

March 8, 2023

North Cascades National Park Complex
810 State Route 20
Sedro-Woolley, WA 98284

RE: Backcountry Camp Modifications in North Cascades National Park Environmental Assessment

Sent via the Internet portal

Wilderness Watch is providing these comments on the Backcountry Camp Modifications in North Cascades National Park Environmental Assessment (EA) in the Stephen Mather Wilderness. Wilderness Watch is a national nonprofit wilderness conservation organization dedicated to the protection and proper stewardship of the National Wilderness Preservation System. We have serious concerns with the proposed action. The proposed action violates the Wilderness Act and the very essence of sound wilderness administration.

The two general locations are separated by many miles, each of which contain two or three separate projects. They don't fit together in a single EA. It is impossible to do site-specific analysis on such disparate proposals in one document.

Introduction

The EA and Minimum Requirements Analysis/Minimum Requirements Decision Guide (hereinafter MRA) treat the Wilderness Act as a procedural rather than a substantive law.ⁱ The most wilderness destructive option is chosen. The NPS's routine use of motorized equipment in any action in Wilderness, which the EA admits is the case, is an affront to Wilderness.

One difficulty in reviewing the EA is the lack of adequate maps of the proposals. The maps that have the largest scale (EA, pages 15, 16 and 19) have this caveat, "not to scale and for schematic purposes only." The other larger scale maps (pages 14 and 17) have no topographic contour lines to precisely locate features. Further the wilderness boundary is omitted, perhaps a Freudian slip on the lack of priority the NPS has to its duties to properly administer and keep Wilderness wild.

Failure to Protect Wilderness and Failure to Follow the Wilderness Act

The Wilderness Act contains a narrow exception to allow otherwise-prohibited activities—such as helicopter use, motorized equipment or placement/maintenance of installations—only where such activities are necessary to meet the minimum requirements for administration of an area for the purpose (singular) of the Wilderness Act. 16 U.S.C. § 1133(c). In other words, the exception applies only where the otherwise-prohibited activity will affirmatively advance the "'preservation and protection' of wilderness lands ... in their natural, untrammelled state." *Wilderness Soc'y v. U.S. Fish &*

Wildlife Serv., 353 F.3d 1051, 1061 (9th Cir. 2003) (en banc) (quoting 16 U.S.C. § 1131(a)). The Wilderness Act charges “each agency administering any area designated as wilderness [with the responsibility of] preserving the wilderness character of the area.” 16 U.S.C. § 1133(b).

The Wilderness Act requires the administering agency to demonstrate that the project as proposed is necessary to preserve the wilderness character of the area. Unless the National Park Service can make and support this demonstration in its analysis of the project, the project cannot proceed. *Wilderness Watch v. U.S. Fish & Wildlife Serv.*, 629 F.3d 1024, 1040 (9th Cir. 2010) (setting aside the agency’s authorization of new structures built by motorized means in Wilderness where the agency failed rationally to demonstrate that structures would advance wilderness preservation and a no less intrusive approach could achieve that goal).

The Ninth Circuit Court of Appeals decision in *High Sierra Hikers vs. Blackwell* made clear that preservation of wilderness character is paramount:

The Wilderness Act twice states its overarching purpose. In Section 1131(a) the Act states, “and [wilderness areas] shall be administered for the use and enjoyment of the American people in such a 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.” 16 U.S.C. § 1131(a). (emphasis in original omitted). Although the Act stresses the importance of wilderness areas as places for the public to enjoy, it simultaneously restricts their use in any way that would impair their future use as wilderness. This responsibility is reiterated in Section 1133(b), in which the administering agency is charged with preserving the wilderness character of the wilderness area.

The proposal is not the minimum necessary. The EA, at best, tacitly admits non-motorized options are viable and, at worst, dissembles the public in its explanation as why the NPS did not analyze a non-motorized option:

Use of only non-motorized tools in designated wilderness was considered and dismissed from detailed analysis in this EA but is considered in more detail in the MRA (Appendix C). While many construction tasks outlined in the proposed action could be accomplished without motorized tools, when the project is considered on balance with all the other trail maintenance needs in the wilderness, power tools are deemed to be the minimum tool for use in designated wilderness. Chainsaw and motorized tool use for the project work enables a limited number of trail crew members to keep all trails and designated camps in the Park Complex up to established standards. Not keeping trails to maintenance standards results in numerous short and long- term impacts to wilderness character that the NPS considers unacceptable.

EA at 20.

The following points summarize just how flawed the rejection of an alternative that upholds the letter and spirit of the Wilderness Act is:

- The NPS admits the work “could be accomplished without motorized tools” but then equivocates due to other needed trail projects, leading the reader to believe that perhaps some other trails may be maintained with non-motorized means. Yet, in the following paragraphs, it becomes clear every single trail and campsite project, regardless of how minor, would be done “with the same tools as proposed in Alternative I.” *Ibid.* Alternative I is the motorized alternative, including helicopter use.
- It is also clear that helicopters and other motorized is used for “routine trail and camp maintenance” even though it involves the use of 4(c) prohibitions. *Ibid.* (See also EA at 40). It is an abuse of the Wilderness if trail and campsite maintenance is routinely done by motorized means.ⁱⁱ Perhaps the NPS would benefit from training from Forest Service or Montana Conservation Corps trail crews who routinely do their work, including trail relocation, without motorized equipment, including helicopters.
- The MRA (EA page 55) points out the trail and campsites for the northern set of projects were washed out in 2003, 2006, and 2017. Why is it crucial that that this work be done this year, since it has been two decades since the first flood event? This suggests the agency should have done something, perhaps moving the trail and the campsite, a couple of decades ago. Poor planning on the part of the NPS is no excuse.
- The EA and MRA all suggest the need for motorized equipment and helicopters to expand campground capacity in the Bridge Creek area (southern group of projects). For example, see the EA at page 64. However, there is no alternative that would use a permit system for Pacific Crest Trail (PCT) through-hikers or decrease the number of PCT through-hikers, or work with the Forest Service on PCT through-hikers. This proposed action, by definition, can't be the minimum necessary without looking at options that don't violate the Wilderness.ⁱⁱⁱ
- The amount of helicopter use is not clearly disclosed. Page 28 suggests helicopter use may (or may not?) be required. The MRA part for the EA states that two to four flights would be needed for each of the two locations. What is the cumulative number? It could be anything from zero to eight.
- The NPS has increased funding for this kind of work through the infrastructure legislation. As such, the concern over inadequate number of work crews seems misplaced.

The MRA on page 82 seems to not understand what trammeling is and seems to erroneously conflate it with trampling. The idea that doing something with traditional skills would trammel an area misses the point.

The bigger problem with the MRA is that it is designed to reach a predetermined conclusion. For example, the MRA would have us believe that in addition to the campsite in the Bridge Creek area, gouging out new tent pads and building new campsite structures is less natural than just keeping the existing sites. That is beyond reason.

Any notion of providing for solitude and primitive and unconfined recreation through assigned sites with more than one party is not logical. While assigned sites, in rare instances, might be justified to prevent resource damage – even then, assigned sites are indicative of the failure of an agency to manage recreation use within the carrying capacity of the land. They detract from primitive and unconfined recreation and outstanding opportunities for solitude. If assigned sites are to be required, then minimizing structures is key. Yet, the MRA leads us to believe otherwise.

NEPA

The need for the proposal is not demonstrated. The EA (Appendix A, visitor use data, EA pages 45 and 46) clearly shows there is no need for new campsites. The sites are rarely full. For example, Bridge Creek Hiker camp was full two percent of the time.

The MRA is no substitute for NEPA, yet the EA (page 20) erroneously suggests otherwise. The failure to look at the only legal alternative, based upon the MRA's skewed analysis, is astounding.

The EA proposes to increase visitor numbers rather than manage visitor numbers. Increasing use is an issue that should be addressed and even the EA hints that it should be addressed. Nonetheless, the EA evades the issue of increasing use, which supposedly necessitates heavy-handed use of structures and motorized equipment for camp construction, rather than considering viable options. This kind of fragmentation evades a real analysis of what is the minimum necessary.

The use of motorized equipment and the construction of permanent structures in Wilderness are actions that require the preparation of an EIS. These are not normal actions for Wilderness, nor should they be. The very narrow exception for this kind of use is governed by section 4(c) of the Wilderness Act.

The failure to locate the proposed campsites in Brush Creek also fails NEPA requirements for site-specific analysis. It is beyond the pale that the MRA suggests that unrecorded cultural sites could be damaged under other options when the location of some campsites for the proposed action has not been determined.

Summary

The EA and MRA don't truly try to minimize the use of structures and motorized equipment. Rather the EA and MRA engage in a gross distortion of the Wilderness Act to require structures and motorized equipment, for the convenience of the agency and to accommodate more use, in spite of visitor data that suggest it is not needed. That is hardly the minimum necessary.

Sincerely,

Kevin Proescholdt
Conservation Director

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The critique of wilderness character monitoring by wilderness professionals, Cole et al 2015., details the problems with the MRA process and how the NPS has decided to define it. A copy of this was sent to your office by Wilderness Watch on July 13, 2020.

ii The EA states on page 21, "In summer and fall 2022 there were 128 helicopter landings and 33 longline deliveries in the Chilliwack River drainage including Brush Creek, primarily related to wildfire management and damage assessment. This is extremely high use because of the fire, normally there would be none to a few helicopter landings/longline delivery in the area for tasks related to trail maintenance and radio repeater repair (at Copper Lookout)." This admission should be an embarrassment but it would appear the NPS is so inured to requirements of the Wilderness Act and proper wilderness administration, this seems routine. Even a few helicopter landings for routine work is proof the NPS routinely fails in its duties to abide by the Wilderness Act.

Further, the MRA portion of EA is somewhat confusing in that it claims on page 73 helicopters won't be used for routine trail maintenance for this project.

iii The issue of the campsites deserves even more attention. In both instances, the construction of tent pads using motorized tools is certainly in excess of the minimum necessary. If structures are needed, signing can show where the tent locations are found on the ground. The Park Service in the recommended wilderness of Yellowstone National Park does not construct tent pads. Rather the small signs indicate the assigned campsites. While we also dispute the need for toilets in the Wilderness—Yellowstone National Park has none in the backcountry—why couldn't they be hauled in by stock and built on site? The Forest Service packed in a bridge that spanned well over a hundred feet in the Bob Marshall Wilderness. Why are bear boxes needed when a simple wood pole suspended between two trees suffice as is done elsewhere? The same goes for the constructed campsites preferred by the NPS in this park versus the more primitive sites in Yellowstone's recommended wilderness. In any case, assigned and constructed campsites are usually less in keeping with proper wilderness administration and stewardship than permit systems based on carrying capacity which allow the visitor to camp where they wish.