



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

OFFICE OF PROJECT MANAGEMENT AND PERMITTING

550 West 7th Avenue, Suite 1430
Anchorage, AK 99501-3561
Main: 907.269-8690
Fax: 907-269-5673

August 9, 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 (MB 2340)
Washington, DC 20240

Submitted online at <https://www.regulations.gov/document/NPS-2024-0004-0001>

Re: Rights of Way Proposed Rule, RIN 1024-AE75

Dear Mr. McKay,

The State of Alaska (State) has reviewed the National Park Service (NPS) proposed rule to revise its Rights of Way (ROW) regulations at 36 CFR Part 14 (89 Federal Register (FR) 48850, June 6, 2024). The NPS has management responsibilities for more than 84 million acres across the nation, of which approximately 54 million acres are within the State of Alaska. The following comments represent the consolidated views of state resource agencies, including the Departments of Fish and Game (ADF&G) and Natural Resources (DNR).

Alaska National Interest Lands Conservation Act (ANILCA)

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA), which established more than 100 million acres of federal land in Alaska as new or expanded conservation system units (CSUs), including approximately 54 million acres of park lands. Due to their vast size, most CSUs in Alaska contain or effectively surround numerous state and private inholdings, including lands owned by Alaska Native regional corporations pursuant to the Alaska Native Claims Settlement Act (ANCSA).

In passing ANILCA, Congress sought to preserve unrivaled scenic values, wildlife populations, and their habitat in vast undeveloped landscapes. Congress also sought to provide opportunity for rural residents to remain in their communities, and to balance the social and economic needs of the State of Alaska. As part of the balance, Congress incorporated Title XI – *Transportation and Utility Systems In and Across, and Access Into, Conservation System Units* to specifically ensure that Alaskans would retain their ability to develop the State's economy and infrastructure, and ensure inholders have adequate and feasible access to their lands for economic and other purposes. Congress further ensured that nonfederal lands falling within these newly expanded park boundaries would not be treated as if they were federally owned public lands. Title XI provides a unique process by which federal agencies must evaluate applications for rights-of-way for transportation and utility projects within CSUs, including within designated wilderness areas, national recreation areas, national conservation areas, and wild and scenic river corridors. The process includes provisions to minimize the adverse impacts of siting Transportation and Utility Systems (TUSs) within the CSUs

established by ANILCA and provides for a single comprehensive statutory authority for the approval or disapproval of TUS applications in the future. This process directs, among other requirements, the development of a National Environmental Policy Act (NEPA) document that considers alternative project designs and input from relevant agencies. Notably, the TUS process changes the compatibility standard for the TUS system such that it does not “significantly interfere with or detract from the purposes for which the area was established” (43 CFR 36.2(f)).

We suggest the following language be added to the background information section (addition bold and underlined). This addition is important because Alaska hosts roughly 54 million acres of NPS land. It is critical, for public and land manager understanding and transparency, to include mention of such a significant exception. Additionally, because ANILCA is not “legislation specific to a System unit,” but rather to a whole state, this additional clarity is appropriate:

“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 **the Alaska National Interest Lands Conservation Act** or legislation specific to a System unit.”

The proposed rule to revise NPS ROW regulations fails to make any reference to Alaska, nor to the Department of Interior (DOI) regulations at 43 CFR 36 that implement Title XI. The State requests the NPS add language to the final regulations to acknowledge that Title XI of the ANILCA applies to applications for rights-of-way in Alaska. ANILCA Title XI, and its implementing regulations at 43 CFR Part 36, outlines the process by which federal agencies must adjudicate applications for transportation and utility system rights-of-way across NPS lands in Alaska.

The 43 CFR Part 36 regulations are the controlling regulatory authority governing rights of ways within Alaska Park CSUs, including designated wilderness areas. We recognize that 36 CFR 1.2 (c) references 36 CFR Part 13 as special regulations for specific park areas (e.g., Alaska) and that 36 CFR 13.2 indicates that the regulations contained in part 13 are prescribed for the proper uses and management of Park areas in Alaska and supersede any inconsistent provisions of the general regulations of Chapter I. However, the Part 13 regulations do not refer to right-of-way permits, which are found in Part 14. Part 14 fails to make any reference to Alaska or the DOI regulations.

For clarity, we request the regulations indicate that ROW projects in Alaska are permitted following the procedures for TUS applications as required by ANILCA Title XI and the DOI implementing regulations at 43 CFR Part 36.

43 CFR 36.1(a) states:

The regulations in this part apply to any application for access in the following forms within any conservation system unit (CSU), national recreation area or national conservation area within the State of Alaska which is administered by the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS) or National Park Service (NPS):
[emphasis added]

- (1) *A transportation or utility system (TUS) is any portion of the route of the system within any of the aforementioned areas and the system is not one which the Department or agency having jurisdiction over the unit or area is establishing incident to its management of the unit or area;*
- (2) *Access to inholdings within these areas, as well as within public lands administered by the BLM designated as wilderness study areas;*
- (3) *Special access within these areas, as well as within public lands administered by the BLM designated as wilderness study areas;*

- (4) *Temporary access within the aforementioned areas, as well as the National Petroleum Reserve in Alaska and public lands administered by the BLM designated as wilderness study areas or managed to maintain the wilderness character or potential thereof.*

Section-specific comments

We request that the proposed new paragraph (a) in 36 CFR 14.1 include the following revisions (addition bold and underlined):

(a) The regulations in this part establish procedures an entity must follow when applying for a right-of-way permit and provisions under which the NPS may authorize a right-of-way within a National Park System unit, **except those units defined as Conservation System Units (CSUs) in Alaska**, under applicable current or future statutory authority, whether the statutory authority is System-wide or specific to a System unit. **Applications for transportation or utility rights-of-way crossing conservation system units, national recreation areas, or national conservation areas in Alaska are subject to the provisions of Title XI of the Alaska National Interest Lands Conservation Act and 43 CFR Part 36.**

Related CFR edits needed

The State looked at 36 CFR Parts 1 and 13 holistically and believes the NPS inadvertently omitted necessary edits to 36 CFR 1.2(c) and 36 CFR 13.2(f). The following suggested edits are important for context/consistency

We request that 36 CFR 1.2(c) be revised to state (addition bold and underlined, deletion struck through):

The regulations contained in part 7 and part 13 of this chapter are special regulations prescribed for specific park areas. Those regulations may amend, modify, relax or make more stringent the regulations contained in parts 1 through 5, ~~and~~ part 12, **and part 14 of this chapter.**

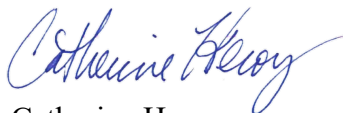
We request a new 36 CFR 13.2(f) which states:

(f) The regulations for right-of-way permits in Alaska can be found in the Department of the Interior Regulations at 43 CFR Part 36.

Closing

Thank you for the opportunity to review and comment on this proposed rulemaking. We offer the additional clarifying language throughout your revised rule to provide clarity to the public, to Alaska NPS staff, and to applicants for transportation and utility system rights of way through the CSUs, national recreation area, and national conservation area in Alaska. Please contact me at (907) 269-0880 or by email at Catherine.heroy@alaska.gov to coordinate any follow up discussions.

Sincerely,



Catherine Heroy
Federal Program Manager