

# STATE OF ALASKA

**SARAH PALIN, Governor**

## **ANILCA IMPLEMENTATION PROGRAM Office of Project Management and Permitting**

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January 31, 2008

Meg Jensen  
Superintendent  
Wrangell-St. Elias National Park and Preserve  
Po Box 439  
Copper Center, Alaska 99573

Dear Ms. Jensen:

The State of Alaska reviewed the Programmatic Environmental Assessment (EA) addressing Established and Maintainable Access to Inholdings in the Wrangell-St. Elias National Park and Preserve (Park). We appreciate the challenges associated with preparation of an EA of this nature and commend the Park and the Regional Office of the National Park Service for their efforts to offer an efficient means to secure documentation of access rights to a significant number of affected landowners. We therefore support the decision to limit the scope of this EA to those routes that are both established and maintainable, and appreciate development of the Class system to categorize the types of access. These steps, along with the concise and forthcoming analysis, will undoubtedly facilitate issuance of the first ANILCA 1110(b) right of way certificates of access (RWCA) under the new guidelines for access to inholdings guaranteed by the Alaska National Interest Lands Conservation Act (ANILCA). We also appreciate that the EA provides enough detail to illustrate the Park's familiarity with the individual access routes and existing and potential impacts, while maintaining the privacy of the affected parties.

Our remaining comments are presented in chronological order. We realize this is not a "draft" EA and that the final decision document will not repeat most of the published information; therefore, some of our technical and editorial comments are included here in case portions of this document are used in future EAs.

Page 1-10, Permits and Approvals Needed to Implement Project. Access routes that involve structures or activities in fish bearing and anadromous waters (i.e. culverts, bridges, water withdrawal, etc.) may require a Fish Habitat (Title 41) Permit from the Department of Natural Resources (DNR), Office of Habitat Management and Permitting. In addition, access routes that involve structures or activities below ordinary high water in navigable waters may also require authorization from the DNR Division of Mining Land and Water. Although this EA only applies to existing routes, it is possible that required authorizations may not have been obtained when structures were initially installed. We request the Finding of No Significant Impact (FONSI) also reference these permit requirements.

Page 2-8, Figure 2.13, RWCA Process diagram. This graphic is a helpful representation of the responsive and interactive process that gives both the owner or occupier and the Service opportunities to achieve a standard of sustainability.

Page 2-13, 2.3.4.2, Hydrology. The third bullet references a 100-year flood event as the standard for replacement of failed structures such as bridges. This looks like a good standard on paper; but making an actual field determination may not be possible in some instances, especially given the history of extreme spot flooding in the Wrangells (e.g., McCarthy Creek in 1980, Jumbo Creek in 2006). Tiny seasonal tributaries can sometimes become raging torrents during extreme weather events. In lieu of an arbitrary threshold, we request the FONSI provide the superintendent discretion to work out a case-by-case solution with the landowner in instances where complying with this mitigation measure could be problematic. For example, it may be more reasonable to rebuild a more modest facility with fewer short-term impacts than installing a mega feature that might or might not survive a true 100-year event.

Page 2-14, second complete bullet. We support the general intent of this mitigating measure; however, we are concerned that exceptions may occasionally be necessary, e.g. terrain may limit available options to stay further away from waterbodies. We request the FONSI clarify that the Service will consider exceptions on a case-by-case if small amounts of cutting are necessary to achieve a sustainable access solution. We also request clarification that this mitigation measure is included for purposes of RWCA authorizations, not other authorized uses of parklands such as subsistence cutting for house logs or firewood. To the extent these standards may affect other authorized uses, we similarly request the option of case-by-case exceptions.

Page 2-14, 2.2.4.6, Cultural Resources. The last sentence says “*No adverse effects to historic properties would be authorized.*” It would be helpful to clarify in the FONSI that a mitigating measure to avoid such adverse affects could include minor realignments, assuming the realignments were small enough to remain within the scope of this EA for “established” access.

Page 2-16, 2.5.2, RS 2477 rights-of-way. We appreciate the acknowledgement of RS 2477 rights-of-way in this document; however, the introductory paragraph uses the term “*asserted*” and “*assertions*” inappropriately in the first part of the first sentence. The term *asserted* has certain legal implications that do not apply to all of these routes. The RS 2477 routes listed in the general management plan have been *identified* by the State, which is different from an active assertion process undergoing court adjudication.

Page 2-16, Table 2-4, Summary Impacts of Alternatives. Under the Preferred Alternative for Public Access & Recreational Use, there is a reference to “*posted motorized access restrictions.*” In light of the Alaska Access Users Guide, we assume such postings would not affect motor vehicles that are generally allowed on adjacent parklands, e.g. snowmachines, over portions of the route crossing federal public lands. In contrast, the last full paragraph on page 4-13 references “*signs limiting vehicular use of the access route.*” For clarity, we request the FONSI indicate that such postings would not restrict public access via snowmachine (recognizing that private property owners may certainly post their private property as they please).

Page 3-1, 3.1, Aquatic Resources and Fish. If this paragraph is used again in another context, we request natural and human influences be discussed separately, or that distinctions be made between the large-scale influences (like spruce bark beetle), and those of a highly localized scale. For example, “overharvest of some fish populations,” especially in a park setting that supports the world-renowned Copper River salmon runs, can easily lead to the wrong impression without having read the rest of the document.

Page 3-4, 3.1.1.1, Jack Lake burbot populations. Current population data for Jack Lake burbot is lacking. ADF&G conducted some limited studies on burbot in Jack Lake in both 1988 and 1989. These were one-event samples, which only estimated “catch per unit effort” with baited hoop traps and collected length information. Abundance estimation work was not conducted. Unless the NPS has additional information documenting “overharvest,” care should be taken in stating that burbot populations were over exploited. The text does not reference a source of the reported information.

Page 4-2, 4.2, Cumulative Impacts, second paragraph. We appreciate the recognition that the Park inherited a long history of human use and associated pre-ANILCA impacts. This fact is often lost in documents about Alaska parks.

Page 4-8, 4.3.1.2, Cumulative Effects, first sentence. As with the statement at 3.1, the statement that fish populations are experiencing downward trends appears overstated. While there may be some localized decreases in fish populations due to site-specific impacts, we are not aware that this is a widespread problem throughout the Park. We request that such discussions focus more on site-specific impacts and avoid the unintended implication that fish populations are declining on a parkwide basis.

Page 4-27, 4.9.1.1, Effects on Wilderness. The first sentence at the top of the page suggests that invasive plants “...are commonly brought into wilderness areas with vehicles....” The term *commonly* may be an over statement. If this analysis is used in future park documents, we request a revision to state that invasive plants “...may be brought into wilderness areas....”

Page 4-27, second paragraph. We appreciate the recognition that the issuance of a RWCA would not necessarily preclude future Wilderness designation by Congress. ANILCA included some pre-existing improved routes around the state within designated Wilderness and specifically authorized access to inholdings irrespective of the underlying Wilderness status.

Page 5-1, consultation, third bullet. The State of Alaska’s ANILCA Implementation Program, while administered by the Department of Natural Resources, does not limit its representation to DNR’s interests. All state departments with an interest in ANILCA, including the Governor’s Office, are represented in our coordinated ANILCA program.

Page C-3, Section 810 Evaluation, last sentence on page. We strongly discourage use of the term “sport hunting” as it has evolved a negative connotation in rural Alaska. State regulations no longer refer to sport hunting, and the term implies that all non-subsistence hunting is strictly for “sport” as opposed to others forms of personal use. The basic reference to “general hunting” is appropriate in this context.

Page C-4, ANILCA 810 analysis, Affected Environment. The final sentence in the first paragraph of the ANILCA Section 810 Analysis in Appendix A on page C-4 reads:

*To engage in subsistence activities within Wrangell-St. Elias National Preserve, individuals are not required to live in a resident zone community, but they must live in a rural Alaskan community or area that has a positive customary and traditional use determination for the species and area they wish to harvest.*

This statement accurately defines eligibility for subsistence uses of the Preserve under the Federal subsistence regulations. However, Preserve lands also are open to hunting, trapping, and fishing under State regulations unless specific closures to non-federally qualified subsistence users have been implemented. We request a correction/clarification in the final decision document.

Page C-5, Subsistence Uses and Needs. The second and third numbered bullets reference subsistence hunters and “*fishers*.” If these points are used in subsequent park documents, we recommend the following non-substantive revisions:

2. *what affect the action might have on access for subsistence hunting and fishing.*
3. *the potential for the action to increase competition between subsistence and other users.*

Page J-1, Minimum Requirements Decision Guide. We support the decision to address only “Step 1” of the Minimum Requirements Decision Guide (MRDG) in this EA. Step 2 cannot really be addressed in the context of the EA since it is reliant on site-specific mitigation measures and stipulations.

Page J-2, Text Box A. The accompanying explanation notes that “*the agency can consider and grant access...*” in wilderness. After checking with Service staff, we understand that the intent of this statement is to address 4(c) of the Wilderness Act; however, in the context of this EA, the language may inadvertently appear to imply that the agency may decline to consider adequate and feasible access, which would not be consistent with ANILCA 1110(b). If this language is used again in future EAs concerning access to inholdings, we recommend a clarification.

Page J-2, Text Box C. The explanation includes the following sentence without caveat: “*NPS policies do not allow for the impairment of park resources.*” If used again, we suggest a more complete quote to convey an improved understanding of the context. For example:

*The Service has “management discretion to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impact does not constitute impairment of the affected resources and values.”*

This recognition of the discretion to allow impacts is particularly important because it is inevitable that compliance with Section 1110(b) will involve some impacts to resources and values, and partly explains why Congress added the directive that access to inholdings would be subject to reasonable regulations to minimize those impacts. We agree with the conclusions

throughout Chapter 4 that the Preferred Alternative would not result in impairment of park resources that are key to the purposes and values for which the park was established.

Page J-3, Text Box D, Explanation. If this language is used again in another document, we recommend the following minor revision for clarity in the fourth sentence: “...and in some cases wilderness was **knowingly** designated to include the routes or airstrips.”

Thank you for the opportunity to provide these comments. If you have any questions, please feel free to contact me at 907-269-7477.

Sincerely,

A handwritten signature in black ink that reads "Sally Gibert". The signature is written in a cursive style with a large, sweeping initial "S" and a long, horizontal flourish extending to the right.

Sally Gibert  
ANILCA Program Coordinator