

ALASKA LAND USE COUNCIL



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The Alaska Land Use Council, on November 19, 1984, approved the attached recommendations on Guidelines for the Use and Occupancy of Cabins on Public Lands in Alaska with following the modifications.

Item # 2 D, 2nd paragraph now reads:

Claimants with pending Native allotment applications, valid mining claims, or other valid claims under public land law are exempt from section 2 D of the above policy. Real property interests of such claimants will be determined through appropriate adjudication processes.

Item # 5, last sentence, now reads:

Trespass actions finalized administratively or judicially prior to 12/2/80 may not be affected by Section 1303.

Item # 8 now reads:

In implementing Section 1303(b) of ANILCA, federal agencies in Alaska are encouraged to consult closely with the Bureau of Land Management, the Bureau of Indian Affairs, and the U.S.D.O.I. Solicitor's Office to avoid adversely affecting the rights of claimants under the Native allotment program.

ALASKA LAND USE COUNCIL RECOMMENDATIONS

1. In implementing Section 1303 of ANILCA federal agencies in Alaska should adopt regulations which, to the extent allowed by their differing mandates are consistent across all agencies.

2. In implementing Section 1303 of ANILCA federal agencies in Alaska should adopt regulations which provide for the issuance of a permit to a claimant who by application:

A. Reasonably demonstrates by affidavit, bill of sale, or other documentation, proof of possessory interest or right of occupancy in the cabin or structure. Proof of actual occupancy during specific periods or for minimum length of time should not be required;

B. Submits a sketch or photograph of the cabin or structure and a map showing its geographic location;

C. Agrees to vacate the cabin and to remove all personal property from the cabin or structure upon expiration of the permit; and

D. Acknowledges in the permit that the applicant has no interest in the real property on which the cabin or permit is located.

Claimants with pending Native allotment applications, mining claims or other land claims are exempt from this section. Real property interests of such claimants will be determined through appropriate adjudication processes.

3. In renewing permits under Section 1303 of ANILCA for life of claimant and immediate family, federal agencies in Alaska are encouraged to adopt by regulation a definition of eligible immediate family members as follows: "last immediate family member of the claimant residing in the cabin or structure under permit" means any person related to the claimant by blood, marriage or adoption and whose eligibility as an immediate member is so declared by the claimant as a part of the initial permit application or as a part of the claimant's subsequent renewal applications.

4. In issuing permits under Section 1303 of ANILCA federal agencies in Alaska are encouraged to include only those conditions and stipulations that meet the following tests:

A. Permits issued under authority of Section 1303(b) - permit conditions and stipulations should be directly related to insuring that the customary and traditional uses are compatible with the purposes for which the unit or area was established. (The provisions of Section 1303(b) apply to federal public lands in Alaska other than those administered by the National Park Service.)

B. Permits issued under authority of both Section 1303(a) and (b) - permit conditions and stipulations should be directly related to insuring that customary and traditional uses will not cause significant detriment to the principle purposes for which the unit or area was established. (Section 1303(a) is specific to lands administered by the National Park Service.)

C. Specified periods of availability for use by the claimant of the cabin or structure should be avoided unless clearly necessary to insure compliance with criteria A and B above.

5. In implementing Section 1303 of ANILCA, federal agencies in Alaska are encouraged to adopt regulations that recognize that a claimant with a trespass action pending either administratively or judicially as of 12/2/80 may be entitled to apply for and receive a permit under Section 1303 of ANILCA if otherwise conforming to the requirements of law. Trespass actions finalized administratively and judicially prior to 12/2/80 may not be affected by Section 1303.

6. In implementing Section 1303 of ANILCA, federal agencies in Alaska are encouraged to adopt regulations specifying that permits issued under Section 1303 do not in and of themselves authorize commercial uses, but that such cabins or structures may be used for commercial purposes if such commercial uses are permitted under other appropriate agency authorities.

7. In implementing Section 1303(b) of ANILCA, federal agencies in Alaska are encouraged to develop and employ a consistent definition of "private recreation uses" as opposed to "customary and traditional uses." The definition of these two concepts is of particular importance in that permits under authority of Section 1303(b) may not be issued for private recreation use.

8. In implementing Section 1303(b) of ANILCA, federal agencies in Alaska are encouraged to consult closely with the Bureau of Indian Affairs and the USDI Solicitors Office to avoid adversely affecting the rights of claimants under the Native allotment program.

GUIDELINES FOR THE USE AND OCCUPANCY OF
CABINS ON PUBLIC LANDS IN ALASKA

BACKGROUND AND LEGISLATIVE HISTORY

There is a long established history of the use and occupancy of cabins on the public lands in Alaska both with and without benefit of authorizing permits. In most cases, the cabins are used for a variety of purposes including subsistence, mining, hunting and fishing, commercial outfitting and guiding, etc. In addition, many of the cabins could have been permitted under long established authorities but instead the construction and use of cabins, for the most part, was simply allowed to continue with only a minimal effort on the part of the land management agencies to enforce compliance with permitting requirements. There are many reasons that this was allowed to happen including lack of manpower and funding, the vast distances in Alaska, the low density of cabins relative to the large amount of public land, the small population of Alaska, and, most significantly, the traditional expectations regarding cabin occupancy and use in Alaska.

Over the years some of the once applicable permitting authorities have lapsed as in the case of lands once open to entry but now closed. However, the most significant change was the passage of ANILCA (PL 96-487) which reclassified millions of acres of public lands into Conservation System Units to be managed for specific purposes. As a result of ANILCA the land management agencies charged with the administration of the various CSU's have limited authorities to grant permits for cabin use and occupancy. Consequently, continued use and occupancy of a significant number of cabins on the new CSU's is in jeopardy.

The Congress in passing ANILCA recognized the unique situation in Alaska with respect to cabins and at Section 1303 provided the Secretaries of Interior and Agriculture with specific authorities to issue permits to allow for the continuation of such uses. The authorities were designed to reflect the differing mandates of the federal land management agencies. The Senate Committee report number 96-413 provides insight into the intent of Congress in providing these new permitting authorities. At page 78 the report states:

Section 1303: Use of Cabins and Other Sites of Occupancy on Conservation System Units.

This section provides the Secretaries with authority to permit the (1303z) continued use of cabins in Alaska even though the occupants may not hold legal title to these cabins.

The Committee is familiar with the use by Alaska residents of cabins and other sites of occupancy on lands which are located in the various units

established by this Act. The use of such cabins has become known nationwide because of the descriptions of John McPhee in his book "Coming into the Country." The types of occupancies described in this book provide a difficult question for the Committee because in many instances it appears that the occupants do not hold any legal interest in the land on which they occupy. Nevertheless, the (1303z) Committee believes these residents carry on a unique lifestyle which may further the purposes of or may not necessarily endanger the units established by this Act. While recognizing that many of these occupants hold no legal interest in these sites, it is the intent of the Committee that the Secretary be fair and equitable in his administration of the permitting authority granted under provisions at this Act. In some cases, the residents of Alaska have lived on these sites of occupancy for a number of years but were unaware of the legal requirements of filing under the various public land laws. The Committee intends that the Secretary utilize (1303z) this permitting system to permit the continuation of this life style wherever possible and where there is no real conflict or danger to the resources for which the units have been established.

The Committee adopted an amendment which provides for the continuation of valid leases or land use permits for cabins, homesites, or (1303z) similar structures on Federal lands. The Secretary is directed to renew existing valid permits or leases unless he determines the use of the lease is a direct threat or significant impairment to the values of the units.

Section 1303 of ANILCA provides the specific Congressional direction and authority for the permitting of cabins on Federal lands in Alaska. The section defines six categories of cabin occupancy and use as follows:

1. Cabins with valid existing leases or permits at the time the Act was passed.
2. Cabins on non-National Park System lands which were not under a permit or lease at the time the Act was passed.
3. Cabins constructed after passage of the Act on non-National Park Service lands.
4. Cabins existing prior to December 18, 1973 on National Park Service lands.
5. Cabins or other structures on NPS lands, the use or occupancy of which commenced between December 18, 1973 and December 1, 1978.

6. Cabins or other structures on NPS lands the use or occupancy of which commenced after December 1, 1978 and new cabins or structures on NPS lands after passage of the Act.

Each of these categories provides criteria for the continuation of cabin use and occupancy on Federal lands in Alaska. Over time, the provisions of Section 1303 will result in a significant reduction in the number of privately owned cabins on the public lands in Alaska. The differing criteria are a reflection of Congressional intent to balance the CSU values to be protected against fair and equitable treatment of persons using and occupying cabins on public lands.

SUPPLEMENT TO THE PROJECT GROUP REPORT ON PROPOSED CABIN MANAGEMENT POLICY RECOMMENDATIONS

National Park Service
October 29, 1984

The National Park Service has participated in the subcommittee to the Alaska Land Use Council for the development of interagency cabin policy as it related to Section 1303 of ANILCA. The National Park Service has also reviewed the product of this subcommittee as presented to the ALUC Staff Committee on October 24, 1984.

While recognizing the need to give consistency and direction to the various methods used to implement this section of law, the NPS must point out that Congress intended the National Park Service to administer cabins in a manner different from other Alaska land managing agencies. This point is supported by the fact that Congress provided for the use and occupancy of certain cabins on lands administered by the NPS under Section 1303(a) of ANILCA and provided for cabin use and occupancy on "Other Units or Areas Established or Expanded by the Act" under Section 1303(b).

The subcommittee has made a recommendation (2A) to the ALUC through the Staff Committee which reads as follows:

2. In implementing Section 1303 of ANILCA federal agencies in Alaska should adopt regulations which provide for the issuance of a permit to a claimant who by application:
 - A. Reasonably demonstrates by affidavit, bill of sale, or other documentation, proof of possessory interest or right of occupancy in the cabin or structure. (Proof of actual occupancy during specific periods or for minimum length of time should not be required.)
 - B. Submits a sketch or photograph of the cabin or structure and a map showing its geographic location;
 - C. Agrees to vacate the cabin and to remove all personal property from the cabin or structure upon expiration of the permit; and
 - D. Acknowledges in the permit that the applicant has no interest in the real property on which the cabin or permit is located.

Claimants with pending Native allotment applications, mining claims or other land claims are exempt from this section. Real property interests of such claimants will be determined through appropriate adjudication processes.

The NPS has particular concern over the portion of Recommendation 2A which states that "Proof of actual occupancy during specific periods or for minimum length of time should not be required." This statement is clearly contradictory to policy published by the Department of the Interior in proposed rules for cabin use and occupancy in the Federal Register, Volume 49, No. 65,

April 3, 1984. This policy is supported through congressional intent as outlined in the Senate Committee Report No. 96-413 and has been reaffirmed by Deputy Under Secretary Horn in the attached letter to Senator Stevens.

To support 2A would not only be in direct contradiction to Departmental policy but would ignore congressional intent and would not be in the best interest of the National Park Service. Further, the assignment of cabins to those who could not prove a history of even one-third year residency would deprive the public of use of these trespass cabins for the remainder of the year.

While not specific to NPS-administered units it should be pointed out that Recommendation 2 ignores specific elements of 1303(b)1, e.g., the consistency determination required of other agencies, the assessment of traditional and customary uses of cabins, and the prohibition of recreational use cabins.

Finally, the last statement of 2A should be addressed in a separate recommendation. The NPS recognizes that a problem exists which needs to be resolved; however, it is dubious as to whether a statutory requirement may be voided in such a manner.

At the November meeting it is recommended that the Council either delete Recommendation 2A or refer it back to the subcommittee for reconsideration and substantial revision.