STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF PROJECT MANAGEMENT AND PERMITTING
ANILCA IMPLEMENTATION PROGRAM

FRANK H MURKOWSKI
GOVERNOR

550 W. 7TH AVENUE, SUITE 1660
ANCHORAGE, ALASKA 99501
PH: (907) 269-7470 / FAX: (907) 269-3981
Sally_Gibert@dnr.state.ak.us

Joe L. Meade
Forest Supervisor
Chugach National Forest
3301 'C' Street - Suite 300
Anchorage, Alaska 99503-3998

November 26, 2003

Dear Mr. Meade:

RE: Notice of Public Meeting and Hearing for the Iditarod National Historic Trail Seward to Girdwood

The State of Alaska received the November 19, 2003, e-mail note with attached Notice of Public Meeting and Hearing for the Iditarod National Historic Trail Seward to Girdwood (INHT). The State is concerned with the process the Forest Service is using to close selected portions of the Iditarod Trail to motorized access under ANILCA 1110(a). From an ANILCA process standpoint, it is unclear why the Forest Service chose to divide motorized use into two groups: one with an ANILCA-required hearing and one without. While we understand the need to maintain consistency with the Forest Plan, the process used for the proposed motorized closures must be consistent with ANILCA.

This letter addresses critical closure procedures only and does not address the merits of specific proposals. Additional substantive comments may be forthcoming at a later date.

ANILCA Section 1110(a) mandates that:

> . . . the Secretary shall permit, on conservation system units, national recreation areas, and national conservation areas, and those public lands designated as wilderness study, the use of snowmachines (during periods of adequate snow cover...), motorboats, airplanes, and non-motorized surface transportation methods for traditional activities...and for travel to and from villages or homesites. Such use shall be subject to reasonable regulations by the Secretary to protect the natural and other values of the conservation system units... **and** shall not be prohibited unless, after notice or hearing in the vicinity of the affected unit or area, the Secretary finds that such use is detrimental to the resource values of the unit or area. (**emphasis added**)

The State's letter on the INHT Environmental Assessment, dated July 18, 2003, recommended that the Service use the existing process for restricting access in ANILCA units that was adopted by the Department of the Interior for all Interior ANILCA units at 43 CFR Part 36. The Interior's regulatory process includes a finding of damage, notices, hearings, and adoption of

rulemaking as required in ANILCA 1110(a). These Interior regulations were upheld by the federal court. Since the Forest Service did not adopt regulations to implement ANILCA 1110(a), care must be taken to assure the closure process used for portions of the trail is consistent with ANILCA.

Under regulations at 43 CFR Part 36, which were specifically adopted to express statutory intent applying to all ANILCA units, permanent closures involve: 1) a finding of detriment to resource values of the unit; 2) must be published by rulemaking in the Federal Register with a minimum public comment period of 60 days and shall not be effective until after a public hearing(s) is held in the affected vicinity and other locations as deemed appropriate by the appropriate Federal agency, and; 3) a published notice made available in affected newspapers, post offices, local radio stations, and for public inspection at the office of the appropriate federal agency. Consistent with the statute, the Forest Service must include an assessment of potential damage to the resource values for the affected sections of the trail. We urge the Forest Service to follow Interior's regulatory process by making these findings available before the hearings. This tested methodology improves the public's understanding of the issues and facilitates more relevant and useful public input at the public hearings.

The State contends that <u>any</u> restrictions of access under ANILCA, including areas with alternative access, must first undergo an ANILCA 1110(a) closure process. We request the Service develop an ANILCA closure process comparable to Interior's. It would be unfortunate if process-based litigation slowed down actions necessary for management of the Iditarod Trail.

The State, as an adjacent landowner and cooperating partner, would like to meet with Service officials before the hearings to discuss and assist in the ANILCA 1110(a) closure process. Please contact Don Perrin at 907-269-7476 to make appropriate arrangements. Thank you for your attention to this matter.

Sincerely,

Sally Gibert
State ANILCA Coordinator

cc: Denny Bschor, USFS
Dan Golden, USFS
Betty Charnon, USFS
Alison Rein, USFS