

STATE OF ALASKA

ANILCA IMPLEMENTATION PROGRAM Office of Project Management and Permitting

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February 22, 2008

Christopher Savage, District Ranger
Petersburg Ranger District
USDA Forest Service – Alaska Region
P.O. Box 1328
Petersburg, AK 99833

Dear Mr. Savage:

The State of Alaska received the January 24, 2008 scoping letter outlining the Petersburg Ranger District's plans to prepare an environmental impact statement (EIS) for a proposed timber sale project on Kupreanof Island within the Petersburg Ranger District. The letter notes that the EIS will also "*propose and analyze recommendations for roads to remain open, to be closed and to be designated for off-highway vehicle use*" as part of the District's Access and Travel Management (ATM) objectives. This letter focuses exclusively on the ATM component. The following consolidated state agency comments were compiled by the State's Alaska National Interest Lands Conservation Act (ANILCA) Implementation Program and cover ANILCA-related issues and other state interests, excluding coastal zone management.

The Alaska Department of Natural Resources, Division of Coastal and Ocean Management (DCOM) implements the Alaska Coastal Management Program (ACMP). On February 14, 2008, DCOM submitted NEPA scoping and ACMP comments related to the timber sale portion of the project. Some of the information requested though DCOM will also be useful in assessing the ATM proposals in the Draft EIS.

As you are likely aware, the State appealed the Sitka District ATM decision because it does not comply with ANILCA. We also recently provided ATM scoping comments to the Ketchikan-Misty Fiord and Yakutat Ranger Districts, which addressed both District-specific issues and general information needed to bring their ATM plans/projects into compliance with ANILCA. For the Petersburg District's benefit, relevant information from these ATM scoping comments is repeated below. To ensure the public is adequately informed of its access rights under ANILCA and to assist the public and the State in its evaluation of the proposed action, we urge the Petersburg District to include this essential information in the EIS.

Based on the January 24 letter, and subsequent phone calls for clarification to the District office, we are aware that the Petersburg District plans to combine its ATM requirements with various other District projects, rather than taking a single District-wide look at ATM planning as other Districts have done to date. We are concerned with this piecemeal approach and urge a District-wide effort that looks at ATM access issues in a broader context. Without that broader context, it will be difficult, if not impossible, to determine if resulting cumulative access opportunities for subsistence purposes will be reasonable under Section 811(a) of the Alaska National Interest Lands Conservation Act (ANILCA).

Compliance with ANILCA

The State of Alaska filed a formal appeal of the Sitka District Access and Travel Management (ATM) decision on January 7, 2008. This appeal was brought because the Sitka ATM project does not comply with ANILCA. We strongly urge you to review the appeal at

http://www.dnr.state.ak.us/opmp/nilca/pdf/08_01_07_FS_Stka_ATM_Appeal.pdf and take whatever measures possible to ensure that the Yakutat District ATM complies with ANILCA. Our concerns with the Sitka ATM are summarized for the record, which apply equally to the Petersburg District:

- By 2009, the national Travel Management rule of 2005 will convert most Forest Service land to a “closed until open” management approach; yet ANILCA Section 811 requires a default “open until closed” approach.
- Access closures under ANILCA must be implemented by formal regulation, not mere publication of an ATM map developed pursuant to the national rule.
- The national Travel Management rule is therefore inconsistent with ANILCA because an administrative regulation cannot trump a federal statute.
- Based on ATM Plans and proposals we have seen to date, little – if any – attention is focused on the requirements of ANILCA Section 811, including acknowledging the rights of access for subsistence purposes under this provision and the specific justification for individual proposed closures. ATM plans to date do not adequately address these ANILCA provisions.

Section 811 of ANILCA describes the requirement for access for subsistence purposes on all public lands in Alaska: (emphasis added)

*(a) The Secretary shall ensure that rural residents engaged in subsistence uses **shall have reasonable access** to subsistence resources on the public lands.*

*(b) Notwithstanding any other provision of this Act or other law, the Secretary **shall permit** on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, **subject to reasonable regulation.***

In addition to requiring “reasonable regulation” for any ultimate closures, we request the Petersburg District address the following elements that mirror the implementing Section 811 regulations and procedures used by the National Park Service and the US Fish and

Wildlife Service. Using the Department of the Interior approach as a guideline in your NEPA work will give your District a head start in ANILCA compliance.

- An explanation of the Forest Service’s ANILCA obligations under Section 811, including to “*ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources.*”
- Description of affected subsistence uses and how the proposed decision will affect such use (i.e., the required ANILCA Section 810 analysis),
- Sufficient geographic information for the public and resource agencies to understand the location of all routes being addressed. For example, the Office of Habitat Management and Permitting (OHMP) requests detailed maps of stream crossing locations, along with the following additional information needed for the concurrence process.
 - Stream name and classification (anadromous, high value resident or hydraulic conveyance)
 - ADF&G catalog number, if anadromous
 - Specific information about fish species present at the crossing sites
 - Description and diagrams of proposed stream crossing structures (i.e. bridge, culvert, ford)
 - Description of stream and riparian habitat at the crossing
 - Proposed timing of instream work
- Current and proposed status of all roads, including the proposed status of all “closed” roads (decommissioned, closed pending repairs, closed pending authorizations, etc.) to allow the public to understand which routes could be opened later and why.
- Route and/or area-specific justification for each closure. For example, Department of Interior agencies are required to determine that continued use “...*is causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or other purposes and values...*” (50 CFR 36.12) This information could be provided in Table format for simplicity.
- If a road is to be closed to cars and trucks but open to ATVs, the EA needs to explain how fisheries resources will be protected and what types of stream crossing structures will be used (crossing structures should be cross-referenced with road numbers in the EA). The Forest Service will need to work with OHMP through the concurrence process prior to conducting any related in-stream work in fish-bearing streams.

Southeast Alaska Transportation Plan

The Southeast Alaska Transportation Plan (SATP) needs to be clearly integrated into the assessment and decision process to the extent it is applicable. Specifically, the SATP includes essential transportation and utility corridors that may align with existing roads under assessment. We request that, wherever possible, the District reserve and protect these corridors for future transportation and utility purposes. Electronic copies of the SATP are available at:

http://dot.alaska.gov/stwdplng/projectinfo/ser/newwave/SATP_FINAL/index.shtml

Federal-Aid Highway Funding Restrictions

We recommend avoiding use of the term “trail” as it could be problematic in some instances with respect to the future eligibility of federal-aid highway funds, which carry more burdensome restrictions when proposed development would displace a designated recreational facility or area. Our concern, therefore, does not involve trail designations per se, but the implication of designating the trail and surrounding area as recreational. Our understanding is that the term “trail” will be used in the context of this ATM for the purposes of roadway management and funding resources. Essentially, these are intended to be short-term decisions that do not bind future management of the forest. Please clarify in the NEPA documentation and decision notice that any designations of “ORV trails” do not convert a roadway corridor to a designated recreational facility, unless there may be some overriding stated reason for doing so in a site-specific situation. In particular, we assume that the Forest Service is retaining the management prerogative of converting an “OHV trail” into a ML 2 (or higher) road in the future.

Based on other District ATM documents, we request that the EIS avoid using language that may incorrectly imply that some areas or routes are already formally closed to motor vehicle use. For example, roads that are simply “*impassable*” or “*undrivable*” are not actually closed at this time.

We appreciate your willingness to accept comments beyond the suggested February 11, 2008 timeframe. If you have any questions or wish to further discuss any of our comments, please contact me at (907) 269-7529. State agency representatives are also available to work with your staff as the EA is prepared to facilitate completeness and accuracy.

Sincerely,



Susan E. Magee
ANILCA Project Coordinator

cc: Sally Gibert, ANILCA Program Coordinator