

What the NPS Learned

Decisions must be based on reasonable information, well documented and fully disclosed to the public. As the Court noted: "In ignoring the repeated references in the Administrative Record about the significance of the proposal's impacts, the National Park Service's decision not to perform an Environmental Impact Statement is arbitrary and capricious."

A "Finding of No Significant Impact" is also a legally significant determination. It relies on the scientific analysis and data of an Environmental Assessment as its basis. In this case, decision-makers ignored the repeated warnings in the administrative record that tree removal and other impacts were significant. If an EA indicates that impacts may be significant an EIS must be prepared.

Mitigation measures proposed must be based on scientific and technical analysis and present a realistic opportunity for success in a foreseeable time period. If mitigation measures are partial or speculative, those results must be disclosed and recognized in assessing the significance of the mitigated impacts.

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COALITION FOR CANYON PRESERVATION VS. SLATER, HALL, BABBITT AND MIHALIC

CV98-84-M-DWM
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*Lessons Learned:
Determining Impact
Significance and
Mitigation Success*

FACTS OF THE CASE A decision by the National Park Service to construct a parking lot on the east side of the Going to the Sun Road at Glacier National Park was challenged by two conservation organizations. In 1996 the park issued an Environmental Assessment (EA) on the proposed project. A little over one year later, a Finding of No Significant Impact (FONSI) was issued. The Federal District Court for the District of Montana issued a Temporary Restraining Order in June of 1998. After a hearing on the case the Court issued an injunction stopping the NPS from implementing the decision or engaging in any site work.

THE SETTING The Avalanche Creek Area at Glacier National Park is located at the confluence of Avalanche and McDonald Creeks several miles upstream of McDonald Lake, adjacent to the Going to the Sun Road. The east side of the Going to the Sun Road contains a campground. It has an asphalt and handicapped accessible boardwalk through the Trail of the Cedars and is the trail head for the two mile hike to Avalanche Lake. Both areas are popular with visitors to Glacier. The west side of the Going to the Sun Road in the Avalanche area has a 12 table picnic area, restrooms and twenty parking spaces that abut the southbound lane of traffic of the Going to the Sun Road. Because the Trail of the Cedars and the trailhead to Avalanche Lake are on the east side of the road, and the parking to the west,

there is considerable pedestrian traffic across the Going to the Sun Road.

Responding to the increased visitor use and the perceived need to find a long term solution, beginning in 1984 the park prepared a series of plans and studies for the parking area. In 1995-1996 the park revisited the problem and prepared the EA and FONSI challenged by the conservation organizations. The NPS preferred alternative in the EA called for a parking lot on the east side of the Going to the Sun Road in the Avalanche Creek Area. The conservation organizations charged that the impacts were too severe and mitigation measures too speculative and that a more comprehensive Environmental Impact Statement should be prepared.

KEY ISSUES The heart of the controversy was the impact that the parking lot might have on vegetation at the new construction site. The area for the new construction is a cedar-devil's club forest with trees dating to the year 1517—a place recognized by NPS as rare and vulnerable to extinction.

The Draft EA on the proposed parking facility stated that “further permanent loss of this rare and unique habitat, whether it be mature or successional forest, constitutes a long-term significant impact.” That language was removed from the final document, but the final language also implied the need for an environmental impact statement to consider the project's impact on an extremely significant resource.

The number of trees to be removed was underestimated by the park in the EA and the FONSI. The July 1997 FONSI stated that only 9 trees greater than 12” in diameter would be removed. But a later count showed that 47 trees would be removed. Additionally, the NPS would also have to remove “hazard trees” that might fall into the parking lot. Estimates of the number of hazard trees to be removed were close to 200.

WHAT THE COURT DECIDED It was evident to the Federal Judge that “The categorical findings of significant impact on the wealth of this biologically rare and diverse area is incongruous with the Finding of No Significant Impact.”

In addition, the court noted that the park had proposed mitigation measures that included revegetation of the picnic area on the west side of the Going to the Sun Road to allow for restoration. The park and the NPS asserted that this would mitigate the damage resulting from the tree cutting on the east side of the road. The Judge concluded: “There is insufficient scientific analysis that the area to the west will regenerate, or that its regeneration is sufficient mitigation to the loss of the habitat to the west. The National Park Service conclusion that it will regenerate is speculative. Finally, there is no dispute that regeneration, if successful, would take centuries. The measure of mitigation would be nearly half of the next millennium.”