

National Parks Conservation Association

Protecting Our National Parks for Future Generations

26 May 2006 .,,

Marcia Blaszak
Alaska Regional Director
National Park Service
240 W. 5th Ave.
Anchorage, AK 99501

Re: "A Users Guide to Accessing Inholdings in a National Park Service Area in Alaska"

Dear Director Blaszak,

The National Parks Conservation Association is pleased to be providing additional comments on the Users Guide to Accessing Inholdings in a National Park Service Area in Alaska (Users Guide). The National Parks Conservation Association (NPCA) is America's only private nonprofit advocacy organization dedicated solely to protecting, preserving, and enhancing the U.S. National Park System. Founded in 1919, NPCA has more than 300,000 members of which 1,000 reside in Alaska.

NPCA has been involved in the discussion about a Users Guide from the very beginning and we continue to support the concept of gathering all available information, and existing regulations and policies into one place for ease of understanding. Not only for those that are seeking access to an inholding, but also to ensure continuity among the different parks as National-Park Service employees process these requests across the state. We do not see the Users Guide as developing any new policy or regulations. It is merely clarifying and compiling existing policies and procedures and presenting the range of options for those discretionary actions identified in existing regulation such as fees and length of permit.

The primary focus of the Users Guide is section 1110 (b) of the Alaska National Interest Lands Conservation Act of 1980. In reading the Users Guide, it is important to remember that, while recognizing the right of access "shall be given," that right is modified by Congressional direction to the Secretary to promulgate "reasonable regulations....to protect the natural and other values" of our national parks. And it is also important to remember that the right of access is further modified to be that which the Park Service determines is "adequate and feasible." That does not necessarily mean that whatever an inholder requests, they will receive. It is the responsibility of the National Park Service to negotiate on behalf of all the citizens of this an access solution that is

adequate and feasible for the inholder and protects park values for all Americans.

In reviewing the second version of the Users Guide, we are pleased to see that the Park Service is strongly stating that the National Environmental Policy Act (NEPA) clearly is relevant to these decisions. Several entities, including the state of Alaska and the University of Alaska have tried to make the argument that NEPA doesn't apply. NPCA has supported and continues to support the Park Service position that NEPA is required for actions like this. In the NEPA context, however, we do understand that in some instances, such as the driveway issue in Wrangell-St. Elias, a programmatic environmental review may be adequate and we support those opportunities to more efficiently address the impacts of a class of inholders rather than a separate environmental review for each instance.

NPCA is also pleased to see that special attention is given in this new draft to existing access. However NPCA makes a clear distinction between persons whose existing or future residences require access across park land and commercial operators now and in the future. This distinction will be clarified in the remainder of this letter.

NPCA recognizes that the issuance of a permit is currently the only authority the Park Service has to address inholding access. We feel that in most instances a permit is the correct mechanism. However, in the case of driveway access to residential, non-commercial properties, we would encourage the Park Service to explore needed regulatory changes to provide a more permanent access permit and to explore the opportunities to attach the access to the property rather than to the current owner. In addition, a discussion of longer-term solutions could also include a review of Form SF-299 to see if a version could be developed and adopted for Alaska purposes.

Regulatory changes, however, can often times take several years to complete and there is a keen interest in a more immediate solution for existing inholders, primarily those that are residential in nature. NPCA would endorse the Park Service moving forward with "up to 30 year" permits while at the same time making a commitment to explore a more permanent process through a regulatory adjustment.

We support the concept of waiving fees for some applications. We would like to see a distinction made between commercial and non-commercial applicants in the criteria used to determine if a fee-waiver is warranted. A commercial applicant seeking an access permit may only require an Environmental Assessment (EA), but we do not feel commercial applicants should receive a fee waiver as they are gaining financial benefit from their impact to park land. The Park Service should seek to recover all the costs associated with commercial applicants, including the cost of writing an EA.

One approach to making this fee distinction is to amend the Key Permit Revisions so that the waiving of fees is subject to the discretion of the Superintendent rather than a given standard for all EA level applicants. The criteria subsequently used by the Superintendent to determine if a fee waiver is warranted should include the purpose of the access. Those non-commercial applicants seeking access to a residence should be given greatest consideration for a fee waiver. This approach recognizes that Title XI doesn't differentiate between commercial and residential or non-commercial access and a

hard and fast rule solely for one or the other receiving a waiver isn't appropriate. Giving discretion to the Superintendent to determine if fees should be waived, along with guidance that preference for a fee waiver is given to residential access, is a similar discretionary approach to permit stipulations as the "up to 30 years" provision for length of permit.

NPCA has no strong opinion about permit duration for residential, non-commercial applicants. If 30 years works for those receiving the permit, it works for NPCA. We would, however, like to see the application of the 30-year duration be limited to residential, non-commercial applicants. Commercial applicants seeking a long-term permit should remain limited to the existing 10 year permit. The guidance on page 7 that discusses how the "up to 30 years" would be applied needs to be modified to include guidance for the distinction between commercial and residential, non-commercial inholdings.

We understand concerns have been raised about a permit being revoked by a subsequent superintendent and that concern has caused dissatisfaction with even a 30 year permit. To put people's minds at ease, we strongly encourage the Park Service to discuss under what conditions a permit may be revoked and that it cannot be done at the whim of the superintendent. Revoking a permit can only be done for cause and there is a process involved in that revocation. Both the process and what defines cause should be added to the guide.

We have one suggested addition to the FAQs. On page 11, we suggest adding another sentence to "1.) What about Revised Statute 2477 rights-of-way?" We suggest making it clear that the authorization someone would need to gain access along a claimed RS 2477 is the same process as outlined in this document. Suggested addition as the last sentence: "The National Park Service will evaluate access applications on unresolved RS2477s using the process set forth in this Users Guide."

Thank you for the opportunity to comment. If you would like to discuss any of our ideas further, please let us know.

Sincerely,

Jim Stratton
Alaska Regional Director