National Elk Refuge

Policy for Commercial Filming Requests

DEFINITION

All commercial filming on the National Elk Refuge (NER) requires a special use permit. Commercial filming refers to the film, electronic, magnetic, digital, or other recording of a moving image by a person business, or other entity for a market audience with the intent of generating income. Examples include but are not limited to feature film videography, television broadcasts, documentaries, videos created for and distributed via the internet, or other similar projects. Commercial filming activities may include the advertisement of a product or service, or the use of actors, models, sets, or props.

Audio recording activities will require a special use permit only if the activity takes place in a closed area, involves more than handheld equipment, and/or requires agency oversight.

Still photography only requires a permit if it uses models, sets, or props, takes place in areas closed to the public, or requires monitoring by agency staff to minimize resource damage or visitor conflict.

News gathering is not considered a commercial activity and should not be treated in the same manner as other commercial filming activities.

SERVICE REGULATIONS

On August 22, 2013, the Department of the Interior published final regulations in the Federal Register on commercial filming, still photography, and audio recording. The regulations became effective September 21, 2013. This is the most current Service guidance the NER will use for issuing commercial filming permits.

The regulation governing commercial filming and still photography is found at 43 CFR part 5 subpart A. New definitions are found at 43 CFR 5.12, including definitions for commercial filming, models, news gathering activities, set and props, and still photography.

When a permit is issued for either commercial filming or still photography, cost recovery charges for that activity may be collected.

A Comprehensive Conservation Plan for the NER, signed on September 18, 2015, provides a means to charge fees when issuing special use permits for commercial uses.

A proposed location fee schedule was published in the Federal Register on August 22, 2013. A location fee schedule has not yet been published or approved. The NER's policy will be revised when the U.S. Fish and Wildlife Service's (USFWS) location fee schedule goes into effect. In the interim, NER fees will be commensurate with general Service guidance for commercial filming on federal lands and waterways for crews of five people or fewer.

INITIAL REQUESTS AT THE NER

When the NER receives a request for a commercial filming activity, the individual will be sent Standard USFWS Form 3-1383_C, 05/14.

A $50 non–refundable processing fee must accompany the returned application in order for the activity to be considered. The check should be made out to the US Fish and Wildlife Service and sent to the administrative offices or dropped off with the application. This covers the costs incurred as a result of considering the permit request.

Applicants must give Refuge staff five (5) business days to process a special use permit. Any special use permit requests made within a shorter time frame may not be accommodated; an additional $100 non–refundable fee will be assessed for expedited requests.

Permits for commercial filming are specific to individual projects. A videographer, film company, or other business that has had a special use permit for a previous filming project must reapply for approval to conduct a subsequent filming project involving other locations, venues, or product uses.

The information provided in the applications will be initially screened by the Outdoor Recreation Planner (ORP). The ORP may need to make additional contacts with the requesting individual to obtain all the necessary information. The Refuge Manager will make the final determination as to whether or not the project will be approved or denied. Requests for filming activities will be evaluated for potential impacts on agency resources, staffing, operations, and visitor activities.

DENYING AN NER PERMIT REQUEST

The NER can deny a permit if it's determined the activity would likely:

- cause resource damage
- unreasonably disrupt or conflict with the public's use and enjoyment of the site
- pose health or safety risks to the public
- be inappropriate or incompatible

with the purpose of the Refuge
- cause unacceptable stress to wildlife
- violate the Endangered Species Act or other applicable Federal, State, or local law or regulations
- present staffing challenges to the Refuge's limited number of personnel in order to process or monitor the activity

A permit can be denied or revoked based on any previous incident with a permittee operating on the NER or becausse of a permittee's failure to comply with any regulations or required documentation.

If a permit request is denied or revoked, the Refuge's ORP or Refuge representative will contact the applicant and state the reason the permit was not approved.
A letter, signed by the Refuge Manager, will also be sent if requested by the applicant.

43 CFR.10 states that an applicant may appeal the denial of a permit application. The USFWS is working on an appeals process and will include it in new policy guidance forthcoming; this NER commercial filming policy will be revised to include the appeals process when available.

In the interim, an applicant that wants to appeal the decision should submit a written appeal of the decision with reasons for reconsideration, addressed to the Refuge Manager. The Refuge Manager will submit the appeal to the Refuge Supervisor of the Mountain–Prairie Zone in the NER's Regional Office. The decision of the Regional Refuge Supervisor will be the final agency action.

APPROVING AN NER PERMIT REQUEST

The ORP or Refuge representative will work with the permittee to finalize the special use permit, which will include permit terms and conditions specific to the project. Other NER staff can provide input on conditions they would like included in order to reduce impacts to their programs.

The permittee is responsible for submitting a Certificate of Insurance, valid for the duration of the special use permit, that includes the following:
- liability insurance for a minimum of $1,000,000 each occurrence and $2,000,000 aggregate
- property damage for a minimum of $10,000 each occurrence and $25,000 aggregate for property damage
- names the United States of America as an additional insured

The Refuge Manager will sign the special use permit when it's finalized, approving both the activity and the special conditions. Per Department guidelines, a $200 fee will be assessed upon approval of the commercial filming permit. All fees and current Certificate of Insurance must be on file before the permit is issued.

The ORP or Refuge Manager will notify the NER's Regional Office if the commercial filming project is a major motion picture or if the project has regional or national significance.

SPECIAL CONDITIONS

A document outlining any reasonable terms and conditions will be attached to the permit. A violation of any of the special conditions may result in the permit being revoked, effective immediately. A permittee may also be prosecuted for a violation.

If the Certificate of Insurance expires during the permittee's designated operational period, the permit will be invalid, beginning on the first day of lapsed coverage. The permit will remain invalid until an updated Certificate of Insurance is presented to the ORP or Refuge representative.

ACCOMMODATING THE ACTIVITY

Any NER staff member should track time spent involved with logistical arrangements, meeting with members of the crew, monitoring the filming activity, or other tasks. A fee of DI-1040 Bill for Collection may be completed for the purpose of cost recovery to the NER. The bill will be itemized to include but not limited to:
- hourly costs of each staff member involved with the permitting or monitoring activity
- replacement costs of equipment or infrastructure damaged or removed during filming
- operational costs of government equipment
- other direct costs associated with the activity

If a Service employee works on a commercial filming project outside of their regular duty hours, the Bill of Collection will reflect the employee's overtime rate. Per Service policy, any after–hour callouts will be billed as a minimum of two hours, regardless of the amount of time the individual spent accommodating the callout request.

DEPOSIT AND USE OF REVENUE

The Refuge Manager will designate an account for depositing checks received from commercial filming permittees. The money will be deposited into a Recreation Fee account and used primarily for one of the following purposes:
- backlogged repair and maintenance projects, including those related directly to health and safety
- interpretation, signage, habitat, or facility enhancement
- resource preservation
- law enforcement related to public use and recreation