

**National Park Service**  
**U.S. Department of the Interior**

**Wrangell-St. Elias National Park and Preserve**  
**Alaska**



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**Finding of No Significant Impact**

**Established and Maintainable Access to Inholdings Programmatic Environmental Assessment**

**February 2008**

Recommended: Margaret Jensen February 28, 2008  
Superintendent, Wrangell-Saint Elias National Park and Preserve Date

Approved: Narcia Blazguk 2/28/2008  
Regional Director, Alaska Date

# **FINDING OF NO SIGNIFICANT IMPACT**

## **Established and Maintainable Access to Inholdings Programmatic Environmental Assessment**

### **Wrangell-St. Elias National Park and Preserve, Alaska February 2008**

The National Park Service (NPS) prepared an environmental assessment (EA) in 2007 to evaluate a proposal to authorize access to inholdings under Section 1110(b) of the Alaska National Interest Lands Conservation Act (ANILCA) for established and maintainable routes and methods of access within Wrangell-St. Elias National Park and Preserve (WRST), Alaska. Issuing ANILCA 1110(B) Right-of-Way Certificates of Access (RWCA) to inholders is necessary to describe and document their legal methods and means and to assure their access interests. To protect park resources and minimize potential impacts to park resources and values, the NPS would identify these routes and methods of access, including the suite of maintenance methods and tools the inholder may use to ensure the surface tread is useable as intended. Established and maintainable routes and methods of access qualifying for consideration in this EA are those that currently exist, have not resulted in unacceptable impacts to park resources and values, and can be maintained in their present condition and character essentially within their existing footprints. Examples of established access facilities include constructed and bladed roads, off-road vehicle (ORV) trails, airstrips, and waterlines.

The NPS has selected Alternative 2, the NPS and Environmentally Preferred Alternative, to issue ANILCA 1110(b) RWCA to inholders with established and maintainable access in the park.

Written comments were received from the State of Alaska, ANILCA Implementation Program; National Parks Conservation Association (NPCA, et. al.); and five individuals. These comments were generally of a clarifying nature, supported the proposed action as described, or expressed no significant objections to the proposed action. The public comments received did not change the conclusions in the EA about the environmental effects of the action. The NPS responses to substantive public comments, including errata for the EA, are attached in Appendix A.

#### **ALTERNATIVES**

Two alternatives were evaluated in the EA.

##### **No Action Alternative**

This alternative represents a continuation of the existing uses of access facilities to inholdings in the park and preserve, and provides a baseline for evaluating the changes and impacts of the proposed action alternative.

Under the No-Action Alternative, the NPS would continue to consider requests for access under ANILCA section 1110(b) on a case-by-case basis. In response to an application for an ANILCA

1110(b) RWCA, the NPS would conduct an environmental analysis of the proposal and determine if the individual route, method, and means is adequate and feasible. Processing applications would be based on procedures and timeframes specified in the ANILCA regulations at 43 CFR 36.10 and the policies and approach outlined in the 2007 NPS Alaska Region Access to Inholdings User Guide.

The NPS would not develop a comprehensive program to issue RWCA's and actively analyze and manage established and maintainable access facilities. Landowners would continue to use established access facilities to their property unless unacceptable impacts to park resources occur from unauthorized uses of NPS lands or the property owner contacts the NPS and requests a RWCA. Otherwise, NPS management of access to inholdings would consist of maintaining inventories of access facilities and discussions with landowners regarding access to their property across park lands.

**Proposed Action Alternative: Implement a Program to Authorize Right-of-Way Certificates of Access for Established and Maintainable Access to Inholdings (the NPS and Environmentally Preferred Alternative)**

Under this alternative, NPS would develop and implement a program for authorizing established and maintainable access to inholdings. Those access facilities meeting the assessment criteria for both administrative requirements and technical management objectives would qualify for inclusion. The NPS would actively manage and monitor landowner or other valid occupier operations of motorized vehicles across federal public lands on established and maintainable facilities for access to state and private inholdings as provided by ANILCA Section 1110(b) and its implementing regulations. This action would not affect the use of snowmobiles, motorboats, or airplanes, which are currently permitted under ANILCA Section 1110(a). The NPS would accomplish its objectives by working with landowners that submit applications for ANILCA 1110(b) RWCA's, which describe the routes and methods of access, facility geometry and location, vehicle class, maintenance operations, and other appropriate terms and conditions to protect park resources. Such RWCA's would also include appropriate terms and conditions with maintenance options to enable landowners to maintain their established access facilities in their existing footprint and consistent with their current level of development.

The RWCA would include those resource protection measures deemed necessary to ensure consistency with Title 43 CFR 36.10 (e) (1) and 36.9(b) criteria. The NPS would attach specific protection measures to individual RWCA's to address unique resource protection needs. Protection measures for a specific authorized access facility may change over time to reflect changing resource conditions or access needs.

**PUBLIC INVOLVEMENT**

The public was involved in scoping access issues over the past three years in conjunction with the NPS Alaska Region's effort to develop the Access to Inholdings User Guide. The NPS conducted meetings with inholders in affected communities during the week of May 14, 2007, and posted a newsletter on the NPS Planning, Environment, and Public Comment (PEPC) webpage in early June to announce the NPS intent to complete the subject EA. The NPS mailed

or emailed copies of the one-page newsletter to 153 addresses, including the Alaska Congressional delegation; state and federal agencies; Native tribes, governments and organizations; (15) environmental groups; resource development organizations, local groups; and (95) individuals, mostly landowners. Other scoping activities included consultation with the U.S. Army Corps of Engineers about wetlands impacts and use of Nationwide Permits; the NPS Water Resources Division Wetlands Specialist about NPS policy and procedures for wetlands management; the State of Alaska, Department of Natural Resources, regarding the Access User Guide provisions and principles; and, the U.S. Fish and Wildlife Service, Ecological Services, Anchorage, Alaska, regarding the presence of threatened and/or endangered species in the subject area. The Interim User's Guide to Accessing Inholdings in National Park Service System Units in Alaska was released in July 2007.

The Established and Maintainable Access to Inholdings Programmatic Environmental Assessment was placed on the PEPC website on November 28, 2007, where it was available for public review and comment through January 31, 2008. A press release announcing the availability of the EA and the public comment period was issued on November 28, 2007. The news release was aired by radio stations in Valdez and Glennallen, Alaska, during the public comment period and was published in the *Copper River Record* and the *Anchorage Daily News*. Additionally, the news release was sent governmental agencies, organizations, and interested individuals. Letters, emails, and phone calls were made to WRST's private land owners to notify them that the EA was available for public review. Park staff also had informal discussions with land owners to brief them on the EA's contents.

## **DECISION**

The NPS decision is to select the Proposed Action Alternative: Implement a Program to Authorize RWCA for Established and Maintainable Access to Inholdings (the NPS and Environmentally Preferred Alternative), along with the mitigating measures.

### **Mitigating Measures**

The mitigation measures described in section 2.3.4 of the EA (pages 2-13 to 2-15) are adopted as part of the selected alternative: Implement a Program to Authorize RWCA for Established and Maintainable Access to Inholdings. These measures describe actions to avoid or reduce impacts to wetlands, hydrology, aquatic habitat and fish, soils and substrates, native plants, cultural resources, migratory birds, and wilderness.

### **Rationale for the Decision**

Implementing a program to authorize RWCA for established and maintainable access to inholdings resolves a long-standing concern with private landowners, the NPS, and the interested public regarding access to inholdings across federal public park lands in WRST. The program will result in the descriptions and documentation of access methods and means to provide adequate and feasible access for landowners and valid occupiers while protecting park resources and values and avoiding unacceptable impacts. The proposed program complies with ANILCA Section 1110(b) and its implementing regulations at 43 CFR Part 36.10 and results in fewer

impacts to park resources than the No-Action Alternative. The decision provides a management process with assessment criteria for determining which access facilities qualify for RWCA and which access facilities would require additional future environmental analyses. For those landowners and valid occupiers whose access fit the criteria described in this EA and apply for and obtain their ANILCA RWCA, the final documentation will reduce potential misunderstanding between the landowners and the NPS and provide certainty for adequate and feasible access for the landowners. Plan implementation will assure protection of park resources in accordance with ANILCA, the Organic Act, the National Historic Preservation Act, the Wilderness Act, and Executive Orders 11988 and 11990.

### **Significance Criteria**

The preferred alternative will not have a significant effect on the human environment. This conclusion is based on the following examination the significance criteria defined in 40 CFR Section 1508.27.

*(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.*

This EA evaluated the effects of the preferred alternative (plan implementation) on aquatic resources and fish, cultural resources, inholdings, public access and recreation, soils, vegetation and wetlands, and wilderness. Implementation of this decision would have negligible adverse effects on aquatic resources and fish; minor beneficial effects on cultural resources; moderate beneficial effects on the uses and values of inholdings; minor adverse and beneficial effects on public access and recreation; negligible adverse effects and minor beneficial effects on soils; minor adverse effects and negligible beneficial effects on vegetation and wetlands; and minor beneficial effects on wilderness. No significant adverse impacts would occur and there would be no significant restriction of subsistence users or uses.

*(2) The degree to which the proposed action affects public health or safety.*

Implementation of the selected alternative would not affect public safety to any known or appreciable degree either adversely or beneficially.

*(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetland, wild and scenic rivers, or ecologically critical areas.*

A few of the existing access facilities are located in designated wilderness. ANILCA Section 707 directs that wilderness be managed in accordance with the Wilderness Act of 1964, except as otherwise expressly authorized by ANILCA. Title XI provides specific exceptions to the Wilderness Act for the purposes of access, including the uses of snowmobiles, motorboats, and airplanes.

*(4) The degree to which effects on the quality of the human environment are likely to be highly controversial.*

The effects on the quality of the human environment are not likely to be highly controversial, and the action will result in no new, negligibly new, and possibly minor beneficial environmental effects. Neither the content nor the number of comments received during the 60-day comment period indicates a high level of controversy exists.

*(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.*

No impacts associated with this action are highly uncertain or involve unique or unknown risks.

*(6) The degree to which the action may establish a precedent of future actions with significant effects or represents a decision in principle about a future consideration.*

This action only addresses established and maintainable access facilities. Construction of new access facilities or major modifications to existing access facilities will require separate NEPA analysis. Issuing RWCA's for established and maintainable access facilities does not set a precedent for future actions.

*(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.*

This action will enable the NPS to provide inholders with adequate and feasible access to inholdings while protecting natural and other values. This programmatic EA considers cumulative impacts, and we conclude the action is not related to other actions of individual insignificance that will amount to cumulatively significant impacts on the environment.

*(8) Degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.*

The RWCA's will include specific protection measures to address unique resources. The likelihood of loss or destruction of known scientific, cultural, or historic resources from implementation of the selected alternative is extremely remote.

*(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.*

Implementation of the selected alternative will not adversely affect any known endangered or threatened species or its habitat.

*(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.*

No federal, state, or local laws or requirements imposed for the protection of the environment will be violated by implementing this alternative.

## **FINDINGS**

The levels of adverse impacts to park resources anticipated from the selected alternative will not result in an impairment of park resources that fulfill specific purposes identified in the establishing legislation or that are key to the natural or cultural integrity of the park.

The selected alternative complies with the Endangered Species Act, the National Historic Preservation Act, and Executive Orders 11988 and 11990 for floodplains and wetlands. There will be no restriction of subsistence activities as documented by the Alaska National Interest Lands Conservation Act, Title VIII, Section 810(a) Summary Evaluation and Findings.

The National Park Service has determined that the selected alternative does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, in accordance with the National Environmental Policy Act of 1969 and regulations of the Council on Environmental Quality (40 CFR 1508.9), an environmental impact statement is not needed and will not be prepared for this project.

## ATTACHMENT A

### NPS RESPONSES TO COMMENTS and ERRATA For the Established and Maintainable Access to Inholdings Environmental Assessment Wrangell-Saint Elias National Park and Preserve, Alaska

This attachment amends the subject environmental assessment (EA) and provides NPS responses to public comments.

#### NPS RESPONSES TO PUBLIC COMMENTS

Comments were received from the State of Alaska and the National Parks and Conservation Association (jointly submitted with The Wilderness Society, Alaska Center for the Environment, and the Defenders of Wildlife). Five comment letters were received from individuals.

The NPS has read and considered all comments received. Responses to substantive comments are provided below. "A substantive comment is defined as one that leads the NPS to: (1) modify an alternative, including the proposed action; (2) develop and evaluate an alternative not previously given serious consideration; (3) supplement, improve, or modify the environmental analysis; (4) or make factual corrections (CEQ NEPA Regulations 1503.4)." The comments addressed below are those judged to be substantive.

The comments are quoted or paraphrased, and the NPS responses follow in italics.

**State of Alaska SOA Comment #1:** Page 1-10, Permits and Approvals Needed to Implement Project. Though no new access facilities are anticipated, the State expressed concern that established access facilities may not already have appropriate permits from ADNR for structures in fish habitat or below the high water mark in navigable waters. Therefore, the State would like to have these permits listed in the appropriate sections of the EA.

***Response:***

*The NPS specifies in the EA on page 2-12 and criteria (3) and (4) of 43 CFR 36.9(b) that any RWCA will not violate any applicable air and water quality standards and related facility standards pursuant to law and would prevent damage to fish habitat. Furthermore, appendix E provides an example RWCA, which states the landowner is responsible for complying with all applicable state and federal permits for their access. The NPS, however, will add to the EA the possible need for landowners to obtain a fish habitat permit and/or water use permit where applicable.*

**SOA Comment #2:** Page 2-13, 2.3.4.2, Hydrology. "The third bullet references a 100-year flood event as the standard for replacement of failed structures such as bridges."



**Response:** *The mitigating measure is to accommodate a major flood. A 100-year event is an example of an ideal design of a replacement structure to avoid impacts to fish and habitat. The NPS will work with individual landowners to ensure this mitigating measure is tailored to their particular situation without creating new impacts outside the footprint of the existing access alignment.*

**SOA Comment #3:** Page 2-14, second complete bullet. “We support the general intent of this mitigating measure; however, we are concerned that exceptions may occasionally be necessary, e.g. terrain may limit available options to stay further away from water bodies. We request the FONSI clarify that the Service will consider exceptions on a case-by-case if small amounts of cutting are necessary to achieve a sustainable access solution. We also request clarification that this mitigation measure is included for purposes of RWCA authorizations, not other authorized uses of parklands such as subsistence cutting for house logs or firewood.”

**Response:**  
*The NPS will work with individual landowners to ensure that this stipulation can be tailored to their particular situation. For example, the NPS may require the landowner to place large woody debris within the aquatic zone rather than remove the material from the area. Authorizing RWCAs does not change management of subsistence or other authorized uses.*

**SOA Comment #4:** Page 2-14, 2.2.4.6, Cultural Resources. “The last sentence says, ”No adverse effects to historic properties would be authorized.” It would be helpful to clarify in the FONSI that a mitigating measure to avoid such adverse affects could include minor realignments, assuming the realignments were small enough to remain within the scope of this EA for ”established“ access.”

**Response:**  
*No new adverse effects to historic properties would be authorized by this EA because access facilities containing features deemed eligible for the National Register of Historic Places would require further analysis and be addressed by additional NEPA and NHPA compliance. Consultation with the SHPO applies both inside and outside the access footprint. If an historic resource could be avoided within the disturbance footprint, then this could be authorized, but only after the consultation with SHPO.*

**SOA Comment #5:** Page 2-16, 2.5.2, RS 2477 rights-of-way. “We appreciate the acknowledgement of RS 2477 rights-of-way in this document; however, the introductory paragraph uses the term “*asserted*” and “*assertions*” inappropriately in the first part of the first sentence. The term *asserted* has certain legal implications that do not apply to all of these routes. The RS 2477 routes listed in the general management plan have been *identified* by the State, which is different from an active assertion process undergoing court adjudication.”

**Response:**  
*The NPS has modified the EA to replace the term “asserted” with “identified potential”.*

**SOA Comment #6:** Page 2-16, Table 2-4, Summary Impacts of Alternatives. Under the Preferred Alternative for Public Access & Recreational Use, there is a reference to “*posted motorized access restrictions.*” In light of the Alaska Access Users Guide, we assume such postings would not affect motor vehicles that are generally allowed on adjacent parklands, e.g. snowmachines, over portions of the route crossing federal public lands. In contrast, the references “*signs limiting vehicular use of the access route.*” For clarity, we request the FONSI indicate that such postings would not restrict public access via snowmachine (recognizing that private property owners may certainly post their private property as they please).

**Response:**

*While this comment does not require a change in the EA or FONSI, we anticipate that park visitors who encounter some access driveways and roads need to be informed that these are not open to the general public. The NPS intent with signs is to prevent unauthorized motorized uses that would not be allowed on adjacent public lands. The signs will alert and inform the public that these driveways and roads are access to private lands and not a general public access road. The NPS agrees signs on federal park lands should be phrased appropriately so as not to limit motorized access authorized by ANILCA 1110(a), such as snowmachines during periods with adequate snow cover, motorboats, or airplanes. The signs will prohibit unauthorized uses of highway vehicles, heavy equipment, or ORVs. Keeping unauthorized motorized vehicle uses off of inholder access facilities would reduce both impacts to the travel surface and user conflicts.*

**SOA Comment #7:** Page 3-4, 3.1.1.1, Jack Lake burbot populations. Current population data for Jack Lake burbot is lacking. ADF&G conducted some limited studies on burbot in Jack Lake in both 1988 and 1989. These were one-event samples, which only estimated “catch per unit effort” with baited hoop traps and collected length information. Abundance estimation work was not conducted. Unless the NPS has additional information documenting “overharvest,” care should be taken in stating that burbot populations were over exploited. The text does not reference a source of the reported information.

**Response:** *The information presented in the EA is consistent with information reported in ADFG Technical paper 292 by Simeone, W.E and J. Kari. In this report, Tom Taube, ADFG Area Fisheries Biologist states “The popularity of burbot and lake trout in lakes located near the road system has caused populations of these fish to be over harvested ...”*

**SOA Comment #8:** Page 4-8, 4.3.1.2, Cumulative Effects, first sentence. As with the statement at 3.1, the statement that fish populations are experiencing downward trends appears overstated. While there may be some localized decreases in fish populations due to site-specific impacts, we are not aware that this is a widespread problem throughout the Park. We request that such discussions focus more on site-specific impacts and avoid the unintended implication that fish populations are declining on a park wide basis.

**Response:** *The analysis addresses the affected area as described on page 3-1, which is a relatively small portion of the entire park/preserve. The description of fish populations within the affected area adequately reflects the analyst’s professional opinion after reviewing available information provided by the National Park Service, the Alaska Department of Fish and Game, other researchers, and traditional ecological knowledge.*

**SOA Comment #9:** Page C-3, Section 810 Evaluation, last sentence on page. The State discourages use of the term “sport hunting” because it has resulted in a negative connotation in rural Alaska. State regulations no longer uses “sport hunting” because the term implies that all non-subsistence hunting is strictly for “sport” as opposed to others forms of personal use. The basic reference “general hunting” is appropriate in this context.

**Response:** *The EA is amended to delete the term “sport hunting” to use simply “hunting” as adequate to describe general hunting.*

**SOA Comment #10:** Page C-4, ANILCA 810 analysis, Affected Environment. The final sentence in the first paragraph of the ANILCA Section 810 Analysis in Appendix A on page C-4 reads:

*To engage in subsistence activities within Wrangell-St. Elias National Preserve, individuals are not required to live in a resident zone community, but they must live in a rural Alaskan community or area that has a positive customary and traditional use determination for the species and area they wish to harvest.*

This statement accurately defines eligibility for subsistence uses of the Preserve under the Federal subsistence regulations. However, Preserve lands also are open to hunting, trapping, and fishing under State regulations unless specific closures to non-federally qualified subsistence users have been implemented. We request a correction/clarification in the final decision document.

**Response:** *The NPS amended the EA sentence to specify what is being described as eligibility under federal subsistence regulations:*

*To engage in subsistence activities within Wrangell-St. Elias National Preserve under federal subsistence regulations, individuals are not required to live in a resident zone community, but they must live in a rural Alaskan community or area that has a positive customary and traditional use determination for the species and area they wish to harvest.*

*Because the state authorizations are listed in the previous paragraph of the 810 analysis, we do not think it necessary to repeat that information in this paragraph.*

**SOA Comment #11:** Page J-2, Text Box A. “The accompanying explanation notes that “*the agency can consider and grant access...*” in wilderness. After checking with Service staff, we understand that the intent of this statement is to address 4(c) of the Wilderness Act; however, in the context of this EA, the language may inadvertently appear to imply that the agency may decline to consider adequate and feasible access, which would not be consistent with ANILCA 1110(b). If this language is used again in future EAs concerning access to inholdings, we recommend a clarification.”

***Response:***

*The NPS language does not intend to imply we may decline to consider adequate and feasible access to an inholding, merely that we can consider motorized access across designated or eligible wilderness areas in the study area.*

**NPCA, et. al. Comment No. 1:** “It will be important to address the impacts of the 28 active facilities whose maintainability was not determined, and therefore not considered in this EA, particularly for those that ford fish bearing streams. The 28 existing access routes that do not fit the evaluation criteria established in this EA and all future access requests will be separately reviewed in subsequent environmental documents prepared consistent with the National Environmental Policy Act.”

***Response:***

*These 28 facilities are beyond the scope of this proposal and their impacts are considered in the cumulative analysis. Most of these access facilities cross fish bearing streams hence do not meet the criteria for consideration in this EA; they may be addressed in the future collectively or on a case by case basis.*

**NPCA, et. al. Comment No. 2:** The process and criteria outlined in the Access to Inholdings EA is a significant federal action which should warrant evaluation under an Environmental Impact Statement (EIS).

***Response:***

*As documented in the EA and FONSI, this proposal does not result in significant impacts to park resources and values, and as such, is not considered a major federal action warranting an EIS.*

**NPCA, et. al. Comment No. 3:** We have concerns that increased awareness of RWCAs, particularly on the longer routes and remote airstrips that provide access deeper into the park, will attract recreational users. This is a source of potential conflict with subsistence users and, as such, it should be evaluated in the EA. Our concern is not that these RWCAs will restrict subsistence access, rather that they will increase recreational access that causes conflict with subsistence users.

***Response:***

*Most of the established access facilities covered under this EA are proximal to the road system, in developed areas, and/or are already known by local residents and many park visitors. Because their physical current character would essentially remain the same, we do not anticipate any substantive change in recreational use patterns. Nothing in this federal action would affect authorized recreational access or any subsistence access or use. These access facilities would not be advertised and other mitigation could occur, such as signage indicating the route is for authorized uses only.*

**NPCA, et. al. Comment No. 4:** Subsistence should be an impact topic. The EA needs to evaluate the cumulative impact to subsistence from all 60 potential RWCAs. Any further NEPA compliance on RWCAs should discuss impacts to subsistence.

**Response:**

*An analysis of the potential impacts to subsistence from the proposed action is provided in the 810 analysis at Appendix C. The EA is revised at 1.4.2.2 to clarify as documented in the 810, that the proposal would have at most a negligible effect on wildlife and a minor effect on subsistence fish resources. Effects to fishery and habitat would be reduced over the status quo by mitigation measures required by the proposal. There would be no direct impact on allowed means of subsistence access, and competition for subsistence resources on federal lands is not expected to increase.*

**NPCA, et. al. Comment No. 5:** The lack of specific access facility detail makes it challenging to provide concrete, substantive feedback, particularly regarding those facilities located in designated or eligible Wilderness, as identified in Table 4.3. Of particular concern is the Kotsina Trail which, according to Table 4.3, consists of a bladed route through 8 miles of designated Wilderness. What is the current status of this route? Will additional stipulations to protect the adjacent wilderness be included in any potential RWCA for this route? We are also concerned about the proposed issuance of RWCA's on approximately 60 miles of trails and 3 miles of landing strips located in eligible Wilderness. It is not clear how the issuance of RWCA's in eligible Wilderness areas may impair or negatively impact the viability of future Wilderness designation upon these lands.

**Response:**

*All inholders who would be considered under this EA for an ANILCA RWCA must submit an SF-299 application (with NPS assistance if needed), which would describe facility details. The private lands in the upper Kotsina have been accessed by ORVs, fixed-wing aircraft, and snowmachine. Each method is somewhat unique and may require review to determine whether it does not have new impacts to park resources by confining operations to the established footprint as outlined in the EA. This would be the same for all potential authorized RWCA facilities regardless whether they are located in wilderness.*

*Some existing access facilities to inholdings were included in those areas designated as wilderness. Wilderness values will be addressed by provisions in the RWCA that confine use to the established footprint. The Kotsina Trail was developed as a bulldozed roadbed that currently traverses both private Native lands as an ANCSA 17(b) easement and through designated Wilderness. Where it is an ANCSA 17(b) easement, the route provides access to public federal lands and is not addressed in this EA. Established and sustainable access to inholdings will not change the eligibility of these lands for wilderness designation.*

**NPCA, et. al. Comment No. 6:** We request to be notified and provided the opportunity to be involved in some form of review of each individual RWCA when the application is made and as the terms and stipulations are being determined.

**Response:**

*WRST proposes to set up a spreadsheet on the park webpage so interested parties can track the status of SF 299 applications.*

**NPCA, et. al. Comment No. 7:** We recommend that the Park Service establish a consistent signage strategy for the marking and identification of access facilities and associated park boundaries. Signage should clarify that the access facility is not a recreational trail established by the Park Service nor maintained by the private land owner for the purpose of providing access to public parklands.

***Response:***

See SOA response #6. *We plan to have a consistent signage program that educates the public and clarifies that these access routes are for authorized users only.*

**NPCA, et. al. Comment No. 8:** In the event that the public should damage an access facility, we request that Park Service clarify who will be held responsible for the right-of-way's repair.

***Response:***

*The NPS will address potential threats to park resources and damage to a facility travel surface through education. The NPS believes consistent signage, however, will reduce the likelihood of unauthorized uses and damages. NPS could pursue cost recovery from perpetrators, as warranted and appropriate, from injury to resources and facilities on NPS lands.*

**NPCA, et. al. Comment No. 9:** We recommend that the Park Service clarify the source and method by which property owners will be required to obtain approved, clean gravel for the maintenance of the right-of-way across parklands. We recommend that the Park Service consider making a clean gravel source available for rights-of-way maintenance.

***Response:***

*Approvals to use NPS borrow materials for private use is outside the scope of this EA and is not considered part of this proposal. The NPS will work with landowners to identify sources of weed-free fill and gravel on non-federal lands.*

**NPCA, et. al. Comment No. 10:** We have concerns in relation to criteria #6, which pertain to the grades of the facilities in review: What is the basis for accepting grades between 20-40% for 50 feet in length or less than 10% of the total as acceptable and not needing to be relocation or mitigation? These grades may contribute to environmental impacts beyond what the NPS considers acceptable and may need mitigation beyond the scope of that which is permitted in Appendix B. Accordingly, what level of enforcement and financial responsibility will the NPS assume to ensure that slope-related problems are mitigated?

***Response:***

*The NPS criteria and guidelines are described in Table 2.2 of the EA are meant to prevent impacts outside the established footprints. As stated on page 2-12 of the EA, there may be a joint landowner and NPS on-site evaluation of facilities prior to authorization to assure the access*

*meets the criteria in table 2.2. The NPS has already inspected many of the existing access facilities considered in this EA. If reasonable alignment alternatives exist or mitigation measures are available, then they would be required or recommended so long as no new disturbance area is created. For any segments with > 20% grade the RWCA will require a surface tread of durable character to keep vehicles in the alignment. The “watershed” of a 50-foot section is not large enough to accumulate enough water to cause significant erosion. Regular maintenance to maintain water control features and the tread surface in steeper sections will be subject to agency monitoring to prevent unacceptable environmental impacts. The 10% “allowance” of steeper segments is to ensure that established alignment minimizes the use of steeper grades to the extent possible and only a small portion of the access exceeds the >20% grade standard.*

**NPCA, et. al. Comment No. 11:** The goal appears to be to mitigate wet trails before they cause sedimentation into surface water or further degradation and widening, but it seems that for these criteria, the lengths and depths are ambiguously chosen and applied. Access Facility Assessment Criteria, presented within Table 2.2, needs to be clarified, with definitions of trail features (ruts, depression muck hole, etc.) within the text of the document or appendices. Specific questions on this section are as follows:

There appears to be conflict between the criteria that state: no ruts exceed 8” depth over 10’ of length, no depressions or muck holes exceed 8” depth over 2’ of length, and no persistent ponded water exceeding 4” depth and 10’ length.

How do you decide the difference between a rut and a depression?

**Response:**

*A rut is caused by the passage of a wheel when the tread surface can’t support its weight. The downward force of the wheel shears and displaces the soil beneath it, forcing the soil to bulge outwards and upwards beside the wheel. The shearing and displacement is most likely to occur on fine textured soils under saturated soil conditions. These typically occur at break-up when frozen subsoils restrict internal drainage or during periods of excessive precipitation when surface water accumulation exceeds the rate at which water can percolate through the soil profile. It is uncommon on coarse textured soils. On organic soils, surface materials are typically more subject to in-place abrasion and churning rather than shearing and displacement. Ruts then, are caused by the passage of wheeled traffic and typically appear as a characteristic linear depression and two rises of displaced soil within the width of a relatively level tread surface cross section. Ruts generally occur in pairs, as both wheels impact the surface and maybe evident from a single passage where the individual tread marks are visible or would be expressed as two deeper ruts generated from multiple passes. Ruts on grades tend to channel water. Ruts on flats tend to hold water. A “depression” is a large scale failure of the tread surface that extends across the entire width of the tread surface. It is generally caused by repeated passage across a section of the trail that is saturated for long periods of time such as an area in a low lying section that ponds surface water. It is also common on organic soils subject to repeated vehicle passage. Depressions can develop from ruts where repeated passage enlarges ruts to the point that they cover the entire width of the tread. Ruts and depressions are managed differently. Ruts can often be re-graded with displaced materials used to re-shape the*

*tread surface. Depressions often require the importation of fill material or trail hardening, and a broad-scale evaluation of water management and necessary mitigation.*

Is a depression 8” below the average undisturbed ground surface or could it also be below the 8” rut?

***Response:***

*Rut and depression depth would be measured below the normal surface tread elevation. Because of their nature, a rut could develop within a depression, but a depression could not form within a rut.*

Why can a wet muck hole be 8” deep and while ponded water is only allowed to be 4” deep?

***Response:***

*A wet muck hole is typically a feature that has formed on organic soils or is a mineral soil depression. It is a clear indication of surface failure. Eight inches is the set allowance, after which mitigation is required. Ponded water is a major contributing factor to surface failure. Prolonged ponding saturates surface soils and ultimately leads to rutting and the development of depressions on fine textured and organic tread surfaces. Areas with prolonged ponding are an indicator of inadequate water control and require mitigation at an early stage to prevent more extensive degradation.*

What are “normal conditions” under which a trail is supposed to be mud free?

***Response:***

*Mud-free travel surfaces exist when there is no accumulation of water on the surface or saturation in surface soils. This is normally the period in the spring after mineral soils are thawed to the depth to provide free flow of water through their soil profile; and periods when precipitation rates do not exceed a soil’s infiltration and internal percolation rates.*

Is there a significant difference in trail conditions between a segment that has 4” of ponded water for up to 10’ of length and one that has running surface water for up to 50’ in length?

***Response:***

*Ponded water saturates surface soils that can lead to surface tread failure and degradation. Running water erodes and transports tread material down slope. It can cause sheet, rut or gully erosion and sediment deposition problems if unchecked. The management of the two conditions is different, although they can be related as running water often pools in low areas and forms ponded sections of tread. The first step in mitigating ponded sections is to attempt to eliminate the source of the water. This would be to divert water off tread surfaces up slope from the ponded areas. This is accomplished by constructing rolling grade dips at the top of grades and along sloped sections at appropriate intervals. This is also the mitigation for running water issues. For the ponded areas themselves, the mitigation is to improve local drainage. Mitigation can include importing cap material to elevate the surface; the development of side ditches to*



*improve drainage and provide material to elevate and crown the tread; the development of supplemental ditches and drains; or other form of trail hardening.*

Where “water is directed off tread surface in a manner to prevent tread surface erosion and sedimentation”. Is this after it has run along the trail for 50’?

**Response:**

*Ideally, water would be directed off of the tread surface at the top of the grade. Water could also be managed within the 50 feet segment by crowning, in-sloping or out-sloping the tread surface to direct water to an in-side ditch or to the side slope. Direct fall line alignments would be discouraged and recommended contour alignments would provide opportunities to utilize the native side slope to receive surface sheet flow. Additional water control in the form of rolling grade dips or other water control feature could also be integrated into the 50 foot segment if, and as needed.*

**NPCA, et. al. Comment No. 12:** The second paragraph on page 1-2 appears to imply that off-road vehicle (ORV) use is allowed under ANILCA 1110(a) for traditional activities, yet this is not accurate. While 43 C.F.R. § 36.11 may purport to authorize ORV use as a special access method, NPS should clarify that this authority does not derive from ANILCA 1110(a) as a type of access for traditional activities.

**Response:**

*The NPS does not intend to make any such implication. The phrase “traditional activities” and “regulations to address ORV access” are in two different sentences. ANILCA 1110(a) allows for special access for traditional activities and for travel to and from villages and homesites, but it only authorizes the uses of snowmachines (with adequate protective snow and ice cover), motorboats, airplanes and non-motorized surface transportation methods. Special access methods are regulated by 43 CFR Part 36.11, which includes the use of ORVs on designated routes and areas. We agree ANILCA 1110(a) does not authorize the use of ORVs, and 43 CFR 36.11(g) prohibits the use of ORVs except on designated routes and areas in accordance with EO 11644 or as identified pursuant to §36.10 (Access to Inholdings) and §36.12 (temporary access).*

**NPCA, et. al. Comment No. 13:** The EA refers to relevant portions of the park’s General Management Plan (GMP) on page 1-7 in describing the relationship between this EA and other planning documents, NPS should explain how this process fits with the actual language cited from pages 16 and 18 of the GMP: The use of ORVs for access to inholdings may be allowed under 43 CFR 36.10 by the superintendent on a case-by-case basis on designated routes... The use of ORVs for access to inholdings *will only be allowed upon a finding that other traditional methods of access will not provide adequate and feasible access.* (Emphasis added).

Specifically, does this EA satisfy NPS’ finding requirement from the GMP, will NPS make this finding on an individual basis as they address each RWCA, or has NPS abandoned the finding requirement?

**Response:**

*The proposed federal action evaluated in this EA is providing adequate and feasible access to established and maintainable inholdings under Title 1110(b) of ANILCA, and not 1110(a), which governs special access. Special access regulations require a finding that such ORV use would be “compatible with the purposes and values” of the park (43 CFR 36.11(g)(2)). No finding is made or is necessary in this federal action because the RWCA’s will be issued to qualified applicants pursuant to access to inholding regulations at 43 CFR 36.10.*

**Individual Comment #1:** “Since this E.A. covers only approx. 25% of ALL access facilities, it seems like the study could have addressed these facilities in greater detail by specific reference. That way the 60 or so affected inholders would be able to comment with more meaningful remarks. Also, the remaining 75% of the inholders would be able to anticipate their plight with more clarity.”

**Response:**

*This EA provides the parameters for issuing RWCA’s to inholders if their route, uses, and maintenance provides adequate and feasible access and protects park resources as determined by the five criteria in 43 CFR 36.10(e)(i-v). We have chosen not to list access within WRST that may meet these criteria because until the owner or valid occupier’s application (SF-299) is completed, we do not know which applications would be covered by this EA.*

**Individual Comment #2:** One commenter inquired to determine if his inholding access was covered by the EA, but was dismayed to find out neither the Nugget Creek Trail or Kotsina Trail met the criteria. Nugget Creek trail apparently crosses fish bearing streams and the Kotsina Trail is braided along its alignment through wilderness for approximately ¼ mile.

**Response:**

*The Nugget Creek and Kotsina Trails both cross fish-bearing streams and there are sections of the Kotsina Trail that may need to be rerouted. Hence these facilities may need to be addressed in a subsequent NEPA document. The NPS is interested in working with the inholder to address adequate and feasible access to his inholding.*

**Individual, Comment #3:** “I was surprised to read that the local rural residents have no RWCA restrictions similar to the subject EA coverage. The report tells me that they enjoy less restrictive access to hunt or fish (maintainable or not), than any inholder (landowner) does. I was also left with questions concerning the existence of any RWCA restrictions on native Land inholders, recreational users, landing strip users, and waterline utility users.”

**Response:**

*Private land owners receiving RWCA’s will have authorization to take action on and along their access route on public lands and to perform maintenance tasks that are unavailable to other users, such as those engaged in subsistence or recreation.*

**Individual, Comment #4:** One commenter complained he could not find the key phrase defined in ANILCA 1110(b) “adequate and feasible for economic and other purposes.”

**Response:**

*The EA is amended to include the definition of adequate and feasible access. ANILCA 1110(b) implementing regulations at 43 CFR Part 36.10 (regulation noted in the EA) provides the following pertinent definition: "Adequate and feasible access means a route or method of access that is shown to be reasonably necessary and economically practicable but not necessarily the least costly alternative for achieving the use and development by the applicant on the applicant's non-federal land or occupancy interest."*

**Individual Comment #5:** "Recreation is classified as an "other purpose" (page 2-1). Recreation is partially defined on page 3-10. As it pertains to me, my ATV use of the access trails to my inholdings is categorized as recreational for site-seeing and for the sheer enjoyment of ATV riding."

**Response:**

*The EA is amended on page 2-1, section 2.1.1 to specify other inholder land use purposes to include recreation **on their property**. Chapter 3 describes resources and values that could be affected by the NPS decision, including recreation.*

**Individual Comment #6:** "Rather than put in a large bridge or culvert to accommodate a major flood, depending on the specific situation, it may make sense to build something smaller. Depending on particulars of the locale, a bigger structure may have more environmental impact than a smaller one, which is replaced after flood episodes and might also cost less. It would be good if NPS staff had the flexibility to consider this option when reviewing access routes with landowners."

**Response:**

*See response to SOA #2. The NPS will work with landowners on a case by case basis to ensure that if a structure is selected it will be sized and designed so as to mitigate impacts, not add to them.*

**Individual Comment #7:** "The NPS should address the burden of requiring the inholders and neighbors to provide invasive species free fill."

**Response:**

*Controlling and eliminating invasive plants species is a major concern and was evaluated in this programmatic EA. If exotic plants get established they, could result in significant impacts to park resources and ecosystems. See response to NPCA #9. The NPS will work with landowners to locate sources of weed-free fill.*

**Individual Comment #8:** "These are your standards, you should not require others to design 100-year flood plan standards in excess of what was there."

**Response:**

*See response to State of Alaska comment # 2.*

**Individual Comment #9:** “Our access was established in 1960 (and unbeknownst to the State, so was their RS 2477 Rights; that is now known as RST-001) and was in those times dedicated as a TUS access corridor to FEDERAL SURVEY 4892 in 1968 making it “otherwise dedicated” when ANILCA was instituted; therefore, our access was not available to be designated as part of the WRST. I short, Alaska Possesses Title to that land; Alaska dispenses ownership rights or use of its land, not the NPS.”

**Response:**

*Access under ANILCA 1110(b) does not affect the status or validity of access under other state and federal authorities (such as RS 2477).*

*The State of Alaska has listed many RS 2477 rights of way in Alaska, including many within NPS units. The NPS acknowledges these listings, however, a 2005 decision of the U.S. Court of Appeals for the Tenth Circuit (Southern Utah Wilderness Alliance v. Bureau of Land Management, 425 F.3d 735, 2005) declared that only a federal court has the authority to determine the validity of an asserted RS 2477. The Secretary of the Interior has stated that Department of Interior agencies will be guided by that Tenth Circuit opinion. There have been no court determinations of RS 2477 rights of way in NPS units in Alaska. Until an RS 2477 is determined to be valid by a federal court, the NPS will work with landowners to issue an 1110(b) RWCA for access on whatever routes are needed for such access.*

*These comments concern access to the commenter’s property. NPS staff is available to discuss specific issues concerning this access with the commenter.*

**Individual Comment #10:** “Our access is protected and provided by §1110(a) \_\_\_ “... and for travel to and from villages and homesites. ...Nothing in this section shall be construed as prohibiting the use of other methods of transportation for such travel and activities on conservation system lands where such use is permitted by this Act or other law.” (ANILCA) (emphasis added) Other law being Alaska State Law. Nothing in Alaska Statute prohibits us from freely using highway vehicles to traverse a driveway, roadway or any existing facility designed for such use. We are, however, authorized by Alaska Statute 19.30.400 to use and maintain our access/driveway. Additionally, Alaska granted us surface ownership rights to this access route; we are not signing for a permit to utilize our own property.

**Response:**

*The reference to “other law” in ANILCA §1110(a) provides that §1110 shall not be construed as a limitation of other statutory authorizations or allowances. Consequently, §1110 does not prohibit uses otherwise allowed by other statutes. However, the referenced provision does not repeal the laws and regulations protecting park resources including the prohibition of ORV use in park areas except in certain circumstances. The State authorities referenced in the comment are preempted by the federal prohibition.*

## ERRATA

1. Page 1-1, Paragraph 1: *The EA is amended to include the definition of “adequate and feasible access” in the first paragraph of the EA. ANILCA 1110(b) implementing regulations at 43 CFR Part 36.10 provide the following pertinent definition: “Adequate and feasible access means a route or method of access that is shown to be reasonably necessary and economically practicable but not necessarily the least costly alternative for achieving the use and development by the applicant on the applicant’s non-federal land or occupancy interest.”*
2. Page 1-9, Section 1.4.2.2: *The EA is revised to clarify as documented in the ANILCA 810 Evaluation (Appendix C, page 3) that the proposal would have at most a negligible effect on subsistence wildlife resources and a minor effect on subsistence fish resources.*
3. Page 1-10, Permits and Approvals Needed to Implement the Project: *The EA is amended to include the possible need for inholders to obtain a fish habitat permit or water use permit from the State of Alaska, where applicable.*
4. Page 2-1, Section 2.1.1: *The EA is amended to specify other inholder land use purposes to include recreation “on their property”.*
5. Page 2-16 of the EA: *The term “identified potential” replaces the term “asserted” or “assertions” in response to the State’s comments regarding RS 2477 right-of-way.*
6. Page C-3, Appendix A, ANILCA 810 Evaluation, last sentence on page. *The EA is amended to delete the term “sport hunting” to use simply “hunting” as adequate to describe general hunting.*
7. Page C-4, Appendix A, ANILCA 810 Evaluation, Affected Environment, final sentence in the first paragraph: *The NPS modifies the sentence to specify what is being described as eligibility under federal subsistence regulations: To engage in subsistence activities within Wrangell-St. Elias National Preserve “under federal subsistence regulations”, individuals are not required to live in a resident zone community, but they must live in a rural Alaskan community or area that has a positive customary and traditional use determination for the species and area they wish to harvest.*