

# STATE OF ALASKA

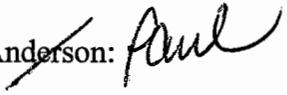
**FRANK H MURKOWSKI**  
**GOVERNOR**

## ANILCA IMPLEMENTATION PROGRAM

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July 20, 2005

Paul Anderson, Superintendent  
Denali National Park and Preserve  
P.O. Box 9  
Denali Park, Alaska 99755

Dear Mr. Anderson: 

The State of Alaska reviewed the July 2005 *Determination of Traditional ORV Use for Access for Subsistence Purposes on Denali National Park Lands in the Cantwell Area by Federally Qualified Subsistence Users* (Determination). The following comments represent the consolidated views of the State's resource agencies.

The State of Alaska strongly supports the National Park Service's efforts to document and allow appropriate use ORVs for subsistence purposes in the Cantwell area. In particular, we support the following aspects of this process:

- cooperative work with local residents to rigorously document historic use of ORVs,
- revision of the undocumented 1986 determination that ORVs were not traditionally employed,
- identification of minimum areas where such ORV use may be allowed to continue,
- properly implemented, short-term closures where resource damage from continued use would likely be detrimental to park resources (e.g., wet tundra).
- intent to get an interim solution in place before the August 1 moose hunting season, and
- intent to further develop longer-term alternative solutions (including possible judicious expansion of ORV use) with public review and implementation through rulemaking.

While we support moving forward with the Cantwell proposals to allow legitimate ORV use this fall, we must bring to your attention some important concerns with the potentially precedent-setting criteria used to develop the Determination. Given the depth of historic ORV use in the Cantwell area, we do not expect the outcome will have a significant affect on the specific Cantwell situation; however they may be of critical importance if applied to other areas or other park units. In particular, we object to certain aspects of the criteria used to determine if ORV access qualifies as "traditionally employed" under ANILCA Section 811, as itemized below.

### **"Multi-generational"**

We object to the criterion that traditional use must be "*multi-generational*" as found on page 6: "*A multi-generational, consistent pattern of use, excluding interruptions beyond the control of the community or area.*" Nothing in ANILCA's legislative history indicates that Congress intended to

limit uses or methods of access to those that had been used for multiple generations, or that they had any concerns with the patterns of use in effect at the time of passage of the Act. Congress even made a point of recognizing new technologies and evolving patterns of use over time. The reference to multi-generational also could imply a lengthy number of years – but without doing so explicitly – leaving future managers the apparent discretion to develop supplemental criteria based on number of years. On the other hand we do not object to use of supporting documentation in the Evaluation sections that successive generations used a particular technology, as long as it is not an explicit requirement.

**“...for many years.”**

We also object to the qualifying phrase “for many years” in the criterion on page 7: *“A significant community practice and pattern of subsistence ORV use reoccurring in specific seasons for many years (rather than individual practice).”* The phrase “for many years” begs the question of how many is enough, which is not essential to determine those uses “traditionally employed.” Consistent with our rationale above, we do not object to reporting years of use to help build a case for qualifying use; however there is no indication in ANILCA or legislative history that some qualifying period of use must have occurred.

**Background**

The second paragraph under Background on page 1 is misleading. Among other things it inappropriately implies that subsistence use of ORVs is closed unless opened by the Service. We request the paragraph be revised as follows.

ANILCA does not specifically recognize ORVs as a form of access for subsistence, except that section 811(b), provides for “other means of surface transportation traditionally employed.” Therefore, ORVs are permitted for subsistence use where traditionally employed, subject to reasonable regulations found at 36 CFR 13.46. The NPS determined in the 1986 Denali General Management Plan (GMP) that ORVs had not been regularly used for subsistence purposes and were not considered a traditional means of subsistence access. The GMP determination was made on existing information and applied on a park-wide basis. The GMP also provided that the park will review additional information about traditional means of subsistence access on a case by case basis.

**Definition in the GMP**

Following the dictionary definition quoted on page 2 from the General Management Plan (GMP), we request additional recognition from the GMP that *“it would be valuable to pursue, with those affected, the refinement of this definition in the context of legislative history.”* We also request that the following language be deleted.

Thus, for ORV use to be “traditional” for subsistence purposes in the Cantwell area of the Denali addition, it must have occurred between at least two generations as of December 2, 1980, when such use was authorized by ANILCA.

Even in the context of the GMP, the definition does not contain the criterion regarding multiple generations.

We also note a quotation error in the Webster’s dictionary definition. Under (2) the phrase “excessive generations” should be “successive generations.”

**Dunkle Hills**

We question whether the Service has gained enough information about subsistence use in the Dunkle Hills to determine that such use is "*not a consistent or significant community practice for the Cantwell community.*" We request that the Service not foreclose the opportunity to revisit this assumption in the context of the upcoming Environmental Assessment.

**Conclusion**

Thank you for the opportunity to provide these comments. Even though we have substantial concerns regarding precedent for other areas, we again recognize that Cantwell's future ORV use likely does not hinge on resolution of these otherwise important issues. In addition to supporting Cantwell's interests, we wish to assist the Service in developing a defensible determination process that can be applied to other areas of the park system. With the exception of the criteria, most of the Service's intended steps to address ORV use appear to be useful and appropriate. We support criteria that can be tailored to the specific circumstances of each community or park area.

Sincerely,



Sally Gibert  
ANILCA Program Coordinator