Emerald Lake Shelter Reconstruction Project

Draft Environmental Assessment

Comments

Chris Barns

I am the retired BLM Representative at the Arthur Carhart National Wilderness Training Center. Among other specialties over my many years there, I taught stewardship at the nexus of cultural and wilderness resources. In addition, I was coauthor of the *Keeping It Wild* technical documents used by the Forest Service and the three other wilderness-managing agencies to monitor trends in wilderness character.

Briefly, the proposed action is to remove portions of the existing, collapsed Emerald Lake Shelter (ELS), and it then “would be reconstructed from the bottom up” (p. 8) with new materials and more modern construction techniques.

There are significant flaws in your EA.

First, in your section Cultural Resources, you seem to be implying that any structure eligible for the National Register under the NHPA would allow such an action (see p. 17). This is incorrect. There is wide latitude in proper treatment of a structure that may be eligible. Reconstruction is not among the allowable actions. Preservation in situ is defined as “identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, and conservation; education and training regarding the foregoing activities; or any combination of the foregoing activities” (54 U.S.C. Section 300315). Reconstruction, using new materials and significantly different construction techniques, cannot be shoe-horned into the NHPA allowable practices. This lack of integrity is not supported by the NHPA except in, perhaps, cultural properties of the highest national importance. You do not assert such importance of the ELS and, indeed, it would fail to meet that criterion.

Rather, as justification you cite guidance from the Secretary of the Interior's Standards for the Treatment of Historic Properties: Reconstruction as a Treatment and Standards for Reconstruction:

<https://www.nps.gov/articles/000/treatment-standards-reconstruction.htm>. This guidance is quite clear: “Reconstruction **may** be considered as a treatment…[w]hen a contemporary depiction is **required** to understand and interpret a property’s historic value” (emphases added). Yet, such a physical depiction of the ELS is not required. Extant, photographic documentation is certainly sufficient to understand the value of the ELS.

In essence, you are suggesting to build a new structure that pretty much will look like the old structure. This is akin to claiming a photocopy of the *Mona Lisa* deserves to hang in the Louvre. And, of course, the Emerald Lake Shelter is no *Mona Lisa*.

If the site were not in a wilderness, the proposed action might be due a degree of greater consideration. But the wide prescriptive allowances of the NHPA run up against the narrow possibilities afforded by the Wilderness Act of 1964. “The Wilderness Act emphasizes outcome

(wilderness preservation) over procedure . . . it is as close to a ‘purist manifesto’ as may be found in the area of environmental law” (High Sierra Hikers v. U.S. Forest Serv., 436 F.Supp.2d 1117, 1138 (E.D. Cal. 2006)). In addition, you may provide for other statutory purposes “only insofar as to also preserve its wilderness character” (*Olympic Park Associates v. Mainella*, No. C04–732FDB, at 12 (W.D. Wash. 2005)). It is important to point out there is nothing in the designation language for the Mount Timpanogos Wilderness (Pub. Law 98-428) that would supersede The Wilderness Act with respect to reconstructing the ELS.

The proposed action does not preserve wilderness character.

Putting aside the inappropriate conflation of “Recreation and Wilderness,” this section (pp. 21-23) is problematic.

The listing of the qualities of wilderness character (p. 22) has two important omissions. The list of prohibited developments includes “habitations,” but not “structures.” Perhaps you meant them as synonyms, but they are not – structures include a wider range of prohibited uses. And under Solitude or Primitive and Unconfined Recreation, you use language from *Keeping It Wild 2* (pp. 11-12). You write of “recreation in an environment that is relatively free from the encumbrances of modern society” and “the tangible aspects of the setting that affect the opportunity for people to directly experience wilderness.” But you have dropped key qualifying assets of wilderness recreation – the opportunity for “the benefits and inspiration derived from self-reliance, self-discovery, [and] physical and mental challenge.” The ELS clearly degrades these opportunities.

Which directly leads to the erroneous analysis of the impacts of the proposed action on the five qualities of wilderness character (pp. 22-23). Some of these impacts are covered under other resources, and I have brought them into the section below. I have omitted references to resources that we agree are not impacted or have impacts not germane to my criticism, as well as not repeating impacts where you repeat them under multiple resources. Your analyses or interpretations are in italics; mine are in roman. What I consider to be fatal flaws in the Draft appear in red – my apologies if the color seems over the top. And in general, you use “effect” and “impact” to be construed as negative. But there are also positive impacts, which are essential to proper analysis. You should be explicit in which kind of effect/impact you mean.

Untrammeled

**Proposed**: *The presence of the Shelter directly impacts the untrammeled…Wilderness quality[y]*. Here you should be discussing the impacts of reconstruction, not the current situation. Reconstruction would technically impact the untrammeled quality during work, but in a very minor way. See also my comment under Removal, immediately below.

**Removal**: *Removal of the Shelter will result in short term impacts to untrammeled…Wilderness quality[y].* Technically this is true, and it’s good you mention it, but keep in mind the effects to “the earth and its community of life” are minor compared to the impact on other qualities. *Long term the untrammeled…Wilderness quality[y] will [not be impacted]*. No. Rather, “the earth and its community of life” will be better able to express itself on the (comparatively) very small footprint of the existing Shelter.

**No Action**: *The presence of the Shelter directly impacts the untrammeled…Wilderness quality[y]*. Only in a way as to be insignificant.

Natural

**Proposed**: *Because the shelter is present on the landscape, it also has an indirect effect on the natural environment. When constructed, the plant community was impacted. Over the past 68 years the vegetation around the Shelter has recovered, with the exception of the area in close proximity to the shelter, which has less vegetation due to foot traffic in and around the shelter*. What effect would reconstruction have? Short term, you have described and offered mitigation. Long term, the impact likely will continue as currently existing. These are direct, not indirect effects.

**Removal**: *Removal of the Shelter will result in short term impacts to…natural Wilderness quality[y]*. Yes, and likely long-term positive impacts, which you have ignored.

**No Action**: *Because the shelter is present on the landscape, it also has an indirect effect on the natural environment*. I would quibble over indirect/direct, but that is not the point here. What effect would allowing it to molder have? *The area in close proximity to the shelter has less vegetation due to foot traffic in and around the shelter.* Yes, but what effect would allowing it to molder have?

Undeveloped

**Proposed**: *The presence of the Shelter directly impacts the…undeveloped Wilderness quality[y]*….*Motorized equipment and tools are necessary due to the site constraints and to ensure the structure is reconstructed in a manner that can withstand…natural forces*. Right. Make sure the reader knows there are short-term negative impacts from the “temporal development” of using prohibited tools, and reconstructing a structure codifies long-term negative impacts.

**Removal**: *Removal of the Shelter will result in short term impacts to…undeveloped…Wilderness quality[y]*. You should be specific (but brief) in calling out the negative impact of the temporary use of prohibited tools. *Long term the…undeveloped Wilderness quality[y] will [not be impacted]*. This is wrong. There will be a significant positive impact to the undeveloped quality if the ELS is removed. Failure to properly analyze this is one of the fatal flaws in this Draft EA.

**No Action**: *The presence of the Shelter directly impacts the…undeveloped Wilderness quality[y].* Yes, though not to the extent that a reconstructed shelter would.

Outstanding Opportunities for Solitude or Primitive, unconfined recreation

**Proposed**: *The Shelter has an indirect impact on the solitude or primitive and unconfined recreation quality of Wilderness. If visitors are viewing or using the shelter this can either enhance or distract from solitude, but on the contrary, the location of the Shelter is in a primitive environment and created a space for an unconfined recreation experience*. The effect is direct, not indirect. Use or observation of the reconstructed shelter is only a negative impact to solitude. This structure does not create an opportunity for primitive, unconfined recreation; it would be an opportunity for non-primitive recreation, which the Wilderness Act does not support. *The use of [motorized] equipment will have a direct effect on solitude in Wilderness for the amount of time in use.* Yes.

**Removal**: *For a short duration there will be impacts to solitude or primitive and unconfined recreation Wilderness character if the Shelter is removed, due to the use of motorized equipment and tools* [that] *are necessary in the process*. Yes. But you have completely ignored the long-term positive impact to solitude if the ELS is removed.

**No Action**: *The Shelter has an indirect impact on the solitude or primitive and unconfined recreation quality of Wilderness. If visitors are viewing or using the shelter this can either enhance or distract from solitude, but on the contrary, the location of the Shelter is in a primitive environment and created a space for an unconfined recreation experience*. I discussed most of what is wrong here in the Proposed Action section, above. Here, with a structure that is moldering, I would argue it has no effect on solitude and, since unusable, no effect on recreation.

Other Features of Value

This is the most difficult section to analyze, and there are errors or misinterpretations common to all three alternatives that I’ll address up front.

There are historic values associated with the ELS. Beyond those, “societal” values (if and where different) are not recognized by the Wilderness Act. As for “intrinsic” value – that is, a value that is inseparable from and essential to a wilderness – I can think of no trailside shelter fulfilling that requirement. In addition, keep in mind that historical values are not the same as historical uses. Otherwise, we’d still be logging, mining, and homesteading in wilderness areas.

**Proposed**: *The Shelter has historic, intrinsic and utilitarian values to the local community and historical socially significant events*. I have addressed the validity of these values to wilderness character immediately above. *The [ELS] is a feature of value to the local unit. The Shelter has provided a service to forest visitors.* But not a wilderness service, otherwise a Motel 6 would be an improvement. *This structure was heavily used by our search and rescue and emergency response teams while responding to emergency incidents in the remote country.* Yes, but that does not adequately justify reconstruction. The emergency exception to the Prohibition of Certain Uses in the Wilderness Act is at the time of the incident, not proactively. Otherwise, every wilderness would have build such a structure with accompanying helipad. *Further deterioration or loss of this integral cultural feature would be a negative effect.* I don’t see how you can call this “integral.” Same issue as “intrinsic.” What became the Wilderness was used by recreationists for decades prior to its construction. *Reconstructing the Shelter will restore this unique feature that is of historic and social value to the Timpanogos Wilderness area. The Shelter has both intrinsic and utilitarian value to the Wilderness character*. “Utilitarian” is not a Wilderness value. The ELS does not have to be reconstructed to restore its historic value. See my comments at the beginning of this section.

From the cultural section: *The Shelter is tied closely to the historical use and traditions of the area prior to its wilderness designation. Administrative measures are essential to restore the Shelter, which stands as one of two structures of historical and cultural importance within the Mount Timpanogos Wilderness. Its significance is closely associated with the local community's heritage, culture, and fascination with the mountain*. Reconstructing the ELS is not essential to preserve its historical value, only its historical use. By law, the former is part of wilderness character; the latter is not.

**Removal**: *Due to the historic and social significance of the Structure, removal of will have direct impacts to the features of value to the…Wilderness*. I think you would have to explain the degree to which removing all vestiges of the ELS (as opposed to the No Action alternative) and mitigating by interpreting outside the Wilderness, would be insufficient.

**No Action**: *The Emerald Lake Shelter is a feature of value to the local area. The Shelter in the past provided a service to forest visitors. The current state of the structure has a negative effect to this Wilderness quality. Further deterioration or loss of this integral cultural feature would be a negative effect.* Not at all. What would be lost is that “service” to forest visitors, which is definitely not a service to wilderness visitors. It is, in fact, antithetical to wilderness recreation. *If the No Action Alternative were to be selected, the Forest would respond to future needs and conditions without substantial action or policy change*. I have no idea what this means, but it probably should go up in the introduction to each alternative, rather than in the impact analysis to a specific resource.

From the cultural section: *[T]he adverse effect of the collapsed structure remains and would need to be mitigated using another method, per NHPA. The physical evidence of what remains of the Shelter would be a reminder of the history and culture of the area*. Yes. There are allowable options under the NHPA, as I discussed earlier.

Summary

Reconstructing the ELS is not supported by either the Wilderness Act or the National Historic Preservation Act. I am less certain about a decision to remove or take no action. I lean toward removing the non-native superstructure (e.g., corrugated roofing) and let the foundation molder as a reminder of the area’s past, but a more definitive response would require onsite inspection.

I believe your analysis to be error-filled, hence arriving at the wrong Proposed Action. I urge reanalysis. If you would like to discuss this, my contact information is below.

Thank you for your consideration.

Chris Barns

[cvbarns@gmail.com](mailto:cvbarns@gmail.com)

970-238-0532