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August 29, 2016

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Superintendent Sarah Creachbaum  
Olympic National Park – EVC Scoping  
600 East Park Avenue  
Port Angeles, WA 98362

Sent via: <http://parkplanning.nps.gov/EVCscoping>

Dear Superintendent Creachbaum,

The following are scoping comments from Wilderness Watch for the disposition of the Enchanted Valley Chalet (EVC) in the Olympic Wilderness of Olympic National Park. Wilderness Watch is a national wilderness conservation organization focused on the protection of the National Wilderness Preservation System, the system that includes the Olympic Wilderness.

Wilderness Watch submitted comments on the EA for the EVC in June of 2014, at which time we suggested that the National Park Service “allow the Olympic Wilderness to reclaim the site ‘by the natural processes of weathering and vegetative recovery’ and thereby improve the wilderness character of this Wilderness.” I will include these 2014 comments with this submission. Had the Park Service followed this option two years ago, of course, the agency would have saved a quarter-million dollars and we wouldn’t be back now repeating the process.

Wilderness Watch is pleased to see a broader range of alternatives offered for this latest EA, including alternatives that would not offend the Wilderness Act. Of the options presented in the most recent scoping notice, Wilderness Watch most strongly supports the option of Dismantling and Potential Removal and, under this alternative, Option B for complete dismantling of the structure and staging it in sorted piles for removal.

We support this option for the following reasons:

**1. The Wilderness Act prohibits structures and installations unless necessary to meet minimum requirements for administration of the area for the purpose of the Wilderness Act, and the Enchanted Valley Chalet does not meet this narrow exception.**

The overarching purpose of the Wilderness Act is to designate lands “for preservation and protection *in their natural condition*,” 16 U.S.C. § 1131(a) (emphasis added), and to accomplish this purpose, wilderness areas “shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment *as wilderness*, and so as to provide for the protection of these areas, the preservation of their wilderness character...” *Id.*; High Sierra Hikers Ass’n v. Blackwell, 390 F.3d 630,648 (9<sup>th</sup> Cir. 2004) (noting that “[t]he Wilderness Act states twice its overarching purpose” of preserving wilderness character).

The 1964 Wilderness Act (16 U.S.C. § 1131-1136) prohibits structures and installations in designated Wilderness. In the definition of wilderness, the Wilderness Act states: “An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, *without permanent improvements or human habitations...*” 16 U.S.C. § 1131(c) (emphasis added).

The Wilderness Act later repeats this prohibition on human structures and installations: “[T]here shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, *and no structure or installation* within any such area.” 16 U.S.C. § 1133(c) (emphasis added).

Thus the Wilderness Act is quite clear in its prohibitions against buildings and structures. The Wilderness Act provides only a very narrow exception to this prohibition.

The Wilderness Act specifically prohibits structures and motorized uses within wilderness unless “specifically provided for” by the Act or unless “necessary to meet minimum requirements for the administration of the area for the purpose of [the Wilderness Act].” 16 U.S.C. § 1133(c). The Enchanted Valley Chalet is not “specifically provided for” in the Wilderness Act or the designating legislation for the Olympic Wilderness, so if the National Park Service wants to retain this structure, it can only do so if the structure is “necessary to meet minimum requirements for the administration of the area for the purpose of [the Wilderness Act].”

The Enchanted Valley Chalet is not necessary to meet the Park Service’s minimum requirements for administering the Olympic Wilderness to preserve wilderness character—and the Scoping Letter makes no claim to the contrary—so Wilderness Watch strongly supports removal of the structure and requests that the Park Service fully analyze this alternative, including analyzing dismantling and removal methods that do not utilize other prohibited activities (e.g. motorized and helicopter use). If no such methods are available, we suggest that once the structure is dismantled, that the National Park Service consider burning as much of the wooden components as possible. Wilderness Watch would also support relocation of the Chalet so long as the relocation site is outside of the Wilderness and relocation methods comply with the Wilderness Act and preserve wilderness character.

## **2. The other alternatives contemplating retaining, permanently anchoring, or**

**relocating the Chalet to another area within the Wilderness do not preserve wilderness character.**

The Scoping Letter provides no information on how this structure meets the Act's narrow exception to the prohibition on structures, so alternatives contemplating retention of the structure in its current position (on recently added steel I-beams or with a newly constructed foundation) would violate the Wilderness Act. The "purpose and need" for the action merely states that the National Park Service wishes to reach a final disposition on the Chalet and have a plan in place for dealing with the structure should it once again be threatened by natural processes. These broad statements do not satisfy the Park Service's heavy burden if it wishes to retain this structure within the Wilderness.

Further, to the extent that the Park Service is indirectly relying upon the building's historical status as a rationale for retention, historical status likewise is not enough—on its own—to satisfy the Park Service's burden under the Wilderness Act. The Wilderness Act's reference to "historical use" does not eliminate the Act's specific prohibition on man-made structures, and the National Historic Preservation Act does not mandate any particular course of action—it merely denotes a process for considering various courses of action or non-action. Every court that has reviewed an agency decision to maintain or rebuild a structure in wilderness based on its historical status has found that the agency cannot rebuild the structure unless it meets the exception criteria in Section 1133(c) of the Wilderness Act, and every court reviewing such a decision has narrowly construed that exception language and found the agencies' decisions unlawful. See Olympic Park Assocs. v. Mainella, No. C04-5732FDB, 2005 WL 1871114, \*8-9 (W.D. Wash. Aug 1, 2005); Wilderness Watch v. Iwamoto, 853 F.Supp.2d 1063, 1075-77 (W.D. Wash. 2012); High Sierra Hikers Ass'n v. U.S. Forest Serv., 436 F.Supp.2d 1117, 1131, 1151 (E.D. Cal. 2006); see also Wilderness Watch v. U.S. Fish & Wildlife Serv., 629 F.3d 1024, 1036-38 (9th Cir. 2010) (discussing non-historic structures). Thus, even if the structure has historical value, the Park Service may retain the structure only if it is necessary to meet minimum requirements for administration of the area as wilderness.

Finally, it is clear from the prior emergency removal and from the current trajectory of the East Fork Quinault River that the Chalet will continue to be threatened by the river if left in the Enchanted Valley. The Scoping Letter admits that the chalet is located on an active floodplain and that "channel migration across the floodplain is frequent and unpredictable." It was moved 100 feet from its prior location in 2014 to prevent collapse into the river, but the river is once again approaching.<sup>1</sup> Any alternatives considering retention of the structure within the Enchanted Valley must disclose and analyze the reality that the highly active floodplain will continue to pose threats to this structure and most

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<sup>1</sup> See Attachment A, Tristan Baurick, Another Push to Save Enchanted Valley Chalet, Kitsap Sun (July 16, 2016), <http://www.kitsapsun.com/news/another-push-to-save-enchanted-valley-chalet-37b1ddda-88d2-7f84-e053-0100007f4ff4-387114011.html> (noting that since the 2014 move, "[e]rosion has only quickened, eating up to 60 feet during the winter of 2014 and another 10 feet last year" and in July 2016, "only 28 feet separated the riverbank from the chalet.").

certainly require ongoing management actions that conflict with the Wilderness Act and the preservation of wilderness character. Any alternative considering the relocation of the Chalet to another location within the Enchanted Valley but outside of the floodplain must disclose and analyze short-term and long-term impacts of the relocation to a new building site, including short- and long-term impacts to wilderness character and impacts from site-prep and concentrated visitor use surrounding the Chalet in a new location. Wilderness Watch strongly opposes such alternatives as they will result in ongoing harm to wilderness character and are fundamentally at odds with the overriding purpose of the Wilderness Act—to preserve an undeveloped area “retaining its primeval character and influence, without permanent improvements or human habitation,” 16 U.S.C. § 1131(c). The overriding purpose of the Wilderness Act is the preservation of wilderness, not the preservation of buildings.

Please keep Wilderness Watch on your public notification list for later steps for this project.

Sincerely,

A handwritten signature in dark ink that reads "Kevin Proescholdt". The signature is written in a cursive, flowing style.

Kevin Proescholdt  
Conservation Director