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July 6, 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 Environmental Assessment for two Public Use Cabins at Nuka Bay in the Kenai Fjords National Park. This letter represents the consolidated comments of the State's resource agencies.

The State continues to be highly supportive of the National Park Service's (NPS) efforts to provide new public use cabins in national parks in Alaska, including the proposal for two new cabins at Nuka Bay. This area is receiving increased attention by recreationists using kayaks, sailboats, inflatables, power boats, and float planes. The proposed cabins will enhance the public's use and enjoyment of the Nuka Bay area, including its abundant fish and wildlife resources, and provide protection during the windy/rainy periods that prevail along the North Gulf Coast.

Prior to a final decision on this cabin proposal, the State urges the NPS to address the following issues:

Delight Lake Access

The EA needs to address how access will be provided to upland public land and waters in the area. Persons using the cabins will undoubtedly want to traverse Native-owned land to use these public resources. In commenting to the Bureau of Land Management (Willis to Sosnowski, May 20, 1991, enclosed) concerning land conveyances to the Port Graham Corporation, the Alaska Department of Fish and Game requested, among other things, a site easement on Delight Lake with a trail easement along Delight Creek to the coast. The purpose of this easement would be to protect historically-used access between Delight Lake and Nuka Bay pursuant to Section 17(b) of the Alaska Native Claims Settlement Act. BLM has ruled that Delight Creek is non-navigable, and hence would not be available for public access without the 17(b) easement. BLM has not yet ruled on the 17(b) easement request, though the State is not optimistic such an easement will be reserved.

During rough seas on Nuka Bay, float planes will need the option to land on Delight Lake to drop off/pick up park cabin users. We strongly urge the National Park Service to contact BLM and express support for the establishment of a 17(b) easement between Nuka Bay and Delight Lake.

Additionally, access needs to be identified for fishing along Delight Creek which the EA characterizes as a "prized sport fishing stream". Once the land is conveyed to Port Graham Corporation, the only legal access for sport fishing on Delight Creek will be on tidelands. Even if the 17(b) easement is reserved, sport fishing will not be allowed on the easement.

Floodplain Concerns

The EA does not mention that the course of Delight Creek dramatically changed following the 1964 Great Alaska Earthquake. Unlike the stream course depicted on the USGS topographic maps, Delight Creek now empties into the entrance to McCarty Lagoon. Lower Delight Creek occupies a wide gravel floodplain that shows many signs of instability. Future channel shifts may occur. Although the EA states that the structures will not be located in any known floodplain, the rather poor map provided indicates that the cabin site may be within the historical floodplain of Delight Creek. We recommend that NPS confirm that the cabin site is located out of the maximum floodplain before proceeding.

Land Status

The EA fails to clarify whether the NPS provided opportunities for local Native landowners to provide comparable cabin facilities, consistent with ANILCA Section 1306. By the same token, page 9 of the EA indicates that the NPS cabins will be built on Native-selected land. Also, the Alaska Public Lands Information Center (APLIC) is attempting to fulfill its ANILCA mandate by becoming the central cabin/campground reservations office. If the land is subsequently conveyed, what are implications for APLIC reservations, NPS management, and continuing public use?

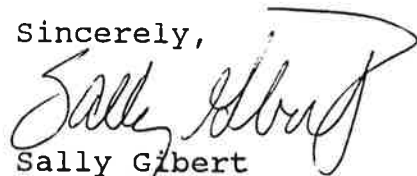
Section 810 Subsistence Evaluation

The Section 810 determination and EA overlook recognition that subsistence activities occur on private and State land within and adjacent to the park. For example, waterfowl and marine mammal hunting occurs on State tidelands.

The State is disappointed that these cabins have been proposed without consultation with State agencies knowledgeable of local conditions and issues. Such consultation could have illuminated the concerns expressed in this letter earlier in the planning process. We request opportunities to participate in preliminary discussions of the siting of future cabins before the EAs are developed. The State also wishes to repeat our request that these EAs utilize a full 30-day public comment period.

Thank you for the opportunity to provide these comments. If you have any questions, please call me at 561-6131.

Sincerely,



Sally Gibert  
State CSU Coordinator

cc:

Anne Castellina, Superintendent, Kenai Fjords NP  
Joan Darnell, Chief, Environmental Compliance, NPS  
Glenn Olds, Commissioner, Department of Natural Resources  
Carl Rosier, Commissioner, Department of Fish and Game  
John Sandor, Commissioner, Department of Environmental Conservation  
Frank Turpin, Commissioner, Department of Transportation and Public Facilities  
Richard Burton, Commissioner, Department of Public Safety  
John Katz, Governor's Office, Washington, D.C.

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

WALTER J. HICKEL, GOVERNOR

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May 20, 1991

Ms. Jan Sosnowski  
Bureau of Land Management  
6881 Abbott Loop Road  
Anchorage, AK 99507-2599

Dear Jan:

Re: Site and Trail Easements at Delight and Desire Lake - Lands  
Being Conveyed to the Port Graham Corporation

Over the past several weeks I have been researching the historical/present use of Delight and Desire Lakes. I have also gained a better understanding of how and when lakes and streams are determined to be navigable, and what effect a major waterway designation has on public usage.

First, as I know you are aware, locating people who used Delight and Desire Lakes in the early 1970's is a difficult task. Adding to the complexity of this situation, is the remoteness of these lakes and the limited number of Alaskans that traveled into the Kenai Fjords. For these reasons, I feel proving "present use" as defined in ANSCA, should only require proof that use did occur. With that in mind I was able to contact two families who flew into Delight and Desire Lakes prior to 1976, the McClays and the Cabanas from Homer; and walked to the coast to do some fishing. Bill deCreeft from Kachemak Air Service, also stated that he has flown to these lakes throughout the past 20 years and although he has no documentation he believes that other people have been flying into Delight and Desire Lakes during that period for purposes of sportfishing and/or hunting. Tom Schrader, a retired ADF&G fisheries biologist, stated that the best sportfishing is at the mouth of Desire Lake's outlet stream or in the stream itself. This implies that anyone landing in the lake would most likely hike down the stream to the coast in order to fish.

In addition, during my search I spoke with at least three other individuals who have been using these lakes over the last several years for commercial operations or general recreation. Bill deCreeft also mentioned that the lakes are particularly popular during the 4th of July weekend (coinciding with the sockeye salmon

run) and he thought that most users were private individuals out of Anchorage and/or Seward. I tried to locate some of those individuals but was unsuccessful. Although this usage is not considered "present use" there is legal justification for reserving an easement for future use (i.e. after December 18, 1976).

Second regarding navigability, Delight and Desire Lakes were determined not to be navigable during a 1986 decision. Since that time, however, the type of vessel usage required to determine navigability has changed. As a result, an updated navigability determination has been requested. Although Desire Lake may still be determined to be non-navigable there is reason to believe that the Delight Lake system may be found to be navigable. I was told by Chuck Ash that he has accessed Delight Lake from McCarty Lagoon by kayak on at least two separate occasions. Roger McCampbell, State Parks, took his inflatable from McCarty Lagoon up the creek most of the way during a dry year. The previous determination also documented cases where people had taken their boats up the stream, some successfully some unsuccessfully. Because a watercourse can still be considered navigable even if it is interrupted by occasional natural obstructions or portages, and climatic changes rendering the waterbody nonnavigable on a seasonal basis do not preclude finding of overall navigability, the Delight Lake system appears to be navigable.

Third, by definition both Delight and Desire Lakes should be considered major waterways. As major waterways the water in the lakes belongs to the public. Because the public easement provision of ANCSA states that easements shall be reserved at periodic points along the courses of major waterways it is justifiable for the public to request at least one site easement and one trail easement on each lake in order for the public to access public water along the coast and those of the lake.

In summary:

- 1) there is verifiable "present use" of both Delight and Desire Lakes;
- 2) there is verifiable current/future use of both Delight and Desire Lakes;
- 3) the Delight Lake system could reasonably be considered navigable; and
- 4) both Delight Lake and Desire Lake should be classified as major waterways as a result of their size and current usage.

The department requests that a site easement be established at the head of the outlet stream for each lake with a trail easement extending to public lands along the coast.

Thank you for the opportunity to comment. If you have any questions or require any of the above referenced names and/or phone numbers please feel free to contact me at 267-2329.

Sincerely,

*Robin*

Robin Willis  
Habitat Biologist  
Region II  
Habitat Division

cc: Jim Culbertson, Land and Resources Section, DNR  
John Westlund, Wildlife Conservation, Anchorage  
Tina Cunning, Wildlife Conservation, Anchorage