

# STATE OF ALASKA

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August 1, 2000

Ted Milesnick  
Bureau of Land Management (WO-210)  
1849 C Street NW (LS-1050)  
Washington, D.C. 20240-0001

Dear Mr. Milesnick:

The State of Alaska has reviewed the draft Manual and Handbook developed by the Bureau of Land Management (BLM) to provide new guidance for preparation of BLM land use management plans. This letter represents the consolidated views of state agencies. The State of Alaska appreciates BLM's emphasis on flexibility, increased public involvement, and increased coordination and collaboration with adjacent landowners and other government jurisdictions. Our comments focus on insuring that, in Alaska, national planning guidance is consistent with the Alaska National Interest Lands Conservation Act (ANILCA). We also request that the Manual and Handbook clarify that states have a separate appeal process in Section 1610.3-2 to address potential inconsistencies between BLM and state policies, plans, and programs.

### **Application of Statutory Guidance to Planning in Alaska**

The State requests that the manual and handbook include reference to ANILCA. At a minimum, we request the manual be revised to include ANILCA under the list of major legal authorities provided in Section .03 Authority. We specifically request inclusion of the ANILCA provisions that directly affect BLM land use planning in Alaska. These include:

- Section 103(c) clarifies that state and private lands within conservation system units (e.g. BLM managed wild, scenic, and recreation rivers; designated wilderness areas) are not public lands and not subject to regulations applicable to public lands within the units.
- Title IV establishes the Steese National Conservation Area and the White Mountains National Recreation Area in Alaska with specific guidelines on multiple use, cooperation with the state, administration of mining claims, and access to such claims.

- Sections 605 and 606 amend the Wild and Scenic Rivers Act for designated rivers under BLM management in Alaska.
- Title VIII contains numerous provisions to protect subsistence activities on public lands, thus affecting planning and management of all BLM lands in Alaska. For example:
  - Section 810. Requires an evaluation of the effects of use, occupancy, or disposition of BLM lands on subsistence uses and subsequent specific procedures before implementing the management action.
  - Section 811. States “the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes. . . .” All land management planning in Alaska should recognize the validity of subsistence access under this section.
- Title XI Sections 1101-1108 provide for the establishment of transportation and utility systems across any conservation system unit subject to a specific statutorily directed process. This right to develop facilities is a statutory recognition of Alaska's fledgling infrastructure that cannot be overridden by subsequent management plans.
- Section 1110 directs “the Secretary shall permit, on conservation system units” (which by definition include designated Wilderness) “national recreation areas, and national conservation areas, and those public lands designated as wilderness study, the use of snowmachines . . . , motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities . . . .” and such use “shall not be prohibited” until a specific procedure including a finding of resource damage is completed.
- Section 1111 provides for temporary access by the State and private landowner to and across any conservation system unit and wilderness study areas for purposes of survey, geophysical, exploratory, or other temporary uses.
- Section 1303(b) allows construction, use and occupancy of cabins and related structures.
- Section 1312 establishes administration of the White Mountains National Recreation Area.
- Section 1314 reaffirms the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands.
- Section 1315 provides for the establishment of fisheries facilities and aquaculture in wilderness areas, continuation of public use cabins, establishment of new public use cabins. (This provision applies to any future wilderness and wild and scenic river designations pursuant to ANILCA Section 102.)
- Section 1316 directs the Secretary shall permit establishment and use of temporary campsites, shelters, and other facilities and equipment “on all public lands where the taking of fish and wildlife is permitted.”

- Section 1323(b) directs the Secretary shall provide access to nonfederally owned land surrounded by public lands.
- Section 1326(b) directs that “No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation area, or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress.”

### **Consistency with State Policies, Plans and Programs, and the Appeal Process**

Concern from several states during review of the 1982 planning regulations was resolved in adoption of Section 1610.3 in the May 5, 1983 final rule (FR 20365). From the preamble:

“The final rulemaking retains the specific provisions for coordination of Bureau planning activities and guidance as a basis for achieving plan consistency with existing officially adopted and approved plans, policies or programs of other Federal agencies, State agencies, Indian tribes and local governments that may be affected by Bureau of Land Management planning. As part of this requirement, the final rulemaking provides that the State Director should seek the policy advice of the affected Governor(s) early in the planning process.”

To implement the elevated role of the states, this explanation concludes:

“ . . . the final rulemaking amends the consistency requirements language of the proposed rulemaking to give State Governments authority to review the resource management plan and plan amendments and to identify inconsistencies and provide recommendations on those inconsistencies. **The final rulemaking requires the review of those recommendations and a procedure for appeal of the failure to accept them.**” (emphasis added)

The regulations adopted in 1983 in Section 1610.3, addressing coordination with state governments, are still in effect. This includes separate notice and timelines for the Governor to review plans, regulations, and policies for consistency with the state’s affected decision making. However, the Land Use Planning Handbook overlooks 1610.3 by wrapping the state coordination and appeal processes into the public appeal process (e.g., pages III-19, IV-22) of Section 1610.2. The appeal process in Appendix F of the Handbook does not reference the special appeal for affected state governments, but merely repeats the existing public appeal processes. Where states have authority and jurisdiction (e.g., fish and game management plans and regulatory authority), we continue to expect BLM to adopt state management plans unless inconsistent with federal law, per Section 1610.3 of the 1983 regulations. Where discretionary land planning impacts state authorities, the specific appeal process already incorporated in regulations should be correctly represented throughout the Manual and Handbook.

## Page-Specific Comments

Draft Handbook, page 10, paragraph two, last sentence incorrectly states “Congressionally designated wilderness areas are statutorily closed to motorized and mechanized use . . . .” Because this is national planning guidance that will apply in Alaska, we request the Alaska amendments to the Wilderness Act be acknowledged. We request inclusion of the specific ANILCA provisions that Wilderness, Wilderness study areas, and conservation system units in Alaska are open to certain motorized and mechanical use until closed through Alaska-specific statutorily-mandated procedures.

Draft Handbook, page III-18, paragraph five states “the BLM **may** invite tribes and States and local governments to be involved as formal cooperating agencies.” (emphasis added) Fish and Wildlife Service (FWS) Final Planning Policy (May 25, 2000 Federal Register notice page 33894 first paragraph, column three) reflected a change based on our concern that the term “may” does not provide clear direction. As a result the FWS changed the policy to read “we **will** provide a representative from appropriate state and tribal conservation agencies. . . .” and “**will** provide a formal written request inviting States, Tribes, and other appropriate agencies to join the refuge planning effort at the beginning of the process.” In order to achieve collaborative consistency among Department of Interior agencies, we request the term “may” as it occurs on page III-18, be replaced with the term “will.” This is also consistent with the discussion relating to collaboration in .06, C, 2 of the draft Manual.

Appendix C – Program-Specific and Resource-Specific Decision Guidance, Page 8, Fire Management. There is no mention of consultation with state or other potential fire management plans (e.g. Alaska Interagency Wildland Fire Management Plan). Decision guidance related to fire management should include consultation with state, local, and federal agencies. Alaska is unique in that large areas of the state have adopted multi-jurisdictional interagency fire management plans; then individual land managers adopt unit-specific plans consistent with the regional plans. Such cooperative efforts are efficient and effective in reducing conflicting management guidelines for areas of mixed or checkerboard land ownership.

Thank you for the opportunity to provide these comments. If you have any questions, please feel free to call this office.

Sincerely,

/ss/

Sally Gibert  
State CSU Coordinator

cc: John Katz, Governor's Office, Washington, D.C.  
Pat Galvin, Director, Division of Governmental Coordination  
John Shively, Commissioner, Department of Natural Resources  
Frank Rue, Commissioner, Department of Fish and Game  
Deborah Sedwick, Commissioner, Dept. of Community and Economic Development