

August 9, 2024

Kevin McKay
Branch Chief, Realty Management, National Park Service
WASO Land Resources Division, Park Planning, Facilities and Lands
1849 C Street NW, 2nd floor
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RE: National Park Service ROW Rule – RIN 1024-AE75

submitted electronically to

<https://www.federalregister.gov/documents/2024/06/10/2024-12605/rights-of-way>

Dear Mr. McKay,

These are my comments on the National Park Service's Proposed Right-of-Way Rule (36 CFR parts 1 and 14) published in the Federal Register, page 48850, on June 10, 2024.

The proposed rule includes no reference to Title XI of the Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487, or to ANILCA's Title XI implementing regulations at 43 CFR Part 36. The final Title XI regulations, adopted via Federal Register Notice on September 4, 1986 (page 31624), apply only to National Park Service (NPS) units Alaska. Title XI and its implementing regulations have governed right-of-way (ROW) authorizations on National Park System lands and other Department of Interior lands in Alaska since 1986.

Title XI and its implementing regulations contain specific requirements for the NPS in Alaska in reviewing and processing applications for access and to authorizing access when appropriate. There are significant areas of conflict between the current proposed rule and the existing authority of Title XI and its implementing regulations that are not addressed in the proposed rule. In such areas of conflict, Title XI and 43 CFR are controlling.

Examples of conflicts are:

43 CFR 36.3(b) allows for pre-application activities by applicants in NPS units under certain conditions. The proposed rule contains no such provision and does not acknowledge this Title XI provision.

43 CFR 36.5 sets requirements for submittal and NPS processing of applications for access, including specific deadlines on both the applicant and the NPS, and coordination between federal agencies when multiple agencies are involved. The proposed rule contains no such requirements and does not acknowledge the Title XI requirements.

43 CFR 36.6 sets specific deadlines for completion of National Environmental Policy Act documents. The proposed rule contains no such provisions and does not acknowledge these Title XI provisions.

43 CFR 36.7 provides processes for NPS to make a decision to approve or disapprove an application for access, including a specific deadline for doing so. The proposed rule contains no such provisions and does not acknowledge the Title XI provisions.

43 CFR 36.7(b) contains provisions that direct the agency to make specific decisions, with specific deadlines, on applications for ROWs for which the agency has no authority to authorize the requested access, and applications that request access within designated Wilderness. The proposed rule contains no such provisions and does not acknowledge the Title XI provisions.

43 CFR 36.8 provides appeal rights to applicants whose applications have been denied. The proposed rule contains no such provision and does not acknowledge the Title XI provision.

43 CFR 36.9 sets out terms and conditions that each issued ROW permit must contain. The proposed rule contains no such provision and does not acknowledge the Title XI provision.

43 CFR 36.10 addresses applications for access to inholdings within NPS units, and implements the legislative right of access to inholdings contained in ANILCA section 1110(b). Although ROW permits issued for access to inholdings can and should contain terms to protect park resources, the issuance of ROW permits for access to inholdings is not discretionary. The proposed rule is in direct conflict with the ANILCA 1110(b) and 43 CFR 36.10, which are existing and applicable authorities.

The proposed regulations need to be revised to show the application of ANILCA Title XI and its implementing regulations to applications for access in Alaska, as well as to the processing of such applications and the possible issuance of ROW permits. This is necessary for the sake of future applicants for access, for the general public, and just as importantly, for NPS personnel responsible for working on requests and applications for access on NPS lands in Alaska.

Thank you for this chance to comment.

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(NPS, Alaska Region, retired)

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