

Interim Directive 2709.11 Special Uses Wilderness Filming

Key Messages

The goal of this Interim Directive (ID) is to provide clarification for considering proposals for commercial filming in wilderness areas due to advances in film and video technologies combined with the need for the agency to more fully tell our land management story. This Interim Directive meets the intent of the Wilderness Act by identifying when commercial films can be considered a commercial service appropriate in a wilderness area.

- The ID is effective immediately: developing a full regulation at this point would have been more time consuming and in the interim more special use applications would potentially have been denied based upon previous criteria.
 - The ID is not a permanent document, but provides time for the agency to evaluate from the impacts of special use permit to film in wilderness in order to frame future policy that is protective of the natural resources while being fair to the public.
1. An important component of this Directive is that any commercial photography, filming or videotaped production permitted must have a primary objective of disseminating information about the use and enjoyment of wilderness or its features and values that is necessary for wilderness purposes.
 - Requests for film or video productions in wilderness need to include information about the ecological, geological, or scientific features of wilderness, or its historic, educational, scenic, or solitude aspects.
 - Requests must preserve the wilderness character of the surroundings of the area in which they are filmed or videotaped, leaving the area untrammelled, natural, undeveloped, and preserve opportunities for solitude and primitive and unconfined recreational opportunities
 2. Another additional element of the new ID is that the activity being filmed or videotaped must be wilderness-dependent – the location within a wilderness area is identified for the proposed activity and there is no suitable location outside of a wilderness area where the activity could be filmed under the same conditions.

It is important to note that there is no permit required for most still photography or for non-commercial filming on National Forest Lands including wilderness areas. That did not change in this Interim Directive.

Questions and Answers

Q. What are the major differences between the previous version and this new Directive?

Previous Directive	New Directive	Significance
Specified only that "...the activity contributes to the purpose for which the wilderness area was established."	Requires that the request fulfills "...a primary objective of dissemination of information about the use and enjoyment of wilderness for its ecological, geological, or other features of scientific, educational, scenic, or historical value."	Requires a more clear description of the end product being developed by the use of wilderness as a location. Helps to relay the successes of the agency in managing the public's natural resources.
same	Requires that other locations be considered for the film outside wilderness and documentation why wilderness is the only suitable location	Meets the intent of TWA that only "necessary" commercial services should be provided in wilderness
Specifically discussed still photography only	Clarifies criteria for filming requests for <i>other than non-commercial still photography</i> . i.e. filming or videography	Brings the Directive in line with technological advances. Provides more communication opportunities for the agency to relate its successful land management successes with the public.
Only referred to the original Wilderness Act of 1964 (16 U.S.C. 1131) for transportation restrictions	Specifies the prohibitions against motorized vehicles and equipment, motor boats, any type of landing or air craft, or the use of mechanical transport of any kind, such as hang gliders or bicycles	Provides better guidance and logistical preparation for special use permit applicants. More clearly delineates what is acceptable in wilderness.

	Specifically addresses the issue of advertising of any product or service connected to the request.	The legal terms commercial service and commercial enterprise are used in delineating whether a project is for the good of the public and the public lands, or for profit.
“the activity contributes to the purposes for which the wilderness area was established”	Provides criteria that would identify a film proposal as a commercial service that could be authorized in wilderness	Meets the intent of the Wilderness Act. Should provide for more consistent interpretation by field managers on this issue

Q. What issue or circumstance brought about the drafting of this new Directive?

Decision to clarify this Directive stemmed from a lack of clarity produced by previous Directive, and brought to light by increasing amounts of applications for commercial film permits in wilderness similar to that in Idaho, but not specifically as a result of any one incident. The Interim Directive became effective and a matter of public record on the day that it was signed. Final information, however, has to be formatted for public websites and developed for media advisory to ensure clarity in its release.

Q. Does commercial filming in wilderness fall under the Wilderness Act definition of “commercial enterprise” (Sec. 4(c)), or “commercial service” (Sec. 4(d)(6))?

Commercial filming may not be authorized as a commercial enterprise (The Wilderness Act, Section 4(c)). Commercial filming in wilderness can be authorized as a commercial service, when the production meets the purposes of The Wilderness Act. Section. 4(d)(6) states that commercial services may be allowed in wilderness areas “to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.”. The public purposes of wilderness are described in Section 4(b) as “recreational, scenic, scientific, educational, conservation, and historical use. “. These purposes are further clarified in the criteria listed in FSH interim ID 2709.11-2010-1. The criteria distinguish between enterprise and service by determining the primary objective and that the proposal would not advertise a product or service. It is not the intent of this ID to permit commercial enterprise in wilderness areas

Q. Can commercial filming be authorized in wilderness?

Proposals for commercial filming in wilderness can be authorized if they meet the criteria for approval. Wilderness administrators may consider opportunities through commercial filming that serve a public need for the gathering and dissemination of information regarding their use and enjoyment as wilderness (Sec. 2(a)). A proposal for commercial filming must pass the initial screening criteria found in 36 CFR 251.54, as well as meet the criteria spelled out in this new Directive for filming in wilderness

•

Q. Can a commercial enterprise (a business) operate in wilderness to make a commercial film?

A commercial enterprise (such as a film company) could be authorized to make a film where the primary objective is to provide information about wilderness and it is dependent on a wilderness location (see the criteria in FSH interim ID 2709.11-2010-1) much as a commercial outfitter-guide business can be authorized to operate in wilderness as a commercial service to facilitate “activities which are proper for realizing the recreation and other wilderness purposes of the area” Section 4(d)(6).

Q. How will the Forest Service determine which proposals for commercial filming are appropriate in wilderness? Section 4(d)(6) of The Wilderness Act allows for commercial services but only “to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.” The responsible Forest Service official will use the criteria in FSH interim ID 2709.11-2010-1 to determine if there is a need for the commercial filming activity described in the proposal that matches the wilderness purposes as described in Section 4(b) of the Wilderness Act. For example, a proposal could meet wilderness purposes if the primary objective is an educational film about wilderness values and benefits that is unique to that area and cannot be produced outside wilderness. In contrast, a proposal to make a Hollywood style adventure film or documentary film in wilderness, because of a desire to use wilderness locations as settings, would not meet the criteria, even if wilderness recreation use or Leave no Trace is mentioned in the film.

Q. Is the concern for commercial filming in wilderness based on a prohibition of mechanized equipment such as movie cameras in wilderness?

No. The Wilderness Act does not prohibit stationary mechanized equipment and the use of cameras in wilderness areas is not prohibited by law, regulation, or policy. Motorized equipment and mechanical transport is prohibited by the Wilderness Act but Forest Service regulation and policy exempts devices such as cameras including those with motor drives and other mechanisms (36CFR 293.6 and FSM 2320.5).

Q. How does the Forest Service define commercial filming and still photography?

Definitions for commercial filming, still photography and permit requirements are outlined in Forest Service Handbook 2709.11, sec. 45.5. They are based on the directions of the Commercial filming Act of May 26, 2000 (PL 106 -206).

COMMERCIAL FILMING: Use of motion picture, videotaping, sound-recording, or any other type of moving image or audio recording equipment on National Forest System lands that involves the advertisement of a product or service, the creation of a product for sale, or the use of actors, models, sets, or props, but not including activities associated with broadcasting breaking news. For purposes of this definition, creation of a product for sale includes a film, videotape,

•
television broadcast, or documentary of historic events, wildlife, natural events, features, subjects, or participants in a sporting or recreation event, and so forth, when created for the purpose of generating income.

STILL PHOTOGRAPHY: The use of photographic equipment to capture still images on film, digital format, and other similar technologies on National Forest System lands that:

- Takes place at a location where members of the public are generally not allowed or where additional administrative costs are likely, or;
- Uses models, sets, or props that are not a part of the site's natural or cultural resources or administrative facilities.

Q. Can still photography be authorized in wilderness?

In general still photography is not regulated nor is a permit required for it on the National Forest. However, if the still photography in wilderness takes place in locations where members of the public are generally not allowed, or where additional administrative costs are likely, or if the still photography involves models, sets, or props that are not a part of the site's natural or cultural resources or administrative facilities, then a permit is required. (Refer to FSH 2709.11, sec. 45.5, for definitions of models, sets, and props).

If a commercial film permit is required because of the criteria listed above, then if it is proposed in wilderness, it must also meet the additional criteria listed for if it would occur in a wilderness area in ID 2709.11-2010-1 Special Uses Handbook.

Q. Why not just issue a Regulation instead of a temporary fix?

Issuing an interim Directive gives the Forest Service more options to quickly address the issue and evaluate the impacts. This is effectively immediately. Drafting a complete Regulation requires more initial research and evaluation, completion of Draft documents, public comments to the Draft, and finalizing the Regulation. Using the Interim Directive allows the agency to address the situation now, and use the next 18 months to go through the process of developing a final Regulation.

Q. Why does the Forest Service issue Special Use permits in the first place? Why can't people just go where they want and use public lands however they want?

Public Law 106-206 dictates the conditions under which Forest service issues a permit to film on NFS land. The special use permit is designed to manage the impact of humans on the natural resources, and commercial access to public lands.

In general, private citizens can travel to any parts of their public lands, following trail, Forest, area, or regulated restrictions. In the case of trails, people must follow restrictions for hiking, biking, motorized, or equestrian uses. Motorized equipment and mechanical transportation, for example, are not allowed in wilderness areas. You are prohibited to hunt or use firearms within

•
certain distances of developed campgrounds and other recreational sites. All of these limitations and restrictions are for both visitor safety and for the sustainability of the natural resources.

Q. Why is it that some permits are granted for projects in one state or region, while the same project would be denied in another? Why the variance from region to region?

The new direction through this ID is intended to bring consistency to this issue. There will always be regional considerations for access and use because of local conditions and interpretations of the less specific aspects of overarching federal regulations. This is true for most policy and regulation, and why so many Forest Service projects and plans are legally challenged. The new ID seeks to provide better clarity for both permit applicants and forest and district staff in determining whether a permit should be granted or denied, and help outline the basis for that decision.