

National Park Service Alaska Region



User's Guide to Accessing Inholdings in a National Park Service Area in Alaska March 27, 2006

Notwithstanding any other provisions of this Act or any other law, in any case in which State owned or privately owned land, including subsurface rights of such owners underlying public land, or a valid mining claim or other valid occupancy is within or is effectively surrounded by one or more conservation system unit, national recreation area, national conservation area, or those public lands designated as wilderness study, the State or private owner or occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land by such State or private owner, or occupier and their successors in interest. Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.

--Alaska National Interest Lands Conservation Act, 1110(b)



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INTRODUCTION

Access to Inholdings in a National Park Service Area in Alaska

As a property owner in a unit of the national park system in Alaska, you are assured access to your land. This guide is intended to help steer you through the necessary steps of obtaining legal access from the National Park Service.

As the stewards of America's national parks, the National Park Service has responsibilities to manage public land in a way that protects the values Congress recognized in establishing the parks. Laws and regulations, consultation with the State of Alaska, and consideration of ideas and comments from Alaskans directed the development of this guide.

An inholding is a parcel of non-federally owned land, a mining claim or other valid occupancy that is in, or is effectively surrounded by, one or more national park areas, such as a national park, monument, or preserve. There are approximately 1,666,500 acres of private, state, borough, city, and Native corporation lands and less-than-fee land interests within the boundaries of national park areas in Alaska that are considered inholdings.

The National Park Service wants the process of obtaining access across park areas to be as simple and straightforward as possible, while also assuring protection of park resources. The purpose of this user's guide is to help landowners and our own managers share a common understanding of the process that is required by the National Park Service to assure access across park areas.

Some national park units in Alaska are quite old; for instance, the original Mount McKinley National Park was established in 1917, Katmai National Monument was established in 1918, and Glacier Bay in 1925. These parks were generally established from federal public land and included few non-federal parcels. The majority of Alaska's national park areas were established in 1980 with passage of the Alaska National Interest Lands Conservation Act (ANILCA). Coming after years of homestead staking, Native allotments, mining claims, and passage of laws such as the Alaska Statehood Act and the Alaska Native Claims Settlement Act, the boundaries of many of the new parks and park expansions included parcels of private and state land.

In 1980, access to those parcels varied greatly, and today people continue to use many different means to get to their property. In some cases, private property is along a state road or a park road. In other cases owners reach their property by air or water. There are also some cases where access across federal land began at some time in the past without a permit or right-of-way. For those needing authorization for access across federal land to private property, the specific history of the access route or facility, if any, will make a difference in how the authorization will be processed.

For access across federal land that requires authorization by the National Park Service, planning ahead and working with the park superintendent are essential to expedite your application. Processing time depends upon several factors, including the complexity of the access, availability of information, and staff availability. Authorization for complex projects with substantial new construction can take a year or longer.

Access Routes or Facilities Existing as of January 1, 2006

For those landowners who have access to their property as of January 2006 that meets their needs and for

which there are no substantial environmental concerns, the NPS authorization process will include preparation of an Environmental Assessment (EA) as required under the National Environmental Policy Act (NEPA). In parks where there are numerous existing routes with relevant similarities the NPS will initiate its evaluation under one programmatic EA.

This NPS will undertake the following steps, in consultation with individual landowners:

- Obtain a description of the established access route or facility on an SF-299 application.
- Potentially visit a site to map or record the route or facility.
- Inventory existing environmental conditions, and assessing the sustainability/manageability of the established route or facility.
- Prepare an environmental assessment to evaluate the route and means of access.

The EA will document the existing access, identify reasonable, sustainable maintenance options available to the landowner, and provide guidance to mitigate or avoid unnecessary impacts outside the footprint of the access route or facility. The authorization process is generally straightforward for access routes and facilities that can be maintained within the established footprint and for which there would not be any significant change or impacts to resources.

Some existing access routes may not be sustainable, and may require extensive construction, realignment and/or investigation of alternative access means because of ongoing or potential new environmental impacts. Addressing these complex access cases and issues will require individual attention and the authorization process would more closely resemble that for a new access route or facility.

National Park Service Categories of Access

Title XI of ANILCA addresses many types of access across federal lands in Alaska, including major systems, like pipelines, highways, and power transmission lines that cross national park areas, as well as other conservation units. This user's guide addresses access to inholdings through National Park Service managed lands. The Alaska Lands Act assures that you will have access to your land. The NPS will provide you with a right-of-way permit unless you can access your property using methods that do not require a permit as described below.

The sections of Title XI that are most applicable to access to inholdings are sections 1110(a) and 1110(b). Section 1110(a) addresses access by motorboats, airplanes, and snowmachines, as well as non-motorized methods. Access pursuant to 1110(a) generally does not require a permit from the National Park Service.

Section 1110(b) addresses access to inholdings that would require use of an access method not authorized by 1110(a) or would require construction or maintenance of a road, trail, powerline, landing strip, or other access improvements. The National Park Service acknowledges the access provided in both section 1110(a) and section 1110(b) is very important to inholders. Department of the Interior regulations (43 CFR 36.10) provide additional direction to land managers and landowners on how to secure access to inholdings.

When is a permit not needed?

Generally you do not need a permit if 1) you will be using a non-motorized means of travel, or a motorboat, airplane, or snowmachine to access your land, 2) this access does not require construction or maintenance of a facility on national park areas, and 3) there are no other park regulations otherwise restricting or controlling access to the area. Also, a permit is not necessary if there is a valid, existing right-of-way (such as a state highway) to your land, or if there is a designated park road or trail to your land that is open to use by the general public. Snowmachine access requires adequate snow cover. Also, a permit is not needed if access is via an off-

highway vehicle (OHV) on a route NPS has designated for OHV use.

When is a permit needed?

If the paragraph above does not describe your type of access, then you most likely will need a permit. Permits are usually necessary when operating motorized highway vehicles or OHVs on park lands or when construction or maintenance of a trail, road, powerline, or a landing strip would occur on national park areas, or if the mode of access needed is not one of those listed above. The permitting process allows the National Park Service and other agencies that manage public resources – for example, salmon streams, wildlife habitat, historical sites and other resource values -- to protect those public assets while assuring access to your property. Please note that in addition to right-of-way permits, other permit requirements such as those for commercial use or specific park requirements (such as for vessels during the summer in Glacier Bay) may apply.

THE PROCESS

Step 1: Starting the Process

To apply for a right-of-way permit for access across national park areas to your property, you will need to identify what kind of physical access you need or are currently using. As stated above, if access by snowmachine, motorboat, airplane, or by non-motorized means is sufficient for you, it's likely no permit will be needed. However, if you need to use other modes of transportation, or if you need to construct or maintain a road or utility line, then a right-of-way permit is generally required. Consider what modes of access, as well as what routes of access would work best for you. Then contact the superintendent of the national park area to schedule a pre-application meeting. Park superintendents' addresses, phone numbers, and email addresses are included at the end of this guide

Step 2: Pre-Application Meeting

A pre-application meeting provides an opportunity for you to discuss your access needs in detail and for the park superintendent to further explain the process. The pre-application meeting will also cover information needs, timelines, fees and other topics. This meeting has the potential for saving both you and the National Park Service time and expense. The meeting will help determine if you even need a right-of-way permit. Discussing your ideas about the types and routes of access with park staff can help everyone focus on practical and feasible options that will expedite a decision. The meeting also can help identify other agencies that will need to consider your proposed access.

To get the most out of the pre-application meeting, we recommend prior to the meeting that you review the standard application form (SF 299) and consult with park staff. You can obtain the application either from the park superintendent or from the website:

<http://www.blm.gov/nhp/what/lands/realty/rowcr/documents/FormSF-299.pdf>. The SF 299 is used for all proposed transportation systems that require authorization, from power lines and major roads to short driveways. Be sure to bring any information that may be useful during this session. For example, Item #7 on the application (Project Description) requests specific information about your proposal, such as physical specifications (length, width, grading, etc.) or types of vehicles to be used. Having at least preliminary information on these topics will better explain your proposal at the meeting. Item #8 requests a map of the project area. You may already have a survey or other adequate map that will provide the necessary information to process your request. Bring any other documents that may provide additional information to assist in explaining and illustrating your proposal. It's okay if you don't have all the required information for the pre-application meeting, although the more you have the easier it will be for the NPS to understand your needs.

Step 3: Applying for a Permit

Based on the understandings gained at the pre-application meeting, complete the application for a right-of-way

permit (SF 299) to the best of your ability. Please provide all the information requested on the application form. An incomplete application or insufficient information can slow processing. Park staff may assist you if needed. Large projects will require significantly more information on the SF 299 than will a small project. Send the completed application to the park superintendent.

Step 4: Processing the Application

The National Park Service will review the submitted application for completeness and has up to 60 days to inform you of the need for any additional information. If additional information is needed you will be asked to provide it. The National Park Service will also determine what information it must gather to process the application. For example, the NPS may need to conduct a field study to determine whether an archaeological site would be affected by your request. The application process and related deadlines (noted below) begin when the application is determined to be complete.

Any request for access across national park areas, unless it is entirely on an established right-of-way or designated trail or area, will require environmental analysis. Relatively simple proposals will generally be analyzed in an environmental assessment (EA). Large and complex access proposals may require a more lengthy and detailed analysis, documented in an environmental impact statement (EIS).

The NPS will follow the National Environmental Policy Act (NEPA) process when evaluating the impacts of your proposal on park resources and values. The law requires the National Park Service to evaluate a range of reasonable alternatives and the impacts of each on park resources and values. The NEPA process includes preparing the document and making it available for public review. The review period is usually 30 days for an environmental assessment (EAs are reviewed in final; there are no draft EAs). Environmental impact statements are reviewed in draft and in final. There is a 60-day public review for a draft EIS.

The National Park Service has up to nine months from receipt of a complete application to prepare the EA or draft EIS, and an additional three months to prepare the final EIS. Following completion of the EA or EIS, the NPS has up to four months to make a final decision on the request. These are maximum periods established by law, and simple proposals should take less time. These timeframes may be extended for good cause, for example at the applicant's request to consider new information.

An important consideration in the process is whether existing access or another route or method than that requested could assure access for the land use objective. For example, if an inholding is on the shore of a large lake, and access is available by float or ski-equipped plane, a major new road development might not be necessary or economically practicable for many purposes. In this example, if such air access would suffice, there would be no need for a permit for overland access. Alternatively, the EA may identify a different route as more practicable, which would also require a permit.

Step 5: Other Agency Involvement

Depending on the complexity of an access request and the issues involved, other agencies may have a role in evaluating your request. For example, if stream crossings are involved, the State of Alaska has an interest in protecting fish populations and habitat, especially for anadromous species such as salmon. The Alaska Department of Natural Resources may require State authorization(s) for activities in anadromous, as well as navigable water bodies. If gravel, sediment or other materials are discharged into a stream or connected wetlands, a Clean Water Act Section 10 or 404 permit may be required by the U.S. Army Corps of Engineers.

The National Park Service will work with you to help identify other agency authorizations that may be necessary, but it is your responsibility to obtain the necessary permits and authorizations from these or other agencies. Normally permits are issued with a requirement that the applicant have all necessary permits before construction begins

The following links will take you to additional resource agencies that may be involved in some access projects.

1. U.S. Army Corps of Engineers: www.poa.usace.army.mil/reg/PNnew.htm
2. State of Alaska DNR Office of Habitat Management & Permitting: www.dnr.state.ak.us/habitat/
3. State of Alaska DNR Division of Mining, Land, and Water: www.dnr.state.ak.us/mlw/permit-lease/index.cfm
4. State of Alaska DNR Public Information Center: www.dnr.state.ak.us/pic/

Step 6: Permit Issued

Where the NPS determines that such a permit is needed and after processing an application, the NPS will issue a right-of-way permit to the applicant. Appropriate terms and conditions will be included in the right-of-way permit to protect natural and other values. Terms may, for example, specify the route and width of a road, types of vehicles, maintenance requirements, seasonal restrictions or other measures to protect park resources and values. Mitigation measures to avoid, reduce, or compensate for resource impacts may also be needed. The permit is signed by the NPS and the applicant.

KEY PERMIT PROVISIONS

Fees

The Alaska Region of the National Park Service will implement the following policy regarding fees for authorization of access to non-federally owned lands within park units in Alaska:

- Requests for right-of-way permits to inholdings which require an environmental assessment will have application, environmental assessment, processing, monitoring, and rental fees waived. Most permit applications for existing access are expected to require an EA.
- Requests for new access routes to inholdings which require an environmental impact statement due to potentially significant environmental effects as defined under NEPA regulations (40 CFR part 1508.27), will be processed according to 43 CFR 36.6(c)(1) and (2), which provide that "...the reasonable administrative and other costs of EIS preparation shall be reimbursed by the applicant, according to the BLM's cost recovery procedures and regulations implementing section 304 of the FLPMA, 43 U.S.C. 1734" (See 43 CFR 2808). In these instances, the Alaska Region can not waive these costs.
- NPS does not have authority to waive fees charged by the State of Alaska and other federal agencies.

Permit Duration

The Alaska Region of the National Park Service will implement the following policy regarding the duration of right-of-way permits issued under ANILCA Section 1110(b) within park units in Alaska:

- Right-of-way permits will be issued for periods up to 30 years.
- If access conditions remain the same, the NPS expects to renew permits.
- Right-of-way permits are transferable with the written approval of the park superintendent.
- If a different or more intensive use of public property is required by the permittee, a new permit, additional environmental review and modified permit conditions may be necessary to protect the public land resources and values while assuring access.

The duration of the permit may vary. In some instances, permit terms may be relatively short if that meets the needs of the owner. For instance, if the overland transport of building supplies and equipment using heavy

equipment is needed for two or three seasons after which access will be by foot or snowmachine, a permit can be written to reflect that temporary need. In other cases, such as a driveway to a home, the permit term is likely to be the full 30 years.

All right-of-way permits are revocable for violation of terms and conditions. NPS will occasionally inspect park areas affected by permits to insure that there are no unexpected or unpermitted damages to park resources.

CONCLUSION

The owners of nonfederal lands in National Park Service units in Alaska are assured adequate and feasible access by Congress in sections 1110(a) and 1110(b) of ANILCA. The National Park Service is committed to working with landowners to provide access to their lands, while also protecting park areas for the enjoyment of present and future generations.

Frequently Asked Questions

for

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in a National Park Service Area in Alaska

These questions came from the public, Park Service employees, and people living and working in Alaska's national parks. If we haven't adequately answered your specific questions, contact the appropriate park superintendent. Park addresses, phone numbers, and e-mail addresses are included in Appendix A of this guide.

NEED FOR A RIGHT-OF-WAY PERMIT

1) Why do I need a right-of-way permit?

A right-of-way permit allows you to do things in a park that otherwise would generally be prohibited, such as construct or maintain roads, install utilities, and drive most types of motor vehicles across park areas.

2) What laws and regulations apply to right-of-way permits and access to inholdings?

Most of the national parks in Alaska were created or redesignated by the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. Section 1110(b) of ANILCA affords adequate and feasible access to inholdings. Notwithstanding any other provisions of this Act or any other law, in any case in which State owned or privately owned land, including subsurface rights of such owners underlying public land, or a valid mining claim or other valid occupancy is within or is effectively surrounded by one or more conservation system unit, national recreation area, national conservation area, or those public lands designated as wilderness study, the State or private owner or occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land by such State or private owner, or occupier and their successors in interest. Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.

The regulations implementing this section of ANILCA are at 43 CFR 36.10. The regulations say that the National Park Service will use right-of-way permits to authorize needed access to inholdings while protecting park values. [43CFR 36.10(e)(1)].

3) Do I need a right-of-way permit to travel across national park areas to reach my inholding?

You do not need a permit if you are traveling over an established public right-of-way or a designated park road (an exception is the Denali Park Road). You do not need a right-of-way permit to use a state highway. Also you do not need a permit if you are walking or using non-motorized means of surface transportation, such as sled dogs or a pack or saddle animal.

You do not need a right-of-way permit for access to inholdings by motorboat, snowmachine, or airplane [ANILCA 1110(a) and 43 CFR 36.11(a)]. Snowmachine use is dependent upon adequate snow cover. In Kenai Fjords National Park and Denali National Park and Preserve, the park superintendent announces when adequate snow cover exists. Additional regulations regarding boat access at Glacier Bay National Park also apply.

You do not need a permit to use OHVs if you are traveling only on trails designated for such use. National park areas may occasionally be closed to some access methods to protect park resource values. There will be public notice of these closures [43 CFR 36.11(h)]. Snowmachines are prohibited at all times within the former Mt. McKinley National Park [36 CFR 13.63(h)(2)].

You will need a right-of-way permit:

- To use other motorized surface transportation vehicles on general park lands (except as identified above). If off-highway vehicle (OHV) use is determined through a finding by the park superintendent to be compatible with park values, the National Park Service can issue permits to use OHVs on existing OHV trails [43 CFR 36.11(g)(2)].
- To reroute roads or trails on park lands.
- To build new roads or trails on park lands.
- To install utilities such as telephone lines and repeaters, communication sites, power lines, and water-lines.

4) My property predates the national park; do I need a right-of-way permit?
Depending on your access needs, you may need a right-of-way permit.

Most inholdings predate creation of the national parks. Most lands that are now parklands were previously managed by the Bureau of Land Management (BLM). Until 1968, most lands were open to homesteaders, Native allottees, and miners. Until the mid-1970s many federal lands were open to selection by the state and Native corporations. Until the passage of the Federal Land Policy and Management Act (FLPMA) in 1976, BLM didn't have a general authority to grant road rights of way to individuals. After FLPMA passed, rights of way were required for pre-existing roads on public lands, including roads in use before FLPMA. Even though your property predated the national park, unless there is an existing authorization for your access, you will need to obtain an authorization from the National Park Service.

5) My neighbor won't let me cross his land. Therefore, I have to cross a national park to reach my property. Can I receive a right-of-way permit?

We encourage you to explore other routes across private land to access your inholding. However, it is not required that you attempt to obtain access to your inholding across non-federal lands before applying for a right-of-way permit. The National Park Service will work with you to file an application and help you find adequate and feasible access to your land.

6) If an access route is used by more than one private property owner, does each owner need authorization from the National Park Service?

If the method of access is not already allowed and park lands must be crossed in order to reach separate properties, then each owner would need a separate authorization. There may be some circumstances where adjoining property owners join together to file a shared application. Joining with neighboring private landowners and agreeing on a single physical access route could simplify the process with the NPS.

7) How are alternative routes determined?

The applicant and park staff will discuss alternative routes during preapplication meetings. Impacts to park resources as well as technical feasibility, and cost of your proposal and the alternatives will be analyzed in the EA or EIS. Additional suggestions for alternative routes may be brought forward during scoping or during public review of the EA.

8) How is access gained to state lands and Native corporation lands within a park area?

As with accessing other non-federal lands within park areas, no permit is generally needed to cross park lands if you access the state or Native corporation lands by non-motorized means, snowmachine, motorboat, fixed-wing aircraft, OHV on a designated for OHV use, or by a state road right of way. However, if the public needs to use a means of access that is not already authorized to reach state lands, a right-of-way permit will be required. It will generally be the responsibility of the State of Alaska to obtain such authorization, rather than individual citizens. In a similar situation, for shareholder access across parklands to their Native corporation lands, it will generally be the responsibility of a Native corporation to obtain any necessary right-of-way permits, rather than individual shareholders.

9) Although my property isn't within a park area, the only feasible access to it is across parklands. Can I access my property across parklands?

The owners and occupiers of properties that are "effectively surrounded" by a park area, due to rugged terrain or waterways or other physical impediments, are entitled to the same right of access across parklands as applies to properties that lie within the boundaries of the park area. Such owners and occupiers can to apply for and obtain right-of-way permits to cross the parklands.

ACCESS VIA OTHER LAWS AND LEGAL RIGHTS

1) What about State Revised Statute 2477 rights-of-way?

An RS 2477 is a public right-of-way owned by the State of Alaska that overlays lands owned or managed by others. Neither the federal courts nor the Department of the Interior has confirmed the validity of any RS 2477 rights-of-way in Alaska national park areas, therefore their validity remains unresolved. Consequently, before using or maintaining a claimed RS 2477 route to your inholding, prior authorization from both the State and the National Park Service must be obtained.

2) I'm on a state road; do I still need a right-of-way permit?

State roads are on rights-of-way belonging to the State of Alaska Department of Transportation and Public Facilities (DOTPF). Generally the road right-of-way is wider than the road surface. DOTPF manages the road; the National Park Service and DOTPF share management of the portion of the road right-of-way that is not maintained by DOTPF. If your property abuts or is inside the road right-of-way you will need a driveway permit from DOTPF (<http://www.dot.state.ak.us/permits/index.html>).

The National Park Service will not require a right-of-way or other permit for the portion of your driveway covered by the DOTPF driveway permit. You will need a National Park Service right-of-way permit for the portions of a driveway crossing a park area outside the state right-of-way. You will also need a NPS right-of-way permit for other access such as utilities or a developed parking lot in the road right-of-way. If you have questions about whether a permit is needed, please contact the park superintendent.

3) Do I need a right-of-way permit to access my property on or across a navigable water body?

If you are using a motorboat, snowmachine, or airplane to access your property, then the navigability of the water body is not an issue because both the National Park Service and the State already generally allow these uses without a right-of-way permit. If you want to use other motor vehicles or construct a facility such as a dock, other state and federal laws may apply and permits may be required. Check with both the Alaska Department of

Natural Resources (ADNR) and the park superintendent.

4) Can I use a section line easement?

A section line easement is a kind of RS 2477 right-of-way asserted by the State of Alaska under state law. Neither the federal courts nor the Department of the Interior has confirmed the validity of any section line easements across federal lands in Alaska's national park areas. Therefore, a right-of-way permit may be required to cross park lands.

5) Do I need a right-of-way permit to use an Alaska Native Claims Settlement Act 17(b) easement to reach my property?

No, because right-of-way permits only apply to national park lands and 17(b) easements provide access across lands belonging to Alaska Native corporations. The easements were reserved to provide public access from public lands and waters across Native corporation land to other public lands and waters. You should learn the allowable uses of the easement before using it. These easements have limitations on types of vehicular use and season of use. Depending on your route and use, you may need a right-of-way permit once you reach the national park areas.

GENERAL ACCESS QUESTIONS

1) I do not actually own the land, but the owner gave me permission to drive out there this summer. Can I do that?

Yes, but you will need to have permission from the landowner to use the landowner's right-of-way permit. It is also necessary for you to comply with the terms of the permit.

2) I tried to get to my inholding by snowmachine last winter, but some trappers told me I can't use the trail because they have some wolf traps set and claim the trail as their own. Is that right?

No. Trapping trails do not confer rights of exclusive use. Misunderstandings can often be avoided by talking with the trappers and trying to identify a suitable solution. Any conflicts may also be brought to the attention of the park superintendent or the Alaska Department of Fish and Game (ADF&G).

3) There is platted access in my subdivision, but it is in a terrible location. Can I get access through the park?

If it is prohibitively expensive or physically infeasible to use the platted right-of-way, you may be able to obtain a National Park Service right-of-way permit.

AIRCRAFT AND AIRSTRIP ACCESS QUESTIONS

1) Why would the National Park Service consider that landing a plane on a lake, gravel bar, or dry ridge, within walking distance of my land as feasible access, when using an aircraft is more expensive than overland travel? The answer depends on whether the air access meets the definition of "adequate and feasible access. Adequate and feasible access must be economically practicable but does not necessarily have to be the least costly way to fulfill the occupancy interests of the landowner [43 CFR 36.10(a)(1)].

Using an aircraft as described in the question may be a reasonable option to consider since the use of fixed wing aircraft is normally allowed without a right-of-way permit or other authorization [43 CFR 36.11(f)].

If landing and walking is not an adequate and feasible method of access for your situation, we will work with you to find an acceptable method of access.

2) Do I need a permit to maintain the airstrip in a park area that I use to access my property?

If you use non-motorized hand tools to maintain an existing landing strip that is used to access your property, a

right-of-way permit is not necessary. You need authorization from NPS to construct or maintain a landing strip in national park areas with motorized tools.

3) I need to get from my airstrip to my inholding. Do I need a permit to drive my off highway vehicle (OHV) from the airstrip to the inholding?

You need an OHV permit or a right-of-way permit to cross park lands, if the access is off state highways or designated park roads or designated OHV trail.

MINING ACCESS

1) I am going to lease a mining claim and mine for placer gold. I need access across the park and want to do it in the summer time. How do I do that?

Mining activities, on patented and unpatented mining claims filed under the General Mining Law of 1872 within the boundaries of a national park are regulated under a Plan of Operations approved by the park superintendent. The Plan of Operations may authorize access, or the National Park Service may issue a separate right-of-way permit under the Access to Inholdings regulations [43 CFR 36.10(c)]. Contact the park superintendent for more specific information about accessing your mining claim.

2) I'm thinking about leasing some unpatented placer claims and want to go in and check them out in the summer by OHV before deciding whether I want to enter into a formal agreement and work the ground. Can I do that?

First check to see if the claim holder already has a right-of-way permit. If the holder does not, consult the park superintendent. Access of a limited or short-term nature (for example, less than a year), depending on the methods proposed, may be easier to secure, but will probably involve application using the same forms and process. Use of an OHV on park land requires a specific authorization.

OBTAINING A RIGHT-OF-WAY PERMIT

1) What laws and regulations govern access to inholdings and where can I look for further information regarding access?

The regulations dealing with access in or across national park areas in Alaska are found at Title 43 of the Code of Federal Regulations part 36 (43 CFR 36.10). These regulations are available at the park headquarters or online at: http://www.access.gpo.gov/nara/cfr/waisidx_03/43cfr36_03.html .

2) Is getting a right-of-way permit going to be difficult?

Simple proposals with few potential environmental impacts take less time to process. Complex proposals and those involving new uses require more time to process. The better the National Park Service understands your proposed access, the easier it will be to process your application and issue the right-of-way permit.

A pre-application meeting with the park superintendent is highly recommended. The pre-application meeting allows you to explain your needs, proposed route, types of vehicles, and any construction or maintenance that is necessary. The pre-application meeting is a good time to explore options on how to provide access while protecting park resources.

Once you have filed a complete application, the National Park Service will conduct an environmental analysis, which is usually an environmental assessment (EA) or, in some cases, an environmental impact statement (EIS). The environmental analysis will evaluate your proposal and reasonable alternatives, and most likely, recommend terms and conditions to protect park resources. These terms and conditions would then be included in your right-of-way permit. An EIS may be necessary if the proposal has the potential for significant environmen-

tal effects.

3) Who chooses the route and decides what I can drive?

Federal regulations (43 CFR 36.10) require that the land managing agency authorize the route and method of access requested by the applicant, unless one or more of three specific conditions apply, or if the method of access is unnecessary to accomplish the applicant's land use objective. These conditions include significant adverse impacts on the natural or other values of the area; jeopardy to public health and safety; or inconsistency with the management plan for the area. If one or more of these conditions apply, the NPS will consult with the applicant and then will issue a right-of-way permit with an alternative route and/or method of access that still provides the applicant with adequate and feasible access.

4) Why does the National Park Service want to know why I want to access my land (land use objectives)?

Knowing about your plans will allow the park superintendent to determine whether the requested access is adequate and feasible to meet your needs while minimizing the impact on park resources.

5) What is the next step if I am unhappy with the right-of-way permit decision?

You can request reconsideration from the NPS Alaska Regional Director. Alternatively or after reconsideration, you can ask the federal courts to review the final agency decision.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

1. Why is NEPA required for a new permit application?

Granting a permit for access—whether new or existing—is considered a major federal action with potentially measurable impacts on the human environment that requires analysis under NEPA. Applications for permits for routes or facilities on park land are not categorically excluded, so the level of NEPA documentation will generally be an environmental assessment (EA). Additionally, the DOI ANILCA access regulations require use of NEPA to review and process a right-of-way application. However, the NPS will bear the costs and workload required to prepare environmental assessments to insure that this process is not an obstacle to landowners obtaining adequate and feasible access.

2. Why does NPS need to consider the “no action” alternative when my access is assured under ANILCA?

Inclusion of the “no action” alternative in the NEPA document is based on NEPA regulations and NPS policy, and in this case provides a baseline for analysis of existing impacts against which to compare impacts of the proposed access. However, the “no action” alternative can not be used as a way to deny access. Your access is assured under ANILCA, and the regulations require the NPS to issue an access permit unless adequate and feasible access already exists without one. The regulations further require the NPS to select the route and method of access requested by the landowner unless it causes significant adverse resource impacts, would jeopardize public health and safety, is inconsistent with the park's management plan, or is not needed to accomplish the property owner's land use objective.

USE OF A RIGHT-OF-WAY

1) Can I transfer my right-of-way permit when I sell my property?

Yes, you may transfer your right-of-way permit to a new property owner with the park superintendent's approval. Transfer is known as assignment. The new owner must agree in writing to abide by the terms and conditions of the existing right-of-way permit. Alternatively, the new owner can apply for a new permit.

2) Can the public also use my right-of-way?

Regulating motorized use of a right-of-way by others is a National Park Service responsibility. The right-of-way

permit allows you and your guests to use a specified location on national park land for access. Other users of the right-of-way will be addressed during the processing of the application and the permit will determine who is authorized to use the road or trail. Public access that is generally allowed on neighboring park lands, such as hiking or snowmobiling, will continue to be allowed on the right-of-way route. A landowner who has a right-of-way permit will not be held responsible for damage to parklands caused by public use of the right of way.

3) When I have my right-of-way permit, what happens if my equipment breaks down and I have to abandon it in the park?

The right-of-way permit will cover this contingency. You will be given a reasonable period of time to recover the equipment in an appropriate manner; after that time, the National Park Service may remove it and then charge you for the costs incurred.

4) With a right-of-way permit, can I make route improvements along the access route to my inholding?

The terms and conditions in your right-of-way permit will specify what maintenance and improvements are authorized.

5) Once I receive a right-of-way permit, can the National Park Service later decide to change the terms on how I use my access route?

After consultation with the permit holder, the National Park Service can add additional restrictions if there are unforeseen circumstances, changing needs, or new environmental impacts. Examples of situations requiring changes include discovery of an archeological site on the right-of-way or the need to re-route access due to a flood or other events.

6) When I get to my property I will need to go on national park areas to cut firewood or conduct other activities. Can I use my truck, car, or OHV?

Your right-of-way permit is only for access to your property. Consult the park superintendent regarding access needs for other activities on park areas.

7) I may need to drive back to the highway for materials or emergencies. Can I do that?

Right-of-way permits generally will not set a limit on the number of trips. In unusual cases where unlimited vehicle use may result in impacts to park resources, the number of trips would be limited by the right-of-way permit. However, permit terms will insure that the frequency of travel will meet the needs of the applicant.

8) Would special restrictions for maintaining my access route apply to the right-of-way? The right-of-way permit will have a section on maintenance. Right-of-way permits may allow the permit holder to keep the route clear of snow and debris and may allow for specified levels of maintenance and improvement.

9) Under one right-of-way permit, can we take 3 or 4 vehicles along in case we break down?

Travel in remote locations often requires reasonable precautions and some level of back up for emergencies. The vehicle type, number of passes, and frequency of use should be described in your application. Discuss your strategy and reasoning with the park superintendent to reach an understanding that can be addressed in the permit conditions.

10) Once I have a right-of-way permit, does someone go along from the National Park Service?

NPS staff will not generally accompany you to and from your inholding.

DRAFT

Definitions

for

A User's Guide to Accessing Inholdings

in a National Park Service Area in Alaska

Access means how you, your family, clients, lessees, employees, business partners, friends, and guests get to your inholding. Access is also how utilities such as fuel, power, and communication are delivered to your property.

- Physical access refers to the land used and the improvements constructed such as roads, trails, poles, power and telephone lines or facilities.
- Legal access is the authorized right to use or occupy park areas for access. A right-of-way permit provides for legal access across park areas.

Adequate and feasible means a route and 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 [43 CFR 36.10 (a) (1)].

ANILCA Sec.1110 (b) says State and private owners "shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land by such State or private owner or occupier and their successors in interest."

Airstrip means visible, marked, or known aircraft landing areas in park areas. Airstrips may be marked with cones, lights, flagging, or windsocks, or be unmarked but recognizable because they have been cleared of vegetation or other obstructions [36 CFR 13.1].

Effectively surrounded by means that physical barriers prevent adequate and feasible access to state or private lands or interests except across a park area [43 CFR 36.10(a)(3)].

Environmental Assessment (40 CFR) is a public document in which a proposed agency action and any alternatives are described and evaluated. An EA is a useful planning tool that helps inform the public about a proposal and solicit their ideas and concerns, and that also helps the decision-maker understand the implications of an action before making a decision. Agencies also use EAs to determine whether potential environmental impacts are significant and an Environmental Impact Statement would be warranted.

Environmental Impact Statement (CEQ Regulations 1508.11) is a detailed study prepared when an agency knows the impacts of a proposed action would be significant. EISs require more extensive public involvement than EAs, including public scoping, a 60-day public comment period on the draft EIS, and a 30-day waiting period after the final EIS is published and before a decision is made.

Inholding (for the purposes of access) means state owned or privately owned land, including subsurface rights, underlying park areas or a valid mining claim or other valid occupancy within or effectively surrounded by one or more park areas [43 CFR 36.10(a)(4)].

Examples of inholdings include state lands, private lands, homesteads, homesites, trade and manufacturing sites, lands belonging to Native corporations, Native allotments, life-term leases, perpetual easements, valid unpatented mining claims, and patented mining claims.

National park area means lands and waters administered by the National Park Service within the state of Alaska [36 CFR 13.1(n)].

Off-highway vehicle (OHV) means any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, wetland, or other natural terrain, except snowmachines or snowmobiles [36 CFR 13.1(m)].

Park road means the main-traveled surface of a roadway open to motor vehicles, owned, controlled or otherwise administered by the National Park Service (CFR 36 CFR 1.4).

Right-of-way permit (ROW permit) means a document signed by the applicant and the National Park Service (NPS), specifying the route(s) and method(s) of access across the park area(s). (43 CFR 36.10(e)(1)). ROW permits can be issued for a single use or for a period of up to 30 years and are renewable. ROW permits include conditions to protect other park users, park purposes, and resources such as plants, wildlife, and archeological sites [43 CFR 36.9(b)].

Appendix A
Contact Information
ALASKA REGION PARKS
February 2006

ALASKA AFFILIATED AREAS (AFAR)

Aleutian WWII National Historic Area
Inupiat Heritage Center
Bruce Greenwood, Superintendent
(anna_jacobs-bateman@nps.gov)
240 West 5th Avenue, Room 114
Anchorage, Alaska 99501

Phone: (907) 644-3503/Fax: (907) 644-3816

LAKE CLARK NATIONAL PARK AND PRESERVE (LACL)

Joel Hard, Superintendent (joel_hard@nps.gov)
4230 University Drive, Suite 311
Anchorage, AK 99508

Phone: (907) 271-3751/Fax (907) 271-3707

Port Alsworth: (907) 781-2218/Fax (907) 781-2119

Port Alsworth physical address: Port Alsworth, AK 99653

DENALI NATIONAL PARK AND PRESERVE (DENA)

Paul Anderson, Superintendent (paul_r_anderson@nps.gov)
P.O. Box 9
Denali Park, Alaska 99755

Phone: (907) 683-2294/Fax: (907) 683-9612

Physical address: Milepost 238, Parks Highway

SITKA NATIONAL HISTORICAL PARK (SITK)

Greg Dudgeon, Superintendent (greg_dudgeon@nps.gov)
103 Monastery Street
Sitka, Alaska 99835

Phone: (907) 747-6281/Fax: (907) 747-5938

GLACIER BAY NATIONAL PARK AND PRESERVE (GLBA)

Tomie Lee, Superintendent (tomie_lee@nps.gov)
Box 140
Gustavus, Alaska 99826

Phone: (907) 697-2232/Fax: (907) 697-2654

Physical address: #1 Park Road

WESTERN ARCTIC PARKLANDS (WEAR=CAKR, KOVA, NOAT, BELA)

George Helfrich, Superintendent (george_helfrich@nps.gov)
Cape Krusenstern National Monument (CAKR)
Kobuk Valley National Park (KOVA)
Noatak National Preserve (NOAT)
P.O. Box 1029
Kotzebue, Alaska 99752

Phone: (907) 442-3890/Fax: (907) 442-8316
Physical address: 333 Shore Ave, rear of Eskimo Bldg

Tom Heinlein, Superintendent (thomas_heinlein@nps.gov)
Bering Land Bridge National Preserve (BELA)
P.O. Box 220
Nome, Alaska 99762

Phone: (907) 443-2522/Fax: (907) 443-6139
Physical address: 214 Front Street, Suite 121
KATMAI NATIONAL PARK AND PRESERVE (KATM)
Aniakchak National Monument and Preserve (ANIA)

Steve Frye, Superintendent (steve_frye@nps.gov)
P.O. Box 7
King Salmon, AK 99613

Phone: (907) 246-3305/Fax (907) 246-2116
Physical address: #1 King Salmon Mall

KENAI FJORDS NATIONAL PARK (KEFJ)
Jeff Mow, Superintendent (jeff_mow@nps.gov)
P.O. Box 1727
Seward, Alaska 99664

Phone: (907) 224-7500/Fax: (907) 224-7505
Physical address: HQ: 500 Adams St./VC: 1212 4th Ave.

WRANGELL-ST. ELIAS NATIONAL PARK AND
PRESERVE (WRST)

Jed Davis, Superintendent (jed_davis@nps.gov)
P.O. Box 439
Copper Center, Alaska 99573

Phone: (907) 822-5234/Fax: (907) 822-7216
Physical address: 106.8 Richardson Highway

KLONDIKE GOLD RUSH NATIONAL HISTORICAL PARK
(KLGO)

Jim Corless, Superintendent (james_corless@nps.gov)
P.O. Box 517
Skagway, Alaska 99840

Phone: (907) 983-2921/Fax: (907) 983-9249

Physical address: 2nd & Broadway

YUKON-CHARLEY RIVERS AND GATES OF THE
ARCTIC (YUGA)

Yukon-Charley Rivers National Preserve (YUCH)

Gates of the Arctic National Park and Preserve (GAAR)

Dave Mills, Superintendent (david_mills@nps.gov)

201 First Avenue, 1st Floor

Fairbanks, Alaska 99701

Phone: (907) 457-5752/Fax: (907) 455-0601

Eagle: (907) 547-2233/Fax: (907) 547-2247

