

October 23, 2009

Mr. Robert Krumenaker
Superintendent
Apostle Islands National Lakeshore
415 Bayfield Ave.
Bayfield, WI 54814

Dear Superintendent Krumenaker:

Wilderness Watch is providing the following comments on the Draft General Management Plan for Apostle Islands National Seashore (APIS). We appreciate the efforts of NPS staff that have gone into developing the plan.

Wilderness Watch is a national conservation organization with members throughout the country who have a deep and abiding interest in the protection and proper stewardship of the lands and waters in the National Wilderness Preservation System. We appreciate the Park's efforts to protect and perpetuate the wilderness character of the GNW. We believe, however, that the plan needs to be strengthened in this regard.

As a general point, we have reviewed the comments of Public Employees For Environmental Responsibility (PEER) and wish to endorse those comments in most respects. We wish to raise a couple of additional concerns with regard to the plan's treatment of cultural resources and the use of generally prohibited activities (i.e. motorized equipment, motor vehicles, etc.).

Cultural resources: The APIS contains a wealth of both cultural/historic resources and Wilderness. With respect to that portion of the APIS that is designated as Wilderness, both cultural resources and Wilderness can be preserved provided it is done in a manner that is consistent with all relevant laws. In short, that means in a manner that preserves the area's wilderness character.

The Wilderness Act defines Wilderness in part as "...an area of undeveloped federal land retaining its primeval character and influence, without permanent improvements..." It mandates that Wilderness shall be managed "for such other purposes for which it may have been established as also to preserve its wilderness character." The Act achieves this goal in part by prohibiting certain uses or activities, "...except as necessary to meet minimum requirements for the administration of the area for the purpose of the Act...there shall be no temporary road, no use of motor vehicles,

motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such areas.”

The GMP appears to treat cultural resources in the Wilderness as though they are exempt from the general prohibition on structures, or from the mandate to preserve wilderness character (we have related concerns with respect to the treatment of “cultural landscapes,” however we feel this issue is adequately addressed in PEER’s comments and will not belabor the point). Fidelity to the Wilderness Act appears to weigh solely on how the work gets done. For example, on page 90 the GMP states, “historic properties eligible for the [National Register] will be protected and maintained according to the pertinent laws and policies governing cultural resources. However, the *methods* used...must be consistent with the preservation of wilderness character.” (italics added). In fact, both the underlying question of maintaining (or rebuilding/ reconstructing) a structure in Wilderness and the method for doing so must preserve the area’s wilderness character and be consistent with the prohibitions in sections 4(c) of the Wilderness Act.

Two recent court opinions are relevant on this point. In Olympic Park Associates v. Mainella, the superintendent of Olympic National Park approved replacing two collapsed, historic trailside shelters with two new shelters in the Olympic Wilderness. The proposal included the use of a helicopter to airlift the new shelters into the Wilderness. The Court struck down the plan because the man-made structures themselves are contrary to the law and noted:

“While the former structures may have been found to have met the requirements for historic preservation, that conclusion is one that is applied to a man-made shelter in the context of the history of their original construction and use in the Olympic National Park. Once the Olympic Wilderness was designated, a different perspective on the land is required. Regarding the Olympic Wilderness, that perspective means ‘land retaining its primitive character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions.’”

Even if the Park Service has proposed to transport the structures to site by pack animal rather than helicopter, the legal outcome would have been the same.

In a separate case involving the Emigrant Wilderness (High Sierra Hikers Assn., v. U.S.F.S.), the Forest Service proposed to maintain several small, historic dams (some deemed eligible for listing) in the Emigrant Wilderness. All work was to be done using traditional skills. No motors or mechanized tools involved. Here again, the Court struck down the plan because the purpose—maintaining structures that are not the minimum necessary to protect the Wilderness—violated the Wilderness Act.

“[T]he text of the Wilderness Act provides no indication that Congress intended to exempt existing dams in wilderness areas from the general prohibition against “structures” or “installations.” The court must conclude the plain and unambiguous text of the Wilderness Act speaks directly to the activity at issue in this case – repairing, maintaining and operating dam “structures” – and prohibits that activity....Based on the foregoing, the court concludes the proposed actions in this case – the repair, maintenance and operation of the

dam structures – are clearly and unambiguously contrary to the provisions of the Wilderness Act....

Absent a declaration by Congress of the need to restore and preserve the dam structures in recognition of their historical significance, there is nothing the court can point to that would authorize such an action where the maintenance of the dams would otherwise come into conflict with the Wilderness Act. The area manifested its wilderness characteristics before the dams were in place and would lose nothing in the way of wilderness values were the dams not present....

The Wilderness Act’s prohibition against structures is categorical so far as the court can determine, allowing only those exceptions that are specifically set forth in the Act or in Congress’s designation of a particular wilderness area, neither of which apply here.”

It was not the method of repairing and maintaining the dams that the court found contrary to Wilderness, but the effort to perpetuate the structures in Wilderness that offended the law. Without further belaboring the point, we think the GMP needs to be changed to reflect that the treatment of cultural resources is a different matter inside the Gaylord Nelson Wilderness than it is in the rest of the APIS. The test is not whether the structures are historic, but rather whether they are necessary to meet minimum requirements to protect the area’s wilderness character.

Motorized Equipment / Mechanized Transport

The Desired Conditions section of the plan states: Administrative use of motorized equipment or mechanical transport will be authorized only if the superintendent determines it is the minimum requirement needed to achieve the *purposes of the area as wilderness...*” (italics added). This is an inappropriately liberal allowance for the use of motorized equipment in Wilderness.

The Wilderness Act prohibits the use of motorized equipment and mechanical transport “except as necessary to meet minimum requirements for the administration of the area for the purpose of the Act.” The purpose of the Act is to preserve the area’s wilderness character. Thus the test for the use of motorized or mechanized equipment is whether its use is *necessary to meet minimum requirements to protect the Wilderness*.

The purposes of Wilderness, described in section 4(b) of the Act, are a variety of appropriate uses of an area such as for recreation, education, scientific research, etc.. These uses or purposes, however, are not the very limited singular purpose (preserving wilderness) to which the exception in section 4(c) applies. Wilderness Watch suggests that the statement in the GMP be changed to more accurately reflect the safeguards in the law, for example, “Administrative use of motorized equipment or mechanical transport will be authorized only if the superintendent determines it is necessary to meet the minimum requirement needed to achieve the *purpose of protecting wilderness character...*” Alternatively, the plan could simply mimic the language in section 4(c) of the Wilderness Act.

We appreciate the opportunity to provide our comments on the GMP and Wilderness Management Plan. I'd be happy to discuss any of these comments or concerns with you or your staff.

Sincerely,

George Nickas
Executive Director