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Emerald Lake Shelter Reconstruction Project

USFS Intermountain Regional Office

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RE: Objection Emerald Lake Shelter Reconstruction Project Draft Decision Notice and Finding of No Significant Impact (DDN) and Final Environmental Assessment (FEA)

Objection Submitted Electronically: <https://cara.fs2c.usda.gov/Public/CommentInput?Project=66370>

Wilderness Watch submits this objection letter on the "Emerald Lake Shelter Reconstruction Project" as detailed in the Final Environmental Assessment (FEA) and Draft Decision Notice and Finding of No Significant Impact (DDN) pursuant to 36 C.F.R. § 218. This objection is focused on the impacts to the High Uintas Wilderness. Wilderness Watch is the lead objector. The responsible official is Kelly Orr, Forest Supervisor, Uinta-Wasatch-Cache National Forest. The project is scheduled to occur in the Mount Timpanogos Wilderness.

Wilderness Watch is a national wilderness advocacy organization, headquartered in Missoula, Montana, dedicated to the protection and proper administration of the National Wilderness Preservation System. Wilderness Watch members use and value, and will continue to use and value, the Mount Timpanogos Wilderness for personal and professional pursuits, including hiking, plant and wildlife viewing, and plant and wildlife study. Wilderness Watch members also value the Mount Timpanogos Wilderness for its own sake. Wilderness Watch members value knowing that Wilderness is protected as Congress intended, whether or not they ever set foot inside the Wilderness boundary. As more fully described below, the Forest Service's proposed action would adversely affect Wilderness Watch's organizational interests, as well as its members' use and enjoyment of the Wilderness.

Our scoping and EA comments raised topics now addressed below in this objection. Although we incorporate our comments by reference, we also include excerpts from our comments to illustrate certain objection points. As such, our objection complies with 36 C.F.R. § 218.

Sincerely,

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INTRODUCTION

Our scoping comments stated:

The agency has to demonstrate two things. The Forest Service must show that construction of every aspect of a new structure is the minimum necessary for preservation of the area as Wilderness. Then, the Forest Service has to show that the use of every piece of motorized equipment and every use of motorized and/or mechanized transport is the minimum necessary for the protection of the area as Wilderness. This is a high bar and we don't see any way for the agency to demonstrate either in this case.

Our scoping comments also stated:

Wilderness is defined in the Wilderness Act as being "in contrast with those areas" where humans and their works are dominant. Elevating a single largely demolished structure above the Wilderness itself amounts to administrative declassification (...) [and is, in effect] an administrative repeal of the Wilderness Act. It turns the Wilderness Act on its head.

As noted in our EA comments, "Such a repeal is illegal for an administrative agency." Both our scoping and EA comments referred to case law, which finds in a similar case that actions-specifically including actions generally prohibited by section 4(c) of the Wilderness Act regarding so-called historic structures in Wilderness-are not legal and that conflating these structures as part of wilderness character is also not legal. For example, the 11th Circuit Court found in *Wilderness Watch v. Mainella*, "As an initial matter, we cannot agree with the Park Service that the preservation of historical structures furthers the goals of the Wilderness Act...the need to preserve historical structures may not be inferred from the Wilderness Act nor grafted onto its general purpose." 375 F.3d 1085 (2004). The heart of the matter is this: A project-using helicopters, heavy equipment, and jackhammers to rebuild a structure, in this case, one that was not "historic" at the time of wilderness designation and one whose original construction did not involve the use of heavy equipment, helicopters, or jackhammers-is inconsistent with the Wilderness Act. Trying to shoehorn such a project into the strictures of the Wilderness Act is neither reasonable nor legal.

WILDERNESS

1- "The purpose of the Wilderness Act is to preserve the wilderness character of the areas to be included in the wilderness system, not to establish any particular use." Howard Zahniser, author of the Wilderness Act, 1962. Our scoping comments introduced the purpose of Wilderness:

The Wilderness Act establishes a National Wilderness Preservation System to safeguard our wildest landscapes in their "natural," "untrammeled" condition. 16 U.S.C. § 1131(a). "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...." Id. § 1131(c).

The Wilderness Act's provisions form a coherent, preservation-first scheme; absent specifically enumerated exceptions, they are designed to further the Act's overarching purpose of wilderness preservation. The Act clearly places Wilderness, including the Mount Timpanogos Wilderness, in contrast with human developments. The DDN and FEA violate the plain meaning of the Act, caselaw, and common sense through a massive construction project, supported by motorized equipment. Again, we point to a logical and consistent reading of the Wilderness Act from *Wilderness Watch v. Mainella*:

As the Park Service notes, Section 1133(b) mentions "historical use" along with "recreational, scenic, scientific, educational, [and] conservation" uses. However, this list tracks the definition of wilderness areas in § 1131(c), which describes "a primitive and unconfined type of recreation" and "ecological, geological, or other features of scientific, educational, scenic, or historical value." 16 U.S.C. § 1131(c). Given the consistent evocation of "untrammelled" and "natural" areas, the previous pairing of "historical" with "ecological" and "geological" features, and the explicit prohibition on structures, the only reasonable reading of "historical use" in the Wilderness Act refers to natural, rather than man-made, features. (Emphasis added).

Of course, Congress may separately provide for the preservation of an existing historical structure within a wilderness area, as it has done through the NHPA. Congress wrote the wilderness rules and may create exceptions as it sees fit. Absent these explicit statutory instructions, however, the need to preserve historical structures may not be inferred from the Wilderness Act nor grafted onto its general purpose. Furthermore, any obligation the agency has under the NHPA to preserve these historical structures must be carried out so as to preserve the "wilderness character" of the area. See 16 U.S.C. § 1133(b) ("[E]ach agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.") (Emphasis added). *Id.* at 1092.

Our EA comments made the same point as the court, pointing out congressional agreement in the Senate Report on the Act:

The Senate Committee on Interior and Insular Affairs, when explaining the language in what became the 1964 Wilderness Act referred to the "intangible, unmeasurable values" (Senate Report 88-109 at 15, referring to historical, scenic and other values mentioned in the Act) then contrasts "park-type facilities where mass recreation is available" to Wilderness (*Id.* At 16). It also explains the rarity and uniqueness of a wilderness "expedition to some remote scenic or historic mountain or area." (*Ibid.*, emphasis added.) The Senate's report summarizes the issue well by quoting Zahniser, "Historical, scientific, educational, and other values of wilderness were well epitomized by Howard Zahniser, spokesman for wilderness proponents, in his description of a primitive area as 'a piece of the long ago that we still have with us.'" (*Id.* at 18). In other words, the land itself and its natural features are the historic and other values, as they have influenced humans for millennia such as when people used mountains or other physical features as distant guide posts in travels, wondered at geological formations, or trod on paths centuries old, used by wild animals and people alike.

The DDN and FEA do just the opposite by conflating wilderness character with maintenance of this structure (intimating it is a historical use or special feature) with motorized equipment including helicopters, excavators, and jackhammers (e.g. DDN at 1). Thus, the basis of this proposal is based upon a false premise, one that is not supported by the Wilderness Act, congressional direction, or caselaw.

Even if this mistake comes from misunderstanding and misusing the wilderness character monitoring protocol as a decision matrix (addressed in the next objection point) and even if we were to accept this misuse of the monitoring protocol, which we don't, the clear direction from Congress, the courts, and the agency's own policy to avoid prohibited means, such as helicopters and jackhammers still stands. The staff of the Uinta-Wasatch-Cache National Forest know this too as our EA comments demonstrate in quoting from additional materials on the website for this project:

Perhaps the most telling is the Forest Service recognition that what it proposes is not legal. We again quote from the supplemental information supplied by the Forest Service archaeologist, "Once the Mount Timpanogos Wilderness was established in 1984 this continued the effort to preserve environmental quality, however inadvertently it made maintenance and preservation of the two historic structures in the wilderness a dubious topic." This demonstrates the agency knows full well what the law requires. This EA is a deliberate attempt by the Forest Service to obfuscate legal requirements in order to violate those same legal requirements. (Emphasis

added).

As our EA comments stated:

If there is a conflict between uses in Wilderness, the statute and the agency's regulations and management guidance provide direction for resolving those conflicts in favor of wilderness preservation. See, e.g., 16 U.S.C. § 1133(b); 36 C.F.R. §293.2(c); FSM 2320.6. ...

The statute, when read as a coherent whole, supports this position. 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*, 353 F.3d at 60 ("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).

REMEDY: Drop the proposal or select the no action alternative.

2- The misuse of the wilderness character monitoring protocol has engendered recent and unsupported informal policies and assumptions that are inconsistent with preservation of Wilderness and the Wilderness Act. A quote from our scoping comments introduce this topic (footnotes in our original omitted):

The dissection of wilderness character into numerous qualities or attributes detracts from the singular purpose of wilderness in section 2(a) and referred to again in section 4(c) of the Act. This has its origins in the wilderness character monitoring protocol from Landres et al. Landres' Keeping it Wild protocols are internal agency guidance documents that have not gone through formal notice and comment rulemaking. These documents are the subject of much disagreement and controversy, largely because they promote- intentionally or not-an interpretation of the Wilderness Act that is internally inconsistent and result in management actions that are antithetical to Wilderness preservation. See, e.g. Cole, et. al. 2015. While initially envisioned as a tool to help agencies measure wilderness character, on the ground it has had the unintended consequence of agencies (including the Forest Service here) to creep back into management paradigms that are predominant outside of Wilderness. A prime example of a rapidly growing consequence from Keeping it Wild is the erroneous idea that managers can weigh various components of wilderness character against each other, thereby reducing the Wilderness Act to a point-tallying system rather than a substantive law with cohesive goals and stringent prohibitions. This management mindset effectively and unlawfully repeals and rewrites the Wilderness Act.

Neither the monitoring protocol nor the minimum requirements process (the Minimum Requirements Analysis Framework or MRAF), have gone through formal rulemaking. Yet, they form the basis for the Forest Service's wilderness analysis in the FEA at pages 21 and 22. The paragraph below provides some background on the use or misuse of these informal policies, policies that are inconsistent with the plain language of the Wilderness Act, congressional intent, and caselaw cited previously in this objection.

The origins and consequences of defining wilderness character through fragmenting the eloquent whole of the Wilderness Act came from a well-intended, but fatally flawed wilderness character monitoring protocol. Landres and others identified the various attributes of wilderness character by dissecting the Wilderness Act. It was an exercise in reductionism. From our communications with Landres, the main purpose behind this exercise was to be able to objectively monitor changes in wilderness character in the National Wilderness Preservation System.

Hence, the protocol titled Keeping it Wild and Keeping it Wild 2. While this process to define wilderness character was undoubtedly a well-intended effort, as time has passed, it is clear it has serious negative unintended consequences for Wilderness. Other wilderness specialists and researchers recognize these failings in their pointed critique (see Cole et al. 2015).

As noted in our comments, prime examples of negative consequences of the monitoring protocol and the MRAF are: a) the erroneous idea that managers could trade off various components of wilderness character against each other, thereby reducing the Wilderness Act into a procedural process, via an MRAF, rather than a substantive law; and b) conflating a supposed special feature, as in the case before us, with preserving wilderness character. This management mindset, which effectively repeals and rewrites the Wilderness Act, is a recent development. It is doubtful even those wilderness specialists who defined wilderness character in a reductionist manner would concur, as our personal conversations with Landres suggest.

In sum, the fragmentation of the Wilderness Act into separate and oft times competing directives is legally wrong and violates the canons of statutory construction. The Wilderness Act does not set up a point tallying system that concludes a special feature incorrectly identified by the Forest Service, one inconsistent with wilderness preservation, can be the tail that wags the wilderness dog. Further, the use of helicopters and jackhammers to restore wilderness character is an oxymoron.

REMEDY: Select the No Action Alternative.

3- Consistent with the Wilderness Act and the 11th Circuit Court ruling cited above, even the monitoring protocol and its supporting documents (see objection point above) do not offer support for historical structures like cabins being part of wilderness character. In *Keeping It Wild 2: An Updated Interagency Strategy to Monitor Trends in Wilderness Character Across the National Wilderness Preservation System*, Landres et al. 2015. RMRS-GTR-340 (KIW2) has this to say about historical cabins:

Important features that are not considered integral to wilderness character may still be monitored under other resource programs; for example, cultural resource staff may track the condition of historical cabins. But they will not be monitored as part of the Other Features of Value Quality of wilderness character.

Landres et al. 2015 at 56. None of the specific examples in KIW2 of these special features are of historical cabins or structures. Rather, they are, with the exception of wagon wheel ruts along a historic trail, mostly natural features with some pre-Euro-American settlement sites such as lithic scatters. We, along with the courts and Congress, disagree with this dissection of the Wilderness Act. Even if we were to accept this fragmentation as KIW2 does, the shelter still does not pass muster as being integral to the Mount Timpanogos Wilderness as per the KIW2 protocol.

One of the monitoring protocol's associated documents, the Technical Guide to Monitoring Selected Conditions Related to Wilderness Character Landres, et al. 2009. GTR-WO80, has this to say:

The issue of how features of historical significance are addressed in this protocol needs to be explicitly addressed. Features of historical significance will not be evaluated any differently in this protocol than other features. Although the Wilderness Act does acknowledge in Section 2(c) that wildernesses "may also contain ecological, geological, or other features of scientific, educational, scenic or historical value" (emphasis added), it does not clearly state, or even imply, that these historical values should be interpreted as part of the wilderness character of the area. In fact, as previously stated, the Wilderness Act suggests that the absence of permanent improvements constitutes an important aspect of wilderness character.

Landres et al., 2009 at 139.

While we disagree that the MRAF and wilderness character monitoring protocol processes are the appropriate tools to make recommendations or decisions about the use of 4(c) prohibitions (the minimum necessary), had the Forest Service correctly followed those processes, it is highly doubtful the proposed action would have been

selected. This is an unprecedented proposal. The following paragraphs are examples of the problem.

Regarding "Natural" (FEA page 22, the Wilderness Act uses the phrase natural conditions), the FEA states, "Because the Shelter is present on the landscape, it also has an indirect effect on the natural environment." *Id.* The shelter has a direct impact to natural conditions, which would be increased by reconstructing the building with modern materials as proposed. Further, the FEA states regarding removal, "Long term the untrammelled and undeveloped Wilderness qualities would have no impact." *Id.* At 23. There would be a positive benefit from removal on natural conditions.

Regarding "Solitude or Primitive and Unconfined Recreation" (FEA at 22), the FEA also states, "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." *Ibid.* Solitude won't be enhanced by reconstructing the building. It does not create the opportunity for primitive and unconfined recreation. Rather, it is just the opposite, the structure would support developed recreation, which is antithetical to Wilderness.

The FEA further states:

The Emerald Lake Shelter is a feature of value to the local unit. The Shelter has provided a service to forest visitors. This structure was heavily used by our search and rescue and emergency response teams while responding to emergency incidents in the remote country. Further deterioration or loss of this integral cultural feature would be a negative effect. Reconstructing the Shelter would restore this unique feature that is of historic and social value to the Mount Timpanogos Wilderness area. The Shelter has both intrinsic and utilitarian value to the Wilderness character.

FEA at 22. There are a few serious errors in this analysis. Our EA comments noted regarding an emergency:

We addressed safety at some length in the scoping comments, including citing the Forest Service Manual and case law stating, "The emergency exception of Section 16 U.S.C. § 1133(c) of the Wilderness Act...most logically refers to matters of urgent necessity rather than to conveniences for use in an emergency." (*Olympic Park Associates v. Mainella*) It should be recognized that there are no shelters for those who wish to climb Mount Nebo, in the Mount Nebo Wilderness, Lone Peak, in the Lone Peak Wilderness, or Kings Peak, usually a multi-day journey into the High Uintas Wilderness to a mountain nearly 1800 feet higher than Timp. Nor should there be.

The Wilderness Act does not recognize societal, intrinsic, or utilitarian values associated with Other Features of Value, nor do the MRAF Instructions. No utilitarian structure is an intrinsic value to Wilderness. Historical values are not the same as historical uses, and historical values do not authorize preserving structures in wilderness. *Wilderness Watch v. Mainella*, 375 F.3d at 1092. The FEA conflates the two. The MRAF Instructions don't use the term historical uses. Reconstruction is not mandated under the NHPA, especially in Wilderness. The service provided by the shelter is not a wilderness service (see also Forest Service Manual 2320.2 and 2302.3 item 10 pointing out the physical challenge and risks that make Wilderness what it is).

Thus, there is no support for the proposed decision, even in the monitoring protocol and MRAF processes. The DDN states on page 1 regarding the selected alternative, "When compared to the other alternatives, this alternative will best meet the purpose and need through restoring wilderness character in Mount Timpanogos Wilderness by maintaining the Emerald Lake Shelter as a feature of cultural, scenic, and historic significance." The paragraphs above and the objection points demonstrate that preserving wilderness character is not about the use of helicopters, jackhammers, and excavators for rebuilding a structure. Rather, the conflation of wilderness character with the structure is in direct contradiction to agency guidance, the Wilderness Act, and caselaw.

REMEDY: Select the no action alternative.

4- The proposal is essentially new construction supported by helicopters, jackhammers, and excavators, which is not the minimum necessary. Our scoping comments under the heading, Building What Is Essentially A New Structure Is Not The Minimum Necessary, noted, "It is also doubtful whether any new hut would better survive, especially in an era of global warming. ... [which] will likely increase the opportunity for avalanches and heavy snowfall in the area around Emerald Lake." Figure three of the Forest Service scoping letter shows the severe damage, Figure two uses the term collapse to describe the event.

Associated document entitled Mount Timpanogos Wilderness -The Mount Timpanogos Hike and Structures, aside from conflating the Timp hike, which was ended due to resource damage, with Wilderness, admits that the structure had fallen into disuse. This fact is also referenced in our scoping comments.

With the exception of the lack of historical maintenance and the much younger age of the Emerald Lake Shelter, it is similar to the Green Mountain Lookout in the Glacier Peak Wilderness, which was essentially new construction as proposed in this case. The Green Mountain Lookout case, *Wilderness Watch v Iwamoto*, 853 F.Supp.2d 1063 (2012), comes to similar conclusions as in *Wilderness Watch v Mainella*, cited herein. Cases also cited in *Wilderness Watch v Iwamoto*, concur that structures are antithetical to Wilderness. The use of helicopters, jackhammers, and excavators is not consistent with the Wilderness Act.

Even the Forest Service's flawed Minimum Requirements Analysis Framework (MRAF), similar to the interagency Minimum Requirements Decision Guide (MRDG) process guides and documents on wilderness.net do not support the extensive use of motorized equipment in a case like this. In an example document entitled Cutler Cabin Management, it considered a helicopter alternative, a non-motorized alternative, and a recording/inventorying/documenting alternative. Even the point tallying MRAF process concludes and selects in this example:

The selected alternative is #3, Inventory and record all information about the cabin and allow the structure to deteriorate naturally. The value of the Cutler cabin as a representation of pioneer use and habitation of lands that are now managed by the park would be preserved by way of two primary goals: 1) official inventory and documentation to meet legal requirements, NPS policy, and established standards; 2) education and interpretation for park visitors and others.

Cutler Cabin Management document at pdf 47, attached. Our comments also suggested that documentation occur rather than violating the Wilderness through construction and use of helicopters, jackhammers, and excavators. "The National Historic Preservation Act 54 U.S.C. § 300315 defines preservation as including 'identification, evaluation, recordation, documentation' among the others. It does not require the sites be maintained, especially if sites have been destroyed." *Wilderness Watch* EA comments on page 6. This is the same conclusion reached by the example MRAF document.

It should be noted that the photos and documentation provided by the Forest Service on the website for this project, including the National Historic Register nomination, should be a good start if not sufficient for documenting under the National Historic Preservation Act.

The DDN mitigation measure on page 6, "Helicopter would sling load into Wilderness (not land)" appears to be a futile attempt to evade the Wilderness Act mandate. Indeed, 36 CFR § 261.18 National Forest Wilderness, prohibits in part (c) "Landing of aircraft, or dropping or picking up of any material, supplies, or person by means of aircraft, including a helicopter." As such, the mitigation measure does not provide any meaningful difference.

REMEDY: Choose the no-action alternative or select documentation under the NHPA, after proper NEPA analysis.

NEPA AND WILDERNESS

(A) An EIS is needed. Our EA comments stated, "The amount of motorized equipment proposed for this project, including helicopters, excavators, jackhammers, and a list of other equipment (see EA pages 12 and 13) is extensive. This amounts to an industrial site, not a Wilderness. If this kind of assault on the Wilderness is approved, it must have a thorough analysis." Such a major undertaking in Wilderness where helicopters, jackhammers, and excavators are anathema requires an EIS.

REMEDY: Drop the FEA and DDN and prepare an EIS.

(B) An adequate range of alternatives is not considered. One reason this might be is because the Forest Service has not "[e]nsure[d] that Forest Service employees acquire and maintain necessary skills for primitive travel by foot, horse, canoe, or other nonmechanical means and the use of hand tools." FSM at 2326.03. The EA and now the FEA and DDN allege that motorized equipment is necessary for safely completing this project. They also allege that the trail is not safe for stock, but provide no evidence other than a conclusory statement (FEA page 7). We addressed these issues in our EA comments:

The EA on page 7 claims stock cannot use the trail. There is only a vague reference to pack animal user(s). The US Forest Service in Region 4 has significant stock resources in places like the Teton Wilderness or the Frank Church-River of No Return Wilderness. Were other national forest or district offices in the region contacted to see if they have the traditional skills to use stock on trails like those on Mount Timpanogos? Further, the excuse that the trails have deteriorated seems specious. We are not told which trails are supposedly deteriorated, Aspen Grove, Timpooneke, or both trails. If the trail or trails are so bad, why does the Forest Service allow "nearly 300,000 visitors" (EA at 16) per year on the trails if safety is a concern? Also, if the trails are truly deteriorated, why ignore a logical alternative component - that of trail maintenance - in order to allow stock to use the trails (and safe use by hikers)? Lastly, the EA claims, "livestock presence in the high alpine areas has the potential to affect sediment and nutrient input into sensitive alpine areas." Using this as a reason to exclude a pack animal support alternative from even being considered ignores the fact that stock animals are compatible with Wilderness; helicopters, excavators, and jackhammers are not.

Attached is an example of a complicated bridge structure that was packed into the Bob Marshall Wilderness. If the Uinta Wasatch Cache National Forest personnel no longer have the skills to do this project, there are certainly other people in the agency who do. Other national forest officers in Region IV, Region II, and Region I undoubtedly have that expertise as the attached article indicates.

The FEA states:

If Alternative A, no action is taken, the 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 and how it supported visitors to Mount Timpanogos.

FEA at 17. Again, this is an admission that documentation fulfills NHPA requirements.

The failure to consider trail reconstruction, other options such as cutting the old metal into pieces with a cutting torch, or a real non-motorized alternative is glaring. Even though the materials on the Forest Service website for this project show the hut was constructed with traditional skills, as referenced in our comments, this alternative was not fully considered. This violates NEPA and the Wilderness Act.

REMEDY: Withdraw the DDN and FEA and do an EIS.

C- The FEA is inadequate. How many helicopter flights will there be? Our EA comments noted, "There is no specificity on the number of helicopter flights that will be undertaken for this project. The EA mentions the need for helicopters for the proposed action on pages 9 and 10. We don't know whether it will be two flights or dozens." The FEA and DDN refer to some unspecific minimum, but we don't know what that is. The lack of specificity violates NEPA and the Wilderness Act (minimum requirements). Other projects (attached) have shown that information.

Our EA comments also state:

The EA engages in a muddled analysis, claiming the supposed historic yet damaged shelter has a negative effect, generally on Wilderness (page 23), leading the reader to conclude that something more must be done, such as removal. The partial removal analysis on the same page claims removing it has a general negative impact too, but due to the removal of part of the structure, not the retention of the structure. The EA then reflects the extreme bias of the writers and shows the decision was really made before this NEPA analysis. This is demonstrated by the claim that reconstructing the hut using jackhammers, helicopters, and excavators helps the Wilderness (pages 22 and 23). So, turning the Wilderness into an industrial site is somehow beneficial to Wilderness. This assumes that the hut is the most important characteristic of the Wilderness, indeed its *raison d'être*. Ironically, the EA on pages 17 and 18-the section dealing with compliance with the NHPA-suggests that the historic value of the shelter can be documented and allowed to deteriorate.

These contradictions, repeated in the FEA and DDN, may be due to the fact the agency knows it is engaging in an extreme form of shoehorning. The cognitive dissonance in the FEA and DDN come through because the proposal is so contrary to any conception of what is the minimum necessary in Wilderness, so contrary to the basic tenets of the Wilderness Act, that it can't be logically or legally justified.

REMEDY: Drop the DDN and FEA and/or prepare an EIS.

CONCLUSION

The entire proposal rests on the conflation of the structure with wilderness character, which is inconsistent with any logical reading of the Wilderness Act, case law, and even agency policy (formal and informal) as noted in this objection. For example, this conflation leads to the FEA's tenuous analysis, such as the allegation that not rebuilding the structure doesn't meet the Forest Plan's "goal of providing opportunities for recreational, aesthetic, and educational experiences while conserving special environmental, cultural, social, and/or scientific values in protected areas, including designated wilderness." FEA at 6, a slight but meaningful alteration of the Uinta Forest Plan at 2-1. Suggesting this broad goal is not being met by not building the hut in Wilderness is out of context of the Forest Plan goal itself, which is directed at making sure the allowable recreation and other uses don't harm the special environmental and other values mentioned in the goal. It has nothing to do with the Emerald Lake shelter that was collapsed by natural processes.

The fact the FEA combines the recreation and wilderness analysis into one is indicative of the agency's bias against Wilderness. The FEA's insistence that impacts to Wilderness are only temporary (never mind the fact a new structure will be built) also fails. The Wilderness Act does not permit motorized use for recreationists one day out of the year, a temporary action. The attitude that industrial motorized use in Wilderness is only temporary has a toxic effect on the agency's commitment to Wilderness. Indeed, the DDN and FEA demonstrate how little the agency values the Mount Timpanogos Wilderness.