



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Natural Resources

CITIZENS' ADVISORY COMMISSION ON
FEDERAL AREAS
Stan Leaphart, Executive Director

3900 Airport Way
Fairbanks, Alaska 99709
Main: 907.374.3737
Fax: 907.451.2751

June 10, 2013

Senator Lisa Murkowski
Senate Committee on Energy and Natural Resources
709 Hart Senate Building
Washington, D.C. 20510

Dear Senator Murkowski:

At our meeting of June 7 & 8, 2013 the Citizens' Advisory Committee on Federal Areas considered S. 340, the *Southeast Alaska Native Land Entitlement Finalization and Jobs Protection Act*. During these two days the Commission heard testimony on the bill from Alaskans speaking on behalf of a number of organizations, Southeast Alaska communities and themselves. The Commission also had the opportunity to discuss key issues in the proposed legislation with representatives from Sealaska Corporation and the Alaska Department of Natural Resources Division of Forestry. As has been the case in the past, the U.S. Forest Service declined an invitation to participate in the meeting.

It is our understanding that a mark-up of S. 340 is scheduled during the June 18 Business Meeting of the Committee on Energy and Natural Resources. The Commission requests that the following comments be considered by the Committee prior to making any revisions to S. 340.

Our review of S. 340 clearly indicates that a number of important changes and improvements have been made in response to recommendations from this Commission and others on earlier versions of the legislation. We particularly note Section 4(d) that would keep all lands conveyed under this legislation open and available to the public for hunting and fishing for subsistence and non-commercial recreational purposes. We also note the significant reduction in the number of the previously identified future sites and economic development sites that had proven to be highly controversial and the source of much local and regional opposition. And finally, we note that the improvements in the provisions related to the continuation and renewal of special use authorizations for guiding and outfitting. Despite those changes, there are a number of provisions in S. 340 which we cannot support.

The Commission remains concerned that although this proposed legislation applies only to Sealaska Corporation's land entitlement under the Alaska Native Claims Settlement Act (ANCSA), it could set a precedent for other corporations to pursue changes to their land entitlements. While acknowledging your assurances that this legislation is not precedent setting, we believe that the likelihood of similar requests from ANCSA corporations increases as the

deadline approaches for final conveyance of selected lands under ANCSA and the Alaska Land Transfer Acceleration Act. The Bureau of Land Management, the agency responsible for handling ANCSA conveyances, expressed similar concerns in its April 25, 2013 testimony before the Committee.

CONSERVATION AREAS

This Commission remains adamantly opposed to the designation of 152,000 acres of Land Use Designation (LUD) II Management Areas, so-called Conservation Areas, listed in Section 7 of the bill. As we pointed out previously, placing this acreage into a permanent, legislatively designated conservation classification, along with the existing 5.7 million acres of designated wilderness and 722,000 acres of designated LUD II areas will place nearly 40% of the Tongass National Forest under wilderness designation or its equivalent.

Your letter of March 1, 2013 to the Commission states: *"it became absolutely clear in talks with the Senate majority and the Obama Administration that it would not entertain the possibility of allowing passage of a Sealaska bill without the creation of some greater amount of conservation lands."* and that it was *"worth the price to maintain 40 percent of the state's existing timber industry."* We are unconvinced that it is worth the price and the Commission cannot support this concession.

In our experience, these types of concessions, while they may be politically expedient, often lead to further demands and additional concessions. We have only to look at the Tongass Timber Reform Act (TTRA) as an example of the folly of believing compromises are permanent. Congress declared in ANILCA Section 101 that with the passage of that statute it believed *"the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby."* Yet, just 10 years later, the same groups who pushed relentlessly for the passage of the "great compromise" that was ANILCA were back at the table clamoring for yet more wilderness. The result was another 296,000 acres of wilderness in addition to the 722,000 acres of LUD II areas designated by TTRA.

The 2011 court decision that removed the Roadless Rule exemption for the Tongass National Forest provides another reason not to designate these conservation areas. Now that national forest lands in Southeast Alaska are subject to the Roadless Rule, hundreds of thousands of acres are now off limits to timber harvest. While much of the acreage proposed for inclusion in the conservation areas may be currently unavailable because of restrictions in the TLMP or other administrative classifications, the designations under S. 340 would be permanent and will only add to the impacts of the Roadless Rules on the National Forest timber base. The proposed conservation areas should be removed from the bill.

IMPACTS OF ROADLESS RULE

We also want to correct a mistake in the March 1, 2013 to the Commission, which stated:

"But 60,944 of those [Sealaska selections] acres were placed in Old-Growth Habitat Preserves by the Forest Service, and 277,000 of those acres are located in the

Inventoried Roadless area that would cause problems for Sealaska to be able to connect roads on their private lands to the existing road network."

This is incorrect and apparently based on the misconception that the Roadless Rule supersedes Sealaska's private ownership rights of access under ANILCA. Access to Sealaska lands, State lands, village corporation lands or any non-federal lands are not subject to the Roadless Rule. This is true whether Sealaska ultimately takes conveyance of its pending selections in the existing withdrawal areas or in the areas identified in S. 340. Many of the proposed selection areas are also within or adjacent to Inventoried Roadless areas.

ANILCA Section 1323(a) guarantees Sealaska, the State of Alaska and any private land owner access to their lands. The Roadless Rule does not supersede that guarantee of access. The regulations at 36 CFR Part 251 specifically provide for access to non-national forest lands lying within the boundaries of a national forest. A discussion of the potential effects of the Roadless Rule on access to non-federal lands surrounded by National Forest System lands is found in the *Supplementary Information* accompanying the final rule published in the January 12, 2001 *Federal Register*:

Comment on Access. The agency received many comments questioning how the proposed rule would affect access to lands that the agency does not manage, such as State lands or private inholdings, and access pursuant to the General Mining Law of 1872.

*Response. This rule does not affect a State's or private landowner's right of access to their land. The proposed rule did not close any roads or off-highway vehicle (OHV) trails. The proposed rule provided for the construction and reconstruction of roads in inventoried roadless areas where needed pursuant to existing or outstanding rights, or as provided for by statute or treaty, including R.S. 2477 rights, **access to inholdings under the Alaska National Interest Lands Conservation Act (ANILCA) provisions, or circumstances where a valid right-of-way exists.***

*The most common right of access to non-federally owned property surrounded by National Forest System lands is a road constructed or reconstructed on those National Forest System lands. The final rule at Sec. 294.12(b)(3) provides for construction or reconstruction of a road in an inventoried roadless area "if the Responsible Official determines that * * * a road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty." **For example, the ANILCA provides a landowner a right of access across National Forest System lands in certain circumstances, and this rule does not amend or modify that statute.***

Title 36 part 251 of the Code of Federal Regulations implements the ANILCA access provisions and sets forth the procedures by which landowners may apply for access across National Forest System lands; this rule does not amend or modify that regulation. (66 FR 3253- emphasis added)

DEFINITION OF SUBSISTENCE

Any reference to ANILCA Section 803, as it defines subsistence uses, should be removed from the bill. Hunting and fishing activities on private lands in Alaska are conducted solely under State regulations, which are promulgated by the Alaska Board of Game and the Alaska Board of Fisheries. Those activities are not subject to the provisions, definitions, eligibility requirements or restrictions found in ANILCA Title VIII. It is also important to note that Federal courts and agencies have interpreted the definition of subsistence differently than have State courts and State agencies. Reference to or use of the definition of subsistence activities found in Federal law will potentially confuse the courts and the public and may lead them to believe that hunting and fishing on these private lands are conducted under Federal regulation or law.

17(b) EASEMENTS

Provisions in Section 4(a) which allows up to 2 years for the Secretary to identify and reserve 17(b) easements should be revised. Easements should be identified as part of the interim conveyance. Final easement alignments can then be identified and reserved as part of the final conveyance process. This would ensure that public easements are available for use at the time of the interim conveyance, with any adjustments made by the time the final deeds of conveyance are issued. This will allow time for an adequate review to determine the best location and route of any public easement.

Language should also be included that requires the BLM to issue public notice and provide an opportunity for public comment on any proposal to vacate an existing 17(b) easement. A statement outlining the need for vacating the easement should be required as part of the public notice. Further, no easement can be vacated unless adequate alternative access is identified and reserved.

ENDANGERED SPECIES ACT

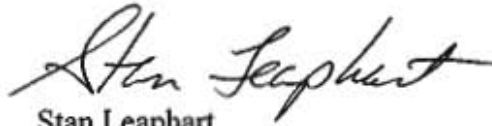
We continue to be concerned about the potential effects from the new selection areas on the existing conservation strategies for the Alexander Archipelago wolf and the Queen Charlotte Goshawk remain. As you know, in August 2011 the Center for Biological Diversity (CBD) filed a petition with the U.S. Fish and Wildlife Service to list the wolf population in Southeast Alaska under the Endangered Species Act. In July 2012, CBD notified the Service of its intent to file suit against the Service for failing to act on the petition.

While the U.S. Forest Service staff that we have spoken to believe that the conservation strategies will not be compromised and sufficient old-growth reserves will remain, ultimately it is the U.S. Fish & Wildlife Service and possibly the courts, who will determine the status of the wolves in Southeast Alaska. Any listing of the Alexander Archipelago wolf under the ESA would have significant consequences for timber harvest and other resource development activities on all lands in the region – both public and private.

The Commission offers these comments on S. 340 for consideration by the Committee as it works to revise the bill. The Commission has deferred any further action until the mark-up of the bill is complete and we have an opportunity to review any changes made to it. We have made it clear in the past that we support the finalization of Sealaska Corporation's land entitlement under

ANCSA. However, we have not yet determined if S. 340 is the most equitable way in which to accomplish that.

Sincerely,

A handwritten signature in black ink, appearing to read "Stan Leaphart". The signature is fluid and cursive, with a large initial "S" and a long, sweeping tail.

Stan Leaphart
Executive Director

cc: Sen. Mark Begich
Rep. Don Young
Gov. Sean Parnell
Sealaska Corporation