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May 27, 2006

Ms. Marcia Blaszak
Regional Director
National Park Service
240 West Fifth Avenue
Anchorage, AK 99501

Dear Ms. Blaszak:

Thank you for providing a second public review draft of the National Park Service "User's Guide to Accessing Inholdings in a National Park Service Area in Alaska." I appreciate your willingness to involve the public in building a long-term strategy that will be useful for generations to come. Substantial progress has been made to date. While this draft is much improved over the first, it nonetheless falls short of appropriately recognizing the inholder access guarantee provided in Section 1110(b) of the Alaska National Interest Lands Conservation Act (ANILCA). In addition, the process to define and document the access appears to lack sufficient long-term stability to assure individual landowners and other valid occupants they indeed have the access promised to them by ANILCA.

To address the remaining issues, I urge you to continue your dialogue with local residents, landowners, and state representatives. To take advantage of the progress made to date, while inviting further evolution, there may be value in consolidating the next round of revisions into an "Interim" Access Guide. An interim document would provide willing inholders an opportunity to roll up their sleeves directly with the Service using actual or test applications to troubleshoot and further fine-tune the process before the document becomes final.

As a prelude to further discussions, I also encourage you to explicitly acknowledge that park residents and communities within parks are an important part of the fabric and heritage of Alaska's national parks. In light of historic efforts by the National Park Service to eliminate inholders from parks in the "lower 48," Alaskans need assurances that the Service honors ANILCA's intent to minimize impacts on Alaskans. Further, local residents and communities provide visitor services and amenities that complement the values and opportunities available on parklands. Your continued efforts to

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recognize the importance of park residents and to encourage all park personnel to respect their views will also assist in solving many of the complex issues facing park managers.

The Access Guide is a compilation of law, regulations, and policy. As a result, local residents and landowners are justifiably concerned that much of the positive direction in the Guide appears to be based solely on discretionary policy, which could be overturned by an unsympathetic future manager. For this reason, I encourage you to introduce the Guide by articulating ANILCA's fundamental intent, such as:

- ANILCA Section 1110(b) is an access guarantee in perpetuity. Termination or modification of an associated authorization document cannot eliminate this fundamental right of access.
- A landowner's right of access is not subject to the Service's discretion; although landowners do need to work with the Service to mutually define and document how that access is implemented on the ground.
- Landowners do not need the Service's permission to transfer their property.
- Authorizations granted by the Service under Section 1110(b) do not affect the status or validity of other access rights available under other authorities (e.g., RS 2477).

These fundamentals are not subject to discretion. Highlighting this basic ANILCA intent will help everyone, including future park managers, understand that park manager discretion is substantially limited by statute.

The following major issues still need to be addressed:

Type of Authorization

We strongly encourage use of an authorization that is not a "permit." A permit implies that the Service is granting a privilege, not a right. Furthermore, a permit lacks the implicit recognition of the permanent, albeit flexible, nature of the Section 1110(b) access right. As access "for economic and other purposes" changes over time, the specific access need may also evolve. For these and other reasons we think the public will be better served by a tailored form of authorization or registration that ties specifically and exclusively to Section 1110(b) access.

We question whether the Service has exhausted all options to identify an authorization or other document that can be recorded to run with a property's title. Even if not possible or applicable for all valid occupancies, there may be some circumstances where it could be appropriate. For example, the location

of a 100-yard long driveway across dry ground leading from a designated state or park road to a private parcel would likely never change. In this case, there would be few downsides to a recordable description of such access, even though it would not modify the underlying land ownership. Another option that should be considered is an easement. Both the state and federal governments reserve various forms of "floating easements" that are shown on status plats that can move under specified circumstances. State representatives are available to further discuss these options.

We encourage the designation of park roads when desired routes of access are or will be used by multiple landowners. A designated park road would need to be suitable and appropriate for general public access and not encourage trespass on private property. While the park road designation option may have limited application in practice, and may need close coordination with the state Department of Transportation and Public Facilities, it has several advantages: 1) potential for quick implementation, 2) multiple individual access authorizations would be reduced in scope or eliminated, 3) the Service would have direct responsibility for maintenance and resource protection, and 4) the need to identify other potential access rights (e.g., RS 2477 or pre-ANILCA BLM rights of access) is reduced.

We recommend the Service work with inholders to develop a simpler application or registration form as an alternative to the Standard Form 299. The SF 299, which was originally developed for large-scale transportation and utility systems like commercial pipelines and transmission lines, is perceived by some as intimidating and difficult to understand.

Term of Authorization

We appreciate extension of the proposed term of the access authorization from 10 to 30 years. While this change is welcome, the issues associated with permanence and revocability remain. Renewals should be automatic unless route considerations have substantially changed.

Revocability

We recognize there may be rare circumstances when the Service determines that an existing authorization is no longer tenable; however, such circumstances would not grant the Service unilateral authority to revoke an existing authorization. Available options include working with the inholder to immediately mitigate the problem, amend the existing authorization, or begin work on a new authorization. For gross negligence, the Service has the option of citing the landowner in civil or criminal court. Since the Service cannot revoke the basic right of "adequate and feasible" access, we assert that

unilateral revocation of the associated authorization would not be consistent with the intent of ANILCA.

Limiting discretion to modify an existing authorization

We understand the need to provide a measure of flexibility for the Service and the inholder to jointly modify or update an authorization. Justifiable reasons could include unanticipated resource damage, the need to relocate a route due to a washout, or the need for increased access based on a business addition or expansion. Section 1110(b) specifically limits the Service's discretion to actions needed "to protect the natural and other values of such lands." Allowing such discretion must not be construed to give the Service authority to arbitrarily impose terms or conditions without adequate justification. One option to address this concern is to incorporate into the authorization itself the specific conditions under which the Service and the inholder would renegotiate the details.

Transferability

The Guide needs to clarify that the Service will work with all subsequent landowners or other valid occupants to continue the previous holder's access authorization, or tailor the authorization to meet any new needs of the subsequent holder. An authorization issued today does not affect the ability of a current landowner to sell, bequeath, or otherwise transfer their property to another. In addition, we encourage exploration of standardized language that could be attached to the title by the existing owner, at their discretion, that identifies the associated Section 1110(b) right of access. Ultimately, both current and future inholders need to be assured that their right of access will not be diminished as a result of property transfer.

Fees

We commend your discretionary decision to waive all fees associated with existing access. For the future benefit of these landowners, I encourage you to lock these fee waivers into place as solidly as possible to be immune from any change of heart by a future regional director. Options include 1) fix the fee waiver into the authorization in a way that is not subject to subsequent administrative discretion, or 2) adopt a regulatory change. Fixing the waiver of rental fees, for example, could be critical to assure the "adequate and feasible" access guaranteed by Section 1110(b). If, ten years from now, an inholder is suddenly required to pay rental fees on a five-mile long driveway, the economic consequences could be serious.

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Environmental Analysis and the National Environmental Policy Act (NEPA)

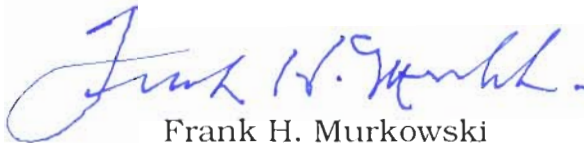
If the Service conducts its environmental analysis under NEPA, we encourage use of Categorical Exclusions to the extent this approach may minimize the administrative burden on both the Service and the inholder. We also support the concept of assessing the impacts of multiple holders of existing access in one programmatic document prepared at the Service's expense. Any effort to minimize the environmental compliance burden on inholders achieving their access rights is a positive step.

RS 2477

The Access Guide appropriately addresses only access guaranteed under Section 1110(b) of ANILCA. As noted in the discussion of fundamental ANILCA intent, Service authorizations under Section 1110(b) do not affect the status or validity of RS 2477 rights-of-way. I request that the Service work with state representatives to develop disclaimer language to that effect to accompany all Section 1110(b) access authorizations.

My administration will actively track the Service's continued progress on these issues. We look forward to additional opportunities to discuss possible solutions.

Sincerely yours,



Frank H. Murkowski
Governor

cc: The Honorable Ted Stevens, U. S. Senator
The Honorable Lisa Murkowski, U. S. Senator
The Honorable Don Young, U. S. Congressman
The Honorable Dirk Kempthorne, Secretary of the Interior
Drue Pearce, Senior Advisor for Alaskan Affairs, Department of Interior
John Katz, Director of Special Relations and Special Counsel,
Alaska Office of the Governor
Mike Menge, Commissioner, Department of Natural Resources
Mike Barton, Commissioner, Department of Transportation and Public
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Linda Hay, Special Staff Assistant, Alaska Office of the Governor
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