



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources
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Refuge Manager
Selawik National Wildlife Refuge
160 Second Avenue
Kotzebue, AK 99752-0272

Submitted online at <https://eplanning.blm.gov/eplanning-ui/project/2032192/570> and by email to selawik@fws.org

Re: OTZ Microwave Tower Broadband Project Environmental Assessment and Compatibility Determination

Dear Mr. Vialpando and Mr. Wiese,

The State of Alaska (State) has reviewed the Bureau of Land Management (BLM) Preliminary Environmental Assessment (EA) for the OTZ Microwave Tower Broadband Project (NEPA number DOI-BLM-AK-A010-2024-0010-EA). The proposed project will install a series of six new communication towers on BLM land and two new towers on United States Fish and Wildlife Service (USFWS) managed lands, as part of a project to provide broadband services for high-speed internet, data connectivity, and emergency communications for the communities of the Northwest Arctic Borough in northwest Alaska. The State appreciates the need for adequate internet connectivity in the region and is providing information to inform your review. The following supportive comments represent the consolidated views of state resource agencies, including the Departments of Fish and Game (ADF&G) and Natural Resources (DNR).

The preliminary EA appropriately recognizes the proposed project meets the definition of a Transportation and Utility System (TUS) under Title XI of the Alaska National Interest Lands Conservation Act (ANILCA).

Connectivity to towers on State Land

OTZ Telephone Cooperative, Inc. submitted an application to the DNR Division of Mining, Land & Water (DMLW) to lease ten parcels of remote state land, with an area of approximately 0.28 acres each, for the construction and operation of ten additional microwave towers that will accompany the towers on BLM & USFWS lands and extend the overall project across the region.

This entire communication network will extend from the Dalton Highway corridor to the Kotzebue Sound region along the southern extent of the Brooks Range across federal and state managed lands. The DNR final finding and decision, with a recommendation to issue ten 25-year public and charitable leases¹ to OTZ for the construction, operation and maintenance of a communications site, and an Entry Authorization for access and construction prior to lease issuance on state land, was signed on April 19, 2023. The associated state Land Classification Order is NC-22-002.

Alaska National Interest Lands Conservation Act (ANILCA) Title XI Process

The proposed tower locations are in a remote area of Alaska currently lacking connection to high-speed internet. The preliminary EA appropriately recognizes ANILCA Title XI applies to this project as it seeks to establish a system for the transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication. Providing such access on federal lands, including within an ANILCA conservation system unit (CSU), was Congress' intent when it passed ANILCA in 1980. The proposed project seeks to ensure conservation is balanced with the social and economic needs of the State of Alaska and its people.

We point out the following inconsistencies and request corrections for the final EA.

Section 1.2 (page 6) and 1.3.2 (page 10) of the Environmental Assessment states that ANILCA Title XI applies only to the USFWS portion of the review of the proposed broadband project, and that the Federal Land Policy and Management Act is the only guiding statute for BLM. This is incorrect. ANILCA Title XI applies to all federal agencies implicated by the proposed project if any part of that project goes through a CSU (ANILCA Section 1102(4)(A)). In this instance, the proposed broadband project spans the CSU Selawik National Wildlife Refuge and BLM non-CSU land. Therefore, the final EA or errata sheet should clarify that BLM's land use authorization is also issued under the ANILCA Title XI process. The following line from page 10 should be revised in the final document. We suggest the following.

BLM lands are not part of a conservation system unit, however, because they are part of a system that crosses a CSU they are ~~and therefore not~~ subject to ANILCA Title XI review.

The preliminary EA incorrectly states in Section 1.3.2 "U.S. FWS Land Use Plan Conformance" that:

The Service reviews ROW applications under the terms of the National Wildlife Refuge System Administration Act of 1966 (16 U.S. C. 668dd-668ee) as amended, and the regulations found at 50 CFR Part 29. Additional requirements concerning a transportation and utility system within a National Wildlife Refuge are considered under the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S. C. 3161 et seq.).

The Service is required to apply the ANILCA Title XI TUS process for ROWs as implemented in the 43 CFR 36 regulations prior to deciding whether to approve a TUS. ANILCA's Title XI TUS application process cannot be replaced using other Service approval processes.

¹ ADL Nos. 421765, 421778, 421779, 421780, 421781, 421782, 421783, 421784, 421785, 421786

ANILCA Section 1104(a) clarifies that ANILCA takes precedence over other agency laws or policies.

Notwithstanding any provision of applicable law, no action by any Federal agency under applicable law with respect to the approval or disapproval of the authorization, in whole or in part, of any transportation or utility system shall have any force or effect **unless the provisions of this section are complied with.** [emphasis added] 43 CFR 36.1(a) The regulations in this part apply to any application for access in the following forms within any conservation system unit (CSU)...within the State of Alaska which is administered by the...Fish and Wildlife Service (FWS)...

The final EA or errata sheet needs to comprehensively outline the ANILCA Title XI TUS process established by both regulation (43 CFR 36.7(a)) and statute (including ANILCA Sections 1104 and 1106(a)) as well as acknowledge ANILCA's precedence over other agency laws and policies and Title XI's applicability to BLM actions in this instance.

Section-specific comments

- **Section 1.3.2, subsection "Selawik National Wildlife Refuge Revised Comprehensive Conservation Plan (2011)" and Section 3.11 (Preliminary EA, pages 10 and 86)**

As worded, Sections 1.3.2 and 3.11 of the Preliminary EA imply that ANILCA requires management of visual resources in the refuge.

We agree that the Selawik National Wildlife Comprehensive Conservation Plan (CCP) addresses visual resources. However, what ANILCA Section 304(g) requires is identification of refuge special values, and visual resources were not identified as a special value for Selawik NWR. Section 1.6 of the Selawik CCP identifies the Refuge's special values as the Western Arctic Caribou Herd, wetlands and waterfowl, whitefish spawning areas, natural processes, subsistence way of life, designated wilderness, the Selawik Wild River, hot springs, cultural and historic resources, and the Kobuk 440 dog sledding competition.

Please revise for clarity the following paragraph on page 10 as shown:

Visual resources within the Refuge are managed by the Refuge's Comprehensive Conservation Plan (CCP) (FWS, 2011), ~~which addresses Section 304(g) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Section 304(g) of ANILCA requires the USFWS to identify and describe special values of the Refuge....~~

Please also revise well as the sentence on page 86 as shown:

Visual resources within Selawik Refuge are managed under the terms of the 2011 Selawik Revised Comprehensive Conservation Plan (CCP), ~~which addresses section 304(g) of ANILCA.~~

- **Section 4.1 Consultation and Coordination**

Both BLM and the USFWS have Master Memorandums of Understanding with ADF&G requiring consultation on planning activities, but to our knowledge this consultation did not occur. Additionally, the refuge has an obligation under the Refuge Improvement Act to ensure timely and effective cooperation and collaboration with State fish and wildlife agencies during

the course of managing refuges.² For this instance comments are being provided in this letter, but in the future advance consultation with ADF&G area staff should occur. In particular, the identification of special species should occur in coordination on impacts to wildlife and identification of special species.

- **2.4.4 November 2021 Locations.**

Please delete the sentence on page 36 which states: ~~Construction of towers in wilderness would not be feasible because it is a prohibited use under 4(c) of the Wilderness Act of 1964.~~ Designated wilderness is a CSU under ANILCA 102(4). Title XI of ANILCA allows for the construction of TUSs in designated wilderness in Section 1105. The procedures for authorizing a TUS in designated wilderness are found in Section 1106(b).

- **3.3.2.2 Impacts of Alternative B – Proposed Action. (page 44)**

The following sentence on page 44 needs further detail.

One tower location has a confirmed population of a BLM sensitive plant. There is also potential for BLM sensitive plant species to occur at the other five proposed tower locations if they are adjusted more than 100 meters from the current coordinates.

The sensitive plants confirmed at one site and seen as having the potential to occur at five sites, should be identified. (Identification should also occur elsewhere in the document where sensitive plant populations are indicated, e.g., Page 103, Bullet 3)

- **Section 3.7. Issue 5: Subsistence**

This section should reference that subsistence is protected by ANILCA Title VIII.

- **BLM RDFs (within Appendix A, Required Design Features)**

Subsistence and Wildlife

Bullet 3 (Page 104). This bullet should be divided into two bullets. As written, the first sentence addresses compliance with the Bald and Golden Eagle Protection Act. The rest of the bullet addresses subsistence hunting and wildlife disturbance with no reference to eagles.

Bullet 7 (page 105). This bullet discusses avoiding impacts to the WACH and requires the submittal of a Plan of Operations. A copy of this plan must also be submitted to ADF&G as the agency responsible for the management of fish and wildlife populations within the state.

Wildlife

Bullet 4 (page 107). The Federal Aviation Administration (FAA) has specific requirements regarding the marking of support wires. These requirements should be referenced and followed.

General comment. At all sites there is a possibility of grizzly bear den-site disturbance. We request the following:

- Any den-site disturbances should be reported to the ADF&G office in Fairbanks or the website [ADFG: Report a Wildlife Encounter](https://www.adfg.alaska.gov/index.cfm?adfg=reportwildlifeencounter)³ if and when a disturbance has occurred.

² Refuge Improvement Act PUBLIC LAW 105–57—OCT. 9, 1997 111 STAT. 1255

³ <https://www.adfg.alaska.gov/index.cfm?adfg=reportwildlifeencounter.main>

- All tower sites should have adequate bear-proofing for oil storage or other attractants.

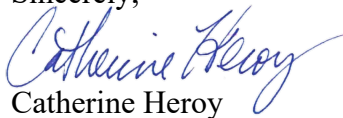
Visual Resources Management (VRM)

Bullet 1 (page 107) and 2 (page 108). Towers and associated structures have certain lighting and paint requirements assigned by the FAA. It is possible FAA will not allow towers to blend into the landscape. The FAA requirements should be followed.

Closing

Thank you for the opportunity to review and comment on this Environmental Assessment and related Compatibility Determination. 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