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March 10, 1994

Steve Martin
Superintendent
Gates of the Arctic National Park and Preserve
P. O. Box 74680
Fairbanks, AK 99707

Dear Mr. Martin:

Thank you for your recent briefing on the status of the Anaktuvuk Pass Exchange/Agreement and the proposed legislation. The information you provided at our meeting of February 28 has been useful in the State's continuing evaluation of efforts to resolve issues surrounding subsistence use of ATVs in the vicinity of Anaktuvuk Pass in Gates of the Arctic National Park and Preserve.

Following our meeting, I forwarded the draft legislation and side agreement to State resource agencies for review. The State's review of this proposal is continuing; in the meantime State agencies have not significantly altered the position reflected in the State's November 1993 briefing paper, attached.

Based on the most recent documents, we are evaluating 1) the adequacy of disclaimer language, and 2) the rationale and practical consequences of the new side agreement.

Disclaimer

The State has consistently stated a preference for an administrative solution based on Section 811(b) of ANILCA, but we recognize that the parties to the agreement have instead chosen a legislative path. We remain concerned that a legislative approach will set a poor precedent for others who rely on ANILCA-protected ATV access within Alaskan park units. For this reason we cannot support such legislation unless it includes disclaimer language intended to prevent establishment of such a precedent. We are not confident that the current language in Section 4 of the draft legislation accomplishes this task.

Similarly, we are concerned about the Draft Summary of the agreement, dated "2/5/94". We urge that the last sentence in the third paragraph be modified to remove the incorrect statement that NPS does not have authority to allow ATV use on park land. (Delete the portion shown in italics): "This agreement would impose permanent limits on ATV use and resolve the current problem of continued ATV use on park land *which is contrary to NPS regulation and policy.*"

ATV Use Side Agreement

State agencies are still evaluating the side agreement concerning monitoring and possible modifications of future ATV use. We will be continuing discussions with you concerning the background of and necessity for this agreement, and the adequacy of involvement of affected local residents. We encourage you to include discussion of the proposed side agreement on the agenda of the upcoming Gates of the Arctic Subsistence Resource Commission meeting in Anaktuvuk Pass. This may help to better inform ATV users about the amendment and how it differs from the original agreement.

Nigu Wilderness Proposal

The 41,000 acre Nigu wilderness recommendation was selected by the State in December of 1992. We recognize, however, this tract is currently withdrawn due to the BLM wilderness recommendation stemming from their 1988 Central Arctic Management Area Plan.

Generally the State of Alaska is opposed to the designation of new wilderness, although we recognize that in this case, the combined tracts identified for new wilderness designation are proposed to offset existing wilderness within the park that will be deauthorized. Regardless of the wilderness designation issue, however, the State prefers continued BLM management of the Nigu tract over transferring it to the National Park Service as part of the Gates of the Arctic Park and Preserve.

Conclusion

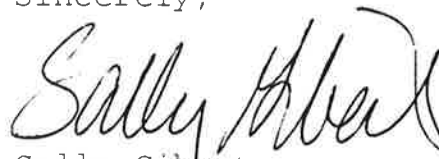
State agencies are continuing to review this agreement package. Following additional internal discussions and possible consultation with affected parties, we will be prepared to refine our position, possibly including additional comments and/or proposed amendments to the legislation.

Steve Martin, Superintendent, GAAR

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Thank you again for your briefing and for seeking the State's views on this proposal. Once it has been introduced, the State will be tracking the progress of this legislation through the Governor's Office in Washington, D.C. In the meantime, if you have any questions, please feel free to call me at 561-6131.

Sincerely,



Sally Gibert
State CSU Coordinator

cc: John Katz, Governor's Office, Washington, D.C.

Attachment

**State of Alaska Position Paper
Proposed Anaktuvuk Pass Land Exchange and ATV Use**

November, 1993

SUMMARY: The State of Alaska fully supports resolution of access problems experienced by the residents of Anaktuvuk Pass since creation of the Gates of the Arctic National Park and Preserve. The State, however, believes that 1) administrative options under the Alaska National Interest Lands Conservation Act (ANILCA) have not been exhausted and 2) the proposed legislative solution may jeopardize the continuation of traditional all-terrain vehicle (ATV) use by other communities in the park resident zone and individually permitted subsistence users, as well as traditional ATV use in other conservation system units.

SPECIFIC CONCERNS IDENTIFIED BY THE STATE

The National Park Service (NPS) has avoided recognition of statutorily protected traditional (pre-ANILCA) access rights of local residents pursuant to ANILCA Section 811(b). NPS indicates that such access by ATVs will be prohibited if the agreement is not implemented by Congress.

The State objects to the NPS definition of "traditional". The State asserts Congressional use of the term "traditional" meant "pre-ANILCA" while the NPS uses and defines the more restrictive term "customary and traditional."

The NPS has inappropriately applied Executive Order 11644 and the Wilderness Act to prohibit ATV access in ANILCA-created designated wilderness areas.

The agreement inappropriately terminates 17(b) easements which provide public access to State-owned land, water, and resources.

A fixed legislative solution lacks flexibility to respond to changing patterns of traditional activities.

Commendably, the agreement no longer proposes to implement an individual subsistence roster system by deleting Anaktuvuk Pass and the park from the resident zones. The LEIS (page 211) leaves the door open to this possibility, however, by stating NPS could "propose a change through the regulatory process."

THE STATE OF ALASKA SUPPORTS an administrative solution relying on provisions of ANILCA and existing Congressional direction to address ATV access, definition of traditional use, administration of Wilderness, and access to state lands. If legislation is introduced, the State will likely not object to the general form of the legislation -- but wants to insure that it not set a precedent which would hamper administrative solutions for others who rely on legitimate ANILCA-protected ATV access.

**CSU Distribution List
Anaktuvuk
March 15, 1994**

Tina Cuning, Department of Fish & Game, Anchorage

Terry Haynes, Department of Fish & Game, Fairbanks

Priscilla Wohl, Department of Environmental Conservation, Anchorage

Joyce Beelman, Department of Environmental Conservation, Fairbanks

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