



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

## ANILCA Implementation Program

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July 10, 2013

Margaret L. Goodro, Superintendent  
Lake Clark National Park and Preserve  
General Delivery  
Port Alsworth, AK 99653

Dear Ms. Goodro:

The State of Alaska reviewed the Draft Land Protection Plan (LPP) for Lake Clark National Park and Preserve. The following comments represent the consolidated views of the State's resource agencies.

We appreciate the LPP recognizes the State's interests within and adjacent to the park and preserve boundaries – including area plans where applicable, as well as the State's interest and management authorities regarding state lands, RS 2477 rights-of-way and navigable water bodies.

### **Planning Authorities**

The Introductory section of the LPP identifies the Land and Water Conservation Fund as the policy that directs the Service to prepare land protection plans and describes elements similar to the land protection plan components required by Section 3 of the 2006 NPS Management Policies, with the following additional components “...*the amount, type, and density of use or development of non-federal lands that can take place without harming park resources; and external activities that have or may have effects on park resources and land protection requirements*” (page 2).

In addition, ANILCA provisions that provide direction for land acquisitions in Alaska park units are listed in the “Legislative Authorities” section. Other provisions identifying planning requirements (Section 1301(6), (7) and (8)) are referenced throughout the document.

We recommend the Service identify and discuss all laws and policies which provide direction for elements of the LPP, including their relationship to one another, in one introductory section. Given the LPP incorporates planning direction that stems from ANILCA section 1301, we also recommend the LPP clarify its relationship to the Park's 1986 General Management Plan.

### **ANILCA and Compatibility Determinations**

The LPP identifies ANILCA provisions that allow for land acquisitions under certain circumstances; however, ANILCA section 1110(b) provides a guarantee of “*adequate and feasible access for economic*

*and other purposes*” for State and privately-owned lands (including subsurface rights, valid mining claims, or other valid occupancy) within or effectively surrounded by conservation system units (CSUs) and other areas designated by the Act. We appreciate the LPP states “*Safeguarding against public misunderstandings that inholders are not welcome or compatible with Lake Clark National Park and Preserve must be a priority*” (page 20), and request the LPP also recognize ANILCA section 1110(b) in the “Legislative Authorities” or other introductory section and further clarify for the public that identification of uses and activities associated with inholdings for the purpose of prioritizing potential land use acquisitions does not in any way reduce or interfere with the rights of inholders to occupy, use and obtain access to their inholding.

The LLP also states that ANILCA section 1301 requires the Service to determine if existing and potential uses are compatible with the park unit’s purposes (page 8). However, ANILCA Section 1301(b)(7) specifically requires that general management plans describe: privately-owned areas within park units and activities carried out in, or proposed for such areas; the purposes for which such areas are used; and methods of controlling the use of such activities *to carry out the policies of ANILCA and the purposes for which the park unit was established or expanded* (emphasis added).

The resulting list of compatible and incompatible uses on non-federal land needs to take into consideration various ANILCA provisions, such as sections 811, 1110(b), 1303(a), 1310 and 1316, which provide for infrastructure and activities on CSU’s. While we recognize the LPP states the lists of compatible and incompatible uses are general guidelines and “...*do not restrict the use of non-federal lands*” (page 8), labeling certain uses and activities on non-federal lands that are allowed by ANILCA in CSUs, such as ATV or road access, as “incompatible” could be confusing to the public and may discourage inholders from exercising their property rights under ANILCA section 1110(b).

We request the Service reconsider the list and discussions of compatible and incompatible activities to ensure they do not conflict with provisions in ANILCA that allow similar uses. In addition, we request the LPP include justification for the compatibility determinations, including identifying any applicable provisions of ANILCA or other Service policy that address such uses and activities within park units in Alaska. See also page-specific comments below that address ANILCA-protected uses and activities.

### **Page-specific Comments:**

Page 3, Purpose of the Unit and Resources to be Protected, second sentence: We recommend referring to traditional subsistence by local residents as one of the purposes the park is managed for similar to the last bullet on page 6 in the Lake Clark NPP Foundation Statement.

Page 3, third sentence: As stated in our 2009 comments on the Park’s Foundation Statement, the listed species ***do not*** depend on a habitat with a wilderness designation to survive. We request the following edits: “...intact habitats for ~~wilderness dependent~~ populations of fish and wildlife.

Page 3, Legislative Authorities: ANILCA Section 1301(b)(5) requires land management plans include a description of the programs and methods that will be used to encourage the recognition and protection of the culture and history of the peoples residing in the conservation system units. The LPP states that “*The basic park strategy for in-holding acquisitions, regardless of priority, requires a seller to be*

willing” (page 20). The Lake Clark GMP/DCP also reflected this intent - “National Park Service will purchase in fee simple and on a willing-buyer, willing-seller basis ... any small tracts that found to be required for the long-term management, operation, and resource protection of the park and preserve” (1982 GMP/DCP, page 40). We recommend the LPP emphasize this intent in the introductory section as many members of the public continue to strongly oppose acquisition without the consent of the owner. In addition, where practical, we request ANILCA be quoted instead of paraphrased to ensure that congressional intent is not misrepresented. We request the following edits to the third paragraph:

*~~No improved property will be acquired without consent of the owner unless such acquisition is necessary for the protection of resources or for protection of those park values listed in ANILCA (§ 201). ANILCA section 1302(d) states “No improved property shall be acquired under subsection (a) without the consent of the owner unless the Secretary first determines that such acquisition is necessary to the fulfillment of the purposes of this Act or to the fulfillment of the purposes for which the concerned conservation system unit was established or expanded.”~~*  
*When an owner of improved property consents to exchange lands or to sell to the United States, the owner may retain for himself, his heirs and assigns, a right of use and occupancy for noncommercial residential and recreational use for up to 25 years or, alternatively, for the lifetime of the owner or his spouse, whichever is longer (ANILCA § 1302(e)).*

Page 4, Legislative Authorities, 5<sup>th</sup> paragraph: The Bureau of Indian Affairs has a trust relationship with Native allottees. Providing that relationship has not been terminated by the allottee, the BIA must approve all transactions. We suggest the following edit to clarify BIA’s active role in transactions involving Native allotments:

*In recognition of the Bureau of Indian Affairs' Congressionally-mandated trust responsibility to owners of Native allotments, the National Park Service will notify the Bureau of Indian Affairs before taking for approval of actions relating to Native allotments, such as securing agreements with allottees, acquiring easements, acquiring allotments in fee simple, or leasing allotments.*

Page 5, Table 1: We recommend the plan also include maps showing land ownership. In an area this large, it is difficult to gauge the areas under discussion without maps showing property locations.

Page 6, Small Private Tracts, second paragraph: This paragraph states “For instance, lodges generally cater to sport fishing, sport hunting, and other wilderness activities.” Not all of Lake Clark NPP is designated wilderness. The preceding sentence refers to recreational use; therefore, we request “wilderness” be replaced with “recreational.”

Page 6, Small Private Tracts, fourth paragraph: This section refers to snowmachines, motorboats and airplanes as “generally compatible” methods of access. Compatibility does not carry the full weight of a congressionally authorized activity. We request the plan recognize that ANILCA allows these modes of access (shall permit, subject to reasonable regulation).

Page 8, Compatibility of Land Uses, Compatible Uses, third bullet: Since subsistence harvest of trees may be necessary for cabin construction (house logs) as well as firewood needs we request the following edit: “*subsistence ~~firewood~~tree harvest with minimal adverse visual or natural resource impacts.*”

Page 8, Compatible Uses: The last bullet appears to combine allowed methods of access in ANILCA Section 811 and 1110(a), where the term “traditional” is used differently. Section 811(b) states subsistence use of snowmobiles, motorboats and “*other means of surface transportation traditionally employed*” shall be permitted (allowed) subject to reasonable regulation. Section 1110(a) states snowmachines, motorboats, airplanes and nonmotorized surface transportation methods for “*traditional activities*” shall be permitted (allowed), subject to reasonable regulation. In addition, ANILCA Section 1110(b) provides for adequate and feasible access to inholdings subject to reasonable regulation; however, it doesn’t prohibit the use of specific vehicles. We request the ANILCA protected methods and rights of access be accurately portrayed and suggest the following revision:

- access to non-federal land by snowmachine, ~~dog team~~, motorboat, ~~foot~~, airplanes and non-motorized surface transportation methods.
- subsistence use of other traditional means of surface transportation, including dog teams, and where traditionally employed, all-terrain vehicles.
- Adequate and feasible access to non-federal land for economic or other purposes.

Page 8, Incompatible Uses, sixth bullet: ANILCA Section 1110(b) assures inholders adequate and feasible access for economic and other purposes. ANILCA Section 1110(a) also provides for the use of airplanes for travel to and from villages and homesites. Such air access is predicated on the use of a suitable water body or an airstrip. We request this bullet be deleted or modified to reflect ANILCA’s access provisions and the rights of inholders.

Page 8, Incompatible Uses, last bullet: The Service has long recognized that ATV access for inholders may be authorized pursuant to ANILCA Section 1110(b). Recently, the Service issued a right of way certificate of access for ATV access to inholdings in the Silver Salmon Creek area. Page 12 of the associated EA states that the preferred alternative “*would not result in an impairment of park resources that fulfill specific purposes identified in legislation establishing the park or key to the natural or cultural integrity of the park.*”

ANILCA Title XI also provides a process by which transportation and utility systems may be authorized within a park unit. We request the following edits to recognize these allowances.

*ATV access (exceptions could be ANILCA 1110(b) access) or road access (exceptions could be ANILCA Title XI transportation or utility systems, existing easements, trails, or cases where there would be no damage to park values)*

Page 11, Compatibility of Land Uses, first sentence: We assume this discussion is referring to ANILCA section 1301(b)(7), which states:

*A description (A) of privately owned areas, if any, which are within such unit, (B) of activities carried out in, or proposed for such areas, (C) of the present and potential effects of such activities on such unit, (D), of the purposes for which such areas are used, and (E) of methods (such as cooperative agreements and issuance or enforcement of regulations) of controlling the use of such activities to carry out the policies of this Act and the purposes for which such unit is established or expanded. (Emphasis added)*

Rather than listing actual or proposed activities, the example cited in the first paragraph and the list of incompatible uses seem speculative, and the methods for controlling the activities are limited to working with the landowner or acquiring an interest in the nonfederal lands. We suggest this section also take into consideration mitigating effects of regulatory authorities on proposed activities (as noted on page 12 of the LPP). We also request the discussion accurately reflect the intent in section 1301 that both the policies of ANILCA *and* the purposes of the unit be taken into consideration.

Page 12, Existing laws and regulations, Application, first sentence: Please clarify that Service regulations do not apply to private *and state lands and waters* within the park.

Page 12, Application: Regulation of wetlands falls under Section 404 of the Clean Water Act, which is included in the list of state and federal laws that apply to private lands within the Park. We recommend removing “Protection of Wetlands,” which appears to relate to Executive Order (EO) #11990. EO 11990 does not apply to activities involving wetlands on non-Federal property (see Section 1(b) of the EO) and thus should not be included in a discussion of laws that apply to private lands within the Park.

Page 14, Classification of State Lands Section: In the first and second paragraphs of this section please change “Division of Land and Water Management” to “Division of Mining, Land and Water.”

Page 17, Exchange, last sentence: For consistency with ANILCA, we recommend replacing “*if to do so would be*” with “if the Secretary determines such exchange is...”

Page 19, Lakefront Tracts: This section identifies a concern that private tracts clustered along the shore of Lake Clark could affect public access to the lake for recreational and other purposes. We request the LPP take into consideration the State’s Constitution protects access to navigable or public waters of the State. In particular, Article VIII, section 14 of the Alaska Constitution states:

*Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.*

Thank you for this opportunity to comment. Please contact me at (907) 269-7529 if you have any questions.

Sincerely,

/ss/

Susan Magee  
ANILCA Program Coordinator

cc: Joan Darnell, NPS Alaska Region

