

An Interim User's Guide to Accessing Inholdings in National Park System Units in Alaska

July 2007

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Notwithstanding any other provisions of this Act, or other law, in any case in which State owned or privately owned land, including subsurface rights of such owners underlying public lands, or a valid mining claim or other valid occupancy is within or is effectively surrounded by one or more conservation system units, national recreation areas, national conservation areas, 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.

Section 1110(b) of the Alaska National Interest Lands Conservation Act

INTRODUCTION

Owners of non-federal lands and holders of valid occupancies that lie within units of the National Park System in Alaska were granted the right of adequate and feasible access to their lands by Section 1110(b) of the Alaska National Interest Lands Conservation Act (ANILCA). This guide presents the process for obtaining an ANILCA 1110(b) Right-of-Way Certificates of Access (RWCAs) from the National Park Service (NPS), and presents other information that may be useful in understanding this subject.

As the stewards of America's National Park System, the NPS has responsibilities to manage public land in ways that protect the values Congress recognized in establishing these parks, monuments, and preserves. The NPS also has the responsibility to faithfully implement Section 1110(b) by working with the owners and valid occupiers of non-federal lands that lie within National Park System units in Alaska, to see that they obtain the access rights they need to use and enjoy their lands. The NPS wants the process of obtaining RWCAs to be as simple and straightforward as possible.

This guide is intended to address all types of access needs to inholdings, from unimproved trails for Off Road Vehicles, to new road construction, to installation of utilities. It also addresses all types of inholdings, from small homesites to tracts that contains thousands of acres.

This guide is considered an "interim" document. It follows the preparation of "draft" guides in 2005 and 2006. Those drafts were distributed for public comment. Public meetings were held, as well as meetings with numerous "stakeholder" groups. Written comments and the comments from those meetings were used to revise the guide. This interim guide will be used by the NPS to begin issuing RWCAs. The experience gained in processing and issuing RWCAs will be used to revise the guide as necessary. It is expected that a final guide will be prepared within two years. There will be opportunities for public input for the final guide.

Definitions of the key terms used in this Access Guide are provided in Appendix A.

Guiding Principles

The following principles will guide the NPS in fulfilling its responsibilities under Section 1110(b) of ANILCA.

- Residents within Alaska's national parks are part of the essential fabric of the parks. We acknowledge their value in providing services to park visitors and continuing traditional lifestyles.
- The NPS wants to see residents and communities within and around parks thrive. The NPS seeks to establish mutually respectful long-term relationships with all of our neighbors.
- ANILCA 1110(b) requires the NPS to give the owners of properties within National Park System units such rights as may be necessary to assure adequate and feasible access to their properties for economic and other purposes.
- ANILCA 1110(b) gives the NPS the responsibility to reasonably regulate access to inholdings to protect natural and other values of National Park System units.
- The NPS recognizes that access is crucial to the use and enjoyment of the non-federal lands in National Park System units in Alaska. The NPS will work with the owners of these non-federal lands and holders of valid occupancies to meet their access needs across NPS lands.
- Documenting ANILCA 1110(b) access rights across park lands provides certainty to the landowner and to the NPS. Certainty of access will allow landowners to make long-term plans and insure that access occurs in ways that minimize effects on park resources.
- The documentation and authorization process should be as quick, simple, inexpensive and enduring as possible. This process should be transparent to the public and fully understood by all NPS managers.
- Access under ANILCA 1110(b) does not affect the status or validity of other access rights under other state and federal authorities (such as RS 2477).
- The NPS will treat all landowners fairly and consistently across the state and over time.

Inholdings and Access

Inholdings are private, state and other non-federal lands or valid occupancies within the boundaries of National Park System units, or are effectively surrounded by one or more conservation system units.

Some National Park System units in Alaska are quite old. 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 ANILCA. Coming after years of staking of homesteads, homesites, mining claims, and Native allotments, and passage of laws such as the Alaska Statehood Act and the Alaska Native Claims Settlement Act, the boundaries of the new parks and park expansions included many parcels of private and state land. There are approximately 1,666,500 acres of private, state, and municipal lands within

the boundaries of National Park System units in Alaska. All Alaska parklands are subject to ANILCA 1110(b) provisions.

In 1980, methods of accessing inholdings varied greatly. Today people continue to use many different means to get to their properties. 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 cases where access across federal land began at some time in the past without a right of way or other authorization. While such use was generally allowed by the federal land managing agency, this did not create a right of way or easement.

Section 1109 of ANILCA recognizes that some owners and occupiers may already have rights of way or easements to their lands. It states “Nothing in this title shall be construed to adversely affect any valid existing right of access.” Such valid existing rights of access most commonly are state highways. The NPS will respect any valid existing rights of access.

Categories of Access

Title XI of ANILCA addresses many types of access, including major systems, like pipelines, highways, and power transmission lines that cross National Park System units in Alaska, as well as other conservation system units. Section 1110(b) of Title XI is specific to access to inholdings. This user’s guide addresses access to non-federal lands where there is a need to cross NPS managed lands.

Section 1110(a) authorizes the public’s use of motorboats, airplanes (fixed-wing), and snowmachines, as well as non-motorized methods, for traditional activities, in National Park System units. Snowmachine access requires adequate snow cover. Access to some inholdings is effectively provided by the means authorized by Section 1110(a). Access by these means generally does not require an authorization from the NPS.

Section 1110(b) and this Access Guide specifically address access to non-federal lands within NPS areas, otherwise known as inholdings. Section 1110(b) is a statutory guarantee that non-federal landowners will be given the rights they need to access their lands, subject to reasonable regulation. Section 1110(b) applies to access to non-federal lands 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 NPS will issue ANILCA 1110(b) Right-of-Way Certificates of Access (RWCA) unless adequate and feasible access to non-federal properties is available using methods that do not require a RWCA.

When is an ANILCA 1110(b) Right-of-Way Certificate of Access not needed?

Generally you do not need a RWCA if: 1) you will be using a motorboat, airplane (fixed-wing), snowmachine or a non-motorized means of travel 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 RWCA 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.

When is an ANILCA 1110(b) Right-of-Way Certificates of Access needed?

If the paragraph above does not describe your type of access, then you most likely will need a RWCA. RWCA's to inholdings are usually needed when operating motorized highway vehicles or ORVs on National Park System lands where no designated road or trail exists, or when construction or maintenance of a trail, road, powerline, or a landing strip occur on National Park System lands. Please note that specific park requirements (such as for vessels during the summer in Glacier Bay National Park and Preserve) may apply.

Established Access Routes and Facilities at Wrangell-St. Elias National Park and Preserve

Wrangell-St. Elias is unique among Alaska parks because it contains many more inholdings than any other unit. To evaluate access routes or facilities, existing as of 2006, to land holdings within or effectively surrounded by Wrangell-St. Elias National Park and Preserve, in 2007 the NPS is preparing a programmatic Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA).

In consultation with individual landowners, the NPS will

- Obtain a description of the established access route or facility.
- Visit the site to map or record the route or facility.
- Inventory existing environmental conditions, and assess the sustainability/manageability of the established route or facility.
- Prepare a programmatic EA to evaluate the route and means of access prior to issuing a RWCA.

The programmatic EA will document the footprint of the established access, identify reasonable, sustainable maintenance options available to the landowner, and provide guidance to mitigate and/or avoid unnecessary impacts of the access route or facility. The authorization process should generally be straightforward for access routes and facilities that can be maintained within the established footprint in their present condition and character, with negligible to minor new impacts on park resources and values. Once the programmatic EA is completed, RWCA's will be issued for qualifying routes and facilities.

Some existing access facilities 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 more complex access cases and any proposed new access route or facility will require a separate environmental document (EA or EIS).

Programmatic EAs may also be prepared for other National Park System units that have existing, sustainable access routes that require RWCA's.

THE PROCESS FOR OBTAINING AN ANILCA 1110(b) RWCA

The 1110(b) RWCA process allows the NPS to manage and protect public resources, for example, salmon streams, wildlife habitat, and historical sites, while assuring access to non-federal properties. The NPS is committed to assisting and working with people who need RWCA's and making it as simple and easy as possible to obtain a RWCA.

For access across federal land that requires authorization by the NPS, planning ahead and working with the park superintendent are essential to expedite issuance of RWCA. Processing time will depend 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.

Step 1: Starting the Process

To apply for a RWCA for access across National Park System land 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 RWCA will be needed. However, if you need to use other modes of transportation, or if you need to construct or maintain a road, airstrip or utility line on NPS lands, then a right-of-way is generally required. Consider what modes of access, as well as what routes of access would be adequate and feasible for your needs. Then contact the superintendent of the national park area to schedule a pre-application meeting. Park superintendents' addresses and phone numbers are included in Appendix B.

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 staff to further explain the process. The pre-application meeting will cover information needs, timelines, any applicable fees and other topics. This meeting can save you and the NPS time and expense. The meeting will help determine if you even need a RWCA. 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. Be sure to bring any information that may be useful during this session, particularly useful are maps and drawings of your proposed access route and facilities.

Existing ANILCA regulations (43 CFR 36) require the use of the SF 299 application form. To get the most out of the pre-application meeting, we recommend that prior to the meeting you review this application form. NPS staff can assist in determining what information is needed on your application for your specific access request, and can indicate which sections of the application do not need to be filled out. You can obtain the application either from the park superintendent or from the website:

<https://www.blm.gov/FormsCentral/show-home.do>. Then click on the "Standard Forms" link.

Step 3: Applying for an 1110(b) RWCA

Based on the information gained at the pre-application meeting, complete the application (SF 299) to the best of your ability. The SF 299 is used for all accesses, from a minor road to a major highway, so some sections of the SF 299 will not apply to small-scale access, and the amount of detail needed will vary greatly. Only those sections of the SF 299 relevant to your access need to be completed. The NPS may be able to assist you in preparing the SF 299 or relevant support documents. An incomplete application or insufficient information can slow processing. Send the completed application to the park superintendent.

Step 4: Processing the Application

The NPS 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 application process and related deadlines (noted below) begin when the application is determined to be complete.

Issuance of a RWCA for access across National Park System lands requires environmental analysis under NEPA (for a description of NEPA requirements see Appendix C). If you are applying for access on a road, trail or other facility that already exists and is sustainable in its present condition, it may be covered by a programmatic EA, and your RWCA will be considered for approval under a categorical exclusion (CE). Requests for new or more complex access routes and means will require their own EAs or EISs.

The NPS has up to nine months from receipt of a complete application to prepare an EA or draft EIS and has an additional three months to prepare the final EIS. Following completion of the EIS, the NPS has up to four months to make a final decision on the request. These are maximum periods established by law and regulation (43 CFR 36.6), but they may be extended for good cause, for example at the applicant's request to consider new information. EAs generally take significantly less time than EISs.

As specified in the Title XI regulations (43 CFR 36.10(e)(1)), the NPS will approve the route and method of access desired by the applicant unless: 1) the requested access would result in significant impacts on natural or other values; or 2) the requested access would jeopardize health or human safety; or 3) the requested access is inconsistent with the management plan(s) for the area or purposes for which the area was established; or 4) the requested method of access is unnecessary to accomplish the applicant's land use objective. If none of these conditions exists, then the applicant is to receive a RWCA for the access as requested. However, if the NPS makes findings that any of these four conditions exists, after consultation with the applicant, the NPS must specify an alternative route(s) and/or method(s) in a RWCA that will provide the applicant with adequate and feasible access.

In the end, the applicant must be provided adequate and feasible access to his/her land. Another possibility is that no RWCA is needed. For example, if an inholding is on the shore of a large lake, and access is available by float or ski-equipped plane, a new road might not be necessary or economically practicable. In this example, if air access would provide adequate and feasible access, there would be no need for a RWCA for overland access.

Step 5: Other Agency Involvement

Depending on the complexity of an access request and the issues involved, other agencies may have roles 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 streams, 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 NPS will work with applicants to help identify other agency authorizations that may be necessary, but it is the applicant's responsibility to obtain the necessary permits and authorizations from these or other agencies. RWCA's will be issued with a requirement that the applicant obtain required permits from other agencies and that these permits are issued before construction or maintenance 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 Department of Natural Resources (DNR) Office of Habitat Management & Permitting: www.dnr.state.ak.us/habitat/
3. State of Alaska DNR Public Information Center: www.dnr.state.ak.us/pic/

Step 6: 1110(b) RWCA Issued

Where the NPS determines that a RWCA is needed, the NPS will issue a RWCA to the landowner or holder of a valid occupancy. Appropriate terms and conditions will be included in the RWCA. 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 or reduce impacts on resources and other park uses will also be specified in the RWCA. RWCA's will be signed by the NPS Alaska Regional Director and the landowner or the holder of a valid occupancy. Appendix D contains a sample ANILCA 1110(b) RWCA. This sample presents some of the standard stipulations that will be in RWCA's. Each RWCA will need to address the specific conditions applicable to individual routes, facilities and environments.

STIPULATIONS FOR ANILCA 1110(b) RWCA's

The Alaska Region of the NPS will implement the following policies regarding access to non-federally owned lands and valid occupancies within National Park System units in Alaska. Stipulations in 1110(b) RWCA's will reflect the following statements:

Fees

- The Title XI regulations (43 CFR 36.6(c)) state that fees are to be charged in accordance with agency-specific laws and procedures, except for access requests that require an environmental impact statement (EIS). EIS's require cost reimbursement pursuant to the regulations implementing the Federal Land Policy and Management Act. It is the policy of the NPS not to charge fees and costs regarding the exercise of rights (not privileges)(NPS

Reference Manual 53, C5-1 & C10-2), such as the ANILCA 1110(b) access right, to the extent allowable by law and regulation. Accordingly, the NPS will charge fees only for an access request that requires an EIS. RWCA's for established access and for some new accesses are not expected to require EISs.

- The fee for EIS cost recovery will be determined by the NPS Regional Director, based on the applicable regulations of 43 CFR 2804.14. These regulations allow for reductions and waivers of fees.
- Except in the case of an EIS, the NPS will not charge applicants for mitigation, as required by NPS policy, for replacement of wetlands or the costs associated with an NPS wetlands delineation. Any wetlands delineation or compensation required by the Corps of Engineers, however, will be the responsibility of the applicant.
- If the NPS lacks sufficient funds or other resources to process an 1110(b) access request, the applicant may pay for the costs to expedite processing.
- NPS does not have authority to waive fees charged by the State of Alaska or other federal agencies.

Wetlands

NPS policy is to limit impacts to wetlands and to compensate for any loss of wetlands from any project. Compensatory mitigation refers to those actions, such as restoration and creation of wetlands, that are designed to offset wetland losses.

- Impacts to wetlands will be avoided where possible.
- The NPS will provide wetlands compensation if the 1110(b) access request can be evaluated in an Environmental Assessment.
- Landowners will need to obtain U.S. Army Corps of Engineers Section 404 permits as required by that agency for filling wetlands or other "waters of the US," and compensate for the loss of wetlands as required by that agency.
- Landowners will generally be responsible for wetlands compensation if an EIS is required. Wetlands compensation could take the form of restoration or creation of wetlands by the landowner where practical, or payment that would be used for these purposes. Wetlands compensation (both actual restoration and/or compensation payments) will be treated in a manner similar to EIS cost recovery (43 CFR 2804.14). These regulations allow for reductions and waivers of cost recovery in certain circumstances.
- Wetlands compensation required by the NPS will not be additive to the Corps of Engineers' requirements, rather the Corps' requirements will fulfill all or part of the NPS requirement.

Duration

The NPS will generally issue 1110(b) RWCA's that have no fixed expiration dates. These RWCA's will be valid as long as they are needed for access to the subject inholding. However, the duration of RWCA's may vary. In some instances, RWCA terms may be relatively short, if that meets the needs of the owner. For example, if the overland transport of building supplies using heavy equipment is needed for a single season, after which access will be by foot or snowmachine, a RWCA can be written to reflect that temporary need. The duration of a RWCA may also be tied to the duration of a valid occupier's use, for example, the RWCA may be issued to a lessee for the duration of his/her lease.

Amendments

An approved RWCA may be amended to adjust the stipulations for changed conditions, to correct oversights, or to address conditions not previously contemplated. Either party may initiate an amendment by notifying the other in writing and providing a justification for the proposed revision or supplement. Amendments by mutual consent of the NPS and RWCA holder may occur, but the NPS may require an amendment without the consent of the holder if the RWCA conditions become inconsistent with the regulatory standards of Title 43 CFR 36.9 and 36.10(e)(1). The NPS will consult with the holder when any amendment is initiated. Any amendment must result in the RWCA holder continuing to have adequate and feasible access to his/her property.

Transfer or Assignment

Any proposed transfer or assignment of an existing RWCA due to a change in ownership must be filed in writing with the Superintendent and must be supported by a written, signed statement that the transferee/assignee agrees to comply with and be bound by the terms and conditions of the current RWCA. If these conditions are met, the NPS Regional Director will approve the transfer of the RWCA.

Compliance with Terms of a RWCA

1110(b) of ANILCA guarantees property owners and holders of valid occupancies adequate and feasible access to their inholdings for as long as they need the access. This statutory right cannot be revoked, though it is subject to reasonable regulation to protect natural and other values. Securing the 1110(b) access right in a RWCA serves the interests of both the inholder and the NPS. Should violations of RWCA terms or other violations of law occur, the NPS will take appropriate action, including civil or criminal action to protect park resources or uses.

Reconsideration of a Decision

The Title XI regulations (43 CFR 36.10(g)) provide that the agency decision is the final administrative decision, which means it can be challenged in Federal District Court. If an applicant disagrees with the decision of the Regional Director on an application for an 1110(b) RWCA, the applicant has the option to request reconsideration of the decision before filing a lawsuit. The applicant must submit a written request for reconsideration to the Regional Director within thirty (30) days of his/her receipt of the decision. The request for reconsideration must state the reasons for the reconsideration. A hearing on the reconsideration may be conducted, at the discretion of the Regional Director. The Regional Director will inform the applicant in writing of the result of the reconsideration. If the applicant requests reconsideration, the NPS will not regard its decision as final until the conclusion of the reconsideration. If the applicant does not request reconsideration, NPS decision will be treated as final upon its issuance.

CONCLUSION

The owners of non-federal lands and the holders of valid occupancies in NPS units in Alaska are assured adequate and feasible access by Congress in Section 1110(b) of ANILCA. The NPS is committed to working with owners and valid occupiers to provide access to their lands, while also protecting National Park System units for the enjoyment of present and future generations.

FREQUENTLY ASKED QUESTIONS

An Interim User's Guide to Accessing Inholdings in a National Park System Units in Alaska

The following questions came from the public, NPS employees, and people living and working in Alaska's national parks. If we have not adequately answered questions you have, please contact the appropriate park superintendent. Park addresses and phone numbers are given in Appendix B of this guide.

NEED FOR AN 1110(b) RIGHT-OF-WAY CERTIFICATE OF ACCESS (RWCA)

1) Why do I need an 1110(b) RWCA?

A RWCA allows you to do things in NPS parklands that otherwise would generally be prohibited, such as construct or maintain roads, install utilities, and drive most types of motorized vehicles off state highways or designated park roads.

2) What laws and regulations apply to 1110(b) RWCA and access to inholdings?

Most of the National Park System units in Alaska were created or expanded by the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. Section 1110(b) of ANILCA directs the Secretary of the Interior to give owners of non-federal lands and other valid occupancies adequate and feasible access to those inholdings, subject to reasonable regulation. The regulations implementing Section 1110(b) of ANILCA are at 43 CFR 36.10. These regulations direct that the NPS will use rights of way to authorize needed access to inholdings while protecting park values. These regulations are available at the park headquarters or online at: <http://www.nps.gov/akso/regulations/index.htm>. As directed by these regulations, all requests for access to inholdings that require an authorization from the NPS will be processed under the regulations at 43 CFR 36.10 (Access to Inholdings), rather than other regulatory provisions, such as 43 CFR 36.12 (Temporary Access).

3) Do I need an 1110(b) RWCA to travel across national park areas to reach my inholding?

You **do not need** a RWCA if you are traveling over an established public right of way or a designated park road (an exception is the Denali Park Road, where a RWCA is needed for access to inholdings). You **do not need** a RWCA to use a state highway. Also you do not need a RWCA if you are walking or using non-motorized means of surface transportation, such as sled dogs or a pack or saddle animal, or if you are using a motorboat, snowmachine, or airplane (fixed-wing aircraft) (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. Snowmachines are prohibited at all times within the former Mt. McKinley National Park (36 CFR 13.952). Additional regulations regarding boat access at Glacier Bay National Park also apply. You **do not need** a RWCA to use ORVs if you are traveling only on trails designated by the NPS for such use. National Park System units may occasionally be closed to some access methods to protect park resource values. There will be public notice of these closures.

You will need an 1110(b) RWCA:

- To use other motorized surface transportation vehicles on NPS managed lands (except as discussed above for snowmachines and ORVs, or on designated park roads or highways).
- To reroute roads or trails on National Park System lands.
- To build new roads or trails on National Park System lands.
- To construct or maintain a landing strip with motorized tools on National Park System lands.
- To install utilities, such as telephone lines and repeaters, communication sites, power lines, and waterlines, on National Park System lands.

4) Instead of getting an 1110(b) RWCA, can I use a park road to access my property?

In some situations access routes or facilities not only serve as access to inholdings but also are open to public travel or serve NPS administrative needs. The NPS has the authority to designate such routes or facilities as park roads, trails and facilities. We intend to work with the users of these access routes and facilities and either issue RWCA's or designate them as park roads.

5) My property predates the national park. Do I need an 1110(b) RWCA?

Depending on your access needs, you may need a RWCA. 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.

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 NPS. Two Appeals Court decisions hold that when the United States government granted title to private lands, such as homesteads, it did not grant easements across the public lands (*Fitzgerald Living Trust v. U.S.*, 460 F.3d 1259 (9th Cir. 2006) and *U.S. v. Jenks*, 129 F. 3d 1348, 1354 (10th Cir. 1997)). ANILCA is the statutory authority for giving access rights to owners of inholdings in NPS units in Alaska.

6) My neighbor won't let me cross his land. Therefore, I have to cross a national park to reach my property. Can I receive an 1110(b) RWCA?

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

7) If an access route is used by more than one private property owner, does each owner need authorization from the NPS?

If the method of access is not already allowed and National Park System 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.

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

As with accessing other non-federal lands within National Park System lands, no NPS authorization 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, ORV on a route designated for ORV 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, an RWCA 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, 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 outside but "effectively surrounded" by a unit of the National Park System in Alaska, due to rugged terrain or waterways or other physical obstructions, are entitled to the same access rights across parklands as are the owners or valid occupiers of properties that lie within the boundaries of a National Park System unit. Such owners and occupiers can apply for and obtain rights of way to cross the parklands.

ACCESS VIA OTHER LAWS AND LEGAL RIGHTS

1) What about Revised Statute (RS) 2477 Right of Way?

An RS 2477 right of way is a public highway right of way owned by the State of Alaska or a borough or municipality.

The State of Alaska has asserted many RS 2477 rights of way in Alaska, including many within NPS units. The NPS acknowledges these assertions, 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 asserted 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.

2) 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 landowner would need a 1110(b) RWCA to use of a section line on federal lands.

There may be valid section line easements on park lands that were acquired from the State or private owners. Research will be required on individual cases. On federal lands the validity of section line easements, as with other asserted RS 2477 rights of way, can be determined only by a federal court, and no such determinations have occurred to date within National Park System units in Alaska.

3) I'm on a state road; do I still need an 1110(b) RWCA?

State roads are on rights of way belonging to the State of Alaska. Within units of the National Park System these rights of way overlie NPS lands. The Alaska Department of Transportation and Public Facilities (ADOT&PF) manages the road and has the right to use the right of way for "road purposes." The NPS and ADOT&PF share management of the road right of way. If your property abuts or is inside the state-owned road right of way you will need a driveway permit from ADOTPF (<http://www.dot.state.ak.us/permits/index.html>).

The NPS may require an 1110(b) RWCA for that portion of your driveway covered by the ADOT&PF driveway permit if there are particular resource or public use issues. You will need an RWCA for the portions of a driveway crossing National Park System lands outside the state right of way. You will also need an RWCA for other access, such as utilities or a developed parking lot in the state-owned road right of way. If you have questions about whether an 1110(b) RWCA is needed, please contact the park superintendent.

4) Do I need an 1110(b) RWCA 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 NPS and the State already generally allow these access modes without a RWCA. 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.

5) Do I need an 1110(b) RWCA to use an Alaska Native Claims Settlement Act 17(b) easement to reach my property?

No. 17(b) easements provide public 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 RWCA once you reach National Park System lands.

GENERAL ACCESS QUESTIONS

1) I do not 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 1110(b) RWCA. It is also necessary for you to comply with the terms of the RWCA.

2) I'm not the owner of the land (inholding), but I have a lease from the owner. Can I get an 1110(b) RWCA?

Yes. An 1110(b) RWCA can be issued to the landowner, with the right to use the RWCA by lessees, or in some cases can be issued to the lessee. If the RWCA is to be issued to a lessee, there will need to be documentation of the lease and coordination with the landowner. Anyone using the RWCA will need to comply with its terms.

3) 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).

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

Generally you will be required to use platted access, but if it is prohibitively expensive or physically infeasible to use the platted right of way, you may be able to obtain an 1110(b) RWCA to cross National Park System lands.

AIRCRAFT AND AIRSTRIP ACCESS

1) When would airplane access on a lake, gravel bar, or dry ridge, within walking distance of my land be required rather than less expensive overland travel?

Adequate and feasible access must be economically practicable but does not necessarily have to be the least costly way to access your property (43 CFR 36.10(a)(1)). Fixed-wing aircraft access is generally allowed and does not require a right of way or other authorization (43 CFR 36.11(f)). To the extent air access is economically practicable it could be a reasonable alternative to avoid significant adverse impacts of other access methods (43 CFR 36.10(e)(1)). Many landowners currently use air and boat access to their properties and find it an appropriate 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, an 1110(b) RWCA is not necessary. You do need authorization from the NPS in National Park System units to construct or expand a landing site with non-motorized tools or to construct, expand, or maintain a landing site with motorized tools.

3) I need to get from my airstrip to my inholding. Do I need an 1110(b) RWCA to drive my off road vehicle (ORV) from the airstrip to the inholding?

You need an 1110(b) RWCA to cross park lands with an ORV if the access is off state highways or designated park roads or designated ORV trails.

MINING ACCESS

1) I am going to lease a mining claim. I need access across parklands and want to do it in the summer time. How should I do that?

Mining activities on federal patented and unpatented mining claims within the boundaries of National Park System units are regulated under Title 36 CFR part 9(a). These regulations require the submission and approval of a Plan of Operations. The Plan of Operations may authorize access, or the NPS may issue a separate right of way under the Access to Inholdings regulations

(43 CFR 36.10(c)). Contact the park superintendent for specific information about accessing mining claims.

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

First check with the claim holder to see if he already has an 1110(b) RWCA that allows ORV access to the claims. If he does, then he can authorize you to use the RWCA for access. If the claim holder does not have a RWCA, he will need to apply for one from the NPS.

OBTAINING AN ANILCA 1110(b) RWCA

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

The primary law addressing access to non-federal lands in National Park System units in Alaska is the Alaska National Interest Lands Conservation Act (ANILCA). Section 1110(b) of ANILCA is specific to access to inholdings. The regulations dealing with access to inholdings in National Park System units 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.nps.gov/akso/regulations/index.htm>

2) Is getting an 1110(b) RWCA 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 NPS understands your proposed access, the easier it will be to process your application and issue the right of way.

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 NPS will conduct an environmental analysis, which is usually an environmental assessment (EA) or, in some cases, an environmental impact statement (EIS). An EIS may be necessary if the proposal has the potential for significant environmental effects. 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 RWCA.

3) Why does the NPS want to know my land use objectives?

Knowing your plans will enable the NPS to assess whether the requested access is adequate and feasible to meet your needs.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

1. Why is NEPA required for an 1110(b) RWCA?

Issuing a 1110(b) RWCA—whether new or existing access—is considered a potentially major federal action with measurable impacts on the human environment that requires analysis under NEPA. Applications for RWCA for routes or facilities on National Park System lands are not categorically excluded from preparation of an environmental assessment (EA) or environmental impact statement (EIS), so an environmental analysis must be conducted. The NEPA documentation will generally be an EA.

2. Why does the 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. Your access is assured under ANILCA, and the regulations require the NPS to issue a right of way unless adequate and feasible access already exists without one.

3. Why is issuing an 1110(b) RWCA not categorically excluded?

A “categorical exclusion” is a class of actions which agency experience has indicated will not have individual or cumulatively significant environmental effects. Most federal agencies have a list of specific actions, based on past experience, that have been shown to have no significant effects and which are listed as categorical exclusions. It has not been demonstrated that the action of issuing a right of way would not result in environmental impacts. Establishing a new categorical exclusion requires the NPS to follow certain notification procedures, and to demonstrate a rationale and history that shows the action will not individually or cumulatively have significant effects on the human environment.

USE OF AN ANILCA 1110(b) RWCA

1) Can the public also use my road that’s authorized by an 1110(b) RWCA?

Regulating motorized use of an 1110(b) RWCA by others is a NPS responsibility. The RWCA allows you and your guests to use a specified location on National Park System lands for access. In many cases, use of the RWCA will be limited to the inholder and the NPS. However, in some situations it may be appropriate to allow the public to use the RWCA. If a non-federal parcel is being subdivided, State of Alaska regulations may require that the right of way to the subdivision be open to the public (11 AAC 53.630. Legal Access). Other users of the RWCA will be addressed during the processing of the application, and the RWCA will specify who is authorized to use the road or trail. Public access that is generally allowed on adjacent park lands, such as hiking, snowmobiling and subsistence activities, will continue to be allowed on the RWCA. A landowner who has a RWCA will not be held responsible for damage to parklands caused by public use of the RWCA. The NPS also recognizes that inholders should not bear the burden of the additional maintenance that may be required for public use of a RWCA for park purposes.

2) If I subdivide my land, will I need to obtain an 1110(b) RWCA to it?

Current State of Alaska regulations (11 AAC 53.630. Legal Access) require that subdivisions have public access. However, the Alaska Department of Natural Resources (DNR) has determined that the access guarantees provided by Title XI of ANILCA are sufficient to fulfill the public access requirements of these regulations, and DNR does not require that RWCA's be issued to subdivisions within National Park System units in the Unorganized Borough. However, if 1110(b) RWCA's are to be issued for access to new subdivisions, DNR will likely require, as a condition of approval of the subdivision plats, that the RWCA's be open to public access.

3) With an 1110(b) RWCA, can I make route improvements along the access route to my private land?

The terms and conditions in your RWCA will specify what maintenance and improvements are authorized.

4) 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 ORV?

Your right of way is only for access to your property. Consult the park superintendent regarding access needs for other activities on National Park System lands.

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

1110(b) RWCA's generally will not set limits 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. However, RWCA terms will insure that the frequency of travel will meet the needs of the applicant.

6) Will special restrictions for maintaining my access route be required in the RWCA?

The Environmental Assessment will evaluate the access and will include a section on maintenance. The RWCA will specify the types of allowable and any required maintenance.

Appendix A DEFINITIONS

An Interim User's Guide to Accessing Inholdings in a National Park System Units in Alaska

Access means how you, your family, clients, lessees, employees, business partners, friends, and guests get to your private land. 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.
- **Legal access** is the authorized right to use or occupy National Park System lands for access. A right of way provides for legal access across NPS lands.

Adequate and feasible access 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. See 43 CFR 36.10 (a) (1).

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. See 36 CFR 13.1.

Categorical Exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which are described in one of the categorical exclusion lists in the NPS DO-12 Handbook and for which no exceptional circumstances exist.

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

Environmental Assessment 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. See 40 CFR 1508.9.

Environmental Impact Statement 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. See 40 CFR 1508.11.

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. See 43 CFR 36.10(a)(4).

Major Federal Action for the purposes of NEPA means actions that have the potential for significant impacts to the human environment. They include adopting policy, implementing rules or regulations; adopting plans, programs, or projects; ongoing activities; issuing permits; or financing projects completed by another entity.

Off-road vehicle (ORV) 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. See 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 NPS. See CFR 36 CFR 1.4.

Snowmachine or Snowmobile means a self-propelled vehicle intended for off-road travel primarily on snow having a curb weight of not more than 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow and steered by a ski or skis in contact with the snow. See 36 CFR 13.1.

**Appendix B
CONTACT INFORMATION**

National Park System Units in Alaska--July 2007

<p>ALASKA AFFILIATED AREAS (AFAR) Aleutian WWII National Historic Area Inupiat Heritage Center Superintendent 240 West 5th Avenue, Room 114 Anchorage, Alaska 99501</p> <p>Phone: (907) 644-3503/Fax: (907) 644-3816</p>	<p>LAKE CLARK NATIONAL PARK AND PRESERVE (LACL) Superintendent 240 West 5th Avenue, Suite 236 Anchorage, AK 99501</p> <p>Phone: (907) 644-3626/Fax (907) 644-3810</p> <p>Port Alsworth: (907) 781-2218/Fax (907) 781-2119 Port Alsworth physical address: Port Alsworth, AK 99653</p>
<p>DENALI NATIONAL PARK AND PRESERVE (DENA) Superintendent P.O. Box 9 Denali Park, Alaska 99755</p> <p>Phone: (907) 683-2294/Fax: (907) 683-9612 Physical address: Milepost 238, Parks Highway</p>	<p>SITKA NATIONAL HISTORICAL PARK (SITK) Superintendent 103 Monastery Street Sitka, Alaska 99835</p> <p>Phone: (907) 747-6281/Fax: (907) 747-5938</p>
<p>GLACIER BAY NATIONAL PARK AND PRESERVE (GLBA) Superintendent Box 140 Gustavus, Alaska 99826</p> <p>Phone: (907) 697-2232/Fax: (907) 697-2654</p> <p>Physical address: #1 Park Road</p>	<p>WESTERN ARCTIC PARKLANDS (WEAR=CAKR, KOVA, NOAT, BELA)</p> <p>Superintendent Cape Krusenstern National Monument (CAKR) Kobuk Valley National Park (KOVA) Noatak National Preserve (NOAT) P.O. Box 1029 Kotzebue, Alaska 99752</p> <p>Phone: (907) 442-3890/Fax: (907) 442-8316 Physical address: 333 Shore Ave, rear of Eskimo Bldg</p>
<p>KATMAI NATIONAL PARK AND PRESERVE (KATM) Aniakchak National Monument and Preserve (ANIA) Superintendent P.O. Box 7 King Salmon, AK 99613</p> <p>Phone: (907) 246-3305/Fax (907) 246-2116</p> <p>Physical address: #1 King Salmon Mall</p>	<p>Superintendent Bering Land Bridge National Preserve (BELA) P.O. Box 220 Nome, Alaska 99762</p> <p>Phone: (907) 443-2522/Fax: (907) 443-6139 Physical address: 214 Front Street, Suite 121</p>
<p>KENAI FJORDS NATIONAL PARK (KEFJ) Superintendent P.O. Box 1727 Seward, Alaska 99664</p> <p>Phone: (907) 224-7500/Fax: (907) 224-7505 Physical address: HQ: 500 Adams St./VC: 1212 4th Ave.</p>	<p>WRANGELL-ST. ELIAS NATIONAL PARK AND PRESERVE (WRST) Superintendent P.O. Box 439 Copper Center, Alaska 99573</p> <p>Phone: (907) 822-5234/Fax: (907) 822-7216 Physical address: 106.8 Richardson Highway</p>
<p>KLONDIKE GOLD RUSH NATIONAL HISTORICAL PARK (KLGO) Superintendent P.O. Box 517 Skagway, Alaska 99840</p> <p>Phone: (907) 983-2921/Fax: (907) 983-9249</p> <p>Physical address: 2nd & Broadway</p>	<p>YUKON-CHARLEY RIVERS AND GATES OF THE ARCTIC (YUGA) Yukon-Charley Rivers National Preserve (YUCH) Gates of the Arctic National Park and Preserve (GAAR) Superintendent 4175 Geist Road Fairbanks, Alaska 99709</p> <p>Phone: (907) 457-5752/Fax: (907) 455-0601 Eagle: (907) 547-2233/Fax: (907) 547-2247</p>

Appendix C

National Environmental Policy Act (NEPA) Requirements

Approving a right of way is a federal action with potential environmental impacts that requires the NPS to comply with NEPA. Depending on the degree or severity of impact, requests for ANILCA 1110(b) Right-of-Way Certificates of Access (RWCA) will be evaluated in environmental assessments (EA) or environmental impact statements (EIS). The NEPA document is an objective, scientific analysis of the environmental effects of your proposal and reasonable alternatives, which helps the park superintendent and regional director make informed decisions.

Most RWCA requests will be analyzed in EAs. However, if there are potentially significant impacts, an EIS must be prepared. NEPA regulations present significance criteria (40 CFR 1508.27) that trigger an EIS. The criteria include consideration of the context of the proposed action, the intensity of the impacts, the proximity to or impact on wetlands, threatened and endangered species, and areas of recognized scenic, recreational, archeological or historic value, impacts on health and human safety, and whether the proposal is highly controversial or involves unknown risks.

EA Process

Prepare EA (up to 9 months including public review)

30-day public review of EA

Decision: Finding of No Significant Impact (FONSI)

EIS Process

Notice of Intent: Public Scoping

Prepare draft EIS (up to 9 months from complete application)

Notice draft EIS: 60-day public review

Prepare final EIS, addressing public comments (up to 4 months from the draft EIS)

Notice final EIS: 30-day No Action period

Decision: Record of Decision (ROD) (up to 4 months from the final EIS)

Appendix D
SAMPLE--ANILCA 1110(b) Right-of-Way Certificate of Access (RWCA)
July 21, 2007 DRAFT

National Park Service Alaska Region 240 West 5th Avenue, Room 114 Anchorage, Alaska 99501	RWCA No.: _____
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1. An ANILCA 1110(b) Right-of-Way Certificate of Access (hereinafter “RWCA”) is hereby issued pursuant to Section 1110(b) of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980 (16 USC 3170).

2. Nature of Interest:

a. By this instrument _____ (Holder’s Name) (hereinafter “Holder”), whose address is _____, receives a right to construct, operate, use, maintain, and terminate a _____ (road, trail, airstrip, etc.) on National Park Service (hereinafter “NPS”) managed lands in _____ (NPS Unit Name) and within an area described as follows:

(Description of area of use authorized by RWCA)

Located in Township _____, Range _____, _____ Meridian, Alaska,
 Section(s) _____, _____ Recording District, Alaska.

The area of use authorized by this RWCA is illustrated on the attached map(s) (Exhibit B).

b. The area authorized by this RWCA is _____ feet wide, _____ feet long, and contains _____ acres, more or less. If a site type facility, the facility contains _____ acres.

c. This RWCA shall not be construed as an interest in the land authorized for use by this RWCA, or as an abandonment of use and occupancy by the United States, but shall be considered a use of the land as described, anything contained herein to the contrary notwithstanding.

d. The stipulations, plans, maps, or designs set forth in Exhibit(s) _____, dated _____, attached hereto, are incorporated into and made part of this instrument as fully and effectively as if they were set forth herein in their entirety.

3. Rental Fee. No rental fees apply because it is NPS policy not to charge fees when a requested use involves exercise of a right (not a privilege).

4. General Terms and Conditions:

a. The Holder shall comply with all applicable State and Federal law and existing regulations in the construction, operation and/or maintenance within the area authorized by this RWCA.

- b. This RWCA will expire when it is no longer needed for the purposes for which it is issued unless, prior thereto, it is relinquished, abandoned, or modified pursuant to the terms and conditions of this instrument or of any other applicable federal law or regulation.
- c. This RWCA may be amended to adjust the terms and conditions for changed conditions, to correct oversights, or to address conditions not previously contemplated. Either the NPS or Holder may initiate an amendment by notifying the other in writing and providing a justification for the proposed revision or supplement. Amendments by mutual consent of the NPS and Holder may occur, but the NPS may also require an amendment without the consent of the Holder if uses within the area authorized by this RWCA or other conditions become inconsistent with the regulatory standards of Title 43 CFR 36.9 and 36.10(e)(1). The NPS will consult with the Holder when any amendment is initiated. Any amendment must result in the Holder continuing to have adequate and feasible access to his/her property.
- d. The Holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and health and safety of the public.
- e. This RWCA is for the purpose of providing the Holder with access across NPS lands to his/her non-federal land or valid occupancy. It does not authorize the Holder to use the area authorized by this RWCA for any activities other than access.
- f. This RWCA may be assigned. The proposed assignee must state in writing that he/she agrees to comply with and to be bound by the terms and conditions of the existing RWCA. With such a written statement from the proposed assignee, the NPS Regional Director will approve the assignment of the RWCA to the assignee, who shall become the Holder. The assignment becomes effective upon the written approval of the NPS Regional Director, Alaska Region.
- g. The Holder shall take adequate measures as directed and approved by the superintendent of the NPS unit to prevent or minimize damage to resources. This may include restoration, soil conservation and protection measures, landscaping with indigenous grasses and shrubs, and repairing roads, trails, etc. The superintendent or his/her representative may enter and inspect the area authorized by this RWCA and any facilities in it, as deemed necessary by the NPS and without restriction.
- h. The Holder will halt any activities in the area authorized by this RWCA and notify the superintendent of the NPS unit upon discovery of archeological, paleontological or historical artifacts. All artifacts unearthed remain the property of the United States.
- i. Use of pesticides or herbicides is prohibited within the area authorized by this RWCA.
- j. Use by the Holder is subject to the right of the NPS to establish trails, roads, and other improvements and betterments over, upon or through the area authorized by this RWCA. Also, at the discretion of the NPS, the area authorized by this RWCA may be open to use by the public and others. If it is necessary for the NPS to exercise such right, every effort will be made

by the NPS to refrain from unduly interfering with use of this area by the Holder for the purposes intended under this RWCA. The Holder agrees and consents to the occupancy and use by the NPS and by individuals and entities authorized by the NPS, of any part of the area authorized by this RWCA. The Holder's right to "adequate and feasible access" under Title XI of ANILCA will be respected by the NPS.

k. No deviations from the locations authorized in this RWCA shall be undertaken without the prior written approval of the superintendent of the NPS unit. The superintendent may require the filing of a new or amended application for a proposed deviation.

l. Notwithstanding the relinquishment or abandonment of this RWCA by the Holder, the provisions of this RWCA, to the extent applicable, shall continue in effect and shall be binding on the Holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein.

m. Upon expiration or termination of this RWCA, in the absence of any agreement to the contrary, the Holder will be allowed six (6) months or such additional time as may be granted in which to remove from the area authorized by this RWCA all property or improvements of any kind, other than a road and usable improvements to a road, placed thereon by the Holder; but if not removed within the time allowed, all such property and improvements shall become the property of the United States.

n. Upon expiration or termination of this RWCA the Holder may be required by the NPS to restore the NPS lands affected by the RWCA.

o. This RWCA has no effect on any valid existing rights of access pursuant to any other authority.

p. The Holder agrees that in undertaking all activities pursuant to this RWCA, it will not discriminate against any person because of race, color, religion, sex, or national origin.

q. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this RWCA or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this RWCA if made with a corporation for its general benefit.

r. This agreement is made upon the express condition that the United States, its agents and employees shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury, or death to any person or property of any kind whatsoever, whether to the person or property of the Holder, its agents or employees, or third parties, from any cause or causes whatsoever while in or upon said premises or any part thereof during the term of this agreement or occasioned by any occupancy or use of said premises or any activity carried on by the Holder in connection herewith, and the Holder hereby covenants and agrees to indemnify, defend, save and hold harmless the United States, its agents and employees from all liabilities, charges, expenses and costs on account of or by reason of any such injuries, deaths, liabilities, claims, suits or losses however occurring or damages growing out of the same.

- s. Any alterations to this instrument must be in writing and signed by the NPS and Holder.
- t. Nothing herein contained shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this RWCA for the fiscal year, or to involve the NPS in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.
- u. The waiver of any breach of any provision of this RWCA, whether such waiver be expressed or implied, shall not be construed to be a continuing waiver or a waiver of, or consent, to any subsequent or prior breach of the same or any other provision of this RWCA.

IN WITNESS WHEREOF, the Regional Director, Alaska Region of the National Park Service, acting on behalf of the United States, in the exercise of the delegated authority from the Secretary of the Department of the Interior, has caused this ANILCA 1110(b) Right-of-Way Certificate of Access (RWCA _____) to be executed this _____ day of _____, 2007.

 Regional Director, Alaska Region
 National Park Service
 United States Department of the Interior

ACCEPTED this _____ day of _____, 2007.

 Printed name of Holder

 Signature of Holder

Appendix D (Continuation)
SAMPLE--ANILCA 1110(b) Right-of-Way Certificate of Access (RWCA)
July 21, 2007 DRAFT

Exhibit A (of Sample 1110(b) RWCA): Specific Stipulations

RWCA No.: _____

Stipulations specific to the RWCA are listed here, for example:

- Vehicle classes
- Maintenance methods
- Use of culverts
- Season of use or maintenance, if applicable
- Signing and/or gating, if applicable

Exhibit B A (of Sample 1110(b) RWCA): Map

RWCA No.: _____

Standards

- a. Survey or engineer's drawing not generally required
- b. Map drawn by NPS or Holder (reviewed and accepted by NPS)
- c. Minimum scale 1 inch equals 1 mile
- d. Map based on USGS quadrangle map or rectified orthographic photograph.

Required

1. Name of the USGS 15' (1 inch equals 1 mile) quadrangle map
2. Orthographic photograph (if used): flight line, date filmed, frame number
3. Legal description of the inholding: US Survey, State of Alaska Survey, or lot and aliquot parts
4. Authorized area beginning and ending: latitude and longitude. Bearing and distance from a United States or State of Alaska survey monument can be used instead of latitude and longitude.
5. Centerline plot of authorized area using Global Positioning System (GPS) or other method acceptable to NPS.