

Controlling interest—in the case of a corporation, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business so as to permit the exercise of managerial authority over the actions and operations of the corporation or election of a majority of the board of directors of the corporation. In the case of a partnership, limited partnership, joint venture, or individual entrepreneurship, a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and operations of the entity. In other circumstances, any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business.

Historical operator—a holder of a valid special use authorization to provide visitor services in a CSU under Forest Service jurisdiction who:

(1) On or before January 1, 1979, was lawfully and adequately providing visitor services in that CSU;

(2) Has continued lawfully and adequately to provide the same or similar types of visitor services within that CSU; and

(3) Is otherwise determined by the authorized officer to have a right to continue to provide the same or similar visitor services.

Local area—any site within 100 miles of the location within a CSU where any visitor services covered by a single solicitation by the Forest Service are to be authorized.

Local resident:

(1) *For individuals*—Alaska residents who have lived within the local area for 12 consecutive months prior to issuance of a solicitation of applications for a visitor services authorization for a CSU; who maintain their primary, permanent residence and business within the local area; and who, whenever absent from this primary, permanent residence, have the intention of returning to it.

(2) *For corporations, partnerships, limited partnerships, joint ventures, individual entrepreneurships, and other circumstances*—where the controlling interest is held by an individual or indi-

viduals who qualify as local residents within the meaning of this section.

(3) *For nonprofit entities*—where a majority of the board members and a majority of the officers qualify as local residents within the meaning of this section.

Native Corporation has the same meaning as under section 102(6) of ANILCA (16 U.S.C. 3197).

Preferred operator—a Native Corporation that is determined, pursuant to § 251.123, to be most directly affected by establishment or expansion of a CSU; or a local resident, as defined in this section, who competes for a visitor service special use authorization under § 251.124 of this subpart.

Responsive application—an application that is received in a timely manner and that meets the requirements stated in the prospectus.

Visitor service—any service or activity for which persons who visit a CSU pay a fee, commission, brokerage, or other compensation, including such services as providing food, accommodations, transportation, tours, and outfitting and guiding, except the guiding of sport hunting and fishing.

§ 251.122 Historical operator special use authorizations.

(a) A historical operator has the right to continue to provide visitor services under appropriate terms and conditions contained in a special use authorization, as long as such services are determined by the authorized officer to be consistent with the purposes for which the CSU was established or expanded. A historical operator may not operate without such an authorization.

(b) Any person who qualifies as a historical operator under this subpart and who wishes to exercise the rights granted to historical operators under section 1307(a) of ANILCA (16 U.S.C. 1397(a)) must notify the authorized officer responsible for the CSU.

(c) A historical operator may apply for a special use authorization to provide visitor services similar to but in lieu of those provided by that historical operator before January 1, 1979. The authorized officer shall grant the application if those visitor services are

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determined by the authorized officer to be:

(1) Consistent with the purposes for which the applicable CSU was established or expanded;

(2) Similar in kind and scope to the visitor services provided by the historical operator before January 1, 1979; and

(3) Consistent with the legal rights of any other person.

(d) Upon the authorized officer's determination that the person qualifies as a historical operator, under either paragraph (a) or paragraph (c) of this section, the authorized officer shall amend the current special use authorization or issue a new special use authorization to identify that portion of the authorized services that is deemed to be historical operations. The special use authorization shall identify the location, type, and frequency or volume of visitor services to be provided.

(e) When a historical operator's special use authorization expires, the authorized officer shall offer to reissue the special use authorization for the same or similar visitor services, as long as the visitor services remain consistent with the purposes for which the CSU was established or expanded, the historical operator was lawfully and adequately providing visitor services under the previous special use authorization, and the historical operator continues to possess the capability to provide the visitor services adequately.

(1) If the operator accepts the offer to reissue, the authorized officer shall issue a new special use authorization that clearly identifies the historical operations as required by paragraph (d) of this section.

(2) If the authorized officer determines that it is necessary to reduce the visitor services to be provided by a historical operator, the authorized officer shall modify the historical operator's special use authorization to reflect the reduced services as follows:

(i) If more than one historical operator provides services in the area where visitor service capacity is to be reduced, the authorized officer shall apportion the reduction among the historical operators, taking into account historical operating levels and such other factors as are relevant to achieve

a proportionate reduction among the operators.

(ii) If the reductions in visitor service capacity make it necessary to reduce operators in an area, the authorized officer shall select, through a competitive process that is limited to historical operators only, the operator or operators to receive a special use authorization from among the historical operators. Historical operators participating in this competitive process may not claim a preference as a preferred operator under § 251.124.

(f) Any of the following shall result in the loss of historical operator status:

(1) Revocation of a special use authorization for historical types and levels of visitor services for failure to comply with the terms and conditions of the special use authorization;

(2) A historical operator's refusal of an offer to reissue a special use authorization made pursuant to paragraph (e) of this section;

(3) A change in the controlling interest of a historical operator through sale, assignment, devise, transfer, or otherwise, except as provided in paragraph (g) of this section; or

(4) An operator's failure to provide the authorized services for a period of more than 24 consecutive months.

(g) A change in the controlling interest of a historical operator that results only in the acquisition of the controlling interest by an individual or individuals, who were personally engaged in the visitor service activities of the historical operator before January 1, 1979, shall not be deemed a change in the historical operator's controlling interest for the purposes of this subpart.

(h) Nothing in this section shall prohibit the authorized officer from authorizing persons other than historical operators to provide visitor services in the same area, as long as historical operators receive authorization to provide visitor services that are the same as or similar to those they provided on or before January 1, 1979.

(i) If an authorized officer grants to a historical operator an increase in the scope or level of visitor services from what was provided on or before January 1, 1979, beyond what was authorized under paragraph (d) of this section, for

either the same or similar visitor services, the historical operator has no right of preference for the increased amount of authorized services. If additional operations are authorized, the special use authorization shall explicitly state that they are not subject to the historical operator preference.

§ 251.123 Most directly affected Native Corporation determination.

(a) Before issuance of the first special use authorization for a specific CSU pursuant to § 251.124 on or after the effective date of this subpart, the authorized officer shall give notice to Native Corporations interested in providing visitor services within the CSU and give them an opportunity to submit an application to be considered the Native Corporation most directly affected by the establishment or expansion of the CSU under section 1307(b) of ANILCA (16 U.S.C. 1397(b)). In giving notice of the application procedure, the authorized officer shall make clear that this is the only opportunity to apply for most directly affected status for that particular CSU.

(1) At a minimum, an application from an interested Native Corporation shall include the following:

(i) Name, address, and telephone number of the Native Corporation; date of its incorporation; its articles of incorporation and structure; and the name of the applicable CSU and the solicitation to which the Native Corporation is responding;

(ii) Location of the Native Corporation's population centers; and

(iii) An assessment of the socioeconomic impacts (including changes in historical and traditional use and landownership patterns) on the Native Corporation resulting from establishment or expansion of the applicable CSU.

(2) In addition to the minimum information required by paragraph (a)(1) of this section, Native Corporations may submit such additional information as they consider relevant.

(b) Upon receipt of all applications from interested Native Corporations, the authorized officer shall determine the most directly affected Native Corporation considering the following factors:

(1) Distance and accessibility from the Native Corporation's population centers and/or business address to the applicable CSU;

(2) Socioeconomic impacts (including changes in historical and traditional use and landownership patterns) on Native Corporations resulting from establishment or expansion of the applicable CSU; and

(3) Information provided by Native Corporations and other information considered relevant by the authorized officer to assessment of the effects of establishment or expansion of the applicable CSU.

(c) In the event that two or more Native Corporations are determined to be equally affected for purposes of the most directly affected Native Corporation determination pursuant to this section, each such Native Corporation shall be considered a preferred operator under this subpart.

(d) A Native Corporation determined to be most directly affected for a CSU shall maintain that status for all future visitor service solicitations for that CSU.

§ 251.124 Preferred operator competitive special use authorization procedures.

(a) In selecting persons to provide visitor services for a CSU, the authorized officer shall, if the number of visitor service authorizations is to be limited, give a preference (subject to any rights of historical operators under this subpart) to preferred operators as defined in this subpart who are determined to be qualified to provide such visitor services.

(b) In such circumstances, the authorized officer shall solicit applications competitively by issuing a prospectus for persons to apply for a visitor services authorization. Notwithstanding Forest Service outfitting and guiding policy in Forest Service Handbook 2709.11, chapter 40, when authorizations, including priority use permits for activities other than sport hunting and fishing, expire in accordance with their terms, they shall not be reissued if there is a need to limit use and when there is competitive interest by preferred operators.