

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

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May 26, 1992

John Morehead  
Regional Director  
National Park Service  
2525 Gambell Street, Room 107  
Anchorage, Alaska 99503

Dear Mr. Morehead:

The State of Alaska has reviewed the Final Legislative Environmental Impact Statement concerning All-Terrain Vehicles for Subsistence Use in Gates of the Arctic National Park and Preserve. This letter represents the consolidated comments of the State's resource agencies.

The State of Alaska reiterates full support for resolving access problems experienced by the residents of Anaktuvuk Pass since creation of the Gates of the Arctic National Park and Preserve. The State continues to believe, however, that other administrative options have not been fully explored prior to attempting the proposed legislative solution.

The State is further concerned that if Congress does not implement this proposed land exchange, then longstanding ATV use in the park by Anaktuvuk Pass residents will be arbitrarily disallowed. The National Park Service has put all its eggs in one basket, which seems unwise in light of the controversy this proposal is expected to generate, in part due to the unprecedented proposal to deauthorize park Wilderness lands. The LEIS should be accompanied by a contingency plan that provides some opportunity for continued use of ATVs for subsistence purposes in the park if Congress takes no action or rejects the bill.

The solution to local residents' need for access as proposed in this LEIS appears to deviate significantly from the spirit and intent of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Specifically, the LEIS avoids recognition of statutorily protected traditional (pre-ANILCA) access rights of residents, indicating that such existing access by ATVs will be prohibited if the LEIS is not implemented by Congress. In essence, the National Park Service has negotiated with the local residents for changes in Wilderness designations, reduced opportunities for use of private lands, and land exchanges -- all for the purpose of providing local residents with access opportunities which are already authorized by ANILCA.

#### **COMPARISON OF DRAFT AND FINAL LEGISLATIVE EISs**

We have compared the Final LEIS to the Draft LEIS to assess how our previous concerns were addressed in light of the statutory requirements of ANILCA. The Draft LEIS contained numerous, significant problems addressed in the State of Alaska's response of April 16, 1991. We have found that most of these significant problems still appear in the Final LEIS.

#### Subsistence Eligibility

We do commend the NPS for being responsive to the objections voiced by the State and other groups regarding the Draft LEIS proposal to delete Anaktuvuk Pass and the park from the present resident zones. The State consistently opposed this proposal and urged that Anaktuvuk Pass residents be fully informed of the pros and cons of retaining resident zone status versus the proposed roster system for determining subsistence eligibility. As public meetings proceeded, it quickly became evident that local residents in fact did not support the proposed roster system.

The National Park Service, however, appears to leave the door open for such a change by noting in its response to the State's comments regarding the proposed roster system, that the National Park Service could "propose a change through the regulatory process" (LEIS, page 211). The State assumes the NPS is referring to the roster regulation being developed as a tool available to the subsistence resource commissions. We understand that the NPS would promulgate such regulation only if a commission requested it. If the LEIS is now referencing a different regulation enabling the NPS to independently propose such a change, the State requests an explanation for this departure from what has been anticipated to date.

### Traditional Use of ATVs

The LEIS fails to recognize pre-ANILCA use of ATVs as "traditional", per ANILCA Section 811(b). The NPS continues to reject ATVs as a traditional means of access for subsistence in Gates of the Arctic National Park and Preserve. The State continues to strongly object to this inflexible and unjustified position. A review of the public comments on this agreement illustrates that other knowledgeable parties also dispute the NPS position on this issue. Concern over traditional access will likely emerge as a significant and volatile issue in Alaska if Congress does not implement the proposed LEIS and the NPS continues to refuse consideration of administrative options to provide continued ATV access for subsistence uses.

Contrary to the NPS response #32 to the State's comments (page 228), at no time has the State accepted the definition of "traditional" included in the general management plans. The State has consistently asserted Congressional use of the term "traditional" meant "pre-ANILCA" while the NPS defines the more restrictive term "customary and traditional."

### Other Issues

Several other issues were discussed in considerable detail in the State's letter of April 16, 1991, such as:

- \* inappropriate use of Executive Order 11644 and the Wilderness Act to prohibit ATV access in ANILCA-created wilderness areas;
- \* lack of flexibility to respond to changing patterns of traditional activities; and
- \* inappropriate termination of public access 17(b) easement to State owned land, water, and resources.

These issues remain unresolved in the Final LEIS; therefore, our previous comments continue to apply.

### **CONCLUSIONS**

The State of Alaska supports an administrative solution using provisions of ANILCA and existing Congressional direction to resolve our concerns regarding permitting ATV use, administration of Wilderness, definition of traditional, and access to state

lands. We reiterate our recommendation that National Park Service pursue a more comprehensive approach which addresses all affected users, residents, and land managers to yield a more satisfactory, long-term resolution.

Sincerely,



Paul C. Rusanowski, Ph.D.  
Director

CC:

James Ridenour, Director, National Park Service  
Roger Siglin, Superintendent, Gates of the Arctic National Park  
and Preserve  
Harold Heinze, Commissioner, Department of Natural Resources  
Carl Rosier, Commissioner, Department of Fish and Game  
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