

August 7, 2024

Kevin McKay
Branch Chief, Realty Management, National Park Service
WASO Land Resources Division, Park Planning, Facilities and Lands
1849 C Street NW, 2nd floor
Washington, DC 20240

RE: National Park Service ROW Rule – RIN 1024-AE75

submitted electronically to
<https://www.federalregister.gov/documents/2024/06/10/2024-12605/rights-of-way>

Dear Mr. McKay,

I am commenting on the National Park Service's Proposed Right-of-Way Rule (36 CFR parts 1 and 14) published on page 48850 in the Federal Register on Monday, June 10, 2024. My comments are informed by my 27 years of experience as the State of Alaska's ANILCA Implementation Program Coordinator until my retirement in 2011.

The proposed rule includes no reference to the Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487, or to ANILCA's implementing US Department of the Interior access regulations at 43 CFR Part 36, also known as the ANILCA Title XI regulations. The final Title XI rule, adopted via Federal Register Notice on September 4, 1986 (page 31624) became effective after the 1980 36 CFR Part 14 rule and applies exclusively to Alaska. The 1986 Title XI regulations were litigated and upheld by the Court in an informal settlement as described in the Federal Register notice of October 8, 1997, page 52509. See *Trustees for Alaska, et al., v. United States Department of the Interior, et al.*, Case No. A87-055. The Title XI regulations have governed right-of-way (ROW) authorizations on National Parks and other federal lands in Alaska since 1986.

My fervent hope is that the authors of the Proposed Rule inadvertently overlooked the unique statutory direction provided by Congress in 1980 for all NPS lands within Alaska. It is understandable for Washington, DC administrators to lack familiarity with the legal context of federal laws that uniquely apply to Alaska. If the lack of recognition of ANILCA is indeed an oversight, a simple exemption of NPS lands in Alaska from the Proposed Rule would immediately eliminate the conflict.

If the NPS intended any portion of the Proposed Rule to apply to NPS lands in Alaska, there is no explanation or justification for doing so. The Proposed Rule cites the "general statutory authority" derived from 54 U.S.C. 100902, but refines that guidance in the page 48850 background discussion of Legal Authority for ROWs:

"The NPS may not issue a ROW permit for any purpose that is not identified in 54 U.S.C. 100902, unless the NPS is separately authorized to do so by law, such as through legislation specific to a System unit." [emphasis added]

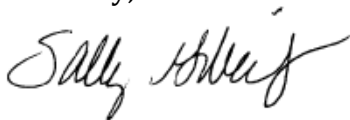
ANILCA is unequivocally a law specific to all units of the National Park System in Alaska. A major component of ANILCA is a wide-ranging set of unique provisions governing access and ROW authorizations on federal lands in Alaska, including NPS lands. The 1986 Title XI regulations provide the correspondingly specific framework to implement the statute. The ANILCA access provisions for Alaska units and the associated regulations supersede regulations of general applicability in cases of explicit and implicit conflict. It would therefore be appropriate to unambiguously state that ANILCA is an example of such specific legislation, and explicitly clarify the Title XI regulations remain similarly intact, unaffected by this Proposed Rule.

If the Proposed Rule authors see a need to modify the Alaska-specific Title XI regulations *in specific ways*, the appropriate vehicle for considering that would be a separately proposed revision of the ANILCA Title XI regulations themselves with a full explanation of how the proposed revision(s) will still adhere to the *original statutory framework of ANILCA*. Administrators do not have the authority to use regulations to retroactively alter the original Congressional intent of ANILCA. For example, some of the Title XI regulations track the statute almost verbatim.

If the final rule continues to sow doubt or ambiguity about what portion(s) of the Title XI regulations are intended to be supplanted or modified, NPS personnel in the Alaska Region will be caught painfully between a rock (ANILCA) and a hard place (inconsistent national regulations), with the potential for expensive administrative and/or judicial remedies. ANILCA and its implementing regulations, policies and procedures generally suffice to address the unique access and ROW needs of Alaska under ANILCA. So regardless of what the authors understand or intend, I urge the final rule to include a blanket exemption for Alaska. At a minimum the final rule should clarify that in case of conflict between the Proposed Rule and ANILCA and its Title XI regulations that the Alaska-specific direction shall prevail.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink that reads "Sally Gibert". The signature is written in a cursive, flowing style.

Sally Gibert
Anchorage, Alaska

cc: Sarah Creachbaum, Alaska Regional Director, National Park Service
Senator Lisa Murkowski
Senator Dan Sullivan
Representative Mary Peltola