

This is an amendment to 19.5.1 NMAC, Sections 3 and 7, effective \_\_\_\_\_.

**19.5.1.3 STATUTORY AUTHORITY:** 19.5.1 NMAC is authorized pursuant to [~~NMSA 1978, Section 9-1-5(E)~~] Subsection E of 9-1-5 NMSA 1978 and Sections 16-2-2 *et seq.* NMSA 1978. [12-31-96; 19.5.1.3 NMAC - Rn, 19 NMAC 5.1.3, 12/31/2002; A, 1/1/2008; A, XX/XX/201X]

**19.5.1.7 DEFINITIONS:**

**A. “Authorized areas”** means locations, places, sites, regions, zones or spaces identified by the director or, for purposes of hunting or fishing, the state game commission. These areas may be defined with signs or other appropriate proclamation or means. For purposes of bowfishing, authorized areas include all parks where fishing is allowed.

**B. “Boating and rafting excursions”** means a guiding service for boating or rafting trips offered to the general public.

**C. “Capital improvement”** means a construction project by a concessionaire to the concession premises that is not maintenance or repair and that costs at least \$1,000.

**D. “Commercial activity”** means for-profit sales or services but does not include the operation of vending machines unless the vending machine is operated as part of a larger concession operation.

**E. “Commercial charter bus”** means a bus transporting a group of persons who pursuant to a common purpose, and under a single contract at a fixed price, have acquired the exclusive use of a bus to travel together under an itinerary.

~~[E.]~~ **F. “Commercial filming”** means the use of motion picture, videotaping, sound recording or other moving image or audio recording equipment that involves the advertisement of an event, product or service; or the creation of a product for sale including film, videotape, television broadcast or documentary of participants in commercial sporting or recreation events for the purpose of generating income.

~~[F.]~~ **G. “Commercial photography”** means still images taken with a camera that the photographer intends to sell.

~~[G.]~~ **H. “Concession”** means commercial activity conducted within a park the department has authorized in writing.

~~[H.]~~ **I. “Concessionaire”** means the owner or operator of a concession who operates pursuant to a department-issued concession contract.

~~[I.]~~ **J. “Concessions administrator”** means a division employee who maintains records and documentation concerning concession contracts and concession permits.

~~[J.]~~ **K. “Concession contract”** means an agreement between the department and a person, or business entity, which allows the concessionaire to provide services, merchandise, accommodations or facilities within a park. The concessionaire may or may not occupy a permanent structure or location within the park. The concession contract’s term shall not exceed 30 years pursuant to [~~NMSA 1978,~~] Section 16-2-9 NMSA 1978.

~~[K.]~~ **L. “Concession permit”** means a permit the department issues to a person or business entity to provide commercial activities, including services or goods, in a park for a [~~time~~] period of up to one year. The fee for a concession permit is established in 19.5.6 NMAC. Services the division may authorize under a concession permit include guiding and outfitting services for fishing, boating and rafting excursions; educational and park resource protection services; and other services or goods, including commercial services, that enhance visitors’ experience and enjoyment, such as sales of firewood, propane, ice, food or refreshments.

~~[L.]~~ **M. “Concession permittee”** means the holder of a department-issued concession permit.

~~[M.]~~ **N. “Cultural property”** means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

~~[N.]~~ **O. “Department”** means the energy, minerals and natural resources department.

~~[O.]~~ **P. “Developed site”** means a park camping site with at least one shelter, table or grill or a combination of two or more such facilities at the site. Sites with recreational vehicle utility hookups are considered developed regardless of the presence of shelters, tables or grills.

~~[P.]~~ **Q. “Director”** means the director of the energy, minerals and natural resources department, state parks division.

~~[Q.]~~ **R. “Director designee”** means persons the director appoints including deputy directors, bureau chiefs, regional managers and park superintendents.

~~[R.]~~ **S. “Division”** means the energy, minerals and natural resources department, state parks division.

~~[S.]~~ **T. “Flotation assist device”** means a wet suit or wearable flotation device in good condition capable of providing flotation to the wearer on the water’s surface.

~~[T:]~~ U. “**Geocaching**” means an outdoor treasure-hunting activity in which the participants use a global positioning system receiver or other navigational means to hide or find containers called "geocaches" or "caches".

~~[U:]~~ V. “**Gross receipts from sales and services**” means the total amount of receipts from sales and services.

~~[V:]~~ W. “**Guide**” means an individual or an employee of an outfitter who is hired to escort or accompany clients in fishing, rafting or boating.

~~[W:]~~ X. “**Letter boxing**” means an outdoor hobby that combines elements of orienteering, art and puzzle solving. Letter boxers hide small, weatherproof boxes in publicly-accessible places and distribute clues to finding the boxes in printed catalogs, on websites or by word of mouth. The activity is characterized by the boxes containing a logbook and a rubber stamp. Letter boxers stamp the box’s logbook with personal rubber stamps and use the box’s stamp to imprint their personal logbooks as proof they found the box.

~~[X:]~~ Y. “**Net receipts from sales and services**” means the total amount of receipts from sales and services, less the amount of gross receipts taxes.

~~[Y:]~~ Z. “**Off highway motor vehicle**” means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:

(1) “**all-terrain vehicle,**” which means a motor vehicle 50 inches or less in width, having an unladen dry weight of 1,000 pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control;

(2) “**off-highway ~~motoreyle~~ motorcycle,**” which means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and has handlebar-type steering control;

(3) “**snowmobile,**” which means a motor vehicle designed for travel on snow or ice and steered and supported in whole or part by skis, belts, cleats, runners or low-pressure tires;

(4) “**recreational off-highway vehicle,**” which means a motor vehicle designed for travel on four or more non-highway tires, for recreational use by one or more persons, and having:

(a) a steering wheel for steering control;

(b) non-straddle seating;

(c) maximum speed capability greater than 35 miles per hour;

(d) gross vehicle weight rating no greater than 1,750 pounds;

(e) less than 80 inches in overall width, exclusive of accessories;

(f) engine displacement of less than 1,000 cubic centimeters; and

(g) identification by means of a ~~[17-character]~~ 17-character vehicle identification

number; or

(5) by rule of the department of game and fish, any other vehicles that may enter the market that fit the general profile of vehicles operated off the highway for recreational purposes.

~~[Z:]~~ AA. “**Other ~~power-driven~~ power-driven mobility device**” means any mobility device powered by batteries, fuel or other engines, whether or not designed primarily for use by individuals with mobility disabilities - that is used by individuals with mobility disabilities for the purpose of locomotion including golf cars, electronic personal assistance mobility devices, such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair.

~~[AA:]~~ BB. “**Outfitter**” means a person or company who employs guides.

~~[BB:]~~ CC. “**Park**” means an area designated as a state park within the state parks system and that the division manages or owns.

~~[CC:]~~ DD. “**Park**” or “**parking**” means the leaving of a vehicle, camping unit or trailer, whether occupied or not, in a location, other than when engaged in loading or unloading.

~~[DD:]~~ EE. “**Park management and development plan**” means a plan used as a guide for expansion, services, programs and development for the park.

~~[EE:]~~ FF. “**Park support group**” means an organization as defined in ~~[NMSA 1978.]~~ Section 6-5A-1 NMSA 1978 or an organized group of individuals that volunteers time, services or funds to promote and support the division or an individual park and whose principal purpose as authorized by the division is to complement, contribute to and support, aid the function of or forward the division’s or park’s purposes.

~~[FF:]~~ GG. “**Person**” means an individual, partnership, firm, corporation, association, joint venture or other entity.

~~[GG:]~~ HH. “**Personal flotation device**” means a United States coast guard approved life preserver, buoyant vest, hybrid device, ring buoy or buoyant cushion.

~~[HH.]~~ II. “**Primitive site**” means a camping site that offers no facilities except a cleared area for camping. Primitive sites may have trash receptacles, chemical toilets or parking.

~~[H.]~~ JJ. “**Rally**” means a parking area or facility designated for group functions.

~~[JJ.]~~ KK. “**Receipts**” means consideration in money and in trade received from sales and charges for services.

~~[KK.]~~ LL. “**Regional manager**” means a division employee responsible for several parks within a region.

~~[LL.]~~ MM. “**Resource program**” means a division employee or employees responsible for the natural and cultural resource protection program.

~~[MM.]~~ NN. “**Sales and services**” means transactions by a concessionaire, or a concessionaire’s agents or employees, for which the concessionaire receives consideration in money or money’s worth in connection with the concession business operated pursuant to the concession contract.

~~[NN.]~~ OO. “**Secretary**” means the secretary of the department.

~~PP.~~ PP. “**Special event facility**” means an entire building or structure such as a visitor center, lodge, pavilion or group shelter, or an area designated by the superintendent.

~~[-OO.]~~ QQ. “**Special use permit**” means a permit the division has issued to ~~[a person, business entity, park support group or organized group to provide an event or activity within a park~~ Examples of special use events and activities include regattas, boat races, parades, races, fishing tournaments, exhibitions and educational activities] a person for a non-commercial activity or event within a park.

~~PP.]~~ RR. “**State park official**” means a division employee.

~~QQ.]~~ SS. “**State parks system**” means land and water in a park.

~~RR.]~~ TT. “**Superintendent**” means a division employee who is in charge of a specific park; which includes a park superintendent or park manager.

~~SS.]~~ UU. “**Vehicle**” means an automobile, car, van, sport-utility truck, pickup truck, motorcycle, wagon, buggy or similar device that is used or may be used to transport persons or property on a highway, except devices moved exclusively by human power.

~~TT.]~~ VV. “**Vending machine**” means a coin-operated beverage, snack or service machine subject to division approval.

WW. “**Visitor**” means a person who reserves park facilities or enters a park. This definition does not include department employees who are on duty, concessionaires or their employees operating their concession or on duty employees of an entity that owns the property where the park is located.

~~UU.]~~ XX. “**Wheelchair**” means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or both indoor and outdoor locomotion.

~~VV.]~~ YY. “**Working days**” means Monday through Friday, excluding state holidays.  
 [7-17-1967, 7-25-1972, 7-31-1979, 12-21-1989, 12-31-1989, 5-20-1992, 12-31-1996, 12-31-1998, 7-1-1999; 19.5.1.7 NMAC - Rn & A, 19 NMAC 5.1.7, 12/31/2002; A, 5/1/2004; A, 1/1/2008; A, 12/30/2010; A, 1/1/2013; A, XX/XX/201X]