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9 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 **OLYMPIC PARK ASSOCIATES,**
11 **WILDERNESS WATCH, and PUBLIC**
12 **EMPLOYEES FOR ENVIRONMENTAL**
RESPONSIBILITY,

13 Plaintiffs,

14 v.

15 **FRAN P. MAINELLA, in her official capacity**
16 **as Director of the National Park Service, an**
17 **agency of the United States Department of the**
18 **Interior; JONATHAN B. JARVIS, NPS**
Regional Director for the Pacific West
Region; and WILLIAM G. LAITNER,
Superintendent of Olympic National Park,

19 Defendants.

No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

20
21 Plaintiffs Olympic Park Associates, Wilderness Watch, and Public Employees for
22 Environmental Responsibility (PEER) bring this challenge to Olympic National Park's
23 decision to transport newly constructed shelters by helicopter and install them in a wilderness
24 area within Olympic National Park (ONP). Plaintiffs' claims are as follows:

25 **JURISDICTION AND VENUE**

26 1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1346, and 2201, as
27 this case presents cases and controversies under the Wilderness Act, 16 U.S.C. § 1131-1136;

1 the National Environmental Policy Act, 42 U.S.C. §§ 4321, 4331-4332 (NEPA); and the
2 Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706.

3 2. Venue is proper in the United States District Court for the Western District of
4 Washington, pursuant to 28 U.S.C. §§ 1391(e)(2), because a defendant in the action resides in
5 the district and because a substantial part of the events giving rise to the claim occurred there.
6 The case is being filed in the Tacoma Division of the Western District of Washington,
7 pursuant to Local Civil Rule 5(e), because ONP lies within the geographical area covered by
8 the Tacoma Division.

9 **PARTIES**

10 3. Olympic Park Associates is a nonprofit corporation organized under the laws
11 of Washington, with its principal office at 12730 9th Avenue N.W., Seattle, Washington
12 98177. Olympic Park Associates was formed in 1948 for the specific purpose of preserving
13 the wilderness and integrity of ONP. Olympic Park Associates' 300 members are dedicated
14 to protecting and restoring the wilderness within ONP. Most members live within a half-
15 day's drive of ONP and spend significant time among the park's matchless old-growth forests,
16 sub-alpine meadows, native wildlife, and spectacular glacier-clad mountains. Members
17 frequently visit the Olympic Wilderness to hike, camp, climb, cross-country ski, snowshoe,
18 and enjoy the peace and solitude of its pristine wildlands. Members take an active interest in
19 wilderness management. They have supported wilderness protection for the park and
20 ecosystem enhancement through Elwha River salmon restoration, wolf reintroduction, and
21 restoring other native species and ecosystem functions. They have opposed developments
22 that would degrade wilderness character. They submitted written comments on the shelter
23 proposal being challenged in this case and routinely participate actively in governmental
24 decision-making processes with respect to the management of the Olympic Wilderness. The
25 interests of Olympic Park Associates and its members will be harmed if ONP constructs
26 permanent shelters within the wilderness area and will be harmed further by the park's
27 construction activities, including the use of helicopters and power tools.

1 4. Wilderness Watch is a nonprofit charitable organization incorporated in the
2 state of Montana in 1989 and has its principal offices at 208 E. Main St., Missoula, Montana
3 59802. Wilderness Watch was formed to ensure the preservation and enhancement of public
4 lands in the United States designated by Congress as Wilderness Areas and as Wild and Scenic
5 Rivers. Wilderness Watch has a chapter in the state of Washington. Wilderness Watch's
6 members use and enjoy the natural resources of Olympic National Park and the Olympic
7 Wilderness. Wilderness Watch submitted written comments on the shelter proposal being
8 challenged in this case. Wilderness Watch and its members will be harmed if Olympic
9 National Park constructs permanent shelters within the wilderness area and will be further
10 harmed by the park's construction activities, including the use of helicopters and power tools.

11 5. Plaintiff Public Employees for Environmental Responsibility (PEER) is a
12 national nonprofit charitable organization of local, state, and federal resource professionals.
13 PEER was incorporated in the District of Columbia in 1992 and has its principal offices at
14 2001 S Street N.W., Suite 570, Washington, D.C. PEER has a field office in Olympia,
15 Washington, that was opened in 2000. PEER was founded to monitor natural resource
16 management agencies and to organize a broad base of support among employees within local,
17 state, and federal resource management agencies. Members of PEER include public employees
18 as well as other citizens. PEER's members have enjoyed, and continue to enjoy, the Olympic
19 Wilderness and its characteristics as wildlands. One hundred of PEER's members live within a
20 half-day's drive of Olympic National Park. PEER submitted written comments on the shelter
21 proposal being challenged in this case. The interests of PEER and its members will be harmed
22 if Olympic National Park constructs permanent shelters within the wilderness area and will be
23 further harmed by the park's construction activities, including the use of helicopters and
24 power tools.

25 6. Defendant Fran P. Mainella is the Director of the National Park Service (NPS)
26 and is sued in her official capacity. NPS is the agency responsible for implementing the
27 Wilderness Act and NEPA in the nation's national parks.

1 **B. ONP Decision To Replace Shelters**

2 12. In November 2002, ONP began a scoping process seeking input from staff and
3 the public relating to its proposal to replace the shelters. ONP decided not to prepare an
4 Environmental Impact Statement (EIS) but instead, in January 2004, issued a more limited
5 Environmental Assessment (EA). A copy of the EA (the Shelter EA) is attached as Exhibit B.

6 13. The new shelters were built before the scoping process for the Shelter EA was
7 begun. The cost was significant, in excess of \$80,000. At the time the EA was issued, ONP
8 had already decided to replace the shelters, and the only question was how. As the EA stated:
9 “In this case, the Superintendent of Olympic National Park (ONP) and the Regional Director
10 are faced with a decision of how to restore two historic shelters to their original locations at
11 Home Sweet Home and Low Divide in the Park’s wilderness backcountry.” Despite the fact
12 that the Shelter EA purported to consider the alternative of not replacing the shelters, and
13 thereby letting the wilderness return to its natural condition, ONP had already spent the
14 money to build the structures. Its only question was how, instead of whether, to replace the
15 shelters. The building of new shelters before alternatives were analyzed essentially rendered
16 moot any alternatives except for transporting the new shelters via helicopter. The entire
17 NEPA review was a post hoc rationalization of a decision that had already been made.

18 14. Although it received numerous comments from the public objecting to replacing
19 the shelters, ONP followed its pre-determined course and decided to replace them. On
20 September 30, 2004, it issued a FONSI, selecting alternative B-1 (building new shelters and
21 transporting them by helicopter into the wilderness) which, according to the FONSI, was “the
22 same as what was described in the EA without modification.” Surprisingly, the FONSI chose
23 alternative B-1 as the “environmentally preferred alternative” rather than alternative A, which
24 would have removed all remnants of the shelters and returned the wilderness to its wild state.
25 The FONSI states: “While alternative A would result in less impacts to natural resources, it
26 would result in moderate to major adverse impacts to cultural/historic resources, and this
27 alternative would not aid in reducing risk to visitor health and safety by providing shelter in

1 times of emergency.” Installing new shelters in a wilderness area was “environmentally
2 preferred” over leaving the environment as nature made it when the shelters were destroyed by
3 heavy snowstorms.

4 C. ONP’s Lack of Management Plans

5 15. NPS regulations emphasize the importance of planning in order to “define
6 which types of resource conditions, visitor experiences, and management actions will best
7 achieve the mandate to preserve resources unimpaired for the enjoyment of future
8 generations.” *NPS Management Policies*, § 2 Introduction (2001). Two significant
9 management documents that should guide ONP’s decision on the Home Sweet Home and Low
10 Divide shelters do not exist.

11 16. NPS regulations require that all parks prepare and maintain a General
12 Management Plan (GMP). *Id.* at § 2.3.1. “The purpose of each GMP will be to ensure that
13 the park has a clearly defined direction for resource preservation and visitor use.”

14 The [GMP] will consider the park in its full ecological, scenic
15 and cultural contexts as a unit of the national park system and
16 as part of a surrounding region. The GMP will also establish a
17 common management direction for all park divisions and
18 districts. This integration will help avoid inadvertently creating
19 new problems in one area while attempting to solve problems
20 in another.

21 *Id.*

22 Within the broad parameters of the park mission and mission
23 goals, various approaches to park resource preservation, use,
24 and development may be possible, some of which may
25 represent competing demands for the same resource base. The
26 GMP will be the principal tool for resolving such issues.

27 *Id.* at § 2.3.1.7.

28 17. Where a park contains wilderness areas, NPS regulations require that a
Wilderness Management Plan be developed.

The superintendent of each park containing wilderness
resources will develop and maintain a wilderness management
plan or equivalent planning document to guide the preservation,
management, and use of these resources. The wilderness
management plan will identify desired future conditions, as well

1 as establish indicators, standards, conditions, and thresholds
2 beyond which management actions will be taken to reduce
3 human impacts to wilderness resources.

4 *Id.* at § 6.3.4.2.s

5 18. ONP is approximately 95% wilderness, yet it does not have a General
6 Management Plan or a Wilderness Management Plan. Congress established the Olympic
7 Wilderness in 1988, and Wilderness Management Plans are required to be completed every ten
8 years. *See* NPS Director's Order #41: Wilderness Preservation and Management (1999)
9 (Order #41). As the Shelter EA describes, a series of Backcountry Management Plans
10 (BMPs) were developed "while awaiting completion of a Wilderness Management Plan, which
11 will be prepared in conjunction with the new General Management Plan (2005)." EA § 1.5.5.
12 It now appears that the Wilderness Management Plan will not be developed until after the
13 General Management Plan, thereby further delaying its completion.

14 19. The first Backcountry Management Plan, which was developed in 1974, was
15 amended in 1980 and 1992. *Id.* While the Backcountry Management Plans address some
16 issues related to wilderness, they do not meet the minimum requirements of a Wilderness Plan.
17 *See* National Park Service Reference Manual RM 41: Wilderness Preservation and
18 Management, Appendix D (July 1999) (RM #41). Moreover, the Backcountry Management
19 Plans were not developed by reference to a GMP because ONP has no GMP. NPS
20 regulations state: "Wilderness management plans must be coordinated and integrated with
21 other park planning documents (General Management Plan, the park's Strategic Plan/Annual
22 Performance Plan, Facility Management Plans, Fire Management Plan, etc.) to ensure
23 consistency across park management programs." Order #41.

24 20. The shelter plan, along with its EA and FONSI, were therefore developed in a
25 vacuum, without the benefit of adequate planning for the Olympic Wilderness or overall
26 planning for ONP.
27

1
2 **FIRST CLAIM FOR RELIEF**

3 **VIOLATION OF THE WILDERNESS ACT OF 1964**

4 21. Plaintiffs incorporate herein by reference paragraphs 1-20.

5 22. Congress enacted the Wilderness Act in 1964 to “establish a national
6 Wilderness Preservation System for the permanent good of the whole people” 16 U.S.C.
7 § 1131 (a). Congress intended that the Act would secure for present and future generations of
8 Americans an “enduring resource of wilderness” by creating areas that “shall be administered
9 for the use and enjoyment of the American people in such a manner as to leave them
10 unimpaired for future use and enjoyment as wilderness” *Id.*

11 **A. ONP’s Shelter Plan Fails to Preserve the Area’s Wilderness Character**
12 **As Required by Sections 4(b) and 2(c) of the Wilderness Act**

13 23. The Wilderness Act defines “wilderness” as:

14 [A]n area where the earth and its community of life are
15 untrammled by man, where man himself is a visitor and does
16 not remain. An area of wilderness is further defined to
17 mean . . . an area of undeveloped federal land retaining its
18 primeval character and influence, without permanent
19 improvements or human habitation, which is protected and
20 managed so as to preserve its natural conditions and which
21 (1) generally appears to have been affected primarily by the
forces of nature, with the imprint of man’s work substantially
unnoticeable; (2) has outstanding opportunities for solitude or a
primitive and unconfined type of recreation; (3) has at least five
thousand acres of land or is of sufficient size as to make
practicable its preservation and use in an unimpaired condition;
and (4) may also contain ecological, geological, or other features
of scientific, educational, scenic, or historical value.

22 16 U.S.C. § 1131(c).

23 24. Under section 4(b) of the Wilderness Act, the “agency administering any area
24 designated as wilderness shall be responsible for preserving the wilderness character of the
25 area and shall so administer such area for such other purposes for which it may have been
26 established as also to preserve its wilderness character.” 16 U.S.C. § 1133(b). ONP’s
27 decision to build new structures, to transport them to the wilderness area by helicopter, and to

1 accomplish the installation by use of chainsaws, generators, and power tools violates section
2 4(b) because it fails to preserve the wilderness character of the Olympic Wilderness Area. It
3 also violates section 2(c)'s prohibition of "permanent improvements" within a wilderness
4 area.

5 **B. ONP's Shelter Plan Violates Section 4(c) of the Wilderness Act**

6 25. Subject to certain narrow exceptions, the Wilderness Act prohibits
7 "... mechanical transports, and structures and installations" within wilderness areas. 16
8 U.S.C. § 1331(c). The only relevant exceptions are available only when "necessary to meet
9 minimum requirements for the administration of the area for the purpose of [the Wilderness
10 Act]" *Id.*

11 26. There currently are no shelters at the Home Sweet Home and Low Divide
12 locations since both shelters collapsed in heavy snow and the remains were cut up and left on
13 site. Shelter EA at § 2.1.1. ONP's plans do not contemplate restoring or repair of the
14 structures (even though the title of the EA is the "Shelter *Repair* Environmental
15 Assessment"). Instead, new structures were built, and ONP plans to install them in the
16 locations where the old shelters previously existed. This action meets NPS' definition of
17 reconstruction, not restoration. NPS Director's Order #28 § D.1.d (1998).

18 27. NPS' Reference Manual #41 states: "The construction of new shelters for
19 public use will generally not be allowed, in keeping with the values and character of
20 wilderness. An existing shelter may be maintained or reconstructed only if the facility is
21 necessary to achieve specific wilderness management objectives as identified in the park's
22 wilderness and cultural resources management plans." RM #41 at 22. Director's Order #28
23 further emphasizes the conflict between new buildings and wilderness areas: "Reconstruction
24 of an entire structure is always a last-resort measure for addressing a management objective
25 and will be undertaken only upon specific written approval of the director after policy review
26 in the Washington office." NPS Director's Order #28 § D.1.d (1998).

1 28. Categorizing the new structures as “historic” is contrary to the facts since the
2 old shelters collapsed under heavy snow and the replacements were built in another location
3 with new materials. The shelters were not listed on the National Register of Historic Places
4 before they collapsed. Building a new shelter and moving it to the location where the old one
5 was does not make the new structure historic.

6 29. Section 4(c) of the Wilderness Act prohibits the introduction of the new
7 shelters. They are not necessary to meet minimum requirements for the administration of the
8 area in accordance with the Wilderness Act, nor are they necessary for emergencies or health
9 and safety.

10 30. Section 4(c) of the Wilderness Act also prohibits the use of motorized
11 equipment, aircraft, and other mechanical transport within wilderness areas. 16 U.S.C.
12 § 1331(c). The only relevant exceptions are for measures necessary for administration of the
13 wilderness area for the purpose of the act and for “emergencies involving the health and safety
14 of persons within the area” *Id.* These exceptions must be “necessary to meet minimum
15 requirements for the administration of the area” *Id.* In addition to minimum requirements,
16 the Wilderness Act and NPS policies require that any work in a wilderness area be performed
17 with what are called “minimum tools.” *See* Order #41 at 7-9. ONP’s proposal to fly Heavy
18 Lift Type I Chinook helicopters and other helicopters in and out of the wilderness area
19 repeatedly does not meet the minimum tool requirement, nor does the use of the use of
20 chainsaws, a gas-powered generator, or battery powered drills and saws.

21 31. ONP’s proposal to install new shelters in the wilderness area is unjustifiable,
22 especially given the lack of overall planning. No shelters should be built in wilderness areas
23 without an approved Wilderness Management Plan, a General Management Plan, and a
24 Cultural Resources Management Plan. Those documents are essential to ensure that the
25 requirements of the Wilderness Act are met. In addition, the planning documents will be
26 subject to NEPA, which will allow for adequate public input not only of an isolated proposal
27

1 to build new structures but also of the broader plan to manage the park. At a minimum, the
2 plan to install new shelters is premature given the lack of planning.

3 32. Defendants' decision to approve the shelter plan described in the EA and
4 FONSI not only violates sections 2(b), 4(b), and 4(c) of the Wilderness act, it is also contrary
5 to law, is an abuse of discretion, and is arbitrary and capricious in violation of the APA.
6 5 U.S.C. § 706(2)(A).

7 **SECOND CLAIM FOR RELIEF**

8 **VIOLATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT**

9 33. Plaintiffs incorporate herein by reference paragraphs 1-32.

10 34. Congress intended that NEPA would "encourage productive and enjoyable
11 harmony between man and his environment; [] promote efforts which will prevent or
12 eliminate damage to the environment and biosphere and stimulate the health and welfare of
13 man; [and] enrich the understanding of the ecological systems and natural resources important
14 to the Nation." 42 U.S.C. § 4321.

15 35. To achieve this goal Congress mandated that agencies engage in environmental
16 review of all actions that may have an impact on the environment. 42 U.S.C. § 4332(2)(A).

17 36. Where wilderness is concerned, the emphasis of environmental review is on
18 preserving the natural conditions of the wilderness:

19 In evaluating environmental impacts, the National Park Service
20 will take into account wilderness characteristics and values,
21 including the primeval character and influence of the wilderness;
22 the preservation of natural conditions (including the lack of
23 man-made noise); and assurances that there will be outstanding
24 opportunities for solitude, that the public will be provided with
25 a primitive and unconfined type of recreational experience, and
26 that wilderness will be preserved and used in an unimpaired
27 condition. Managers will be expected to appropriately address
28 cultural resources management considerations in the
development and review of environmental compliance
documents impacting wilderness resources.

26 NPS Management Policies 2001 at § 6.3.4.3.

1 37. In this case, ONP chose not to prepare an Environmental Impact Statement
2 (EIS) for the shelter installation. Instead, it prepared a more limited Environmental
3 Assessment (EA) and then, based on the EA, determined that there was no significant
4 environmental impact.

5 38. NEPA requires an EIS for the shelter proposal. An EA does not suffice,
6 particularly given the lack of a Wilderness Management Plan for ONP. Conducting a NEPA
7 review without reference to a Wilderness Management Plan prevents comprehensive review of
8 the shelter plan's effects on the wilderness as a whole and results in piecemeal or fragmented
9 environmental review, which is prohibited by NEPA. An EIS is also required given the
10 significant impact on a wilderness area and the extensive public controversy over the shelter
11 proposal.

12 39. NEPA requires agencies to state a purpose and need for a proposed action. 40
13 C.F.R. § 1502.13. ONP's analysis of purpose and need is inadequate because it assumed that
14 new shelters should be installed where the old shelters were and therefore framed the question
15 to be decided as how, not whether, the shelters should be rebuilt. The outcome of the NEPA
16 process was a foregone conclusion after ONP invested more than \$80,000 to rebuild the
17 shelters. Although a "no action" alternative was proposed in the EA and discussed in the
18 FONSI, it was apparent that the outcome had been determined before any alternatives were
19 fairly considered.

20 40. NEPA requires that agencies "rigorously explore and objectively evaluate all
21 reasonable alternatives" to the proposed action. 42 U.S.C. § 43332(2)(C)(iii); 40 C.F.R.
22 § 1502.14. ONP failed to consider all alternatives adequately since some form of shelter
23 reconstruction and installation was predetermined before the EA was prepared. In addition,
24 although wilderness values should drive selection of alternatives within wilderness areas, the
25 EA and FONSI selected installation of newly constructed shelters as the "environmentally
26 preferred alternative." The NEPA analysis was therefore flawed and its preference for
27

1 poorly articulated and substantiated historical, cultural, and emergency concerns violated
2 NEPA.

3 41. NEPA requires agencies to consider adequately, analyze, and disclose the
4 individual and cumulative impacts of the proposed action and alternatives to it. 42 U.S.C.
5 § 4332(2)(C); 40 C.F.R. § 1502.16. Because the EA and FONSI were prepared in a vacuum,
6 without the benefit of a Wilderness Management Plan, they failed to consider all cumulative
7 impacts of, among other things, promoting shelters in the wilderness area as necessary for
8 emergency or other administrative use. The precedent established by installing new shelters
9 in the Olympic Wilderness Area can only be considered in the context of a broader
10 Wilderness Management Plan, which would be subject to a full NEPA review.

11 42. Defendants' decision to approve the shelter plan described in the EA and
12 FONSI not only violates NEPA, it is also contrary to law, is an abuse of discretion, and is
13 arbitrary and capricious in violation of the APA. 5 U.S.C. § 706(2)(A).

14 **PRAYER FOR RELIEF**

15 WHEREFORE, plaintiffs respectfully request that the Court:

16 A. Declare that defendants violated the Wilderness Act and NEPA;

17 B. Declare that defendants' violations of the Wilderness Act and NEPA are
18 arbitrary, capricious, an abuse of discretion, and contrary to law in violation of Section 706(2)
19 of the APA;

20 C. Enjoin defendants from taking any action to transport or install the
21 reconstructed Home Sweet Home and Low Divide shelters within the Olympic Wilderness
22 Area;


23 D. Issue an order requiring defendants to prepare an EIS for the shelter proposal
24 after a Wilderness Management and General Management Plan are prepared;

25 E. Award plaintiffs their reasonable fees, costs, and expenses, including attorneys'
26 fees, associated with this litigation pursuant to EAJA, 28 U.S.C. § 2412(d)(1)(A).

1 F. Grant such additional and further relief as plaintiffs may request or this Court
2 may deem just and appropriate.

3 Dated this 29th day of October, 2004.

4 Respectfully submitted,

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6 _____
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