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DIRECTOR'S ORDER #76: LEGISLATIVE AND CONGRESSIONAL AFFAIRS

Approved: /s/ Fran P. Mainella
Director

Effective Date: March 11, 2005

Duration: This Director's Order will remain in effect until revised or terminated.

Special Directive 95-3, "Legislative Support Data Packages," is superseded and replaced by this Director's Order and Reference Manual 76 (RM-76).

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1. PURPOSE AND BACKGROUND

The purpose of this Director's Order is to:

- Provide direction to National Park Service (NPS) personnel who interact with Members of Congress and congressional staff;
- Provide direction and guidance to NPS personnel involved in the development and implementation of legislation; and
- Ensure that NPS personnel fully understand and comply with laws and regulations governing permissible and impermissible public advocacy.

2. AUTHORITIES

The authority to issue this Director's Order is found in 16 USC 1 through 4 (the NPS Organic Act), and the delegations of authority contained in Part 245 of the Department of the Interior (DOI) Manual.

Part 461, "Legislative Coordination," of the DOI Manual (461 DM), in particular section 1.7, deals with the role of bureaus in assisting DOI's Office of Congressional and Legislative Affairs.

This Order is intended only to improve the internal management of the NPS and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

3. LEGISLATIVE AND CONGRESSIONAL AFFAIRS PROGRAM OBJECTIVES

The objectives of the NPS Legislative and Congressional Affairs Program are to:

- Engage Members of Congress and staff in the understanding of DOI/NPS policies and positions on legislation and other congressional matters;
- Develop and maintain cordial and effective working relations between NPS personnel, congressional leadership, other Members, and congressional staff;
- Provide effective coordination of the NPS legislative and congressional affairs program with DOI and the Office of Management and Budget (OMB), to ensure it reflects the priorities and goals of the Administration;
- Ensure accurate and timely responses to inquiries by Members of Congress;
- Provide accurate, competent testimony before Congress on issues of relevance to the NPS;
- Develop clear, legally sufficient language, in consultation with Congress, for proposed legislation that complies with DOI policy and meets the needs of the Service;
- Provide summaries of newly enacted legislation for DOI, the Directorate and the regions; and
- Assist program officials and regional and park staff in their dealings with Members of Congress and their staffs.

4. PROGRAM DESCRIPTIONS

In order to meet program objectives, the Office of Legislative and Congressional Affairs (OLCA) provides three main areas of service: (1) congressional liaison, (2) congressional correspondence and (3) legislation. In addition, OLCA assists in preparation of congressional testimony, legislative activation, and maintaining legislative history.

4.1 Congressional Liaison

It is the policy of the NPS to develop and maintain a constructive dialogue with Members of Congress and congressional staff. Superintendents and senior regional and Washington office

(WASO) employees are encouraged to meet with Members and their staffs on a recurring basis to inform them of significant projects, current issues, or other matters of concern to the Members or the Service.

OLCA will designate a staff member as the Congressional Liaison, who will assist park, regional office and WASO staff in scheduling meetings in Members' Washington offices. Meetings held in congressional district offices, parks, or other locations may be arranged by park staff. In order to maintain good working relationships with Members of Congress, the Congressional Liaison should be provided advance notification of meetings.

In those instances when the Congressional Liaison was not involved in arranging a meeting with Members of Congress or their staffs, a summary of the meeting will be sent to the Assistant Director of OLCA (Assistant Director), with a copy to the Congressional Liaison. The summary may be brief, but should provide basic information on topics discussed and any concerns of the congressional office.

In addition, the Congressional Liaison will work with regional legislative representatives to provide opportunities for informative congressional visits to park sites. The Congressional Liaison will also provide notification to Members of Congress about major grants, the appointment of commission members and new superintendents, major regulatory decisions, and other important notices about parks and programs. Regional and program offices, and parks will keep the Congressional Liaison informed about anticipated announcements in these areas.

The Congressional Liaison will work with the Assistant Director to ensure that the Directorate and appropriate officials within DOI are aware of all key liaison activities.

4.2 Congressional Correspondence

OLCA must review, prior to sending, all correspondence with Members of Congress that is to be signed by Associate Directors and Program Chiefs, the Deputy Directors, the Director, the Assistant Secretary for Fish and Wildlife and Parks (Assistant Secretary), or the Secretary of the Interior (Secretary). OLCA must also review congressional correspondence to be signed by regional directors or superintendents that involves substantive policy or controversial issues. OLCA will ensure that the Directorate, the Office of Policy, and DOI, when appropriate, are advised of congressional correspondence involving substantive policy or controversial issues.

In order to maintain good relationships with Congress, OLCA should be sent a courtesy copy of any congressional correspondence that did not require prior review.

Congressional correspondence must follow the style, formatting, and subsequent requirements identified in the WASO Correspondence Manual, Director's Order #5: Paper and Electronic Communications, and Director's Order #19: Records Management, and their accompanying materials.¹

¹ These documents are available on the Office of Policy webpage, at <http://www.nps.gov/policy/>

Most correspondence from Congress is considered controlled correspondence, and is assigned a tracking number by the Washington Administrative Program Center. Response dates and criteria identified on the controlled correspondence cover sheet must be adhered to.

Facsimiles and electronic mail may be used to communicate with Congress only when requested by a Member's office, but all requirements of this section will apply.

4.3 Legislation

Developing draft legislation and working with Congress to modify proposed legislation are critical responsibilities of OLCA, coordinated by the Assistant Director and Deputy Assistant Director, OLCA, and carried out by the staff's legislative specialists. These tasks have a direct impact on the NPS's ability to accomplish its mission.

Draft Legislation. Draft legislation may be initiated in a number of ways:

- A Member of Congress may request OLCA to prepare draft legislation to accomplish specific goals. Draft legislation created in response to this type of congressional request is prepared by the legislative specialists in consultation with the regional legislative representative and the park and/or program office. The draft legislation is submitted to the requesting Member, with a letter stating that the draft legislation is being forwarded without any substantive review or recommendation from the NPS, DOI, or OMB.
- The NPS may prepare draft legislation as part of the Administration's legislative program.
- A Member of Congress may introduce legislation that affects the NPS with little or no participation from the NPS.

Every two years, in August preceding a new Congress, OLCA will initiate a request for legislative proposals in preparation of the Administration's legislative program. Each regional and program office must prioritize its proposals and forward them to OLCA by the deadline. The regional and program office proposals will be reviewed by OLCA in consultation with the submitting offices. All recommended legislative proposals will be drafted by OLCA, in consultation with the appropriate regional, park or program offices, and forwarded for approval to the Director, the Assistant Secretary, the Secretary, and OMB. Approved proposals will be transmitted to the Congress. Additional legislative proposals that are identified during the course of a Congress by a park, regional, or program office may be submitted to OLCA at any time.

Legislative Support Data Packages. Parks, via the regional office, and program offices must submit a completed Legislative Support Data Package (LSDP) to OLCA for each legislative proposal recommended as part of the Administration's legislative program, as outlined in the Legislative Support Data Package Guidance (part of RM-76).² Information provided should be concise and relevant, as this will be the primary data source used by OLCA when representing

² As stated in section 6, the Legislative Support Data Package Guidance can be found on the web at <http://www.nps.gov/policy/DOrders/LSDP.pdf>.

the position of the NPS concerning the legislation. *No legislative proposal will be forwarded for approval without an LSDP.*

Coordination. All legislation affecting the NPS, whether initiated by a Member of Congress or the NPS, will be coordinated through OLCA, with the exception of appropriations legislation. The responsibility for managing legislation concerning appropriations is delegated to the Office of the Comptroller. All regional, park and program offices affected by proposed legislation are required to fully participate in the legislative process and to provide the support and information necessary to effectively advance the position of the NPS during the legislative process. The legislative specialists will serve as the primary points of contact for the regional offices, parks, and program offices on all legislation.

Amending Legislation. Modification of legislation may occur throughout the legislative process. DOI may seek amendments to legislation to conform to Administration policy and the interests of the NPS. The legislative specialists will ensure that appropriate amendment language is prepared to further the position of DOI, and will incorporate these proposals in written testimony, letters and in discussions with congressional staff, as appropriate. These amendments are frequently completed under extreme time constraints, which may limit the degree of participation by interested NPS employees. Unless precluded by time constraints, the legislative specialists will consult with the regional legislative representatives, park and program office staff on any amendments.

4.4 Congressional Testimony

Testimony before congressional committees is typically presented during hearings on proposed legislation, or during oversight hearings concerning specific NPS program areas. Hearings are normally scheduled two to four weeks in advance. Written testimony is usually provided to the committee 48 hours in advance of the hearing. Oral testimony is normally limited in time and often constitutes a very small portion of the written testimony.

Preparation. In the case of bills affecting the NPS, the affected park or program office will draft written testimony in coordination with the regional legislative representative or program manager, respectively. After obtaining appropriate regional or program office approval, the regional legislative representative or program manager will forward the testimony to the appropriate legislative specialist in OLCA. Any amendments being proposed will be included, when appropriate, in the draft testimony.

All written testimony must be coordinated through OLCA to ensure it is consistent with the laws and policies governing the National Park Service and that it receives appropriate review and approval by the Director or Deputy Director, the Assistant Secretary, and by the Secretary. Testimony must also be approved by OMB to ensure it is consistent with Administration policy. This approval process takes a considerable amount of time and effort, requiring all participants to give an extremely high priority to testimony preparation, which often must be written in one day.

Witnesses. Witnesses for congressional hearings are selected at the discretion of the Secretary after reviewing the recommendations of the NPS. OLCA will coordinate with the NPS

Directorate and the Secretary on an appropriate hearing witness. The preferred level of representation is as follows:

- Secretary – Presidential or Secretarial initiatives;
- Assistant Secretary – Presidential or Secretarial initiatives;
- Director or Deputy Directors – Major NPS legislative initiatives having a Service-wide impact or that involve significant NPS policy or program activities;
- Associate Director – Legislation affecting a program under the associate’s jurisdiction, or when a majority of the bills for a specific hearing fall under the associate’s jurisdiction;
- Regional Director – All field hearings and hearings on significant park-specific issues; and
- Superintendents – All hearings, Washington or field, involving a specific park, or as a technical witness to accompany the principal policy witness.

Pending final approval of written testimony, the legislative specialists in OLCA will brief the NPS witness concerning the issues likely to be discussed at the hearing. The briefing is an important component of hearing preparation. Regional legislative representatives as well as park or program office experts will participate in these briefings as needed. The regional, park, and program offices also will offer to provide backup technical witnesses to assist at the hearings subject to the concurrence of the Department’s witness and the approval of the committee holding the hearing.

Oral testimony and subsequent questions and answers will be given in a professional manner and must be factual in nature. Oral testimony will be a summary of the most salient points of the written testimony. Oral testimony will reflect the official view of the NPS and DOI. When an NPS employee providing testimony is asked by a Member of Congress to provide the official view of the NPS or DOI on an issue as to which the employee is not certain of the correct answer, the employee will defer from immediately answering the question and will instead refer it to OLCA (if it relates to a legislative matter), or to the Office of the Comptroller (if it relates to an appropriations matter). OLCA and the Office of the Comptroller are each responsible for responding to questions concerning their program areas.

Personal Views. Whenever an NPS employee is requested by a Member of Congress to state his/her personal view on a legislative matter, he/she may do so. He/she will indicate clearly, however, that the views expressed are his/her own and do not necessarily reflect the position or policy of the NPS or DOI. To avoid misinterpretation of the NPS or DOI position or policy, and to provide an opportunity for necessary clarification of any issue, the employee will prepare a summary report as required in section 4.1 of this Order.

Transcripts. It is the responsibility of OLCA to obtain copies of transcripts of NPS employee testimony, when available, from congressional committees, to ensure Members’ questions are promptly and accurately answered. The legislative specialists will review hearing transcripts to ensure they are factual and accurate.

4.5 Legislative Activation

After legislation concerning the NPS has become law, the Service has a legal duty to implement it. OLCA will track all such legislation, and upon enactment will draft a memorandum for the Director's signature. The memorandum, with supporting background material, will notify the Directorate and the regional directors of their responsibilities in implementing the legislation.

Similarly, OLCA will provide the Director with copies of any Presidential proclamations affecting the Service, and will draft an activation memorandum, with appropriate background information, for the Director's signature. OLCA will also provide the Director and other appropriate park or program offices with copies of any Executive orders affecting the NPS.

4.6 Legislative History

Employees at all levels may have a need to review legislation and the legislative history of particular parks or programs. Each park, regional office, and program office is responsible for maintaining these records. OLCA can provide additional support to parks and program offices if the legislative history cannot be located, or if additional information is needed.

5. RESPONSIBILITIES AND DELEGATIONS

5.1 All Employees

5.1.1 *Communications with the Congress.* In order to represent the views of the Service, official communications with Members of Congress and congressional staff should be conducted by employees with knowledge of the facts of a given situation and the potential policy implications. These communications should be conducted under the guidelines set forth in section 4.1.

NPS employees have the right to express their personal views to Members of Congress and congressional staff. See, 5 USC 7211. Each employee who exercises that right, however, has the obligation to clearly indicate that the views are his/her own and do not necessarily reflect the position or policy of the NPS or DOI.

5.1.2 *Prohibited Lobbying Activities.* All employees are required to comply with the provisions of law relating to lobbying or influencing Members of Congress, or any state or local officials. These laws prohibit the use of any Federal appropriation (which includes employee salaries, equipment, supplies, utilities, etc.) for any type of activity intended to promote public support or opposition to any legislative proposal, law, ratification, policy, or appropriation, or to influence a Member of Congress, a jurisdiction, or an official of any government in any of these matters. See, e.g., 18 USC 1913.

Employees are permitted to reply to requests for information from the public, Members of Congress, or officials of any government or jurisdiction. Employees are also permitted to inform Members of Congress, or officials of any government or jurisdiction, about official policy positions when replying through official channels. Any responsive communications should be

conducted under the guidelines set forth in section 4.1. See, “Guidelines on Prohibited Lobbying Activities” issued by the DOI Ethics Office.

In order to gain clearer understanding of rules regarding lobbying or influencing Members of Congress, or officials of any government or jurisdiction, employees are strongly encouraged to review releases from the DOI Ethics Office (see section 6 below) and to speak with the appropriate ethics officer or OLCA.

5.2 WASO Directorate

The Director, Deputy Directors and Associate Directors have the responsibility to:

- Determine NPS legislative needs;
- Develop overall legislative priorities;
- Review and approve draft legislation and testimony; and
- Select appropriate witnesses.

5.3 Office of Legislative and Congressional Affairs

OLCA is responsible for and has been delegated the authority to:

- Inform and update the Directorate and DOI’s Office of Congressional and Legislative Affairs regarding pending legislative and congressional issues;
- Finalize testimony and proposed legislation, in coordination with affected parks and program offices, with DOI and OMB approval;
- Prepare background information and brief employees who will testify before the Congress;
- Review correspondence going to the Washington offices of congressional members or committees, and review all congressional correspondence concerning substantive policy or controversial issues;
- Track legislation affecting the Service, work with Members of Congress and congressional staff and other interested parties to refine legislation as needed, and provide regular reports to the Directorate, regional directors, and DOI officials;
- Develop activation memoranda which, along with a copy of the legislation and supporting background material, will be forwarded to the Director, and upon signing, will be distributed to the appropriate regional or program office;
- Respond to congressional inquiries;
- Arrange meetings between NPS employees and Members of Congress and congressional staff; and
- Promulgate, and review and revise as necessary, RM-76 (to include LSDP Guidance).

5.4 Regional Directors

Regional directors are responsible for and have been delegated the authority to:

- Determine their regions’ legislative needs;
- Ensure their managers and superintendents are conversant with this Director’s Order;

- Develop overall legislative priorities and submit LSDPs for their regions;
- Provide liaison support between the parks and OLCA, usually through the assignment of a legislative representative;
- Provide draft testimony, background material, maps, and other requested information, to OLCA; and
- Maintain, in the regions and the parks, administrative and legislative histories of all park units and programs relevant to the regions.

6. FOR FURTHER REFERENCE

- OLCA
<<http://www.nps.gov/legal>>
- Legislative Support Data Package Guidance
<<http://www.nps.gov/policy/DOrders/LSDP.pdf>>
- Director's Order #5: Paper and Electronic Communications
<<http://www.nps.gov/policy/DOrders/DOrder5.html>>
- Director's Order #19: Records Management
<<http://www.nps.gov/policy/DOrders/DOrder19.html>>
- 461 DM
<http://elips.doi.gov/app_dm/index.cfm?fuseaction=home>
- WASO Correspondence Manual
<<http://www.nps.gov/policy/DOrders/wocm.pdf>>
- DOI Ethics "Lobbying"
<<http://www.doi.gov/ethics/lobby>>

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