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April 16, 1991

Mr. Boyd Evison
Regional Director
National Park Service
2525 Gambell, Room 107
Anchorage, AK 99503-2892

Dear Mr. Evison:

The State of Alaska appreciates the opportunity to review and comment on the Legislative Environmental Impact Statement (LEIS) entitled "All Terrain Vehicles (ATV) for Subsistence Use in Gates of the Arctic National Park and Preserve, Alaska." This letter contains the consolidated comments of the state's resource agencies.

The State of Alaska fully supports the concept of resolving access problems that have arisen since the Gates of the Arctic National Park and Preserve was created. We believe, however, that other administrative options should be more fully explored before embarking on a legislative solution.

Our review indicates that the solution to local residents' need for access as proposed by the National Park Service (NPS) in this LEIS appears to deviate significantly from the spirit and intent of the Alaska National Interest Lands Conservation Act (ANILCA) and accompanying congressional intent. It appears that implementation of the exchange agreement would lead residents in the vicinity of Gates of the Arctic National Park and Preserve (in addition to the residents of Anaktuvuk Pass) toward eventual reductions and possible loss of rights of access. Loss of access rights would inhibit local residents' ability to conduct traditional activities on NPS lands as intended by ANILCA.

This letter briefly summarizes the significant findings of our review. The enclosure details these and other concerns.

THE EXISTING NPS PROHIBITION OF ATV ACCESS FOR SUBSISTENCE ACTIVITIES IN GATES OF THE ARCTIC APPEARS TO BE CONTRARY TO ANILCA.

After reviewing ANILCA legislative intent and current 36 CFR part 13 NPS regulations, it appears the procedure that has been used to restrict use of ATVs for subsistence activities within Gates of the Arctic National Park and Preserve is inconsistent with ANILCA and the NPS regulations. Review of the LEIS reveals that despite over twenty years of documented ATV use in the area prior to ANILCA, an ATV prohibition has been implemented without following the NPS regulations referenced above. Review of the chronology of public and state comments indicates no hearings, consultation, findings, or other appropriate procedures were conducted as required by ANILCA Sections 110, 811, and the NPS regulations prior to NPS effectively implementing total ATV closures. The State of Alaska does not advocate unrestricted ATV use in Gates of the Arctic Park and Preserve. We are aware of the potentially serious impacts that inappropriate ATV uses can have on wilderness values, fish, wildlife, and their habitats. We believe that Congress struck the appropriate balance between use of ATVs for access while at the same time vesting the appropriate authority with the Park Service managers to maintain the integrity of the Park and Preserve.

EXECUTIVE ORDER (EO) 11644 AND THE WILDERNESS ACT CANNOT BE USED TO PROHIBIT ATV ACCESS IN ANILCA CREATED WILDERNESS AREAS.

The LEIS justification for the closures in Gates of the Arctic is based on Executive Order 11644 adopted in 1964 and amended in 1972 and 1977. The EO directs:

"Each respective agency head shall develop and issue regulations and administrative instructions, within six months of the date of this order, to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted."

"(4) Areas And Trails Shall Not Be Located In Officially Designated Wilderness Areas of Primitive Areas." (emphasis added).

We are puzzled by the NPS decision to propose to administer ATV access on ANILCA designated wilderness areas in Alaska by citing the executive order and the Wilderness Act which were both adopted prior to ANILCA. This decision is inconsistent with ANILCA Section 707 which states the Wilderness Act is amended by the specific provisions of ANILCA. The Department of Interior's Title XI regulations published by the Secretary of Interior on September 4, 1986, confirms this finding.

THE LEIS FAILS TO RECOGNIZE PRE-ANILCA USE OF ATVS AS "TRADITIONAL" PER ANILCA 811(b).

The LEIS acknowledges that ATV use occurred in the area of Gates of the Arctic Park for approximately 20 years before ANILCA was established. However, the NPS has concluded that such use is not "traditional" in the application of ANILCA 811(b). The LEIS document does not provide any basis to support this apparent contradiction.

THE LEIS PROPOSAL LACKS FLEXIBILITY TO RESPOND TO CHANGES IN PATTERNS OF TRADITIONAL USE.

While the LEIS may satisfactorily address contemporary access problems, the State is concerned that the approach is not flexible enough to respond to changes in the future. For example, creation of specific ATV access corridors could concentrate subsistence efforts, thus affecting hunting success, subsistence use patterns and the resource base. Additionally, the proposed legislation may address contemporary access issues but does not have the flexibility to enable people to change their access patterns when the caribou herds inevitably change their migratory paths. The EIS also apparently does not address several other activities and issues that may be important for local residents such as:

- * Winter subsistence activities
- * Use of certain types of ATVS (three and four wheelers)
- * Users other than subsistence
- * Qualified subsistence users who do not reside in Anaktuvuk Pass

We recommend these issues be addressed in the LEIS so that the impact of this proposal on citizens and the resources can be better understood.

THE LEIS ADOPTS A "ROSTER" FOR SUBSISTENCE ELIGIBILITY IN LIEU OF EXISTING COMMUNITY RESIDENT ZONES.

We object to the proposal to delete Anaktuvuk Pass and the park/preserve from the resident zone. By deleting the areas from the resident zone and putting the Nunamiut Corporation or its designee in charge of compiling a "roster" of eligible subsistence users several undesirable and possibly unintended consequences may occur. First, non-Native community residents and other non-Nunamiut shareholders who presently qualify for subsistence in the park might be disenfranchised. This goes against the spirit and intent of ANILCA.

Second, former residents who are temporarily absent and friends from nearby rural communities apparently will be denied the

opportunity to participate in subsistence activities with Anaktuvuk Pass residents because they will not be on the "roster." This could be contrary to traditional hunting practices, although the inadequate discussion of this issue in the proposal does not allow us to evaluate this concern conclusively.

Third, the proposal specifies that "eligible subsistence users" for purposes of this process initially are all present or former residents of Anaktuvuk Pass. This raises a series of questions focusing on who and how decisions are made regarding rosters. Are eligible subsistence users from the NPS proposed pool of candidates or are they the persons who the Nunamiut Corporation is required to select? What happens to the former residents of Anaktuvuk Pass who may be left off the original list because the Nunamiut board unintentionally forgot about them? Is any provision made for them if they don't meet the more restrictive criteria established for eligibility after the agreement is signed? Does the initial pool of "eligible subsistence users" include residents of urban Alaskan communities and nonresidents of Alaska who formerly resided in Anaktuvuk Pass?

Fourth, what are the more comprehensive implications of deleting the park/preserve from the resident zone? This topic is not given much attention in the plan, but should be more fully explained so that its implications, if any, on other unit residents and resident zone communities is fully understood.

THE PROPOSED ACTION FAILS TO ADEQUATELY PROTECT ACCESS TO STATE OWNED LAND, WATER, AND RESOURCES.

Specifically we are concerned that, the Proposed Action calls for the Secretary of the Interior to terminate existing ANCSA 17(b) easements created by the Alaska Native Claims Settlement Act (ANCSA) and replace them with a public, non-motorized, general access easement. Any existing ANCSA 17(b) easements that provide access to state land should not be eliminated, unless they are replaced with easements that provide the same rights for public access. Specifically, easements that provide access to the Anaktuvuk River, the John River, and from Anaktuvuk north to state land along the Anaktuvuk River need to be retained. Furthermore, nothing in this proposal should be construed as affecting public access rights already established pursuant to Revised Statutes 2477.

The State of Alaska supports an administrative solution using the provisions of ANILCA and existing congressional direction to resolve our concerns regarding permitting ATV use, administration of Wilderness, definition of traditional, subsistence eligibility, and access to State lands. We recommend a more comprehensive approach which includes all the affected users in the communities,

Mr. Boyd Evison

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DRAFT/DATE

the North Slope Borough, the Arctic Slope Regional Corporation, Nunamiut Corporation, the Subsistence Resource Commission, the State of Alaska and other affected parties to yield a more satisfactory outcome for the National Park Service, the resources, and user groups.

Thank you for this opportunity to comment.

Sincerely,



Paul C. Rusanowski, Ph.D.
Director
Division of Governmental
Coordination

cc: Commissioner Rosier, ADF&G
Commissioner Heinze, ADNR

**GATES OF THE ARCTIC NPP
FINAL LEGISLATIVE EIS
DISTRIBUTION LIST**

April 19, 1991

Al Carson, Department of Fish and Game, Anchorage
Pricilla Wohl, Department of Environmental Conservation, Anchorage
Joyce Beelman, Dept. of Environmental Conservation, Fairbanks
Jenny Olendorf, Dept. of Transportation and Public Fac., Anchorage
Norm Piispanen, Dept. of Transportation and Public Fac., Fairbanks
Rob Walkinshaw, Department of Natural Resources, Anchorage
Steve Jacoby, Div. of Governmental Coordination, Juneau
Tina Cuning, Department of Fish and Game, Nome
Terry Haynes, Department of Fish and Game, Fairbanks
John Katz, Governor's Office, D.C.
Paul Rusanowski, Div. of Governmental Coordination, Juneau
Stan Leaphart, Citizens Advisory Commission on Federal Areas, Fairbanks
Dick Swainbank, Dept. of Commerce and Economic Development
C. Rankin, Fish and Wildlife Protection, Kodiak
Tina Long, Dept. of Commerce and Economic Development
Randy Rogers, Div. of Governmental Coordination, Fairbanks
Ron McCoy, Alaska Land Use Council, Anchorage
Curtis McVee, Department of the Interior, Anchorage
Frank Rue, Department of Fish and Game, Juneau

Paul Rusanowski
Director
Division of Governmental
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Office of the Governor

April 17, 1991

465-4100

Carl L. Rosier
Commissioner
Department of Fish and Game

Gates of the Arctic
Land Exchange EIS

Enclosed are our review comments regarding the National Park Service's (NPS) Draft Legislative Environmental Impact Statement (EIS) entitled "All-Terrain Vehicles for Subsistence Use in Gates of the Arctic National Park and Preserve, Alaska."

When Congress passed the Alaska National Interest Lands Conservation Act (ANILCA), it provided clear intent regarding the management of public lands on behalf of the public interest and needs of residents. Our review of the EIS has revealed a major disparity between NPS purposes and congressional intent for ANILCA. Our review indicates that the NPS could do more to exhaust readily available solutions regarding disagreements with residents on significant NPS management issues. We, therefore, question the appropriateness of the NPS seeking Congressional legislation when administrative solutions appear not to have been fully considered.

We believe the EIS is deficient in its analysis of impacts on rural Alaskans and the resources. We have identified several significant issues within the EIS which lead us to conclude that the proposal may adversely impact many Alaskan rural residents. In particular, long-term implementation of the exchange may cause residents in the vicinity of Gates of the Arctic, as well as residents of Anaktuvuk Pass, to eventually lose their rights of access, development opportunities, and ability to conduct traditional activities.

We have identified numerous questions and apparent errors in the rationale for the proposal. These involve items such as: inconsistent interpretations of existing laws and regulations, inappropriate scope of application, overlooked role of the Subsistence Resource Commission, and lack of appropriate public involvement. Until the issues, questions, and errors identified in the enclosure are addressed, the department does not believe it is in the public's interest to support the proposal.

We are very concerned about the long overdue need of Alaskan residents and other affected publics to have their serious access problems resolved by the NPS in the management of Gates of the Arctic National Park and other parks. In that spirit, we recommend that the NPS seek administrative rather than legislative solutions.

Enclosure

cc: Max Hodel
Frank Rue
David Kellyhouse
Rob Bosworth

bcc: Lance Trasky
Al Carson
Tina Cuning
Terry Haynes

CLR/AC/lh

Enclosure to Commissioner Rosier's letter to Paul Rusanowski - Staff review comments on NPS DEIS, "All Terrain Vehicles for Subsistence Use in Gates of the Arctic National Park and Preserve, Alaska

Background

Prior to passage of the Alaska National Interest Lands Conservation Act (ANILCA), Congress extensively discussed its intent to protect Alaskan residents' way-of-life, including rights of access and opportunities for subsistence activities. Congressional intent specific to Anaktuvuk Pass which accompanied passage of the final bill includes House Report November 12, 1980 (H10535) presented by Congressman Udall:

"Since the people of the village are dependent upon caribou for their survival, they often have to follow the movements of the caribou herds. Thus, subsistence use of the park may be essential periodically or continuously for the continued survival of the Anaktuvuk people It is noted that the Arctic Slope Regional Corporation traded certain lands, selections, and identifications to the Secretary in exchange for other lands. A fundamental part of that agreement was an understanding that in relinquishing its selections and identifications, the people of Anaktuvuk Pass would still be able to continue their subsistence lifestyle on those lands which are now part of the park. It is the intent of the committee that the secretary, in managing the area, take into consideration the sporadic movement of caribou from year to year, and be in a position to react quickly, if needed, to

provide subsistence hunting zones for the local people, should the caribou move to different locations."

A turning point in the evolution of final legislation was addition of language addressing access. In House Record (May 17, 1978) H4103, Congressman Seiberling described the Interior Committee's version of ANILCA (HR 39) which had been developed to resolve issues raised in other versions.

"He [Congressman Young] also expressed concern about the fact that the Natives and the other inhabitants of Alaska had traditionally exercised transportation privileges, and other privileges on Federal lands. And so we worked out provisions that I think protect those privileges even in wilderness areas."

The access provisions for subsistence, recreational, and other activities are primarily contained in Section 811 and Title XI. (Full text of Section 811 in Attachment 1):

"the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation."

All of ANILCA Title XI addresses access and transportation across conservation system units; however, Section 1110 is the most pertinent to this EIS review (full text in Attachment 1):

"(a) the Secretary shall permit, on conservation system units, . . . the use of snowmachines . . . motorboats, airplanes, and non-motorized surface transportation methods for traditional activities . . . and for travel to and from villages and homesites. Nothing in this section shall be construed as prohibiting the use of other methods of transportation for such travel and activities on conservation system lands where such use is permitted by this Act or other law."

Upon creation of the new park units, NPS developed regulations specific to Alaska (36 CFR Part 13) in order to address the many ANILCA management directions necessary for Alaska units that were different from other units in the national park system. On June 17, 1981, "interim" regulations were published along with the rationale used in their preparation which reflected understandings reached in the final compromises in ANILCA. The Section-By-Section Analysis echoed these understandings as it discussed direction for NPS management in allowing ATV uses for subsistence purposes (31852) (full quote in Attachment 1):

"In furtherance of section 811 of ANILCA, 13.46 provides local rural residents engaged in subsistence uses reasonable access to the subsistence resources on which they depend. With respect to local rural residents who are engaged in subsistence hunting, fishing, and gathering activities within the park areas, this regulation liberalizes the provisions of Subpart A on certain off-road vehicles. All routes and areas are open to subsistence use of these vehicles except as specifically restricted or closed. Basically in order to

impose a restriction, the Superintendent must determine that the use in question is causing or is likely to cause an adverse impact on public health or safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or the purposes for which the park area was established. The Superintendent will arrange notice and public participation concerning closure proposals in order to involve those affected to the fullest extent possible in the decision-making." (Emphasis added.)

Discussion of Significant Issues

A. NPS prohibition of ATV access for subsistence activities

Upon review of congressional direction and current regulations, we believe NPS has failed to use proper process to prohibit use of ATVs for subsistence activities within the park. Because the components of the NPS justifications are complex, we have broken this issue into three parts which contain interrelated errors: (1) improper process, (2) Inappropriate application of Executive Order 11644 and the Wilderness Act, and (3) failure to consistently recognize "traditional" (pre-ANILCA) activities.

Subissue 1: Improper Process

Inserted in each EIS, a January 1991 letter from NPS Regional Director Evison claims that through the proposed legislation "the residents would gain motorized access to land it considers critical for summer subsistence activities." However, according to Evison, the proposal would "permanently limit ATV use for subsistence."

A comparison of the Congressional directions with Evison's statements results in our reaching the following conclusions:

- * NPS' access restrictions have, contrary to Congressional directions, prevented residents from pursuing "critical" subsistence activities,

- * adoption of the proposed ATV limitations would permanently negate Congress' promises to maintain responsive, flexible management.

Before reaching these conclusions, we reviewed the current 36 CFR Part 13 regulations for park areas in Alaska. We found that the Congressional directions providing for ATV access for subsistence activities are reflected in current NPS regulations (Attachment 1). The process in the regulations for NPS to restrict ATV access is clear. However, review of the EIS reveals that, despite over 20 years of documented ATV use in the park unit prior to ANILCA, the NPS has prohibited ATVs without following the regulatory closures process in Sections 13.30 and 13.46.

We then reviewed past correspondence, and a chronology of key public and state objections to improper closures is contained in Attachment 1. For a decade, rural residents who are eligible to conduct subsistence activities in Gates of the Arctic and the State of Alaska have consistently objected to the unilateral prohibitions and lack of proper process regarding access for a decade. Despite Secretary of Interior Mott's and Senator Stevens' attention, and in direct contradiction to law and regulation, the NPS staff continue to advise the public that ATV access is prohibited.

* Review of the chronology of public and state protests indicates no hearings, consultation, findings, or other appropriate procedures were conducted as required by Section 811 and NPS regulations prior to NPS effectively implementing total closures.

In the face of public protests, the only provisions NPS has made in Gates of the Arctic are to allow limited ATV access as part of a "research" project and on certain (private) easements. The EIS provides no explanation for its determination that ATVs are not a

traditional means of access in the park by Anaktuvuk Pass residents. By sanctioning ATV use under a recent "research project," we believe the NPS has implicitly acknowledged their importance for traditional activities but at the same time set up an all-or-nothing situation in the community. ATVs could only be used as long as the "research project" was active or if the land exchange occurred.

The NPS has determined that prohibition of ATVs without due process is justified because: (1) most of the park unit is Wilderness, which cannot be accessed by ATV according to their application of Executive Order 11644, and (2) NPS continues to assert that ATVs are not "traditional." We believe these interpretations are inaccurate as discussed under Subissues "2" and "3" below.

Subissue 2: Inappropriate use of Executive Order 11644 and Wilderness Act to prohibit ATV access in Wilderness areas created in ANILCA

In considering additional Wilderness designations in Alaska, the following House Interior and Insular Affairs Committee intent (HR 96-97 Part I; April 18, 1979) was repeatedly included in House Reports, and its intent accompanied the final version of ANILCA:

"In considering wilderness designation in Alaska, the Committee amendment adopts several special provisions relating to wilderness management in Alaska.

"For over 10 years, the Committee on Interior and Insular Affairs has been deeply involved in considering legislation to establish wilderness areas on public lands throughout the country. The Committee does not view the Wilderness Act as being as restrictive as many people believe it to be. Rather, the Committee is convinced that the restrictive management policies of the administering agencies--not founded in law--have led to a view by the public that virtually nothing can take place in a statutorily designated wilderness. When considering past legislation designating wilderness, the Committee has consistently taken the opposite view; namely, that, in practice, the Wilderness Act is a flexible act and many activities, especially previously existing activities, are permitted and management policies have to be developed on a specific area by area basis, rather than broad, general, and unduly restrictive. Nonetheless, the Committee is concerned

that Wilderness units may be managed in too restrictive a fashion in Alaska. In particular, the standard Wilderness constraints imposed on mechanical forms of access, etc. could have severe adverse impacts if used in Alaska. Accordingly, the Committee amendment includes special Wilderness management provisions authorizing greater flexibility." (Emphasis added.)

Additional Congressional records clarifying intent to maintain existing subsistence uses and related access in Wilderness areas are provided in Attachment 3.

ANILCA Section 707 states:

"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."

In light of the above, Congress' passage of ANILCA clearly and specifically amended the Wilderness Act for application in Alaska. We conclude:

* The NPS justification for prohibiting ATV use in Wilderness areas, based upon the Wilderness Act, is not appropriate for Wilderness areas created in Alaska by ANILCA.

The EIS and past NPS documents include justifications for the closures based on Executive Order (EO) 11644 adopted in 1964, amended in 1972 and 1977. The EO directs:

"Each respective agency head shall develop and issue regulations and administrative instructions, within six months of the date of this order, to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted," "(4) Areas and trails shall not be located in officially designated Wilderness Areas or Primitive Areas."

We believe that passage of ANILCA in 1980, with all the clear Congressional intent to permit existing activities and access to continue, effectively amends the 1964 executive order as well as the Wilderness Act. Congress further clarified its intentions in Section 811 with "other means of surface transportation" shall be permitted for subsistence activities in conservation system units in Alaska. (ANILCA Section 102(4) defines conservation system units to include Wilderness.)

Our interpretation that ANILCA superseded the EO is supported in the preamble to the ANILCA Title XI regulations published by the Secretary of Interior on September 4, 1986. Interior clarified **"statutory authorization is not limited by E.O. 11644."** Obviously, Interior also believes EO 11644 is superseded by subsequent statute. Interior further stated:

"Nothing in this section is intended to limit or restrict the rights of rural residents as specified in Title VIII. Accordingly, a new paragraph (b) has been added to this section to clarify that the regulations contained in this section in no way restrict the rights of rural residents as

specified in Title VIII and agency regulations implementing those provisions."

Consistent with Interior's interpretation, we believe NPS's regulations in 36 CFR Part 13 subsection B appropriately provide for ATV access for subsistence activities consistent with ANILCA Section 811.

* However, NPS has inappropriately determined that earlier legislation (Wilderness Act) and EO 11644 override subsequent statute and current regulations.

One added point--the EO defines off-road vehicle to exclude "any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract." Interior's interpretation of EO section 4 above is also addressed in the preamble for the Title XI regulations: **"Permitted ORVs are exempted from E.O. 11644."** Therefore, a management alternative is immediately available for administrative resolution of the rural residents' desires to resume traditional (preANILCA) ATV access--NPS could render an umbrella permit to allow ATV use by all residents eligible to participate in subsistence activities in the unit.

Subissue 3: NPS refusal to recognize ATVs as "traditional"

The State has consistently objected to the lack of proper process used by NPS to prohibit traditional access, which was protected by ANILCA Sections 811 and 1110. The NPS argument is that ATVs are not "traditional" despite testaments from the State, public, and NPS's own studies.

The State has suggested that NPS contract or enter into cooperative studies to determine traditional access for each park unit. Although NPS has occasionally concurred with the idea and even offered commitments to such studies in some of the general management plans, no such studies have been conducted. The NPS has conducted studies in a few units in an attempt to demonstrate damage to vegetation, but none of these studies have been completed (subjected to peer review and publication). The NPS has also not completed the "access and general circulation" plans required by ANILCA Section 1301(b)(4) for each unit, which could serve to document all known historical access as well as a plan for future access.

The pivotal point to this issue is failure of NPS to adopt a practical and reasonable definition of the term "traditional" consistent with its use during Congressional deliberations. A review of the term in context indicates it was loosely used by Congressmen to mean: preANILCA, existing, or generally occurring. Examples of such usage in applicable legislative history include Senate Report 96-413 November 5, 1979:

"The Committee recommends that traditional uses be allowed to

continue in those areas where such activities are allowed. **This is not a wilderness type pre-existing use test.** Rather, **if uses were generally occurring** in the area prior to its designation, those uses shall be allowed to continue and **no proof of pre-existing use will be required.**" (Emphasis added.)

"This section also recognizes the importance of the use of snowmachines, motorboats, and other means of surface transportation **traditionally employed** for subsistence purposes on the public lands. Although aircraft are not included within the purview of this section, reference to means **'traditionally employed'** for subsistence purposes is not intended to foreclose the use of new, as yet unidentified means of surface transportation, so long as such means are subject to reasonable regulation necessary to prevent waste or damage to fish, wildlife or terrain." (Emphasis added.)

When the NPS prepared its "interim" regulations for the park units, comments addressed the need for a definition of traditional in relation to Sections 811 and 1110 access. In the June 17, 1981 Section-by-Section analysis, the NPS clarified their working definition of "traditional":

" The legislative history of section 1110(a) defines a traditional activity in terms of a use generally occurring in a park area prior to its designation. See S. Rep. No. 96-413, supra at 248; H Rep. No. 96-97, Part 1, supra at 239. The Service may attempt to define area-specific traditional activities in subsequent rule-makings." (Emphasis added.)

The Acting Associate Regional Director for Operations, Alaska Region provided "OPERATIONS MEMO 82-3" permit forms and guidelines for motorized equipment in park units in Alaska, as approved by the Solicitor's Office. The guidelines state:

"Subsection (c) [13.14] authorizes the Superintendent to issue permits for the use of off-road vehicles on existing off-road vehicle trails which have not been designated open for this use. No permit is required for those so designated. This use is not allowed in areas designated as part of the National Wilderness Preservation System. The Superintendent must make a determination that issuing the permit for off-road vehicle use would be compatible with park purposes and values prior to issuing the permit. The Superintendent must include in any such permit stipulations and conditions as are necessary for the protection of park purposes and values. **No permit is needed for off-road vehicle use traditionally used by local rural residents for subsistence purposes**". (Emphasis added.)

Despite the law, regulations, permit guidelines, documented uses for 20 plus years, and public objections, the NPS has continued to assert that ATVs are not traditional for subsistence activities. In reviews of the NPS general management plans, the State of Alaska requested the term "traditional" be defined consistent with Congressional intent, to no avail. The NPS refusal to adopt a definition consistent with Congressional intent and denial that ATVs are traditional in Gates of the Arctic as well as other units appears to be indefensible. This is highlighted by the management

of another park unit (Wrangell-St. Elias) which does recognize ATV traditional access for subsistence and has taken steps to designate (allow use of) historic ATV trails and areas with resource protection measures.

Such inconsistencies in management approach illustrate why individuals and organizations could choose to enter into a land exchange in order regain their rightful, traditional access for subsistence activities. It appears that NPS has forced the negotiating parties to give up development rights on private lands and subsistence eligibility for their community and other park residents in exchange for the ability to conduct an activity which appears to have been inappropriately denied them.

B. Proposal hampers natural evolution of subsistence

Substantial studies of subsistence activities have been conducted since the passage of ANILCA. These illustrate that subsistence land use patterns are a dynamic process and change in response to factors beyond the control of local residents. We note two problems with the current ATV access proposal:

* In the short term, creation of specific ATV access corridors may concentrate subsistence efforts which could cause additional effects to hunting success and the resources.

* The proposed legislation may address a contemporary access issue but fails to provide needed flexibility for people to access caribou when they again change their migration route.

C. EIS fails to consider ATV impacts on resources

The EIS fails to address the capacity of the resources to support ATV uses and perceived conflicts with other uses. A summary document of known impacts and conflicts documented for ATVs in Alaska was prepared by the Alaska Department of Fish and Game (ADF&G) and submitted to the Alaska Board of Game (Sinnott 1990). Such data neither appear to have been used in the analysis of ATV impacts in the EIS nor in decision-making about designating access routes and areas. These additional aspects of ATV access issues need to be addressed.

* In view of the failure of the proposal to address many ATV access and related resource issues, the EIS would be found inadequate if subjected to NEPA requirements.

D. Public Involvement has been superficial

Pertinent correspondence related to ATV access issues is contained in Attachment 3. An indepth analysis can lead one to conclude that NPS was single-minded in its purpose and desired outcome of negotiations related to access and subsistence eligibility in Gates of the Arctic. In addition to the correspondence in Attachment 3, there has been considerable other correspondence requesting the NPS provide appropriate public notice and consultation.

Similarly, the State has repeatedly expressed frustration at lack of opportunity for involvement in activities and issues such as the subsistence resource commissions, land exchange discussions, and cooperative studies. We were contacted once by the Gates of the Arctic staff and NPS regional office requesting a meeting to verbally determine the state's position on components of the early 1988 internal draft land exchange. We declined on the grounds that a public review was more appropriate and that we needed a "hard copy" in order to achieve policy concurrence; no copies were given to the State at that time and public review was postponed until now. State staff have been advised that a land exchange was in the works for several years during other resource management planning and subsistence resource commission meetings, among others, but were provided no details.

E. Failure to recognize subsistence as a management purpose of the park unit

The NPS does not agree that subsistence is a purpose of the park unit, contrary to the apparent intent of Section 101(c):

"It is further the intent and purpose of this Act consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each conservation system unit is established, designated, or expanded by or pursuant to this Act, to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so."

Subsistence uses are the priority consumptive use on all federal lands in Alaska (Title VIII) except where prohibited. We do not understand how NPS can claim that management to provide opportunities for subsistence activities is anything other than one of the purposes for which the park is managed.

H. Failure to recognize the role of the SRCs

We believe the proposed change to the system for determining eligibility to conduct subsistence activities in parks is not in the best long term interests of the residents. The EIS does not provide substantive justification for changing the present system. Impacts of implementation of a "roster" system will likely include unnecessary divisiveness among community members and, in the long term, incremental elimination of all subsistence uses within the park. Further, the roster proposal does not seem to be necessary to support to goals of the exchange.

The State of Alaska and members of the public have consistently objected to the NPS's pursuit of an a roster system. We believe the system devised by Congress is adequate and provides sufficient

options for the SRCs to determine the evolution of their own communities and for park staff to limit eligibility to individual permits when appropriate.

A review of correspondence shows the "roster" concept was first proposed by NPS staff at Gates of the Arctic and Denali park unit Subsistence Resource Commission meetings. The NPS staff presented concerns that certain communities were evolving or growing enough to necessitate additional restrictions on who qualified to participate in subsistence activities in the park units. All seven SRCs have reviewed some type of "roster" proposal, and have raised significant questions about necessity and implications to natural evolution of subsistence uses within the communities. All SRCs have rejected the roster concept for their park units, except one which has tentatively rejected it for all but one community.

In the face of these concerns, it is unfortunate that NPS has encouraged Anaktuvuk Pass residents to support loss of their community "resident zone" status, as well as for other residents of the park. We question whether residents of Anaktuvuk Pass fully understand the possible long-term implications of this component of the land exchange. Apparently no members of the public turned out for a recent public meeting in the community concerning the proposal. It is unlikely that all residents are well-informed and not benefitting from further information about the proposal.

We are not certain that the other "resident zone communities" are aware that congressional adoption of the proposal will eliminate their abilities as communities to participate in traditional ATV

access for subsistence activities in the park. This affects the residents of the following communities who now are eligible for subsistence opportunities without individual permits through "resident zone community" status: Alatna, Allakaket, Ambler, Bettles/Evansville, Hughes, Kobuk, Nuiqsut, Shungnak, and Wiseman.

Residents of Anaktuvuk Pass and of the park/preserve will only be able to participate in subsistence activities if included on the "roster", a list prepared by the profit-making Nunamiut Corporation for approval by the Park Superintendent. Several undesirable and possibly unintended consequences may result, such as discrimination against nonNunamiut shareholders or nonnative community residents who would otherwise qualify for subsistence in the park prior to the agreement. In our judgement this scenario contradicts the spirit and intent of ANILCA.

The Gates of the Arctic SRC met recently and unanimously rejected the roster proposal as part of their hunting plan (such plan is required in ANILCA Section 808 for submission to the Secretary and Governor). To date, the NPS has not distributed minutes of the meeting or provided public notice of the draft plan that was adopted by the SRC. This supports our concern that NPS may not have fully apprised the residents of the possible impacts to their community lifestyle which could result from adoption of this proposal. (A brief chronology of ANILCA legislative intent, analysis of regulations, and NPS efforts to achieve a "roster system" in Gates of the Arctic is included in Attachment 4 which illustrates the direction of NPS's efforts.)

A number of secondary questions regarding specifics of the roster proposal need to be addressed. According to our reading, former residents who move away temporarily and friends from nearby rural communities who have traditionally been part of community activities will apparently be denied the opportunity to conduct subsistence activities with Anaktuvuk Pass residents on the roster. This might be contrary to traditional hunting practices as well as natural evolution of communities provide by ANILCA legislative intent. Yet projected impacts on local hunting activities are not discussed sufficiently in the EIS to allow us to evaluate.

The proposal specifies that "eligible subsistence users" for purposes of this process initially are all present or former residents of Anaktuvuk Pass. Is this the NPS-proposed pool of candidates or the persons who the Nunamiut Corporation is required to select? What happens to the former residents of Anaktuvuk Pass who are omitted from the original list because the Nunamiut board unintentionally forgot them? Is any provision made for them if they do not meet the more restrictive criteria established for eligibility after the agreement is signed? Does the initial pool of "eligible subsistence users" include residents of urban Alaskan communities?

The real implications of deleting the park from the resident zone is not given much attention in the plan so that its impacts on other unit residents and resident zone communities is fully understood. The ability of the SRC and the communities to make further determinations as to the evolution of their subsistence lifestyle appears to be greatly reduced. Because the GMPs and

ANILCA Section 808 call for full consultation with the SRC, but the proposal was apparently developed without adequate consultation, we conclude that NPS has underutilized the SRC in providing recommendations related to subsistence in the park.

I. Elimination of ANCSA 17(b) Easements

The Department of Natural Resources (DNR) has brought to our attention that the EIS proposes to terminate existing easements established pursuant to Section 17(b) of the Alaska Native Claims Settlement Act. In place of these easements, the EIS proposes to establish public, nonmotorized, general access easements across Native lands. The DNR has expressed concern that these easements would not allow vehicle access to state lands along the Anaktuvuk and John Rivers and, therefore, they should not be eliminated unless they are replaced with easements that provide the same rights of public access. In rural Alaska where public access for management and use of fish and wildlife resources is particularly critical, we are concerned about any losses of public easements.

Summary of Significant Issues

Management directions contained within the proposal appear to have the potential to severely affect NPS decision-making related to subsistence opportunities for users of, not only Gates of the Arctic National Park and Preserve, but 11 other NPS units.

If the "roster" concept for determining eligibility is adopted, one more avenue for restricting uses by individuals rather than

communities in park units will have been created. To date, none of the SRCs or communities have supported the "roster" proposal as part of their hunting plan. They all question the long-term problems of "who" will identify the "who has from who hasn't" and the inevitable fade-out of subsistence activities under such a system.

Congress adopts the proposal, the result will be congressional retraction of traditional access guarantees, particularly for ATVs. This concept cannot move forward without community support, yet the community may not be aware that ATV access for traditional (preANILCA) activities may be at risk on all federal lands in Alaska.

The State and numerous organizations have strongly opposed any creation of a "buffer zone," which is created by Nunamiut giving up its development rights on private lands. ANILCA Section 103(c) clearly excludes federal jurisdiction of public lands regulations on private and state lands. We wonder if this will establish a precedent to restrict access and activities in other areas so as to convince individuals to give up other rights in return for being able to conduct their guaranteed activities.

Questions and Page-specific Comments

Definition of All-Terrain Vehicle

The definition of ATV on page 333 is not consistent with the definition of off-road vehicles (ORVs) contained in NPS regulations. Is NPS attempting to distinguish ATVs in the EIS as being the larger six- and eight-wheelers versus the many other types of vehicles included in the NPS definition of ORVs (e.g., three- and four-wheelers) If so, does this entire agreement only address the former? What management is proposed for the smaller traditional ATV access vehicles? Is NPS aware that residents in small villages tend to share use of equipment? In other words, the apparent small numbers of ATVs in the villages in the 60's does not mean everyone in the villages was not using them!

The EIS states "use of other vehicles would be prohibited unless the secretary of the Interior determines that the cumulative physical and aesthetic (visual and audible) impact is no more detrimental than that of the six- or eight-wheelers currently in use" (p. 47). When would that determination be made--after impacts occur?

A single four-wheeler is probably less detrimental than most six- or eight-wheelers; however, due to their lower cost, greater maneuverability, and reduced carrying capacity, there may be many more four-wheelers used in the future, which could result in greater visual and audible impacts. (On the other hand, new four-wheeled ATVs such as the Kawasaki Mule offer a carrying capacity similar to Argos; they may be more attractive to Anaktuvuk

residents than six- or eight-wheelers in the future.) Increased hunter mobility can also affect wildlife behavior, age and sex composition, and distribution. These are trends already observed in areas popular with sport hunters (Sinnott 1990). Any increase in ATV numbers and range is likely to be more detrimental to vegetation, wildlife populations, and backcountry use by others.

Public's interests, page 1. Not only "Native interests" but the State, on behalf of the public's interests, has repeatedly maintained that ATVs have been necessarily and traditionally (preANILCA) used to access subsistence resources. The NPS does a disfavor by misleading the public into believing the EIS is a final solution for "Native interests."

The EIS further states on page 2: "The proposal is also needed to end the possibility of a legal challenge to the NPS position that ATVs are not a traditional means of surface transportation." We disagree. Other Natives and nonNatives alike will lose recognition of their traditional surface transportation, not only in Gates of the Arctic but in all park lands in Alaska. Adoption of this EIS would only resolve the dispute with present residents of Anaktuvuk Pass in the areas of the easements involved in the land exchange. It is not clear in reading the agreement in the Appendix whether the ATV traditional access of other communities' residents is summarily dismissed or left to future agreements with individual communities. It would not seem likely that Nunamiut Corporation intended to foreclose access rights of other subsistence users through adoption of this proposal. However, that is the conclusion

one draws from the Agreement itself.

Aircraft Access. page 2. We question the accuracy of the statement: "Aircraft access for subsistence is prohibited except on preserve land." The NPS regulation 36 CFR 13.64(a)(2) states:

"Aircraft Use. In extraordinary cases where no reasonable alternative exists, local rural residents who permanently reside in the following exempted community(ies) may use aircraft for access to lands and waters within the park for subsistence purposes in accordance with a permit issued by the Superintendent."

This parallels ANILCA legislative history (H10540) in House Record November 12, 1980:

"Some years the caribou herds do not use the mountain passes near the village of Anaktuvuk Pass during their annual migration. Since this village has not alternative sources of food, the use of aircraft is essential for the continued survival of the Anaktuvuk Pass people. Although there may be similar situations in other areas of Alaska in which aircraft use for subsistence hunting may be appropriate and should be permitted to continue. "

Is this another case of NPS advising Anaktuvuk residents a certain activity is illegal that in fact Congress directed to be allowed.

ANILCA Sections 816(b) and 1316. page 2. Congressional proceedings reveal many discussions transpired regarding the relative inaccessibility of much of Alaska, even to rural residents. Congressional committee reports frequently reflect intent to protect the status quo of the way-of-life of Alaskan residents, but directing that the burden of a bureaucratic system of permits and requirements be avoided as much as possible. Despite this clear intent, the NPS has repeatedly refused to accept preANILCA access as "traditional," even where identified by local residents, the State, and studies contracted by NPS (e.g., Hall et al.) The State has even proposed the NPS contract with a University or other organization to document preANILCA access as a means to resolve the dispute.

By prohibiting traditional access, the NPS has effectively closed hunting in many parts of some parks in Alaska. This appears to be in violation of Section 816(b); NPS has effectively closed the subsistence taking of fish and wildlife by eliminating the traditional method of access. Similarly, recreational uses related to the taking of fish and wildlife protected by Section 1316(a) appear to be inappropriately closed. Section 1316(a) allows continuance of existing uses of facilities and equipment "directly and necessarily related to" taking of fish and wildlife on "all public lands" where such take is allowed.

Administrative Sites, page 3, paragraph 3. Section 1306(a) specifically directs the secretary to attempt to locate administrative sites on Native lands. The EIS does not clarify why

NPS believes it is so imperative to acquire their own land. This seems to contradict the congressional intent that the federal agencies should provide financial support and integrate with the community through arrangements such as leases.

Other access needs in Gates of the Arctic. page 3. Summer access for Anaktuvuk residents for current areas of wildlife populations may be resolved by this agreement, but what about winter ATV access? What about ATV access for the other residents within Gates of the Arctic not immediately within the Anaktuvuk Pass easements areas? What about other communities' residents and individual subsistence permit holders who use other parts of the park?

Subsistence Concerns, page 4. Division of Subsistence staff noted that the first paragraph suggests that hunting patterns have changed in Anaktuvuk Pass during the past 30 years because of the wage economy. We agree that there can be and often is an association between wage employment and level of involvement in seasonal harvest activities; however, the discussion in this section could easily lead the uninformed reader to conclude that wage employment contributes to the community economy such that wild resources really are not an important component. This would be misleading, inaccurate, and presumably not what the NPS intended to convey.

Veiled application of EO 11644 to snowmachines, page 13. In the

final paragraph on page 13 and in Appendix 10 on page 32, references are made which imply NPS could (potentially intends) to use EO 11644 to prohibit snowmachines from being used for subsistence purposes by Anaktuvuk Pass residents. We question the NPS intent by clarifying how they intend EO 11644 to relate to traditional access provisions in ANILCA.

Other planning requirements of ANILCA, page 16. The ANILCA Section 1301(b)(4) requirement to complete "a plan for access to, and circulation within, such unit" has not been done for a single park unit in Alaska in the decade since passage of ANILCA. We question why NPS believes it must go back for further congressional action before exhausting the cooperative planning mechanisms already available.

Consultation with State, page 21. We are unaware of any formal consultation with the State. Occasional meetings have included mentions of the proposed land exchange between NPS and Nunamiut Corporation, with the implication that it had no relationship or impact on other aspects of the public's interests related to the unit. One briefing was held a few years ago, as described in the text above, but no concrete proposals were provided for the State's review. As you learned upon calling the superintendent last week, the park staff are unable to provide a convincing list of actual consultations occurring with the State or public on the many matters in the proposal which are of the public's interest. Even the Subsistence Resource Commission for the park unit is unaware of

the details of the agreement. We suggest that administrative solutions to some of the problems would be appropriate before seeking congressional intervention.

Table 2, page 30. The table is confusing. It is unclear whether the miles tabulated under the "Future" heading are total miles or additional miles disturbed. Perhaps labelling the columns "Future Additional" would help. The word "disturbed" in the table's title is ambiguous. These figures are the miles (and acres) that have been physically altered by ATVs. "Disturbed" is a more comprehensive term that includes areas where wildlife behavior and other characteristics are affected by ATVs and associated hunting, and areas where ATV noise can be heard and trails seen by other users. It may be more appropriate to replace the word "disturbed" with "physically altered." It would be helpful if the EIS could provide estimates of the acreage "disturbed" by ATV use as well, even though this is likely to be a highly subjective estimate. It would be less subjective if based on figures available in the literature, e.g., Sinnott, R.J. 1990. Off-road vehicles and hunting in Alaska. Division of Wildlife Conservation, Alaska Department of Fish and Game, Anchorage.

Subsistence Use Data, page 84. What is the source of the estimated big game harvests (moose, caribou, sheep) by Anaktuvuk Pass residents? We do not dispute the data but have found little documentation in the published literature.

Arctic Food Chain, page 91. Small mammals are not the "base of the arctic food chain." Most of the 36 species of mammals and 140 species of birds identified in the park unit are consuming plants or invertebrates which feed on plants. Relatively few predatory species consume significant numbers of small mammals.

Revised Statute 2477 Rights-of-Way, Native allotments, page 184. Both of these issues directly affect existing and future access by ATVs; therefore, their impacts must be assessed in this document. For example, allowing access by legitimate owners of land and mining claims through the Dalton Highway Corridor Management Area has increased hunting off the Dalton Highway, in an area which is otherwise closed to ATV use. The solution to ATV use on RS 2477 rights-of-way and to private lands may be outside the scope of this EIS, but the existing and potential levels of this use must be assessed in relation to ATV use for subsistence in the park unit.

APPENDIX 3, Subsistence 810(a) Evaluation, pages 261-275. The ANILCA Section 810 evaluation is better written and more detailed than many we have reviewed, but it is incomplete until it addresses the questions raised above. Anaktuvuk pass is a relatively young community and its land use patterns as a community may not yet be well established. The analysis does not examine how the "roster" system might affect customary and traditional use patterns over time, not only for Anaktuvuk Pass residents but for all residents who currently or traditionally participate in subsistence activities in the park unit.

ATTACHMENT 1

ANILCA Section 811:

"(a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.

(b) Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation." (Emphasis added.)

ANILCA Section 1110:

"(a) Notwithstanding any other provision of this Act or other law, the Secretary shall permit, on conservation system units, national recreation areas, and national conservation areas, and those public lands designated as wilderness study, the use of snowmachines (during periods of adequate snow cover, or frozen river conditions in the case of wild and scenic rivers), motorboats, airplanes, and non-motorized surface transportation methods for traditional activities (where such activities are permitted by this Act or other law) and for travel to and from villages and homesites. Such use shall be subject to reasonable regulations by the Secretary to protect the natural and other values of the conservation system units, national recreation areas, and national conservation areas, and shall not be prohibited unless, after notice and hearing in the vicinity of the affected unit or area, the Secretary

finds that such use would be detrimental to the resource values of the unit or area. Nothing in this section shall be construed as prohibiting the use of other methods of transportation for such travel and activities on conservation system lands where such use is permitted by this Act or other law." (Emphasis added.)

Interim Regulations Section-By-Section Analysis

"In furtherance of section 811 of ANILCA, 13.46 provides local rural residents engaged in subsistence uses reasonable access to the subsistence resources on which they depend. With respect to local rural residents who are engaged in subsistence hunting, fishing, and gathering activities within the park areas, this regulation liberalizes the provisions of Subpart A on snowmobiles, motorboats, dog teams and other non-motorized surface transportation (e.g., saddle horses), and certain off-road vehicles. All routes and areas are open to subsistence use of these vehicles except as specifically restricted or closed. The Superintendent will implement such closures or restrictions on the basis of criteria which are more limited than the criteria for closure to general recreational use. Basically in order to impose a restriction, the Superintendent must determine that the use in question is causing or is likely to cause an adverse impact on public health or safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or the purposes for which the park area was established. The Superintendent will

arrange notice and public participation concerning closure proposals in order to involve those affected to the fullest extent possible in the decision-making. (emphasis added)

"It should be noted that the types of access vehicles covered by 13.46 include 'means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.' The limitations of this phrase, if any, will be addressed as appropriate in future rule-making efforts."

Current 36 CFR Part 13.46 regulations (attached):

ATTACHMENT 2

CHRONOLOGY OF PUBLIC AND STATE OBJECTIONS TO
IMPROPER ACCESS PROHIBITIONS ON PARK LANDS

Alaska Legal Services provided on March 15, 1981 a synopsis of comments raised by residents of Anaktuvuk Pass on the "interim" regulations, which includes:

"There are many details in the regulations that still will cause a great amount of unnecessary hardship on rural Alaskans like the people of Anaktuvuk Pass. The local people are expecting the National Park Service to make the permit and decision-making process as accessible to them as possible. The standards surrounding any possible closure of subsistence hunting, trapping, or fishing should be made much more clear. The regulations should provide for increased notice to local and regional advisory councils of any of the closures or restrictions, as well as openings, within the park areas."

"The village of Anaktuvuk Pass strongly supports the recognition given here (regulation 13.46) that snowmachines, motor boats and other means of surface transport can be used in subsistence activities without special permits within park areas. Anaktuvuk Pass people must use all-terrain or off-road vehicles in the summer months, as neither snow machines nor motorboats can be used in the summer months and mountain terrain surrounding the village. The village suggests that the regulations more clearly express that off road vehicles may be used by certain communities."

On July 10, 1984, the City of Anaktuvuk Pass adopted "A Statement of Concern From the People of Anaktuvuk Pass, Alaska Relating to the All Terrain Vehicle (ATV) Easements Within the Gates of the Arctic National Park." This statement read in part:

"In the past we have hunted where our fathers, grandfathers and their fathers before them hunted. Now we find we can only hunt with our all terrain vehicles where the Parks Service of the United States says we may. They did not ask us where our traditional hunting grounds were located. They drew lines on a map and told us that we may use those easements only as access to our hunting areas, and that we will be fined and our ATVs may be taken away from us if we are found outside of the easements with them.

"We are aware that some of these easements were part of the land trade between the NPS and Arctic Slope Regional Corporation (ASRC). We acknowledge the receipt of those easements, and the time and money that went into the negotiations and legal maneuvering that went into acquiring them by our native corporation, the Nunamiut Corporation. We are not ungrateful but feel that ASRC & the NPS did not consult us as a people about their location and that those easements were a last ditch effort by ASRC in order for the sale of the land to go through. Our needs were not considered. Our needs were not met."

"We realize that there were some among us who wanted Anaktuvuk Pass to be included within the boundaries of the park. At

that time we were given to understand that we would retain our native hunting rights in order to live a subsistence life style. We have, unfortunately, not found this to be true.

"There are 7,952,000 acres of land in the Gates of the Arctic National Park and Preserve. Almost eight million acres of land! We are not, we feel, being unreasonable. We do not ask for all of this land, or even access by easement to all of the land, but we do seek the right to hunt as we have always hunted."

On September 19, 1984, Mayor Brower of the North Slope Borough wrote to NPS Regional Director Contor protesting

"The process used by the NPS to identify subsistence use areas and access easements and the enforcement of very restrictive regulations. Rather than holding public meetings or consulting those most affected, apparently your Park management staff in Fairbanks simply drew lines on a map designating subsistence use areas and access easements in the Gates of the Arctic. The citizens of Anaktuvuk Pass, the only village in the park, were not asked to participate to any extent, nor were they asked to identify their traditional hunting grounds. This unilateral decision-making process is extremely unfair and undemocratic. In addition, park officials threatened to confiscate subsistence hunting equipment and levy stiff fines on those who traveled beyond the access easements with all terrain vehicles. This may be in direct conflict or in violation of ANILCA. The law does

not exclude the use of any new forms of transportation in the park for subsistence purposes. In fact, it specifically allows the use of non-traditional forms of transportation. I am sure the intent of ANILCA's subsistence provisions is to help maintain the integrity of our subsistence lifestyle, as opposed to further restricting our activities and enforcing ridiculous regulations."

On June 7, 1985, the City of Anaktuvuk Pass adopted Resolution 85-6 which states in part:

"WHEREAS, the Nunamiut people of Anaktuvuk Pass have traveled to hunting and fishing sites during the summer by ATV since the introduction of that form of transportation; and

"WHEREAS, the ANILCA does not exclude ATV use, but specifically states that new, non-traditional forms of transportation should not be excluded; and

"WHEREAS, the access corridors established by the NPS do not follow traditional paths, and do not allow access to enough areas; and

"WHEREAS, the future subsistence needs of the Anaktuvuk Pass Nunamiut will require greater rather than loess access to hunting and fishing and trapping areas; and

"WHEREAS, the NPS has interpreted ANILCA in such a way as to disenfranchise the Anaktuvuk Pass people from their rightful use of and access to traditional summer subsistence areas; and

"NOW, THEREFORE BE IT RESOLVED; THAT, the Secretary of the Interior direct the NPS to: 1) allow the free and unrestricted use of ATV's by the Nunamiut people in pursuance

of their subsistence livelihood"

On June 11, 1985, the Northern Alaska Environmental Center wrote the Chairman of the Subsistence Resource Commission for Gates of the Arctic and copied the Superintendent as follows:

"We support efforts of the village of Anaktuvuk Pass and the National Park Service to resolve off-road vehicle use problems in the Anaktuvuk Pass area. Any proposed resolution to this problem must protect park resources from ORV impacts and allow residents of Anaktuvuk Pass reasonable access to areas adjacent to the village traditionally used with ORV's."

In an August 30, 1985 response to the NPS draft General Management Plan (GMP) for Gates of the Arctic, the State wrote "We oppose many of the blanket restrictions on access, traditional uses," and noted that the ANILCA Section 1301(b)(4) requirement for a plan for transportation and access had not been met (NOTE: this plan still has not been completed). The draft GMP stated that ATVs are not permitted on park lands. The State responded:

In addition, on August 30, 1985 the Division of Governmental Coordination (Governor's Office) sent a letter to Regional Director Evison in review of the Draft GMP. The GMP page vi stated ATVs are not permitted on park lands. The State responded:

"Contrary to this assertion, the use of ATVs is permitted and occurring within most NPS units in Alaska. Primary uses involve transportation or support for subsistence and

recreational harvests of natural resources, access across federal and state lands, access to or associated with inholdings, and other traditional activities. In general, these uses have not been extensive in Gates of the Arctic NP&P. Documented impacts on the environment could lead to ATV restrictions under the provision of the ANILCA Title XI, including hearings for affected parties. We request revision to reflect actual status, legal mandates and procedures for restrictions, and existing rights."

"We are not aware of notice and hearings having been held, as are required by the ANILCA Title XI requirements in order to restrict traditional access. We are also not aware of any regulations restricting ATV access to designated easements or private lands.

"A recent study by Edwin Hall and Associates found that ATV use has a historical time depth of over 20 years, and that the presently designated easements do not reflect areas of historical use of ATVs by Anaktuvuk Pass residents. We request this paragraph and associated management intent be corrected to reflect that historical use is not limited to designated routes. It should also be noted that these easements used by ATVs are possible RS 2477 rights-of-way.

"Contrary to this assertion, the use of ATVs is permitted and occurring within most NPS units in Alaska. Primary uses involve transportation or support for subsistence and recreational harvests of natural resources, access across

federal and state lands, access to or associated with inholdings, and other traditional activities. In general, these uses have not been extensive in Gates of the Arctic National Park and Preserve. Documented impacts on the environment could lead to ATV restrictions under the provision of ANILCA Title XI, including hearings for affected parties. We request revision to reflect actual status, legal mandates and procedures for restrictions, and existing rights."

"The use of ATVs for summer and early fall hunting and fishing by Anaktuvuk Pass residents needs to be added to the discussion of current subsistence use and access methods."

"We are not aware of notice and hearings having been held, as are required by the ANILCA Title XI requirements in order to restrict traditional access. We are also not aware of any regulations restricting ATV access to designated easements or private lands.

"A recent study by Edwin Hall and Associates found that ATV use has a historical time depth of over 20 years, and that the presently designated easements do not reflect areas of historical use of ATVs by Anaktuvuk Pass residents. We request this paragraph and associated management intent be corrected to reflect that historical use is not limited to designated routes."

The inappropriate restrictions on ATVs were causing increasing frustration and severely curtailing traditional (preANILCA)

activities of residents. Hence, Mayor Harry Hugo of Anaktuvuk discussed this issue with Governor Sheffield in autumn of 1985. On October 7, 1985, Governor Sheffield detailed his efforts to resolve the issue:

"Following my trip to Anaktuvuk, I met with Bill Mott, Director of the National Park Service, and with Boyd Evison, the new Alaska regional director, and discussed your concerns. Mr. Mott assured me he agreed with the need to remain flexible on the issue of enforcing ATV regulations, especially until the final management plan is in place.

"In addition, the director of my Washington office, John Katz, talked last week with Assistant Secretary of the Interior Bill Horn regarding interim enforcement. Mr. Horn promised to look into the problem and assured us that local people would be involved in the decision-making process. Mr. Horn did note that the Park Service is obligated to fulfill the requirements of ANILCA to define "prior use" of ATVs and to limit uses to the level which existed when ANILCA was enacted. However, he wants to explore the possibility of more flexible enforcement until these levels can be determined."

The State reviewed the final GMP and notified the NPS on June 9, 1986 that "the GMPs still do not adequately protect existing and traditional uses consistent with ANILCA and Congressional intent." The State's letter states:

"Resolution of many policy questions is deferred to future

planning efforts . . . and/or to the discretion of park superintendents. This deferral risks limiting state and public participation in the decision-making process. Too much discretion can also lead to arbitrary and capricious restriction of traditional uses."

"Traditional uses are not adequately acknowledged or documented (e.g., subsistence use of ORVs).

In August 1987, Senator Stevens travelled to Anaktuvuk Pass to discuss paramount issues. Anaktuvuk Pass Village Council and Nunamiut Village Corporation members discussed problems related to access to the park unit by ATVs. Corporation, Council, and North Slope Borough members accompanied Senator Stevens on an ATV tour of Gates of the Arctic park. According to Senator Stevens' September 1987 newsletter to Alaskans:

"Stevens called the use of ATVs in the park 'as essential to the people making their livings here as tractors are to farmers farther south'."

ATTACHMENT 3

CONGRESSIONAL RECORDS REGARDING ACTIVITIES AND ACCESS
IN WILDERNESS AREAS

House Report 96-97 Part II (April 23, 1979) reports an amendment (Section 1316) added to the bill, which was intended to emphasize intent to protect existing fishing and hunting opportunities, reiterated assured use of motorized equipment in wilderness:

"This section, adopted as a committee amendment, clarifies that **activities incidental and necessary to allowed uses within conservation system units, including wilderness areas, shall be permitted**, subject to reasonable regulations. The amendment provides that equipment and facilities, which would be utilized in carrying out permitted activities such as guided hunting, sport hunting, and commercial fishing, shall be permitted, but the Secretary may through reasonable regulations ensure these activities are made compatible with administration of the area. This amendment applies to the continuing use of existing facilities and equipment and to the use of new facilities and equipment." (Emphasis added.)

To reinforce this intent, Congressman Udall stated on the House floor (May 4, 1979):

"Further, even though the Wilderness Act permits use of motorboats, airplanes, and other forms of transport when previously existing, in order to make it absolutely clear that the unique conditions in Alaska relative to people use are not

frustrated, we include in our bill a number of special provisions relative to access, use of boats, airplanes, snowmobiles, and so forth, and other special provisions to meet the needs of people in Alaska, which apply not only to the conservation system units, but wilderness areas within those units as well." (Emphasis added.)

Similarly, Senate Report 96-413 (November 5, 1979) states:

"The Committee amendment guarantees access subject to reasonable regulation by the Secretary on conservation system units, National Recreation Areas and National Conservation Areas, for traditional or customary activities such as subsistence and sport hunting, fishing, berry picking, and travel between villages.

"The Committee recommends that traditional uses be allowed to continue in those areas where such activities are allowed. This is not a wilderness type pre-existing use test. Rather, if uses were generally occurring in the area prior to its designation, those uses shall be allowed to continue and no proof of pre-existing use will be required."

"In order to prevent the land manager from using his discretion to unnecessarily limit such access, the Committee amendment provides that such access shall not be prohibited unless the Secretary finds after holding a hearing in the area that it would be detrimental to the resource values of the unit." (Emphasis added.)

"In general the Committee notes that the Wilderness Act and the access provisions of this act have built in flexibility which can allow existing uses to operate. Different Federal agencies have applied differing standards in interpreting the Wilderness Act. It is the intent of the Committee that the National Park Service develop regulations for the management of wilderness in Alaska that take into account a liberal interpretation of the Wilderness Act and to allow as many of the existing uses to continue as provided for by the access provisions of this act."

Senate Report 96-413 further specifically clarifies Section 811's application in order "to ensure that residents engaged in subsistence uses shall have appropriate access to subsistence resources on the public lands," as follows:

"The committee intends that access to fish and wildlife populations shall be provided to local residents engaged in subsistence uses regardless of where such populations may be located in the future (except that the section is not intended to permit the subsistence use of wildlife in national parks and monuments which are permanently closed to such uses). Traditional habitat and migration routes may be altered by transportation systems and development activities on the public lands. By focusing on access to the resource itself, rather than on the particular portion of the public lands upon which the resources may presently be located, this section provides the flexibility necessary to ensure the continuation of subsistence uses in the future, subject to reasonable

regulation. (Emphasis added.)

ATTACHMENT 4

Legislative Intent, Regulations analysis, and pertinent chronology of NPS efforts to achieve a "roster system" in Gates of the Arctic to determine eligibility.

Correspondence related to the NPS efforts to convince one SRC to adopt the "roster system" so as to establish the precedent are much more extensive than indicated below. We have limited these references to those specific to congressional intent and Gates of the Arctic.

ANILCA House Report November 12, 1980:

"Designation of resident zones rather than National Park Service regulation of subsistence hunting by individual permit has a number of advantages. The National Park Service is spared the expense and administration complications attendant in the implementation of a comprehensive permit system. The traditional movement of local residents between rural villages and Alaska's larger population centers can continue, consistent with unit values, without the interference of a complicated administrative structure. And most importantly, rural communities and cultures will not be burdened by implementation of a complex and in many instances culturally disruptive regulatory system, unless necessary in specific instances to protect and administer unit values."

"The direction of the evolution of many rural communities within resident zones is as yet undetermined. As a result, the composition of residents within a particular community may

alter substantially in the future. If so, and section 203 and title VIII so authorize, the National Park Service to protect unit values by determining eligibility of residents of communities within previously designated resident zones for subsistence hunting purposes through implementation of an individual permit system." (ANILCA Section 804 of ANILCA established criteria for further restrictions on subsistence take of populations if necessary.)

"Consequently, in general, no permit or quota system for the subsistence use of wildlife within national parks and monuments and other conservation system units should be imposed on rural residents unless necessary to protect the continued viability of a particular wildlife population, and then only with respect to that particular populations."

June 17, 1981 "interim" regulations regarding "local rural residents" and "resident zones":

"In practice, this residence concept should not exclude a person from qualifying as a local rural resident merely because of a temporary absence for military duty or limited-term employment, for example. This concept does not impose a durational residency requirement." and

"The availability of subsistence permits is part of the system contemplated by ANILCA for identifying "local rural residents" who are authorized to engage in subsistence uses in national parks and monuments. The subsistence permit is system

necessary to ensure the fairness of a regulatory system which seeks primarily--by means of resident zones--to avoid the necessity of permits in allowing subsistence uses by local rural residents. Thus, the subsistence permit system is an integral part of the resident zone system. As a corollary, it should be noted that the Park Service's decision to limit the applicability of the resident zone system to national parks and monuments (i.e., not preserves) necessitated a similar limitation of the applicability of the subsistence permit system. As another corollary, the Service's decision to expand the resident zone designations, thereby encompassing more subsistence users within the zones, should reduce the number of subsistence users who must apply for a permit." (Emphasis added.)

"According to ANILCA's legislative history, however, Congress intended the Park Service (1) to devise a system of resident zones as the primary mechanism for identifying local rural residents in park areas, and (2) to avoid a subsistence permit system to the extent possible. See S. Rep. No. 96-413, supra, 170-171;p 126 Cong. Rec. at H 10541. Congress recognized that subsistence permits may be necessary in certain situations as an adjunct to the system of resident zones."

April 16, 1984, internal draft GMP identified NPS significant issues to include: "Monitoring will be necessary to determine whether a resident zone community continues to meet eligibility requirements." (Emphasis added.)

January 26, 1984, Superintendent Ring met with State and AFN; identified key problems for GMP which included 'local use, traditional use. Mr. Ring stated that he figures protection of traditional uses precludes increases in the number of users of the area. **He is concerned that any increase or new population in the unit will cause problems with protecting traditional use as well as defining local use.'** (Emphasis added.)

Gates of the Arctic SRC met May 15, July 31-August 1, and November 16-18, 1984; Superintendent Ring conducting research on "ATV use and abuse" and "role of ATV use as a traditional access."

November 8, 1984; internal draft GMP for Gates of the Arctic provided to the SRC; NPS refers to **concerns that**

"Newcomers with no established, historical pattern of use within the park are taking advantage of the community designations to engage in subsistence uses of park resources. If a designated community no longer appears to meet the criteria, a process of public notice, hearing, and consultation with the Subsistence Resource Commission will be initiated to consider deleting the community from the designated resident zone." (Emphasis added.)

December 3, 1984 meeting; Superintendent Ring suggests the SRC **evaluate the resident zone community concept and eligibility of new residents.**

Rural Cap presented a resolution at the Fairbanks public meeting on

the draft GMP (1985) calling for the plan to be delayed 20 months in order to allow for the hunting program to be completed by the Subsistence Resource Commission and included in the plan.

June 9, 1986; State review of second draft GMP:

"NPS has not actively involved the state in the utilization of the Subsistence Resource Commissions (SRC) as is called for in Title XIII of ANILCA and has not facilitated SRC involvement in the development of subsistence management plans beyond the required hunting program."

September 21, 1987 letter from ADFG Commissioner to Chairman Gates of the Arctic SRC:

"Congress directed qualifications be based on communities rather than individuals for a number of reasons. Community qualification would avoid interference with the communities natural social, and economic evolution; it would avoid a costly and time consuming permit process, and would reduce regulatory burdens on community residents and NPS. Additional restrictions on those who qualify for subsistence uses in the unit are only to be implemented if necessary to provide additional protection to a given resource (e.g., specific species is being depleted) or because the community has evolved significantly. We are unaware of any evidence to demonstrate that either of these situations have occurred."

"We also note that the recommendation does not seem to be the

most effective approach for addressing the SRC's concerns about eligibility. Because of these problems, we request the SRC reconsider the recommendation and develop other alternatives for assuring the desired cultural continuity without creating intra-community distinctions among residents."

October 28, 1988 letter from ADF&G Commissioner to NPS Regional Director:

"The second issue of concern relates to the NPS proposal to change Subsistence Resource Commission (SRC) regulations to allow any SRC to adopt a list of qualified individuals who can utilize Park lands for subsistence purposes. As was indicated during our October 12 meeting, the Governor has objected in the past to this proposal. . . ."

"The consequences of adopting this proposed regulation will be situations where Alaskan citizens that fully qualify for subsistence privileges under state laws and policies will not qualify as a bona fide subsistence user within the National Parks. Although we acknowledge the NPS has the authority to implement more restrictive conditions on Park subsistence users, we do not understand the basis for this approach to defining those qualified to subsist on Park lands. The reason stated at the October 12 meeting regarding significant changes in community populations does not appear to be a reality and ignores the fact that there are other ways to address major community population changes which are more consistent with

the state's responsibilities and policies regarding subsistence."

February 29, 1989 letter from ADF&G Commissioner to Citizen's Advisory Commission on Federal Areas:

"The department is concerned with SRC proposals to change the rules of eligibility for subsistence users on NPS lands. As noted in my October 28, 1988, letter to Boyd Evison, Regional Director of NPS (copy enclosed), the Governor objects to the proposal to adopt lists of qualified individuals (i.e., rosters) in lieu of resident zone designation for subsistence users. These proposals may result in a declining use of parklands for subsistence purposes in the future, as the effect of the "roster" concept has the potential to limit and reduce eligibility over time. We do not believe this is in keeping with the spirit and intent of ANILCA." (Emphasis added.)