

OFFICE OF THE GOVERNOR

**OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF GOVERNMENTAL COORDINATION**

SOUTHCENTRAL REGIONAL OFFICE
3601 "C" STREET, SUITE 370
ANCHORAGE, ALASKA 99503-5930
PH: (907) 561-6131/FAX: (907) 561-6134

CENTRAL OFFICE
P.O. BOX 110030
JUNEAU, ALASKA 99811-0300
PH: (907) 465-3562/FAX: (907) 465-3075

PIPELINE COORDINATOR'S OFFICE
411 WEST 4TH AVENUE, SUITE 2C
ANCHORAGE, ALASKA 99501-2343
PH: (907) 278-8594/FAX: (907) 272-0690

July 28, 1993

Steve Martin
Superintendent
Gates of the Arctic National Park and Preserve
P.O. Box 74680
Fairbanks, Alaska 99707

Dear Mr. Martin:

The State of Alaska has reviewed the proposed Compendium for the Gates of the Arctic National Park and Preserve. This letter represents the consolidated comments of the State's resource agencies.

Thank you for providing an opportunity for the state agencies to collectively review a "compendium" proposed by National Park Service for limiting uses in a national park unit in Alaska. This is the first Compendium that has been made available for State or public review; consequently we have conducted a thorough analysis of applicable issues and authorities in developing these comments. This letter addresses both the specific problems with application of the proposed restrictions for Gates of the Arctic and our more general concerns for the process by which the National Park Service is restricting public uses.

We conclude that this and all other such compendia must be immediately withdrawn on the basis that this method of restriction of public uses in Alaska park units is clearly inconsistent with the Alaska National Interest Lands Conservation Act (ANILCA) and its implementing regulations.

LEGAL AUTHORITY OF COMPENDIA

We first became aware that compendia exist when the Citizens' Advisory Commission on Federal Areas acquired several through a Freedom of Information request a few years ago. We were not aware until recently, however, that the compendia were being used as the legal basis upon which to issue public use citations. Our initial concern is that documents which purport to restrict public uses have not been readily available for review and comment by the State of Alaska and the public.

More importantly, the application of such documents to enforce public use restrictions in Alaska park units is clearly inappropriate and inconsistent with existing statutory requirements. The State requests an analysis of the legal basis for, and the extent of, use of Superintendents' Compendia to enforce restrictions of public uses in Alaska park units. Based on our analysis, we do not believe a legal basis exists.

Congress clearly directed that discretionary restrictions on public uses would not be implemented in Alaska without full public involvement and formal rulemaking. Subsequent rulemaking for Alaska units (36 CFR Part 13) clearly recognized this procedural distinction. Further revisions to the national regulations (36 CFR Parts 1-7) reiterated that closures of public activities in Alaska would follow the Part 13 regulations. Thereafter, special access regulations for Alaska units were adopted (43 CFR Part 36) which even more clearly laid out formal rulemaking requirements to implement closures.

The aforementioned formal rulemaking and other National Park Service publications adopted to implement ANILCA, e.g. general management plans, support our position that use of compendia to restrict access and public use activities protected by ANILCA is improper. We object to any actions which restrict public uses of Alaska park units, particularly access, without having followed the required closure processes outlined in the Alaska National Interest Lands Conservation Act (ANILCA) and its implementing regulations.

The pertinent sections of such formal rulemaking are extracted and quoted below in chronological order of adoption. Attention is directed to boldface portions.

From Department of the Interior National Park Service 36 CFR Part 13 National Park System Units in Alaska, Final Rule, Federal Register Vol 46, No. 116, Wednesday, June 17, 1981, Rules and Regulations:

Summary

"This rulemaking has a three-fold purpose. **First, it relieves otherwise applicable regulatory provisions of 36 CFR Parts 1-9 which are generally inappropriate in the unique Alaska setting** (e.g., restrictions on firearms, camping, picnicking, access, use of natural features). **Second, it establishes administrative procedures necessary to implement or clarify various provisions of ANILCA** (e.g., access, use of cabins). **Third, with the new management direction provided by ANILCA, this rulemaking seeks to remove public confusion on what public use activities are now authorized for National Park System units in Alaska.**"

Need for Expeditious Rulemaking and Immediately Effective Date

"First, many of the provisions relieve the otherwise applicable restrictions of 36 CFR Parts 1-9, which are inappropriate in the unique Alaska setting. For example, standard restrictions on access, firearms, preservation of natural features, abandoned property and camping and picnicking are relieved by these regulations."

Section-by-Section Analysis Closure Procedures

"Section 13.30 authorizes the Superintendent to close an area or restrict an activity on an emergency, temporary or permanent basis. A determination to close an area or restrict an activity will be based on factors such as public health and safety, resource protection, and subsistence uses."

Section 13.30(e) Permanent closures or restrictions.

"Permanent closures or restrictions shall be published as rulemaking in the Federal Register with a minimum public comment period of 60 days and shall be accompanied by public hearings in the area affected and other locations as appropriate."

From Department of the Interior National Park Service General Regulations for Areas Administered by the National Park Service, Federal Register Vo. 48, No. 127, Thursday, June 30, 1983, Rules and Regulations:

Analysis of Comments Section 1.2 Applicability and scope.

Alaska. Several commenters in Alaska questioned the applicability of these regulations to park areas in that State. In general, the rules found in 36 CFR Part 13 apply to Alaska park areas and supersede the general regulations found in 36 CFR Parts 1-6 in those specific instances where the provisions of the general regulations are in conflict. For example, Alaskan park areas have specific regulatory provisions concerning snowmobiles, motorboats, aircraft, weapons, traps and nets, hunting, trapping, off-road vehicles, nonmotorized surface transportation (including dogsleds), unattended or abandoned property, camping, picnicking, permits, access, and cabins."

"A number of general regulations or portions thereof continue to apply in Alaska. These include, but are not limited to, audio disturbances, fires, sanitation and refuse, misappropriation of property and services, trespassing, tampering and vandalism, interfering with agency functions, disorderly conduct, and the regulations governing First Amendment activities (sale or distribution of printed matter, public assemblies)."

"Closures in park areas in Alaska will be established in accordance with the requirements of the Alaska National Interest Lands Conservation Act 16 U.S.C. 3101 et. seq., and its implementing regulations in 36 CFR 13.30."

INAPPROPRIATE PROCESS FOR IMPLEMENTING RESTRICTIONS

Congressional intent is accurately reflected in the discussions printed with the regulations above. Subsequently, general management plans were prepared for each park unit, as required by ANILCA Section 1301. Some portions of the ANILCA Section 1301 requirements, however, were not completed in these plans. During negotiations leading to the completion of the GMPs, the Service assured the State that these would be done as separate implementation plans later with the required public and state involvement. (See attached GMP planning chart.) For example, ANILCA Section 1301(b)(4) requires access and transportation plans for each unit -- which have yet to be completed. We find it particularly indefensible that the Service has neither completed the required planning for Gates of the Arctic unit nor conducted studies of traditional (pre-ANILCA) activities, before proposing limits on such activities.

The 1985 Draft Gates of the Arctic General Management Plan proposed numerous restrictions on public uses which the State emphatically objected to unless the Service conducted formal rulemaking processes as required by ANILCA and regulations. (The State has also repeatedly requested the studies of traditional access and Section 1301 required planning be completed.) In 1987, the final general management plan for Gates of the Arctic was changed to reflect that any such restrictions would require adherence to the closure processes outlined in 36 CFR Part 13 and 43 CFR Part 36.

The State is once again forced to remind the Service of the requirement to follow the appropriate and legal process for implementing restrictions of public uses in Alaska park units. We are disturbed that the Service is apparently not assuring appropriate training of its management staff to be aware of the closure and restriction processes required by law in Alaska park units. Application of compendia to implement restrictions, as is done in "lower-48" park units, is inexcusable in Alaska -- establishing a precedent that must not be allowed to continue.

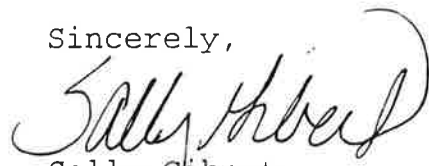
JUSTIFICATION FOR PROPOSED RESTRICTIONS

In addition to the aforementioned procedural problems, there is insufficient documentation to justify the proposed restrictions. Supporting evidence showing a finding of damage is required in applicable regulations and statute for access and public use closures in Alaska park units. (See the thorough analysis of each restriction described in the July 20, 1993 review by the Citizens' Advisory Commission on Federal Areas, attached.)¹ Any actions by the Service to implement restrictions must follow the provisions of ANILCA, the applicable general management plan, and the Service's regulations, including providing adequate justification and need for such actions.

Once the Service has made the required findings, conducted public hearings, and followed the required process for publication in the Federal Register, then the State will be in a position to comment substantively on the necessity or desirability of such restrictions. Until that time we oppose implementation of the proposed restrictions.

Thank you for the opportunity to provide these comments. If you wish to discuss this issue in greater detail with knowledgeable State representatives, please contact this office at 561-6131. The State also urges the prompt attention of the National Park Service Regional Office to this issue, since our concerns are not limited to Gates of the Arctic.

Sincerely,



Sally Gibert
State CSU Coordinator

Enclosure

¹ The Commission's side-by-side analysis of the restrictions as reflected in the compendium and in the GMP clearly shows the disparity between previous commitments and the current proposals. The Commission's letter also quotes pertinent sections of the general management plan which reflect the legally required process for proposed closures and other public use restrictions. We will not repeat this effort; however we support and endorse the letter's analysis and arguments.

cc:

John Morehead, Regional Director, NPS

Harry Noah, Commissioner, Department of Natural Resources

Carl Rosier, Commissioner, Department of Fish and Game

John Sandor, Commissioner, Department of Environmental
Conservation

Bruce Campbell, Commissioner, Department of Transportation and
Public Facilities

Richard Burton, Commissioner, Department of Public Safety

Cheri Jacobus, Department of Law

John Katz, Governor's Office, Washington, D.C.

**CSU Distribution List
GAAR Compendium
July 28, 1993**

Tina Cunning, Department of Fish & Game, Anchorage

Terry Haynes, Department of Fish & Game, Fairbanks

Priscilla Wohl, Department of Environmental Conservation, Anchorage

Joyce Beelman, Department of Environmental Conservation, Fairbanks

Alice Iliff, Department of Natural Resources, Anchorage

Jeff Otteson, Department of Transportation/Public Facilities, Juneau

Norm Piispanen, Department of Transportation/Public Facilities, Fairbanks

Paul Rusanowski, Division of Governmental Coordination, Juneau

Beth Kertulla, Attorney General's Office, Juneau

Connel Murray, Division of Tourism, Juneau

Gabrielle LaRoche, Department of Commerce & Economic Development, Juneau

Dick Swainbank, Department of Commerce & Economic Development, Fairbanks

Colonel Phil Gilson, Fish & Wildlife Protection, Anchorage

Stan Leaphart, CACFA, Fairbanks

Ron McCoy, Department of the Interior, Anchorage

Nelson Angapak, Alaska Federation of Natives, Anchorage



Citizens' Advisory Commission on Federal Areas

July 20, 1993

3700 Airport Way
Fairbanks, Alaska 99709-4699
(907) 451-2775
Fax: 451-2761

OFFICE OF
MANAGEMENT & BUDGET

JUL 22 1993

GOVERNMENTAL
COORDINATION

Mr. Steve Martin, Superintendent
Gates of the Arctic National Park & Preserve
P.O. Box 74680
Fairbanks, Alaska 99707

Dear Mr. Martin:

The Citizens' Advisory Commission On Federal Areas has reviewed the proposed compendium for Gates of the Arctic National Park & Preserve. Based upon our review of the proposed regulations, as well as the General Management Plan (GMP) for Gates, we have concluded that the compendium cannot legally go into effect until such time as proper regulatory procedures have been followed. Any regulation which places limits or restrictions on group size, camping, fires and pack animals can be implemented only after complying with the procedures in 36 CFR Part 13 or 43 CFR Part 36.

Most of the regulations in the compendium were proposed originally during the development of the GMP for Gates. In comments on the draft GMP, this Commission pointed out that compliance with the closure procedures in 36 CFR §13.30 would be necessary before the restrictions or limits could be implemented and enforced. In response to those comments, the final GMP clearly acknowledged that those closure procedures would be followed. We have prepared a comparison of the proposed regulations and the cited regulatory authority for each and the same proposals in the final GMP, along with the regulatory authority cited in that document.

Compendium

Group Size Limits- 36 CFR §1.5(a)(1)

Float trips are limited to party size of 10 persons. Backpacking trips are limited to a party size of 7 persons. Between October 1 and May 31 party size is limited to 10 persons for any activity.

Final GMP

Group Size Limits- 36 CFR §1.5; §13.30; and 43 CFR §36.11(h)

Float trips limited to party size of 10. Backpacking group size to be set at 6 June through September. Winter group size would be set at 10. (GMP pg. 135-136)

Compendium

Final GMP

Camping Restrictions- 36 CFR §2.10(a)

Camps will remain in one place no longer than 5 days unless prior approval has been obtained from the superintendent. After 5 days a camp must be relocated at least 1/2 mile from the previously used campsite.

Camping Restrictions- 36 CFR §13.30

Campsites must be at least 1/2 mile apart, and the length of stay will be limited to no more than three nights at any one campsite. Special written permission may be obtained for longer periods...if impacts can be mitigated. (GMP pg. 142)

Audio Disturbances- 36 CFR §2.12(a)(3)

The use of power rock climbing drills is prohibited.

No mention made in final GMP of either prohibiting or allowing this use.

Fires- 36 CFR §2.13(a)

Campfires are allowed in all areas of the park without a permit except that fires may not be built on vegetation. Fires should be built only on gravel bars or mineral soil.

Fires- 36 CFR §13.30

Recreational visitor fires will be allowed only on gravel bars or beaches unless contained in a fire pan, wood stove or other such device. Implementation of this limitation will follow established closure procedures, which specify notice and hearing requirements. (GMP pg. 104)

Horses & Pack Animals- 36 CFR §2.16(g)

A party may have no more than 3 pack animals.

Horses and Pack Animals- 36 CFR §1.5; §13.30; & 43 CFR §36.11(h)

Horses, llamas, mules and other hoofed animals will be limited to 3 pack animals per recreational group and will require a permit obtained in advance. Implementation will follow established closure procedures, which specify notice and hearing requirements. (GMP pg. 137)

Compendium

Final GMP

Grazing- 36 CFR §2.60(a)(3)

Grazing of pack or saddle animals by private parties, not to exceed 14 days, is authorized without a permit.

No discussion of grazing in final GMP

Public Use Cabins- 36 CFR §13.17(e)(5)

No formal designations at this time, however, all federal cabins not otherwise under exclusive permit are available for emergency use by the public.

Cabins- 36 CFR §13.17

Unclaimed cabins will be left standing for emergency situations or intermittent authorized winter activities. (GMP, pg. 158)

Appendix J of the final GMP (pg. 278) contains a list of proposed changes to relevant regulations which would be pursued to implement proposals in the plan. Camping restrictions, group size limitations and restrictions on campfires are all regulated under 36 CFR §13.18. This section of the regulations permits camping in all park areas unless prohibited or otherwise restricted in accordance with §13.30 closure procedures.

§13.30(a) authorizes the superintendent to close an area or restrict an activity on a emergency, temporary or permanent basis, subject to a determination that such action is necessary for "(p)ublic health and safety, resource protection, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the park area was established." §13.30(e) states that "Permanent closures or restrictions shall be published as rulemaking in the *Federal Register* with a minimum public comment period of 60 days and shall be accompanied by public hearings in the area affected and other locations as appropriate." Additionally, closures or restrictions must be (1) published in at least one newspaper of general circulation in the state and in at least one local newspaper, if available, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations, and designated on a map available for public inspection; (2) designated by posting of appropriate signs, or (3) both.

Use of pack animals is regulated under 43 CFR §36.11(e), which permits the use of non-motorized surface transportation such as dogs, horses and other pack or saddle animals in all areas except where such use is prohibited or otherwise restricted in accordance with 43 CFR §36.11(h) closure procedures. §36.11(h)(1) authorizes the appropriate federal agency to close an area on a temporary or permanent basis to use of aircraft, snowmachines, motorboats or

Mr. Steve Martin
July 20, 1993

4

nonmotorized surface transportation only upon a finding by the agency that such use would be detrimental to the resource values of the area. Permanent closures under these regulations must also be published by rulemaking in the *Federal Register*, with a minimum public comment period of 60 days and shall not be effective until after a public hearing(s) is held in the affected vicinity or other appropriate locations. Permanent closures must also be published in a newspaper of general circulation in Alaska, and in a local newspaper, if available; posted at community post offices within the affected area; made available for broadcast on local radio stations; and designated on a map which is available to the public.

The regulations at 36 CFR Part 13 and 43 CFR Part 36 are derived directly from the provisions of the ANILCA and are specific to Alaskan park units. Use of only the general regulations under 36 CFR Parts 1 & 2, with their limited opportunity for public review and comment and no requirements for justification of agency action are not appropriate for these types of use restrictions.

Although these restrictions may have been proposed in the GMP for Gates, that document also recognized that proper regulatory procedures would have to be followed before they were implemented. For example, the GMP states:

"Actions such as group-size limits and campfire limits will require changes in existing regulations through the rule-making process with further public notice." (GMP, pg. 134)

"Implementation [of group size limits] will follow established closure procedures, which specify notice and hearing requirements (36 CFR 1.5 and 13.30 and 43 CFR 36.11(h))." (GMP, pg. 136)

"Implementation [of restrictions on pack animals] will follow established closure procedures, which specify notice and hearing requirements (36 CFR 1.5 and 13.30 and 43 CFR 36.11(h))." (GMP, pg. 137)

"Implementation of these proposed [camping] limits will follow established closure procedures, which specify notice and hearing requirements (36 CFR 13.30)."

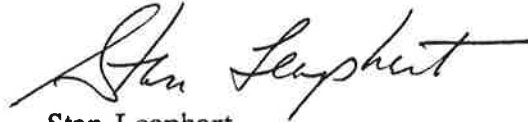
We expect the National Park Service to follow the proper regulatory procedures for implementing the proposals contained in the compendium. Any effort to enforce the proposed limits and restrictions before doing so would be a violation of the provisions of ANILCA, the GMP and the agency's own regulations. While these proposals may be considered necessary to protect park resources and values, no information justifying the need for these actions has been presented, as is required by both statute and regulation. The proposed compendium must be withdrawn, the proposed regulations, with adequate justification supporting the need for such actions, published in the *Federal Register* with at least a 60 day comment period, and public hearings scheduled for Fairbanks and other affected areas.

Mr. Steve Martin
July 20, 1993

5

This Commission does appreciate the opportunity to review and comment on the proposed compendium for Gates of the Arctic. Although other park units have adopted similar compendia, none of those has ever been made available for public review. We will be pursuing efforts to have those compendia withdrawn until proper regulatory procedures have been followed. In the meantime, if you have any questions about our comments or if we need to clarify anything, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Stan Leaphart". The signature is written in black ink and is positioned above the printed name and title.

Stan Leaphart
Executive Director

cc: Regional Director Jack Morehead
Sally Gibert- DGC