

STATE OF ALASKA

ANILCA IMPLEMENTATION PROGRAM Office of Project Management and Permitting

SEAN PARNELL, Governor

550 W. 7TH AVENUE, SUITE 1430
ANCHORAGE, ALASKA 99501
PH: (907) 334-2563 / FAX: (907) 269-5673
nina.brudie@alaska.gov

April 7, 2012

Ms. Carol Goularte, District Ranger
Sitka Ranger District
U.S. Dept. of Agriculture, Forest Service
204 Siginaka Way
Sitka, AK 99835

Re: White Sulphur Springs Bathhouse EA

Dear Ms. Goularte:

The State of Alaska reviewed the White Sulphur Springs Bathhouse Environmental Assessment (EA). We appreciate reconsideration of the original decision regarding the bathhouse and recognize that reopening this planning process required significant effort on the part of the Forest Service (Service). We fully support the Proposed Action to reconstruct the historic bathhouse so that people may continue to enjoy these unique springs as they have for at least the past 100 years. We find the EA's assessment of the human health and safety value of the bathhouse is accurate.

The State concurs with the Service's assessment that Section 1315(c) of the Alaska National Interest Lands Conservation Act (ANILCA) provides an exception to the prohibition on structures found in the Wilderness Act. This direction is evident in the Alaska Supplement to Forest Service Manual 2300. Specifically, 2323.13b(1) states, "[e]xisting (as of December 2, 1980) public use cabins **and shelters** may remain and may be maintained or replaced as provided by Section 1315(c) of ANILCA." (Emphasis added.) The Service is acting well within its authority.

While additional justification above and beyond that found in ANILCA is not necessary, it should also be noted that structures are not strictly prohibited by the Wilderness Act and are expressly allowed when determined necessary for the administration of the area or are otherwise allowed under enabling legislation.

The Service is responsible for,

... preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use. (Emphasis added.)

The object of rebuilding the bathhouse – or the administrative purpose – is to perpetuate the continuation of a specific, established remote recreational experience and historical use, as well as provide emergency shelter in matters of public health and safety, consistent with the intent of Congress and the purposes of the Wilderness Act. This decision to allow an otherwise prohibited structure is, in part, discretionary and based on the judgment of the responsible official with decision authority.

Any assertion that the minimum requirement concept is appropriate for the broad protection of wilderness character is not founded in the Wilderness Act. Protection of wilderness character does not come from minimizing administrative activities, rather it stems from using the “minimum tool” – in this case using materials that blend with the surrounding environment, as well as other identified mitigation measures – to conduct those activities. This is consistent with the following direction in *House Report No. 96-97* from the House Committee on Interior and Insular Affairs,

*. . . the Committee does not view the Wilderness Act as being as restrictive as many people believe it to be. Rather, the Committee is convinced that **the restrictive management policies of the administering agencies – not founded in law – have led to a view by the public that virtually nothing can take place in a statutorily designated wilderness.** (Emphasis added.)*

As the Service properly highlights in the EA, White Sulphur Springs has been used in its current manner for over 100 years. The current bathhouse dates to 1966, well before the establishment of the West Chichagof-Yakobi Wilderness Area. The bathhouse has important historical and cultural value to residents of the nearby communities and to the commercial fishing community, who have used it for generations. Prior to wilderness designation, the U.S. House of Representatives Committee on Interior and Insular Affairs held a public meeting in Sitka, Alaska, and was made well aware of the historical structures and their present-day use in the proposed area. We agree with using the methods and tools described in the existing Minimum Requirements Decision Guide to reconstruct the bathhouse.

Congress carefully crafted the Wilderness Act after much deliberation. As properly emphasized on page 32 of the EA, designated wilderness is defined, for legal purposes, as

*. . . undeveloped federal land retaining its primeval character and influence, without permanent improvements or human habitation and which **generally appears** to have been affected **primarily** by the forces of nature, with the imprint of man’s work **substantially** unnoticeable.... (See 16 U.S.C. § 1131, emphasis added.)*

The qualifications (“generally appears,” “primarily,” “substantially”) in the Wilderness Act indicate Congress intended these areas need not be pristine.

. . . Congress has itself not hesitated to embrace wilderness that was less than pristine. For example . . . the House Interior Committee disapproved of the view that an area could be disqualified where “any trace of man’s activity” was present, and where the “sights and sounds” of cities (often many miles away) could be perceived from anywhere in candidate areas. It welcomed consideration

of areas not necessarily “entirely free of the marks of mankind, but [which are] fully capable of providing in the long term, wilderness benefits to many people. (H.R.Rep. No. 540 (95th Cong., 1st Sess. 4-6 (1977))¹

We concur with the Service’s correct assertion on page 32 that a wilderness area “*does not have to be pristine or pure.*” In fact, a word search of the Wilderness Act does not find the words “pure” or “pristine.” We also concur with the Service’s assessment that the project area, even with a maintained structure (constructed out of rustic materials that blend with the surrounding landscape), will “*still appear primarily affected by the forces of nature.*” Still further, we affirm the area will stand in stark contrast to the “expanding settlement and growing mechanization” of the modern world, as “man and his works will not dominate the landscape.” Opportunities for “solitude or a primitive and unconfined type of recreation” will continue to exist. In short, rebuilding the White Sulphur Springs bathhouse will not offend the underlying purposes of the Wilderness Act or the intent of Congress.

Lastly, while we maintain that the new structure, regardless of size, will blend with the surrounding environment, the State nonetheless recommends that, consistent with safe building practices and regional/national standards, the Service maintain the existing footprint of the proposed replacement structure to the greatest extent possible.

In conclusion, the State fully supports the Proposed Action. This historical bathhouse not only perpetuates established remote recreational experiences and historical use, and provides emergency shelter in matters of public health and safety, but also provides experiences not found elsewhere within the National Wilderness Preservation System. We affirm the weight given to the survey results and find the Service’s intent to perpetuate cultural and historical activities that are important to Alaska residents, while maintaining the wilderness character of the area, appropriate and consistent with ANILCA and the Wilderness Act, as well as the intent of Congress. Similar to its recognition that snowmachines, motorboats and airplanes are integral to the Alaska wilderness experience, Congress clearly also recognized structures as integral while deliberating management of designated wilderness in Alaska.

Thank you for your consideration of these comments. If you have questions, please contact me at (907) 334-2563.

Sincerely,



Nina Brudie
ANILCA Project Coordinator

cc: Susan Magee, State of Alaska ANILCA Program Coordinator

¹ Coggins, G. C., Wilkinson, C., & Leshy, J. (2002). *Federal public land and resources law* (5th Ed.). New York, NY: Foundation Press. 1130