



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

ANILCA Implementation Program

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March 14, 2014

Rick Obernesser, Superintendent
Wrangell-St. Elias National Park and Preserve
P.O. Box 439
Copper Center, AK 99573

Re: RIN 1024-AE14

Dear Mr. Obernesser:

The State of Alaska reviewed the Federal Register (FR) notice regarding proposed regulations, which implement the December 2012 Record of Decision (ROD) for the Nabesna Off-Road Vehicle Management Plan and Environmental Impact Statement (EIS). The following comments represent the consolidated views of the State's resource agencies.

The State consistently commented throughout the planning process in support of remediating trails in the Nabesna area to a sustainable level in order to allow for continued use of off-road vehicles (ORV) for subsistence and non-subsistence use. We supported the intent in the Service's preferred alternative (Alternative 5) in the draft EIS to continue authorizing non-subsistence use of ORVs on rehabilitated trails in the park. However, we objected to the formation of a new hybrid alternative in the final EIS (Alternative 6), which unexpectedly and without additional public review, reversed the prior position in the draft EIS that non-subsistence ORV use could be allowed to continue in the Park. The ROD adopted Alternative 6 and the proposed regulations implement this final decision.

While we continue to support remediating trails to allow for continued subsistence ORV use in the Park and Preserve, and continued non-subsistence ORV use in the Preserve, we question the basis for eliminating non-subsistence ORV use in the Park. For many users, this decision eliminates affordable access to hunting and fishing opportunities on adjacent preserve lands. In the Service's January 26, 2012 letter responding to the State's comments on the final plan and EIS, the Service implied that affordable access was still available to users because the costs associated with aviation transport was a fraction of the cost of an ORV. We disagree with that logic. While the cost of one trip via an air transporter may be less than the total cost of a typical ORV, the owner of an ORV can make multiple trips over the lifetime of the vehicle. In addition, for existing owners of ORVs, the cost of an air transport would now be in addition to funds already expended to purchase the ORV.

The final plan and ROD do not otherwise distinguish between the Park and Preserve. The only distinction between park and preserves in Section 1313 of the Alaska National Interest Lands Conservation Act (ANILCA) is the general allowance for the take of fish and wildlife, and trapping in preserves.

*A National Preserve in Alaska shall be administered and managed as a unit of the National park System in the same manner as a national park except as otherwise provided in this Act and **except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve under applicable State and Federal law and regulation.***

The final plan and EIS recognize the well documented historical use of ORVs on the Nabesna trail system for both subsistence and recreational activities, and purposely limits both the routes and the definition of recreational use to ensure that ORVs would only be used as a utilitarian mode of access. It also imposes ORV type, size and weight restrictions; establishes monitoring protocols; and identifies available management tools, which will be applied should trails begin to show signs of unacceptable impact. While these limitations and protocols should effectively alleviate concerns regarding resource impacts from either subsistence or non-subsistence ORV use, the Service has determined that it cannot continue to authorize non-subsistence ORV use in the Park regardless, because once re-routed, the trails in the Park would be considered “new” trails and therefore not permissible pursuant to 43 CFR 36.11(g)(2), which only allows the Service to authorize non-subsistence ORV use on “existing” trails. We believe this interpretation is unfounded.

Service regulations promulgated in 1981 provided Superintendents with the general authority to designate ORV routes and areas and issue ORV use permits on existing trails in non-wilderness areas. The regulation’s preamble also clarified that provisions addressing ORV use at 36 CFR Part 13 superseded the national regulations at 36 CFR 4.19 (31854 FR 6/17/81). The Department of Interior regulations at 43 CFR 36.11, promulgated in 1986, purposely retained this discretionary authority in direct response to the public’s desire to continue this method of access in support of recreational activities allowed under ANILCA. The preamble to the 1986 regulations (51 FR 3619) clarified the intent behind including ORVs in the regulation package was to allow the use to continue, where appropriate, and also identified the process by which *new* trails could be proposed. There was no indication that the Department of Interior intended for existing trails to have a limited life should trail conditions necessitate maintenance or re-routing. The regulations at 43 CFR 36 also do not define new or existing trails and neither the Nabesna ROD nor the current FR notice provide a citation to support the assertion that trails re-routed for the purpose of sustainability are no longer considered “existing” trails.

As stated in our comments on the final EIS, 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. State regulations for RS2477 right-of-ways (ROW) allow for realignment providing the realigned access is reasonably comparable to the original trail, 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)). With the possible exception of the Tanada Trail, these conditions apply to the proposed re-routes in the Park, which are also state-asserted RS2477 ROWs.

In addition, the final EIS states “[a]ll existing motorized trails are ‘destination’ trails that are used to access certain places or areas...” (page 3-86). As destination trails (including the Tanada Trail), 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 are not “new” trails and the Service may continue to exercise its discretionary authority under 43 CFR 36.11(g)(2) to issue permits for continued recreational ORV use on all re-routes, including those located within the Park.

We therefore reiterate our objection to the Service’s arbitrary decision in the final plan and ROD to discontinue the allowance for non-subsistence ORV use in the Park on the basis that such use is prohibited by 43 CFR 36.11(g)(2), when the re-routed trails would result in a single trail that provides access to the same destination as the original trails. 43 CFR 36.11(g)(2) also states that such use *can be allowed* if found compatible with the purposes and values of the established area and that permit stipulations and conditions that protect the unit’s purposes and values should be taken into consideration. As is, the decision has far reaching negative implications statewide, beyond the boundaries of Wrangell-St. Elias National Park and Preserve, as this interpretation inappropriately limits the Service’s discretionary authority to make judicious, site specific allowances.

We request the Service recognize the full discretionary authority granted in 43 CFR 36.11(g)(2) to permit non-subsistence ORV use on trails within park units in Alaska, including re-routed “destination” trails. We also request the Service exercise this authority and revise the final plan and ROD to authorize non-subsistence ORV use on improved trails within the Park in a manner that protects park resources, such as issuing a limited number of permits with stipulations designed to mitigate user conflicts or other potential resource impacts. The same monitoring protocols and management tools being applied to subsistence ORV use in the Park and Preserve and non-subsistence ORV use in the Preserve would also serve to detect and mitigate potential impacts resulting from non-subsistence ORV use in the Park.

Thank you for this opportunity to comment. We would again like to recognize local park staff’s considerable efforts to work with local communities and other stakeholders throughout this planning process. While we do not agree on all aspects of the plan, we also appreciate the consistent efforts to apprise and coordinate with the State.

Please contact me at (907) 269-7529 if you have any questions.

Sincerely,

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Susan Magee
ANILCA Program Coordinator