



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources
OFFICE OF PROJECT MANAGEMENT AND PERMITTING

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July 23, 2025

Kenai National Wildlife Refuge
Attention: Refuge Manager
PO Box 2139
Soldotna, AK 99669

Submitted via email to kenai@fws.gov

Re: Compatibility Determination for Alaska Energy Authority's Transmission Line Upgrade on Kenai National Wildlife Refuge

Dear Kenai National Wildlife Refuge Manager,

The State of Alaska (State) has reviewed the Kenai National Wildlife Refuge (KNWR) Draft Environmental Assessment (Draft EA) and Compatibility Determination (CD) for a right-of-way (ROW) permit to Alaska Energy Authority for a transmission line rebuild. The proposed project would involve construction of new poles in new locations, use of metal poles instead of wooden poles, increased height of the poles, and replacement of the current transmission line with a new transmission line capable of supporting an electric load of 230 kV versus the current load of 115 kV. The CD also evaluates the use of access routes that are outside of the existing ROW permit. The work would take place on an existing transmission line that parallels the Sterling Highway from Three Johns Road to the U.S. Forest Service Boundary at the Russian River, encompassing approximately 323 acres of land within KNWR.

The State offers the comments below, which incorporate input from the Departments of Natural Resources (DNR) and Fish and Game (ADF&G).

General Support

Overall, the State supports the CD's conclusion that the Alaska Energy Authority Transmission Line remains compatible with Refuge Purposes.

The State concurs with the determination of compatibility and offers general support for the proposed transmission line rebuild. The determination of compatibility aligns with the congressional intent of ANILCA, which sought strike a balance between conservation of natural resources and the economic needs of the State of Alaska. Part of this balance was the inclusion of Title XI, a section of ANILCA designed in part to recognize the infrastructure needs of a growing state and challenges that conservation system units (CSUs) might pose to transportation and utility construction. Title XI allows for the construction of transportation and utility projects within CSUs, including near designated wilderness areas. Electric transmission lines are systems that are specifically provided for in ANILCA Section 1102(4)(B)(iv).

Items Suggested for Edits

While the State supports the project and the CDs conclusion, there are some inaccuracies within the documents that warrant review and editing. We suggest the following edits.

Draft EA, Page 77. Wild and Scenic Rivers (which include recreational rivers) can only be designated by Congress. Please revise the following sentences to reflect this.

~~The lower Russian River has been designated by USFS as a Wild, Scenic, and Recreation River.~~ USFS has recommended the lower Russian River as suitable for inclusion ~~to~~ in the National Wild and Scenic Rivers System, but however, Congress has not acted on this recommendation it has not been admitted.

Appendix A: Compatibility Determination

While supportive of the CD's conclusion, the State disagrees with the compatibility standard used and with the description of the Title XI procedure as outlined in the section *How would the use be conducted* (CD pages 5-6).

As specified in 50 CFR 29.11(b), applications for rights-of-way authorized under ANILCA (see 16 U.S.C. 3162(B)) must be submitted under authority of 16 U.S.C. 3101 et seq. and follow the procedures and requirement set forth in 43 CFR part 36.

The ANILCA Title XI process and DOI's promulgated regulations change the typical compatibility standard for CSUs, including National Wildlife Refuges, for transportation and utility projects in Alaska. The compatibility standard for a TUS project on the Refuge is different from that of a typical programmatic or project CD where the use must not **materially** interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife.

Under Title XI, the project is compatible if it will not **significantly interfere with or detract from the purposes for which the unit was established** [emphasis added] (43 CFR 36.2(f)).

The 1986 preamble to the final DOI Title XI regulations discuss this standard specifically:

...commenters were concerned that most, if not all, proposals could be found to interfere with or detract from the purpose for which a unit was established. The majority of relevant comments suggested that the addition of "significantly" as a modifier in order to clarify that "compatible with the purposes for which the unit was established" means that the system will not significantly interfere with the purposes for which the unit was established. Interior agrees and this change was made.¹ [emphasis added]

How would the use be conducted?

The discussion fails to recognize that ANILCA is the prevailing statute in the decision-making process for a TUS within or partially within a Conservation System Unit (CSU) in Alaska. In response to learning that an application for the approval of a TUS located fully or partially within a CSU in Alaska, an agency's first action is to determine if sufficient information is available for the applicant to file a SF 299.

In making a decision, the federal agency must consider and make detailed findings on the criteria outlined in ANILCA and the DOI Title XI regulations at 43 CFR 36.7(a)(2) which are typically included in the NEPA document.

¹ Federal Register Vol. 51, No. 171. Thursday, September 4, 1986. Transportation and Utility Systems in and Across, and Access Into, Conservation System Units in Alaska, Page 31620.

Please revise the following paragraph on pages 5-6 of the CD as shown below:

A new ROW for a TUS on Refuge lands ~~may~~ will be granted if the system is found to have no significant impact on the environment under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347) and upon consideration of the criteria found in 43 CFR 36.7(a)(2).

If approved, permits issued for a TUS will contain terms and conditions as required under regulations at 43 CFR 36.9(b) and 50 CFR 29.21 through 29.24. Typically, we issue ROW permits for a 20-year term with the option for renewal but can authorize a ROW permit from 10 years up to a 50-year term per 50 CFR 29.21- 3(a).

Anticipated Impacts of the Use

We recommend revision to the 'potential impacts' section (CD pages 9-10), as it overstates the potential impacts to wildlife and habitat and designated wilderness. The existing and proposed replacement power poles are not located within, nor will they impact the undeveloped quality of, the Refuge Wilderness. We request the following revisions.

Potential impacts of a proposed use on the refuge's purposes and the NWRS mission (CD p. 9)
Please strike "and the NWRS mission" from this sub-header.

ANILCA Title XI limits compatibility to significant impacts to the refuge's purposes per 43 CFR 36.29(f). We question whether any of the stated "Anticipated Impacts to Resources" meet the significant threshold and recommend deleting the table. At a minimum we request deletion of the word "permeate" in the first row of the column. The refuge is 1.35-million acres, temporary noise impacts will not permeate the refuge.

Affected Environment Table:

Wildlife and Habitat:

Construction and maintenance activities may result in localized and temporary instances of noise exceeding background levels ~~that would permeate~~ in the refuge and into the Kenai Wilderness.

Wilderness:

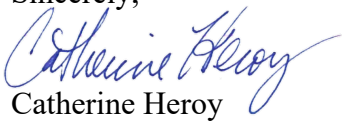
The close proximity of the ROW to designated Wilderness may lead to temporary impacts to solitude during construction, maintenance and decommissioning due to noise.

~~The presence of visible power poles from Wilderness may impact the undeveloped character of Wilderness.~~

Closing

Thank you for the opportunity to review and comment on this proposed project. 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