



THE STATE
of **ALASKA**
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Greg Dudgeon, Superintendent
Gates of the Arctic National Park and Preserve
4175 Geist Rd.
Fairbanks, AK 99709

Dear Mr. Dudgeon:

The State of Alaska reviewed the Draft Land Protection Plan (LPP) for Gates of the Arctic National Park and Preserve. The following comments represent the consolidated views of the State's resource agencies.

We appreciate the LPP recognizes the State's interests within and adjacent to the park and preserve boundaries – including area plans where applicable, as well as the State's interest and management authorities regarding state lands, RS 2477 rights-of-way and navigable water bodies.

Planning Authorities

The Introductory section of the LPP identifies the Land and Water Conservation Fund as the policy that directs the Service to prepare land protection plans and describes elements similar to the land protection plan components required by Section 3 of the 2006 NPS Management Policies, with the following additional components “...*the amount, type, and density of use or development of non-federal lands that can take place without harming park resources; and external activities that have or may have effects on park resources and land protection requirements*” (page 2).

In addition, ANILCA provisions that provide direction for land acquisitions in Alaska park units are listed in the “Legislative Authorities” section. Other provisions identifying planning requirements (ANILCA Section 1301(6), (7) and (8)) are referenced throughout the document.

We recommend the Service identify and discuss all laws and policies which provide direction for elements of the LPP, including their relationship to one another, in one introductory section. Given the LPP incorporates planning direction that stems from ANILCA section 1301, we also recommend the LPP clarify its relationship to the Park's 1986 General Management Plan.

ANILCA and Compatibility Determinations

The LPP identifies ANILCA provisions that allow for land acquisitions under certain circumstances; however, ANILCA section 1110(b) also provides a guarantee of “*adequate and feasible access for*

economic and other purposes” for State and privately-owned lands (including subsurface rights, valid mining claims, or other valid occupancy) within or effectively surrounded by conservation system units (CSUs) and other areas designated by the Act. We request the LPP recognize ANILCA section 1110(b) in the “Legislative Authorities” or other introductory section and further clarify for the public that identification of uses and activities associated with inholdings for the purpose of prioritizing potential land use acquisitions does not in any way reduce or interfere with the rights of inholders to occupy, use and obtain access to their inholding.

The LLP also states that ANILCA section 1301 requires the Service to determine if existing and potential uses are compatible with the park unit’s purposes (page 8). However, ANILCA Section 1301(b)(7) specifically requires that general management plans describe: privately-owned areas within park units and activities carried out in, or proposed for such areas; the purposes for which such areas are used; and methods of controlling the use of such activities *to carry out the policies of ANILCA and the purposes for which the park unit was established or expanded* (emphasis added).

The resulting list of compatible and incompatible uses on non-federal land needs to take into consideration various ANILCA provisions, such as sections 811, 1110(b), 1303(a), 1310 and 1316, which provide for infrastructure and activities on CSU’s. While we recognize the LPP states the lists of compatible and incompatible uses are general guidelines and “...do not restrict the use of non-federal lands” (page 10), labeling certain uses and activities on non-federal lands that are allowed by ANILCA in CSUs, such as ATV or road access, as “incompatible” could be confusing to the public and may discourage inholders from exercising their property rights under ANILCA section 1110(b).

We request the Service reconsider the list and discussions of compatible and incompatible activities to ensure they do not conflict with provisions in ANILCA that allow similar uses. In addition, we request the LPP include justification for the compatibility determinations, including identifying any applicable provisions of ANILCA or other Service policy that address such uses and activities within park units in Alaska. See also page-specific comments below that address ANILCA-protected uses and activities.

Page-specific Comments:

Page 4, Purpose of the Unit and Resources to be Protected, second sentence: We recommend referring to all park purposes instead of the following limited quote “...*the mandate to maintain the wild and undeveloped character of the area*” similar to the Lake Clark LPP. A succinct, more complete summary of the park purposes can be found on page 7 of the Gates of the Arctic NPP Draft Foundation Statement.

Page 3, Legislative Authorities: ANILCA Section 1301(b)(5) requires land management plans include a description of the programs and methods that will be used to encourage the recognition and protection of the culture and history of the peoples residing in the conservation system units. The Lake Clark LPP states that “*The basic park strategy for in-holding acquisitions, regardless of priority, requires a seller to be willing*” (page 20). The 1982 Lake Clark GMP/DCP also reflected this intent - “*National Park Service will purchase in fee simple and on a willing-buyer, willing-seller basis ... any small tracts that found to be required for the long-term management, operation, and resource protection of the park and preserve*” (page 40). We recommend the Gates of the Arctic LPP also emphasize the intent to only purchase from willing sellers in the introductory section as many members of the public continue to

strongly oppose acquisition without the consent of the owner. In addition, where practical, we request ANILCA be quoted instead of paraphrased to ensure that congressional intent is not misrepresented. We request the following edits to the third paragraph:

~~No improved property will be acquired without consent of the owner unless such acquisition is necessary for the protection of resources or for protection of those park values listed in ANILCA (§ 201). ANILCA section 1302(d) states “No improved property shall be acquired under subsection (a) without the consent of the owner unless the Secretary first determines that such acquisition is necessary to the fulfillment of the purposes of this Act or to the fulfillment of the purposes for which the concerned conservation system unit was established or expanded.”~~
When an owner of improved property consents to exchange lands or to sell to the United States, the owner may retain for himself, his heirs and assigns, a right of use and occupancy for noncommercial residential and recreational use for up to 25 years or, alternatively, for the lifetime of the owner or his spouse, whichever is longer (ANILCA § 1302(e)).

Page 5, Legislative Authorities, 5th paragraph: The Bureau of Indian Affairs has a trust relationship with Native allottees. Providing that relationship has not been terminated by the allottee, the BIA must approve all transactions. We suggest the following edit to clarify BIA’s active role in transactions involving Native allotments:

In recognition of the Bureau of Indian Affairs' Congressionally-mandated trust responsibility concerning to owners of Native allotments, the National Park Service would notify the Bureau of Indian Affairs ~~before taking~~ for approval of actions relating to Native allotments, such as securing agreements with allottees, acquiring easements, acquiring allotments in fee simple, or leasing allotments.

Page 5, Resource Management and Visitor Use Objectives: This discussion refers readers to Chapter 3 and Appendix B but does not state the name of the referenced document(s).

Page 6, Table 1: We recommend the plan also include maps showing land ownership. In an area this large, it is difficult to gauge the areas under discussion without maps showing property locations.

Page 8, Small Private Tracts, fourth paragraph: This section refers to snowmachines, motorboats and airplanes as “generally compatible” methods of access. Compatibility does not carry the full weight of a congressionally authorized activity. We request the plan recognize that ANILCA allows these modes of access (shall permit, subject to reasonable regulation).

Page 10, Compatibility of Land Uses, first sentence: We assume this discussion is referring to ANILCA section 1301(b)(7), which states:

*A description (A) of privately owned areas, if any, which are within such unit, (B) of **activities carried out in, or proposed for such areas**, (C) of the present and potential effects of such activities on such unit, (D), of the purposes for which such areas are used, and (E) of **methods (such as cooperative agreements and issuance or enforcement of regulations) of controlling the use of such activities to carry out the policies of this Act and the purposes for which such unit is established or expanded.** (Emphasis added)*

Rather than listing actual or proposed activities, the example cited in the first paragraph and the list of incompatible uses seem speculative, and the methods for controlling the activities are limited to working with the landowner or acquiring an interest in the nonfederal lands. We suggest this section also take into consideration mitigating effects of regulatory authorities on proposed activities (as noted on page 15 of the LPP). We also request the discussion accurately reflect the intent in section 1301 that both the policies of ANILCA *and* the purposes of the unit be taken into consideration.

Page 11, Compatible Uses: The last bullet does not fully consider the modes of transportation allowed under ANILCA Sections 811(b) and 1110(a). In addition, ANILCA Section 1110(b) provides for adequate and feasible access to inholdings subject to reasonable regulation; however, it does not prohibit the use of specific vehicles. We request the ANILCA protected methods and rights of access be accurately portrayed and suggest the following revision:

- access to non-federal land by snowmachine, ~~dog team~~, motorboat, ~~foot~~, aircraft and nonmotorized surface transportation methods.
- subsistence use of other means of surface transportation, including dog teams, and where traditionally employed, all-terrain vehicles.
- Adequate and feasible access to non-federal land for economic or other purposes.

Page 11, Incompatible Uses, sixth bullet: ANILCA Section 1110(b) assures inholders adequate and feasible access for economic and other purposes. ANILCA Section 1110(a) also provides for the use of airplanes for travel to and from villages and homesites. Such air access is predicated on the use of a suitable water body or an airstrip. We request this bullet be deleted or modified to reflect ANILCA's access provisions and the rights of inholders.

Page 11, Incompatible Uses, last bullet: The Service has long recognized that ATV access for inholders may be authorized pursuant to ANILCA Section 1110(b). Most recently, the Service approved issuance of a RWCA for debris removal in the Chandler Lake area. Regarding road access, ANILCA Section 201(4)(a)(b) guarantees access across Gates of the Arctic to the Ambler Mining District. In addition, ANILCA Title XI provides a process by which transportation and utility systems may be authorized within a park unit. We request the following edits to recognize these allowances.

ATV access (exceptions could be ANILCA 1110(b) access) or road access (exceptions could be cases along Hickel Highway, Ambler mining district right of way, ANILCA Title XI transportation or utility systems, or cases where there would be no damage to park values)

Page 11, External Conditions Affecting Land Protection: The last sentence states "*The National Park Service is interested in participating in any planning effort in the region and in being good neighbors, rather than establishing any zone or buffer around the unit*" (emphasis added). It is unclear how the Service would create a zone or buffer outside park boundaries. We request the second half of the last sentence either be clarified or deleted.

Page 12, Lands South, Recommendation, second paragraph, last sentence: While the WSRA gives State's the authority to designate and manage rivers as wild, scenic or recreational rivers, the State does

not support this option. We recommend including only activities in this section where the Service can take direct action, and request the last sentence be deleted.

Page 12, Lands East, Existing and Potential Uses, first paragraph, fifth sentence: The Dalton Highway corridor is closed to the use of off road vehicles except for persons holding a mining claim in the vicinity or for oil and gas work. In addition, the Alaska Board of Game closed the area to hunting with firearms. We request the following edit.

The state legislature has closed the corridor ~~to hunting with firearms and~~ to off-road vehicle use except for access to a mining claim in the vicinity or for oil and gas work.

Page 13, Lands East, Existing and Potential Uses, last paragraph: The remote location and limited season and use make “*strip development not unlike gateways to national parks in the lower 48*” an unlikely scenario for the utility corridor. We recommend removing this statement.

Page 13, Lands East, Recommendation, third sentence: Linking recreational opportunities within the utility corridor with the purposes of adjacent conservation system units is inappropriate. We request “*...and purposes of the conservation system units*” be deleted.

Page 14, Classification of State Lands Section: In the first and second paragraphs of this section please change “Division of Land and Water Management” to “Division of Mining, Land and Water.”

Page 14, Lands West, last sentence: We recommend this sentence be revised to clarify that any acquisitions *within the Park* would be designated as park. If lands are acquired within the Preserve, they would be designated as preserve. This comment also applies to page 22, Recommendations, last paragraph.

Page 15, Existing laws and regulations, Application, first sentence: Please clarify that Service regulations do not apply to private *and state lands and waters* within the park.

Page 15, Application: Regulation of wetlands falls under Section 404 of the Clean Water Act, which is included in the list of state and federal laws that apply to private lands within the Park. We recommend removing “Protection of Wetlands,” which appears to relate to Executive Order (EO) #11990. EO 11990 does not apply to activities involving wetlands on non-Federal property (see Section 1(b) of the EO) and thus should not be included in a discussion of laws that apply to private lands within the Park.

Page 21, Condemnation: We request the following sentence from the Draft Lake Clark LPP (page 18, Condemnation) be added to this section of the GAAR LPP:

In Alaska condemnation (other than for title clearing purposes) cannot be used to acquire state lands, local government lands, Native corporation lands and certain other types of lands (ANILCA section 1302(b)).

Page 24, Specific Proposals: We support the basic park strategy reflected in the Lake Clark LPP and recommend including the same language in the Gates of the Arctic LPP.

The basic park strategy for in-holding acquisitions, regardless of priority, requires a seller to be willing. The least level of interest acquisition (easement to fee simple purchase) that achieves compatibility and meets the needs of the land-owner will suffice in this protection plan. Safeguarding against public misunderstandings that inholders are not welcome or compatible with ~~Lake Clark~~ Gates of the Arctic National Park and Preserve must be a priority.

Thank you for this opportunity to comment. Please contact me at (907) 269-7529 if you have any questions.

Sincerely,

/ss/

Susan Magee
ANILCA Program Coordinator

cc: Joan Darnell, NPS Alaska Region