

**THE STATUS OF THE NATIONAL
PARK SERVICE CONCESSIONS
MANAGEMENT PROGRAM AND
IMPLEMENTING REGULATIONS**

OVERSIGHT HEARING

BEFORE THE
SUBCOMMITTEE ON NATIONAL PARKS, RECREATION,
AND PUBLIC LANDS
OF THE
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTH CONGRESS
FIRST SESSION

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Tuesday, March 25, 2003
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C O N T E N T S

	Page
Hearing held on March 25, 2003	1
Statement of Members:	
Christensen, Hon. Donna M., a Delegate in Congress from the Virgin Islands	3
Radanovich, Hon. George P., a Representative in Congress from the State of California	1
Prepared statement of	2
Statement of Witnesses:	
Fears, Bruce W., President, Delaware North Companies Parks and Resorts, Inc., Buffalo, New York	28
Prepared statement of	30
Jones, A. Durand, Deputy Director, National Park Service, U.S. Department of the Interior, Washington, D.C.	4
Prepared statement of	7
Lamb, Jennifer, Public Policy Director, National Outdoor Leadership School, Lander, Wyoming	34
Prepared statement of	36
Todd, Andrew N., Chairman, National Park Hospitality Association, and President and CEO, Xanterra Parks & Resorts, Aurora, Colorado	20
Prepared statement of	23
Voorhees, Philip H., Vice President, Park Funding and Management, National Parks Conservation Association, Washington, D.C.	43
Prepared statement of	45
Woodside, David B., Vice-Chairman, National Park Hospitality Association, and President and General Manager, The Acadia Corporation, Bar Harbor, Maine	31
Prepared statement of	33

**OVERSIGHT HEARING ON THE STATUS OF
THE NATIONAL PARK SERVICE CONCES-
SIONS MANAGEMENT PROGRAM AND
IMPLEMENTING REGULATIONS**

**Tuesday, March 25, 2003
U.S. House of Representatives
Subcommittee on National Parks, Recreation, and Public Lands
Committee on Resources
Washington, DC**

The Subcommittee met, pursuant to notice, at 3 p.m., in room 1334, Longworth House Office Building, Hon. George P. Radanovich [Chairman of the Subcommittee] presiding.

Present: Representatives Radanovich, Cubin, Souder, Christensen, Kildee, Grijalva and Bordallo.

**STATEMENT OF THE HON. GEORGE P. RADANOVICH, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF
CALIFORNIA**

Mr. RADANOVICH. The hearing of the Subcommittee on National Parks, Recreation and Public Lands oversight hearing regarding concessions management will now come to order.

I want to apologize. I know that this hearing was to originally start at 2 o'clock. I did have a bill to manage on the floor and, unfortunately, things can get a little long-winded on the floor and it took a little longer than it probably should have, so I am very pleased now to begin the Subcommittee hearing.

As this is the first Subcommittee hearing of the 108th Congress, I would like to welcome back my colleague and friend, the Ranking Member from the Virgin Islands, Mrs. Donna Christensen, with whom we hope to build upon the bipartisan relationship of the previous Congress.

I would also like to welcome the new members of the Subcommittee, Mrs. Cubin of Wyoming, Mr. Peterson of Pennsylvania, Mr. Bishop of Utah, Mr. Kind from Wisconsin, Mr. Grijalva from Arizona, Mr. Cordoza of California, and Mrs. Bordallo of Guam.

Welcome to the Subcommittee. I think you will find this is the Subcommittee that has almost more work than any other Subcommittee, at least in the number of bills. There is a lot that we deal with here on a daily basis. So I welcome you to the Committee and look forward to the talents that you will be bringing. Thank you very much.

Today the Subcommittee will conduct an oversight hearing on the always complicated subject of park concessions, in particular, the status of the National Park Service Concessions Management Program and its implementing regulations.

At this time I would like to inform members that the National Park Service, working through the Concessions Management Advisory Board, formed a working group in January to attempt to cooperatively resolve some of the more pressing issues facing the concessionaires in light of the April, 2000 regulations, such as Leasehold Surrender Interests or cross-collateralization. And I thought tax law was complicated.

[Laughter.]

In all seriousness, I am very confident that the working group will resolve some of these pressing issues through Director's orders and new regulations. I, for one, do not wish to revisit the 1998 Act.

The intent of the hearing today is not to necessarily attack the Park Service or increase tensions between the National Park Service and the concessions community but, rather, to keep the pressure on the Service and the concessions working group to produce consensus on the most contentious issues.

Obviously, staff and I are following the discussions closely. Quite frankly, I expect results from the working group and I am pleased with the progress so far. I would like to see an environment where concessionaires believe that their investment is recognized and valued, while at the same time the Secretary's vision of the four C's—consultation, cooperation, communication and conservation—is fulfilled.

As my colleagues are aware, the strong partnerships between the Park Service and the private concessionaires have existed since the creation of Yellowstone National Park in 1872. Today's services provided by the concessionaires include basic conveniences such as food and beverages, to more sophisticated services such as lodging and transportation.

Like many of my colleagues on this Subcommittee, I believe that the 9,000-plus concession operations on Federal lands, including those throughout the National Park System, make it possible for our parks to provide the public with a rich experience that they otherwise would not have. In fact, concessionaires help fulfill a legal mandate of the Park Service, which is to leave the resources unimpaired, while providing for the enjoyment of the public. Sometimes I believe that the second component of the Park Service's mission is not given its due deference. It is essential that we help aid the public in enjoying these national treasures—and most of them do that in one way or the other—through the successful partnership of the Park Service and our concessionaires.

I look forward to the testimony of the National Park Service and to the concessionaires, and I now yield to the Ranking Member, Mrs. Christensen, for any opening statement that she may have.

[The prepared statement of Mr. Radanovich follows:]

**Statement of The Honorable George Radanovich, Chairman,
Subcommittee on National Parks, Recreation and Public Lands**

Good afternoon. The Subcommittee on National Parks, Recreation and Public Lands will come to order.

As this is the first Subcommittee hearing of the 108th Congress, I would like to welcome back my colleague and friend, the Ranking Member from the Virgin Islands, Mrs. Christensen, with whom we hope to build upon the bipartisan relationship of the previous Congress. I would also like to welcome the new Members of the Subcommittee: Ms. Cubin of Wyoming, Mr. Peterson of Pennsylvania, Mr. Bishop of Utah, Mr. Kind of Wisconsin, Mr. Grijalva of Arizona, Mr. Cardoza of California and Ms. Bordallo of Guam.

Today, the Subcommittee will conduct an oversight hearing on the always complicated subject of park concessions, in particular the status of the National Park Service Concessions Management Program and its implementing regulations. At this time, I would like to inform Members that the National Park Service, working through the Concessions Management Advisory Board, formed a Working Group in January to attempt to cooperatively resolve some of the more pressing issues facing concessioners in light of the April 2000 regulations, such as leasehold surrender interest or cross-collateralization—and I thought tax law was complicated. In all seriousness, I am very confident that the Working Group will resolve some of these pressing issues through Directors Orders and new regulations. I, for one, do not wish to revisit the 1998 Act.

The intent of the hearing today is not to necessarily attack the Park Service or increase tensions between the National Park Service and the concession community, but rather to keep the pressure on the Service and the concessions working group to produce consensus on the most contentious issues. Obviously, staff and I are following the discussions closely. Quite frankly, I expect results from the Working Group. I would like to see an environment where concessioners believe their investment is recognized and valued, while at the same time, the Secretary's vision of the 4-C's—consultation, cooperation, communication, and conservation—are fulfilled.

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Like many of my colleagues on the Subcommittee, I believe that the 9,000-plus concession operations on Federal Lands, including those throughout the National Park System, make it possible for our parks to provide the public with a rich experience that they otherwise would not have. In fact, concessioners help fulfill a legal mandate of the park service which is to leave the resources unimpaired while providing for the enjoyment for the public. Sometimes, I believe, that the second component of the Park Service's mission is not given its due deference. It is essential that we help aid the public in enjoying these national treasures and most of them do that, in one way or another, through the successful partnership of the Park Service and our concessioners.

I look forward to the testimony of the National Park Service and the concessioners.

**STATEMENT OF THE HON. DONNA M. CHRISTENSEN, A
DELEGATE IN CONGRESS FROM THE TERRITORY OF THE
VIRGIN ISLANDS**

Mrs. CHRISTENSEN Thank you, Mr. Chairman. I, too, look forward to working with you in this Congress and doing a lot of good things to improve our parks and public lands throughout the Nation, as we have done in the past. And I want to join you in welcoming our new members.

Mr. Chairman and guests, the reform of the National Park Service concessions program was over 20 years in the making. With the enactment of title IV of Public Law 105-391 in 1998, significant changes were made to the National Park Service's concession program. While far from perfect, the law did take a very important step in beginning to correct some of the more glaring problems of the former concessions program.

Pursuant to the detailed provisions of the new law, the National Park Service issued concessions regulations in April of 2000. Those regulations were developed with public review and comment and

have survived several legal challenges. It is my understanding the National Park Service has also hosted several meetings recently with concessionaires and others, including congressional staff, to discuss concession regulations and policies and promote a better understanding of the issues by all parties. I commend the Park Service for holding those meetings.

Mr. Chairman, I look forward to learning more about the National Park Service's concessions program and how those meetings are going and what is coming out of them.

We appreciate the attendance of our witnesses today and welcome their testimony.

Mr. RADANOVICH. Thank you, Mrs. Christensen.

Are there any other opening statements from other Subcommittee members? OK. Thank you very much.

We will now begin with panel No. 1. Mr. Randy Jones, welcome. You've been a frequent visitor to this Subcommittee as the Deputy Director of the National Park Service. I want to welcome you again to the Committee.

I think we're giving you 5 minutes, if people would stick as closely as you can to that 5 minutes. If I interrupt you after that, you'll know why. Randy, we welcome your testimony.

**STATEMENT OF A. DURAND JONES, DEPUTY DIRECTOR,
NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE
INTERIOR**

Mr. JONES. Thank you, Mr. Chairman. It's a pleasure to be here. I look forward to many appearances before you in the next few months.

Mr. Chairman and members of the Committee—and I do ask that my entire statement be submitted for the record, and I will be happy just to go through the highlights of it.

Mr. RADANOVICH. Very good.

Mr. JONES. Thank you for the opportunity to discuss the ongoing efforts and accomplishments for the National Park Service in implementing portions of the National Park Omnibus Management Act, the Concessions Management Improvement Act, Public Law 105-391.

We are interested in providing this update on the status of the program, including the issues that you have expressed interest in, the improvements we are making, the ongoing development of working relationships with our external partners, and seeking your input and comments on this important program. As you indicated in your comments, it is, at best, an incredibly complicated program.

The National Park concessions program administers 590 concessions contracts in 126 parks. These contracts currently generate \$818 million in annual gross revenues. The new statute provided a new process for concessions contracting and the terms and conditions of those contracts.

We particularly appreciate the ongoing help and assistance of the Concessions Management Advisory Board working group in our recent efforts to engage representatives of our concessions partners, along with members of both authorizing committee staffs, in discussions to address several key issues of common concern. These have included management of Leasehold Surrender Interest, cross

collateralization of loans, approval of sales and transfers, and a more simplified and flexible pricing program.

Through all of these discussions, we're trying to learn through the experiences we have had as we develop the new regulations in trying to always seek new improvements to make the system work better. Through a committee of the advisory board, we have made substantial progress in achieving common understanding of these issues, and framing a range of alternatives to improve our handling of them. In particular, we believe there are conditions under which we can favorably consider requests for cross collateralization, and we are working on specific criteria to accomplish this.

Similarly, there appears to be ways to simplify our review of sales and transfers which will streamline the process for concessioners to conduct business. The advisory board has already endorsed and we have approved the implementation of a core menu pricing system, which will make the approval of pricing go much quicker.

Finally, we've had extensive discussions regarding the application and handling of the Leasehold Surrender Interest issue, and those discussions will continue at the June meeting. We will be continuing our discussions on all of these topics in the next few months. Recommendations from this Committee will be publicly presented and discussed at future meetings of the full advisory board, and subsequently submitted to the Director of the National Park Service with recommendations for action.

In responses to law and recommendations of the advisory board, the Park Service has made and will continue to make a number of other business changes. The concessions program has made extensive use of external firms. For example, we have over 21 different organizations as prime and sub-contractors advising us on various elements of the concessions program and management.

The National Park Service is following recommendations made by the advisory board in four specific areas: initiating professional staff development, improving external relationships with stakeholders, business practices and open competition, and contract progress.

Professional development guidance. Our goal for ongoing professional development of concessions program staff is in its initial stages. We are implementing a program to improve the skills of our concession staff through formal training. We are also increasing our program to hire very qualified candidates. For example, at Grand Canyon National Park, Rocky Mountain National Park, and the Golden Gate National Recreation Act, we hired individuals to manage the concession programs in those parks who have MBAs, therefore providing a rich background and experience for us to upgrade our level of professionalism.

We have developed a strategic partnership with Northern Arizona University School of Hospitality to conduct an extensive training program for our employees to again improve their skill base. The program's goal will be to ensure all concession staff are qualified and certified to fulfill their role in an increasingly complex business program.

The relationship we have with our external stakeholders continues to improve. For all incumbents and potential operators, we

offer educational sessions on how to do business with the National Park Service. These sessions are designed to assist participants in understanding the regulations, the prospectus, and the development process so they can submit proposals to us.

Through outsourcing, we have developed protocols that focus on the key business process of contracting and contract oversight in all concessions contracts. We believe the competition for renewal of concession contracts is a healthy step and allows for potentially new business opportunities which benefits the concessioner, the visitor, and the National Park Service.

A potential issue of concern to the National Park Service is the possibility of government debt obligation in relationship to concessioner Possessory Interest. Possessory Interest is guaranteed either by the newly selected concessioner or the U.S. Government, if no successor is identified. Possessory Interest reflects a government obligation. However, Possessory Interest is not as readily quantifiable as Leasehold Surrender Interest, which will replace Possessory Interest in all new contracts. We are aggressively evaluating the total obligation represented by PI and prospectively by Leasehold Surrender Interest. When this work is complete, we expect to complete a comprehensive approach to managing these obligations.

By the end of 2002, six large contract prospectuses were issued and five contracts were executed. over the course of the next year, we estimate that 15 additional prospectuses will be issued under our revised process for large contracts. We completed a total of 100 contracts during 2002, and expect to complete 200 additional contracts during the additional fiscal year, putting us on course to complete our backlog and get it behind us by the end of 2004.

The National Park Service is addressing the concerns of the small business operator regarding the implementation of Commercial Use Authorizations. Based upon the concerns raised during the public review process, we intend to request the Concessions Advisory Board to establish a multi-disciplined work group to consider the issues raised by those comments. So we are holding any decision as far as taking those proposed rules to final until we've had a chance to talk further with the advisory board.

Concerning nonprofit organizations, nonprofit organizations range from scout troops and educational institutes to park cooperating associations, friends groups or foundations. Each offers support to the park in a unique way, and as a distinctive entity. They must each have the proper permit, authorization or agreement based on the type and level of services they offer the park and its visitors. So they may be in some cases concessions contracts, they may be under the old system Commercial Use Authorizations, or they could be under special use permits. We are managing all of these nonprofit organizations to ensure they're meeting the applicable requirements.

This is an issue that has currently been under review by the General Accounting Office, and we have provided the GAO substantial information in support of their study.

We thank you for the support and the direction that you have provided, and look forward to a concessions program that is successful for the National Park Service, our concessions partners, and

the general public. We have a long ways to go in getting this program completed, implemented and managed in a good, professional, sound way. We think we've made progress and we will continue to strive to make it a program that this Committee will be very proud of.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Jones follows:]

**Statement of A. Durand Jones, Deputy Director, National Park Service,
U.S. Department of the Interior**

Mr. Chairman, members of the Subcommittee, thank you for the opportunity to discuss the ongoing efforts and accomplishments by the National Park Service (NPS) in implementing Title IV of the National Parks Omnibus Management Act of 1998, the Concessions Management Improvement Act, Public Law 105-391.

We are interested in providing an update on the status of the NPS concessions management program including the issues in which you have expressed interest; the improvements we are making; the ongoing development of working relationships with our external partners and seeking your input and comments on the program.

The NPS concessions program administers 590 concessions contracts in 126 parks. These contracts currently generate \$818.6 million in annual revenues. Of these 590 contracts, 52 currently gross above \$3.0 million. These high-dollar contracts represent about 80% of the total annual concessions revenues. In contrast, the more than 75% of contracts generating less than \$500,000 account for less than 6% of the gross revenues.

Title IV of Public Law 105-391 was enacted on November 13, 1998. This title repealed the Concessions Policy Act of 1965, Public Law 89-249, and established a new process for concessions contracting and the terms and conditions of those contracts. A major change was the repeal of the preferential right of renewal for all contracts grossing over \$500,000, other than those held by outfitters and guides. The law also established the National Park Service Concessions Management Advisory Board (CMAB) and directed other changes in the National Park Service Concessions Program (NPSCP). The law was the bipartisan product of over 20 years of work by legislators, including your Committee.

We are moving forward with our implementation of the law through our concessions regulations and other actions, and we appreciate the assistance received by the CMAB, established by Section 409 (s) of Title IV.

Concessions Management Advisory Board Working Group

We particularly appreciate the CMAB's assistance in our recent effort to engage representatives of our concessions partners, along with members of both authorizing committee staffs, in discussions to address several key issues of common concern. These have included management of Leasehold Surrender Interest (LSI), cross collateralization of loans, approval of sales and transfers, and more simplified and flexible pricing approval. Through a committee of the CMAB, we made substantial progress in achieving common understanding of these issues and framing a range of alternatives to improve our handling of them. In particular, we believe there are conditions under which we can favorably consider requests for cross collateralization and we are working on specific criteria to accomplish this. Similarly, there appear to be ways to simplify our review of sales and transfers which will streamline the process for concessioners to conduct business. The CMAB has already endorsed and we have approved the implementation of a core menu pricing system. We will implement this system more broadly. In addition we are exploring other ideas to make pricing approval simpler and more effective. Finally, we have had extensive discussion regarding the application and handling of LSI. We believe that our discussions have created a common ground of understanding on how this concept functions in relation to standard business practices. Further, we have identified several potential approaches to simplify and improve the application of LSI in a fair and equitable manner. We will be continuing our discussions on all these topics in the coming months. Recommendations coming from this committee will be publicly presented and discussed at future meetings of the full CMAB and subsequently submitted to the Director of the NPS with recommendations for action.

In response to the law and to recommendations of the CMAB, the NPS has made and will continue to make a number of other business process changes. In doing so, the concessions program has made extensive use of external firms (including PricewaterhouseCoopers (PwC)) with specific expertise in the arenas of asset management, hospitality, recreation, tourism, engineering and finance. Our process im-

provements and commitment not only responds to the intent of the Concessions Management Improvement Act but implements the President's management agenda as well.

To ensure proper implementation of the law, the NPS is following recommendations made by the CMAB in four specific areas: initiating professional staff development, improving external relationships with stakeholders, business practices and open competition, and contract progress.

Professional Development Guidance

Our goal for ongoing professional development of concessions program staff is in its initial stages. The NPSCP, through the guidance of the CMAB, is implementing a program to improve the skills of concessions staff through formal and informal training. In addition, through the recruitment process, we are hiring qualified business candidates. The most recent positions filled include the Chief of Concessions Management at Grand Canyon National Park, a Management Assistant with concessions responsibilities at Rocky Mountain National Park and a Concessions Management Specialist at Golden Gate National Recreation Area. As additional concessions positions become vacant, we will seek candidates with a business background, focusing, when possible, on candidates with experience in the hospitality industry. The NPS realizes that we must have the necessary business acumen, knowledge and skills to perform our duties in a highly professional manner. We have developed a strategic partnership with Northern Arizona University (NAU) School of Hospitality as an opportunity for NPSCP employees to further advance their Concessions Management skills. This multi-year program includes 420 hours of course study that is based upon the NAU core hospitality curriculum. The objective of this program is to provide a hospitality management curriculum that will improve the overall accountability and professionalism of the NPSCP. Additional training was developed to enhance the skill set of NPSCP staff working on concessions contracts and to lay the foundation of a NPSCP Certification Program. The program's goal will be to ensure all concessions staff are qualified and certified to fulfill their role in a complex business program. The coursework was developed and is taught collaboratively through a partnership with the American Hotel and Lodging-Educational Institute, NPS, the Department of the Interior and PwC.

Improving Relationships with Stakeholders

The relationship we have with our external stakeholders continues to improve. We are working to involve all affected parties in the concessions program. For example, the 1998 law placed an emphasis on competition for contracts in the national parks. However, all incumbents grossing \$500,000 or less, and all outfitters and guides, continue to enjoy a preference in the renewal of their contracts, if the concessioner has operated satisfactorily during the term of its contract and has submitted a responsive proposal for a proposed new contract which satisfies the minimum requirements established by the Secretary. For all incumbents and potential operators, we offer educational sessions on "How to do Business with the NPS." These sessions are designed to assist participants in understanding the NPSCP and the key components of the prospectus development process. Three such outreach sessions were held in Fiscal Year 2002, in Napa, California, Phoenix, Arizona, and Atlanta, Georgia, and we anticipate holding two additional sessions in Fiscal Year 2003.

Business Practices and Open Competition

Through outsourcing, we developed protocols that focus on the key business processes of contracting and contract oversight in all concessions contracts. We will ensure, that the franchise fee established by the contracts reflect the "probable value to the concessioner of the privileges granted by the particular contract involved." The law requires that this value "be based upon a reasonable opportunity for net profit in relation to the capital invested and the obligations of the contract." We are also outlining how to better meet our fiduciary responsibilities through responsible contract oversight.

We believe that competition for the renewal of concessions contracts is a healthy step, and allows for potentially new business opportunities, which benefit the concessioner, the visitor and the National Park Service. We believe it is the intent of Congress for incumbents and potential operators to have the opportunity to compete fairly and equally for a concessions contract, so that government and visitors receive the best services available. A potential issue of concern to the National Park Service is the possibility of government debt obligation in relationship to concessioner Possessory Interest (PI). It is important to note that the compensation for concessioner PI is guaranteed either by the newly selected concessioner or the U.S. government (if no successor is identified). PI reflects a governmental obligation. However, PI is not as readily quantifiable as LSI, which will replace PI in all new contracts.

As reported in the 2000 NPSCP Annual Financial Report (AFR) database, 127 concession contracts reported assets in which PI was claimed. This represents more than 20 percent of concessions contracts. We are aggressively evaluating the total obligation represented by PI and prospectively by LSI. When this work is complete we expect to present a comprehensive approach to managing these obligations.

Contract Progress

Our backlog on concessions contracts has been a concern for all involved. The largest 52 concessions contracts include hospitality, retail, marina and transportation assets and operations. Recognizing their complexity, high value, legal and financial risk, we have sought external expertise to assist us in developing an action plan for the development of prospectuses for these contracts. In Fiscal Year 2002, the NPSCP with the aid of external experts, identified the 52 contracts and the level of prospectus due diligence necessary for each. By the end of Fiscal Year 2002, six large prospectuses were issued and five contracts were executed. Over the course of the next year, we estimate that fifteen additional prospectuses will be issued under our revised process for large contracts. As we mentioned earlier, we have engaged PwC and numerous other firms to assist parks in developing a strategy for undertaking appropriate due diligence for these large contracts, including real property condition assessments, real and personal property valuations, market and financial analysis, and concessions facility planning. We are assessing the condition of our facilities and aligning our capital improvement programs to address deferred maintenance. Thus far, over \$13 million dollars of deferred maintenance has been identified and will be eliminated through the maintenance reserve and other improvement requirements in new contracts. As with other park facilities, we will be monitoring facility conditions to measure the performance of concessioners and park managers.

The parks, in conjunction with PwC and its subject-matter experts, have been working together to redesign the prospectus to appropriately reflect the needs of NPS and offerors. Currently, the regions and individual parks are responsible for the prospectus development of those contracts grossing less than \$3 million in annual revenues, and each region has developed a strategy for implementation. Approximately 100 of the small contracts were issued between Fiscal Year 2001 and the end of Fiscal Year 2002, and approximately 200 will be issued in Fiscal Year 2003.

Commercial Use Authorizations

The NPS is addressing the concerns of the small business operator regarding the implementation of the Commercial Use Authorization (CUA)- Proposed Rule. We received significant public comment on the proposed rule, issued on November 27, 2002. Based upon the concerns raised, the NPS intends to request CMAB establish a multi-disciplined work group, to consider the issues raised by the comments. The work group will consist of interagency personnel, representatives of private sector interested parties and designated officials of the CMAB. This approach will allow for consideration of the business need for a predictable, stable platform while ensuring consistency with the preservation of park resources. Recommendations of the work group will be transmitted for full consideration by CMAB in a public meeting. NPS will review any advice from CMAB on this issue in determining how best to move forward with this rule.

Non-profit Organizations

The issue of non-profit organizations supporting our National Park units, and the effect these non-profit organizations may have on a park concessioner appears to be of concern to some park concessioners. Non-profit organizations range from scout troops and educational institutes, to park cooperating associations, friends groups or foundations. Each offers support to the park in a unique way, and as a distinctive entity. They must each have the proper permit, authorization, or agreement based on the services they offer the park or its visitors. We are managing all these non-profit organizations to assure they are meeting applicable requirements.

This Subcommittee as asked the Government Accounting Office (GAO) to assess NPS compliance with applicable regulations, policies, and contracts to determine whether park subsidies are provided to non-profit organizations, and to determine how services provided by non-profit organizations affect concessioners. The NPS has provided GAO substantial information in support of this study. The Division of Interpretation, the Partnership Office and the Concessions Office will work together to address any issues that may arise as a result of the review. We look forward to receipt of the review.

The NPS is actively working on improving the concessions management program. We have made many improvements since the passage of P.L. 105-391, and antici-

pate continual improvements as we work with our concessioners, private sector contractors, and this Committee. We thank you for the support and direction you have provided and we look forward to a concessions program that is successful for the NPS, our concessions partners and the general public.

This concludes my testimony. I would be happy to answer any questions you might have.

Mr. RADANOVICH. Thank you, Mr. Jones. We'll go ahead and proceed with questions. I will go ahead and begin and then we'll do the same thing with the next panel.

Mr. Jones, the Federal Government understands and uses the Generally Accepted Accounting Principles, as does the private sector. Within the GAAP, definitions can be found that clearly identify what type of projects or expenditures qualify as capital improvements.

With respect to Leasehold Surrender Interests, or LSI, why has the National Park Service redefined what qualifies as a capital improvement instead of using the same definitions and procedures, for example, in GAAP, as the rest of the people that deal with these types of things?

Mr. JONES. Yes, we have looked at that particular issue. Some of it relates to the structure of the statute itself, which says Leasehold Surrender Interest is granted for construction. I am not—accounting is not my personal specialty, but I would offer that it's my understanding that, under the GAAP procedures, there is a lot of flexibility in interpretation of what types of things you can, for accounting purposes, put under that program which, for example, could include things that we would consider routine maintenance. We think the program should be limited to those items that are construction in nature, as the statute explicitly directs us to do.

Mr. RADANOVICH. What was the genesis of the 50 percent rule and what prompted its need?

Mr. JONES. The 50 percent rule was an attempt to quantify a mechanism, again trying to identify what constituted construction. I think there has never been any dispute or doubt, if a concessioner is building a new building from the ground up, that it therefore clearly qualifies as Leasehold Surrender Interest.

The question comes that, when you're doing a major modification, be it a new kitchen, be it a new roof, and how the standard should be set as to what constitutes maintenance of a building versus what constitutes new construction that would qualify for Leasehold Surrender Interest.

The original draft regulations actually provided that for existing buildings, as I understand it, nothing would qualify and it would all be considered maintenance. The public comment period recognized that to be perhaps not the best way to go. It was changed as an attempt to compromise it 50 percent. Based on our continuing dialog, we recognize there are still some ongoing problems with that, and it was based on that understanding as to why we asked the Concessions Advisory Board to take this issue up, working with Pricewaterhouse and some of our other consultants, working with the concessioners and Committee staff, to try to identify is there a simpler, better, clearer way that all parties could agree what should qualify as Leasehold Surrender Interest.

Mr. RADANOVICH. I see.

Mr. Jones, with regard to the reserve account, do you see that account ever being used for capital items or items that would, per the '98 Act, be accorded LSI status?

Mr. JONES. The reserve account that we're now using in the new contracts is specifically designated as a maintenance reserve contract; therefore, it would be our vision that they would not qualify as Leasehold Surrender Interest, based on our philosophy that if organizations or entities are using government buildings, that we would expect them to do routine maintenance.

Mr. RADANOVICH. One other question. A small guide and/or outfitter has a franchise fee set at 6 percent, but when he or she arrives at the park, there are entrance fees, boat launch fees, back country fees, et cetera. Now his or her franchise fee is actually up to 13 percent.

What is the National Park Service doing to prevent fee layering, or what specifically are you doing to ensure that the collection of these additional entrance and special use fees are taking into consideration when setting up the original franchise fee structure?

Mr. JONES. Mr. Chairman, I think the last part of your question is the key element, that we need to make sure that the other fees that are paid are taken into consideration as we establish the franchise fee that would be the minimum requirement in a prospectus.

As far as to the extent of the visitors who are coming in by concessioner or paying park entrance fees, in that regard they would be treated no differently than any other visitor coming into the park. But we do agree that we need to take those things into consideration in setting a franchise fee.

Mr. RADANOVICH. Thank you very much, Mr. Jones.

Mrs. Christensen.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman, and thank you, Mr. Jones, for your testimony.

A major reason for the Concessions Reform Act of 1998 was to foster competition. Has that happened?

Mr. JONES. Yes. Under the statute, outfitters and guides are automatically given a preferential right to renew, and small concession operations under gross sales of \$500,000, as you know, are also granted a preferential right to renew their contracts.

We are seeing in the new, larger contracts that are going out a lot of competition, a lot of bids. Most important, we think for the visitor what we're seeing are overall more comprehensive, more responsive bids that address a wide variety of visitor services and environmental programs, and also, from a financial point of view, addressing franchise fees. So we're already seeing evidence that the increased competition, in fact, is good for the parks and good for the public.

Mrs. CHRISTENSEN. Great.

How many concession contracts have been issued in the 5 years since the Act?

Mr. JONES. When the statute was first passed, things initially were put on hold as we developed the regulations to implement the statute. We then found ourselves for the next few years in court defending those regulations, in which the courts did, in fact, uphold the regulations, with a couple of very minor, fine-tuning exceptions.

So once the courts finished their process, we charged ahead with the program full speed. For example, in 2002, we did award 111 contracts. During the current fiscal year, we are expecting to award over 200 contracts. We are currently on pace to catch up with the backlog and get it done by the end of 2004.

Mrs. CHRISTENSEN. Thank you.

You mentioned the legal challenges. Could you update us on the challenges that were made to the concession regulations?

Mr. JONES. The major issue that is still pending—arguments, in fact, were presented to the Supreme Court just a couple of weeks ago—is the one issue as to whether—and I’m paraphrasing this, because I’m definitely not an attorney—is whether they are considered procurement contracts and, therefore, what are the rules and procedures that would govern implementation of those contracts. That element of the case was accepted by the Supreme Court, has been argued in front of the Court, and we’re waiting for their decision.

Mrs. CHRISTENSEN. Just on the LSI for a minute, concerns have been raised and there have been suggestions that this be reopened for discussion and maybe some changes.

Doesn’t the 1998 Act require reexamination and a possible replacement in 2007—

Mr. JONES. Yes, it does.

Mrs. CHRISTENSEN. And wouldn’t it be better for us to discontinue it?

Mr. JONES. The language of the Act specifically does address how Leasehold Surrender Interest would be calculated. To give it the best and fair chance to see how we should assess that 4 years from now, we want to try to make it as workable as possible. So in any regulatory process, once they are issued and we go through a learning curve and we talk to the people most affected, we’re trying to be open to say OK, what changes need to be done to make the system work better, with the ultimate answer going to be in 4 years when we have to respond back to these Committees as to what’s working and what doesn’t work.

Mrs. CHRISTENSEN. Thank you.

Mr. Chairman, I have no further questions.

Mr. RADANOVICH. Thank you very much, Mrs. Christensen.

Mrs. Cubin?

Mrs. CUBIN. Thank you, Mr. Chairman, and thank you for being here, Mr. Jones.

It always troubles me when the Federal Government has to go to court. Those are costs that we don’t build into any of our programs, and those are costs that—that’s money that comes right out of the operation of the park, all the parks. That’s always distressing to me, especially when it goes all the way to the Supreme Court, when it’s over a rulemaking thing.

Who were the plaintiffs? You don’t need to tell me names, but were they possible concessionaires, were they people who made bids, were they legislators? Who were the plaintiffs in the suits?

Mr. JONES. It was, again, my understanding—I have not ever read any of the documents personally, but it was the hospitality association who brought the complaint, and I don’t know who else was involved.

Mrs. CUBIN. OK, that answers my question well enough.

What other points were discussed besides whether or not the concessionaire should be considered a procurement activity?

Mr. JONES. Again, I'm honestly not the best one to answer that, because those were all issues that were pending on the national scene when I was living a very happy life as the Superintendent of Rocky Mountain National Park.

Mrs. CUBIN. I understand. Believe me, I understand.

The reason I ask is because one of the parts of the rules—and the Chairman may have already brought this up—but it stated that the capital improvements that are made by the concessionaires become the property of the United States, without right of compensation. I wondered if that was one of the points.

Mr. JONES. Going back to the original 1965 Concessions Policy Act, the improvements made by concessioners on Federal properties have always been the ownership of the United States. The concessioners have always had a contractual right to be compensated for their investment.

In the course of the last 40-plus years, there have been several different versions and variations in all those contracts that have been drafted and, therefore, how they get interpreted.

Mrs. CUBIN. I was aware of that. But are you telling me then there's really not a change in that, that the concessionaires are compensated for their—

Mr. JONES. They are. The questions that have been on the table is what is the mechanism used to determine the dollar amount of that compensation. The fundamental question of entitlement is—

Mrs. CUBIN. Right. It's just always up in the air, always questionable and always open to opposition.

There was one other thing that I wanted to ask. It is my understanding that there were four factors in the legislation, and that when the rule came out it added another factor, one that assesses how the proposer of the contract conducts the concession operations in terms of environmentally healthy ways and, among other things, requiring energy conservation, waste reduction, and recycling.

Now, that was never in any part of the legislation. Was that particular thing challenged in the lawsuit?

Mr. JONES. I honestly do not know. I do know that—and I would be happy to provide that information to you.

Mrs. CUBIN. Yes, I would appreciate it.

Mr. JONES. I could provide it to the Committee for the record.

I do know that has been one of the areas—and I would just cite one example. Forever Living Resorts, for example, who is a major concessioner in many parks, including the Grand Tetons, has been a real leader in solving problems from an environmental point of view of emissions on houseboats. Those are the kinds of leadership roles that some of our concessioners have taken that we wanted to be able to recognize and reward as we came to issuing contracts.

Mrs. CUBIN. I absolutely agree with the practice. What I don't necessarily agree with is rulemaking that supersedes or that adds to legislation where it wasn't intended, although I certainly approve of the activities and the fact that the Park Service is taking note of those concessionaires who do a better job.

Thank you very much. I yield back.

Mr. RADANOVICH. Thank you, Barbara.

Ms. Bordallo is recognized for 5 minutes.

Ms. BORDALLO. Thank you. Thank you very much, Mr. Chairman, and Ranking Member Christensen. I would like to thank you, Mr. Chairman. I'm a new member and I'm very honored and pleased to serve on this Committee.

Mr. RADANOVICH. You're very welcome.

Ms. BORDALLO. Mr. Jones, how is customer satisfaction measured by the Service or its contractors, and how are these measures weighed into the contract bidding and the renewal process, if they're considered at all, and in what way?

Mr. JONES. How we handle issues of customer satisfaction beyond concessions, we actually have a program and implementation of the Government Performance and Results Act, doing a series of surveys of the park visitors themselves, to ask them about how they're enjoying their experience and what kinds of services they would like to see in the park, and how we can do a better job and be responsive as a government agency.

When it comes to what goes into a specific contract, every single one of them is based on the specific needs of that contract. As an example, what one needs to be a primary consideration of someone who is taking mountain climbers to the top of Denali or Mount Ranier is very different than a river runner, which is very different than a hotel operator. So there's really no standard answer as to exactly what criteria are used beyond some of the basic requirements in the statute of what has to be included in a prospectus.

Ms. BORDALLO. But you do use a visitors survey of some type, is that correct?

Mr. JONES. I need to actually consult with my staff on that question. [Conferring.]

I am told we not doing it on specific contracts.

Ms. BORDALLO. I see. All right.

The other question I wanted to ask is, I noticed in your written testimony you talked about or placed emphasis on improving relationships with the stakeholders. I believe this is to become more business like and efficient. You hold these outreach sessions.

Mr. JONES. Right. That's correct.

Ms. BORDALLO. Twice a year, I think is what I read.

What are you planning to do for this next fiscal year? Do you have sessions already planned?

Mr. JONES. I assume. I again need to refer to staff back here. [Conferring.]

Yes. Yes, we do have two scheduled. A major purpose of what these sessions are designed to do—and they're open to anybody who would like to bid, either an existing concessioner or anyone who would like to become a concessioner. There are many things, both in the statute and the regulations—and it goes back to the Chairman's question, on things like Leasehold Surrender Interest—that as a concept, there really is nothing analogous in the private sector. So providing an understanding of how to interpret and how to work the system, so to speak, so that everybody is on a level playing field, is the purpose of why we've been holding these sessions. And they have been well attended.

Ms. BORDALLO. Do you feel two is enough?

Mr. JONES. Given the availability of funds, it's probably as much as we can do at this time.

Ms. BORDALLO. Thank you very much, Mr. Jones.

Mr. RADANOVICH. Thank you very much.

Mr. Souder.

Mr. SOUDER. Thank you, Mr. Chairman. Mr. Jones.

I have a question because I kind of lost track of this. It relates to a broader question. At Minnie Glacier Lodge in Glacier National Park, one of the challenges is the cost of rehabing these old structure is so costly, particularly one like that, that can only have a short season and rebuilding was so high, that there were questions about how to tradeoff what the concessionaires can charge in the rooms, particularly when we have kind of a "no new net gain of rooms" in the park, how to actually make this work to preserve our older structures, which is a challenge that's going to get greater.

I wondered whether you've been giving more flexibility to concessionaires to not have the same rate pressure on the rooms, particularly with historic lodges, and how you see that evolving. Since most concessionaire activity or the growth in that is occurring in the gateway communities anyway, the net effect is you can't make some of these things profitable unless you have a huge concession with multiple lodges inside the park.

Mr. JONES. Of course, Congressman, you and I have had some of these discussions before on your visits to the parks. Minnie Glacier Hotels is probably one of the best examples of what is, without a doubt, a major challenge of a structure that is without a doubt of national historic significance and, therefore, needs to be preserved and protected. But the amount of money that needs to be invested in the structures in Glacier are so high that it raises a fundamental question of how you can do that investment and still have people who would be willing to bid on the contracts.

So what we really need to do, and what our new superintendent at Glacier has been charged with, is to come up with some hopefully creative, inventive solutions. We're talking, for example, to organizations like the National Trust for Historic Preservation, to say what is the role private philanthropy can play in fixing up some of these historic structures with the motive of protecting them. Then, of course, the best way to protect them for the long term is to have a concessioner who is willing to keep reinvesting. But getting that initial capital is a major challenge without an easy answer.

Mr. SOUDER. My understanding from the previous concessionaire, one of the proposals was that there was this cap because at the Minnie Curin Inn—whatever the title of the motel is—there weren't enough rooms and there wasn't a willingness to expand the number to just net in that zone, so that they could raise the room rate, which might be \$350 to \$450, which by the way they're getting in Waterton Park right across the Canadian border, because at Lake Louise, Banff and the Canadian parks they don't have the caps on the room rate.

Is the Park Service looking at that flexibility, to say look, to preserve a structure like this, we may have to throw off the balance and say look, the wealthiest people are going to have to fund keeping that open.

Mr. JONES. We would like to do it through a way of working with the concessioner on the flexibility of how a structure is renovated, so that if what makes sense economically for that place to go is to say renovate the interior with different types of rooms that would be higher end and, therefore, we want to make sure that when the public is paying a fee to use facilities in the parks, they are actually getting what they pay for. So I don't see a situation of where we just stop the approval process of rates.

But how we can structure contracts, terms of contracts, how we can do things, since a place like Glacier has several different properties, so you can do one thing at a property that would help offset a different property under the terms of the same contract, we just have to be creative and innovative. Some of them like Glacier are some of our toughest challenges.

Mr. SOUDER. But do you have a guideline that says "x" number of rooms have to be below a certain dollar, and "x" number in the mid range, and "x" number in the—

Mr. JONES. No, we do not.

Mr. SOUDER. So you've been flexible with that.

On the transportation plans, when a concessionaire agrees to bid for a contract, if there is a transportation plan change like at Bryce or Zion, does the concessionaire, if all of a sudden people don't have the flexibility to go to the lodge or they have to leave the park earlier and may not be able to stay for dinner, is that calculated in their contracts, or do you give them a waiver to change their bidding process or anything?

Mr. JONES. If there's an action that is a result—an impact on a concession operation that is a result of an action that we've taken, concessioners have the right to appeal franchise fees, and in some cases they can even come back and ask to renegotiate the term of a contract to address the issues you just raised.

Mr. SOUDER. That would be a huge step. There is nothing short of a major step like that that, when you trigger something that logically will have maybe a three to 5 percent impact—and that's even debatable. I know at Bryce they're having this debate. For example, dinner reservations drop, but who's to say exactly why that did, but the fear of being left in the park may be one.

Mr. JONES. Well, a situation also at the various parks depends—for example, Bryce, Zion, Grand Canyon, which are experiencing a significant reduction in visitation that based on our initial studies appears to be as much generated by a reduction in the number of international tourists coming to the park, as opposed to U.S. tourists. Part of that appears to be as much the economy and the strength of the dollar and, of course, in addition to some of the impacts in the aftermath of September 11th. So a challenge we always have when there's a downturn in any one business operation or concession is to try to do an assessment in cooperation with the concessioner as to what's the root cause of that.

Mr. SOUDER. But the burden of proof is on the concessionaire to establish it when you make a change?

Mr. JONES. We want to work with them on that, yes.

Mr. SOUDER. Thanks.

Mr. RADANOVICH. Thank you.

Mr. Jones, I have one question. It's a long-winded question, so if you'll bear along with me on this. I do want to get this on the record, though.

With the exception of the Defense Department programs and the National Park Service Concessions Program, the rest of the Federal Government is using Federal acquisition regulations, or FAR, which include procedures for awarding contracts and subsequent notification to all bidders on the procedures and methods used to select the winner, along with specific information as to how other bidders fared in the process.

In the recent Yellowstone contract, no such information has been forthcoming. Bidders have no clue as to why they were not selected or why the winner was. There is no information on what would make them a more competitive bidder on future contracts or any discussion on how the bidding process could be made better to benefit the government, the public, and the bid process itself.

In most cases, the rest of the government has apparently found that using FAR has improved their programs and contract results. Why has not the National Park Service taken on these Federal Acquisition Regulations in its bidding process?

Mr. JONES. If I can maybe separate my answer into two different issues. One, to the extent that the Concessions Policy Act is subject to the FARs, the issue currently before the Supreme Court and the issue before the Supreme Court is interpretation of the intent of Congress, so if I can sort of be evasive in an answer by saying it is our intent to implement it as the courts and the Congress tell us to.

Mr. RADANOVICH. See what the Court does, huh?

Mr. JONES. And then we can go from there.

As far as the fundamental policy issue of getting information back to the concessioners on the bidding process so that they can grow and learn is something that I would agree with you on and is something we need to do, but I would not say that that would be necessarily part of the FAR process. We should just be doing it as part of the concessions program. I am hoping that we're going to be moving in that direction.

Mr. RADANOVICH. To further talk about the bidding process, I was made aware recently where some concessions operations would bid on a particular project, the winner would be selected, and then the project itself would be appraised, and then the bid amount adjusted to that appraisal, sometimes even less.

Why are not appraisals done before the bidding process, and why are they done afterwards by the Park Service? It just makes sense that there would be some baseline value to the project during the bidding process when it begins.

Mr. JONES. There is the ideal scenario, and then as we're dealing on a case-by-case basis, there are many examples—again, if I can go back to my tenure at Rocky Mountain National Park, where what you just raised is what I did with one of our concessioners and we, in fact, negotiated the value of the Possessory Interest and settled that prior to the award of the new contract.

In other cases, that's easier when you have the natural order of things, when you know a contract is going to expire so many years in the future and you can start a deliberative process. Where we

are now is in a massive catch-up program of contracts that have expired and, in many cases, several years ago, a statutory limitation of contract extensions not to exceed 3 years, and we want to avoid a situation of potential chaos of people challenging whether we can do a further extension and therefore end up with a possible interruption of services. So we're in a mad dash to get contracts caught up and awarded. So what the ideal scenario is versus what we're faced with right now I think are two different circumstances.

Mr. RADANOVICH. Thank you.

Are there any more questions of Mr. Jones? Mr. Souder?

Mr. SOUDER. Thank you, Mr. Chairman.

I wanted to ask a question about visitor centers. At Rocky Mountain you have done an innovative thing with—I don't think it would actually be a concessionaire because it's outside the park—but you worked with them to help pay for a visitors center in conjunction with putting a visitors center with their operation.

But in many parks we don't have enough funds to build adequate visitor centers. There is a big discussion about what size gift shops, what size book stores, what size cafeterias should be in visitor centers because it becomes a way for us to pay for the visitor center. Yet that obviously alters concessionaire contracts as well as gateway communities attitudes, Gettysburg being the classic, where we scale down, scale down, and all of a sudden then we say at our Committee there's not enough to pay for the visitors center. Well, if you cut back the gift shop and the restaurant enough, there's not enough to pay for a visitor center.

In these concessions guidelines, are the rules of what you can do and can't do in the park negotiating visitor centers, vis-a-vis existing concessionaires?

Mr. JONES. Those are addressed on a park-by-park specific as it relates to the planning and environmental compliance that's done for a proposed visitor center. A visitor center could incorporate, for example, the need for concession operations. We have several that are incorporated. For example, the Carlsbad Caverns National Park concession operation operates the same building with the visitor center. They're all in the same open space. So each one is done based on the needs of a local area.

Mr. SOUDER. Let me give an example. If Mesa Verde, to try to fund their new visitor center—which they would need quite a bit of capital to do it the way they want—decided to put in a large gift operation, bookstore operation, would that be rebid or would the concessionaire that's currently in the park, because their business center is at the edge and isn't there—how does the concessionaire who bid on the amount of food, the amount of other things that were going to be calculated in the number of visitors at the park, how do they deal with the new prospect of a—

Mr. JONES. Again, it somewhat relates to the terms of a specific contract at a park. Some parks have concession contractors that give the incumbent concessioner essentially rights for everything within the boundaries of the park, or a geographic area within the park. Other parks—for example, Olympic National Park may have a dozen different concessioners, each in different geographic areas. So it depends upon each unique circumstance of the park, the terms of the concessions contract, and also—You mentioned the

word bookstores, as to what would be viewed as one of our cooperating associations as opposed to food service, which would traditionally be viewed as a concessions operation.

Mr. SOUDER. So there is not a park-wide standard that—

Mr. JONES. There is not a park-wide standard, no, sir.

Mr. SOUDER. On Leasehold Surrender, when there are questions of whether a leaseholder is investing the way the Park Service would like, or whether the structures are being maintained, is there a warning process that kind of gives an advance, or is there any way on this compensation for the interest—In other words, yes, they don't own it, the government owns it, but you have to repay—that presumably is somewhat built into the bidding. But is there any kind of “heads up” before you just get hammered?

Mr. JONES. Well, the process that we'll go through is, when a concessioner wants to do a major capital project that would qualify for Leasehold Surrender Interest, that project would have to be submitted and approved under the terms of their concessions contract by the superintendent.

The one nice thing about Leasehold Surrender Interest is that, once a project is identified, we think it will be a much simpler process to calculate the values and what the entitlements of the concessioner are compared to some of the circumstances we've had from some of the very old contracts.

Mr. SOUDER. Let's say, hypothetically, at Lake Yellowstone Hotel, there was a less than satisfactory working relationship in how it was being developed and what the value of that was. There would be presumably discussions with the superintendent, but is there any official process that says, look, we've got some concerns here, here's how it could affect your Surrender Interest?

Mr. JONES. The right of a Leasehold Surrender Interest is a contractual right. As far as satisfactory performance, that's another issue in which contract implementation and oversight, which is a responsibility we have, which is one of the reasons we're trying to gear up and improve our training in the education program of our people to help administer that in a consistent and more professional way.

Mr. SOUDER. Thank you, Mr. Chairman.

Mr. RADANOVICH. Thank you, Mr. Souder. Mr. Jones, thank you very much. I have no more questions. Thank you very much for being here.

Mr. JONES. Thank you, Mr. Chairman.

Mr. RADANOVICH. With that, we'll go ahead and introduce our next panel.

Panel 2 is Mr. Andy Todd, who is president and CEO of Xanterra Parks and Resorts, from Aurora, CO; Mr. Bruce Fears, president of Delaware North Parks Services from Buffalo, NY; Mr. David Woodside, president and general manager, Acadia Corporation, from Bar Harbor, ME; Ms. Jennifer Lamb, Public Policy Director, the National Outdoor Leadership School, Lander, WY; and Mr. Philip Voorhees, vice president of Park Funding & Management, National Parks Conservation Association, Washington, D.C. You all may come up to the table.

OK, we'll just go right down the list. Each invitee will have 5 minutes to deliver their presentation. We will start with you, Mr.

Todd. Andy, welcome to the Committee. If you would please begin, we would appreciate it. We will do all these testimonies, and then, after that, we'll open up questions for the whole panel.

Mr. Todd.

STATEMENT OF ANDREW N. TODD, CHAIRMAN, NATIONAL PARK HOSPITALITY ASSOCIATION, AND PRESIDENT/CEO, XANTERRA PARKS AND RESORTS

Mr. TODD. Thank you, Mr. Chairman. I appreciate the opportunity to be here and discuss the concession policy of the national parks.

I personally have a high degree of interest in this topic, since the concessions policies and regulations govern how business is conducted in our parks, as well as how concessionaires and the NPS interact and resolve issues.

I am President of Xanterra Parks and Resorts, who has 11 national parks, including the major contracts at Grand Canyon and Yellowstone. I am also Chairman of the National Park Hospitality Association, which is the primary trade association for the concessionaires at national parks whose membership is responsible for the bulk of the services provided in the parks.

I will submit written testimony and will try to touch on the highlights of the written testimony here in the oral presentation.

In regards to the 1998 Act, which, of course, the regulations were written to interpret, I have a pretty strong history. I participated in numerous meetings with former Congressman Hansen, as well as Senator Thomas and his staff when the bill was being drafted. I have also testified in prior House and Senate hearings and discussed the concession legislation and the related regulations.

Initially, when the regulations were finalized and released in April of 2002, obviously I was very frustrated to see that they were written in a manner which we thought was inconsistent with the law, especially when we, as an association, had submitted pages of comments regarding the regulations and the problems they were going to create with the current law prior to them being finalized during the public comment period. Nonetheless, the leadership of the Park Service at that time, under the old administration, ignored the comments primarily and issued the regulations final anyway. So, unfortunately, 4 years later we're kind of in the same boat we were in then, and that's having regulations that, in my opinion, are unworkable in some key areas and contradict the underlying statute.

However, there has been a recent ray of hope and, under the new administration, Fran Mainella, the Director of the Park Service, has been very open and very cordial and expressed a willingness, along with her staff, Cindy Orlando in particular, to meet with the concessionaires and other key constituents to try to resolve the issues in a timely way.

The most pressing issues have been the following: one, the Leasehold Surrender Interest, which I want to give you a little bit of a background on because, to me, it's warranted. That is, of course, the term that created the old possessory interest term, which was simply the methodology used to award and compensate concessionaires for private investments in the national parks. It was cre-

ated in the 1998 Act to encourage concessionaires to invest in the parks and guarantee them a return on their investment.

Per the '98 Act, it was supposed to be pretty simple; that was, if you invest capital improvements in the park, you were supposed to get a return of CPI. One of the issues in the discussions back then was the fact that possessory interest is very complex and a hard topic to understand per the '65 Act contracts. So it was supposed to, by creating LSI, which was a new terminology they gave it, that was supposed to make it simple. You invest a capital outlay in the park and it grows by CPI, and who could argue, you know, about the CPI being an unreasonable return.

One of the things that has been kind of discouraging to me is the fact that, back when the law was being discussed years ago, the '98 Act, one of the big things the concessionaires had was preferential right of renewal, which was the right to match anybody else's best offer, and possessory interest, which was a way to compensate you for your investment. Through all the hearings and conferences in the House and Senate, it was eventually determined—and Senator Thomas agreed, as well as former Congressman Jim Hansen—that they would no longer allow preferential right of renewal except for the guides and outfitters in the contracts with less than \$500,000 in revenue. But what you would be entitled to is Leasehold Surrender Interest.

So what, I guess, was troubling to me was, once the regulations came out, it seemed like the one thing we got was so diluted by its definition of what qualifies for Leasehold Surrender Interest that you felt like even the piece that you compromised on and got somehow disappeared.

I know Mr. Jones mentioned the fact that the law indicates you're to be awarded Leasehold Surrender on new construction. Of course, everybody knows the national parks, at 98 percent of construction in the parks, is not all new built. It's on existing structures. So if it only applied to that specifically, it wouldn't even be an issue on probably 99 percent of the cases. But, of course, the issue comes is when you're always investing in an existing structure, so the question becomes, when you make that investment in a structure that is existing, which is always the case, how do you account for it and do you get credit for it?

So when some of the rules came out, including this 50 percent rule, saying if you have a \$10 million structure, you put \$2 million in the roof, well, that's not 50 percent of the 10 million so it doesn't qualify. Of course, that seemed ludicrous to concessionaires, thinking how could that possibly have been the intent.

At all the meetings I was at when that was discussed, it was always assumed that some kind of private sector measure would be the determinant in whether something qualifies for Leasehold Surrender Interest or not. So what I thought was a pretty simple procedure, and was meant to be simple, has now gotten somewhat complicated because the regulations have figured out ways to carve out what that value wound up being.

Now, if you go to invest money in a park, you end up sending the superintendent—as Randy mentioned, you send a submission to the superintendent for the project and hope that they bless it, but, quite frankly, that's complicated, because by then you're al-

ready in the contract and you should know when you're bidding on these things whether the capital you're going to invest in the parks is going to be deemed LSI credit. If you have to wait until specific projects throughout the term of your contract determine that, that's very hard to bid and assess the risk that you're dealing with.

I guess another major issue is that it was always assumed that some kind of measure, such as GAAP or whatever, would end up being the measurement for determining the value and what qualifies. I guess I never dreamed there would be, nor do I think the other concessionaires thought there would be, some new Park Service definition of what qualifies for treatment of capital improvements. So I'm not sure how that was determined. I would hope it wasn't determine just to figure out a way to make sure that LSI doesn't get big. The whole thing was, if you want money to be invested in the parks, the government doesn't have it, so you better get the private sector to do it, and if they do, you're going to have to give them at least CPI credit in return on that investment, which like I said doesn't seem like that's an outrageous return to expect.

I guess the other issue that becomes a big issue is how do you fix the problem. I know there's been discussions about we'll fix that via a Director's order, which is simply a Park Service Director's order and it doesn't go out for public comment or review. You just simply issue it and that's the new policy.

To me, this falls way short of what should be done, because the issues we're talking about, like an LSI, for example, are so critical to the law, to simply have a Director's order that says it will work for a while—the question is, what if they decide to change the Director's order a year or two from now, or under another Director of the Park Service, it seems like the years of this battling over legislation, that would be a very uncertain way and wouldn't give me much assurance, to think that if I sign a 15- or 20-year contract, wondering what happens in year three of that contract, do they change the Director's order back to something else. So, in my opinion, you have to fix the regulations. I'm adamant about that. You have to fix the regulations on these things that are so different than the actual statute. The Director's orders are too tenable and not permanent enough to give any assurance.

The other big issue that we discussed. The advisory board is underway, as you know, having meetings with the working group of several constituents, and certainly the Park Service has been open so far to hearing everyone's discussion. I'm really not sure, to be honest, ultimately how decisions will be made in that group. The advisory board is just as it says, an advisory board. I know that a lot of those members don't have the history and the experience to know how to resolve the issues, especially if one person says fix it via a Director's order, or the concessionaires say change the regulations, the Park Service says Director's order, I'm not sure who's going to make that call, quite frankly. So the advisory board is good, but you can kind of see we're progressing along and you're wondering how you're eventually going to reach a decision and how is it going to be shaped when all is said and done to reach consensus, or if there isn't a consensus, who's going to make the final call on how it is resolved.

The other issue is cross collateralization—

Mr. RADANOVICH. Mr. Todd, if you could wind it down, too. I do want to hear your other issue, we're a little over 5 minutes.

Mr. TODD. Actually, I'm fine.

Mr. RADANOVICH. We'll be happy to hear you. Take another minute.

Mr. TODD. On cross collateralization, that was simply an issue of pledging more assets or contracts as security for a loan, for a single loan, in order that the lender would then have a bigger diversification of risk on their portfolio and give you a better interest rate. So I think we're very close with the Park Service in resolving that issue.

But somehow, when the regulations came out, some of the legal experts for the association felt like the regulations were prohibiting you from pledging, if you're a multiple park operator, from pledging more than one contract to a single loan, which, of course, if you have ten contracts, for example, or like our case, ten, and you end up having to get a loan, you don't want to have to go get a loan for every single contract, one by one, because, quite frankly, some of the contracts are losers and don't make any money and no one will give you a loan for that. So the only way for it to make any sense would be to pledge the whole thing as a blanket loan and diversify the risk both for ourselves and for the lender. So that's an issue that I think we're reaching a good conclusion on that. The only question, again, is whether you do it via Director's order or through the regulation.

Thank you.

[The prepared statement of Mr. Todd follows:]

Statement of Andrew N. Todd, Chairman, National Park Hospitality Association, and President/CEO, Xanterra Parks & Resorts

Mr. Chairman, I am pleased to have been invited to your important oversight hearing on concessions policy in our National Parks. I hereby submit my written testimony for the record. As Chairman of the Board of Directors of the National Park Hospitality Association ("NPHA"), I represent a membership that is responsible for most of the visitor services provided by the private sector in our National Parks.

I am also President and CEO of Xanterra Parks & Resorts, which operates both large and small commercial enterprises that benefit park visitors. I also have substantial prior experience in real estate investment and finance.

I. Introduction

The primary purpose of our participation in these hearings is to bring the Committee up to date on efforts to reconcile problems that have emerged in the wake of the passage of the National Parks Omnibus Management Act of 1998 (the "1998 Act"). Although generally these relate to the regulations and form contracts that the National Park Service ("NPS") has promulgated that were supposed to be written to interpret and implement the 1998 Act, there are other important issues that deal with the administration of concessions contracts generally that should be brought to your attention and that are identified below.

The regulations (the "Regulations") are embodied in 36 C.F.R. Part 51, and the three separate form contracts that the NPS has drafted (the "Standard Contracts") were adopted by the agency and published in the Federal register on May 4, 2000, and July 19, 2000. To our knowledge, one of the Standard Contract forms has formed the basis for each prospectus issued by the NPS under the 1998 Act.

I have previously appeared before this Subcommittee on a number of occasions. Most recently, on February 10, 2000, I appeared to protest the published proposals of the NPS that largely resulted in the Regulations and Standard Contracts a few months later. My written testimony to that hearing (as well as the written testimony of another NPHA member, Terry Povah) gives an overview of the history of

concessions, the goals and accomplishments of the 1998 Act and the industry's primary objections to the Regulations and Standard Contracts and the reasons for those objections. Although some of that information concerning specific issues is repeated below, I refer any interested members to the written testimony we provided at that previous hearing for a more in depth treatment of the general purposes behind the 1998 Act and the historical background.

It is no secret that the debate leading up to the passage of the 1998 Act was spirited and divisive. For our industry, these debates amounted to nothing less than a battle for the survival of a viable concession program in the parks. Although much of the debate centered on whether concessioners who had faithfully performed under their prior contracts should be entitled to retain the preferential renewal rights they enjoyed under the prior law, many other issues had a potentially devastating impact on the ability of concessioners to earn a reasonable profit on their operations and investments. Some, we felt, would force many prospective bidders for contracts, including incumbents, to examine whether they could undertake the potential risks as a result of bidding on a concession opportunity. These risks could impair their non-concession businesses, to the extent the NPS sought rights that went beyond the contracts, or could simply arise from the uncertainty associated with ambiguous regulations and contract terms. The result was that the 1998 Act included compromises on many of these issues.

Although Senator Thomas moved a long way toward the position of the prior administration and sponsors of competing legislation in crafting a compromise, the prior administration was not content with the partial victories it won on some issues and crafted the Regulations and Standard Contracts with a view toward imposing restrictions on concession contracts that it had fought for in the debates but had not achieved. The most negotiated trade-off concerned Sen. Thomas' decision to terminate the preferential right of renewal for larger contracts, but preserve (in modified form) the right of the concessioner to receive a modest return on its invested capital by replacing the previous concept of possessory interest with a new valuation formula, called leasehold surrender interest ("LSI"), that was designed to fix the return at cost as adjusted for inflation, thereby decreasing the uncertainty and potential for disputes concerning the valuation of these interests.

As a consequence, there remain many provisions of these important documents that do not honor either the explicit provisions or the intent of the 1998 Act. The NPHA and certain of our members found it necessary to challenge some of these provisions in court, resulting in over 2 years of expensive litigation that culminated in a Supreme Court argument on one issue earlier this month. Although the decisions of the courts so far and certain representations of the NPS made during the proceedings have clarified some of the matters challenged by the NPHA, others matters in dispute were not decided by the courts, either because the courts did not find them "ripe" for review, or because the NPHA did not raise them in the litigation due to their sheer number. Thus, we believe there is much remaining work to do to normalize NPS regulations and contracting procedures with the goals that Congress was trying to achieve in passing the 1998 Act.

That being said, I am happy to report that the NPHA and its members enjoy a much better relationship with the NPS since Fran Mainella has taken her place and built her staff. It has been refreshing for our members to hear that public access to our parks and the provision of quality services to park visitors is again a priority of the NPS and that the NPS again considers its partnership with concessioners as among the most important of its strategic relationships. It is also a hopeful sign that the NPS has chosen to seek out professional consultants (PricewaterhouseCoopers) to help in assessing its business relationships. While the NPS has an impressive staff dedicated to the protection of park resources, many—including members of this Subcommittee and the NPS itself—have acknowledged that NPS employees do not have the necessary business and financial backgrounds to adequately deal with the agency's commercial relationships. Although the NPS has been working toward improving its staff in this area, we believe that outsourcing many of these functions will move the agency more quickly along the path to fixing the problem. If we can engage in dialogue with people who have a working understanding of return on investment and the financial markets, and realize that reducing financial incentives in one area necessitates a compensating enhancement of incentives in others, the process has a better chance of succeeding and the parks will benefit. One must remember that each contract is the result of a solicitation process and that bids will reflect the overall returns that the bidders require, which will to a large extent depend on the risks that the contract and the regulations place on the operator. Because of the hundreds of contracts that are in the pipeline, the sooner that these matters can be resolved, the better.

I have been assured by Director Mainella and persons at various other levels of the NPS that they intend to address the problems created by the Regulations and Standard Contract. In that regard, through the auspices of a task force assembled by the National Park Service Concessions Management Advisory Board (the "Board"), there have been two preliminary meetings among various constituencies to identify some of the more-important issues and try to devise a framework for resolving them.

However, although we have agreed to participate in these meetings, in the final analysis, solutions need to be crafted that comply with the law, create certainty among concessioners, reflect standard business practices, encourage the improvement of visitor services (including operations and facilities), increase administrative efficiency, and reduce bureaucracy and wasteful disputes between the government and its contractors. We believe that the top levels of the NPS embrace each of these goals as well.

To the extent that the solutions proposed do not achieve these goals, we will not hesitate to continue to identify failures in the process and seek help from this Committee if needed. In that regard, the encouragement of this Subcommittee to address these issues promptly and to facilitate legislative fixes where the regulatory and contracting process has failed would be most welcome.

II. Key Challenges

- A. As indicated above, several of the issues that were the subject of litigation between NPS and NPHA were not fully resolved by the courts. Accordingly, Director Mainella is working with NPHA and other interested parties to attempt to cooperatively resolve these issues and others of importance. The key areas currently being discussed are: (a) measurement and assignment of leasehold surrender interests; (b) cross-collateralization of concessioner financing arrangements across multiple contracts; (c) NPS oversight of transactions that affect the ownership of a concession contract or a concessioner; (d) improvement and simplification of the rate approval process; and (e) attempting to devise a long-term strategy on how best to provide services in parks where the economics don't support the existing contract structure.
- B. Leasehold Surrender Interests ("LSI"):
 1. The key element of these discussions, and that of greatest interest to both NPS and concessioners, is how LSI will be handled under 1998 Act contracts. As you know, LSI was developed to provide the concessioners with investment protection in concession facilities in order to attract bidders to National Park contract opportunities. However, concessioners believe there are several critical areas where changes are necessary. Because all of the provisions of the Regulations relating to LSI are interconnected, we believe that there are edits required to a significant number of those Regulations to conform them to the law (including the matters resolved in the litigation) and improve the administration of concession contracts in this area. Conforming changes would also need to be made to the Standard Contract forms.

The primary LSI-related issues are:

a. Definitions of Capital Improvements, including the 50% rule

1. While certain sections of the Regulations correctly call for Generally Accepted Accounting Principles ("GAAP") to be used as the benchmark to determine whether costs should be accorded LSI treatment, there are provisions in Sec. 51.51 that are contrary to GAAP, such as the rejection of building materials for capital improvement eligibility except when initially installed as part of a structure or where the 50% rule is met. Thus, for example, the conversion of a dormitory to guest lodging, though costing millions of dollars, would not necessarily be considered a capital improvement eligible for LSI treatment. In that case, only if the conversion cost represented at least 50% of the pre-conversion value using a replacement cost standard would LSI treatment be accorded to the conversion. This limitation has been termed the "50% Rule". Thus, common—and sorely needed—renovations, rehabilitations, and other capital improvement projects in our National Parks often would not qualify for LSI treatment. Fortunately, the discussions of the task force convened by the Board indicate that both NPS and the concessioners are in agreement that the 50% Rule should be eliminated. NPHA wants to ensure that this change and related changes to Section 51.51—51.66 of the Regulations are made in a more permanent manner through modification of the Regulations and Standard Contract language, rather than through a less permanent solution such as a Director's Order, the solution preferred by the NPS. Employing a Director's Order in the face of published regula-

tions that reach an inconsistent result would at best create ambiguity and confusion and at worst be void as being a policy position that is inconsistent with the published regulations. Moreover, a Director's Order can be easily modified by the NPS without notice and comment rule-making and thus may only be a temporary accommodation. A temporary solution is unacceptable to the NPHA, since our membership could not rely upon it. Although the NPHA acknowledges that modification of the Regulations will entail additional effort and time, it is critical that the published Regulations in the C.F.R. are clear, workable, well-reasoned, and in compliance with the law. Therefore, we are against efforts to solve any of these issues through Director's Orders where they have already been addressed by Regulations.

b. Prevailing cost ceiling

1. The Regulations also purport to restrict the LSI values to "amounts that are no higher than those prevailing in the locality of the project", which is not a requirement of the 1998 Act. This means the NPS could set LSI values on the basis of lower construction costs in metropolitan communities outside the National Parks, even though the cost of construction in remote park areas could be much higher. The litigation established that this limitation only pertains to a comparison with other in-park projects, which of course are already subject to strict regulation by the NPS. Thus the limitation in the Regulations doesn't make sense. Since concessioners have no incentive to "overpay" for a project in the hopes of receiving LSI that will only grow by CPI, this restriction will only serve to impose a needless bureaucratic step for each project and create confusion and disagreement between the parties. It should be eliminated.

c. LSI credit for amounts funded through Reserve Accounts

1. There has been considerable discussion about whether capital improvements, determined in accordance with GAAP but which are funded from reserve accounts established under new contracts to fund key renovation projects, should be accorded LSI treatment. The statute requires that all in-park capital improvements funded by a concessioner be entitled to LSI. The NPS position (evidently supported by its consultant, PricewaterhouseCoopers ("PwC")) is that moneys spent out of reserve accounts should not be entitled to LSI since they should, theoretically at least, be identified in the prospectus as likely to occur during the contract term. We believe PwC's position to be that any dollars invested through a reserve account have been theoretically factored into their financial analysis when modeling the final scenario that goes to bid. To us, that is a different issue than whether the expenditures are entitled to LSI. Under the 1998 Act, capital improvements made by concessioners are entitled to LSI credit without regard to how concessioner funds may be segregated under the contract. Although a bidder indeed will make projections relating to all recurring and non-recurring expenditures, whether capital in nature or not, to the extent that a contract would attempt to deprive capital investment of LSI credit, the result would be lower bids (or none at all if the contract could not be economically justified as a result). If an investment is funded by concessioners and it qualifies under GAAP as a capital improvement, NPHA believes it should be assigned LSI just like any other investment. We have no objection to the NPS establishing reasonable reserves, but they should be generally limited to repair and maintenance expenditures that are not capitalized under GAAP. In cases where the NPS would also require reserves for capital items, which generally is not a good idea because this would increase financing costs under the contract since they would not result in collateral to the lender, they should be separate from the repair and maintenance reserve.
2. In our on-going discussions, NPS has emphasized that there should only be occasional or isolated instances where an LSI determination needs to occur. On the other hand, NPHA believes these instances will occur on a more routine basis as capital investment generally occurs throughout a contract term. Since a consistent approach across all contracts would be desirable, NPHA believes that a framework should be set up to resolve these instances simply and efficiently. Possibly a recognized accounting firm such as PwC, acting both in a dual role as NPS' asset manager and as an independent financial expert, could serve to confirm that the costs that are capitalized by concessioners under GAAP are in

fact entitled to LSI. This could lead to long-term consistency and stability so that both NPS and concessioners would benefit from having a hopefully simple set of procedures that would be used to evaluate these critical on-going decisions for both parties.

C. Cross-collateralization

1. Cross-collateralization means the use of multiple assets or contracts to provide security for a single or separate loans made by a single lender for the purchase or other investment in (or to provide working capital for) those or other assets. It reduces a borrower's financing costs through the more efficient use of assets by allowing a lender to diversify its collateral and reduce its risk.
2. NPHA, NPS, and PwC have had many discussions over the financial benefit to the concession system of allowing concessioners with multiple contracts to finance them through a "bundled" approach, thereby lowering the cost of borrowing to the concessioners. All parties appear to be in agreement that this is desirable. However, although not prohibited by the 1998 Act, NPHA believes that Section 51.87 of the Regulations may prohibit this. NPS has proposed issuing a Director's Order that would clarify that this is permissible, but since the Regulations could override this Order if NPS changed its mind in the future, NPHA believes this should be clarified and memorialized in an amended Regulation.

D. Shareholder Level Transactions

1. This issue is also of critical importance to any concessioner that is part of an affiliated group of companies or that engages in businesses other than National Park concessions.
2. Although, it may be understandable for the NPS to want as broad approval rights as possible over transactions involving changes in ownership of concessioners and their owners, Congress recognized that regulating shareholder behavior would reduce bidding interest and create enormous risks to affiliated organizations. NPS and NPHA have been working to clarify under what conditions approval by NPS is necessary. There is agreement that clarification is advisable and the NPHA is optimistic that the NPS will ultimately agree on a solution that complies with the law. However, NPS again prefers to issue a Director's Order that would provide guidance, whereas the NPHA believes that the Regulations should be amended to remove the sections that exceed the scope of NPS authority under the 1998 Act.

E. Rate Simplification

1. The statute requires that the rate approval process "shall be as prompt and as unburdensome to the concessioner as possible". Some progress is being made in the area, most notably the food service "core menu" concept. This concept provides that a key list of items should be included in a concessioner's menu and reviewed by NPS to ensure that they are priced appropriately. For all other menu offerings, the concessioner would have the flexibility to design the offering and establish a reasonable price. This would allow for more variety and innovation in menus since there would be no administrative overhead outside the core menu requirements.
2. Very preliminary discussions have begun on how this "core" concept might be applied to lodging, but nothing firm has been determined. The NPHA has long argued that the current "comparability" approach employed by the NPS is seriously flawed. If a "core" concept can be implemented that would permit non-core lodging units to better reflect market conditions, both the NPS and concessioners would benefit, and bureaucracy can be virtually eliminated in this contentious area.
3. Discussions are also underway on how retail pricing mechanisms might be improved to streamline this process as well.

F. Unprofitable Concession Contracts and Fee Reductions

1. The NPHA is concerned about the viability of visitor services at some of the smaller parks. Lower visitation, coupled with dramatic increased in operating expenses such as the cost of energy, administrative requirements under our contracts and all forms of insurance, have made many concession operations unprofitable. Normally a concessioner would be able to bid a lower fee upon renewal to compensate for these problems, but this does not provide relief under an existing contract. The contracting backlog has resulted in countless extensions of the old contracts. For example, my company's contract at Stovepipe Wells in Death Valley, California expired in 1985 and is presently still operating on a year-to-year extension. Of course, a concessioner could simply walk away from an unprofitable expired contract, as occurred at Oregon Caves, but then that would leave the NPS in a difficult situation to try and find a temporary operator for an unprofitable concession contract. However, most con-

cessioners are not looking to dissolve the long-term relationships they've established with visitors, their employees, and the NPS. Nonetheless, years of net losses at operations such as Stovepipe Wells, combined with significant Concessioner investment under the pre-1998 Act contracts, even where the Concessioner doesn't have possessory interest in the improvements, has created an untenable situation.

2. The NPHA understands that the contract backlog will not be cleared for some time, and we believe the volume of open RFPs should be maintained at a manageable level. Therefore, in the interim we think it would be in the mutual interest of concessioners and NPS to review the fees paid at parks such as Death Valley, Petrified Forest, Everglades, and other unprofitable parks to determine whether fee relief would be appropriate during the extension period. The involvement of PwC could be very helpful in designing a streamlined process that would be efficient, fair, and consistent.
 3. In some cases fee relief alone may not be enough. Appropriated funds are needed to address deferred maintenance at government owned facilities such as Flamingo Lodge in the Everglades. Contractually required concessioner capital (that would be entitled to LSI credit) may be able to address some of the deficiencies at these parks, but the economics of many of these properties may nevertheless produce insufficient returns to attract an operator, even with no fee. In those cases, government appropriations to make necessary improvements may be the only solution, unless private donations could be found.
- Thank you for the opportunity to participate in this important hearing.

Mr. RADANOVICH. You're welcome. And we'll have a chance to talk about other things during the Q&A, too, if there is something that's missing there.

Mr. Fears from Delaware North. Welcome. Please begin your testimony. You have 5 minutes.

STATEMENT OF BRUCE W. FEARS, PRESIDENT, DELAWARE NORTH COMPANIES PARKS AND RESORTS, INC.

Mr. FEARS. Mr. Chairman and members of the Subcommittee, thank you for giving me the opportunity to testify on the status of the National Park Concessions Management Program.

My name is Bruce Fears. I am the president of Delaware North Companies Parks & Resorts, Inc., a subsidiary of Delaware North Companies, Inc., a Buffalo, NY based company that provides food service, hospitality and recreation services at parks, attractions, professional sports facilities and airports. As such, I oversee a \$300 million operation which includes contracts at four national parks: Yosemite, Sequoia, Grand Canyon and Yellowstone, as well as the Kennedy Space Center, the U.S. Mint, and various state parks throughout the United States. Delaware North also owns and operates several resort properties.

My experience with national parks spans more than 30 years. I grew up near Shenandoah National Park where my mother and father earned their livelihood working for a small company that managed the park's concessions. When my brothers and I were old enough, we helped them, learning the business from the ground up. Following my graduation from college, I joined ARAMARK, where I spent 20 years in concessions management, including working with many National Park Service contracts. I came to Delaware North as vice president of operations in 1996, just several years after the company entered the parks concessions business.

This afternoon, I would like to speak about the effect that the National Park Service Concessions Management Improvement Act of 1998 and the resulting increased competition for national park

contracts have had on the quality of the bids that are being presented.

Yosemite was Delaware North's first national park contract. Then legislation gave preferential right of renewal to incumbent concessionaires. However, through an unusual set of circumstances, the contract was open to bids. Delaware North competed against four other companies, winning the bid and entering into a partnership with the National Park Service that became not only a model, but also the impetus for change.

Through our work at Yosemite, Delaware North demonstrated it was possible to enhance visitor services, protect public lands, and provide an attractive rate of return to the government. Indeed, in less than 10 years of operation at Yosemite, we have spent approximately \$140 million on capital improvements and buyout of the previous concessionaire's possessory interest. In all, we have returned about 17 percent of revenues to the National Park Service. The previous concessionaire was returning less than 1 percent.

The story is similar at Sequoia, where in the first 4 years of operation, Delaware North reinvested an astounding 77 percent of revenues, including a \$14 million investment in the design and construction of Wuksachi Lodge.

Our dedication to the national parks in our care transcends our financial contributions in a most profound way. GreenPath, our system of environmental management, is a clear indication of the importance we place on environmental stewardship. GreenPath has won awards and earned registration to the rigorous standards established by the International Organization for Standardization, a first for a U.S. hospitality company or park concessionaire. We are proud of our accomplishments and prouder still that we have inspired some of our competitors to follow suit.

Using these examples and others like them to support our claim, we lobbied for the National Park Service Concessions Management Improvement Act of 1998. Since its passage, we have seen many cases in which the National Park Service is being offered stronger, more competitive bids. I might add that these bids did not always unseat the incumbent or benefit Delaware North, for that matter. But they did give interested parties an opportunity to bid, and the National Park Service a choice.

For example, Delaware North and two other companies pursued the Crater Lake contract. Delaware North did not win the bid. Two companies bid on the Acadia contract, which the incumbent retained. Interestingly, Delaware North was considering the request for proposal, but after reviewing the work that was being done at Acadia, we decided there was little we could do to improve on the current concessionaire's performance. Finally, there were three bids for Yellowstone's retail contract, which Delaware North subsequently won.

I cannot speak about our competitors' bids because I am not privy to them, but I can tell you that Delaware North won the Yellowstone contract as a result of a fair and aggressive rate of return to the government, our record of environmental management, and a plan that includes extensive renovation and restoration of the park's retail stores.

As a result of the National Park Service Concessions Management Act of 1998, we now have better proposals, where capital improvement funds, fair rates of return, and innovative interpretive and environmental management programs are the norm. Our current climate encourages qualified bidders to invest the time and money necessary to prepare a competitive bid, whereas the preferential right to renew proviso contained in 16 USC was a disincentive.

Incidentally, we are comfortable with the protection given to concessionaires with contract valued at \$500,000 or less, understanding that it helps establish a level playing field for all. Conversely, there are many contracts valued at less than \$5 million that are controlled by large corporations and should be put out to bid in the interest of giving the National Park Service solid, competitive bids.

Professionally and personally, we believe strongly in the importance of sharing National Park Service business with many companies, large and small, and awarding contracts based on the strength of the bids and on the ability of each concessionaire to respond to the unique needs of each park. No National Park Service effort, or legislation in its behalf, has brought more to bear on the level of returns to the U.S. Government and its taxpayers, or on the preservation and enhancement of our national treasures.

Thank you for your time and attention. I am happy to answer questions.

[The prepared statement of Mr. Fears follows:]

**Statement of Bruce W. Fears, President,
Delaware North Companies Parks & Resorts, Inc.**

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Through our work at Yosemite, Delaware North demonstrated that it was possible to enhance visitor services, protect public lands and provide an attractive rate of return to the government. Indeed, in less than 10 years of operation at Yosemite, we spent approximately \$140 million on capital improvements and buyout of the pre-

vious concessionaire's possessory interest. In all, we returned about 17 percent of revenues to the National Park Service. The previous concessionaire was returning less than 1 percent. The story is similar at Sequoia, where in the first four years of operation, Delaware North reinvested an astounding 77 percent of revenues, including a \$14 million investment in the design and construction of the Wuksachi Lodge.

Our dedication to the national parks in our care transcends our financial contributions in a most profound way. GreenPath, our system of environmental management, is a clear indication of the importance we place on environmental stewardship. GreenPath has won awards and earned registration to the rigorous standards established by the International Organization for Standardization, a first for a U.S. hospitality company or parks concessionaire. We are proud of our accomplishments and prouder still that we have inspired some of our competitors to follow suit.

Using these examples and others like them to support our claim, we lobbied for the National Park Service Concessions Management Improvement Act of 1998. Since its passage, we've seen many cases in which the National Park Service is being offered stronger, more competitive bids. I might add that these bids did not always unseat the incumbent or benefit Delaware North, for that matter. But they did give interested parties an opportunity to bid, and the National Park Service, a choice.

For example, Delaware North and two other companies pursued the Crater Lake contract. Delaware North did not win the bid. Two companies bid on the Acadia contract, which the incumbent retained. Interestingly, Delaware North was considering the Request for Proposal, but after reviewing the work that was being done at Acadia, we decided there was little that we could do to improve on the current concessionaire's performance. Finally, there were three bids for Yellowstone's retail contract, which Delaware North subsequently won.

I cannot speak about our competitors' bids because I am not privy to them, but I can tell you that Delaware North won the Yellowstone contract as a result of a fair and aggressive rate of return to the government, our record of environmental management, and a plan that includes extensive renovation and restoration of the park's retail stores.

As a result of the National Park Service Concessions Management Act of 1998, we now have better proposals, where capital improvement funds, fair rates of return, and innovative interpretive and environmental management programs are the norm. Our current climate encourages qualified bidders to invest the time and money necessary to prepare a competitive bid, whereas the preferential right to renew proviso contained in 16 USC was a disincentive. Incidentally, we are comfortable with the protection given to concessionaires with contracts valued at \$500,000 or less, understanding that it helps establish a level playing field for all. Conversely, there are many contracts valued at less than \$5 million that are controlled by large corporations and should be put out to bid in the interest of giving the National Park Service solid, competitive bids.

Professionally and personally, we believe strongly in the importance of sharing National Park Service business with many companies—large and small—and awarding contracts based on the strength of the bids and on the ability of each concessionaire to respond to the unique needs of each park. No National Park Service effort—or legislation in its behalf—has brought more to bear on the level of returns to the U.S. government and its taxpayers, or on the preservation and enhancement of our national treasures.

Thank you for your time and attention. I am happy to respond to questions.

Mr. RADANOVICH. Thank you, Mr. Fears. We'll keep questions for the whole panel after everybody has been given a chance to speak.

Up next is Mr. David Woodside, president and general manager of Acadia Corporation, Bar Harbor, ME. Mr. Woodside, welcome, and please begin.

**STATEMENT OF DAVID B. WOODSIDE, VICE CHAIRMAN,
NATIONAL PARK HOSPITALITY ASSOCIATION AND
PRESIDENT AND GENERAL MANAGER, THE ACADIA COR-
PORATION**

Mr. WOODSIDE. Thank you.

Mr. Chairman and members of the Committee, my name is Dave Woodside. I am the president and general manager of the Acadia Corporation, a small, locally owned company which has operated concessions in Acadia National Park since 1932. My company recently received a new 10 year contract that was awarded in a competitive bid under the new guidelines established in the 1998 Concessions Act.

As a small concessions and officer of the National Park Association, I am here to testify on behalf of the small, independent, locally owned concessioners. With the passage of the new law in 1998, and the loss of preference for companies over \$500,000 in revenues, many small companies in the one to five million dollar range question whether Congress and the National Park Service envision any future for them in the concessions business.

The 1998 Concessions Act has created many new challenges for small concessioners, including competitive bidding, an unpredictable, costly and labor-intensive contract proposal process, and a loss of investment security.

Out of the 590 concession contracts, less than 50 exceed \$5 million in gross revenues. With the granting of renewal preference to those contracts under \$500,000 in annual revenues, a number of small, locally owned concessioners were left in the gap between those over \$5 million and those under \$500,000. Five million dollars of revenues is not a large business by any stretch of the imagination. I would advocate allowing the National Park Service the option of granting a renewal preference to small, local concessioners who have demonstrated a high degree of competency in operating their park concession.

The current contracting process has occurred on a very unpredictable schedule. In my own case, I received a 1-month notice that our contract prospectus was to be released, followed by 60 short days, in the height of our operating season, to prepare our response. In order to provide all the required information, our response exceeded 700 pages. The magnitude of the response effort, coupled with the short response time, is very daunting to any bidder, but is especially difficult for smaller operators who have limited managerial personnel to prepare a bid. I would advocate a more streamlined contract response, a definitive contract publication and release schedule giving concessioners sufficient advance of solicitation release, and an adequate off-season response time for smaller contracts.

New contract requirements for additional investments are subject to the cumbersome process of the Leasehold Surrender Interest provisions of the National Park Service regulations, which in most cases do not reflect terms of the 1998 law. Clearly, these regulations do not follow the guidance that Congress set forth in the law, indicating that the National Park Service should institute procedures that are as unburdensome and efficient as possible.

Simply tying LSI value to those that are capitalized under Generally Accepted Accounting Principles is consistent with the law, consistent with a concessioner's financial reporting procedures, and would be easily understood and administered both by the concessioners and the National Park Service. In order for smaller conces-

sioners to carry on their park operations, a fair, equitable and less complex system is needed to secure concessioners' investments.

I firmly believe that there is a role in national park concessions for business diversity through small, well-managed, locally based companies. Companies whose interests reside in the local park and communities, where decisions are made onsite and the overall good of the park is paramount.

Thank you for the opportunity to testify before your Committee. I will be happy to answer any questions.

[The prepared statement of Mr. Woodside follows:]

Statement of David B. Woodside, Vice-Chairman, National Park Hospitality Association, and President and General Manager, The Acadia Corporation

Mr. Chairman and Members of the Committee, my name is Dave Woodside. I am the President and General Manager of the Acadia Corporation, a small locally-owned company which has operated concessions in Acadia National Park since 1932. My company recently received a new ten-year contract that was awarded in a competitive bid under the new guidelines established of the 1998 Concessions Act.

As a small concessions and officer of the National Park Hospitality Association, I am here to testify on behalf of the small, independent, locally-owned concessioners. With the passage of the new law in 1998 and the loss of preference for companies over \$500,000 in revenues, many small companies in the \$1 to \$5 million range question whether Congress and the National Park Service envision any future for them in the concessions business.

The 1998 Concessions Act has created many new challenges for small concessioners including competitive bidding, an unpredictable, costly and labor-intensive contract proposal process, and a loss of investment security.

Out of the 590 concession contracts, less than 50 exceed \$5 million in gross revenues. With the granting of renewal preference to those contracts under \$500,000 in annual revenues, a number of small locally-owned concessioners were left in the gap between those over \$5 million and those under \$500,000.

Five million dollars of revenues is not a large business by any stretch of the imagination. I would advocate allowing the National Park Service the option of granting a renewal preference to small, local concessioners who have demonstrated a high degree of competency in operating their park concession.

The current contracting process has occurred on a very unpredictable schedule. In my own case, I received a one month notice that our contract prospectus was to be released followed by sixty short days in the height of our operating season to prepare our response. In order to provide all the required information, our response exceeded seven hundred pages. The magnitude of the response effort coupled with the short response time is very daunting to any bidder but is especially difficult for smaller operators who have limited managerial personnel to prepare a bid. I would advocate a more streamlined contract response, a definitive contract publication and release schedule giving concessioners sufficient advance of solicitation release, and an adequate off-season response time for smaller contracts.

New contract requirements for additional investments are subject to the cumbersome process of the leasehold surrender interest (LSI) provisions of the NPS regulations, which in most cases do not reflect terms of the 1998 law. Clearly these regulations do not follow the guidance that Congress set forth in the law indicating that the NPS should institute procedures that are as un-burdensome and efficient as possible. Simply tying LSI value to those costs that are capitalized under Generally Accepted Accounting Principles (GAAP) is consistent with the law, consistent with a concessioner's financial reporting procedures and would be easily understood and administered both by concessioners and the NPS. In order for smaller concessioners to carry on their park operations, a fair, equitable, and less complex system is needed to secure concessioners' investments.

I firmly believe that there is a role in national park concessions for business diversity through small, well-managed, locally-based companies. Companies whose interests reside in the local park and communities, where decisions are made on site, and the overall good of the park is paramount.

Thank you for the opportunity to testify before your Committee, I would be happy to answer any questions.

Mrs. CUBIN. [Presiding.] Thank you, Mr. Woodside.

It is now my pleasure to introduce a Wyoming constituent, Jennifer Lamb, representing the National Outdoor Leadership Schools, or NOLS as we call it, which is headquartered in Lander, WY.

Back in 1965, the founder of NOLS, Paul Petzoldt, saw the need for a school that specifically trained people to be skilled outdoor leaders and educators. With hard work and great determination, this small businessman from Wyoming built a global network of wilderness training, growing from 100 students in 1965 to over 3,000 this past year. In the last 37 years, NOLS has become the worldwide leader in wilderness education, as the largest back country permit holder in the United States, running courses on five continents.

In 2001, the crew from the space shuttle Columbia spent 11 wonderful days hiking through Wyoming's Wind River Mountains, learning the lessons of wilderness and teamwork through a partnership between NASA and NOLS. The heroic crew left behind a patch at the top of the Wind River Peak memorializing their visit. They also left behind new friends at NOLS, who will never forget them. I know Jennifer can address that experience a lot better.

Mr. Petzoldt's vision from 1965 is still true today: take ordinary people into the back country for a lengthy period of time, teach them the skills that are required of a strong leader, and when their time is over, they will take the lessons they learned in the wilderness back to their jobs and families and they'll be stronger and better people and leaders for that. This is the experience that NOLS provides every day to its students.

I really look forward to your testimony, Jennifer, and I would now like to recognize Ms. Lamb.

**STATEMENT OF JENNIFER LAMB, PUBLIC POLICY DIRECTOR,
NATIONAL OUTDOOR LEADERSHIP SCHOOL**

Ms. LAMB. Mrs. Cubin, thank you very much for that kind introduction. Mr. Souder, I thank you for allowing me the opportunity to be here today. Good afternoon.

My name is Jennifer Lamb and I represent the National Outdoor Leadership School, as Mrs. Cubin just described. I appreciate the opportunity to be here. NOLS is a nonprofit, experiential education institution, and for 38 years, as you mentioned, we have conducted extended back country expeditions for students of all ages, teaching outdoor leadership skills. We have been fortunate to run almost all of our programs on public land. Parks and forests are our classrooms.

Like our partner organizations, such as Outward Bound, NOLS is a permitted fee-paying commercial operator, with programs in 21 national parks. We have vast experience working with a wide array of Park Service permit systems and procedures.

I am here today to share our perspective as a smaller back country, nonprofit operator. I will briefly highlight what we think is working with the program, and then spend a little bit of time talking about some of the things we would like to see improve.

What's working well. First, the National Park Service has demonstrated a willingness to work in partnership with organizations like NOLS to create high quality visitor education programs. We have supported their mission, as they have supported ours.

Second, the agency is making progress on establishing guidance for the authorization of small commercial operators, (something Mr. Jones referred to in his testimony) including nonprofit organizations. This is something we've been hoping to see for quite some time and we're pleased that it's now moving forward.

Third, the agency has remained committed, we believe, through statute, policy and regulation, to protecting the natural resources it manages. We completely respect and support that commitment.

There are three main areas we think need improvement. First, we would like to see contract and permit terms that encourage a stable and viable business climate. To back country outfitters, this means reasonable term lengths for permits that will ensure business stability and encourage investment in a program. It means performance-based renewal preferences for operators that consistently comply and provide high-quality service. It means adequate notification of contract award and changes in procedures—something other testifiers have referred to—and it means reasonable fees.

By way of example, late last year the agency proposed new regulations regarding small commercial use authorizations. These are not concessions, per se, but they are authorized under the '98 Act. As proposed, the rule will allocate use by selecting small commercial operators on a random basis, assigning 2-year terms and offering no preference for renewal to incumbents. Given the investment that organizations like NOLS make to establish a program, this would be a nearly impossible environment for us to work in. We wouldn't invest resources to run a program that we weren't sure could persist past 2 years.

We suggested an alternative to agency concession staff that involves a performance-based renewal system. Performance-based renewal will reward operators for the right reasons—because they meet and maintain high service and permit standards. It will encourage outfitters to continue to improve, to consider the impact of their operation on the resource, and to be accountable.

The agency has heard our concerns, as Mr. Jones referred to earlier, and has invited us to participate in a stakeholder's working group to reevaluate this commercial use authorization rule. We appreciate that invitation and we look forward to working with the agency on that.

Second on our list if things we would like to see change is the issue of program consistency. In the 20 units in which NOLS operates, our use is generally similar in type and scope. Even so, from park to park we face a pretty wide variety of permit mechanisms. Because of significant differences in individual park procedures, our field staff manage each park separately regarding permits, payment of fees, operating procedures, and reporting. We think there are more efficient ways to go about doing that.

Another consistency issue relates to how the agency determines whether to award a concession contract or a commercial use authorization. We have a tendency to have some of each and the program is not always clear about when which tool is appropriate. The statute specifies criteria, but the regulations seem to leave the ultimate decision to the park. We would like to better understand the

basis for the decision and we would certainly like to hold more concession agreements.

Finally, on the consistency topic is an issue that has plagued the concessions program for some time, and that is the treatment of nonprofit operators. Neither the '98 Act nor the final rule on concessions address this topic in adequate detail, but we are pleased to see that the recently proposed commercial use authorization rule, though it has some issues, begins to deal more directly with nonprofits. We look forward to clarifying that.

Finally, I will speak briefly on fee structures. I want to be clear that we do not object to reasonable fees. We have paid fees for many years and we agree that fees should provide the agency with a fair return for the privilege of operating in parks. However, there are three things we would like to see changed regarding fees.

We would like to see the agency discourage fee bidding. We would like to see the agency minimize the layering of fees that was referred to earlier. And we would like to see fees kept in the field, to see that they be used to supplement rather than supplant congressional appropriations.

We feel strongly that the agency should avoid resorting to a system based on competitive fee bidding. While such a system may benefit agency revenue, it is contrary, we think, to the language in the Act and, in the end, would be harmful to the resource and to operators.

We experience a plethora of fee structures and layers. In some parks, we pay an application fee and an annual fee for access. In others, we pay an application fee, a monitoring fee, a per-person special use fee, and a park entrance fee, just to name some of the varieties. The sum of fee layers within each park generally amounts to about three to 6 percent of our park-based revenue. At one park, however, I know that Outward Bound pays roughly 12 percent of its revenue after all the layers are consolidated. We ask that the agency to adopt a standard approach to fees that will minimize this kind of layering and will consider the cumulative fee burden that's associated with each permit. Perhaps a fee cap is warranted in some cases.

I appreciate the opportunity to be here today. NOLS deeply appreciates the partnership we have built and continue to build with the Park Service. I look forward to answering your questions at the end of the panel.

[The prepared statement of Ms. Lamb follows:]

**Statement of Jennifer Lamb, Public Policy Director,
National Outdoor Leadership School**

Mr. Chairman and members of the Committee, thank you for the opportunity to address the Subcommittee this afternoon regarding concessions management in the National Park Service (NPS).

The National Outdoor Leadership School (NOLS) is a non-profit education institution that teaches outdoor skills and leadership to more than 8,800 students each year. Founded in 1965 and headquartered in Lander, Wyoming, NOLS employs more than 800 instructors and staff at nine branches and two professional institutes worldwide. NOLS' mission is to be the leading source and teacher of wilderness skills and leadership that serve people and the environment.

I speak to you today as a wilderness educator, but also as an outfitter—NOLS, like its partner organization, Outward Bound, is a permitted, fee-paying, commercial operator on public lands. In comparison to others you have heard from today, we are a smaller, non-profit, backcountry educator. It is this perspective that I

would like to share with you. I will offer our experience with concessions management, placing some emphasis on the aspect of the regulations that we deal with most closely as a smaller operator, commercial use authorizations.

For more than 35 years, NOLS has invested in a strong working relationship and effective partnership with the NPS, and we are pleased to have the opportunity to assist with improving and refining the concessions program. NOLS has considerable experience working with the agency and with its wide array of permit systems, policies and procedures. We hold three concession agreements and 18 Incidental Business Permits to operate in 20 parks.

Overall, we believe that there is much about the concessions program that is working well. Other aspects need improvement. On the positive side, we highlight the following:

- The NPS has demonstrated a willingness to work in partnership with organizations like NOLS to bring high-quality education programs to park visitors.
- The agency is making progress on establishing guidance for the authorization of small commercial operators, including non-profit organizations.
- The agency has remained committed, through statute, policy and regulation, to protecting the natural resources they are charged with managing. We respect and support that commitment and encourage the agency to continue to place the highest priority on the health of the resource.

What needs to change? Having been involved with the evolution of the agency's concession program for many years, NOLS has experienced directly the effects of a system that lacks procedural consistency and clarity and does not yet place a high enough priority on creating a positive business climate for its commercial partners. We know that the NPS seeks to address these concerns and hope that our comments provide constructive feedback and suggestions for improvement of the program.

Our specific comments are summarized in the following five points:

- Procedural consistency and clarity
- Stewardship and partnership incentives
- Viable business climate
- Commercial use authorizations
- Fees

1. Consistency and clarity

In the 20 units in which we operate, NOLS' use is generally similar in type and scope. Even so, from park to park, a wide variety of permit mechanisms and procedures are applied to our use. Because of significant differences in individual park procedures, our field staff monitor and manage each park separately regarding permits, payment of fees, operating procedures and reporting. In some cases, this makes sense; for example, it is logical that specific operating procedures for mountaineering activity in Grand Teton National Park would differ from those related to water travel in Dinosaur National Monument. In other instances, it amounts to unnecessary expenditure of time for both NOLS and the agency.

Historically, concession agreements have been granted for larger-scale activities that occur within park boundaries, while Incidental Business Permits (IBP) were issued on a short-term basis to smaller operations that pass through a park. In NOLS' experience, however, and in the language of the Concessions Contracts final rule, the delineation remains unclear. The language in Section 51.17 of the rule, "necessary and appropriate", seems to be the only guidance provided for determining, within each park, whether a concession agreement or an IBP is the appropriate management tool. Both NOLS and Outward Bound have held concession agreements for many years and would like to continue to do so.

The confusion between the two permit mechanisms continues in the recently proposed rule regarding Commercial Use Authorizations (CUA), which is authorized by the 1998 National Parks Omnibus Management Act and will replace the existing IBP system. The proposed CUA rule, published in the Federal Register on November 27, 2002, states that, "Concession contracts may be issued to authorize the provision of services to visitors rather than a commercial use authorization even though the proposed services may be suitable to authorization under a commercial use authorization." NOLS assumes that this leaves the discretion to the park superintendent—the park defines which permit mechanism is appropriate given its mission. While we generally support this kind of local decision making, in this situation, it can lead to inconsistency in implementation across the agency and confusion for commercial operators trying to understand and comply with the system.

An issue that has plagued the concessions program for some time is the treatment of non-profit organizations. Neither the 1998 Act nor the final rule on concessions addressed this topic in adequate detail. We are pleased that the recently released proposed CUA rule begins to deal more specifically with this issue. There remain

some gaps and concerns regarding non-profit management that we addressed in our comments on the proposed CUA rule. These comments are included with this testimony as Appendix A. We look forward to continuing to work with the agency on the question of non-profit management.

2. *Performance incentives*

We strongly encourage the NPS not to overlook the capability of wilderness educators and outfitters and guides to contribute to the protection of park resources and the fulfillment of the agency's mission. By establishing permit mechanisms that reward good performance and encourage partnership, the agency can provide operators with the incentive to offer programs that are compatible with park objectives.

NOLS has experienced significant positive outcomes for both our students and the agency in parks where we have been able to engage land managers in a partnership. For example, each year in Dinosaur National Monument, Park Biologists meet with our students to talk about the issue of invasive species management—a significant issue along the Green River corridor. Students then participate in weed eradication projects—hands-on learning about stewardship that offers them valuable experience while providing a benefit to the resource and park management. These relationships encourage our continued investment in the park and offer great rewards both to our students and to other park visitors.

We recommend that the agency identify and promote commercial operators who demonstrate a commitment to:

- Team with the agency to provide high-quality visitor services and protect the resource.
- Team with the agency to provide educational and interpretive services.
- Team with the agency to develop programs that meet park objectives regarding visitor diversity.
- Provide a reasonable return to the agency.

The concessions program should create incentives for sound resource management and stewardship. Incorporation of resource protection and visitor education and diversity elements in performance standards will establish permittees as partners in ensuring the future health of the resource.

Permitted wilderness educators such as NOLS and Outward Bound provide a valuable service to the public. Our education programs are of the highest quality in the country. We set the industry standard for both Leave No Trace technique and visitor safety in the backcountry. We raise and spend hundreds of thousands of dollars each year to expand the cultural diversity of our student population. We work as partners with the NPS and are committed to resource protection. We encourage the agency to promote a culture that recognizes permittees as legitimate partners in achieving agency objectives and providing visitors with great opportunities to enjoy the outdoors.

3. *Viable business climate*

In order to promote and support healthy partnerships and good visitor service, the concessions program must recognize the commercial operator's need for a stable and viable business climate. Components of a program that will support healthy operators in the parks include:

- Reasonable terms for permits that will ensure business stability and planning,
- Performance-based renewal preferences for operators that consistently provide high-quality service and are responsive to the agency,
- Adequate notification of permit award and changes in permit procedures, and
- Reasonable fees.

The concessions regulations stipulate a standard term of ten years for concession contracts, with deviation from that term to be determined by the Director or an authorized representative. This term adequately acknowledges a concessionaire's need for time to make long-term investments in a park.

Not all agreements are managed this way, however. In many cases, this makes sense, since the vast majority of commercial operators do not make large capital investments in parks or have significant possessory interest. Nonetheless, an adequate term is critical. One of NOLS' concession permits is renewed every ten years—an optimal term in our opinion—while the others are currently reviewed on an annual basis. All of our Incidental Business Permits are awarded for a period of one or two years. I will address this issue, along with performance-based renewal, in the following section regarding Commercial Use Authorizations.

To maintain high-quality visitor programs, commercial operators need adequate notice regarding the issuance of prospectuses and the final decision to award an agreement. Ideally, a prospectus would be issued at least 16 months in advance of the expected start date and award would occur nine to 12 months in advance. In

some cases, the permit award happens only weeks or days prior to the start of an operator's program. Adequate timing respects the need for operators to plan, advertise, enroll courses, develop curriculum, engage instructors and define logistics that will ensure a safe and high-quality program.

4. Commercial use authorizations

Historically, the concessions reform discussion has focused on the large concessions contracts that provide hospitality-based services in the parks. In reality, the vast majority of commercial operations are small, often family-owned businesses governed by the Incidental Business Permit system that issues short-term permits with no Congressional authority. In previous testimony, both NOLS and Outward Bound have expressed concern that the 1998 Act and ensuing concession regulations do not address adequately the agency's authorization of small commercial operators.

As a result, we are very glad to see that the agency is now making progress on this topic through the creation of guidance for issuing Commercial Use Authorizations (CUAs), which are designed to replace the IBP system. On November 27, 2002, the NPS released a proposed rule under Section 418 of the 1998 Act and requested public comment. Along with many others, NOLS evaluated the rule and submitted written feedback to the agency (please see Appendix A). We have since learned that the agency will soon form a working group of stakeholders to help shape the final regulation. We look forward to working with the NPS as part of this group.

While it is not appropriate to repeat the detail of our comments on the proposed CUA rule here, I will highlight two primary concerns that relate directly to this testimony.

- Permit term and the random selection of small commercial operators

This issue relates to the question discussed earlier in this testimony of maintaining a viable business climate for commercial operators. The proposed CUA rule provides the Director with the authority to limit the number of CUAs issued for a particular type of service. As proposed, permit award will be accomplished by random selection and incumbent holders will have no right or preference for renewal. NOLS supports use allocation for the purpose of resource protection and we appreciate the difficulty the agency faces in developing a system for allocating commercial use that attains its goal of protecting the resource while being equitable and encouraging investment in high-quality programs. However, a system, such as the proposed rule, that combines random selection of CUA holders with a short, two-year term and no renewal preference will strongly discourage smaller commercial operators or non-profit educators like NOLS.

NOLS invests a substantial amount of time developing education and wilderness skills programs that are specific to the unique characteristics of a park unit or geographical area. Development of a program involves considerable research, site visits, and building relationships with local land managers who often help us design and implement volunteer service projects for our students inside the park. We are reticent to go to these lengths when we are uncertain that the program will continue for more than two years. The combination of the three factors for managing CUAs as proposed—random selection, no right of renewal, and a two-year term—gave us cause for great concern, which we expressed directly to the NPS concessions program staff. They heard our concerns and have offered us an opportunity to be involved in discussions to re-evaluate the rule.

- Performance-based incentives

As an alternative to a system that offers no renewal preference for CUA holders, NOLS encouraged the agency to adopt a performance-based renewal system that rewards operators who meet and maintain high service and permit standards. We believe that such a system will encourage outfitters to continue to learn, to consider the impact of their operation on the resource, to be accountable, and to establish good working relationships with park managers. It rewards commercial operators for the right reasons. Though it would undoubtedly introduce some additional administrative burden, we believe that a performance-based permit renewal system, would best serve the public, the resource, the agencies and commercial operators.

As mentioned earlier, NOLS is pleased that the NPS has begun the process of defining guidance for the management of small commercial operators. This development fills a critical gap in the concession regulations. We look forward to assisting with the effort.

5. Fees

In the past, both NOLS and Outward Bound have provided testimony on the topic of fees for concessions. Our comments today remain consistent with past testimony and are summarized in the following four brief statements.

- Fees should provide a fair return for the privilege of operating in the parks

NOLS does not object to paying reasonable fees for the opportunity to teach students in the national parks. We have paid fees for more than 35 years and support the agency's goal of earning a fair return from commercial operators. That said, we also support the stipulation in Section 51.17 of the concessions regulations that "consideration of revenue to the United States will be subordinate to the objectives of protecting, conserving and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates."

We feel strongly that the agency should avoid resorting to a system based on competitive fee bidding. While such a system may benefit agency revenue, it is contrary to the regulation language above and, in the long term, would likely be harmful to the resource and to small commercial and non-profit educational operators.

- Fees should be consistent

As mentioned earlier in this testimony, NOLS is accustomed to a wide variety of permit terms and procedures across the 20 parks in which we operate. Fee terms are no exception. In Dinosaur National Monument, for example, we pay three percent of our gross revenue earned within the park under our concession agreement each year. In Grand Teton, we pay ten percent of gross revenue for a concession agreement. Our IBP fees range from an annual fee of \$300 in Glen Canyon National Recreation Area to three percent of gross revenue in Olympic National Park, which, in 2002, amounted to \$6,600 for that park alone.

In addition to the variance in fee amounts, we experience a plethora of fee structures. In some parks, we pay an application fee and a base fee for access, while in others, our fee burden is multi-faceted and open-ended. In Mount Rainier National Park for example, we pay an application fee, a monitoring fee, a per-person special use fee and a park entrance fee.

Generally the sum of fee layers within each park amounts to three to six percent of our park-based revenue. At one park in Colorado, however, Outward Bound pays 12 percent of its revenue after all the fee layers are consolidated. Depending upon what happens to fees over time, the cumulative impact of such layered fees could become substantial.

We encourage the agency to consider a standard approach to fees that will minimize layering, consider the cumulative fee burden for each permit, and make the system easier to understand, implement and comply with.

- Fees should be clearly defined in advance

When finalized, the CUA rule will grant the NPS full legal authority to implement the CUA system, including greater flexibility, more control, and the ability to collect more in fees than the current IBP system allows.

NOLS supports the codification of the system. We also support the agency's objective to charge a "reasonable" fee for commercial use. We have asked, however, that the agency carefully consider the potential impact of a fee increase, and that ample notification be provided so that permittees know what kind of an increase to expect and when to expect it. Because NOLS holds permits in so many units of the park system, an increase in fees, depending upon its size, may have a significant impact on our operation and its financial picture. As a non-profit educational institution, we struggle to keep our tuition affordable to a diverse group of students—any cost increases that we incur must be passed on to them. We ask the agency to consider placing a cap on the amount of fees, whether it be a set dollar amount or percentage-based fee.

The proposed CUA rule states that the fee for a CUA "may also include the costs for the maintenance and repair of park area resources impacted by the holder's activities." Without further definition, this statement seems unreasonably open ended. NOLS recommends that CUA agreements clearly define expectations and performance standards and that any potential impacts and remediation requirements be identified at the start of the permit term. Ideally, the NPS and the operator will communicate with regularity to ensure that both sides are satisfied with the expectations and performance of the operator.

- Fees should supplement rather than supplant adequate congressional appropriations for parks and should be retained in the field

The proposed CUA rule states that all fees paid for CUAs will be expended in the park where collected to pay for management and administrative costs associated with CUAs. Under the premise that the primary purpose of a fee is to generate funds for maintaining the quality of the natural resource, NOLS supports a fee system that keeps revenues in the units that generate them rather than returning income to the general treasury.

In closing, we reiterate that effective and efficient concessions management should work to strengthen relationships and partnerships by recognizing and sustaining the highest quality visitor services while preserving the resource for the fu-

ture. We encourage the NPS to strive for high-quality visitor services through incentives and performance-based permit management.

The Concessions Management Act states that, “The National Park Service shall utilize and encourage concessions to play an essential role to protect park resources and provide for their enjoyment.” This language clearly portrays the intent of Congress to include commercial operators in fulfilling the agency mission. As an educator, commercial operator, and agency partner, NOLS appreciates and supports this philosophy.

Thank you for this opportunity. NOLS appreciates deeply the partnership we have built and continue to build with the Park Service. We look forward to working with the agency to further define and enhance the concessions program.

APPENDIX A

January 22, 2003

Cynthia Orlando
 Concessions Program Manager
 National Park Service
 1849 C Street, NW
 Washington, DC 20240

Via Email: WASO—Regulations@nps.gov

Dear Ms. Orlando,

I am writing on behalf of the National Outdoor Leadership School (NOLS) in response to the National Park Service’s (NPS) request for comments on the proposed rule to establish regulations concerning commercial use authorizations as outlined in the Federal Register (RIN 1024–AC85).

NOLS is a non-profit organization that teaches outdoor skills, leadership and environmental ethics to 9,000 students each year. Founded in 1965 and headquartered in Lander, Wyoming, NOLS employs more than 800 instructors and staff at nine locations and two professional institutes worldwide. Our annual revenues exceed \$19 million. NOLS’ mission is to be the leading source and teacher of wilderness skills and leadership that serve people and the environment. The core of our educational programs includes extended backcountry expeditions of 28 to 93 days in length.

In the U.S., NOLS is a permitted commercial operator in 21 National Parks and Preserves. Three of these agreements are concession contracts (Grand Teton National Park, Denali National Park and Dinosaur National Monument). The balance of our agreements with the agency are Incidental Business Permits (IBPs). We have held many of these agreements for several decades. As a result, our program management staff has considerable experience working with NPS permitting and fee operations.

NOLS has worked closely with the agency’s existing IBP system. Apart from some inconsistencies and layering of fees that cause periodic confusion, we believe this system has worked well for us. The Federal Register states that the proposed rule generally codifies the requirements of the IBP system under the Commercial Use Authorization (CUA) title. While this is true in some ways, we believe there are several significant changes described in the proposed rule that we would like to clarify. They are listed below with reference to the relevant sections of the Federal Register.

Concession agreement versus CUA

Section 52.1 states that the Director may at any time choose to issue a concession contract, even though the proposed services may be subject to authorization under a CUA. Under what circumstances might an operator, whose services are appropriate for a CUA, be managed as a concession? We find the language in the proposal, as well as the language in the Concessions Contracts Final Rule (36 CFR Part 51), regarding the differences between concessions and CUAs to be somewhat confusing.

Commercial Use Authorizations for non profits

Section 52.7 of the proposed rule explains clearly that non-profit organizations, unless otherwise authorized, must obtain a CUA in order to conduct visitor-related activities in a park. NOLS fully supports the agency’s desire to establish agreements with all groups operating within park areas, non-profits included. As a 501(c) 3 organization, we have held permits for more than 35 years and we believe that per-

mits establish an important relationship between operators and land managers that is critical to the stability of the operator's service and the protection of the resource.

Within the structure of the proposed CUA system, however, it is unclear whether an organization like NOLS would be managed with an incidental activity CUA or a Special Park Use permit. It appears as though the distinction is based upon whether the operator earns taxable income. NOLS derives a very small portion of income from the sale of gear to our students. This income is taxable. However, in several recent conversations with NPS staff members, in the field and in the Washington office, we have learned that this income, because it is not pertinent to the activities covered by our permits, would not be relevant. We would therefore fall into the Special Park Use category. It would be helpful if the final rule could better clarify the distinction between these two permit tools.

Permit term and the random selection of commercial operators

Section 52.13 states that if the Director chooses to limit the number of CUAs issued for a particular type of service, the issuance will be accomplished by random selection and incumbent holders will have no right or preference. We appreciate the difficulty the agency faces in developing a system for allocating commercial use that attains its goal of protecting the resource while being equitable and encouraging investment in high-quality programs and services. We prefer a system based on random issuance to one that relies on a competitive bidding process. However, a system, such as the proposed rule, that combines random selection of CUA holders with a short two-year term and no renewal preference will likely discourage smaller commercial or non-profit operators like NOLS.

NOLS invests a substantial amount of time developing education and wilderness skills programs that are specific to the unique characteristics of a park unit or geographical area. Development of a program involves considerable research, site visits, and building relationships with local land managers who often help us design and implement volunteer service projects for our students inside the park. We are reticent to go to these lengths when we are uncertain that the program will continue for more than two years. The combination of the three factors for managing CUAs as proposed in this rule—random selection, no right of renewal, and a two-year term—gives us cause for great concern. One of the three factors would need to be modified for us to comfortably support this rule. For example, lengthen the permit term or offer performance-based renewal opportunities to incumbent permittees, described in the following paragraph.

As an alternative to a system that offers no renewal preference for CUA holders, we encourage the agency to consider a performance-based renewal system that rewards operators that meet and maintain high service and permit standards. Such a system will encourage outfitters to continue to learn, to consider the impact of their operation on the resource, to be accountable and to establish good working relationships with land managers. It rewards commercial operators for the right reasons. Though it would undoubtedly introduce some additional administrative burden, we believe that a performance-based permit renewal system, would best serve the public, the resource, the agencies and the commercial operators.

Permit fees

a) Fee authority: This rule, when finalized, will grant the NPS full legal authority to implement the CUA system. This authority will give the agency greater flexibility, more control, and the ability to collect more in fees than the IBP system currently allows.

NOLS supports the codification of the system. We also support the agency's objective to charge a "reasonable" fee for commercial use. We ask, however, that the agency carefully consider the potential impact of a fee increase, and that ample notification be provided so that permittees know what kind of an increase to expect and when to expect it. Because NOLS holds permits in so many units of the park system, an increase in fees, depending upon its size, may have a significant impact on our operation and its financial picture. As a non-profit educational institution, we struggle to keep our tuition affordable to a diverse group of students—any cost increases that we incur must be passed on to them. We ask the agency to consider placing a cap on the amount of the fee, whether it be a set dollar amount or percentage-based.

b) Impact fees: Section 52.16 states that the fee for a CUA "may also include the costs for the maintenance and repair of park area resources impacted by the holder's activities." Without further definition, this statement seems unreasonably open ended. NOLS recommends that CUA agreements clearly define expectations and performance standards and that any potential impacts and remediation requirements be identified at the start of the permit term. Ideally, the NPS and the oper-

ator will communicate with regularity to ensure that both sides are satisfied with the expectations and performance of the operator.

c) Fee consistency: While most parks follow the IBP structure of charging operators an application fee, a management fee and a monitoring fee, we hold some agreements that charge based on a percentage of our gross earnings within the park. For example, NOLS pays \$300 each year for a permit to operate in the Glen Canyon National Recreation Area, but at Olympic National Park, we pay three percent of our gross operating revenue (in 2002, this amounted to \$6,600). We encourage the agency to consider a standard approach to CUA fees to make the system easier to understand and comply with.

On the whole, the structure of fees and the efficiency and ease of working with the system is more important than the actual amount of the fee, assuming that the fees are reasonable and we know what to expect in advance of the charge.

d) Fee retention: Section 52.17 states that all fees paid for CUAs will be expended in the park where collected to pay for management and administrative costs associated with CUAs. Under the premise that the primary purpose of a fee is to generate funds for maintaining the quality of the natural resource, NOLS supports a fee system that keeps revenues in the units that generate them rather than returning income to the general treasury.

Simplifying the system

As expressed in point number two above, we are confused about the difference between a CUA for non-profit operators and a Special Park Use Permit. This leads us to think that perhaps both the agency and operators would be better served by a simpler system that involves one type of permit rather than two. For example, could a lower-fee or non-fee CUA for non-profit organizations take the place of the Special Park Use permit?

Thank you very much for the opportunity to help refine the agency's permit regulations. We hope that our input is helpful. If you have any questions or need additional information, please contact me at the number below.

Best regards,

Jennifer Lamb
Public Policy Director
(307) 335-2262
jennifer_lamb@nols.edu

Mrs. CUBIN. Thank you.

I would now like to recognize Mr. Philip Voorhees, vice president, Park Funding and Management, National Parks Conservation Association, Washington, D.C.

Mr. Voorhees.

STATEMENT OF PHILIP H. VOORHEES, VICE PRESIDENT, PARK FUNDING AND MANAGEMENT, NATIONAL PARKS CONSERVATION ASSOCIATION

Mr. VOORHEES. Thank you very much.

You have my written comments. I'll be substantially briefer than the others today. There are only a few key points that I think I would like to make here.

Specifically, NPCA has been involved in the issue of concessions for more than a generation, literally since Congress, I think, began considering problems that were emerging in the management and operation of concessions way back in the 1970's. I am happy to say that, although it's an extremely complex climate to try to manage, in that concessions operations in the parks are in many respects unique subspecies or a subset of the hospitality industry, that an awful lot of progress is now being made.

The first step in making the change toward good productive progress I think was the passage of the 1998 Act, which opened the door to competition that was referenced earlier in the testimony.

The second step, though, is a more complex step to be able to take, and that deals specifically with the capacity of the Park Service to manage the program itself. Changing the law and implementing regulations that are responsive, that I think generally they are, in one thing. Trying to bring the bureaucracy up to task in ably managing the program under its responsibility is another.

I am very pleased to say, though, that although it has taken a fair amount of time, 5 years now, to be able to bring the program up to where it needs to be, the concessions program of the Park Service, an awful lot of very strong progress is being made. In the past, part of the problem in dealing with concessions, which I think is the basis of some of the comments earlier today, has been the ability of the Park Service to be truly responsive to the concerns of the concessioners.

It's a very fair point. They are now in a position where they are hiring outside counsel on a variety of different areas that bring their level of understanding of what the real needs of concessioners and real issues are at hand to a completely different level than they've had before.

I sit on the National Park's Concessions Management Advisory Board, although I'm testifying for the National Parks Conservation Association today. I will say, though, that in that venue, I have been extremely pleased with the level of discussions and interchange between concessioners expressing their concerns, the advice that's being provided in response to those concerns to the Park Service from PricewaterhouseCoopers and other consultants, and the general discussion in the room about what the real issues are and how to deal with them. There is a lot more openness, there is a lot more flexibility that's being expressed than I think was possible more than 5 years ago before the law passed.

My point really here to make is that I think, overall, the law is working very well. The regulations, though cumbersome, and subject to some further interpretation, are working well as well. It is another 4 years, I think, before it may be time to reconsider Leasehold Surrender Interest and a variety of other issues that might be at hand for the regulations and for the law, since that's the time clock that was set by Congress 5 years ago when it passed the law.

I would urge this Committee to wait until that time is up. This is a learning process for the Park Service. I think in large measure it's a learning process for the concessioners involved, working their way into fairly complex new territory. But in light of all that, there really is a spirit of partnership that is reemerging that I haven't seen for quite a long time. Prior to the law's passage, many parties were at loggerheads, and many of the positions were highly political. I don't believe that that's true at all any longer. And I'm glad to see it. The conversations are much more substantive, they're based on thoughtful problems and gray areas that clearly need to be addressed.

I think with the spirit of partnership, with the kind of structure that's provided by the advisory board and other side conversations that are actively happening all the time, a lot of the gray area issues can be easily resolved without reopening the regulations, and especially reopening the law.

That's all I have to say. Thank you.

[The prepared statement of Mr. Voorhees follows:]

Statement of Philip H. Voorhees, Vice President, Park Funding & Management, National Parks Conservation Association

Mr. Chairman, and members of the Subcommittee, my name is Phil Voorhees. I represent the National Parks Conservation Association (NPCA). I also serve as a member of the National Park Service Concessions Management Advisory Board. NPCA is America's only private, nonprofit advocacy organization dedicated solely to protecting, preserving, and enhancing the National Park System. NPCA was founded in 1919 and today has approximately 300,000 members.

I am pleased to offer testimony today that reflects NPCA's view that very substantial progress is being made by the National Park Service in the area of concessions management. For many years, NPCA has been a strong advocate of ensuring that concessioners operating within the national park system do so in a manner that reflects standard industry practices in state parks, local parks and within the hospitality industry in general. The road to ensuring this has been long and involved and the agency has not finished its work as yet, but very substantial progress is clear. Many concessioners are welcoming the transition from a broken system to a more normal business-like partnership with the NPS

Points of Progress Since 1998

Five years ago, Congress passed into law the Omnibus Parks Act (PL 105-391) that encapsulated significant changes for the management of concessions in national parks. Prior to passage, concessions were operated on a substantially non-competitive basis. As evidence of this, according to an analysis performed by NPS in the mid-1990s, from 1963 to 1993, only seven of the approximately 1,900 contracts executed were awarded to businesses that competed against the incumbent concessioner. Also, prior to 1998, the small amount of franchise fees generated by the concessions program were deposited in the general Treasury instead of contributing to the upkeep of the parks. Finally, the former law provided concessioners with an opportunity to capture a significant increase in value in the buildings and structures built by concessioners, resulting almost entirely from Federal investments in the parks themselves and simple increases in tourism unrelated to the performance of the concessioners. As a result of the 1998 reforms, parks are now able to retain concessions fees, concessions contract opportunities are generating substantial competition, and "blue sky value" once afforded concessioner-built structures is being more closely controlled. These changes are both good for the visitor and good for the taxpayer.

With the passage of Omnibus Parks Act, however, another problem emerged that was hidden by the old concessions law. Passage of the new law meant that the Park Service had to work harder to produce strong financially feasible concessions bid proposals and manage the daily operations of concessioners. For the past five years, the Park Service concessions program has struggled to operate in a more effective, professional and responsive manner. To the agency's great credit, they have supported the goal of professionalization at all levels and have allocated the resources to contract with PricewaterhouseCoopers to provide generalized support, training and contract analysis. The agency has openly explored best practice models of concessions management in the military and the general hospitality industry, has developed a comprehensive training program with Northern Arizona University, and has responded to a broad variety of recommendations for improvement made by the Concessions Management Advisory Board. Without the personal support of former director Bob Stanton, and especially Director Fran Mainella, the Service would not be making the strong, steady progress that it is today.

Issues Remaining to be Addressed

Beyond the particulars of concessions reform enacted by the 105th Congress, the law was developed with the understanding and goal that the Park Service and the concessioners would need to operate on a level playing field if visitors and taxpayers were to receive high quality service at reasonable cost. The law put in place many of the critical changes to make that possible. Unfortunately, it takes time for a system so far out of balance to find itself again in equilibrium. And it takes patience on the part of all parties to allow for the kind of professional trust that is necessary for business-based partnerships to reestablish themselves. Thus far, to its credit, Congress has been patient. Concessioners have been generally patient with improvements making their way through the concessions management program. And concessions staff have been patient with complications involved in moving change through a complex bureaucracy. Slowly, steadily, the agency is putting in place an effective

and fair concessioner performance evaluation system, a uniform rate approval process, a core menu concept and other improvements. Many of the changes, like the core menu concept, are designed to reduce bureaucracy and improve concessioners' operating flexibility. Slowly, professional trust and the spirit of partnership is re-emerging, in pace with the improvement in the professional capacity of the concessions program itself.

Encouraging the Process of Continuous Improvement

After five years and counting, improvements in the management of concessions in national parks are well on their way. The 1998 law is a very significant improvement over the preceding 1965 Concessions Policy Act. Regulations designed to realize the intent of the law were drafted, reviewed and finalized. They are lengthy and—like nearly all regulations—imperfect. But they are a sufficient base for steering the concessions program in the correct direction: toward better visitor service, fair and vigorous competition for concessions contracts, improved ability to maintain the substantial asset base of concessions structures, and most important, toward a kind of business equilibrium between concessioner and concessions manager that will rebuild the spirit of partnership and benefit all concerned.

Some concessioners have asserted that the regulations resulting from the law are convoluted and in parts confusing. NPCA agrees. We disagree however, on the appropriate solution. Some have argued that the law must change to provide additional guidance or technical correction to various points of interpretation. Some have advocated that the regulations be reopened and amended to make more significant changes. Both avenues carry considerable complications and are unnecessary.

The focus of complaint, it seems, is the treatment of Leasehold Surrender Interest, the law's replacement for Possessory Interest. In NPCA's view, changing the regulations in any way with regard to this structure would cause many more problems that it could solve. One unavoidable complication of reopening the regulations is further delay. While all parties have been patient with slow but steady progress in contracts management, reopening the regulations would have the inevitable result of stopping progress in its tracks while all wait for a new final rule to emerge. The delay could last two years, burning time that would be better spent building productive business partnerships and improving competition for contracts that benefit the visitor. In addition, it seems to make little sense to reopen the regulations on this issue especially. The Omnibus parks Act provides for reevaluation and reconsideration of the concept of Leasehold Surrender Interest nine years after enactment, or four years from now. If a reconsideration is to be made, it would seem prudent to wait the full nine years for the requisite base of experience with the current regulations to build as it pertains to Leasehold Surrender Interest.

The National Park Service has repeatedly demonstrated its willingness to hear all points of view and consider reinterpretation of points of law, if that reinterpretation aligns with standard business practice outside the parks. In addition, the National Park Service Concessions Management Advisory Board was specifically designed to review and resolve complications and air concessioner concerns. Having met nearly a dozen times in five years, the Board makes a special point in each meeting to hear residual concessioner concerns and provide a forum for balanced discussion. Concessioner concerns are being heard, not ignored.

The most appropriate solution for continued concessioner grievances, is continuation of the process that is already in place in the parks. In our view, the regulations need not be reopened at this time and the law certainly does not bear amendment. For changes in interpretation that result from discussion and evaluation of concessioner concerns, the agency has at its disposal Directors Orders that provide direction to field managers on how laws, regulations and other requirements must be followed. This is the correct venue for delivering guidance and direction to the field, not changes in the base law or regulation. To do otherwise would risk further upsetting the equilibrium in concessions management that is slowly but surely establishing itself to the benefit of the visitor, the taxpayer, the parks and the concessioners themselves.

Mrs. CUBIN. Thank you very much.

I will begin the questioning with Mr. Todd. In your testimony you mentioned that you and many of your colleagues enjoy a better relationship with the Park Service than you had before. Could you elaborate on that? And when you said "before", I assume you mean from the last administration?

Mr. TODD. Correct. Actually, since the Bush administration with the appointment of Gale Norton and subsequently Fran Mainella. I think concessioners in general definitely see more willingness to revitalize the old partnership that used to exist between the two parties, the private sector and the public, to work out issues in a manner that's beneficial to both sides and a win-win situation. So Fran Mainella has definitely shown a very improved atmosphere for discussing topics and resolving problems than previously had been happening.

Mrs. CUBIN. I know the answer to this, but these are some questions that we just want to have on the record.

Do you believe that the Park Service correctly interpreted the intent of Congress when it published its regulations on Leasehold Surrender Interest, and if not, why not?

Mr. TODD. I guess the answer is no. I think the intent of Congress was to simply provide concessionaires a CPI return on dollars invested in capital improvements, in accordance with the same way the private sector determines capital investment via GAAP. I feel that the Park Service drafted regulations that dilute that intent and consequently dilute the amount of return to concessionaires for their investing of capital in the parks.

Mrs. CUBIN. Would you respond to Mr. Voorhees' proposal—and if I word it incorrectly, please tell me—that rather than amending the law now, that we should sit with the regulations as they are for the next 4 years and then do a reauthorization in regular order?

Mr. TODD. I know that if I wasn't an operator in the parks and didn't know what you have to experience and what kind of risk you have to take and make decisions, and if I was sitting in his shoes as someone who is not an operator, it's easy to say wait for 4 years. If you're the party making investments in the parks, now and in the next 4 years, and wondering if you're going to get a return on your investment as stipulated in the '98 Act, it's pretty hard to sit back and hope that, you know, you're treated fairly in the interim when, in fact, the regulations have diluted that mechanism in the law. So, to me, 4 years is waiting way too long.

With all the contracts that come out to bid between now and then, plus the ones that are already out, the newer contracts, for example, like I know that my company has signed, and others on the panel have signed, that's a lot of uncertainty during that next 4 years, wondering when you make million dollar investments, wondering whether you're going to get credit for them or not. So, to me, 4 years is too long to wait in an attempt to look at an issue that was, to me, improperly interpreted clear back in '98. We've already had 5 years pass since then, so I can't imagine waiting four more, a total of 9 years, to fix something.

Mrs. CUBIN. Would each one of the rest of the panel respond to that as well?

Mr. FEARS. I think the process that the Director set up, this working group—and most of the panel here have attended the first two sessions—I think you can work through a lot of the issues that are in question. I know the 50 percent rule for leaseholder improvement, it is tough for private enterprise. But I think we can work through that issue.

The reason it's tough, I can give you an example. If you have a 10-year contract and say you're at seven, you have a restaurant that you want to remodel—and it's more than just putting in equipment or changing menu boards; you have to move walls and the electrical—in year seven, if you put that investment in, you deserve to recoup more than 50 percent of that in the last 3 years. You definitely want to incentivize private business to invest in a park from day one until the end of your contract.

Mrs. CUBIN. So you would like us to amend the law now?

Mr. FEARS. I'm not saying amend the law. I think this working group that we're doing—I mean, that's one of the areas we're looking at. I think we have had a lot of great dialog to try to come up with some sort of conclusion to that.

Mrs. CUBIN. Mr. Woodside?

Mr. WOODSIDE. Yes, I would like to see some means derived to change the current proposal and not wait another 4 years. In our case, we're just beginning a new contract, but we were in the midst of a building improvement program when our last contract ended, and the new contract does not make provisions for continuing those building improvements. So right now it probably would be affected by the 50 percent rule. So what will happen is those improvements simply will not be made and I think the visitor will suffer because of that.

Mrs. CUBIN. Miss Lamb?

Ms. LAMB. As a back country operator, NOLS' programs really don't delve into possessory interest in capital investments. As far as we're concerned, we see some positive things happening with the '98 Act, issuing regs, and now this development with commercial use authorizations. We would be comfortable waiting to see how things move.

Mrs. CUBIN. Thank you.

Mr. FEARS, is it your understanding from the regulations that the ability to utilize cross collateralization is dependent upon whether there's an associated LSI?

Mr. FEARS. Could you restate the question? I'm sorry.

Mrs. CUBIN. Sure. Is it your opinion that the regulations—let me just read this. Is it your understanding from the regulations that the ability to utilize cross collateralization is dependent upon whether there is an associated LSI?

Mr. FEARS. I'm not sure if I quite understand the question.

Mrs. CUBIN. It's our understanding that they won't allow cross collateralization if LSI is involved. Is that a correct assumption or understanding?

Mr. FEARS. I'm still not sure I can answer your question.

Mrs. CUBIN. Can someone else on the panel?

Mr. TODD. I think the progress that's been made so far is that the Park Service is willing to allow cross collateralization. It wouldn't always entirely be if you have LSI or not. You could have contracts that don't have LSI, but you still want to pledge those contracts as security on a loan to a lender.

I think what you're getting at, though, I think the Park Service has made great strides in that, and the question now becomes how do you fix that. Is it via Director's order saying you can do that, or via a regulation change.

Mrs. CUBIN. OK. Thank you.

Miss Lamb, do you believe the commercial use authorization proposed rule encourages long-term development for small commercial concerns and for nonprofits?

Ms. LAMB. There is a piece of the rule, as proposed, that is counter to that, and that is the piece I spoke about in my oral testimony and written which has to do with a short, 2-year term assigned on a random basis to operators with no right of preference for renewal, which we now have under the incidental business permit system.

I completely understand why the Park Service is going there, and I certainly support allocation of use, particularly in places where it's needed to protect the resource. But I do have some issues with no right of preference for operators who have shown commitment to the agency's programs and mission and who have provided high-quality service. So we have expressed that and, hopefully, we'll have an opportunity to delve into that when the working group is pulled together.

Mrs. CUBIN. Thank you.

I would now like to recognize Mr. Souder for his questioning.

Mr. SOUDER. Thank you. I wanted to make a couple of comments first.

One, I think the biggest threat to concessionaires has been the hostility to concessionaires, visitation in particular, and a view that often they're the threat to the park, the visitors themselves.

That said, as we work through this process of how to protect the parks and how best to serve the visitors, a couple of things jump out. I wrestle, as do Members of Congress, anybody who has visited the park, with this tradeoff. In other words, our responsibility isn't to benefit the concessionaires and to preserve people who have been there for a long time, who are from the local community. Quite frankly, our responsibility, point blank, is to provide the best service for the visitors.

Since it's a socialist, in a sense, situation, not a capitalist situation, the government is now intervening to make decisions, and making the decisions based on visitor services. We tried to make bidding contracts more flexible and so on, but part of when you're in that kind of decision—because I've talked to many of the small contractors, too. The families that have been there for a long time; the continuity of service is of value; they're a proven performer. Part of it is their willingness to be invested in the park long term rather than just take the money out, and their willingness to invest their capital.

The Delaware North Hamilton Stores type of debate at Yellowstone is a classic example. I mean, to be real blunt, I was there and you could see that Hamilton Stores were not providing the same services in what gifts they were offering and other things, and in a purely competitive environment, they probably would have been weakened. But it wasn't a purely competitive environment. On the other hand, they're one of the longest serving institutions in the Park Service, so how do we resolve those kinds of questions in this interim, as opposed to the real small type thing.

Is it the goal here to protect the concessionaires, or is it to make sure that some of the services are updated, whether it be boat

trips, riding, innovations, other things that are offered to consumers? Where this becomes a question, like everything else in society, the larger corporations are likely to be able to offer more things at a lower cost and better bids. Particularly with cross collateralization and other types of things, you can spread your costs more. That's a fact of life. We can only do so much protecting the smaller, and at the same time say that, oh, what about Wuksachi Lodge, which needs to stay open in the winter and you're not getting any guests there. You have to be able to spread your losses if you're going to do that type of thing.

I wanted to follow up particularly with Mr. Todd on some of these difficult questions, like the Flamingo Lodge at Everglades and Stovepipe Wells. Because this is what would happen normally in the private sector, do you see that we may have to get in a situation—because in these parks there's a proliferation of providers—that I presume at Everglades, some of the services that are offered there are making money, and that in order to provide the lodging, if there wasn't any lodging, they might not be able to have anybody staying there and doing that.

Do you see that in parks which aren't losing money, which you referred to in your written testimony, that we might be able, rather than having the Federal Government make the outlay, a merger of saying, OK, you're going to be the service provider for multiple services at parks where we can't make some money? In other words, are there some parts of Death Valley that are making money but Stovepipe Wells isn't, or some parts of the Everglades that are making money but not Flamingo Lodge, and we may have to do some bundling, which would be the normal way we would respond in a capitalist system?

Mr. TODD. Certainly, as you said, you have to value the economics of the entire operation. Stovepipe Wells is a remote location and there's really not much else you can bundle there. We providing the lodging, the retail, the food and beverage—

Mr. SOUDER. Say if you wanted Furnace Creek, you had to take Stovepipe Wells and they were going to be part of the same bid, not separate.

Mr. TODD. Right. You could, although Furnace Creek is owned in fee. It's not a park contract, so you really couldn't merge a private deal with a public deal. But certainly, yes. They discussed, for example, merging Stovepipe Wells and Scotty's Castle, which are currently separate contracts, but both in Death Valley, both of which my company operates. That's the kind of thing they're looking at doing. But even doing that, in some cases, if they're both losing money and you combine the two of them, you don't solve the problem.

That's why at times many of these small contracts—I mean, the larger ones have been under 1-year extensions for several years, so each time we get ready to sign an extension, we ask ourselves—of course, you know, I get critiqued by some of the owners of the company, saying why would you sign that? You're losing money on the deal. And then in some cases we ask for fee relief during the extension period, saying look, we're losing money on this. We're paying a 5-percent of revenue fee and want to lower the fee to 2

percent so that we can at least break even or make a minimal profit. So far there hasn't been much receptivity toward that.

All I can think of, assuming we're the sole party putting money in the deal, you just have to make it attractive to us. Just like when it goes out for rebid, obviously, if they don't change anything and offer the same fee, will we rebid again to lose money? Not likely. I don't know of anybody else that would, either.

Mr. SOUDER. Have you seen examples of this contract bundling, where you would bundle something—obviously, not two unprofitable things—but where you might consolidate some of the contracts in order to take some of the losses—For example, Everglades might be one. Could you comment at the same time on the concept of bundling profitable parks with unprofitable parks.

Mr. TODD. You could certainly do that. I don't know if you're referring to different geographic regions, where you could say OK, we're going to give you this park that's unprofitable, versus this other park ten States over that's profitable, you could try that. I don't know what your bidding response would be.

Quite frankly, you might end up making it more beneficial to the larger concessionaires, who are willing to lose money on one park to get another one. I mean, some of the small guys, of course, who are only going to bid on a small park to begin with, who could do that operation and might have bid on that park, once you throw in another one, they might say we don't have the organizational infrastructure and corporate level services necessary to do two big parks. We can do one, or one small park, but you give us two of them in two different geographic areas, you might end up eliminating some prospective bidders.

Mr. SOUDER. Is that what happened—one last question for Mr. Fears. Isn't that kind of what happened at Sequoian Kings Canyon, that it wasn't viewed as profitable and then a small group took over?

Mr. FEARS. That's right. The decision was made to move the operation out of the Sequoia area and to move it to a different location. They ended up putting that contract out three times. The first two times they didn't receive any bids, and then the third time they received two or three bids. We decided to put the investment in.

To be honest with you, when you talk about bundling, one of the reasons we did that is because we operate at Yosemite National Park and we can use the same reservation center. There are a lot of marketing efficiencies there. So I think the idea of bundling some of these parks—I mean, you brought up Glacier. Glacier is a tough concession contract. You're looking for private enterprise to fix those hotels up. I think it's a tough deal. There has got to be some sort of government money or something that has to come in.

You have the same problem at Crater Lake. You have a great hotel there, but private enterprise wasn't able to come in and put the investment. And you also have Oregon Caves, which we operated for a year. It's a great hotel. It needs a lot of work on it, but it's just not profitable for private enterprise. The economic model just doesn't work. They also have short seasons. Glacier is 100 days and Oregon Caves is 100 days.

Mr. SOUDER. Thank you all very much.

Mr. RADANOVICH. [Presiding.] Thank you, Mark.

I have a couple of questions. I think we can wrap up with a general question. Mr. Woodside, I would like to get you to comment on this question.

Since the passage of the 1998 Act and subsequent 2000 regulations, a number of small concessionaires have continued to raise serious concerns about the threshold of \$500,000 for preferential right of renewal. In response, legislation was introduced in the 107th Congress to raise the bar to \$5 million, as you may know, and while no action is taken on the legislation, interest still remains high for many concessionaires.

As a small concessioner and a member of the National Park Hospitality Association, if the law were to be amended, what do you think the threshold should be, and why? Usually the response I get is a dollar above the concessionaire's gross revenue.

[Laughter.]

Mr. WOODSIDE. You took away my answer.

It is very difficult to come up with a definitive dollar amount. I definitely think \$500,000 is too small. Five million could be too big. By the way, we're about four million, so—

[Laughter.]

So five million is very self-serving.

One of the interesting things is Pricewaterhouse has separated out the contracts as those above three million and below and called the below three million the smaller contracts. They don't attach any great significance to that, but I think three million is a number that maybe should be looked at, because roughly the top 50 contracts—I think it's actually 52—are over three million and the rest are below that. So there are somewhere about 40 or 50 contracts that would be between \$500,000 and \$3 million.

What I suggested throughout as a proposal is that perhaps the Park Service be given the option to give some form of preference to the smaller local companies that are continuing on under that threshold, be it five million or three million, just to give an opportunity for those smaller companies that have operated for so long a chance to continue.

Mr. RADANOVICH. Thank you.

Mr. Voorhees, I have a question regarding the concessions working group, and perhaps a consensus on changes to Leasehold Surrender Interest. At this point, there seems to be two options: one being a direct order, and the other just modifying the 2000 regulations.

According to your testimony, you would oppose the change through Director's order, through regulations, and yet that would seem to be the best way of instilling predictability of the marketplace in an era in which the service is moving toward better business practices.

Would you not agree, should the changes be made through a direct order, that an incoming Director could then change again how the Leasehold Surrender Interests were to be implemented and wouldn't a Director's order approach add regulatory uncertainty within the industry?

Mr. VOORHEES. Considering where we are in the process with the law, and the opportunity, I guess, 9 years out from the passage of

the law, it strikes me that to take the approach at this point to change the regulation as opposed to issuing something which is arguably a little bit more flexible, like a Director's order, which nonetheless provides the appropriate guidance to be able to work your way through that time, would do little more than put a monkey wrench in the gears of trying to establish a level of progress in dealing with contracts, in improving the Park Service's response to concessionaires overall.

It just strikes me that, instead of accelerating the process, you really would be putting a wrench in it, and it's a wrench that I think is unnecessary, given that there has clearly been a generous amount of conversation and consideration to what are the options to work your way through some of the gray areas. And there are gray areas, about how do you identify what an improvement is, or how do you define an improvement in this circumstance or that.

It just seems to me that to move forward with the thought that the best answer is to reopen the regulations would, in the end, provoke kind of a converse response that everybody wants.

Mr. RADANOVICH. Thank you.

To sum up, I would like to ask any of the witness who may wish to speak regarding this, if you would like to comment on any point that has been made by Deputy Jones in his prior testimony that hasn't been brought out. I want to give everybody the opportunity to do that before we close the hearing. Is there anybody who wants to take that on?

Bruce?

Mr. FEARS. I would just like to make a comment about this \$4 million threshold. There's a lot of contracts that fall in between the \$2-\$5 million threshold that are controlled by big corporations, and they're very profitable contracts. I can cite a number of them, from Trailridge Store in Rocky Mountain National Park to Carlsbad Caverns in New Mexico, Mirror Woods in San Francisco, Claylock Lodge in Olympic Peninsula in Washington State, that if you put them out to bid, you might get a lot of small companies that would bid on these. Claylock Lodge and Mirror Woods is operated by an \$8 billion company. This contract should come out to bid.

I guess the last point I would like to make, I agree with Phil. I think you are too early in the process to open up the regulations. I think it's working and I think you're getting competitive bids. I think you're getting good bids, people that are willing to come in and put passion and investment in these operations, and I think you're too early in the process to open them up.

Mr. RADANOVICH. Thank you, sir.

Mr. TODD. I guess, to comment in terms of the threshold, as the Chairman of the National Park Hospitality Association, of course, I get the same input as you. You talk to one concessioner who is at \$5 million and he'll say, gee, it should be \$5 million, and somebody else says mine is at \$6 million, why not go to \$6 million. So I don't know how you win that battle.

The other thing, quite frankly, I don't know how you can differentiate a large family owned business, like Hamilton Stores was, for example, why they wouldn't get the same right as somebody who is at \$4 million. They could both give you the same theory, that it's been in the family forever, we're not a big conglomerate,

we're a family owned business, and we have so much more at stake than the smaller guy because we have all this infrastructure, hundreds of employees.

I just don't know how you ever get to the point where you say that you deserve it, Mr. Two Million, but you, Mr. Six, don't. I just don't know how you can reach a conclusion on that, unless the objective is simply that you want to have small guys in the parks, period. If that's the objective, then you definitely could do it, because you will certainly eliminate a lot of bigger guys from bidding because you don't want to go through the whole process, only to be matched by somebody else. But I just don't know how you can figure out what level is fair.

In terms of the issue on the regulations, waiting for four more years, I'm adamant that that's a mistake because, No. 1, the provision to look at the law 9 years after 1998, the issue was then to look at depreciation and possible amortization of Leasehold Surrender Interest. It was not to open up the whole regs for everything. It was simply one issue in the law that said, if it doesn't work now, to grow it by LSI and 9 years hence of '98 you can go back and decide—the Park Service can look to see if they want to consider depreciating values. So to say you're going to mix apples and oranges with some issue of basic LSI, you know, to 4 years later, it ends up giving you an entire period of 9 years of uncertainty.

For those who are in contracts now, like we are and others, you're in the middle of a contract, you're still wanting to know, as you put money in the next 4 years, are you getting credit for it or not. It's millions of dollars. To say we'll keep our fingers crossed and wait for something to happen a few years from now just doesn't make any sense. Plus if you issue a Director's order now, in essence, the Director's order is going to contradict the existing regulation, which, to me, makes even more ambiguity.

Mr. RADANOVICH. Thank you. Does anybody else wish to comment? OK. Thank you very much for coming to Washington and being part of this hearing. You have given us valuable information on the record which will help us establish, we hope through the working committees and, if not, then through the legislation here, some answers to some of your questions. I really appreciate it very much.

This hearing is closed.

[Whereupon, at 4:50 p.m., the Subcommittee adjourned.]

