



po box 12065
portland, or 97212
503-331-0374
www.bark-out.org

APPEAL TO THE REGIONAL FORESTER OF THE UNITED STATES
FOREST SERVICE REGION 6

APPELLANT'S NOTICE OF APPEAL, REQUESTED RELIEF, AND STATEMENT OF REASONS

Dated this April 5, 2012

NOTICE OF APPEAL

To: Regional Forester
Appeal Deciding Officer
USDA Forest Service
PO Box 3623
Portland, OR 97208
Email: appeals-pacificnorthwest-regional-office@fs.fed.us

RE: Developed Recreation Site Concessionaire Permit Decision

In accordance with 36 CFR 215, Bark hereby appeals the Environmental Assessment ("EA") and Decision Notice ("DN" or "Decision") for the Developed Recreation Site Concessionaire Permit ("Concessionaire Permit").

Decision Document: Developed Recreation Site Concessionaire Permit Decision Notice and Finding of No Significant Impact

Date Decision published: Feb.23, 2012

Responsible Official: Chris Worth, Forest Supervisor, Mt. Hood National Forest ("MHNF")

Appeal Period End Date: April 7, 2012

Description of the Project: This project would transfer management of 28 public recreation sites currently managed by the U.S. Forest Service on public lands in the Mt. Hood National Forest to a private for-profit company.

Location: Dispersed sites throughout Mt. Hood National Forest

Appellant's Interests:

Bark has a specific interest in this decision, which would transfer management of public campgrounds to private companies. We have expressed our interest in this specific project, providing scoping comments, participating in open houses, and submitting PA comments.

Bark is a non-profit organization based in Portland, Oregon and has worked to protect the MHNH since 1999. Staff, members, volunteers, supporters, and board members of Bark live in the communities surrounding the MHNH and use and enjoy the Forest extensively for recreation, drinking water, hunting, fishing, general aesthetic enjoyment, family gatherings, viewing flora and fauna, gathering forest products, and other purposes.

Specifically, Bark members regularly visit many of the affected campgrounds, day use areas, and Bagby Hot Springs for hiking, camping, relaxing, bird watching, mushroom harvesting, photography, and family gatherings.

Joining Bark in this appeal are the Friends of Mt. Hood, and Russ Pascoe. Friends of Mt. Hood is a nonprofit organization dedicated to monitoring development and management of national forest lands on Mount Hood. They are especially interested in protecting the alpine meadows, wetlands, streams, wildlife, and forested slopes on the mountain, and their members and supporters regularly engage in recreation activities in the Mt. Hood National Forest. Mr. Pascoe is the President of the Oregon Kayak & Canoe Club and Conservation Chair of the Lower Columbia Canoe Club. Mr. Pascoe, along with other members of the Canoe Clubs, uses and enjoys Mt. Hood National Forest for paddling, rafting, and camping.

The value of the activities engaged in by Bark members and staff, Friends of Mt. Hood and Mr. Pascoe will be damaged by the implementation of this project. All appellants have a long-standing interest in public lands and resources being managed for the benefit of the public, not to maximize profit for private companies.

Request for Stay

Although an automatic stay is in effect for this decision as per 36 CFR §215.10(b), we formally request a stay of all action on this project, and that the Forest Service not enter into any contractual agreements with private companies until this appeal is resolved.

Requested Relief

In recognition that this project has not followed the prescribed agency process, fails to meet the stated Purpose and Need, and is part of the disturbing trend to privatize public lands and resources, Bark requests that the Forest Service withdraw the decision and begin the process again, following the specifications of the Federal Lands Recreation Enhancement Act for fee increases.

Bark submits this appeal for the following reasons:

1) Failure to Follow Recreation Facility Analysis guidance:

In 2008, Mt. Hood National Forest prepared a Recreation Facility Analysis (“RFA”), after a series of focused workshops, attended by 150 members of the public, as well as agency staff. *RFA at 4.* The RFA describes itself as a “document [that] will serve as a framework from which the Forest will prioritize investments, and pursue changes in operations or

maintenance of recreation sites.” *RFA at 1*. It also acknowledges that “[p]roposals relating to fees will require consistency with criteria outlined in the Recreation Enhancement Act (REA) and coordination with the appropriate Recreation Resource Advisory Committee.” *Id.*

The Preliminary Assessment (PA) references the RFA as a guiding document for this process, claiming that for “a majority of the sites, it was recommended that there be a change to concession, partner or volunteer operation.” *PA at 6*. The truth is that nine sites were recommended for partner agreements, one site recommended for volunteers, and only three sites, Bagby Hot Springs & Campground and Eightmile Campground, were recommended to be transferred to concessionaire management. *PA at 6*. Thus, the RFA recommended management changes for only 13 of the 28 sites included in the Decision – the other 15 did not include any recommendations for change in management change – and only three for concessionaires

The Decision Notice (DN) does not explain why the Forest Service failed to follow the recommendations of its own Recreation Facility Analysis. While noting that the “PA suggests that these campgrounds might be decommissioned if a new economic model is not implemented,” neither the PA nor the DN provide any specific reasons why privatizing the campgrounds is the *only*, or even best, economic model for management. Without clear reasons to depart from the recommendations of the RFA, the Forest Service is negating the work of hundreds of people and its own recreation experts, and making a decision that is not supported by its own prior analysis or public sentiment.

2) Failure to follow the Federal Lands Recreation Enhancement Act

The “Management Direction” section of the PA, where the Forest Service lays out the regulatory framework guiding the decision, does not include the Federal Lands Recreation Enhancement Act (REA), 16 USC § 6801, as one of the guiding statutes – this is in error.

The REA was passed into law as part of the 2005 Consolidated Appropriations Act (Public Law 108-447) on December 8, 2004. The REA authorized the Forest Service and four Department of the Interior agencies to retain recreation fee revenues to supplement appropriations and other funding sources to repair, improve, operate, and maintain recreation sites and areas to quality standards and to enhance the delivery of recreation services to quality standards. Decisions made to change or increase fees fall under the purview of the REA.

The REA sets out very specific requirements for public participation regarding fee increases, including mandatory advance notice and public participation in the development, or changing, of a recreation fee established under the Act. *See* 16 USC § 6803(a). Instead of following the guidelines of the REA, the Forest Service initially had *no* public process for privatizing 28 recreation areas on Mt. Hood. A Request for Proposal was published in September, 2010. *See* “Prospectus for Campgrounds and Related Granger-Thye Concessions,” *Attachment 1*, and “Errata Sheet for Prospectus,” *Attachment 2*. Bark raised concerns about the lack of NEPA analysis or public process in a December 13, 2010, letter to then Forest Supervisor Gary Larsen. *See Attachment 3*. Only after Bark and other concerned stakeholders insisted that the Forest Service evaluate the proposal and accept public input

was a NEPA process announced in 2011. At no time, however, did the Forest Service comply with the public participation requirements of the REA¹.

In addition, the REA directs the agency to create a Recreation Resource Advisory Committee (RRAC) to make recommendations regarding expansion of fees, or the establishment of a specific recreation fee site. 16 USC §6803(d)(2). The RRAC is also directed to meet at least annually, but may meet as often as needed to deal with citizen concerns about the recreation fee program in a timely manner. 16 USC §6803(d)(3). There is no mention of the RRAC participation or review of the Forest Service's current proposal to transfer management of 28 recreation sites to private management, even though the Forest Service admits that this will result in new fee areas, and increases in fees for other areas: "[i]t is expected that fees at the campgrounds in the proposed action would increase an average of 3% per year under concession management." *PA at 27*. Indeed, a visit to the RRAC webpage shows that the last meeting of the RRAC was on February 2, 2010 – not only has the RRAC failed to review the current proposal, the Forest Service is not meeting its statutory requirement to convene the RRAC annually.

Specifically regarding Bagby Hot Springs, currently soaking at Bagby has no associated fee. Parking at the lot nearest the Hot Springs requires purchase of a NW Forest Pass, but this is the only fee requirement for this standard amenity area. The Forest Service's decision to privatize Bagby will inevitably result in a new fee for use of the Hot Springs². Under the REA, creation of a new fee area for a standard amenity site is not permitted prior to establishment of and review by RRACs. *See REA Forest Service Interim Implementation Guidelines, p14*. Also, the REA prohibits the charging of multiple fees for use of the same recreation area – thus prohibiting a fee for use of Bagby's standard amenities, such as the NW Forest Pass, to be joined by another fee for soaking in the Hot Springs. 16 USC §6802(c). As noted above, the RRAC did not review the current proposal and provide recommendations to the Forest Service. Failure to do so invalidates this process and the decision should be set aside.

3) **Failure to meet Purpose and Need**

NEPA requires that an action agency identify the underlying purpose and need to which the agency is responding with the proposed project. 40 CFR §1502.13. In the current case, the Forest Service states that the key purpose of the proposal is to allow for these 28 developed recreational sites to remain open to the public for their use and enjoyment and to provide safe, clean, affordable, functional facilities in a cost efficient manner. *EA at 8*. While Bark agrees that this is an important purpose and need for the Mt. Hood National Forest, we raised several concerns in our comments that this proposal fails to meet this purpose and need, and may even hinder it.

¹ One of the only references to the REA is in regards to the "No Action" Alternative, which recognizes that "campground fees would initially be \$10 per night per site as they have been since 2004. Any new fees or increase in fees would need to be reviewed by the Pacific Northwest Recreation Resource Advisory Committee, and their recommendations would be submitted to the Regional Forester for concurrence." *EA at 24*. The EA does not discuss why the fee increase resulting from this decision did not go through a similar process.

² As quoted in an Oregonian article regarding privatizing Bagby Hot Springs, Eric Mart, president of California Land Management in Palo Alto (the corporation most likely to receive the concessionaire contract) said a fee for using Bagby Hot Springs is imminent: "We can't operate it without revenue."

To manage the campgrounds in a more “efficient” manner, the Forest Service plans on “bundling the sites in this proposal with the Forest sites already under concession management”. *EA at 27*. Bark is very concerned that this analysis is premised on the necessity of the company that already manages the other sites being the *only* company that can get the new concessionaire contract, otherwise this “economy of scale” approach will not work. This presents too narrow of a purpose and need – that can only be met by one company – and raises serious questions about the objectivity of the contracting process.

This Decision fails to meet the purpose and need for the following reasons:

a) Concessionaires reduce accessible recreation

i) Increased fees impede forest accessibility

When considering the environmental justice aspects of this decision, the Forest Service fails to acknowledge that this decision will result in an increase of fees for (formerly) public campgrounds – though it does admit to this elsewhere in the PA. In doing so, it does not recognize the very real possibility that individuals and families with lower incomes may be eventually forced out of developed campgrounds as the rates inevitably increase. The Forest Service does offer that “[d]ispersed camping can offer a no fee alternative for those unable to afford campground fees” (*PA at 28*) yet this fails to account for the fact that not everyone is equally comfortable with, or capable of, camping without amenities, and that this decision could disproportionately exclude lower income people, the elderly, people with disabilities, etc. from the forest³.

In its Environmental Assessment, the Forest Service stated that by managing a concession by either a for-profit or non-profit enterprise under a public utility model, the Forest Service can regulate the pricing structure to ensure equitable access. *EA at 20*. It did not provide any further information on how the Forest Service will enact such regulation, only that it does anticipate fee increases to occur by 3% per year, which it suggests is equal to inflation. *Id.* Such assurances without specifics do little to assuage concerns about fee increases and the resulting inaccessibility of public lands to the public. Indeed, while the EA says that such a concern is “speculative,” it is equally true that the Forest Service’s assertion that this fee increase will not reduce public use of the facilities is also speculative. So long as there is the possibility that increased fees will reduce accessibility, the Forest Service should meaningfully assess that likelihood.

ii) Public sentiment opposes concessionaire-operated campsites

In its Response to Comments, the Forest Service acknowledges that research has shown that the public generally does not support private operation of public campgrounds, citing Kerstetter, et.al, (2010) and Samnaliev, et.al. (2004). Researchers found that only 28.8% of the American public supports contracting with private companies to manage public recreation lands. As many commenters noted, concessionaire-run campgrounds have

³ It is also important to note that at no time in this process has the Forest Service evaluated the impacts of increased dispersed camping on the environment, other than acknowledging that as this decision may lead more and more people to choose dispersed camping, and dispersed camping can be quite detrimental to the forest and riparian areas, this is an environmental impact that should not be ignored.

changed the nature of the recreational experience on public lands⁴. Instituting a management change that most public lands users oppose does not encourage recreational use of Mt. Hood National Forest and may well discourage use.

iii) Limited Access to Day Use Areas

In the proposed action, the following campgrounds have embedded day-use areas or trailheads: Badger Lake, Bonney Meadows, Cloud Cap Saddle, Eightmile, Knebal Springs, Little Badger, McCubbins Gulch, Rainy Lake, Tilly Jane and Wahtum Lake. The Response to Comments claims that “The proposed action would not change the condition” of access to these trails, but looking at the recent history of concession-run day use areas and campgrounds does not support this response. For example, when the Forest Service privatized the management of Rainbow and Riverside campgrounds, both campgrounds closed their day-use parking areas, so that the public can no longer access the popular Clackamas Riverside hiking trail from either end. In addition, many of the concession-run sites on Mt. Hood National Forest do not currently recognize the NW Forest Pass or the national Golden Passports and/or America the Beautiful benefits and discounts⁵, even though the REA requires that concessionaires honor the national passes. *Interim Implementation Guidelines, p13.*

The Decision Notice does not give any assurance that the day use areas and trails embedded in this Decision will remain open and accessible, comply with the law, and recognize all applicable passes. In addition, the Forest Service should review this decision in light of the recent Ninth Circuit court decision chastising the Forest Service for charging fees for areas that do not have the six required amenities⁶. This may be the perfect time to overhaul the NW Forest Pass program altogether. In order to meet the purpose and need of safe and accessible recreation, the Forest Service must specifically ensure that the trails and day use areas affected by this decision remain open and accessible, and comply with the REA.

b) Concessionaire-run campgrounds are less safe

In the Decision Notice, the Forest Service acknowledged that “[t]he overarching, common theme of many of the expressed concerns is that concessionaires are not well suited to manage publicly-owned recreational facilities.” DN at 3. Bark appreciates this acknowledgement, as it was almost entirely skipped in the Response to Comments. However,

⁴ One exemplary comment noted, “[t]he private concessionaire currently in charge of public campgrounds have completely altered the public feel or experience of camping on public lands. From their constantly-running, giant RV generators to their unfriendly, unknowledgeable and decidedly un-rangerlike demeanor, it no longer feels like camping in a wild, welcoming space that we, the public own.”

⁵ The following Day Use Sites accept Northwest Forest Passes but not Golden Age, Access, or other Passes: Gone Creek (Timothy Lake); Hoodview (Timothy Lake); Oak Fork (Timothy Lake); PGE – West Dam (Timothy Lk.); Pine Point Day Use/Campground;
Day Use Sites that DON’T accept Northwest Forest Pass or any other pass and charge \$5.00 per vehicle: Big Eddy, Clear Lake, Fish Creek, Frog Lake, Lost Creek (Lolo Pass area), Tollgate, and Trillium Lake. \$7.00 per vehicle is charged at Lost Lake & Kinnickinnick (Laurence Lake).

⁶ See Adams, et. al. v. US Forest Service, invalidating the requirement of Forest Passes for parking to access trails. Court opinion available at:
http://www.westernslopenofee.org/pdfuploads/2012_02_09_Mt_Lemmon_Decision_Reversed_and_Remanded.pdf

it does not go far enough to address the hard truth that many concessionaire-hired campground hosts have actually put public health and safety into jeopardy.

In our comments, Bark specifically cited examples where bad campground hosts have caused many a crisis for people seeking good camping experiences in MHNH, such as a group of Bark employees that faced significant harassment from a campground host at the Wyeth campground this past summer. When that host called law enforcement, the officer who responded to the call apologized to the group. He explained that this particular host just didn't really like it when anyone camped at his campground and often unreasonably lashed out at campers. Similarly, campers have complained about campground hosts that had no control over illegal behavior in their campground, and no willingness to take action to make the campground safe.

To the best of Bark's knowledge, private concessionaires are not bound by the same obligations and are not held to the same high standards as Forest Service employees and volunteers⁷. Their staff do not have to go through the rigorous process of getting hired by the federal government, which can lead to these dangerous situations. For example, in recent years many campground hosts have been arrested for drug distribution. People are taking their families to campgrounds where the hosts are dealing drugs. This is a completely unacceptable situation. The Forest Service would not hire people without first running a background check and determining that the individuals are reasonably competent.

This is a prime reason why transferring these 27 campgrounds and Bagby Hot Springs to private management fails to meet the Purpose and Need, and should remain in Forest Service management. Based on the unsafe experiences users have at sites currently managed by concessionaires, it is clear that by passing campground management off to concessionaires the Forest Service is failing to ensure recreation that is safe and well managed.

Neither the DN nor the Response to Comments adequately responded to the safety concerns raised by Bark or other commenters. While the Forest Service asserted that "the Forest has experienced a number of successful partnerships with concessionaires delivering a public service or operating public infrastructure for quite a number of years" (DN at 3), it is equally true that many of the concessionaire employees have created unsafe and unwelcoming situations at campgrounds on Mt. Hood National Forest. Instead of ignoring this issue, if the Forest Service does privatize management of these campgrounds, it should include hiring and training standards in its contract with the concessionaires that ensure employees meet basic standards for public health and safety.

4) Bagby Hot Springs

Bark believes that all parties can agree there is fierce public opposition to the privatization of management of Bagby Hot Springs. As the steward of the public's land and resources, the Forest Service should give strong weight to the public's opinion – especially for recreation decisions that affect public experience so directly.

⁷ While the EA states that the "concessionaire(s) would be responsible for hiring, training and supervising an adequate number of paid campground hosts to . . . gain compliance with campground rules and regulations with a "Good Host" approach" (EA at 14), there is no assurance that bad hosts would be removed by the concessionaire – indeed, in Bark's experience many problematic campground hosts have remained employed by the concessionaire.

Contrary to the Forest Service's assertion in the Decision Notice that Bagby is not recognized as a heritage resource, the Bagby Guard Station is listed on the National Register of Historic Places. *DN at 3.* As described by the Oregon State Historic Preservation Office in the application for listing: "The Bagby Guard Station cabin and its associated storage shed are significant architecturally as the oldest known ensemble of administrative buildings located in the Mt. Hood National Forest. The Guard Station is significant . . . because it embodies the distinctive characteristics of early remote administrative sites in the Mt. Hood National Forest. The guard station retains most of its integrity of location, design, and setting." While it is not certain that privatization will affect these historic characteristics, it is also not certain that it won't.

Without specifically referring to Bagby, the PA states that for the developed recreation sites where historic structures are involved, this action falls under the category of "undertakings with no potential to cause effects." *PA at 28.* Because the Bagby Guard Station is listed on the National Register of Historic Places, and concerns were raised in the comments about the impact to heritage resources at Bagby, the Forest Service should have provided a more thorough discussion of what – if any – changes will occur from privatization of management of Bagby Hot Springs, and ensure Best Management Practices are in place, monitored and enforced to avoid any changes to the important characteristics of Bagby.

Soaking in Bagby Hot Springs has been free, and all hours, since time immemorial. The vast majority of commenters felt *strongly* that Bagby should not be privatized, and the dissatisfaction with the Forest Service's decision may lead to disruptive activity at Bagby. This is another reason that the Forest Service erred by not following the processes specified in the REA for increasing fees at a standard amenity site. Had the invested public been able to weigh-in through the RRAC, or get the prior notification prescribed by the REA, this process would have been much more inclusive and may have resulted in a much better decision that took into account many more factors than the Forest Service's narrow solution to meeting its bottom line.

In conclusion, we believe that this decision was poorly analyzed, through improper means, and will lead to a result that further alienates the public from our own land. Not only did the Forest Service fail to follow the federal guidelines around fee increases, it also largely ignored its own well-informed Recreation Facilities Analysis and came up with a proposal that the public is almost universally opposed to. This decision is in error, both legally and practically, and should be withdrawn until such time as the Forest Service can comply with all necessary regulations, take into account the recommendations of key stakeholders, and make a decision that truly will support safe and accessible recreation on Mt. Hood National Forest.

Sincerely,



Brenna Bell, Esq.
Staff Attorney & NEPA Coordinator

Barbara Wilson, Chair
Friends of Mt. Hood
PO Box 1623
Hood River, OR 97031

Russ Pascoe, President
Oregon Kayak & Canoe Club
400 E 22nd Street
Vancouver, WA 98663-3205