

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## OFFICE OF THE GOVERNOR

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January 20, 1994

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

Dear Mr. *Jack* Morehead:

The State of Alaska appreciates the opportunity to review the nine compendia forwarded to State agencies on January 12. As agreed at the December 10, 1993 meeting between State and NPS representatives, we have completed an initial review of the compendia and are forwarding our preliminary findings to you so that corrective measures can be initiated as soon as possible.

We find that substantial portions of five of these compendia are illegal because they have not been subjected to the procedural requirements of the Alaska National Interest Lands Conservation Act and implementing regulations at 36 CFR Part 13 and 43 CFR Part 36. The attachment, prepared by Stan Leaphart of the Citizens's Advisory Commission on Federal Areas (CACFA), makes a first cut at identifying which restrictions do not meet legal requirements. Also attached is the previous assessment of the Gates of the Arctic compendium. CACFA and State agencies, including the Department of Law, are conducting a thorough review.

At this time, we again urge you to:

- 1) Immediately rescind the compendia in their entirety, or at a minimum, those portions which are currently unenforceable. Such action should be accompanied by press releases and/or other means of actively notifying the affected public.
- 2) Initiate the promulgation of regulations, including hearings and notice in the Federal Register, for those restrictions the NPS believes should be reinstated.

We are concerned that five months have passed since you first acknowledged that the compendia are unenforceable and that this assessment has been confirmed by the Solicitor's Office (meeting of August 17, 1993). We have seen no actions or intent to rescind the illegal restrictions, even though we specifically requested they be withdrawn in our letters of July 28, 1993 and August 23, 1993, attached.

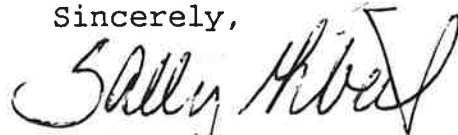
As we explained before, it is not acceptable to merely refrain from enforcing those portions of the compendia which are illegal. Their mere existence has a chilling effect on the public's right to certain activities or access in the affected areas. The regulatory requirements should be followed.

At the December 10 meeting, the NPS Chief of Enforcement again acknowledged the compendia's deficiencies, but expressed the continued reluctance to rescind the illegal portions. The State of Alaska finds this unacceptable. If the illegal restrictions are not withdrawn by February 24, 1994 (date of the next quarterly meeting), the State may be compelled to take legal action.

The State is more than willing to work with the NPS in the development of legitimate and appropriate regulations. We acknowledge that there are likely some regulations which the State will support during regulatory review, although until the formal regulatory process has been conducted, we must withhold any final judgements concerning the appropriateness of individual regulations. By acting in a timely manner now, it may be possible to finalize some restrictions which are found to be properly justifiable and necessary before the height of the summer field season.

Thank you again for the opportunity to work with you and your staff to correct the compendia's deficiencies. If you have any questions, please feel free to contact me at 561-6131.

Sincerely,



Sally Gibert  
State CSU Coordinator

cc:

Superintendents of parks/preserves with compendia

Steve Shackelton, Chief of Enforcement, NPS

Stan Leaphart, Citizen's Advisory Commission on Federal Areas

Cheri Jacobus, Department of Law

Harry Noah, Commissioner, Department of Natural Resources

Carl Rosier, Commissioner, Department of Fish and Game

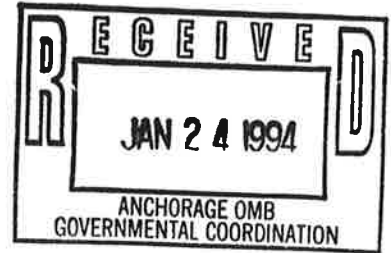
John Sandor, Commissioner, Department of Environmental  
Conservation


Bruce Campbell, Commissioner, Department of Transportation and  
Public Facilities

Richard Burton, Commissioner, Department of Public Safety

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

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**TO:** Sally Gibert- CSU Coordinator  
**FROM:**  Stan Leaphart- Executive Director  
**DATE:** January 20, 1994  
**SUBJECT:** Review of NPS Compendia

I have completed a quick review of the existing park compendia provided by the National park Service Regional Office. I want to point out that this is a preliminary review. An additional review, including an examination of use restrictions proposed in the General Management Plans and other documents for each park unit, needs to be conducted. In this review I have only identified those sections of the compendia which are not clear or appear to have been improperly adopted.

**Denali National Park & Preserve**

It is not clear in which situations the regulations at 36 CFR Part 13 apply to the original Mt. McKinley portion of the park & preserve and in which situations only the system wide regulations apply. For the general public it would appear that the compendium might actually serve to confuse rather than clarify.

2.10 Camping and Food Storage- The prohibition on camping at the Kantishna airstrip requires compliance with §13.30 closure procedures.

2.13 Fires- Prohibition of open fires at the Kantishna airstrip requires compliance with §13.30 closure procedures.

2.15 Pets- May 1 through September 30 prohibition of pets in the park and preserve backcountry requires compliance with §13.30 closure procedures and those in 43 CFR 36.11(h). This prohibition would not allow use of dogs as pack animals, a traditional activity in the additions.

2.16 Horses and Pack Animals- No distinction between the use of horses and pack animals for access and their use for recreation can be made. For Alaskan park units only the regulations at 43 CFR §36.11(e) should apply. Prohibition of overnight horse use in park wilderness requires compliance with 43 CFR §36.11(h) closure procedures.

2.18 Snowmobiles- A rulemaking process to close the former Mt. McKinley National Park portion of Denali NP&P was started in 1983. That process was never completed. Because ANILCA Section 1110(a) permits the use of snowmachines on all conservation system units in

Alaska during periods of adequate snow cover, the NPS must initiate a formal rulemaking procedure, as required by 43 CFR §36.11(h) to prohibit the use of snowmachines in this or any other park unit.

### **Glacier Bay National Park & Preserve**

13.18(a) Camping- This cited portion of the regulations requires compliance with §13.30 closure procedures. Group size limits on the Alsek River were proposed in the management plan for that river, but never properly implemented. A seasonal restriction (camping permit requirement within 1/2 mile of Alsek River June 1 to September 30) that is in effect every year is not a temporary closure. This is actually a permanent closure and should require promulgation of regulations under §13.30(e).

13.30(d)(1) "Temporary" closures and restrictions on aircraft, motorboats and non-motorized surface transportation- These are not "temporary" closures because they are in effect every year. They could more properly be called "permanent seasonal closures". These restrictions should require promulgation of regulations under §13.30(e).

13.30(d)(2) "Temporary" closures and restrictions of certain islands and areas to foot traffic. Again, because these same closures are in effect every year, they are permanent and should require promulgation of regulations under §13.30(e)

### **Katmai National Park & Preserve Aniakchak National Monument & Preserve**

The current version of this compendium does not contain all of the restrictions found in the earlier versions I reviewed. I am assuming that this is a complete copy.

V. Prohibition on pets in most areas of Katmai and Aniakchak would appear to preclude use of dog teams in the winter and dogs as pack animals. Any such prohibition must comply with procedures in §13.30(e) and/or 43 CFR §37.11(h).

VI. Camping restrictions- 36 CFR §13.18(a) is cited as the authority for these camping restrictions. This section of the regulations requires compliance with the closure procedures in §13.30(e).

### **Kenai Fjords National Park**

Section 2.10 Camping and Food Storage- Regulation of camping activities in ANILCA created parks is subject to regs at 36 CFR §13.18. Any restriction on camping, including locations, time limits, or registration requires compliance with procedures in §13.30(e).

Section 13.20 Preservation of Natural Features- Prohibition on cutting of standing dead trees must comply with notice procedures in 13.20(d).

Section 13.30 Closures- This restriction will require compliance with §13.30(e) including rulemaking in the *Federal Register*, not just inclusion in the final compendium.

**Wrangell-St. Elias National Park & Preserve**

If the NPS is going to use compendia in Alaskan park units, this one should probably be the prototype. In listing the general, system wide regulations, they have listed the appropriate Part 13 regulations that supersedes it.

2.60(a)(3) Designated areas for grazing- Any use limits on grazing of pack or saddle animals by private parties, should be implemented under procedures in 43 CFR §36.11(h).

The compendia for the other park units do not appear to have procedural or compliance problems. However, as I stated above, a more detailed analysis needs to be completed. I will provide that to your office as soon as it is completed.

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