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Comments: May 31, 2024

NATIONAL PARK SERVICE
Point Reyes National Seashore
1 Bear Valley Road
Point Reyes Station, CA 94956
Department of the Interior Region 10

Subject: Tomales Point Area Plan EA Comments by Wilderness Watch

To Whom It May Concern,

Wilderness Watch thanks the National Park Service for its proposed Alternative B in the Environmental Assessment, which would move stewardship of the Tomales Point area of the Phillip Burton Wilderness closer to compliance with the Wilderness Act.

We believe, however, that Alternative B still needs several adjustments for the Tomales Point Area Plan to meet the strict requirements of Wilderness Act as it relates to ensuring that any future actions will improve and not degrade wilderness character and meet other restrictions. See Section 2(c) of the Wilderness Act ("an area where the earth and its community of life are untrammelled by man" ... "an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which [] generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable"); see also Section 4(c) ("there shall be ... no use of motor vehicles, motorized equipment, ... and no structure or installation within any such area.")

Clearly, Alternatives A & C do not comply with Sections 2(c) and 4(c) of the Wilderness Act, which was acknowledged by Park Service staff during its May 22, 2024, public informational session. Among others, these inconsistencies include:

- The elk fence, which unnaturally restricts the Tomales Point elk herd to the Wilderness, not allowing the elk to naturally find sources of water and forage beyond the fence in years of drought;
- The elk fence even makes an incursion into the Wilderness as a structure or installation at its western extent, which infringes on its undeveloped character;
- The continued maintenance of wildlife enclosures within the Wilderness, which are structures or installations that infringe on its undeveloped character;
- The presence of water tanks, troughs, and mineral licks, the maintenance of which trammels the Wilderness by providing artificial and unnatural support to the elk, violates the law's prohibition on motor vehicles, and infringes on the undeveloped character of the area;
- Alt. C would also violate the Wilderness Act with its proposed improvement of water sources for elk, which would adversely affect the untrammled, natural, and undeveloped characteristics of Wilderness, as acknowledged by Dave Press at the recent public information session.

We applaud the Park Service for eliminating all of these listed concerns in Alternative B, except that the EA does not clearly address several other concerns that relate to Wilderness. We suggest the following adjustments:

1. Remove the PG&E Power Line – It is unclear whether the proposed action includes the removal of the PG&E power line from the Wilderness. While the document hints at removal under Alternative A, it does not explicitly state that the power line will be removed under Alternative B or C. The power line is a structure or installation, which infringes on the undeveloped character of the Wilderness and should be removed from the Wilderness. We urge the Park Service to explicitly state that the PG&E power line will be removed under Alternative B and its preferred action.

2. Change Prescribed Burning to Wildland Fire Use – The use of prescribed burning in the Wilderness violates the untrammled and natural characteristics under Section 2(c) because it would implement managers' "desired conditions" rather than allowing the Wilderness and its community of life to be "affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable"

Interestingly, at the public information session, NPS staff made this exact point with regard to the development of water resources under Alternative C. That reasoning applies similarly to the use of prescribed burning:

"This relates to Park Service policy and our mission around protecting natural resources and natural processes. So it would be contrary to Park Service policy to essentially manipulate the systems out there to provide better access to water for wildlife."

Dave Press (Transcription from May 22, 2024, Oral Presentation)

While the reason provided in the EA for prescribed burning initially includes the "potential implementation of small research burns associated with efforts to restore native species richness and density and community response by plant species of special concern, as well as response of host plant for Myrtle's silverspot butterfly," the reasoning also suggest that "prescribed burning may be expanded to increase habitat and forage for tule elk." EA, p. 10.

This reasoning directly contradicts the statement made by Dave Press; and similar to building out water resources prescribed burning would be contrary to Park Service policy and its mission around protecting natural resources and processes, and contrary to its policy to not manipulate the systems to provide better access to water for wildlife.

Not only would prescribed burning be inconsistent with Park Service policies, it would also violate the Wilderness Act under Section 2(c).

Just as other Park Service units are wrestling with their desire to manipulate vegetation in Wilderness in pursuit of "desired conditions" rather than "natural conditions," Point Reyes National Seashore should temper its plan and avoid trammeling and pursuing desired solutions that are man-made and therefore literally "unnatural."

Much of the problem stems from incorrectly perceived tensions between the terms

"natural" and "untrammeled" in the Wilderness Act. Such an interpretation allows agencies to view "natural" as a set of conditions existing at some fixed point in time, and when there is a deviation from those conditions, the agencies feel compelled to actively manipulate conditions (trammel them) to "restore" whatever prior conditions the agency has deemed "natural" for the area. This is likely a product of a long-ingrained agency history of modifying public lands to achieve "desired conditions," an idea laden with value bias even in the best of times. Measuring natural conditions with a tiny yardstick necessarily shifts the focus to human preference. Throw climate change and all of its uncertainties into the mix, and the increasing urge to actively maintain static conditions becomes all the more problematic.

Further illustrating the problem, oftentimes agency managers don't agree on the past time-point for demonstrating what is "natural" for the area. As an example, the Forest Service, in conjunction with the National Park Service, is eradicating an "exotic mountain goat population" on the Olympic Peninsula due to "adverse impacts on the natural quality of designated wilderness." Mountain goats were introduced in the 1920s—well before wilderness designations in the 1980s—but the Park Service and Forest Service do not consider them part of natural wilderness conditions.

In another example, the Park Service relocated wolves to an island in Michigan because "[p]redation on the island has been minimal over the last five years due to the decreasing number of wolves on the island," and the Park Service "has observed changes in the ecosystem as a result of increased herbivory from the growing moose population." Wolves did not exist on the island until the 1950s and many of them were choosing to leave the island when ice bridges formed to the mainland. Nonetheless, the Park Service worried that the increased herbivory could accelerate vegetative changes already occurring as a result of climate change and reasoned that "introducing wolves immediately would re-establish a top-down, predator influenced system, thus decreasing herbivory and allowing forest succession to return to a historic trajectory." The Park Service noted that under the no-action alternative, "the island ecosystem functions would continue to change, from the past predator influenced ecosystem, to an ecosystem primarily influenced by physical conditions and vegetation community structure[.]" It also admitted that "[t]here is debate among scientists as to which is most viable or preferable" and admits "[w]hether this is beneficial or adverse for the system depends on whether there is a preference for an ecosystem more influenced by predation or an ecosystem more influenced by bottom-up controls." (emphasis added).

These issues are illustrative of agency tendency to manage for "desired conditions" and the tendency to conflate "desired conditions" with "natural conditions."

The Wilderness Act sought to remove agency bias and influence from the equation. Put another way:

"In contrast to other public land management statutes, which typically authorize agencies to consider and weigh diverse values through exercise of their scientific and policy expertise, the Wilderness Act required certain areas to be managed predominantly for one use: wilderness preservation.... Unlike all other land-management statutes, the Wilderness Act's basic purpose was not to delegate authority to expert agencies, but rather, to exclude certain lands from the application of the agencies' specialized expertise, to restrain agency flexibility, and to protect (with limited, narrow exceptions) certain lands from the impact of the sort of policy choices land managers typically make."

Sean Kammer, Coming to Terms with Wilderness: The Wilderness Act and the Problem of Wildlife Restoration, 43 ENVTL. L. 83, 100-101 (2013).

That Wildernesses have been affected by intentional human manipulation in the past (e.g. vegetative manipulation, development, fire suppression, etc.) or are affected by unintentional human influence now and will continue to be in the future (e.g. climate change) does not change how they are to be administered once designated as Wilderness. The drafters of the Wilderness Act understood:

"[I]t would be impractical and unwise to require that lands be completely untrammeled prior to being designated, but [the drafters] fully expected wilderness areas, once designated, to be untrammeled into the future."

Id. at 106-107.

The statute, when read as a coherent whole, supports this position. The canons of statutory construction dictate that the term “natural conditions” be read in harmony with the term “untrammeled.” See *United States v. Powell*, 6 F.3d 611, 614 (9th Cir. 1993) (“It is a basic rule of statutory construction that one provision should not be interpreted in a way which is internally contradictory or that renders other provisions of the same statute inconsistent or meaningless”); see also *Wilderness Society v. U.S. Fish Wildlife*, 353 F.3d 1051, 1060 (9th Cir. 2003) (“a fundamental canon that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme”); *Kmart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (“In ascertaining the plain meaning of [a] statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.”); *United States v. Lewis*, 67 F.3d 225, 228-29 (9th Cir. 1995) (“Particular phrases must be construed in light of the overall purpose and structure of the whole statutory scheme.”). In other words, a statute should be construed “as a symmetrical and coherent regulatory scheme,” *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569 (1995), and a “harmonious whole,” *Fed. Trade Comm’n v. Mandel Brothers, Inc.*, 359 U.S. 385, 389 (1959).

The Wilderness Act, read as an internally consistent document as required by law, does not pit the terms “untrammeled” and “natural” against one another. “A wilderness, in contrast with those areas where man and his own works dominate the landscape,” is statutorily defined as “an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain” and an area “retaining its primeval character and influence, ... which is protected and managed so as to preserve its natural conditions....” 16 U.S.C. § 1131(c). Thus, what is natural for the area necessarily flows from what is untrammeled. Indeed, this is the common meaning of the term “natural.” See *Black’s Law Dictionary* 1026 (6th ed. 1990) (natural means wild, formed by nature, and not artificially made or cultivated); see also *Webster’s New International Dictionary of the English Language* (1960) (defining “natural” as 1) “Of, from, or by, birth; natural-born;” 5) “In accordance with, or determined by, nature;” and 9) “Not artificial”). It is the result of a process, not a static end point. Otherwise, the default position will always be to trammel Wilderness to comport with a land manager’s notion of what is natural, even though various complicated factors—many of which we do not fully understand and cannot control—are always necessarily at play in shifting natural conditions.

Here, the Park Service is conflating “desired conditions” with “natural conditions” in this case and creating a false conflict to justify prescribed burning in Wilderness. Ultimately, “whatever ‘wilderness character’ means, it cannot be something that depends upon the active manipulations of humans.” Sean Kammer, *Coming to Terms with Wilderness: The Wilderness Act and the Problem of Wildlife Restoration*, 43 ENVTL. L. 83, 86 (2013). Restraint and humility are important values underpinning the Wilderness Act, and “[a]nd managers should exercise this same humility in dealing with wilderness areas, lest they lead us down a path to where there are no longer any places that are truly ‘wild,’ no places beyond the control of human institutions and cultural imperatives.” Id.

The Keeping it Wild 2 protocol acknowledges the importance of protecting wilderness character as a process rather than an outcome:

“Lucas (1973, p. 151) stated, ‘If ecological processes operate essentially uncontrolled within the Wilderness frame of reference, the results, whatever they might be, are desirable by definition. The object is not to stop change, nor to recreate conditions as of some arbitrary historical date, nor to strive for favorable change in big game populations or in scenic vistas. The object is to let nature ‘roll the dice’ and accept the results with interest and scientific curiosity.’”

Landres et al., *Keeping It Wild 2: An Updated Interagency Strategy to Monitor Trends in Wilderness Character Across the National Wilderness Preservation System*, 33 (2015).

The Park Service has the following direction (Lake Clark as the example) regarding

wildlife:

"The park resists wildlife manipulation, and wildlife habitat in the wilderness varies naturally based on complex interactions between recent physical (e.g., precipitation, temperature) and biological (e.g., insect outbreaks, plant disease) factors. Wildlife is free to move through the landscape and populations such as caribou that currently range outside the park are free to return and populate the area as before."

Keeping it Wild in the National Park Service: A User Guide to Integrating Wilderness Character into Park Planning, Management, and Monitoring. Page 164; see also NPS's Wilderness Stewardship Plan Handbook: Planning to Preserve Wilderness Character, which states on page 90 (appendix 4.1):

"Relationship to wilderness character—Wildlife is addressed by several indicators under the natural quality, for example, the indicator "Plant and animal species and communities" and some aspects of wildlife habitat may fit under the "Physical resources" and "Biophysical processes" indicators. Many wildlife management actions are also relevant to the untrammeled quality under the indicators "Actions authorized by the federal land manager that manipulate the biophysical environment" and "Actions not authorized by the federal land manager that manipulate the biophysical environment."

Instead of continuing down the ill-advised road of manipulating the Wilderness to achieve "desired" rather than "natural" conditions, we suggest that the Park Service adjust its proposed burning proposal to rely more specifically on natural fire to maintain and restore ecosystems, and implement a wildfire use policy based on natural ignitions in the Phillip Burton Wilderness for ecological restoration.

3. Prohibit the Use of Herbicides in Wilderness – For the same reasons, the use of herbicides to manipulate vegetation, including invasive species, should be prohibited as a violation of Wilderness character. Manual removal of invasive species should use the minimal tool, which should be limited by hand or manual tools, but not motorized equipment such as trimmers or chainsaws.

4. Spell Out the Specifics of Traditional Ecological Knowledge (TEK), their Effectiveness, and their Potential Use to Mitigate Significant Effects – The use of TEK is mentioned in the EA as it relates to prescribed burning, but it is not defined or explained, and the EA does not describe how its use is justified, other than the Park Service's coordination with the enhancement of tribal resources and values under the agreement with the tribe. Can the Park Service provide the public with specific details about what TEK means and what it entails, and specifically as the Coast Miwok would apply or would have applied their knowledge? Without a detailed list or specificity of how TEK would be applied to assist the prescribed burning, the environmental analysis is incomplete and application of TEK would be arbitrary and capricious.

During the public information session, Park Service staff stated that a Park Service website describes TEK as "the ongoing accumulation of knowledge, practice, and belief about relationships between living beings in a specific ecosystem that is acquired by indigenous people over hundreds or thousands of years through direct contact with the environment, handed down through generations, and used for life-sustaining ways." See <https://www.nps.gov/subjects/tek/description.htm>. Staff explained:

"With regard to the Tomales Bay Area Plan, you know as we talked about, the Federated Indians of Graton Rancheria [FIGR] have participated in this planning effort under our general agreement and also through a cooperating agency agreement. And their input on the plan has also been informed by their traditional knowledge of the lands and resources that are know within the seashore. So TEK will also play a role as the programmatic elements of this plan are implemented. So, for example, if prescribed fire is put on the landscape at Tomales Point, as envisioned under the preferred alternative, the Tribe may shape the burn plan, just by way of an example, in terms of areas that should or should not be burned, or at what intensity, frequency, and so on, based on their traditional knowledge and relationship with the affected resources. So that's just one example that I think just illustrates how this could play out in that specific example."

Paul Engel (?) (Transcription from May 22, 2024, Oral Presentation).

As stated, this was only one example, and the Park Service has a duty to disclose the use of TEK and any other examples in its environmental analysis. While in no way do we mean to discourage or belittle its use, in essence the use of TEK is similar to the use of best management practices (BMPs) or mitigation measures, for which the Park Service has a duty to disclose their effectiveness as well as their means to reduce significant effects, as in this case, to resources of value to the park and tribe, and to ensure the protection of Wilderness character. See Nat'l Parks Conserv. Ass'n v. Babbitt, 241 F.3d 722, 734 (9th Cir. 2001) ("[A] perfunctory description or a mere listing of mitigation measures, without supporting analytical data, is insufficient to support a FONSI."). When an agency offers mitigation measures to lower a project's impacts below significance, it must include an assessment of whether those measures can be effective. Neighbors of Cuddy Mtn. v. U.S. Forest Serv., 137 F.3d 1372, 1381 (9th Cir. 1998); S. Fork Band Council of W. Shoshone v. U.S. Dep't of Interior, 588 F.3d 718, 727 (9th Cir. 2009) (agency must provide "sufficient detail to ensure that environmental consequences have been fairly evaluated").

While the use of TEK may be appropriate in other areas of the Park, in Wilderness it must also be consistent with protecting the wilderness characteristics under Section 2(c) of the Wilderness Act. Generally speaking, the use of TEK to support prescribed burning does not negate the fact that the Park Service's proposal for burning amounts to trammeling, in this case for the purpose of vegetation manipulation based on a manager's or a plan's stated desired conditions for resource values other than protecting Wilderness character.

Along those lines, the use of FIGR's general agreement with the Park Service must also be consistent with preserving Wilderness character under Section 2(c), including the protection of untrammelled, natural, and undeveloped Wilderness characteristics, and it must also be consistent with Section 4(c)'s prohibitions on the use of motorized vehicles, equipment, and mechanical methods.

5. Mixed Results from Prescribed Burning and Invasive Species Require Further Analysis – It should be noted that Dave Press' other statements at the public information session, that the Park Service has had mixed results from prescribed burning due to timing difficulties, air quality concerns, and an inability to provide a consistent application, should be red flags of additional environmental concern. Most concerning is the fact that burned areas have been invaded by non-target invasive species, which could result in a significant effect on both valued resources and Wilderness character. This suggests that the Park Service's use of prescribed burning could have significant environmental effects, which have not been disclosed in the EA. Moreover, there are no mitigation measures or BMPs suggested in the EA that address the issue and would make the Park Service's FONSI in support of its use of prescribed burning arbitrary and capricious.

OTHER ISSUES AND FACTUAL CORRECTIONS NEEDED

6. Minimum Requirements Analysis (MRA) for Removal of Tanks, Troughs, Exclosures, and the Fence is Needed – The EA is inadequate without a discussion of how the water tanks, troughs, exclosures, and fence removal would take place. Please include an MRA as a part of the analysis of Alternative B. Should the NPS choose at the outset to forego the use of motor vehicles or other prohibited uses in removing these structures, and Wilderness Watch encourages it to do just that, then there is no need to prepare an MRA or any other sort of minimum requirement analysis.

7. Provide Sufficient Detail about Ranching Impacts – Although the Park Service has stated correctly in the public information session that the removal of the elk fence would have little, if any, effect on adjacent ranching operations based on its implementation of elk management of the Limantour and Drakes herds, the Park Service should elaborate and provide a more robust analysis regarding impacts on adjacent ranching, even if the analysis shows that the effects would be insignificant. That way the issue is put to rest and does not become a legal concern due to the Park Service's insufficient response under NEPA.

8. Correct Factual Error Regarding Coast Miwok v. FIGR – The EA at p. 2 should be corrected to state that Point Reyes is the ancestral home of the Coast Miwok, and not FIGR. We suggest the following instead, to recognize both: "The lands in the Seashore, including those within the planning area, are the ancestral

territory of the Coast Miwok, now represented by the Federated Indians of Graton Rancheria (FIGR or Tribe)," This is consistent with both the FIGR agreement and the park's foundational document reflecting this ancestral heritage:

"the Tribe, representing Coast Miwok" (FIGR agreement, p. 1)

"More than 120 archeological sites representing Coast Miwok history and culture have been identified within the park and have yielded some of the most significant information on American Indian history in the San Francisco Bay region." (2020a, p. 4)

9. Correct Language to "Stewardship" from "Management" of Wilderness – On EA p. 3 under goals and objectives, we request that the Park Service change "wilderness management" to "wilderness stewardship" in accordance with the more appropriate usage suggested in the Park Service's Wilderness Policy Manual DO #41.

On behalf of Wilderness Watch,

René Voss
Member, Board of Directors

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