



United States Department of the Interior

NATIONAL PARK SERVICE

Alaska Region
240 West 5th Avenue, Room 114
Anchorage, Alaska 99501

IN REPLY REFER TO:
L7615 (AKSO-RER)

OCT -1 2003

Mr. J.P. Tangen
Attorney at Law
1600 A Street, Suite 310
Anchorage, Alaska 99501-5148

Dear Mr. Tangen:

This is in response to your request during our meeting of September 17, 2003, regarding the Hales' access to the Marvelous Millsite in Wrangell-St. Elias National Park and Preserve. I am providing you additional information on the National Park Service's determination that the Hales' September 14, 2003, access request does not constitute an emergency exempt from the requirements of review under the National Environmental Policy Act (NEPA).

The Hales have requested use of a D-4 bulldozer pulling a 16-foot trailer for eight to nine round-trips between McCarthy and the Marvelous Millsite, along a route the Hales cleared without a permit last fall. The trips are requested in October and November, before the ground freezes, and would entail a total of about 230 crossings of McCarthy Creek, a stream with a native Dolly Varden trout population. Park biologists have documented Dolly Varden spawning habitat and observed spawning-size adults in the stream.

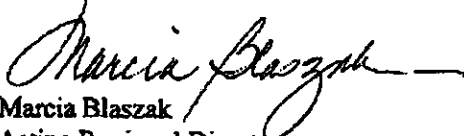
The NEPA implementing regulations at 40 CFR 1506.11 provide for a federal agency action "where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations." What constitutes an emergency is further defined in Council on Environmental Quality (CEQ), Department of Interior and National Park Service guidance. The Departmental Manual at 516DM 5.8 guidance provides "in the event of an unanticipated emergency situation, a bureau will immediately take any necessary action to prevent or reduce risks to public health or safety or serious resource losses." This provision is further interpreted in the Department's Environmental Statement Memorandum No. ESM97-3, *NEPA Compliance in Emergency Situations*, which adopts the CEQ guidance, CEQ/309 Reference Manual, *Compliance with 40 CFR 1506.11 "Emergencies."* As explained below, the National Park Service has determined that action on Mr. Hale's request does not qualify for an exemption because it is not an emergency as defined in the guidance; and, therefore, this action will remain subject to NEPA review.

The National Park Service understands the challenges the Hales face in choosing to overwinter at this remote area. The circumstances identified in the September 14, 2003, letter, however, do not meet the definitions of an emergency requiring federal action. Examples of emergency actions are also set forth in NPS guidance as "cleanup of immediately threatening hazardous materials spills, fire suppression, and prevention or repair of damage by unanticipated floods or other natural disasters," (NPS DO-12 Handbook) and in CEQ guidance as "the collapsing dam or the species which is almost extinct," (CEQ/309 Reference Manual). Departmental guidance on what constitutes an emergency says that federal action is required "to prevent or reduce risks to public health or safety or serious resources losses," and "particularly if there is a possibility of imminent loss of life, property or resources" (ESM97-3).

We consulted with the NPS Environmental Quality Division in Washington, DC, who concurs with our determination that this situation does not constitute an emergency allowing exemption from the requirements of NEPA.

We remain committed to working with the Hales to provide adequate and feasible access as provided for in ANILCA and its implementing regulations. We have experience in this and other parks in Alaska processing applications for right-of-ways which have resulted in access acceptable to the applicant. We invite the Hales to continue working with us to develop a solution that will provide them adequate and feasible access. Superintendent Candelaria will remain your point of contact and he will be contacting you shortly regarding the Hales' temporary access request. He may be reached at (907) 822-5234.

Sincerely,

A handwritten signature in cursive script, reading "Marcia Blaszk", followed by a horizontal line.

Marcia Blaszk
Acting Regional Director

cc:

Cam Toohey, Special Assistant to the Secretary for Alaska
Jake Hoogland, WASO Environmental Quality Division
Chris Bockmon, Office of the Regional Solicitor