Record of Determination for a Public Use Limitation to Prevent Spread of COVID-19

This is a record of decision under 36 CFR 1.5 (c), and is limited to the Interior Region 1 - National Capital Area (NCA) parks. The National Park Service (NPS) is implementing an immediate public use limitation for all permitted events and demonstrations covered by the regulations at 36 CFR 7.96. This comes in response to new public health advisories and limitations on large events from the Centers for Disease Control (CDC) and from the state and local jurisdictions where these parks are located. Specifically, the NPS will not accept applications for permits for demonstrations or for special events that are scheduled to occur over the next eight weeks. All events currently scheduled will be cancelled or postponed to a later date, at the discretion of the applicant.

The NPS has determined that allowing gatherings larger than 25 people is not reasonably consistent with the protection and use of any park areas under 7.96(g)(2)(ii), and the applicable public health orders from the local government. Consistent with our decision not to issue permits for public gatherings, no event that would require a permit under the small group exception enunciated in 7.96 (g)(2)(i) will be permitted in any area covered by the regulations at 36 CFR 7.96. The limited number of areas where a larger small group exception normally exists by regulation at 7.96 (g)(2)(ii) will operate under the small group exception at 7.96 (g)(2)(i). This closure is issued in compliance with current CDC event guidelines and the DC Public Health order limiting gatherings of more than 50 people (https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html); and Mayor’s Order Prohibiting Mass Gatherings in Response to COVID-19 (March 16, 2020) (limiting gatherings to groups no larger than 50).

This limited public use restriction is based on the recommendations of the CDC and after consultation with affected localities and states. This is an unprecedented public health emergency. The NPS will continue to coordinate and consult with federal and local public health agencies, and will revisit this decision, as soon as circumstances change.

These public use limitations are necessary to ensure the safety of visitors and employees and prevent the spread of a disease that has already been designated as a pandemic by the World Health Organization. Visitors may still visit open areas of the parks, and demonstrate without a permit in small groups, with adherence to guidelines for protecting vulnerable populations, hand hygiene, and social distancing.
The use limitation will not adversely affect the park’s natural, aesthetic or cultural values; nor require significant modification to the resource management objections; nor, given the circumstances should it be of a highly controversial nature. Accordingly, the NPS determines publication as rulemaking in the Federal Register is unwarranted under 36 C.F.R. § 1.5(c). This is consistent with hundreds of earlier partial and temporary park closures or public use limitations, the legal opinion of the Office of the Solicitor, and judicial adjudications. Mahoney v. Norton, No. 02-1715 (D.D.C. August 29, 2002), plaintiff’s emergency motion for injunction pending appeal denied Mahoney v. Norton, No. 02-5275 (D.C. Cir. September 9, 2002) (per curiam); Picciotto v. United States, No. 99-2113 (D.D.C. August 6, 1999); Picciotto v. United States, No. 94-1935 (D.D.C. September 9, 1994); Picciotto v. Lujan, No. 90-1261 (D.D.C. May 30, 1990); Picciotto v. Hodel, No. 87-3290 (D.D.C. January 26, 1988); Spiegel v. Babbitt, 855 F.Supp. 402 (D.D.C.1994), aff’d in part w/o op. 56 F.3d 1531 (D.C. Cir. 1995), reported in full, 1995 US App. Lexis15200 (D.C. Cir. May 31, 1995). Pursuant to 36 C.F.R. § 1.7, notice of this public use limitation will be made through media advisories, maps, and by posting at conspicuous locations in the affected park areas. Finally, pursuant to 36 C.F.R. § 1.5(c), this determination is available to the public upon request.

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