CHAPTER 1: PURPOSE & NEED

1.1 Purpose

The National Park Service (NPS) is considering issuing right of way certificates of access (RWCA) to persons with established and maintainable access to land holdings within or effectively surrounded by Wrangell-St. Elias National Park and Preserve (WRST). Access to State or privately-owned land in Alaska national parks is governed by the Alaska National Interest Lands Conservation Act (ANILCA) Section 1110(b), which provides: "Notwithstanding any other provisions of this Act or other law, … the State or private owner or occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic or other purposes." The proposed RWCAs assure the inholders access rights, not property rights. Procedures to provide access to inholdings within conservation system units (WRST in this case), are set forth in 43 CFR 36.10. The regulation at 43 CFR 36.10(b) states:

> It is the purpose of this section to ensure adequate and feasible access across areas for any person who has a valid inholding. A right-of-way permit for access to an inholding pursuant to this section is required only when this part does not provide for adequate and feasible access without a right-of-way permit.

The purpose of this program is to authorize access to inholdings under Section 1110(b) of ANILCA for established and maintainable routes and methods of access. This programmatic environmental assessment (EA) evaluates the environmental effects on the resources and values of WRST of issuing right of way certificates of access for the subject access facilities. Established and maintainable routes and methods of access considered in this EA are those that currently exist, have not resulted in unacceptable impacts to park resources and values, and can be maintained in their present condition and character and essentially within their existing footprints. Established access facilities include roads, off-road vehicle (ORV) trails, airstrips, and waterlines. These access facilities have been grouped into five classes (described in chapter 2), including well-constructed gravel surfaces, bladed surfaces, brushed and evident tracks or trails, barren routes, and waterlines with associated paths. The program establishes criteria by which to determine whether the existing access facilities, in their current conditions and methods of use, have acceptable impacts on park resources and values.

The NPS developed the scope of this proposal over the past several years. During this time the NPS inventoried many of the existing access facilities on park lands, including gathering information such as centerline coordinates, measurements of widths, lengths, photographs, characterizing surface materials, and a broad brush assessment of environmental conditions, including wetlands, stream crossings, braiding, presence of cultural resources, vegetation, and other conditions. Concurrently, the NPS initiated development of an Access Users' Guide (Interim User's Guide to Accessing Inholdings in National Park System Units in Alaska [USNPS 2007]) to assist the public with securing access across park public lands under Title XI of ANILCA. This project resulted

in numerous public meetings across the State of Alaska, especially in communities around WRST. The NPS inventory has documented several established and maintainable facilities that provide adequate and feasible access to private lands. The NPS proposes to issue RWCAs for these facilities pursuant to ANILCA access regulations for access to inholdings and the Access Users Guide.

Examples of access *not* requiring a RWCAs include special access allowed under ANILCA 1110(a) for traditional activities and for travel to and from villages and homesites. Special access methods are regulated by 43 CFR 36.11, which allows for the use of snowmachines (during periods of adequate snow cover and frozen river conditions), motorboats, nonmotorized surface transportation (such as dog teams), fixed-wing aircraft and off-road vehicle use (on designated routes and areas). Some State or privately owned properties in WRST have access immediately from a State of Alaska Highway or other ROWs, and no access across park lands is used or needed.

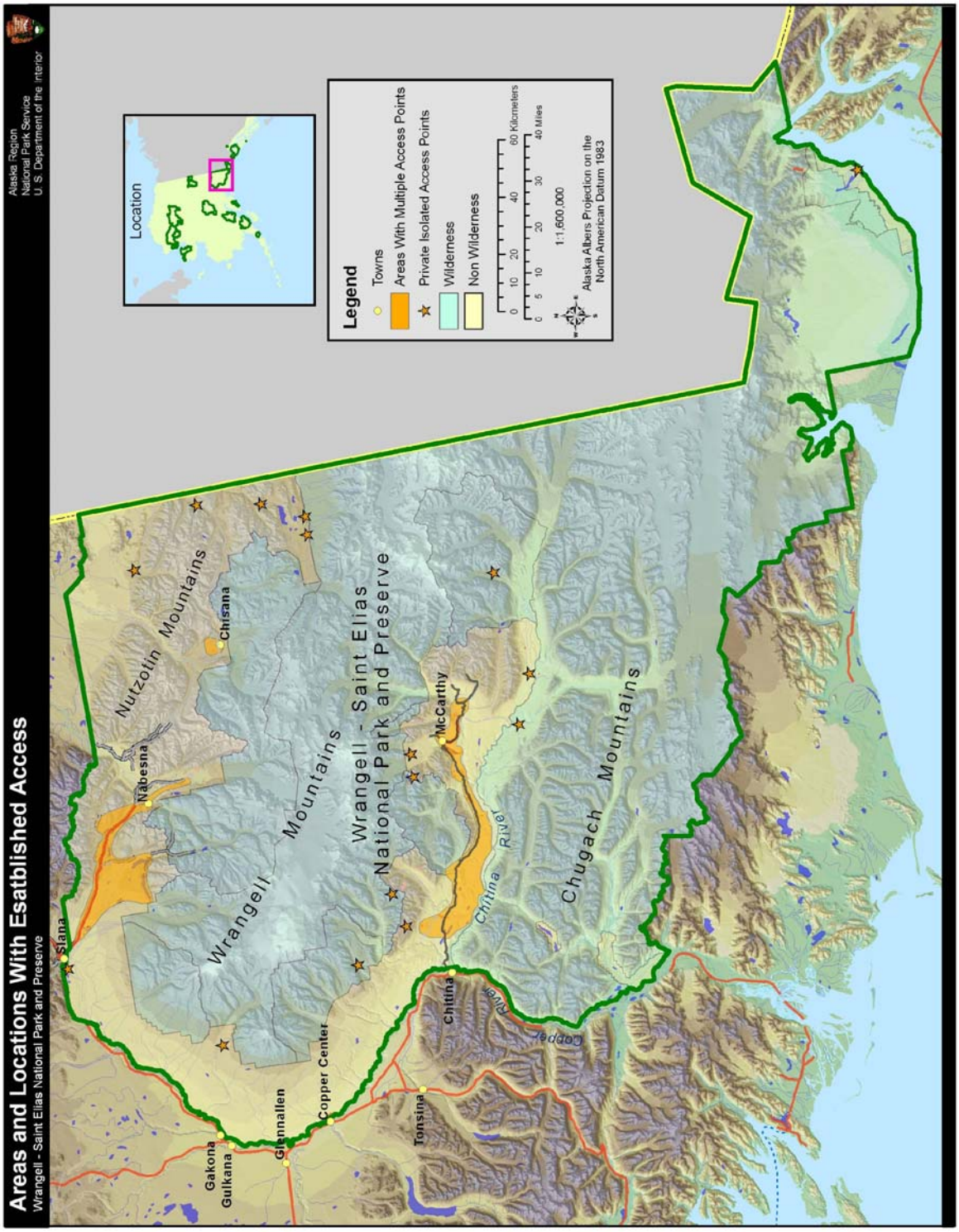
This environmental assessment (EA) analyzes the potential environmental impacts which could result from the alternatives considered, including the No-Action alternative. This EA has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, regulations of the Council of Environmental Quality (CEQ) (40 Code of Federal Regulations 1508.9), and the NPS NEPA compliance guidance handbook (Director's Order (DO)-12, *Conservation Planning, Environmental Impact Analysis, and Decision Making*)(NPS, 2001a).

1.2 Need

Numerous nonfederal lands exist within or are effectively surrounded by WRST. Some of the landowners or valid occupiers have well-established driveways, roads, or other facilities to these properties (Figure 1.1). The NPS inventory to date indicates that about 90 landowners currently use NPS lands to reach their inholdings. An estimated additional 40 landowners previously used or may need to use NPS lands in the future for access to their inholdings. Very few of these access facilities, however, have ROWs or other current authorization (e.g. special use permit) to cross public park lands.

RWCAs are needed to describe and document the access methods and means to provide access for the landowners or valid occupiers. Issuing RWCAs would also protect park resources and values by avoiding unacceptable impacts. In addition to determining what existing facilities meet technical criteria for acceptable impacts, there is a need to monitor approved facilities to ensure they are maintained in a condition that protects park resources and values and to ensure that impairment will not occur. This programmatic EA articulates the approach WRST managers would follow to document maintainable facilities with acceptable environmental effects and authorize access to non-federal lands within or effectively surrounded by park lands, and to provide adequate and feasible access for economic and other purposes. By identifying the classes

Figure 1.1. Overview locations of existing access facilities in WRST addressed in the EA



of established and maintainable access facilities and conducting the requisite environmental compliance, qualifying applicants should be able to receive their ANILCA 1110(b) RWCAs more quickly. NEPA encourages consideration of similar actions in one document (40 CFR 1508.25 (a)(3)), and grouping established and maintainable access facilities in one EA is also more efficient for the NPS than preparing separate EAs for each application.

In addition to complying with ANILCA 1110(b), this EA identifies for park managers those access facilities potentially qualifying as established and maintainable access facilities. Table 1.1 provides a summary of State and private access facilities across public park lands.

Table 1.1 Summary of Inholding Access Facilities in Wrangell-St. Elias NP&P.

		ESTIMATED[1]	ESTIMATED	
Established Access Activity	**Description & Comment**	**Number of Access Facilities[2]**	**Extent of NPS lands**	**Considered in this EA**
Active	**Potentially Maintainable.** Includes driveways, roads, ORV trails, airstrips, 4WD tracks, routes, parking areas, and waterlines.	60	35-50 acres	Yes[3]
Active	**Maintainability not Determined** NPS Administrative uses, fording of fish bearing streams, potential for park road designation	28	35-50 acres	No
Inactive	**Maintainability not Determined** May include driveways, roads, ORV trails, airstrips, 4WD tracks, routes, parking areas, and waterlines	39	Unknown	No
Inactive	Overland winter trails and routes	7	183 miles	No
Active & Inactive	No known established use of parklands. Access is generally over existing State or Federal easements.	92	Unknown	No
Unknown	Existing inholdings with unknown method of access.	25	Unknown	No

[1] Values in columns labeled "Estimated" are approximate.
[2] Some facilities may provide access for multiple inholdings and may require multiple RWCA's.
[3] This is the only group of inholdings addressed in this EA.

1.3 Background

1.3.1 Laws, Regulations, and Policies

1.3.1.1 ANILCA

Alaska National Interest Lands Conservation Act of 1980 (ANILCA) Section 201(9) established Wrangell-Saint Elias National Park and Preserve to:

> maintain unimpaired the scenic beauty and quality of mountain peaks, foothills, glacial systems, lakes, streams, valleys, and coastal landscapes in their natural state; to protect the habitat and populations of fish and wildlife including but not limited to caribou, brown/grizzly bears, Dall sheep, moose, wolves, trumpeter swans and other waterfowl, and marine mammals; and to provide continued opportunities, including reasonable access for mountain climbing, mountaineering, other wilderness activities. Subsistence uses by local rural residents shall be permitted in the park, where such uses are traditional.

ANILCA Section 701(8) established the Wrangell-Saint Elias Wilderness of approximately eight million seven hundred thousand acres.

ANILCA Section 1110(b) provides for special access and access to inholdings:

> Notwithstanding any other provisions of this Act or other law, in any case in which State owned or privately owned land, including subsurface rights of such owners underlying public lands, or valid mining claim or other valid occupancy is within or effectively surrounded by one or more conservation system units, national recreation areas, or those public lands designated as wilderness study, the State or private owner or occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land by such State or private owner, or occupier and their successors in interest. Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.

The Department of the Interior promulgated regulations for Title XI of ANILCA in 1986 at 43 CFR 36.10 “Access to Inholdings”. The regulation defines inholdings and other pertinent terms for access to inholdings; identifies those needing a ROW, describes how to apply for a ROW, and describes how the agency makes decisions to issue ROWs. The pertinent regulation at Title 43 CFR 36.10(e)(1) states: “… the federal agency shall specify in a ROW permit the route(s) and method(s) across the area(s) desired by the applicant, unless it is determined that:

(i) The route or method of access would cause significant adverse impacts on natural or other values of the area and adequate and feasible access otherwise exists; or

(ii) The route or method of access would jeopardize public health and safety and adequate and feasible access otherwise exists; or

(iii) The route or method of access is inconsistent with the management plans for the area or purposes for which the area was established and adequate and feasible access otherwise exists; or

(iv) The method is unnecessary to accomplish the applicants land use objective."

1.3.1.2 NPS Authorities and Policies

The NPS Organic Act of 1916 and the General Authorities Act of 1970 prohibit impairment of park resources and values pursuant to the purposes for which each unit was established. The 2006 NPS Management Policies uses the terms "resources and values" to mean the full spectrum of tangible and intangible attributes for which the park is established and managed, including the Organic Act's fundamental purpose and any additional purposes as stated in the park's establishing legislation. The impairment of park resources and values may not be allowed unless directly and specifically provided by statute. The primary responsibility of the NPS is to ensure that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.

The evaluation of whether impacts of a proposed action would lead to an impairment of park resources and values is included in this environmental assessment. Impairment is more likely when there are potential impacts to a resource or value whose conservation is:

- necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park;
- key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or
- identified as a goal in the park's general management plan or other relevant NPS planning documents.

NPS Management Policies 2006 (NPS 2006) call for park managers to avoid impacts that they determine are unacceptable. "These are impacts that fall short of impairment, but are still not acceptable within a particular park's environment (NPS 2006, 1.4.7.1). The NPS Management Policies 2006 (NPS 2006) also address rights of way for access to private property in section 8.6.5, through wilderness areas in section 6.4.8, and non-NPS roads in section 9.2.1.2. Furthermore, use of borrow material (e.g. sand and gravel) are addressed in section 9.1.3.3, which states, "Materials from borrow pits, quarries, and other clay, stone, gravel or sand sources on NPS lands, including submerged lands, will be extracted and used only 1) by the Park Service or its agents or contractors; 2) for in-park administrative uses; 3) after compliance with NEPA and the National Historic Preservation Act; 4) after compliance with other applicable federal, state, and local requirements."

1.3.2 Relationship of Proposal to Other Planning Projects

1.3.2.1 WRST GMP

The 1986 Wrangell-Saint Elias General Management Plan (GMP) addresses access to inholdings (pp. 16 and 18):

> Access is guaranteed to nonfederal land, subsurface rights, and valid mining claims, but any such access is subject to reasonable regulation to protect the values of the public lands that are crossed (ANILCA Sections 1110 and 1111). Existing regulations (43 CFR 36.10) govern access to inholdings. The use of ORVs for access to inholdings may be allowed under 43 CFR 36.10 by the superintendent on a case-by-case basis on designated routes. In determining what routes and restrictions should apply to the use of ORVs for access to inholdings, the superintendent will consider the potential for resource damage and user conflicts and the availability of alternate routes and methods of transportation. The use of ORVs for access to inholdings will only be allowed upon a finding that other traditional methods of access will not provide adequate and feasible access.
>
> The use of ORVs for subsistence purposes and access to inholdings within designated wilderness is permitted pursuant to sections 811 and 1110(b) of ANILCA.

1.3.2.2 Past and Future NEPA and Planning Efforts for Access within WRST

Twelve other NEPA documents have or are addressing access facilities in WRST. In most cases these analyses have resulted in the issuance of either short-term Special Use Permits or ANILCA 1110(b) access authorizations. These access authorizations generally address winter access trails, roads, mining plans of operation, and airstrips. A list of previous and ongoing access planning documents and decisions is provided in appendix A.

1.4 Issues

To focus the environmental assessment, the NPS selected specific issues for further analysis and eliminated others from evaluation.

The NPS conducted internal scoping sessions in 2006 to identify issues described below. The NPS has also engaged in lengthy consultation over the past two years with the State of Alaska, landowners, and the general public on access across NPS lands during development of an NPS Alaska Access User Guide (USNPS 2007). Access to inholdings in WRST has been a central part of this effort. Maintenance tools and methods for various access facility classes are briefly described in the alternatives chapter, and more detail is given in appendix B for each access class.

1.4.1 Issues Selected for Detailed Analysis

1.4.1.1 Aquatic Resources and Fish

The use and maintenance of established access routes and means near water bodies could disturb or attract aquatic organisms and fish, thereby altering their use of habitat and migration patterns.

1.4.1.2 Cultural Resources

The use and maintenance of established access routes and means could affect archeological or historical resources, particularly where ground disturbing activities might take place.

1.4.1.3 Inholder Property

The documentation of established inholder access routes and means could remove uncertainty regarding access to private lands, affect private property value, and enable landowners to achieve the intended uses of their lands.

1.4.1.4 Public Access and Recreational Use

The use and maintenance of established inholder access routes and means could result in increased public access to areas near or on private lands thereby leading to potential user conflicts or trespass issues. The use and maintenance of established access routes and means could affect natural sounds and visual quality enjoyed by park visitors in the affected areas of the park.

1.4.1.5 Soils

The use and maintenance of established inholder access routes and means could result in the operation of motorized equipment that affect adjacent soils and substrates.

1.4.1.6 Vegetation and Wetlands

The use and maintenance of established inholder access routes and means could result in the operation of motorized equipment that could affect adjacent vegetation, including the introduction of exotic plant species and effects on rare and candidate threatened species. The use and maintenance of established access routes and means could inhibit the natural flow of water through wetlands and small drainages, thereby altering wetlands values and functions.

1.4.1.7 Wilderness

The use and maintenance of established access routes and means could detract from wilderness character and the potential to designate future Wilderness in areas eligible for such designation.

1.4.2 Issues Dismissed From Detailed Analysis

1.4.2.1 Effects on Minority and Low-Income Populations

Executive Order 12898 requires federal agencies to incorporate environmental justice into their missions by identifying and addressing high and adverse human health or environmental effects of their programs and policies on minorities and low-income populations and communities. The proposed access would not result in disproportionately high direct or indirect adverse effects on any minority or low-income population or community.

1.4.2.2 Subsistence

The use and maintenance of established inholder access routes and means would not result in a significant restriction of subsistence uses on federal public lands. Under the provisions of ANILCA (section 201(9) and title 8), local rural residents are authorized to engage in subsistence activities including hunting, fishing, and trapping in Wrangell-St. Elias National Park and Preserve. Most subsistence hunting within Wrangell-St. Elias occurs off the Nabesna and McCarthy roads and the trails that originate from them. This overlaps with the areas with multiple access points illustrated in Figure 1, however, neither of the alternatives addressed in this EA would significantly restrict subsistence uses. For additional information, see the ANILCA Section 810 Subsistence Evaluation in appendix C. See also 1.4.2.4 regarding wildlife populations and habitat.

1.4.2.3 Threatened and Endangered Species

No known threatened or endangered species are known to inhabit the established access routes and means in the park and preserve. The candidate species Kittlitz's murrelet may use habitat in the Malaspina Forelands area for breeding, but it is not expected continued use and maintenance of the established inholder access routes and means would have any effect on this species. NPS consultation with the U.S. Fish and Wildlife Service is contained in appendix D.

1.4.2.4 Wildlife and Habitat

The use and maintenance of established inholder access routes and means would result in negligible temporary disturbances to wildlife and its habitat. New effects to wildlife and its habitat are unlikely to be measurable or detectable.

1.5 Permits and Approvals Needed to Implement Project

1.5.1 Rights-of-Way

The NPS would issue ANILCA 1110(b) RWCAs to landowners whose access fits within the scope of the proposed program to authorize established and maintainable access. Each RWCA would include a map of the ROW use area and specific terms and conditions to protect park resources and values. See sections 2.3.1 and 2.3.3 for procedures to obtain ANILCA 1110(b) RWCAs and appendix E for an example RWCA with the necessary elements.

1.5.2 Clean Water Act Section 404 Permit

The inholder is responsible for obtaining any required permits from the U.S. Army Corps of Engineers (USACE). The use of nationwide permits (NWP) #3 for maintenance, # 12 for utility line activities, #14 for linear transportation corridors, or # 18 for minor discharges may be permitted by the USACE for actions that include minor filling of wetlands (see appendix F). Should any access facility result in 0.5 acres or more of fill into waters of the USA, including wetlands ultimately connecting to navigable waterways, a USACE Clean Water Act Section 404 Individual Permit would be required. For more information see USACE web page:
http://www.usace.army.mil/cw/cecwo/reg/nationwide_permits.htm

1.5.3 Clean Water Act Section 401 Certificate

The Alaska Department of Environmental Conservation (ADEC) would need to issue a Certificate of Reasonable Assurance pursuant to the Clean Water Act Section 401 for any access facility crossing a water body, which also triggers the USACE Section 404 review. See appendix G for ADEC water quality regulations.

1.5.4 Water Rights

Authorized access would be consistent with Alaska Department of Environmental Conservation 18 AAC 70 Water Quality Standards, amended as of December 28, 2006. For ADEC water quality standards, see appendix G. A RWCA for a waterline does not include the right to actually use the water. The inholder is responsible for securing applicable water rights from the Alaska Department of Natural Resources.

1.5.5 Alaska SHPO Approval

The State Historic Preservation Office (SHPO) must be given an opportunity to comment on the issuance of any RWCA that could adversely affect historic or archeological resources.