

STATE OF ALASKA

ANILCA IMPLEMENTATION PROGRAM Office of Project Management and Permitting

SEAN PARNELL, Governor

550 W. 7TH AVENUE, SUITE 1430
ANCHORAGE, ALASKA 99501
PH: (907) 269-7529 / FAX: (907) 334-2509
susan.magee@alaska.gov

September 26, 2011

Elwood Lynn, Acting Superintendent
Wrangell St. Elias National Park and Preserve
P.O. Box 439
Copper Center, AK 99573-0439

Dear Mr. Lynn:

The State of Alaska reviewed the Nabesna Off-Road Vehicle (ORV) Management Plan and Final Environmental Impact Statement (FEIS). The following comments represent the consolidated views of the State's resource agencies.

We appreciate several of the changes made in the FEIS. In particular, we support the improvements to the Suslota trail and its subsequent reopening to recreational ORV use and the decision to allow off-trail game retrieval by subsistence users within 0.5-mile of the trail in designated wilderness. We also support dropping the provision for collecting user fees. In addition, would like to recognize the Project Managers' considerable efforts to inform and work with the public, interested stakeholders, and the State throughout this planning process. However, we have concerns regarding other significant changes to the Preferred Alternative in the FEIS, as detailed below.

Recreational ORV Closures in the Park

The State strongly opposes closing the entire park within the Nabesna District to recreational ORV use under the new preferred alternative (Alternative 6). The FEIS indicates the change was based generally on public comment, which presumably opposed this utilitarian method of access for recreational use, despite a history of use that pre-dates the establishment of the Park and substantial support voiced in comments received from the State and others, including the Residents of the Wrangells, Wrangell-St. Elias National Park Subsistence Resource Commission, Alaska Outdoor Council, and Citizen's Advisory Council on Federal Areas. Had the public been aware that the Preferred Alternative would prohibit recreational ORV use on trails that have a history that pre-dates ANILCA, the DEIS would have likely generated significantly stronger comments from those that support recreational use or have a long history of using these trails to access the park and preserve. As such, we suggest the change may be significant enough to warrant additional public review.

While non-subsistence ORV use is not specifically protected under ANILCA, when the Service and the Department of Interior promulgated the Part 13 regulations in 1981, and Title XI access

regulations in 1986, respectively, the discretionary authority to allow recreational ORV use was purposely included in direct response to the public's desire to continue this access method in support of recreational activities that are allowed under ANILCA.

Furthermore, we disagree with the response to comment (page 5-63, NO78-2), which indicates that re-routed trails are no longer considered existing trails, thereby eliminating the option of authorizing recreational ORV use by permit under 43 CFR 36.11(g)(2). First, we question what appears to be a new characterization of a "re-routed" trail. Trails that are no longer sustainable in the original location are less expensive to re-construct on more stable ground, and are routinely re-routed without being considered new trails. In addition, as RS2477 ROWs, the State's regulatory criteria allows realignment providing "...*the realignment provides access reasonably comparable to the original, does not affect land in other ownership, and connects to the original route where it enters and exits the landowner's land.*" (11 AAC 51.065(k)) As our comments on the DEIS indicated, "... *it appears all the proposed re-routes in the DEIS can be performed by administrative action by the State.*" Similarly, the FEIS states on page 3-86, "[a]ll existing motorized trails are 'destination' trails that are used to access certain places or areas..." As destination trails, the route by which the trails reach their destination is largely insignificant to the purpose of the trails. Because the old trail segments would be closed upon re-route, there would remain only one trail per destination. As such, the proposed trail re-routes would not be considered "new" trails and the Service may exercise its discretionary authority under 43 CFR 36.11(g)(2) to issue permits that continue recreational ORV use on all re-routes, including those located within the Park.

Permanently closing recreational ORV access in the entire park will prevent general hunting access to preserve lands via the Tanada Lake and Boomerang trails, and limit access for sport fishing within the park and the preserve. In particular, hunters access sheep and moose hunting areas within the preserve using the Tanada Lake Trail. The Goat Creek / Wait Creek area is another sheep hunting area utilized in the preserve primarily accessed by ORVs. Loss of the Tanada trail for recreational ORV use would effectively eliminate affordable hunting opportunities to the public since the only ORV access to these areas of the preserve is through the park. While the proposed 20-mile non-motorized route from the end of the Nabesna Road may offer an alternative to those who desire a non-motorized hunting experience, it would not be a practical alternative for many hunters with heavy loads, including meat harvested during the hunt, and would effectively preclude access to hunting parties that include children, the elderly, or the disabled.

While we support repairing trails to a maintainable condition, we do not agree that the permanent loss of this ORV-based hunting opportunity is an acceptable outcome. Nor do we agree that the recreational ORV use of this area would be displaced to other trails in the analysis areas or to areas outside the park as asserted in the response to comments. Wildlife resources are tied to these particular geographic locations, and therefore the hunting opportunities provided by this location cannot be displaced to other areas. This constitutes the loss of hunting opportunity, not the displacement of hunting opportunity. We recommend the implementation of temporary use restrictions rather than permanent closures in those locations where trail improvements are necessary.

The fifteen percent of recreational ORV access that is not hunting-related includes access for photography, wildlife viewing, and sport fishing. Sport fishing is an allowed use within the park, and eliminating recreational ORV use within the park would severely reduce public use of this park resource. The Tanada Lake trail in particular provides access to prime grayling fishing. Access to the park in general is very limited because of the few roads and trails. Distances involved preclude non-motorized access for many users and the current cost of fuel can make aircraft charters cost prohibitive, so the practical effect of prohibiting recreational ORV access would be to eliminate access for many users.

Consistent with other comments submitted to the Service (e.g. National Park Conservation Association, Slana Alaskans Unite), we support issuing permits to family members who are within the second degree of kindred to qualified subsistence users, but who live outside the region or rural area, to accompany their relatives in traditional subsistence activities. This assistance is especially helpful for elders in area communities and facilitates the transfer of traditional knowledge and customs. Consistent with conditions on the ground, special use permits can provide for these activities with minimal impacts to resources. Such allowance is needed in both the park and preserve and should not be precluded by a blanket decision to not allow recreational ORV use on improved trails within the Park.

Revised Statute (RS) 2477 Rights-of-Way

We support the decision in the FEIS to not assess fees for the use of RS 2477 ROWs and appreciate the intent expressed in the response to comments to consult with the State prior to implementing projects that re-route RS 2477 ROWs (Page 5-82, NO78-32). We request the ROD further commit to following the State's RS 2477 ROW re-alignment process pursuant to 11 AAC 51.065(k).

We also understand that federal law gives the Service the authority to reasonably regulate use of RS 2477 ROWs to protect park resources; however, as stated above, we object to permanent closure of RS 2477 ROWs as represented by the preferred alternative (Alternative 6). Alternative 6 would close the Copper Lake trail RST 1567 and the Tanada Lake trail RST 162 to motorized use except by federally qualified subsistence users. The option to improve these trails to a maintainable condition for all users should remain available to managers. Winter use should also remain available for recreational users.

The Service's actions to close or re-route trails along RS 2477 ROWs do not diminish the State's assertions of validity nor the State's ability to pursue improvements or other management actions. Consistent with the following response to comment on page 5-63 (NO78-31) "*...[I]mplementation of actions described within the range of alternatives...would not affect the status or validity of other access rights under state and federal authorities (such as RS 2477),*" we request the ROD include the following statement:

Service actions to close or re-route trails along RS 2477 ROWs do not diminish the State's assertions of validity nor the State's ability to pursue improvements or other supplemental management actions.

Trail Use Projections

We continue to disagree with the Service's trail use projections which form the basis for most of the decisions made in the FEIS. The Service has not provided a substantive summary of how the current use estimates were calculated, nor has the Service provided a description of the rationale or methodology for the use projections. It is insufficient to simply state that the projections are based on counter data, permit data, telephone interviews with permittees, and harvest data without summarizing these data and describing how the various data were synthesized and projected. We are concerned that the Service has selected a preferred alternative largely on the basis of these unsupported projections and unspecified public comments. Under the preferred alternative (Alternative 6), the Service predicts total ORV use would increase 62 percent over the 20-year planning period; however the FEIS does not contain any data that support this prediction, and patterns of use documented by the Alaska Department of Fish and Game over the past twenty years indicate such a rise is unlikely.

We reiterate our previous comment that both general and subsistence hunting ORV use over the next twenty years is likely to remain stable, as it has for the past twenty years. The State provided the Service with the annual numbers of hunters along the Nabesna Road between 1990 and 2009 based on harvest report data. This empirical data accounts for subsistence hunting ORV use and 85 percent of the recreational ORV use, and demonstrates that hunting-related user numbers show no trend of either increase or decrease. Hunting-related ORV use is likely to increase only if hunting opportunities increase in the Nabesna district, and hunter numbers are more dependent on the movements and availability of wildlife resources than on trail conditions. Therefore there is no justification for the assumption that hunting-related ORV use would significantly increase over the planning period.

According to the Service, 15 percent of the recreational ORV use is not related to hunting. As the Service states on page 3-86, "*All existing motorized trails are 'destination' trails that are used to access certain places or areas; consequently there is very little driving up and down trails simply for the sake of four-wheeling.*" The State agrees with this characterization, and further, sees increased ORV use solely for the sake of four-wheeling as highly unlikely. The Service's use projections appear to be based on the assumption that better trail conditions will create higher demand for ORV-based recreation. While the Nabesna trails have had little improvement since the park's formation, ORVs have improved substantially. Modern ORVs are more powerful and capable than those commonly in use even five to ten years ago. If ease of use dictated the number of trail users, the data would already show increasing trends given the availability of more capable ORVs, yet this is not the case. The primary non-hunting ORV users are members of the small local population, which is relatively isolated from the population centers of Alaska. The premise that large numbers of non-hunting ORV users from Fairbanks and Anchorage would drive the three to five hours pulling trailers to recreate in the Nabesna district solely because of improved trails is not a realistic assumption. The Service has given no explanation for projections of increases in non-hunting, ORV-based recreational uses other than improved trail conditions. We do not expect the proposed trail improvements will lead to high numbers of recreational ORV riders in this area for hunting or other purposes such as dispersed camping or sport fishing, and we fail to see any other reason to project a significant increase in ORV-based non-hunting recreation.

We question the assertion that the preferred alternative (Alternative 6) will have a “moderate” effect on wildlife populations, especially considering the FEIS determined the no action alternative, with no improvements, would have only a “minor” effect. This judgment is based entirely on exaggerated use projections and does not take into consideration the role of the Board of Game in regulating the harvest as necessary.

Funding Constraints

We support the Service’s funding prioritization as stated on Page 5-75 in the response to comments:

“Projects that repair existing motorized trails and thus correct resource problems will be requested first, followed by minor repairs to motorized trails, followed by new construction of non-motorized trails.”

We request that this description of the funding prioritization be included in the ROD. We recognize that project-specific funding may become available out of sequence from these priorities. Because the Service estimates it could be 10-15 years before funding is fully secured for trail improvements, we reiterate the recommendation that the Service continue to assess alternative means to maintain motorized access for both subsistence and recreational users. For example, short-term trail maintenance or re-route efforts, combined with weather-dependent closures could effectively extend use while funding is sought for long-term solutions.

Given the substantial effects the new preferred alternative would have on access and the lack of a schedule or dedicated funding for the improvements required to reopen trails to recreational ORV use, we request progress updates on a 5-year basis. If halfway through the plan’s 20-year timeframe trails have not been reopened, we request that the Service reassess its ORV management plan to develop more practical ways to allow recreational ORV access. We support the Service’s commitment to coordinate with the State as the project moves into the implementation phase and look forward to working with the Service to improve access.

Black Mountain Trail Extension

We support the Service’s intent to consider designating the Black Mountain Trail extension to the Copper River just south of Black Mountain as a trail for subsistence ORV users, which has been used by subsistence users for more than a decade. Because it is very difficult to boat that far up the Copper River, subsistence hunters transport rafts on ORVs to this crossing point at the Copper River to further access hunting opportunities to the west. Designating this trail extension would also help disperse sheep hunters to relieve pressure and alleviate concerns over increased ORV traffic in the Black Mountain and Tanada Peak areas. If the trail extension is not designated, subsistence hunting opportunities would be severely restricted on both the upper west side of the Copper River, as well as the east side of the Copper Glacier. We understand this extension will be considered for designation when baseline trail mapping occurs during implementation and prior to monitoring off-trail impacts.

Off-Trail Subsistence Access

Section 811(b) of ANILCA states *“Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of*

snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation.” It is not clear why the monitoring standards and management tools described in the FEIS could not be effective in addressing potential impacts in designated wilderness. Given the very limited area of concern and the importance of subsistence activities to rural residents, we recommend permitting off-trail ORV use in designated wilderness, subject to monitoring and utilizing those management actions necessary to protect resources.

While we maintain that responsibly managed off-trail ORV use for game retrieval would not create significant resource impacts, we nonetheless support the addition of the 0.5-mile allowance for off-trail game retrieval within wilderness areas in the preferred alternative (Alternative 6). The State supports allowing off-trail game retrieval because it would disperse harvest, which provides for improved wildlife resource conservation.

Restricting the off-trail use of ORVs constitutes a closure to subsistence access under Section 811(b), which requires formal regulation. We request the ROD reference the notice and hearing requirements pursuant to 36 CFR 13.460 that are part of the regulation process.

The 810 analysis does not mention or analyze the 0.5 mile game retrieval restriction for ORV use within wilderness. This discrepancy makes it unclear what terms the analysis is evaluating and how the conclusion was drawn that Alternative 6 will not result in a significant restriction of subsistence uses. Page F-3 under Alternative 6 says “...*subsistence users would continue to employ ORVs for subsistence purposes on all nine trails and throughout the analysis areas,*” which implies that subsistence ORV use would continue, as currently practiced, throughout the analysis areas including designated wilderness. Page F-7 of the 810 analysis notes “*subsistence ORV use in designated wilderness would be restricted to designated trails*” under Alternative 6. Both descriptions conflict with the description of Alternative 6 in the FEIS, which restricts off-trail game retrieval to within 0.5 miles of the trail in designated wilderness. We request this error be corrected in the Section 810 Analysis, including a re-evaluation of how the limits associated with Alternative 6 would affect subsistence users.

Minimum Requirements Analysis

We maintain that using a Minimum Requirements Analysis (MRA) in the FEIS is a misapplication of the MRA process. The minimum tool (step 2) is not a method for determining which alternative has the least impact on designated wilderness. It is the method used to determine how a “necessary” administrative action (step 1 – the selected alternative) is to be implemented while preserving wilderness character. We therefore request the MRA be removed from the EIS and appropriately deferred to the implementation phase (or phases) of the selected alternative.

Winter ORV Access

The DEIS and FEIS are both unclear on whether ORV access will continue to be allowed when the ground is frozen. Our understanding is this is an oversight and the new Preferred Alternative allows such use, but limits it to the preserve. The State supports subsistence and recreational ORV access within both the park and preserve and request winter recreational ORV use be allowed to continue in the park. We concur with the conclusion on page 4-11 of the FEIS, which

states: “*Winter access to inholdings would have no impact because soils would be frozen*” and see no reason why that statement would not also apply to all areas within the park and preserve. In addition, similar to our initial comment, had the DEIS indicated that contrary to the settlement agreement, winter use would be restricted; the Service would have likely received additional substantive comments from those that support recreational use.

Page-specific Comments

We appreciate the page-specific corrections you have made to the FEIS. There is one correction which your response to comments acknowledges but still appears to be missing from the FEIS: Page 1-25, 1.7.5.2. We request adding Section 707 of ANILCA as a separate bullet.

Thank you for your consideration of these comments. Please contact me at 907-269-7529 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Magee', written in a cursive style.

Susan Magee
ANILCA Program Coordinator

cc: Bruce Rogers, NPS Project Manager