wilderness adventure on their own. These types of trips can introduce a diverse public to a variety of ways to experience their public wild lands.

**Part 3: Types of Commercial Services that are Necessary**

Is commercial service necessary. This section also uses the categories provided in Part 2 to analyze the aspects of specific activities from Part 1 that may necessitate commercial support to achieve wilderness purposes. A conclusion regarding the necessity for commercial services is made for each activity. The amount of commercial services that would be allowed is addressed in Part 4.

*Note: This section presents, in table format, an analysis of the types of activities that may be supported by commercial services. An example of the table is included at the end of this document.*

**Part 4: Extent of Commercial Services Determined Necessary for Each Proper Wilderness Activity**

This section considers each activity in terms of the wilderness management goals, desired conditions and visitor capacities *(discuss visitor capacities if available)* of each alternative. A determination is reached about the amount of commercial services that would be authorized for each activity. Other mechanisms available for the management of commercially-supported activities are discussed where relevant.

*Insert discussion of amount of such commercial services that the agency determines are necessary under each alternative. This discussion involves an analysis of the area’s capacity for the types of use under consideration, an allocation between commercial and non-commercial use, and a discussion of how the commercial service amounts proposed are consistent with wilderness character goals that are articulated in each of the plan’s alternatives.*

**MINIMUM REQUIREMENTS ANALYSIS**

*NPS wilderness policy requires all management decisions affecting wilderness must be consistent with the minimum requirement concept. To meet this requirement a minimum requirement analysis (MRA) will be conducted, and that analysis will be inserted as part of this section or prepare the MRA as a separate but associated document.*

**(SIGNATURE BLOCKS TO BE ADDED)**

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| **Proper Activity Supported by a Commercial Service** |
| **Backpacking and Hiking Trips (with overnight camping and day hiking)** |
| **Reasons that Commercial Support is Necessary for Activity** |
| Specialized Skills and Knowledge  | Way-finding, orienteering, the use of overnight equipment, campsite selection, food preparation and appropriate food storage in wilderness, wilderness first aid, map reading, sanitation and waste disposal, leadership, and leave-no-trace practices. |
| Specialized Equipment or Services | Proper use of backpack, cooking equipment, tent, food storage devices, water purification equipment |
| Special Safety Concerns | High elevation environment, challenging cross-country areas, orienteering/way-finding, first aid, creek crossings, mountain weather |
| Special Resource Concerns | N/A |
| Other Contributions that Support Wilderness Purposes | Introductory experiences and guided trips can lead to a better understanding of wilderness character, purposes, and values, and assists the public in being confident to appropriately experience their public lands. |
| Introductory Experience | Provides people with the necessary skills to engage in self-reliant recreation.  |
| Conclusion | Backpacking and hiking are activities that are proper for realizing the public purposes of wilderness. The skills, equipment and safety issues identified above are barriers that impede the ability of some visitors to realize the values inherent in a wilderness experience. These factors necessitate some level of commercial support for backpacking and hiking. The availability of commercial support may also offer opportunities for introductory wilderness experiences. Allowing commercial support for this activity is consistent with the desired conditions of the WSP. In terms of desired conditions, backpacking and hiking allow visitors to use and enjoy wilderness in a manner that is consistent with the preservation of wilderness, to experience a natural, undeveloped, and untrammeled environment, and to avail themselves of opportunities for solitude or an unconfined recreation experience. The use of commercial support services also helps to achieve the Desired Condition of ensuring that the parks’ wilderness resources will be accessible to visitors of diverse backgrounds and capabilities. |

1. Merriam-Webster’s (online) [↑](#footnote-ref-1)
2. Oxford Dictionary (online) [↑](#footnote-ref-2)
3. Webster’s II New College Dictionary 225 (1995); accord Merriam-Webster’s Collegiate Dictionary 230 (2000). See Wilderness Society v.

U.S. Fish and Wildlife Service, 353 F.3d. 1051, 1061 (9th Cir. 2003). [↑](#footnote-ref-3)
4. Merriam-Webster’s (online) [↑](#footnote-ref-4)
5. Encarta Dictionary (online) [↑](#footnote-ref-5)