STATE OF ALASKA

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Dear Mr. Contor:

The State has completed its review of the National Park Service (NPS) regulations concerning cabins and other structures on National Park System lands in Alaska. We wish to commend the Department of Interior (DOI) for promulgating regulations specific to cabins in Alaska park areas to assure the continued uses of Alaskan residents as recognized by Congress, consistent with maintaining the integrity of these areas. We fully appreciate the difficulty of balancing these two mandates.

While the State feels that these proposed regulations appear to fulfill DOI's stated intent to protect rural residents' way of life, we have identified several substantive problems which inhibit implementation of this intent. One of the State's major concerns is the protection of subsistence opportunities and the maintenance of the traditional way of life prevalent in many of the parkland areas.

These comments and constructive criticisms are offered to assist DOI in its efforts to develop comprehensive and straightforward regulations which will meet its stated objectives. The following discussions cite each of our concerns by paragraph, then provide suggested resolution(s). If these problems are resolved, we believe that the regulations as a whole would be acceptable.

13.17(a) Administration. (1) Policy: "Except as Congress has directly and specifically provided to the contrary, the use and disposition of cabins in park areas shall be compatible with the values and purposes for which these park areas have been established" (emphasis added). This reference to "values" is undefinable, potentially in conflict with DOI's intent to assure uniform treatment of applicants, and not backed up by the Alaska National Interest Lands Conservation Act (ANILCA). We suggest it be deleted.

This specific recommendation also applies to all subsequent similar references, including 13.17(a)(4), 13.17(b), 13.17(b)(2), 13.17(b)(3).

We are pleased that DOI recognizes the importance of continued traditional uses on parklands as noted in the proposed regulation SUMMARY: "The Department is persuaded that much existing cabin use in Alaska is compatible with the purposes and values of the park areas." This is a key underlying assumption which should be incorporated directly into the regulations, not just the accompanying discussion. We urge that DOI's positive finding that much cabin use is compatible be included in this first paragraph.

13.17(a)(2) Permittee's Interest Limited to Occupancy and Use. We request that provision be made to allow owners of structures that existed on land prior to designation as parklands be given the option of removing the structure. Owners who chose not to remove their structure then must apply for permits or leases, as appropriate, relinquishing all ownership rights except as provided in section 13.17(b). The proposed paragraph is developed from the premise that trespass structures on parklands are government property. No consideration has been given to those structures which existed on the land prior to its designation as parkland (1978 or 1980 as applicable). Parkland designation does not necessarily warrant automatic ownership of attached structures by the federal government; such action is equivalent to condemnation of private property.

We are aware of some situations where owners have been denied use of their structure since parkland designation. These owners have in turn complied with these administrative denials only to subsequently have their property declared abandoned. We believe such action is not consistent with DOI's intent, particularly where activities which are consistent with parkland designated uses were being conducted. These include: mountain climbing, fishing and hunting, photography, subsistence activities, trapping, and other uses which are consistent with the purposes of the park unit. By virtue of the owner's compliance with this administrative "condemnation," the owner may now not qualify for uses of his structure which would otherwise have been allowable in the remaining regulation (such as occupancy). We request that the above oversights be addressed in this and/or other appropriate sections in the final regulations. For example, the annual four month occupancy requirement for the years since designation (1978 or 1980 as appropriate) should be waived for those persons who were abiding by the new law.

13.17(a)(4) Access. The State is concerned that the discretionary authority given the Superintendent in granting access may be too restrictive: "Permits granted under these subsections shall provide such reasonable access as the Superintendent deems appropriate..." Access is often the key element to practical use of an area, including its cabins, tent platforms, and other facilities covered by these regulations. The authority of one administrator to make "appropriate" determinations of "reasonable access" could unduly limit practical access.

Consistent with DOI's stated intent "to determine mutually acceptable methods and routes," we offer two readily available resolutions to this potentially serious problem which would insure reasonable access: 1) adopt guidelines for the Superintendent to use in determining "reasonable" access (such as those proposed for ANILCA Title XI), or 2) include in the paragraph direction to the appropriate administrator (i.e. Regional Director) that "traditional access methods and means shall be allowed to continue until permit stipulations are necessary to assure continued conservation and use (enjoyment) of the park area."

A further concern with this paragraph is the apparent authority given to a Superintendent to restrict or eliminate traditional access without pursuing the notice and hearing of such closures that are required by ANILCA Title XI. Statements providing guidance to the contrary are included in the Section-by-Section Analysis, such as "section 1110(a) of ANILCA, 16 U.S.C. 3170(a), and the NPS general regulations on access in park areas, 36 CFR 13.10-13.14, establish a liberal 'open unless closed' policy concerning most access." We request that the last sentence of Section 13.17(a)(4) be revised to reflect this policy, such as: "Permits granted upon under these subsections shall not restrict access until permit stipulations become necessary to assure continued conservation and enjoyment of the park area; such stipulations will be consistent with ANILCA Title XI."

13.17(b)(4) Revocation. We are concerned with the distinction between (i) Residential structures and (ii) Non-residential structures. As written, these two categories are subject to differing revocation conditions and terms as well as separate appeal procedures. The former category is given the opportunity for an additional hearing by an administrative law judge and the latter is not. No reason is provided in the Section-by-Section Analysis for the original (somewhat vague) distinction between residential and nonresidential conditions, or the major difference in the appeal process. For simplicity and uniformity, we recommend that 13.17(b)(4)(i) be adopted as the standard for revocation of all valid existing leases or permits, thereby deleting (ii) in total and any need to distinguish between types of structures and types of appeals. This specific recommendation applies to these additional paragraphs: 13.17(c)(6), 13.17(g)(4), 13.17(i)(5).

A further concern we have with this paragraph, and all subsequent subsections which adopt this revocation procedure ((13.17(c)(6), (d)(5), and (f)(2)(iv)), is the use of the administrative law judge's decision. It seems pointless to institute an unbiased hearing procedure for a claimant and have the subsequent rendered decision be only advisory to a superintendent who has already reviewed the application materials and rendered a negative decision.

After the hearing by the administrative law judge, it would be more appropriate for him or her to submit findings and recommendations directly to the Regional Director, who would then make a final determination. We request that the hearing procedure be revised

accordingly for this and the subsequent subsections to assure uniformity and "due process."

13.17(c) Personal occupancy and use by a qualified occupant to a cabin not under valid existing lease or permit. (1) Applicability. We concur with the DOI interpretation of ANILCA Section 1303(a), that park units "created or enlarged" by ANILCA include the ten new units as well as the former three units which were expanded by ANILCA.

13.17(c)(2) Definitions. We disagree with the NPS intent to restrictively interpret Congressional use of the term "occupancy" to mean "residency." Application of the additional requirement that a claimant must have "lived in" a structure is not consistent with congressional intent to assure continuation of opportunities for customary and traditional uses while maintaining resource integrity.

There are many legitimate uses of cabins by claimants that render the cabin "occupied" without its having been "lived in" for four consecutive months, such as a trapline base or commercial fishing site. Inclusion of this definition appears to be an attempt to substantially eliminate cabin occupancy even though Congress did not eliminate such users or their uses. Also, to require proof of having "lived in" a cabin further institutes an unnecessary regulatory burden on persons, which conflicts with both Congress' and DOI's intent to "minimize the regulatory burden" as discussed in the SUMMARY. For these and the reasons discussed under (a)(2), we request that the requirements be made consistent with ANILCA by removing the requirements of "lived in" and the four consecutive months residency in this and all other subsections (example: 13.17(c)(2)(i)).

13.17(c)(3) Permit terms dependent on cabin age and occupancy.-(i) Pre-December 18, 1973 cabins. Section 1303(c) of ANILCA states "said permit shall be renewed every five years until the death of the last immediate family member of the claimant residing in the cabin or structure, or unless the Secretary has revoked the special use permit in accordance with the criteria established in this section" (emphasis added). We interpret the phrase "residing in the cabin or structure" to be a description of the claimant, not of the family members. We find the NPS interpretation of this legislation to be more restrictive than intended.

NPS has added a requirement that family members will qualify for continuation of the permit if they have resided in the cabin with the claimant: "For purposes of this paragraph, the term 'last immediate family member of the claimant residing in the cabin or structure under permit' means any person related to the claimant by blood, marriage or adoption residing with the claimant within his/her cabin or structure under permit during a substantial portion of the time (i.e., at least four consecutive months a year, as a general rule) during the term of the expiring permit" (emphasis added). The additional restrictions will disqualify family members have required time or distance separations from the claimant while in his cabin. We do not believe that this is consistent with the intent of Congress.

If the NPS needs a clarification of who the "last immediate family member" is, we suggest that an effective date be used. For example, those persons qualifying as a family member under the proposed definition of "related to the claimant by blood, marriage or adoption" could be limited to those who qualify: (1) at the time application is made for the permit, (2) as of passage of ANILCA on December 2, 1980, or (3) the proposed application deadline of December 31, 1985. An effective date limitation would be consistent with the legislation and the intent to maintain existing customary and traditional ways of life.

13.17(c)(4) Permit Applications.-(i) Content. Corresponding to our discussion of 13.17(c)(2) and (3)(i), subsection (F) should be deleted and (G) should be rewritten as follows: "Submit a list of all persons who qualify as of (insert appropriate date) as the 'last immediate family member to the claimant residing in the cabin or structure' as the quoted phrase is defined in paragraph 13.17(c)(3)(i)."

13.17(3) New cabins and other structures otherwise authorized by law. The paragraph number should be (e) instead of (3).

13.17(f) Authorized commercial activities. (1) Concessions, business uses, and mining operations. Our first concern with this paragraph is the requirement that cabin permits be authorized consistent with the "general management plan and/or statement for management for the park area,". We endorse the concept of consistency between the plan and issuance of permits but we oppose requiring consistency with any statement for management. The statement for management is a very preliminary planning product and is far too general to provide an adequate basis for specific decisions relating to individual cabin permits. The general management plan is the only document that receives full consideration and adequate public review of policy issues affecting this permitting authority. Therefore, we request that the first part of the second sentence of this paragraph be revised to read: "Consistent with the general management plan for the park area, the Superintendent may authorize... ." This specific comment also applies to 13.17(g)(2).

13.17(f)(2). We note a specific lack of coverage for legitimate commercial set net sites on the boundaries of park areas other than those covered in (f)(2). Please specifically address these cabin uses and/or temporary facilities in the final regulations.

13.17(g) General Public Use.-(1) Public use cabins. We question why the NPS proposes to limit cabins for public use to those "in nonwilderness park areas only, for the appropriate enjoyment of the park area." There is no discussion in the Section-by-Section Analysis as to why the NPS is restricting cabin usage for the general public's enjoyment of the park area to nonwilderness land. By virtue of this regulation, government employees and occasional subsistence users will be the only persons to enjoy much of our national parks from existing cabins.

The only other reference to wilderness that we find regarding these paragraphs is in the Section-by-Section Analysis, Section 13.17(a)(1): "With respect to park areas layered with a wilderness designation (see, 16 U.S.C.§ 1132), the Wilderness Act, as modified by relevant sections of ANILCA, establishes additional purposes for the establishment and management of wilderness areas." It appears that the NPS is restrictively interpreting the designation of wilderness in park areas to supersede the ANILCA's authorization of cabin usage.

ANILCA Section 707 specifically amends the Wilderness Act stating "Except as otherwise expressly provided for in this Act wilderness designated by this Act shall be administered in accordance with applicable provisions of the Wilderness Act governing designated by that Act as wilderness..." (emphasis added). Given that ANILCA Section 102(4) defines wilderness units as conservation system units (CSU's), we interpret sections such as Section 1303, 1306, and 1316 which address the uses of cabins and other structures on CSU's to apply to wilderness areas.

It is particularly important to note that ANILCA Sections 1315(c) and (d) specifically provide for continued public uses of existing cabins as well as construction of new cabins and shelters. We, therefore, feel that restricting public use cabins to nonwilderness park areas is in direct violation of ANILCA. We request that the first sentence of this paragraph be rewritten to exclude the phrase "in nonwilderness park areas only,".

13.17(g)(3) Allocation System. We are supportive of the "qualified prior user" concept in this paragraph, but it is unclear as to how this person differs from those qualifying under other subsections, such as subsistence users.

We also question the need for an allocation system for all park areas and all cabins. Public use may not be in conflict in certain areas so that this permit category may not always be necessary. In order to minimize regulatory procedures, promote flexibility, and allow liberal public use in the absence of apparent conflicts, we recommend that permits not be automatically required. We thereby suggest that the first sentence be revised to read "If necessary to avoid resource or user conflicts, the Superintendent shall develop a system...."

13.17(h) Use for official government business. Does this assure the use of cabins if necessary by the State and other government agencies during their conduct of necessary government business, such as fish counts? If not, we request that non-NPS administrative uses be addressed.

13.17(i) Use of temporary facilities directly and necessarily related to the taking of fish and wildlife. (1) Applicability. We request that the first sentence be revised to read "directly and necessarily related to legitimate hunting or fishing in park areas." This would remove any possible limitation on legitimate hunting and fishing activities by virtue of the cabin location. For example, public use

of a cabin located just inside of a CSU boundary should not be precluded by the public conducting legitimate activities outside the boundary, provided that stipulations may be attached to the permit to assist the NPS in enforcement of its regulations.

13.17(2) Permit Application. If this paragraph is enforced according to a literal interpretation, (e.g. "temporary campsite") every person hunting hares while floating a river could be required to provide sketches of his canoe, tent, and campfire circle (required in (B)) and a map of every bar he intends to camp on (required in (c)) with a description of every previous float trip's use of those sites. We do not believe this is the NPS' intent and, therefore, recommend that the content requirements distinguish temporary facilities used in hunting or fishing activities from semi-permanent facilities such as tent platforms. We suggest that language be included which excludes any facilities, equipment or shelter that is automatically disassembled and removed or returned to a natural state when temporary campsites are vacated. It is important that this distinction be made to preclude the interpretation that every hunter or fisherman must apply for a permit.

13.17(j) Other uses (1) Extraordinary hardship. We request deletion of the qualifiers "nonrecreational, noncommercial" in the first sentence of this subsection. It is unclear as to why this subsection was written to address subsistence use hardship cases only when subsection (d) is specific to subsistence uses.

Additional Issues. A subject which appears to be overlooked in all subsections is the replacement of a cabin destroyed by vandalism or acts of nature. We request that language be added in paragraphs (b), (c), (d), (e), (f), (g), and (i) to allow such reconstruction.

Finally, in the valid attempt to cover all aspects of cabin use on parklands, these regulations are complex and sometimes difficult to follow. We urge that DOI does everything possible to streamline and simplify the final rules. This is an important goal since these regulations significantly affect the lives of many individual Alaskans. On this note, we commend DOI for providing the relatively thorough Section-by-Section Analysis, without which these proposed rules would be extremely difficult to follow.

We very much appreciate the extension of the comment period, and the opportunity to provide our observations and recommendations. We would be happy to discuss any aspect of our comments if additional clarification is needed.

Sincerely,

Sally Gibert

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