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June 15, 1994

Mr. David L. Bennett
Federal Aviation Administration
Office of Chief Counsel
Attn: Rules Docket (AGC-200)
Docket No. 27643
800 Independence Avenue, SW
Washington, D.C. 20591

Dear Mr. Bennett:

The State of Alaska has reviewed the March 17, 1994 Advanced Notice of Proposed Rulemaking, Docket No. 27643, concerning Overflights of the National Park System. This letter represents the consolidated comments of the State's resource and transportation agencies.

The State recognizes that trends in aircraft use over selected park areas such as the Grand Canyon merit careful study and efforts to minimize impacts. State agencies, however, have expressed serious concerns about the broader implications for Alaska of general policies or regulations which are developed for application to the park system nationwide. If the general proposals discussed in the Advance Notice go forward into rulemaking, it is not difficult to foresee potentially drastic changes in the primary method of access used throughout most of Alaska.

The State of Alaska strongly recommends:

- * The Federal Aviation Administration (FAA) should retain full regulatory authority over air space and air travel, particularly in Alaska.
- * Exclude Alaska from any broader national policies or regulations which would apply to the national park system or other conservation system units.
- * Any future necessity to regulate airspace over national parks, especially in Alaska, should only be addressed on a park-specific and site-specific basis.

- * Any regulatory procedures should utilize and/or be compatible with the spirit and intent of the Alaska National Interest Lands Conservation Act (ANILCA) which recognizes the importance of aviation in Alaska.

Uniqueness of the Alaska Situation

Lacking a statewide road system, Alaska relies heavily on air transportation for basic access. With very few surface transportation alternatives, air travel is the only practical way to get around the state, and is **essential** for access to **all** communities.

In addition, Alaska has 13 large national park units, with more national park acreage than all other states combined. Due to unpredictable weather and mountainous terrain, many of the only feasible air corridors linking population centers are through mountain passes that are within park units. Consequently, one can virtually not fly from one area of the state to another, from one community to another over common and direct routes, without traversing park lands. Restrictions on such overflights could dramatically increase the risks and flying time for light aircraft, which of necessity must often fly at low altitudes.

In the fall of 1993, the Alaska Department of Transportation and Public Facilities (DOT/PF) assisted the FAA with an inventory of airports whose approach and departure patterns, or boundaries, affect national parks and national wildlife refuges. DOT/PF counted 24 airports affecting national parks, and 137 which affect national wildlife refuges. Almost all of these airports are public, and most are owned and operated by the State of Alaska. The inventory did not include the myriad of gravel bars and upland strips, lakes used by float planes, or areas used for ski landings, all of which are protected for public use by ANILCA, as addressed below.

General restrictions on overflights of park units in Alaska would have broad implications for a variety of commercial and non-commercial uses, many of which are uncommon outside Alaska. Aircraft access is essential for recreational backcountry access, resource exploration and development, grocery and freight deliveries, hunting and fishing, access to inholdings, and postal service.

Role of the Alaska National Interest Lands Conservation Act

As the enabling legislation for all of the recently created and expanded park units in Alaska, ANILCA amends the application of

the National Park Service's (NPS) Organic Act, the Wilderness Act, and other legislation affecting the management of park units in Alaska. ANILCA specifically protects the lifestyles of Alaska residents, including access by means of aircraft throughout park units - including designated wilderness areas. In adopting ANILCA, Congress recognized the lack of surface transportation and the necessity of aircraft use despite its noise impacts.

The NPS has the authority to control or restrict aircraft landings and to restrict aircraft use for certain purposes in Alaska park units, but has no authority to restrict aircraft use over a park unit. Where the NPS believes restrictions are necessary on a case-by-case basis for a particular park unit, or portion thereof, restrictions should first be considered through ANILCA's access regulations detailed in 43 CFR Part 36 and 36 CFR Part 13.30.

For example, use of aircraft for traditional activities and for access to inholdings is authorized under Section 1110(a) and (b) of ANILCA. Use of aircraft for these purposes cannot be prohibited unless, after notice and hearing in the affected area, it is determined to be detrimental to the resource values of the unit.

The 1987 NPS Overflights Act explicitly exempted Alaska from its requirement to conduct studies of overflights of parks. We are unaware of other studies specific to Alaska which document existing uses and/or detrimental effects of aircraft use on park resources. Such findings are essential before any action is considered which would restrict aircraft access under ANILCA.

Airspace Responsibilities Appropriately Rest with the FAA

The 1958 Aviation Act appropriately tasked the FAA with regulating air space and air travel, with priority given to safety and efficiency. FAA has the expertise and knowledge to perform these functions. The NPS on the other hand is responsible for preserving and protecting park land. This division of responsibility is healthy and should be maintained. The FAA should continue to regulate air space and air travel. The NPS is not mandated to place a priority on the safe and efficient use of airspace, as evidenced by efforts in Alaska to impede the maintenance and improvement of existing public airports within park boundaries. If the NPS is given a lead or dual role in influencing the management of airspace, NPS institutional mandates will compel them to prioritize protection of surface park resources over the realities of air access requirements. This is unworkable in a state so dependent on air transportation.

The FAA, while working cooperatively with the NPS when problems arise, should retain its full regulatory authority. Other recent legislation passed by Congress assures that the FAA will work with the NPS to resolve legitimate problems for the benefit of the public as a whole.

Site-specific vs a Broad-brush Approach

State agencies are concerned that remedies for the Grand Canyon and Haleakala national parks will be applied prematurely or unnecessarily to other areas. Other national parks, such as Everglades, Yellowstone, and Alaska's Wrangell-St. Elias, will all have different circumstances and park-specific use patterns.

Resource management problems caused by aircraft flying over park units should be evaluated on a unit-by-unit basis. Furthermore, any subsequent restrictions should be limited to the minimum portion(s) of the unit necessary to adequately address the problem. Such restrictions should also be limited to the season of high use, if such a seasonal cycle exists -- as it certainly does in Alaska. Evaluation of problem areas should also factor in and target the type of use that is perceived to be causing undesirable impacts. If intensive, low-level flightseeing triggers debate in a particular area, then there should be no need to address other types of aircraft use, such as general transportation, mail plane deliveries, etc.

The FAA should also keep in mind that many park boundaries in Alaska, and elsewhere, are aligned on arbitrary section lines which are not evident from the air or the ground. Where restrictions on overflights or minimum altitude requirements are deemed essential, they should utilize hydrographic divides or other features recognizable from the air.

The State also strongly recommends that the FAA look first to voluntary measures to reduce impacts of aircraft use. Voluntary programs would likely meet with greater public and aviation industry acceptance, and provide necessary flexibility required for variable weather and changing use patterns. Regulatory solutions should only be imposed when voluntary methods have proven inadequate.

The State has a long history of observing the application in Alaska of federal rulemaking designed to address "lower 48" problems. Despite repeated assurances at the time of the rulemaking that they were not intended to address Alaska, such promises are seldom kept unless they are written into the regulations. Through changing administrations, new policies and court intervention, even well-intentioned managers are sometimes forced to impose rules inappropriate to Alaska conditions.

We see general aircraft overflight rulemaking that could apply to all park units quickly following an identical path. Ultimately, rules that were intended to remedy very localized problems in Arizona and Hawaii would have widespread influence on virtually all aircraft operations in Alaska. Consequently any subsequent rulemaking should focus on a unit-specific basis. Furthermore, if general policies are deemed essential, we strongly urge incorporation of an explicit exemption for Alaska maintaining the status quo. (Informal assurances outside the regulatory process are not adequate based on our experience.) Existing FAA regulations provide an adequate mechanism for working with the NPS to address the few situations in Alaska where an evaluation of overflights may be productive in the future.

Military Use of Air Space

The military has designated areas for military training which overlay portions of some of the national park units in Alaska. Designation of these training areas has typically been preceded by an environmental impact statement under to the National Environmental Policy Act. We request that any future rulemaking explicitly provide for the retention of these established training and operating areas where the NEPA process has adequately addressed potential impacts.

Wildlife Issues

Existing federal and state laws adequately protect wildlife populations from harassment where agencies provide adequate law enforcement. There is no need to duplicate existing law when improved enforcement of existing law will work. Restrictions on overflights and minimum altitude requirements could significantly impact a variety of wildlife-related activities, including

- * the Alaska Department of Fish and Game's ability to conduct wildlife surveys without cumbersome paperwork;
- * aerial fish spotting in support of commercial fishing; and
- * hunters' and photographers' abilities to locate hunting and observation sites.

Conclusion

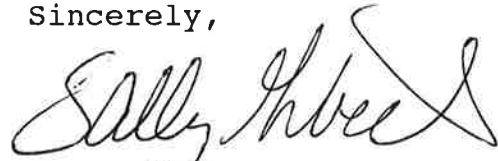
The State of Alaska cannot overemphasize how critical this issue is to aviation in Alaska. If the current course is not altered, we can foresee the demise of aviation in Alaska as we know it today in a few short years, leaving a major, detrimental impact on a broad cross section of individual, community, and commercial interests in Alaska.

Mr. David L. Bennett, FAA

Page 6

Thank you for your consideration of these comments. If you have any questions, please contact me at 907-561-6131.

Sincerely,



Sally Gibert
State CSU Coordinator

cc:

John Morehead, Regional Director, National Park Service
Honorable Ted Stevens, U.S. Senate
Honorable Frank Murkowski, U.S. Senate
Honorable Don Young, U.S. House of Representatives
Bruce Campbell, Commissioner, Department of Transportation and
Public Facilities
Carl Rosier, Commissioner, Department of Fish and Game
Harry Noah, Commissioner, Department of Natural Resources
John Sandor, Commissioner, Department of Environmental
Conservation
Richard Burton, Commissioner, Department of Public Safety
John Katz, Governor's Office, Washington, D.C.