

Appeals from the issuance by the McGrath Resource Area Manager, Anchorage, Alaska, Bureau of Land Management, of a special recreation use permit allowing the use of federally owned portions of the Iditarod National Historic Trail for a snowmobile race. AA-052758.

Appeals dismissed in part; decision affirmed.

1. Appeals -- Notice: Generally -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Timely Filing

A motion to dismiss an appeal on the grounds that the appellant failed to file a timely notice of appeal within 30 days of actual notice of the BLM decision will be denied where there is no evidence in the record of when the appellant had such notice.

2. Appeals -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Standing to Appeal

A person who is a party to a case and who has a cognizable interest which has been adversely affected will be considered to have standing to appeal pursuant to 43 CFR 4.410(a). Where the appellant's interest is only that of a deeply concerned citizen, the appeal must be dismissed for lack of standing.

3. Special Use Permits

A BLM determination to issue a special recreation use permit for a snowmobile race on the Iditarod National Historic Trail is not inconsistent with the nature and purpose of that trail which commemorates the Alaska gold rush era, where the permit contains numerous stipulations designed to protect the public and the environment.

4. National Historic Preservation Act: Applicability -- Special Use Permits

The National Historic Preservation Act, 16 U.S.C. § 470f (1982), provides that the head of any Federal

agency having authority to license any undertaking shall take into account the effect on any property eligible for inclusion on the Register of Historic Places and provide the Advisory Council on Historic Preservation the opportunity to comment. Consultation with the Advisory Council is not necessary, however, where during the consideration of an application for a special recreation use permit for the Iditarod National Historic Trail, BLM makes a determination of no effect pursuant to 36 CFR 800.4(b)(1) and that determination is supported by the record in the case.

APPEARANCES: Geoffrey Y. Parker, Esq., Anchorage, Alaska, for appellants Sharon Long and Beverly Jerue; Richard Lafferty, Anchorage, Alaska, pro se; Dennis Hopewell, Esq., Deputy Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On February 10, 1984, the McGrath Resource Area Manager, Anchorage, Alaska, Bureau of Land Management (BLM), issued special recreation use permit AA-052758 to the Iron Dog Iditarod Association (Association) authorizing the use of approximately 180 miles of the Iditarod National Historic Trail from March 25 through April 4, 1984, for a snowmobile race.

Sharon Long, Beverly Jerue, and Richard Lafferty filed appeals from that action. BLM filed a request for an order by the Board placing the BLM decision in full force and effect. 1/ BLM also filed a motion to dismiss the Long appeal charging a lack of standing.

On March 16, 1984, the Board issued an order pursuant to 43 CFR 4.21(a) placing the decision in full force and effect. 2/ The Board did not rule on the motion to dismiss. The race was held in late March.

On appeal Long and Jerue argue, inter alia, that (1) BLM violated the National Trails System Act (NTSA), as amended, 16 U.S.C.A. °° 1241-1251 (West Supp. 1983), by failing to maintain and consult with the Iditarod National Historic Trail Advisory Council; (2) BLM failed to adopt a comprehensive management plan for the trail as required by the NTSA; (3) the permit was inadequate because it only covered 180 miles of the approximately 970 miles of the trail used by the Iron Dog race; (4) BLM violated the substantive provisions of the National Historic Preservation Act, 16 U.S.C. ° 470f (1982), and its implementing regulations by failing to consult with the Advisory Council on Historic Preservation; and (5) BLM neglected to consult with various Native

1/ Although the Association filed a similar request, it never made a formal entry of appearance or sought intervention in the appeals.

2/ The United States District Court denied a request to enjoin the snowmobile race finding that plaintiff, Richard Lafferty, lacked standing to maintain the action; that he failed to show that BLM erred in issuing the permit; and that he failed to demonstrate any likelihood that he would suffer irreparable harm or severe hardships if the request were

denied. Lafferty v. BLM, No. A84-099 (D. Alaska Mar. 23, 1984).

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corporations who had selected lands subject to the permit. Appellant Lafferty makes various charges concerning the granting of the permit and also argues that BLM failed to consider and adequately guard the public safety during the running of the race.

BLM has submitted a detailed response to all these arguments; however, it also renews its request that the Long appeal, as well as the Jerue and Lafferty appeals, be dismissed. It asserts that the Jerue and Lafferty appeals should be dismissed as untimely and that all three appeals are subject to dismissal because each of the appellants lacks standing.

We will first address BLM's contention that two of the appeals are untimely. The action in question is the issuance of the permit which occurred on February 10, 1983. The pertinent regulation, 43 CFR 4.411(a), provides:

(a) A person who wishes to appeal to the Board must file in the office of the officer who made the decision (not the Board) a notice that he wishes to appeal. The notice of appeal must give the serial number or other identification of the case and must be transmitted in time to be filed in the office where it is required to be filed within 30 days after the person taking the appeal is served with the decision from which he is appealing, or it [sic] publication of the decision in the Federal Register is made, within 30 days after publication of the decision in the Federal Register, whichever shall occur first.

Regulation 43 CFR 4.401(a) provides that a delay in filing may be waived if the document is filed not later than 10 days after it was required to be filed, and it is determined that the document was transmitted or probably transmitted before the end of the period in which it was required to be filed.

The Long appeal was timely filed on March 7, 1984. BLM charges that the Jerue appeal was filed on March 13, 1984, and the Lafferty appeal was filed March 14, 1984. BLM concludes that they were, therefore, filed 2 and 3 days late, respectively. The record in the case shows that the Jerue appeal was deposited in the mail addressed to BLM on March 13, 1984, and actually received by BLM on March 15, 1984. Lafferty's proof of service states that his appeal was hand delivered to BLM on March 13, 1984. Regardless of whether the actual transmission and receipt dates are the 13th, 14th, or 15th of March, the record is clear that neither the Jerue nor Lafferty appeal was transmitted or received prior to the 30th day for filing, counted from February 10, 1984, that date being March 12, 1984 (March 11 being a Sunday. 3/

3/ The Jerue appeal was actually styled as an "Amended Notice of Appeal." Counsel for Long filed the amended notice on behalf of Jerue stating that Long and Jerue "now seek to amend the original notice to bring Ms. Jerue into the appeal as an appellant." The regulations contain no provision for amending a notice of appeal. Appellant Jerue's notice will be considered as a notice of appeal on her own behalf and questions of its

timeliness and her standing will be addressed.

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[1] The question, however, is when these notices of appeal were required to be filed. The regulation provides that notice of appeal is due within 30 days from the date the person is served with a copy of the decision or within 30 days from publication in the Federal Register, whichever is first. In this case neither Jerue nor Lafferty was served with a copy of the BLM action. Likewise, there is no evidence that notice of that action was published in the Federal Register.

BLM argues that both Jerue and Lafferty had actual notice of the action on February 10, 1984. The basis for this argument by BLM is set forth at page 5 of its answer as follows:

[T]hey undoubtedly had actual knowledge of the action on February 10, 1984. Both were actively involved in a public action group which sought to have the permit denied and both participated in a public hearing on the issue held on February 9, 1984. When the permit was issued on February 10, 1984 a press release was also made and the local media carried the story the same day. As active participants in an organized effort to stop issuance of the permit, Jerue and Lafferty were following the matter closely and had been previously advised that BLM would make a final decision on February 10, 1984. When the permit was issued on February 10, 1984 and the story reported in the local media both Jerue and Lafferty undoubtedly became aware of BLM's final decision.

Clearly, one who has actual knowledge of a BLM decision may not assert a failure of service under 43 CFR 4.411 as a way of extending the appeal period. See Nabesna Native Corp., Inc. (On Reconsideration), 83 IBLA 82 (1984). In this case the record does not support a finding that Jerue and Lafferty had actual knowledge of the BLM action on February 10, 1984, despite BLM's assertion that they undoubtedly did. Although it may very well be, as claimed by BLM, that Jerue and Lafferty had actual notice on that date, we are unable to make such a finding based on the present record. Therefore, we must deny the motion to dismiss the appeals of Jerue and Lafferty for untimeliness.

[2] BLM has also moved to dismiss the appeals of all three appellants for lack of standing. Regulation 43 CFR 4.410 provides: "Any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management or an administrative law judge shall have a right of appeal to the Board * * *." The Board has interpreted this regulation to require that one be both a party to the BLM decision and be adversely affected by that decision. Oregon Natural Resources Council, 78 IBLA 124 (1984); Phelps Dodge Corp., 72 IBLA 226 (1983); In re Pacific Coast Molybdenum Co., 68 IBLA 325, 331 (1982); California Association of Four Wheel Drive Clubs, 30 IBLA 383 (1977). Here, each appellant in one way or another actively participated in the decisionmaking process regarding the subject matter of this appeal. 4/

4/ Counsel for Long states that, as a member of the public, Long worked with the "Fact Finding Committee" which was a group organized to oppose the permit. He points out that she also signed up to speak at a Feb. 9, 1984, BLM public hearing on the permit, but he

alleges that she did not speak because

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Thus, we find that each was a "party to a case" within the meaning of 43 CFR 4.411.

The question is whether appellants were adversely affected. In order to be adversely affected the record must show that appellants have a legally recognizable interest. In re Pacific Coast Molybdenum Co., supra at 331. Although determinations of judicial standing and administrative standing cannot be said to turn on the same considerations, the Board has found court cases discussing judicial standing to be a useful guide to the types of interests which are properly considered in adjudicating administrative appeals. Oregon Natural Resources Council, supra at 125; In re Pacific Coast Molybdenum, supra at 332. In addition, the Board has not limited the affected interests to economic or property rights. It has found use of the land in dispute or ownership of adjoining land a sufficient interest. California Association of Four Wheel Drive Clubs, supra.

With regard to appellant Lafferty, BLM charges that his sole interest is as a concerned citizen. In the district court action (Lafferty v. BLM, supra) Lafferty filed an affidavit of injury in which he stated that he was "emotionally injured by the thought of permitting speeding over the Iditarod National Historic Trail because I see this proposed speeding as a desecration of this historic resource." In dismissing Lafferty's district court action, the court stated, citing McMichael v. County of Napa, 709 F.2d 1268, 1270 (9th Cir. 1983), that he had failed to assert any distinct and palpable injury to him which would not be shared in substantially equal measure by all or a large class of citizens. While the record reveals a genuine concern by Lafferty, it does not disclose a cognizable interest.

Lafferty's interest can best be described as that of a deeply concerned citizen. See Oregon Natural Resources Council, supra at 126. Without more, his appeal is not properly before us and must be dismissed.

BLM contends in its motion to dismiss that Long has no cognizable interest which has been adversely affected. BLM asserts that the fact that Long is an Alaska resident and a former Senate aide who worked to have the Iditarod Trail designated as a national historic trail does not establish that she has a cognizable interest. BLM characterizes her interest as merely the same as that shared by numerous other members of the public.

In response Long asserts that she uses portions of the Iditarod Trail in and around Anchorage 5/ and that her husband skied part of the trail.

fn. 4 (continued)

of the large number of speakers from the Committee and the public who represented her view. Counsel states that she sought to give her time to those other speakers. Counsel also claims that Jerue worked with the Fact Finding Committee and testified at the Feb. 9, 1984, hearing. The record shows that Lafferty participated in the Feb. 9, 1984, hearing. 5/ In his "Memorandum in Opposition to Motion to Dismiss" counsel for Long states that she uses parts of the trail in Chugach State Park for hiking. Counsel appended a map to his memorandum indicating the area of usage in the park. The map indicates it is to the east and south of Anchorage. Counsel further states that Long has hiked part of the trail

"in the Chugach National Forest to the south of Anchorage" (Memorandum at 7).

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Long also contends that most of the members of the Fact Finding Committee are mushers, and she seeks to protect their interests.

In its answer BLM correctly points out that Long's relationship with the Fact Finding Committee, which is composed of mushers, and her husband's use of the trail are irrelevant to a consideration of whether she has a cognizable interest. Further, BLM argues that Long's alleged use of the trail is limited to areas which were not affected by the permit to use BLM lands outside of the Anchorage area. The Iron Dog race was scheduled to begin at Big Lake, Alaska, BLM states, but, in fact, began much farther north at McGrath. BLM asserts that Long made no claim of use in that area.

The Iditarod Trail is 2,037 miles long. The permit application identified 1,100 miles of the trail for the race. Approximately 900 miles of trail were used as the Iron Dog race course. The special recreation use permit related to 180 miles of BLM-administered land traversed by that course. There is no evidence in the record that Long uses any of the lands traversed by the Iron Dog race course. Her interest is only that of a genuinely concerned citizen, and, therefore, not sufficient to confer standing. See Oregon Natural Resources Council, *supra* at 126. Long's appeal is not properly before us, and it must be dismissed.

BLM also asserts that Jerue has no legally recognizable interest which has been adversely affected. The record, however, does not support this contention by BLM. Counsel for Jerue argues that she has such an interest, citing the fact that she is an Iditarod musher, having run the race in 1983 and having practiced for it on parts of the trail in 1984. He also points out that she spoke at the public meeting on February 9, and she is a shareholder of Doyon Native Corporation, some of whose land selections were traversed by the Iron Dog race. Further, counsel states that four of Jerue's sled dogs were injured in February 1984 due to conditions on the Iditarod Trail (washboard bumps) caused by snowmobiles.

BLM claims that there is no way to tell whether the washboard bumps resulted from snowmobiles practicing for the Iron Dog race or whether they were the result of general snowmobile use. BLM appears to argue that only use by the former would somehow be sufficient to support standing for Jerue. In addition, BLM states that any injury to Doyon Native Corporation lands would support a cognizable legal claim for the corporation, not for one of its shareholders.

We find that the record establishes that Jerue has standing. The Board has stated that use of the land in dispute is sufficient to confer standing. California Association of Four Wheel Drive Clubs, *supra*. Jerue alleges that she has used the trail as a musher and that she ran the Iditarod race in 1983. BLM does not dispute this use by Jerue. We find such use sufficient to show that Jerue has a legally cognizable interest which is, arguably, adversely affected by BLM's action. Thus, we will consider the substantive issues raised in the statement of reasons filed by counsel for Long and Jerue. 6/

6/ While the Iron Dog race has taken place and specific objections to it are thus moot, we note that the possibility of future applications for permits

Appellant Jerue (hereinafter appellant) contends that conducting a snowmobile race on the Iditarod Trail violates the NTSA, supra, because it is contrary to the purposes for designation of that trail, which appellant claims were related to sled dog mushing. Appellant believes snowmobile use should be limited to noncompetitive travel.

BLM correctly points out that the NTSA permits the use of motorized vehicles on the trail system 7/ and that the NTSA was amended in 1983 to specifically list snowmobiling as a potential use of the national trails system. 8/ The legislative history of the 1983 amendments to the NTSA provides that motorized use may be permitted where appropriate, but that such authority "must be exercised in keeping with those other provisions of the law that require the Secretaries to protect the resources themselves and the users of the system." H.R. Rep. No. 28, 98th Cong., 1st Sess. 8, reprinted in 1983 U.S. Code Cong. & Ad. News 112, 119.

Therefore, the authority of the Secretary of the Interior to permit motorized use of the Iditarod Trail must be measured and weighed against the impact of the usage, i.e., will it substantially interfere with the nature and purposes of the trail? Appellant's contention is that competitive snowmobiling does substantially interfere; BLM's position is that it does not.

[3] This question necessarily turns on a determination of what the nature and purposes of the Iditarod Trail are. The trail was designated a National Historic Trail in 1978. The legislative history of that designation was set forth in S. Rep. No. 1034, 95th Cong., 2d Sess. 11-12 (1978). The description of the trail in the Senate report was taken nearly verbatim from a publication entitled "The Iditarod Trail (Seward-Nome route) and Other Alaskan Gold Rush Trails," prepared by the Bureau of Outdoor Recreation, Department of the Interior, September 1977, wherein it was stated at page 9:

The Seward-Nome route is composed of a number of trails and side trails developed at different times during the Gold Rush

fn. 6 (continued)

of this nature to use the trail and the expressed objections to any type of competitive snowmobile event on the trail militate toward consideration of the merits of the substantive issues presented. See Sierra Club, 57 IBLA 79, 80-81 (1981).

7/ 16 U.S.C.A. § 1246(c) (West Supp. 1983) provides in part: "Other uses along historic trails * * * which will not substantially interfere with the nature and purposes of the trail, and which, at the time of designation, are allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with administration of the Act." This provision represents the reality that at the time of designation, portions of certain trails, including the Iditarod, embraced parts of established transportation systems, such as State highways. BLM and appellant agree that snowmobile use of the Iditarod Trail was permitted prior to its designation in 1978 and that continued usage by snowmobiles was contemplated (Statement of Reasons at 10-11; Answer at 14).

8/ 16 U.S.C.A. § 1246(j) (West Supp. 1983), provides in part: "Potential trail uses allowed

on designated components of the national trails system may include, but not be limited to, * * * snowmobiling * * *."

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Era. The Iditarod strike began in 1908; it was the last of the major Alaskan strikes and prompted the Alaska Road Commission to improve the Rainy Pass-Kaltag section of the Seward to Nome trail. Because the Iditarod mining district was the most common destination of travelers in this last phase of the Gold Rush Era, the name Iditarod Trail has become a term of convenience to describe the many geographic and historic segments of the Seward to Nome trail. These trails, aggregating 2,037 miles, offer a rich diversity of climate, terrain, scenery, wildlife, recreation, and historic resources in an environment largely unchanged since the days of the stampede. It is the isolated, primitive quality of this historic environment that makes the Iditarod National Historic Trail proposal unique. No where in the National Trails system is there such an extensive landscape, so demanding of durability and skill during its winter season of travel. On the Iditarod, today's adventurer can duplicate the experience and challenge of yesteryear.

Appellant states that in 1973 the Iditarod race was initiated as a dog sled race from Anchorage to Nome, and that the race commemorates a historic 1925 trip in which mushers transported diphtheria serum to Nome during a winter epidemic.

Appellants' position is that competitive snowmobile racing substantially interferes with these purposes for designation. We cannot agree. The trail commemorates the gold rush era of Alaskan history. The Iditarod strike began in 1908. Appellant characterizes this rush for the gold fields as "the last of the major stampedes" (Statement of Reasons at 7). Although the principal mode of winter travel at that time was dog sledding, any competitive activity associated with the trail would appear to be consistent with the historic gold rush attitude, *i.e.*, the first to arrive had the best chance of striking it rich. Thus, we find the permitting of a competitive snowmobile race does not substantially interfere with the nature and purposes of the trail, if BLM adequately conditions the permit.

In this case BLM conducted an environmental assessment and determined that if sufficient snow cover existed and if there was compliance with certain mitigating measures, there would be no significant impacts. In accordance with the assessment the running of the race was made conditional on adequate snow cover and was made subject to various special stipulations. 9/ Appended to its answer BLM provides a copy of a memorandum dated April 12, 1984, entitled "Compliance Report -- Irondog Classic Race" (Exh. F at 1-3). BLM asserts that this report bears out the adequacy of its safety and environmental safeguards. 10/ Appellant has presented no evidence that the actual running

9/ Because of inadequate snow cover on southern portions of the trail, the race commenced at McGrath rather than Anchorage.

10/ The last page of the memorandum provides the following recommendation: "The environmental assessment completed previous to the first running of this event was essentially an accurate appraisal of predicted impacts. Adequate snow conditions (*i.e.*

depth and structure) proved to be the most significant factor affecting impacts. Given adequate snow conditions along with adequate attention given to safety of competitors and spectators, an

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of the race adversely affected the trail. We find that issuance of the special recreation use permit was not contrary to the nature and purposes of the Iditarod National Historic Trail.

Appellant also argues that the NTSA imposes various procedural requirements on agencies including the Department of the Interior which have been ignored. Specifically, appellant claims the Secretary failed to maintain the statutorily required Iditarod Trail Advisory Council, 16 U.S.C.A. § 1244(d) (West Supp. 1983), which should have been consulted concerning the requested permit. 11/ In addition, appellant claims the management plan required by the NTSA, 16 U.S.C.A. § 1244(f) (West Supp. 1983), to be adopted within 2 fiscal years of 1978 has not been completed.

BLM admits in its answer that the advisory council has not been maintained, and although a draft management plan has been completed, it has never been finalized. While the establishment of a council and preparation of a plan are statutory requirements, BLM argues that the statute provides no sanction for failing to do so. In the absence of the council or plan, BLM asserts that it acted in a reasonable manner in processing the permit application in accordance with applicable regulations in 43 CFR 8372. It states that it conducted a public hearing and solicited written public comments.

It is clear that the Department has not complied with the directives of the NTSA, and BLM has presented no excuses for these failures. However, BLM correctly points out that such failures should not mean that BLM is powerless to manage the Iditarod Trail. In the absence of a council and management plan, BLM sought to solicit public input to its decisionmaking process. Its environmental assessment and permit conditions and stipulations document its careful consideration of the permit request. 12/

[4] Appellant next contends that BLM failed to consult with the Advisory Council on Historic Preservation in violation of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f (1982), and applicable regulations, 36 CFR 800.1. BLM's position is that it was not required to do so because it properly made a determination of "no effect" in accordance with 36 CFR 800.4(b)(1).

fn. 10 (continued)

[sic] snowmobile event of similar scale could be permitted next year." It was further stated that additional compliance efforts would be needed if the race were to be run again. The BLM hydrologist recommended on-ground summer assessment of the trail in order to establish current conditions and values and as an aid in developing permit stipulations. (Exh. F. at 3, 5). 11/ The Secretary charged with the administration of each trail is required to establish an advisory council, unless there is a lack of "adequate public interest." 16 U.S.C.A. § 1244(d) (West Supp. 1983). It does not appear that there is such a lack of interest in the Iditarod Trail.

12/ Appellant has requested that the Board direct BLM to reestablish the Iditarod National Historic Trail Council and to complete the management plan. Such action is beyond the purview of this appeal. However, we note that given the interest in the Iron

Dog race manifested by the record in this case reestablishment of the Council would appear to be warranted.

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The NHPA requires that the head of any Federal agency having authority to license any undertaking take into account the effect on any property eligible for inclusion on the Register of Historic Places and provide the Advisory Council on Historic Preservation a reasonable opportunity to comment. 16 U.S.C. § 470f (1982). ^{13/} Undertakings include new program activities carried out pursuant to a Federal permit. 36 CFR 800.2(c).

The regulations at 36 CFR 800.4(b) provide that for each eligible property located within the area of potential environmental impact of the undertaking, "the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Effect, (§ 800.3(a)), to determine whether the undertaking will have an effect upon the historical, architectural, archeological, or cultural characteristics of the property that qualified it to meet National Register Criteria." The regulations further provide that if the agency official, in consultation with the State Historic Preservation Officer, finds that the undertaking will not affect these characteristics, the undertaking may proceed. 36 CFR 800.4(b)(1). If a determination of effect is made, the Criteria of Adverse Effect, set forth in 36 CFR 800.3(b), must be applied to determine whether the effect of the undertaking may be adverse. 36 CFR 800.4(b)(2). Where there is a determination of no effect, appellant states that the council need not be consulted.

The criteria of effect and adverse effect are set forth in 36 CFR 800.3 as follows:

The following criteria shall be used to determine whether an undertaking has an effect or an adverse effect in accordance with these regulations.

(a) Criteria of Effect. The effect of a Federal, federally assisted or federally licensed undertaking on a National Register or eligible property is evaluated in the context of the historical, architectural, archeological, or cultural significance possessed by the property. An undertaking shall be considered to have an effect whenever any condition of the undertaking causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological, or cultural characteristics that qualify the property to meet the criteria of the National Register. An effect occurs when an undertaking changes the integrity of location, design, setting, materials, workmanship, feeling, or association of the property that contributes to its significance in accordance with the National Register criteria. An effect may be direct or indirect. Direct effects are caused by the undertaking and occur at the same time and place. Indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable. Such effects may include changes in the pattern of land use, population density or growth rate that may

^{13/} Appellant alleges that eligible properties are those that meet National Register Criteria at 36 CFR Part 60, and that BLM in its draft management plan for the Iditarod Trail determined that the trail itself is eligible. BLM does not dispute this claim.

affect on properties of historical, architectural, archeological, or cultural significance.

(b) Criteria of Adverse Effect. Adverse effects on National Register or eligible properties may occur under conditions which include but are not limited to:

- (1) Destruction or alteration of all or part of a property;
- (2) Isolation from or alteration of the property's surrounding environment;
- (3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;
- (4) Neglect of a property resulting in its deterioration or destruction.
- (5) Transfer or sale of a property without adequate conditions or restrictions regarding preservation, maintenance, or use. [Emphasis in original.]

Appellant argues BLM's "no effect" determination was conclusory. She points to a statement in the environmental assessment (EA) at page 10:

The impact of the snowmobile event on the cultural resources is minimal. The State Historic Preservation Officer (SHPO) has issued an opinion that the snowmobile race will not detract from the qualities of the trail and the associated sites which make it eligible for inclusion in the National Register of Historic Places. A written concurrence [sic] of a determination of "No Effect" per Title 36 CFR 800 was given by the SHPO on January 17, 1984. This determination and concurrence documents are found in the Appendix * * *. [14/]

Appellant complains the concurrence was also cursory and there were no concurrence documents.

14/ In a letter dated Jan. 16, 1984, BLM sought the concurrence of the SHPO in a determination of no effect. In the letter BLM explained that it was proposing to issue a special recreation use permit for the Iron Dog race; that approval would allow travel over portions of the Iditarod Trail and past associated historic sites; but that no use was proposed for vacant historic structures. In a letter dated the following day the SHPO stated: "We have reviewed the materials provided concerning proposed permitting of a competitive sled dog race (permit AA-044401) and a competitive snowmobile race (permit AA-052758) on the Iditarod National Historic Trail System.

"It is our opinion that these races will not detract from the qualities of the trail

which make it eligible for inclusion in the National Register of Historic Places. We therefore concur with your determination of 'No Effect' per 36 CFR 800." (EA at Appendix B).

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Appellant charges that under the regulations "effect" is broadly defined, and that an effect need not be physical. It may be indirect, appellant contends, occurring later in time, such as future land use changes, increased snowmobile traffic or more Iron Dog races. In addition, appellant claims that the race introduced audible and atmospheric elements which were out of character with the property, and thereby created an adverse effect.

BLM believes the no-effect determination was justified. It argues that since the race was consistent with the purposes of the trail it did not change the historical and cultural aspects of the trail. BLM states that the compliance report established that there was no physical damage from the race. As to indirect impacts, BLM states the permit did not signal any increased or changed land-use patterns and issuance of the permit was not intended to establish any preference with reference to future permit requests.

There is no question that BLM's determination of no effects was conclusory, and that it should have set forth with particularity the reasons for its conclusion. 15/ However, we agree with BLM that a no-effect determination was appropriate. The record establishes that issuance of the permit and the subsequent running of the race had no effect or adverse effect on the historical or cultural characteristics that qualify the property to meet National Register criteria. Likewise, BLM has established that the undertaking involved no indirect effects. The audible and atmospheric elements referred to by appellant are not inconsistent with present use of the trail since snowmobiles are an established and permissible use.

Appellant requests that we direct BLM in the future to consult with the Advisory Council when considering future applications for the Iron Dog or similar races on the trail. We decline to do so. As long as the trail is under consideration for National Register designation, or if it is, in fact, designated, BLM must comply with the regulations in 36 CFR Part 800. That means BLM must determine whether an undertaking has an effect or adverse effect. In that respect BLM will be guided by the regulations. However, we note that if BLM decides that an undertaking has no effect, it should document that determination in accordance with 36 CFR 800.4(b)(1). 16/

The permit in this case was insufficient, appellant argues, because it permitted use of only 180 miles of the nearly 1,000 miles of the trail proposed to be used. Appellant states that much of the land traversed by the Iron Dog race was conveyed subsequent to the 1978 designation of the trail, and the trail was reserved as an easement in those conveyances. Appellant asks the Board to clarify the status of the trail on such lands. In addition, appellant contends BLM failed to consult with Native corporations having unconveyed selections on lands crossed by the Iron Dog race.

15/ The no-effect regulation, 36 CFR 800.4(b)(1), states that the "Agency Official shall document each Determination of No Effect, which shall be available for public inspection."

16/ Appellant also asked the Board to direct BLM to nominate to the National Register appropriate properties along the trail and the trail itself. We need not consider this

request since it involves a matter which is not before us in this appeal.

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In response to these claims BLM concedes that it should have included all federally owned or administered portions of the trail in the permit 17/ and that the Native corporations should have been consulted. BLM asserts, however, that it satisfied these requirements and, in any event, failure to do these things does not invalidate the permit.

BLM argues that in issuing the permit the EA considered all the trail; therefore, the general-use provision covered use of the trail where a reservation for the trail was reserved in tentative approvals and patents to the State, in patents to private parties, or for unconveyed, selected lands. Despite this claim of general-use authorization, it is clear that specific authorization should have been made and should be made for any future permit authorizing trail use.

Likewise, the permit stipulation requiring the Iron Dog Association to notify village corporations concerning the race did not comply with the consultation requirement set forth at 43 CFR 2650.1(a)(2)(i). 18/ In this regard, however, BLM states in its answer:

In the future the views of affected Native corporations, both villages and regions, will have to be obtained and considered. Moreover, pursuant to the applicable BLM Instruction Memorandum, I.M. No. AK-76-237, the permit will be approved in the face of objections by Native corporations only if the State Director finds it is in the public's best interest to grant the permit.

(Answer at 22).

In summary, the appeals of Lafferty and Long are dismissed for lack of standing. While the Jerue appeal has pointed out some deficiencies in BLM's consideration of the permit application in this case, the actual running of the Iron Dog race effectively mooted the appeal as to that particular permit. While we conclude that issuance of the permit was not improper, our decision makes clear that BLM must correct these deficiencies in its consideration of any further permit applications of this type for use of the Iditarod Trail.

To the extent arguments have been raised or motions filed and they have not been expressly addressed, those arguments and motions have been considered and are hereby rejected or denied.

17/ BLM explains in footnote 3 of its answer at page 21 as follows:

"Where conveyance documents to the State of Alaska, including Tentative Approvals and Patents, and to private parties, which were issued after designation of the Iditarod Trail in 1978, contain reservations for Iditarod Trail, the BLM can issue a permit to use the trail. Conveyance documents to Native corporations contain 17(b) [43 U.S.C. § 1616(b) (1976)] easement reservations and the public may use the trail in a manner consistent with the 17(b) reservation, but the BLM will not issue a permit on such land."

18/ That regulation provides: "Prior to the Secretary's making contracts or issuing leases, permits, rights-of-way, or easements, the views of the concerned regions or

villages shall be obtained and considered, except as provided in paragraph (a)(2)(ii) of this section."

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Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeals of Lafferty and Long are dismissed and the action by BLM is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Edward W. Stuebing
Administrative Judge