

Send as Email to Kim Griffith, Executive Director and Charlie Lean, Chair
Citizens' Advisory Commission on Federal Areas (CACFA)

During CACFA's February 2026 meeting, I was part of a group of ANILCA specialists that provided an ANILCA Overview, summarizing many of ANILCA's unique provisions protecting public uses of federal lands in Alaska. Commission members requested more information regarding national rights-of-way regulations adopted by the National Park Service (NPS) in 2024. The 2024 national ROW regulations cause confusion if not outright conflicts with ANILCA's access and transportation provisions and the Department of the Interior (DOI) regulations that implement those provisions, which have been litigated and upheld by the Court. The relevant regulation citations and ANILCA provisions at issue are provided below:

NPS Rights-of-Way Regulations

NPS adopted final nationwide ROW regulations in 36 CFR Parts 1 and 14 at 89 FR 99741 on December 5, 2024. Doyon Limited¹, the State of Alaska, and the Alaska Miners Association provided extensive comments and objected to the proposed ROW regulations (89 FR 48850, June 10, 2024) due to conflicts with access rights guaranteed under ANILCA Title XI for inholders, for economic development, and for remote communities' transportation, energy, and communication needs, among others. None of the commenters' requested changes were made in the final rules.

ANILCA Title XI requires specific procedures for processing applications and permitting of ROWs on conservation lands in Alaska "*notwithstanding any provisions of applicable law*", meaning these statutory provisions supersede any other relevant federal laws in Alaska. These include:

- Section 1104 and 1106 – Specify the application process that must be used for ROWs;
- Section 1102(b) – Lists the applicable types of utilities and transportation;
- Section 1110(a) – Requires public entry and certain methods of access be allowed for pre-ANILCA activities so 'open until closed' under an explicit required process; and
- Section 1110(b) – Guarantees access to inholdings for present and future economic and other uses.

All of these Alaska-specific provisions for access and required processes to restrict access are codified in 43 CFR Part 36; additional rules specific to Alaska park units are at 36 CFR Part 13.

The final 2024 NPS regulations do not clearly state that all rights-of-way in Alaska national park lands must be authorized under DOI's 43 CFR Part 36 regulations as statutorily required by ANILCA Title XI. Instead, the preamble makes an obtuse reference (89 FR 96535) that ROW permits are prohibited for any purpose not identified in other law: "*unless the NPS is separately authorized to do so by law, such as through [ANILCA].*" This misses the significance of ANILCA's overarching preemption of any applicable law in Alaska. Similarly, the preamble

¹ Doyon Ltd is one of twelve Native Regional corporations Congress established in the Alaska Native Claims Settlement Act of 1971, whose entitlement of 12.5 million acres makes it the largest private landowner in Alaska.

(80 FR 96540) leaves it to individual managers to determine if “*the [national] regulations in part 14 apply consistent with applicable Federal Law . . . such as Title XI of ANILCA.*” This approach of depending upon individual NPS staff to determine whether access is regulated in Alaska under the national regulations or has applicable provisions under other law is unacceptable.

The final NPS regulations make no reference to Alaska lands or the statutory primacy for permitting of a ROW in Alaska under 43 CFR Part 13 regulations. Section 14.1(a) Purpose and Scope (89 FR 96550) of the final regulations merely states:

“Consistent with applicable Federal law, the regulations in this part establish procedures an entity must follow when applying for a right-of-way permit and provisions under which the NPS may authorize a right-of-way permit within a National Park System unit, under applicable current or future statutory authority, whether the statutory authority is System-wide or specific to a System unit.”

In contrast, Fish and Wildlife Service conducted a parallel update of its national ROW regulations at 50 CFR Part 29. The preamble of the final rule (89 FR 99733, December 11, 2024) clarifies: “*If a right-of-way across Refuge System lands is authorized by ANILCA (see 16 U.S.C. 3162(B)), then **the Service must follow the procedures in 43 CFR part 36** when permitting the right-of-way and follow other Refuge System laws and regulations where they do not conflict with ANILCA.*” **The final rule (89 FR 99737) explicitly exempts Alaska refuges** in 50 CFR 29.11:

(b) *National Wildlife Refuge System lands in Alaska.* 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 requirements set forth in 43 CFR part 36 and other applicable Refuge laws and regulations where they do not conflict with ANILCA. Applications for all other rights-of-way on or over lands in Alaska must be submitted under authority of 16 U.S.C. 668dd, as amended, or for oil and gas pipelines under section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*), following the application procedures set out in § 29.15, except that compatibility determinations for Alaska Native Claims Settlement Act 22(g) lands shall follow the procedures in § 25.21(b)(1) of this chapter.

Resolution: NPS could propose an amendment to its final rule (or anyone can file a Petition for Rulemaking with the Secretary) to adopt language essentially identical to the FWS’s preamble and rule at 50 CFR 29.11 to exempt applications for rights-of-way authorized under ANILCA on National Park lands in Alaska at 36 CFR 14.1(a).