

APPENDIX L

DETERMINATION OF EXTENT NECESSARY

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DETERMINATION OF THE EXTENT NECESSARY FOR COMMERCIAL SERVICES IN THE WILDERNESS SEGMENTS OF THE MERCED WILD AND SCENIC RIVER CORRIDOR

PART 1: INTRODUCTION

The vast majority of Yosemite National Park (95%) was designated as federally protected wilderness by the California Wilderness Act of 1984.¹ Congress delegated management responsibility for Yosemite Wilderness to the National Park Service (NPS). In furtherance of its wilderness management responsibilities, the NPS has adopted a trailhead quota system to limit overnight visitation, implemented an extensive educational program to teach visitors how to minimize their impacts, promulgated a variety of specific regulations that mandate low impact practices, and instituted numerous monitoring programs to assess wilderness character and track potential threats to that character.

The National Park Service has not yet completed an Extent Necessary Determination for commercial services for Yosemite's entire designated wilderness. The need for this type of specialized finding has only recently been articulated, stemming from a 2004 decision by the U.S. Court of the Appeals for the Ninth Circuit in the case *High Sierra Hikers Association v. Blackwell*.² In the *Blackwell* decision, the Ninth Circuit ruled that wilderness managing agencies must complete a specialized finding of necessity prior to authorizing commercial services in wilderness. This finding must be made after considering the extent to which commercial services are necessary to achieve the purposes for which the affected wilderness area was set aside. Congress directed that Yosemite's wilderness be set aside for recreational, scenic, scientific, educational, conservation, and historical use purposes. This document evaluates the necessity for commercial services for designated wilderness portions of the Merced River corridor in light of these purposes.

The most appropriate framework for completing an assessment of an Extent Necessary Determination for commercial services in wilderness is in the park's wilderness stewardship plan, where commercial services will be addressed comprehensively for Yosemite's entire wilderness. Yosemite National Park has appropriated funding for updating its Wilderness Stewardship Plan, and has begun the initial steps in the planning process. The plan, however, will not be ready for public review for several more years. Rather than await the development of a new Wilderness Stewardship Plan, the park has elected to analyze commercial services in the wilderness portions of the Merced Wild and Scenic River corridor at this time and provide the public with an opportunity to comment.

¹ California Wilderness Act, Public Law No. 98-425 (1984)

² See, e.g., *High Sierra Hikers Association v. Blackwell*, 390 F.3d 630 (9th Cir. 2004); *High Sierra Hikers Association v. Weingardt*, 521 F. Supp. 2d 1065 (2007).

PART 2: PURPOSE OF THIS EXTENT NECESSARY DETERMINATION AND RELATIONSHIP TO OTHER PLANS

The purpose of this document is to determine limits on commercial services in the wilderness sections of the Merced River Corridor in accordance with the requirements of the Wilderness Act *and* NPS wilderness management policies. The limits described in this document apply only to the wilderness segments of the Merced River corridor.

As noted above, the NPS is in the early stages of updating the park's Wilderness Stewardship Plan. Limits adopted in this Extent Necessary Determination will be revisited as part of the planning process for the Wilderness Stewardship Plan, which will determine the extent of commercial services necessary throughout all of Yosemite's designated Wilderness. There will be many opportunities for public involvement in the development of the Wilderness Stewardship Plan, including the ability to provide additional input on the amount of commercial services that should be authorized.

This Extent Necessary Determination is neither a formal element nor a required component of the Wild and Scenic Rivers Act as addressed in the Merced Comprehensive River Management Plan.

Under the Wild and Scenic Rivers Act, the NPS must adopt specific limits on use within the river corridor to ensure that the kinds and amounts of visitor use protect and enhance the river's outstandingly remarkable values, free flowing condition and water quality. The MRP's capacity determinations, then, represent the maximum amount of use that can be allowed without degrading river values. The user capacities that were established in the MRP planning process were incorporated into this Extent Necessary Determination. In sections 7 and 8 below, this document analyzes those capacities in accordance with the requirements of Section 4(d) of the Wilderness Act to determine the extent to which any portion of the MRP's numeric use limits should be allocated to commercial service users. This Extent Necessary Determination therefore tiers from the capacity determinations in the MRP.

PART 3: LEGAL FRAMEWORK FOR EVALUATING COMMERCIAL SERVICES IN WILDERNESS

A. The Wilderness Act

The Wilderness Act was passed in 1964 to "secure for the American people of present and future generations the benefits of an enduring resource of wilderness."³ Section 4(c) of the Wilderness Act explicitly bars "commercial enterprises within designated wilderness areas."⁴ An exception to this ban, subject to limitations, is provided for commercial services such as guides and outfitters in section 4 (d) 6, which states that "commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other

³ Wilderness Act, 16 USC 1131 (a)

⁴ Wilderness Act, 16 USC 1133 (c)

wilderness purposes of the areas.”⁵ “Wilderness purposes” are defined in section 4 (b) of the Act as “recreational, scenic, scientific, educational, conservation, and historical use.”⁶

The National Park Service has not issued regulations or formal policy guidance outlining the process for authorizing commercial services under Section 4(d) of the Act. However, the U.S. Court of Appeals for the Ninth Circuit has issued several decisions interpreting the restrictions on commercial activities found in Sections 4(c) and (d) of the Act. These decisions have informed the analysis in this Extent Necessary Determination.

In 2003, the Ninth Circuit, in *The Wilderness Society v. U.S. Fish & Wildlife Service*,⁷ examined the overall structure of the Act and found that the Act’s broad mandate to protect wilderness areas was furthered by the prohibition provision found in Section 4(c), which among other things, prohibits commercial enterprises in wilderness. That prohibition, however, is qualified by the introductory language of Section 4(c) which states, “*Except as specifically provided for in this [Act] . . . there shall be no commercial enterprise*” within any wilderness area. (Emphasis added.) The exceptions to Section 4(c)’s prohibitions are found in Section 4(d), which is entitled “Special provisions.” Of relevance here is the exception allowing for commercial services. The commercial services exception is limited in scope. Because of the Act’s structure, in which there is a broad prohibition on commercial enterprise in Section 4(c) followed by a list of “special provisions” in Section 4(d), the Court concluded that the exceptions found in Section 4(d) are most properly read as a series of limited and express exceptions to the general prohibition found in Section 4(c) on commercial enterprises in wilderness.⁷

In 2004, the Ninth Circuit issued an opinion, *High Sierra Hikers Assn. v. Blackwell*, interpreting the commercial services exception found in Section 4(d)(6) of the Act. The Court examined the specific language of Section 4(d)(6), and in particular the language stating that commercial services may only be authorized “to the extent necessary,” as well as relationship between Section 4(d)(6) and other provisions of the Wilderness Act. According to the Court, the phrase “to the extent necessary” imposed a requirement on wilderness managing agencies to make a “specialized” finding of necessity before authorizing commercial services in wilderness. In this specialized finding, the agency must “show that the number of permits [or other authorizations] granted was no more than was necessary to achieve the goals of the Act.” Although it determined that a specialized finding is required, the Court recognized that the Wilderness Act is “framed in general terms and does not specify any particular form or content” for the specialized finding. Moreover, the Court recognized that wilderness managing agencies are charged with diverse and sometimes conflicting mandates under the Act. Agencies are obligated to protect and preserve wilderness areas, but the Act also embraces competing directives such as those related to the provision of opportunities for public recreation and the discretion to take actions to manage fire and insect risks.⁸

This Extent Necessary Determination follows the direction provided by these Court opinions. In the sections that follow, we identify the types of “activities which are proper for realizing recreational and other wilderness purposes” and then determine the numeric amount of commercial services that are

⁵ Wilderness Act, 16 USC 1133 (d) (5)

⁶ Wilderness Act, 16 USC 1133 (b)

⁷ *The Wilderness Society v. U.S. Fish & Wildlife Service*, 252 F.3d 1051, 1062 (en banc) (2003)

⁸ *High Sierra Hikers Assn. v. Blackwell*, 390 F.3d 630 (9th Cir. 2004)

necessary to realize these purposes, ensuring that the number authorized is no more than necessary so that wilderness character will be preserved.

B. NPS Wilderness Management Policies

Commercial services must be consistent with the application of the minimum requirement concept and with the objectives of the park's Wilderness Management Plan.⁹ See Section 9 of this document for the application of the minimum requirement concept for commercial allocation.

C. Yosemite Wilderness Management Plan

The Yosemite Wilderness Management Plan states that commercial packers "...may be restricted to designated park areas."¹⁰

PART 4: USER CAPACITY IN WILDERNESS

In the Yosemite Wilderness, wilderness character is preserved in part through the use of the trailhead quota system, which limits the amount overnight visitation through the use of a wilderness permit system. In order to preserve wilderness character, NPS must ensure that natural resources are protected from damage that can result from overuse, and that outstanding opportunities for solitude are preserved.

The Yosemite trailhead quota system was developed in the 1970s, prior to wilderness designation.¹¹ The backcountry area of the park was divided into travel zones. For each zone a capacity was set based on the number of acres and miles of trails and desired sociological densities for campsites and trails. The capacities were then adjusted to protect ecological resources. For example, capacities were adjusted in zones with ecosystems that were rare or vulnerable (such as those with subalpine meadows), or that exhibit fragility or limited resilience following impacts (such as those with alpine meadows). Zone capacities have been adjusted periodically to reflect new or changed scientific findings regarding ecosystem health and the effect of patterns of visitor use on resources.

In concert with these zone capacities, the NPS has implemented a trailhead quota system. This type of system requires beginning a trip at a certain trailhead on a certain day, but otherwise does not generally restrict travel plans. Visitor travel patterns were studied to determine the relationship between the various trailheads and the travel zones.¹² By studying wilderness visitation travel patterns, managers were able to determine the percentage of visitors to each zone that are attributable to each trailhead. By limiting the number of individuals who may enter the wilderness from a given trailhead

⁹ NPS Management Policies 2006 6.4.4.

¹⁰ National Park Service, Wilderness Management Plan, 1989, pg. 21

¹¹ van Wagtenonk, J. W. 1979. A conceptual backcountry carrying capacity model. Proc. 1st. Conf. Sci. Res. in the nat'l. Parks. USDI, Nat'l. Park Serv. Trans. and Proc. Series 5:1033-1038.

¹² van Wagtenonk, J.W., and J. M. Benedict. 1980. Wilderness permit compliance and validity. J. Forestry 78(1): 399-401; van Wagtenonk, J.W., and P. R. Coho. 1986. Trailhead quotas: rationing use to keep wilderness wild. J. Forestry 84(11): 22-24.

on a given day, managers limit the number of visitors to each zone such that the wilderness character of the zone, including both the physical resources and the outstanding opportunities for solitude are maintained in accordance with law.

As part of the Merced River Plan, the NPS reevaluated the wilderness zone capacities within the Merced River Corridor in light of the Wild and Scenic Rivers' Act mandate to protect and enhance Outstandingly Remarkable Values and the river's free-flowing condition. The zone capacities adopted for the river corridor guided the Extent Necessary Determination process. For six of the eight zones that include the Merced River corridor, the zone is much larger than the corridor. This extent necessary determination is for the full geographic extent of all eight zones rather than just the corridor. In addition to the use limits set by the trailhead quota system additional limits that relate to wilderness will be in place under the Merced Wild and Scenic River Plan. For example, a capacity on grazing nights for pack stock is being established for the meadow near the Merced Lake Ranger Station.

PART 5: DEFINITIONS

A. Definition of Proper Activities

Section 4 (d) (6) only allows commercial services which are “proper for realizing the recreational or other wilderness purposes of the areas.” Not all activities are proper or allowable in wilderness areas. Section 4(c) of the Wilderness Act prohibits public use of motor vehicles, other forms of mechanical transport, motorized equipment, and landing of aircraft.¹³ The 2006 Management Policies provide additional guidance on the types of activities that are proper in park wilderness areas. NPS policy states that recreational uses in wilderness will be of a nature that:

- Enables the areas to retain their primeval character and influence;
- Protects and preserves natural conditions;
- Leaves the imprint of man's work substantially unnoticeable;
- Provides outstanding opportunities for solitude or primitive and unconfined types of recreation; and
- Preserves wilderness in an unimpaired condition¹⁴.

These restrictions apply equally to commercial and noncommercial public use. In the Yosemite Wilderness, proper activities are those traditionally associated with wilderness recreation, including hiking, backpacking, stock use, rock climbing, photography, nature study, and others. Improper (and illegal) activities include snowmobiling, mountain biking, skateboarding, and others. For a commercial service to be considered, it must first be related to an activity that is proper in wilderness. Therefore, the only commercial services considered in this document are those related to the types of activities found to be proper in Yosemite wilderness.

¹³ 16 USC 1133 (c).

¹⁴ NPS Management Policies 2006, 6.4.3.

The Wilderness Act directs that wilderness areas be administered “so as to provide. . .for the gathering and dissemination of information regarding their use and enjoyment as wilderness”¹⁵ The making of films in wilderness is considered proper for realizing the educational and scenic purposes.

B. Definition of Commercial Services

Before the National Park Service can determine the types of commercial services that are necessary to further wilderness purposes, we must first determine which services are commercial in nature and which are not. The Wilderness Act does not define the term “commercial service.” When Congress has failed to include definitions of important terms in a statute, agencies may rely on commonly accepted definitions. The word “commercial” is commonly defined as (1) “[o]f or relating to commerce,” *i.e.*, “[t]he buying and selling of goods, esp. on a large scale: business,” (2) “[e]ngaged in commerce,” (3) “[i]nvolved in work designed or planned for the mass market,” or (4) [h]aving profit as a primary aim.”¹⁶ The word “service” is commonly defined as, “the organized system of apparatus, appliances, employees, etc., for supplying some accommodation required by the public” or “the performance of any duties or work for another; helpful or professional activity.”¹⁷ Activities that are necessary and proper for realizing wilderness purposes will be evaluated to determine whether they reflect consistent, commonly understood usage of the terms “commercial” and “services.”

In addition, our determination as to what constitutes a “commercial service” is guided by an analysis of the primary purpose and effect of each service. This further layer of analysis, focused on purpose and effect, is supported by judicial precedent.¹⁸ While some services are conducted for more than one purpose and may have more than one effect, the focus of our analysis is on ascertaining the primary reason for the service. Incidental or subsidiary purposes and effects do not dictate that a service be categorized as commercial.

For purposes of this document, a commercial service is one that relates to or is connected with commerce wherein work is performed for another person or entity, if the primary purpose is the experience of wilderness through support provided for a fee or charge and if the primary effect is that the wilderness experience is guided and shaped through the use of support services provided for a fee or charge.

The form of the organization providing the service is also not dispositive of whether the organization is offering a commercial service, for example whether it is a non-profit or not-for-profit. Rather, the definitions above, including an analysis of the activity’s purpose and effect, will guide a determination of whether a service is commercial or not.

Commercial services may be authorized under a number of different legal authorities, using a number of different instruments. Of relevance to designated wilderness areas within Yosemite National park are concession contracts, commercial use authorizations, and special use permits.

¹⁵ Wilderness Act, (16 USC 1131 (a)).

¹⁶ Webster’s II New College Dictionary 225 (1995); *accord* Merriam-Webster’s Collegiate Dictionary 230 (2000). *See Wilderness Society v. U.S. Fish and Wildlife Service*, 353 F.3d. 1051, 1061 (9th Cir. 2003)

¹⁷ www.dictionary.com.

¹⁸ *Wilderness Society v. U.S. Fish and Wildlife Service*, 353 F.3d. 1051, 1061 (9th Cir. 2003).

1. *Authorization Mechanisms for Commercial Services*

a. Concessions Contracts and Commercial Use Authorizations:

Services authorized under concessions contracts and commercial use authorizations are considered commercial services because the entities holding these authorizations are businesses engaged in commerce, they provide a service to the public, members of the public who use these services experience Yosemite wilderness directly as a result of this commercial support, and employees of the concessioner and CUA holder direct and guide the wilderness experience of the trip participants. CUAs holders who lead either stock or hiking trips (hiking trips include those that focus on fishing, photography, Nordic skiing, and other appropriate activities which do not involve stock transport or technical climbing) are considered providers of commercial services, as is the primary park concessioner, which leads stock, hiking, and climbing trips in wilderness.

b. Special Use Permits:

Special Use Permits are used to authorize a wide range of activities, many of which are not commercial. Because Special Use Permits are issued on a case by case basis, it is not possible to evaluate all of the different activities that might be requested in a special use permit in advance; however, commercial filming permits (one type of Special Use Permit) are discussed below. When a request for another type of Special Use Permit in wilderness is received, it will be evaluated in accordance with the criteria above to determine whether the activity constitutes a commercial service. If it does, a permit will only be authorized in accordance with the procedures set out below in Sections 8.

2. *Application of the Purpose and Effect Analysis*

For the majority of traditional wilderness outfitting and guide services the determination of commerciality is straightforward. The commerciality of some uses is not as clear, however, and those uses are analyzed here.

a. Scientific Research:

Scientific research performed by faculty, postdoctoral fellows, or students enrolled in degree-granting programs in accredited colleges and universities or holding appointments with governmental agencies or scientific research institutions, even when accompanied by pack stock support, will typically not be considered commercial. Research trips using pack stock support would normally not be classified as a commercial service trip because the primary purpose and effect of the trip is the enhancement of scientific understanding of park resources, not commercial interests. The NPS will review requests for scientific research permits that involve the support of commercial outfitters to determine whether the trip is commercial. In the event that a research trip is categorized as a commercial service, it will be allowed in accordance with the procedures set out below in Sections 8.¹⁹

¹⁹ Some scientific research could involve a commercial component if it contained an element of “bioprospecting.” Any such proposals will be reviewed for legality under the Wilderness Act and commerciality under the guidelines noted above.

b. Commercial Filming and Photography:

The NPS allows commercial filming and photography in national parks provided that there would not be a likelihood of resource damage, an unreasonable disruption of the public's use and enjoyment of the site, or a health or safety risk to the public.²⁰ Filming involves movement or motion of the subject whereas photography does not. The NPS Management Policies define "commercial filming" as "filming that involves the digital or film recording of a visual image or sound recording by a person, business, or other entity for a market audience." All commercial filming is subject to permitting requirements, and is limited to projects that are necessary or proper for providing educational information about wilderness uses, resources or values, or necessary for other wilderness purposes. Still photography is only subject to permitting requirements if it takes place in areas not open to the public, involves the use of models or props that are not part of the location's existing setting, or requires NPS oversight. Based on the NPS policy cited above, all commercial filming and photography will be treated as a commercial service.

c. Trips by Educational Institutions:

Each year, the park receives requests for wilderness trips by student groups from accredited educational institutions which are conducting classes for course credit. These institutions range from elementary, middle and high schools to colleges and universities. The goal of these trips is to provide environmental education to students and to foster self-reliance and other qualities. In some cases, employees of the educational institution guide the trip. In others, the school retains the services of an institution with expertise in environmental education. NatureBridge, a park partner whose mission is environmental education, leads many trips of this type (A small percentage of NatureBridge's trips are not for academic credit and are considered commercial). Trips by accredited academic institutions which give course credit for completion, even if accompanied by Yosemite Institute or a similar organization, are not considered commercial services for the purposes of this Extent Necessary Determination. The primary purpose and effect of these trips is fulfilling academic goals for the students involved. The students' experience is guided and shaped by the institution's academic goals. Support services from environmental education organizations like NatureBridge do not change the essential character of the trip, which is academic not commercial.

C. Definition of Wilderness Purposes

1. Recreation

All visitors to the Yosemite Wilderness help to realize the recreational purpose. The recreational purpose is realized when people are engaged in proper activities in wilderness. Those activities are described in Section 5.A above. Hiking, backpacking, horseback riding, fishing, climbing, nature study, and mountaineering are just a few examples of the many ways that visitors help to realize this purpose. Yosemite National Park does not allocate capacity to particular wilderness recreational activities.²¹

²⁰ U.S.C. §460l-6d

²¹ This approach is reaffirmed by a recent district court ruling which stated: "...neither fishing nor any other particular activity is endorsed by the Wilderness Act, nor is the enhancement of any particular recreational potential a necessary duty of wilderness area management." *High Sierra Hikers Assn. v. U.S. Forest Service*, 436 F.Supp.2d 1117, 1144 (E.D. Cal. 2006).

2. Education

While many wilderness visitors are engaged in some type of informal, self-directed education, formal education is also necessary to realize the educational purpose.

Examples of formal education that realize the educational purpose of wilderness include, but are not limited to the following:

“How to” education on such topics as:

- Equipment selection
- Navigation
- Wilderness first aid
- Travel and camping skills

More advanced “skills” training on such topics as:

- Rock climbing
- Mountaineering
- Backcountry skiing

Coursework on wilderness values, ethics or philosophy including:

- Natural history
- Human or cultural history
- Wilderness values
- Environmental social or political history
- Environmental philosophy

Coursework on scientific aspects of wilderness, such as:

- Biology
- Geology
- Zoology
- Fire ecology

Programs specifically designed to teach residents of urban areas, particularly youth, wilderness skills, including:

- Self reliance
- Survival
- Independence
- Physical fitness and agility
- Mental toughness
- Problem-solving
- Adaptability

Making of educational films about wilderness, including but not limited to those about wilderness:²²

- Wilderness values
- Natural history
- Human or cultural history
- Famous wilderness defenders such as John Muir
- Endangered species preservation
- Instructional films covering wilderness skills and techniques

Exception:

- Leave No Trace training is considered a fundamental prerequisite for all wilderness visitors and as such will *not* be considered formal education.

3. *Scenic*

Wilderness possesses a particular type of scenery-natural and untrammeled. The scenic purpose is realized when visitors observe the natural landscape of wilderness. It is also realized when people take photographs of scenery and share them with others outside of the wilderness. As with the educational purpose, however, there is a more formal appreciation of scenery that is enjoyed by photographers and other artists. Commercial services provide necessary support for this purpose if they offer photography, painting, or even writing workshops that focus on appreciating and interpreting the scenery. Commercial filming, videography, audiography, and photography also realize the scenic purpose if they focus on wilderness scenery and soundscape.

4. *Conservation*

Conservation means actions that help to maintain the wilderness in a largely natural and untrammeled state, with native biodiversity intact and natural processes uninterrupted.

Examples of activities in wilderness that help to realize the conservation purpose include, but are not limited to:

- Ecological restoration projects
- Trail building and maintenance
- Species preservation activities
- Eradication or removal of non-native invasive species

Realizing the conservation purpose is primarily an agency responsibility. Occasionally a visitor group conducts a “service trip” that includes conservation work. In Yosemite, however, these groups are not able to work independently of NPS control and supervision. They are designated as volunteers, and are thus agents of the National Park Service. This purpose is realized by the agency, not by commercial

²² Films focused on displaying scenic beauty rather than providing education on a topic may more properly be considered to fulfill the “scenic” purpose described below at Section 5.B.3.

services. If the primary purpose of the service trip is to construct, implement or maintain a conservation project, then the purpose and effect is non-commercial.

5. Historic

“Historic uses” are defined as those uses which emphasize the wild, untrammled, and natural character of the land in its historic state. Visitors help to realize the historic purpose when they encounter the land as did those of earlier historical periods. The historic purpose is realized by maintaining the wilderness character of the land, by primitive recreation in the wilderness, by the provision of opportunities for solitude, and by enjoying the scenic wonders of the natural and untrammled landscape. The realization of this purpose is consistent with the realization of the conservation and recreational purposes.

The courts have directly addressed the meaning of “historic uses” as used in the Wilderness Act, and have uniformly construed “historic use” to mean use of the primeval or ancient wilderness in its natural state. The U.S. Court of Appeals for the 11th Circuit found that “the only reasonable reading of “historical use” in the Wilderness Act refers to experiencing the natural, rather than man made, features.”²³ This decision was followed by the district court in *Olympic Park v. Mainella*, which held that:

[t]he Park Service references the historic pattern of shelter construction and recreational use in concluding that the “setting, association, and feeling are significant aspects of historic use within the park” (AR 416-17), but while this may be true, this type of usage is in the past and a new value has been placed on the land by the creation of the Olympic Wilderness....a different “feeling” of wilderness is sought to be preserved for future generations to enjoy, a place “where the earth and its community of life are untrammled by man” and which retains “its primitive character and influence.”²⁴

Thus, “historic use” refers to preserving the wilderness character of the land so that each visitor may encounter it in its historic state, as undeveloped as it was when modern humans first experienced it. No commercial services are necessary for the realization of the historical purpose because its realization is congruent with the realization of the conservation purpose.

6. Scientific

The natural and untrammled qualities of wilderness make an area valuable to science. Realizing the scientific purpose means allowing scientific research and monitoring to take place in wilderness. Unlike conservation activities, scientific activities fall on a spectrum from administrative to independent: Some are conducted by the agency, some are conducted by academics but sponsored or overseen by the agency, and some are conducted by independent academics or graduate students. Research conducted by or for the NPS is considered administrative, not commercial. On rare occasions an independent researcher might require commercial services to pack in supplies. However

²³ *Wilderness Watch v. Mainella*, 2004, need correct cite format, followed by *Olympic Park Associates v. Mainella*, 2005 WL 1871114 (D. Wash. 2005)

²⁴ *Olympic Park Associates v. Mainella*, 2005 WL 1871114 (D. Wash. 2005)

as discussed above in Section 5, the incidental use of pack services to support a research trip typically would not convert a research trip into a commercial service.

In the Yosemite Wilderness, research is reviewed by an interdisciplinary permit committee and limited through a process articulated in *An Interagency Framework to Evaluate Proposals for Scientific Activities in Wilderness*.²⁵ This framework, including the application of the minimum requirement concept, provides methods to quantify the impacts and benefits of research, compare costs and benefits, and prioritize research proposals.

PART 6: EXTENT NECESSARY DETERMINATION

This section describes the thresholds and methods used to determine limits on commercial services in the wilderness portions of the Merced River corridor. As noted above, no commercial services are needed for the realization of the historic, scientific, or conservation purposes. All proposed commercial trips in wilderness will be assessed to see which purposes they fulfill (see section on the application process, below).

A. Overnight Use

The wilderness portions of the Merced River corridor are overlaid with eight wilderness management zones. Each zone has an established capacity and trailhead limits are enforced. The extent necessary determination for overnight trips analyzes use in each zone by month.

1. Recreational Purpose

Under the Wilderness Act, the NPS can only authorize commercial services in wilderness if they are necessary to realize wilderness purposes. Therefore it is important to understand the amount of non-commercial use that is occurring in relation to established capacities. If a wilderness zone is substantially full with noncommercial visitors, then commercial visitors are not needed to realize the recreational purpose. To determine whether an area is “substantially full,” the following method is used:

Each zone is accessed by a number of trailheads, each with a daily quota for overnight use (see capacity discussion above in Part 4). For each zone, permit records for all trailheads that provide more than 10% of the overnight visitors to that zone are tallied (minus permits for commercial groups) and compared to the trailhead quotas. The number of days per month that those trailhead quotas are at least 90% full is tallied. Those days are considered “full.” 90% was chosen instead of 100% because visitors are frequently turned away before 100% of the quota is reached—for example, if only one spot is left, groups of two or greater will be turned away. On many days reserved permits are cancelled, or groups with a reservation arrive with a smaller group than planned. When this happens late in the day, utilization is slightly less than the quota even though many groups may have been turned away.

²⁵ See Landres, P., Fincher, M., Sharman, L., et al, *An Interagency Framework to Evaluate Proposals for Scientific Activities in Wilderness*, 2009 at wilderness.net/toolboxes.

This analysis is done by month, using a five year average of wilderness permit data from 2005-2009. If a zone is “full” more than 66% of the days in a month, that zone is considered substantially full, and will be considered a “restricted” zone. Those zones where the trailheads serving the zone are full 33% to 65% of the time are “weekend restricted” zones. Typically the full days fall on weekend nights, with Fridays and Saturdays the most likely to be substantially full.

Webster’s Dictionary defines “realized” as “to bring into concrete existence.” It is not necessary that a zone be filled to capacity in order for the recreational purpose of that zone to be realized. However, “realization” implies a level of “concrete” use beyond the minimum. Many zones are popular destinations with great demand for access from both the public and commercial outfitters. A zone threshold of 66% for “realization” of the recreational purpose means that all wilderness permits for that zone are issued 4.6 days per week throughout the month. This means that every weekend and holiday as well as many weekdays is filled to capacity for that zone. Additionally, in many popular zones even those days on which utilization falls below 90% it often exceeds 80%. This means that the overall percentage of a quota utilized for a given month may be significantly higher than the percentage of “full” days. The level at which a purpose is realized necessarily entails an exercise of management judgment. This definition of “realization” balances the competing factors of access for commercial recreational groups against the overall preference expressed in the Wilderness Act for noncommercial recreational visitation.

A zone threshold of 33% to 65% for a “weekend restricted” zone means that this zone is filled to capacity between 10 and 19 days per month. This means that every weekend and holiday is filled to capacity for that zone. Noncommercial public recreational demand is dramatically increased on weekends. The “weekend restricted” designation maintains commercial recreational access to desirable areas by permitting it on weekdays, when it helps realize the recreational purpose, while maximizing noncommercial recreational access on weekends.

The results of the overnight commercial recreational capacity analysis are shown on map 1. Overnight commercial groups will be allowed to travel through restricted or weekend restricted zones as long they spend the night outside of such zones.

2. Educational Purpose

The educational purpose is considered realized when there are opportunities for both informal and formal education taking place in the wilderness. Informal education is self-directed learning available to all wilderness visitors. The realization of the “informal” component of the educational purpose can be considered as numerically congruent with the realization of the recreational purpose: All those who are recreating are in some way engaged in informal education. Directed, formal education is also a proper activity in wilderness and also realizes the educational purpose. Formal education presented by a qualified instructor can promote a deeper, more comprehensive understanding of wilderness related subjects. An allocation of 10% of capacity is necessary to ensure that there is sufficient opportunity for formal education and classes, including the making of educational films. Trips that realize the educational purpose also, by definition, also realize the recreational purpose and therefore educational trips in excess of 10% of capacity would be allowed in non-restricted zones to help realize the recreational purpose.

The percent of capacity allocated to formal education is small for a number of reasons:

- The educational purpose is largely being realized through informal education
- NPS Management Policies directs that “. . . the service will, to the extent practicable, afford visitors ample opportunity for inspiration, appreciation, and enjoyment through their own personalized experiences-without the formality of program or structure.”²⁶
- Commercial educational use in restricted and weekend-restricted zones will displace non commercial use. Under the overall structure of the Wilderness Act, denial of access to non commercial visitors in favor of commercial visitors should be minimized.

Classes offered by accredited schools for which students receive academic credit are not considered commercial and are not restricted by this allocation (see section 5).

For restricted zones, and weekend restricted zones on weekends, formal education conducted by noncommercial entities such as the NPS, and accredited schools, colleges, and universities conducting classes for academic credit is also realizing the educational purpose, and will first be subtracted from that 10% of capacity. The remaining allocation, if any, will be available for commercial formal education in order to realize the educational purpose.

3. *Scenic Purpose*

All visitors are engaging in informal appreciation of wilderness scenery, as are individuals located outside of wilderness who are looking in from a road or other developed area. Formal appreciation of wilderness scenery, such as art and photography workshops, can foster a more structured understanding of scenery and is also necessary to realize a purpose of the Wilderness Act. An allocation of 5 % of capacity is necessary to ensure that there is sufficient opportunity for formal appreciation of wilderness scenery, including the making of films that focus on wilderness scenery. Trips that realize the Scenic purpose also, by definition, also realize the recreational purpose and therefore Scenic trips in excess of 5% of capacity would be allowed in non-restricted zones to help realize the recreational purpose.

The percent of capacity allocated to formal appreciation of scenery is small for a number of reasons:

- The scenic purpose is largely being realized through informal appreciation, both inside and outside of wilderness
- Policy guidance, noted above, that directs that non-formal opportunities be “ample.”
- Commercial scenic use in restricted and weekend-restricted zones will displace non commercial use. Under the overall structure of the Wilderness Act, denial of access to non commercial visitors in favor of commercial visitors should be minimized.

Art and photography classes offered by accredited schools for course credit are not considered commercial and are not restricted by this allocation (see section 5).

²⁶ NPS Management Policies 2006 8.2

B. Day Use

The only significant day use in the Merced River Corridor is in the Little Yosemite Valley area. Nearly all of this day use is on the one mile section of the John Muir Trail from the top of Nevada Fall to where the trail leaves the corridor near the designated camping area. An analysis of commercial use from 2005-2009 shows that all commercial day use in the corridor was limited to hikes to Half Dome. That use has already been limited through an Extent Necessary Determination for the Half Dome Stewardship Plan. That plan limits commercial day use to a maximum of 30 people per day for trips that realize the educational purpose and 15 people per day for trips that realize the scenic purpose. Those limits are appropriate for realizing the educational scenic purposes of wilderness in the Merced River corridor while protecting other wilderness values.

C. High Sierra Camps

In 1984, when Congress designated the Yosemite Wilderness, it allowed the continuation of the High Sierra Camps as a non-conforming use and designated the immediate areas of the camps as potential wilderness additions. The only High Sierra Camp in the Merced River corridor is Merced Lake.

The camps are a commercial operation and offer seasonal, rustic accommodations. Under the preferred alternative of the Draft Merced River Plan the Merced Lake High Sierra Camp will provide 42 guest beds, offer full meal service to guests, and sell sundry items to both camp guests and other visitors. It is typically open from early July to early September. The National Park Service, in conjunction with the concessioner, conducts commercial educational “loop trips” to the High Sierra Camps and provides formal interpretative educational programs to both High Sierra Camp guests and backpackers from nearby campgrounds.

The Merced Lake High Sierra Camp is a substantial commercial presence and affects the wilderness experience of visitors in the area, as do the visitors, employees, support personnel, and supply trips going to and from the camp. The nature of the camp, with a nonconforming level of development and services, means that the Merced Lake zone is highly commercialized compared to those zones that have only more traditional, conforming outfitter and guide services. To prevent further commercialization of this area, the Merced Lake zone will be managed as “restricted” during July and August when the camp is open, and the commercial formal education provided by the NPS-concession loop trips will be subtracted from the overnight use allocations for such use, as well as noncommercial educational use.

D. Disabled Access

NPS Management Policies states that the agency must “make available equal opportunities for people with disabilities in all programs and activities.”²⁷ For some people who are mobility impaired, commercial stock services may provide the only reasonable way to access the wilderness. This Extent Necessary Determination only prohibits some types of commercial use in two wilderness management

²⁷ NPS Management Policies 6.4.10

zones (there are 53 such zones in the entire wilderness; 8 in the Merced River corridor) for a part of the use season. Like persons without mobility impairments, mobility impaired visitors may not be able to gain access to their preferred destination as part of a commercial trip during the restricted period. However, Yosemite has many other areas where visitors can take stock-assisted trips. As such, there are “equal opportunities” for mobility impaired individuals to use commercial stock trips to visit the Yosemite Wilderness.

E. Other Commercial Use Limits

In order to honor the clearly expressed legislative intent in the Wilderness Act to limit commercialization of wilderness, and the legislative mandate to permit commercial use only to the extent necessary to realize the wilderness purposes, the following policies will be implemented:

- In the Yosemite Wilderness, off-trail areas are managed to provide outstanding opportunities to enjoy solitude as well as a more pristine natural environment: Group size is limited to eight instead of fifteen to provide enhanced opportunities for solitude, and stock use is generally prohibited to prevent stock impacts in areas without the protection of properly designed and hardened trails. Off-trail areas in the Merced River Corridor zones of the Yosemite Wilderness will be commercial-free areas. No commercial use will be allowed more than ¼ mile from a maintained trail, authorized cross country stock route, or public access road (as shown on the latest version of U.S.G.S. topographic maps.)
- Overnight commercial trips are limited to two per zone per night. There are three reasons for this limit. First, this limit is necessary to protect areas from impacts due to displacement from restricted and weekend restricted zones. Such displacement, if not properly managed, could result in undesirable physical impacts from grazing or from the creation of new campsites large enough to accommodate large commercial groups of 12-15 people, as well as the social impacts of increased numbers of large groups. Second, this limit will help to prevent “harmful spikes in use”²⁸ and protect the wilderness character of areas to which commercial use may be displaced under the operation of this plan.²⁹ If three or more large commercial groups are all displaced to the most desirable unrestricted zone, it could create crowding that detracts from the wilderness experience of noncommercial visitors sharing a zone with such groups.³⁰ A limit of two commercial trips per day in unrestricted zones will prevent this from occurring. Third, this limit will prevent commercial groups from dominating any one area and therefore further the intent of the Wilderness Act.

These limits apply in all zones at all times in addition to the other restrictions noted above.

²⁸ See *High Sierra Hikers v. Blackwell*, 390 F.3d 630 (9th Cir. 2004); *High Sierra Hikers Association v. Weingardt*, 521 F. Supp. 2d 1065 (2007) (holding invalidates the USFS commercial use needs assessment in part because it failed to control harmful spikes in use).

²⁹ For a review of the research demonstrating that harms caused by new impacts to areas not previously impacted are more extensive than harms to previously impacted areas (the “impact curve”), see Hammit, W. & Cole, D. (1998) *Wildland Recreation: Ecology and Management*, 2d ed., New York: John Wiley

³⁰ Recent empirical research on visitor experience in the Yosemite Wilderness has documented a visitor preference not to encounter stock parties and large campsites. See Newman, P., Manning, R. E., Dennis, D. F., & McKonly. (2005). Informing carrying capacity decision making in Yosemite National Park, USA using stated choice modeling. *Journal of Park and Recreation Administration*, 23(1), 75-89.

PART 7: EXTENT NECESSARY CALCULATIONS FOR THE MERCED RIVER CORRIDOR

The following is an application of the rules in Part 7 to the wilderness portions of the Merced River corridor. They apply only to the Merced River corridor, and do not apply to commercial use associated with the High Sierra Camps. The allocations are summarized in Table 1. Some trips may realize all three purposes. Such trips will be allocated according to the purpose allocation that is most favorable to the commercial service provider.³¹

A. Limits on all Commercial Use:

- No camping or travel by commercial groups allowed more than ¼ mile from a maintained trail or public access road. No camping allowed in the Mount Lyell zone (The entire zone is off trail.) No more than two overnight commercial groups per night per zone.
- All commercial stock trips are limited to a 1:1.5 stock to person ratio. Accordingly, for every multiple of 3 persons (including employees), only two pack animals are allowed in addition to 3 riding stock. See section 9 B.

B. Limits on Commercial Trips that only Realize the Recreational Purpose:

1. *Overnight Use*

- Restricted zones (LYV, June, July and August only; Merced Lake, July and August only): No overnight commercial use allowed.
- Weekend restricted zones (LYV, May and September only; Merced Lake, September only): Commercial use allowed on weekdays; but prohibited on weekends and holidays. (This means no overnight stays on Friday and Saturday nights or Sunday night before a Monday holiday. July 4th will only be treated as a holiday during years when the federal holiday forms a three day weekend.
- Commercial trips allowed in the Washburn Lake, Clark Range, South Fork, Johnson Creek, and Chilnualna Creek zones all year. Commercial trips allowed in the LYV zone October through April and the Merced Lake zones October through June.

³¹ Such trips are also favorably evaluated under the minimum requirements analysis described in section 9 below because they help to realize multiple purposes at a lower impact than would multiple trips.

TABLE 1. COMMERCIAL RESTRICTIONS SUMMARY

Overnight Use								
	Other Zones			Weekend Restricted Zones		Restricted Zones		
For commercial groups that realize:	<ul style="list-style-type: none"> Washburn Lake, Clark Range, South Fork, Johnson Creek, and Chilnualna Creek LYV zone October through April and the Merced Lake zones October through June 			<ul style="list-style-type: none"> LYV, May and September only; Merced Lake, September only 		<ul style="list-style-type: none"> LYV, June, July and August only; Merced Lake, July and August only 		
Only the recreational purpose	<ul style="list-style-type: none"> No off-trail travel 1:1.5 stock to person ratio Two commercial groups per zone per night 			<ul style="list-style-type: none"> No off-trail travel 1:1.5 stock to person ratio Two commercial groups per zone per night Monday-Thursday nights. No overnight use on weekend and holiday nights. 		<ul style="list-style-type: none"> No overnight use 		
The recreational and educational purposes	<ul style="list-style-type: none"> No off-trail travel 1:1.5 stock to person ratio two commercial groups per zone per night 			<ul style="list-style-type: none"> No off-trail travel 1:1.5 stock to person ratio Two commercial groups per zone per night Merced Lake zone: Limited to 44 weekend use nights per month. LYV zone: Limited to 131 weekend use nights per month. 		<ul style="list-style-type: none"> No off-trail travel Merced Lake zone: No commercial use allowed. LYV zone: Limited to 465 use nights per month. 		
The recreational and scenic purposes	<ul style="list-style-type: none"> No off-trail travel 1:1.5 stock to person ratio Two commercial groups per zone per night 			<ul style="list-style-type: none"> No off-trail travel 1:1.5 stock to person ratio Two commercial groups per zone per night Merced Lake zone: Limited to 22 weekend use nights per month. LYV zone: Limited to 65 weekend use nights per month. 		<ul style="list-style-type: none"> No off-trail travel Two commercial groups per zone per night Merced Lake zone: Limited to 78 use nights per month. LYV zone: Limited to 233 use nights per month. 		
Merced River Corridor Summary								
Month	Zone							
	South Fork	Johnson Creek	Chilnualna Creek	Clark Range	Washburn Lake	Mount Lyell	Merced Lake	LYV
May						No Camping		Weekend Restricted
June						No camping		Restricted
July						No camping	Restricted	Restricted
August						No camping	Restricted	Restricted
September						No camping	Weekend Restricted	Weekend Restricted

C. Limits on Commercial Trips that Realize the Recreational and Educational Purposes:

1. Overnight Use

- Restricted zones (LYV, June, July and August only; Merced Lake, July and August only): Merced Lake zone: Commercial use prohibited because commercial education associated with the High Sierra Camp Loop Trips conducted by the National Park Service exceeds 10% of capacity, which makes it unnecessary to allocate additional capacity for commercial use in support of the educational purpose on this trail corridor. LYV zone: A negligible amount of noncommercial formal education is occurring. Commercial use limited to 465 use nights per month.³²
- Weekend restricted zones (LYV, May and September only; Merced Lake, September only): Commercial use allowed on weekdays. For weekends and holidays (as defined above) commercial use limited to 131 weekend use nights per month in the LYV zone³³ and 44 weekend use nights per month in the Merced Lake zone.³⁴ Commercial use allowed on weekdays.
- Commercial trips allowed in the Washburn Lake, Clark Range, South Fork, Johnson Creek, and Chilnualna Creek zones all year. Commercial trips allowed in the LYV zone October through April and the Merced Lake zones October through June.

D. Limits on Commercial Trips that Realize the Recreational and Scenic Purposes:

1. Overnight Use

- Restricted zones (LYV, June, July and August only; Merced Lake, July and August only): Merced Lake zone: A negligible amount of noncommercial, formal scenic use is occurring. Use limited to 78 use nights per month.³⁵ LYV zone: A negligible amount of noncommercial scenic use is occurring. Commercial use limited to 233 use nights per month.³⁶

³² Calculated as follows: Capacity for LYV is 150 people per night. 150×31 (number of nights/month) equals 4650 use nights. 10% of 4650 equals 465 use nights. Average noncommercial educational use nights (college classes, etc), average, 2009-2010 is 0 use nights. 465 minus 0 equals 465 use nights available for commercial education.

³³ Calculated as follows: Capacity for LYV is 150 people per night. 150×8.7 (average number of weekend nights/month) equals 1305 use nights. 10% of 1305 equals 131 use nights. Average noncommercial educational use nights (college classes, etc), average, 2009-2010 is 0 use nights. 131 minus 0 equals 131 use nights available for commercial formal education.

³⁴ Calculated as follows: Capacity for Merced Lake is 50 people per night. 50×8.7 (average number of weekend nights/month) equals 435 use nights. 10% of 435 equals 44 use nights. Average noncommercial educational use nights (college classes, etc), average, 2009-2010 is 0 use nights. 44 minus 0 equals 44 use nights available for commercial formal education.

³⁵ Calculated as follows: Capacity for Merced Lake is 50 people per night. 50×31 nights per month equals 1550 use nights. 5% of 1550 equals 78 use nights. Average noncommercial scenic use nights (college classes, etc), average, 2009-2010 is 0 use nights. 78 minus 0 equals 78 use nights available for commercial scenic use.

³⁶ Calculated as follows: Capacity for LYV is 150 people per night. 150×31 nights per month equals 4650 use nights. 5% of 4650 equals 233 use nights. Average noncommercial scenic use nights (college classes, etc), average, 2009-2010 is 0 use nights. 233 minus 0 equals 233 use nights available for commercial scenic use.

- Weekend restricted zones (LYV, May and September only; Merced Lake, September only): Commercial use allowed on weekdays. For weekends and holidays (as defined above), commercial use limited to 65 use nights per month in the LYV zone³⁷ and 22 use nights per month in the Merced Lake zone.³⁸
- Commercial trips allowed in the Washburn Lake, Clark Range, South Fork, Johnson Creek, and Chilnualna Creek zones all year. Commercial trips allowed in the LYV zone October through April and the Merced Lake zones October through June.

PART 8: THE COMMERCIAL USE APPLICATION PROCESS

A. Procedures Applicable to All Commercial Services in Wilderness

Implementation of this Extent Necessary Determination will be integrated into Yosemite’s CUA and SUP application procedures and concession management operations. All entities, including concessioners CUA holders, and SUP holders desiring to provide commercial services in the designated wilderness of the Merced River corridor shall do the following:

- (1) The concessioner, CUA, or Special Use Permit holder must submit a proposed trip itinerary to the Yosemite Wilderness Office by May 1 or as soon as is feasible. The itinerary must be received prior to any trip entry into the park. The itinerary must provide a schedule of planned trips. For overnight trips, the itinerary must include the dates, point of entry and exit, each night’s camping location, and the group size (including employees). Day trips must include the date, group size, trailhead, and destination. Itineraries received prior to May 1 will be used to assign trips for the summer season and may include a second and third choice of trips.
- (2) For educational and scenic trips, the applicant must submit an explanation of the manner in which the proposed commercial trip meets the educational or scenic purposes, along with copies of, or internet links to, all advertising and other promotional materials related to that trip and submit educational syllabus for trip and documentation showing that employees are trained and qualified to provide such education.

B. The Minimum Requirement Concept

By policy, the National Park Service must apply the minimum requirement concept to decisions about commercial use in wilderness.³⁹ The minimum requirement concept is a two part process that determines “if administrative actions, projects, or programs undertaken by the Service or its agent and affecting wilderness character, resources, or the visitor experience are necessary, and, if so how to minimize impacts.”⁴⁰

³⁷ Calculated as follows: Capacity for LYV is 150 people per night. 150×8.7 (average number of weekend nights/month) equals 1305 use nights. 5% of 1305 equals 65 use nights. Average noncommercial scenic use nights, average, 2009-2010 is 0 use nights. 65 minus 0 equals 65 use nights available for commercial scenic use.

³⁸ Calculated as follows: Capacity for Merced Lake is 50 people per night. 50×8.7 (average number of weekend nights/month) equals 435 use nights. 5% of 435 equals 22 use nights. Average noncommercial scenic use nights, average, 2009-2010 is 0 use nights. 22 minus 0 equals 22 use nights available for commercial scenic use.

³⁹ NPS Management Policies 2006 6.4.4

⁴⁰ NPS Management Policies 2006 6.3.5

As part of the minimum requirement process, the National Park Service weighs the impacts and benefits to wilderness character. Commercial trips that realize more than one purpose accrue more benefit to wilderness character than those that only realize one purpose but have the same amount of impact. For this reason trips that realize a higher number of purposes will receive preference over those realizing a lower number of purposes when allocating access.

Part of a minimum requirement decision is determining whether an activity is wilderness dependent. Wilderness dependence as used here means if the activity can occur outside of wilderness with little loss of value, it should not take place in wilderness. The wilderness dependence criteria will be used during the application screening process. Commercial trips whose primary purpose is teaching a subject that is not wilderness dependent will be treated as recreational rather than educational. Examples of such topics are weight loss and cooking.

Consistent with this concept, when two commercial groups that are realizing the same number of purposes are competing for the same date in the same location, the lower impact trip will be given preference. When comparing otherwise equivalent commercial stock trips preference will be given to the trip with the lower stock-to-client ratio.

In order to minimize the impacts of commercial stock use, all commercial stock trips are limited to a 1:1.5 stock to person ratio. Accordingly, for every multiple of 3 persons (including employees), only two pack animals are allowed in addition to 3 riding stock.

C. Process for Allocating Proposed Trips

In the event that there is more than one entity that desires to provide Commercial Services on the same date in the same zone, priority shall be determined by the application of the following steps, in order:

- (1) Each proposed commercial trip shall be awarded one (1) point for each wilderness public purpose (i.e., recreational, educational, scenic) that it realizes. Priority shall be granted to proposed trips with higher point totals;
- (2) Proposed commercial trips that utilize a lower-impact mode of transportation will be given priority over those using higher impact modes of transportation; and
- (3) In the case of otherwise comparable stock trips, the trip with the lowest stock to client ratio will be given priority.
- (4) Any remaining conflicting proposed commercial trips after the application of steps (1) through (3) above will be resolved through a lottery for proposed commercial trips that will be conducted on May 1 of each calendar year.

All trips proposed after the May 1 lottery will be allocated on a first come first served basis. With respect to trips requested on the same date, any conflicts over requested dates and trailheads will be resolved by the application of steps (1) through (4) above.

D. Compliance

Wilderness Rangers routinely check on Commercial Trips in the field to assure compliance with park regulations. An assessment of the extent to which a Commercial Service provider has met its objective with respect to satisfaction of wilderness purposes will be added to the CUA contact form, for example to evaluate the claim that wilderness education is being provided by qualified personnel in addition to recreation.

Failing to provide promised educational or scenic opportunities may be grounds for limiting a commercial service provider's ability to provide future commercial trips in the Yosemite Wilderness.

PART 9: THE REASSESSMENT PROCESS

The limits on commercial use imposed by this plan will be recalculated when significant changes in use patterns occur. Two current actions may affect this process. The first is research on wilderness travel patterns that was completed in 2010. Trailhead quotas will be adjusted based on the results of this study. As a result, travel patterns may change in a way that would affect the results of an Extent Necessary Determination. In addition, the National Park Service has taken the initial steps of rewriting the Yosemite Wilderness Stewardship Plan which will include an Extent Necessary Determination for the entire wilderness. At that time both visitor use patterns and the Extent Necessary methodology will be reevaluated.