



# Denali Citizens Council

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## **Denali Citizens Council Comments on EA for Access and Use Request for the Mountain House Inholding**

The Denali Citizens Council opposes the selection of the NPS preferred alternative (Alternative #2) in this EA. The EA itself is written in a confused way that undermines its conclusions, is deficient in demonstrating any real need for a Special Use Permit, scrambles its access justifications, and trades off explicit (if potentially understated) impacts to wilderness character and natural soundscapes against purely speculative impacts.

We could support Alternative #3, the extension of the staircase to the glacier, if the EA is modified to explain an actual need.

### **Opposition to NPS Preferred Alternative**

DCC firmly opposes the Special Use Permit for storing caches on the glacier to be moved by helicopter sling load to the Sheldon Chalet for several reasons.

- 1) The document demonstrates that there would be adverse impacts to soundscapes and wilderness character from this alternative. While stating that the other alternatives could create more impacts from additional helicopter ferry-trips from outside the park, this is a huge assumption for which there is no evidence. Helicopter trips are expensive. We believe the inholder would likely use fixed-wing flights to bring supplies to the glacier anyway, and would then find an efficient way to move the supplies to the Sheldon Chalet. The Special Use Permit appears to be for convenience only, which does not justify impacts to wilderness character and natural soundscapes.
- 2) In an area where wilderness resource values are supposed to be protected, yet conditions are already degraded below NPS's own (already liberal) standards, there should be no Special Use Permits allowing further degradation. It seems like this should be obvious.
- 3) The actual conclusion to Alternative #2 reads, "The NPS has identified Alternative 2 as preferred because this alternative authorizes the modification and extension of the staircase, thereby ensuring adequate and feasible access as provided for in ANILCA, while best protecting park resources." That is a justification for Alternative #3, not Alternative #2.

We could support Alternative #3, the extension of the staircase, if there was any evidence you considered other alternatives that didn't involve impacts to wilderness character. In particular, we note a snow slope that leads onto the private parcel between the Mountain House and Chalet. Why does NPS



not consider that option for reasonable access to the inholding? Then if stairs were needed to climb onto the nunatak, they could be constructed on private property, not park land.

As presented, we can only support Alternative #1.

### **Access Authorities**

This Environmental Assessment (EA) brings up a confusing palette of authorizations for access to inholdings on park lands, including 1110(a), 1110(b), Special Use Permits and concession permits (and road travel permits in DENA). Our position is that aircraft and snowmachines used to provide commercial access to the Mountain House inholding constitutes 1110(b) access and should be addressed in a Right of Way Certificate of Access (RWCA), as identified in the 2007 Interim User's Guide to Accessing Inholdings In NPS Units in Alaska.

ANILCA 1110(a) provides for the use of airplanes and snowmachines (and motorboats) in CSUs for traditional activities (Mountain House literature does not claim their parcel to be a village or homesite). ANILCA and 43 CFR 36.11(h) (1) authorize closures for these transportation methods only upon a finding of detriment, though (h)(6) does allow for restrictions. 2) 1110b provides for access to inholdings when otherwise authorized access does not. The implementing regulations at 43 CFR 36.10 provide rationales for adjusting access requests to lessen impacts to park resources. 3) Concessions can be permitted by NPS authorities to take park visitors via airplanes to safe landing areas on park lands, under strict conditions.

The reliance on 1110(a) (not mentioned in the Background section) for airplane access by "the property owner" is finally touched upon on pages 6 and 14 when discussing the No Action Alternative. No mention of relying on 1110(a) made it into the text on the other two alternatives, and nowhere in the document was it made clear that Congress devised 1110(a) to protect motorized and some other forms of access for only a particular set of activities. Neither 1110(a) nor the implementing regulations define "traditional activities" [seen by the U.S. Senate in the spectrum of hunting, fishing trapping, and berry-picking (in other words, non-Title VIII subsistence activities)]. We challenge the NPS to find corroborating (or even suggestive) language whereby Congress showed an intent to consider access by paying guests to a lodge or access for the materiel needed to support those guests to be "for" traditional activities.

Though not mentioned in the EA, it would appear that the main use for snowmachines near the Mountain House is to maintain (groom) the snow-covered area for airplane landings and takeoffs. So both the airplanes landing on the glacier airstrip on park land to "shuttle cargo", and snowmachines are used to further the commercial purposes of the Mountain House and need to be viewed and evaluated not under 1110(a) but under the access to inholdings provision. Even the 2007 Interim Guide says that using motorized equipment to maintain an airstrip on park lands is an 1110(b) activity. This position is also supported by the acknowledgement in the Special Use Permit issued to the Mountain House LLC for 2018-19 (ARO-DENA 9500-1802d, viewed at NPS PEPC #82422) that the permission to land fixed-wing



aircraft on park land, use helicopters for sling loading, and store totes on park land in 2019 are all authorized under ANILCA 1110(b).

Though also not mentioned in the EA, the use of airplanes to bring in materials, food, supplies for the Chalet (the Mountain House website says that paying guests arrive by helicopter, landing on the inhaling itself) is contracted out to companies with park concession permits to carry day users or expeditions. This use confuses the park's authorization for "Air Taxi" concessions with the actual need for 1110(b) access (airplane landings to shuttle commercial cargo), and under the paradigm in use these concession permit landings should be reduced or eliminated if BCMP standards are not being met.

### Acoustic Analysis

The acoustic analysis appears to either read in error or be in error. Specifically, Figure 2 in Appendix B appears to measure the effects of 4 minutes of helicopter flight 3 days per week, when the actual request is for 10 helicopter flights per day (at least 40 minutes) for 3 days per week - *"Under Alternative 2, helicopter operations would add additional direct impacts on acoustic resources. It would do so by allowing up to ten round trip helicopter sling load flights (lasting for a total of approximately four minutes per round trip for a total of approximately 40 total minutes) up to three days each week."* (p.15) This would certainly increase the out-of-standard impact by more than 0.8%, and, according to the text accompanying Figure 2, *"would result in an increase of +35.4% of sampled hours out of compliance with standard."*

Figure 3 and accompanying text in Appendix B present two different issues. First is that an approval for up to 10 helicopter sling loads per day is considered one noise event in this analysis. This would be a very significant event given that helicopters are loud, the metric is already 27% in violation of the standard, and probably none of the other "events" are anywhere near 40 minutes (or more) in length.

Secondly, the acoustic analysis deflects attention from, but it is possible to construct an estimate of, helicopter traffic to the private parcel. The Chalet has ten beds, with guests staying a minimum of 3 nights. So figure up to 20 people per week, or a minimum of 4 flights by an AStar per week to bring in guests during the main season. The number of acoustic events to be collected by the park in 2019 and related to this access could be higher.

The acoustic analysis is flawed in that it approves, but does not estimate or measure the proposed and actual helicopter traffic over park lands and its effect on the acoustic resources of the park. The 9<sup>th</sup> Circuit ruled in a similar case in 2001 (NPCA v. Babbitt) that the NPS could not approve an increase in cruise ship traffic in Glacier Bay based on uninformed speculation (or even a lack of informed speculation) via an EA and had to prepare an EIS.

The last page of Appendix B - Acoustic Analysis – appears to posit that snowmachines could transport the materiel from the landing strip to the Chalet proper (suggested by this EA to be 1110a access), without needing helicopter sling loading. Is it only because a helicopter would be bringing in guests and then be on site to be available that the sling loading from park lands is proposed? The regulations at 43



CFR 36.10(e)(iii) state that an access proposal is to be denied when *“The route or method is inconsistent with the management plan(s) for the [area](#) or purposes for which the [area](#) was established and adequate and feasible access otherwise exists.”* Given that the management plan is already out of standard in the area, and that the snowmachine use is protected (according to this EA) by 1110a, feasible access otherwise exists and no helicopter use of park lands should be permitted. The definition of adequate and feasible access (43 CFR 36.10(a)(1) says that *“Adequate and feasible access means a route and method of access that is shown to be reasonably necessary and economically practicable but not necessarily the least costly alternative for achieving the use and development by the [applicant](#) on the [applicant](#)’s nonfederal land or occupancy interest.”* Though bringing in supplies by helicopter to the 5 acre inholding may be more expensive than bringing that cargo in by fixed wing, storing the cargo on park lands while waiting for collateral helicopter time for sling loading, that is not a requirement to authorize for taking over park lands for commercial purposes - especially at the rates guests are paying for the adventure.

### **Wilderness Degradation**

The EA understates dramatically the degree to which cumulative damage has been done to wilderness resource values in the Don Sheldon Amphitheater. ANILCA stated that a purpose of the park additions is to “preserve wilderness resource values and related recreational activities” (Section 101) and to provide continued opportunities for “mountain climbing, mountaineering, and other wilderness recreational activities” (Section 202). The area was actually proposed for wilderness designation in 1987, and NPS Management Policies Section 6.3.1 states “The National Park Service will take no action that would diminish the wilderness eligibility of an area possessing wilderness characteristics until the legislative process of wilderness designation has been completed.” Additionally, Denali’s own Backcountry Management Plan/General Management Plan Amendment states “The National Park Service will manage all backcountry areas of the national park to protect wilderness resource values and provide opportunities for wilderness recreational activities, consistent with the direction of law and policy.”

The Sheldon Amphitheater is one of the national park system’s most stunning wilderness landscapes. But by its failure to act in accordance with its own management plans, NPS has betrayed its fundamental legal mandate to leave this magnificent wilderness resource “unimpaired for the enjoyment of future generations.”

While the EA at least alludes to the sources of cumulative impacts, it fails to characterize the essential fact that the wilderness character of the Sheldon Amphitheater has been fundamentally changed since it came under NPS authority in 1980. The statistics presented in the EA in which motorized noise significantly exceeds the overly-generous GMP thresholds is alarming and can only be viewed as resource impairment. The NPS should not be proposing additional sources of motorized noise and human impact, it should be proposing solutions that will return the Amphitheater to a state where one can find solitude, an absence of unnatural noise, and freedom



from reminders of society that are pledged in the park's General Management Plan. The plan has specific standards for those qualities of wilderness, it is time for NPS to take them seriously.

In the context of a resource that is already suffering impairment, NPS should not authorize any activity that further impairs. The Backcountry Management Plan/General Management Plan offers several tools that can be utilized to bring backcountry use in compliance with standards. In addition the NPS could seek additional authorities from Congress if those tools prove inadequate. The NPS cannot simply sit on its hands and continue to authorize incompatible uses as if impairment doesn't matter. It is a betrayal of the agency's mission.

### Other Issues

- 1) In the stipulations on page 21 it is stated that refueling on NPS land is not permitted. It is not clear why aviation gas or Jet A would then need to be stored (for up to 24 hours) on park land. There is no place to put an airplane on the inholding (for refueling or anything else) and sling loading Jet A from the park land airstrip to the helispot on the private parcel and then refueling there seems an awkward proposition that could result in spills which would be complicated to clean up.
- 2) Appendix B needs pagination.
- 3) One of the draft SUP conditions (p.20) for sling loading is a requirement to provide a comprehensive account of those sling loading operations, but only for those operations between April 1 and July 31. This condition should instead cover helicopter operations for the entire calendar year, given that any helicopter operations would severely impact the expected baseline of quiet for the other 8 months.

### Summary

Our key points are as follows:

- As written, it is impossible to see how any choice but Alternative #1 could be selected. It is possible that NPS could make a case for Alternative #3, but an EA should look at actual alternatives to the proposed staircase on park land.
- The EA needs to be rewritten to clarify that ANILCA 1110(b) provides the authority for construction of the staircase, and that the Special Use Permit is not actually related to ANILCA access provisions.
- The section on acoustic impacts needs to be rewritten since it is presently inconsistent, potentially leading to incorrect conclusions.
- The Special Use Permit for glacier caches and helicopter sling loads should be rejected since the activity would further impair wilderness resources values and natural soundscapes that are already impaired according to NPS's own standards.



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- If NPS were against all reason to approve the Special Use Permit, it should not include the ability to store aviation fuel on the NPS property. The operator should report helicopter operations year-round, not just April 1 to July 31.

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