

# STATE OF ALASKA

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**GOVERNOR**

## **ANILCA IMPLEMENTATION PROGRAM**

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USDA-Forest Service  
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The State of Alaska reviewed the Environmental Assessment (EA) for the Sitka Access and Travel Management (ATM) project. This letter represents the consolidated comments of State agencies.

The State appreciates the difficulties faced by the Sitka Ranger District (District) in managing its road system with increasing resource concerns, changing objectives and use patterns, and reduced funding for maintenance. We also agree that unrestricted access on roads is problematic without legal access agreements, authorized anadromous stream crossings, or where use is causing resource damage. On the other hand, we are concerned that the EA does not adequately address access for subsistence purposes. In particular, the EA lacks adequate information to evaluate the effects of the project on subsistence use. For this reason, we request the Service issue supplementary documentation or a revised EA so that the State and the public can provide more constructive comments. This concern and other issues are addressed separately below.

### Subsistence Access

In Alternative 2, the Proposed Action, several roads are proposed for closure for a variety of reasons and for varying and undefined lengths of time, including: storage pending future need, closure pending completion of repairs or legal access agreements, permanent closure/decommissioning, and closure for conversion to non-motorized trails or off-highway vehicle (OHV) use. Based on the minimal information provided, this alternative does not appear to meet the intent of Section 811 of the Alaska National Interest Lands Conservation Act (ANILCA) for the purpose of implementing closures. Section 811 of ANILCA describes the requirement for subsistence access on all public lands:

- (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.* (emphasis added)

OHVs are included as “*other means of surface transportation*” where they have been traditionally employed for subsistence purposes.

Although the EA contains occasional references to access and uses authorized by ANILCA, there is not enough information provided to understand how access to subsistence resources was assessed and prioritized in the road analysis. It is unclear whether the closure or conversion of these roads to another mode of access would, or would not, negatively impact access to subsistence resources. It is our understanding that there was limited response to initial efforts to obtain information about subsistence access during public meetings. However, in order to properly implement ANILCA intent in Sections 810 and 811, the Service must display an understanding of existing and historic subsistence use patterns to adequately assess potential impacts of the Proposed Action.

Also in accordance with ANILCA Section 811(b), access to subsistence resources is subject to “reasonable regulation.” As such, we request that the Service clarify that any road closures or limitations resulting from this EA will require subsequent rulemaking involving additional public review. The State has worked closely with other federal agencies to facilitate a common understanding of ANILCA’s access provisions for over two decades. Increasingly, we have achieved mutually satisfactory interpretations subsequently adopted in federal policy and regulations. We are interested in working with the Service to develop similar “reasonable regulations” that address the ANILCA access provisions, to apply to this project as well as other applicable Service actions.

We understand that limited funding constrains the Service’s ability to perform adequate maintenance on the existing District road system, and adequate funding will be needed to implement either action alternative. We therefore request estimated timelines and priorities for completing maintenance and repairs, and obtaining legal access agreements. The Service should also address the effects of potential funding delays on District management of resources and public uses, including subsistence. We also request that, to the extent possible, the Service confirm its commitment in the final decision document to obtain the funding necessary to fully implement its chosen alternative.

#### ANILCA References

Regarding the varying references to ANILCA in the discussion of land use designations, it would be more appropriate to separately explain how applicable ANILCA access provisions apply to these designations. Currently the document is unclear which provisions apply to the various designations and it appears that there are some inaccuracies. For example, access to mining claims is not the only access provided for

under Title XI for Wild River corridors as conservation system units (ANILCA Section 102(4)). There is also no reference to subsistence access in any of the designations.

#### Effects of Motorized Use

The EA contains several references to the negative effects of OHV use on the environment. These discussions should include appropriate supporting documentation to substantiate such statements (e.g. OHV traffic/use is primarily responsible for increased sedimentation (page 3-23 to 3-24); and OHV's are the direct cause of water quality and habitat degradation (page 3-24).

#### Southeast Alaska Transportation Plan

In their scoping comments, the Alaska Department of Transportation and Public Facilities (DOT&PF) requested that the plan clearly integrate the Southeast Alaska Transportation Plan (SATP) into the assessment and decision process. The EA discusses the SATP and displays the Proposed Rodman Road on pertinent figures; however, the SATP is identified as a non-significant issue. The Proposed Action, as described in Chapter 2, does not include management intent specific to corridors identified in the SATP. On the other hand, page 3-27 of the EA lists the SATP road corridors with the following statement: "*The corridors of the following roads would be retained indefinitely in case they are needed for future road development.*" We request that this intent be included in the final decision document as it is too important to be incorporated only by reference.

The EA also states on page 3-27: "*Proposed actions within road corridor options described in the SATP (Road to Rodman, Road to Baranof Hot Springs, etc.) will be delayed.*" While we agree with the intent of this statement, the wording is unclear and possibly difficult for the public to interpret. We request this statement be clarified, particularly if it is incorporated into the decision document, as it is essential that individual Forest Service actions not run counter to state goals as described in the SATP.

#### Federal-Aid Highway Funding Restrictions

DOT&PF also requested during scoping that use of the word "trail" be avoided in the assessment and decision process. The use of the word "trail" could be problematic with respect to the use of federal-aid highway funds, which carry more burdensome restrictions when proposed road development would displace a designated recreational facility or use. We are concerned that new OHV trails (formerly utilitarian roads) will qualify as recreation resources that are protected by 49 USC 303 (also known as Section 4(f)). We request that the Service not use the term OHV trail with respect to any action involving an essential transportation and utility corridor identified in the SATP. We want to avoid an outcome where there is a future finding on the part of the Federal Highway Administration (FHWA) that designation of an OHV trail established a "significant recreational resource." If the decision document is not clear in this regard, it could be asserted that new OHV trails are significant pursuant to 23 C.F.R. 771.135(c) on the basis that it would fit within FHWA's guidance, which states "*...identified in the management plans of the administering agency as being primarily for...recreation...purposes.*" The following website provides more information about these requirements:

<http://environment.fhwa.dot.gov/projdev/4fpolicy.asp#2>.

#### Sitka Road Network

The figures depicting the Sitka road network (e.g. Figures 5 and 10) have an outdated and incorrect reference to FH11. This route is less than a mile in length. It begins at the state ferry terminal and extends to the northeast as far as the Starrigavan campground.

#### Road Crossing and Repair Activities

We appreciate the recognition that work in anadromous waterways requires authorization from the Alaska Department of Natural Resources (DNR), Office of Habitat Management and Permitting. The EA should also acknowledge that work conducted below ordinary high water in navigable waterways may require authorization from DNR, Division of Mining, Land and Water.

#### Page Specific Comments

- Page 1-4, Wilderness, 1<sup>st</sup> paragraph. Add “motorboats” as a means of surface transportation for traditional activities and replace “is acceptable” with “are allowed.”
- Page 1-4, Remote Recreation. The access methods listed are “allowed” by ANILCA. Stating that they are “permitted” could be misinterpreted as requiring a permit.
- Page 1-5, 1<sup>st</sup> full paragraph. It appears that the reference to “legal access” should instead be “illegal access.”
- Page 1-9, Issue 2, 5<sup>th</sup> sentence. This statement inappropriately infers that providing for non-motorized subsistence access makes the Proposed Action consistent with Section 811 of ANILCA. See our comments on subsistence access.
- Page 1-9, Fisheries/Water Quality, 3<sup>rd</sup> sentence. The citation for access across anadromous streams is incorrect. The correct citation is AS 41.14.870.
- Page 1-10 Public Safety. It is not clear why motorized access users are being singled out as the only members of the public at risk of using these routes as a result of safety hazards such as landslides.
- Page 3-3, last sentence. It is inappropriate to infer that there are distinctions made as to the intent of subsistence hunting. The last sentence should be deleted as it is inconsistent with the law and the preceding sentence.
- Page 3-14, Competitive Effects, 1<sup>st</sup> paragraph. There are no non-rural areas affected by this project. If the statement regarding “non-rural resident hunting” is intended to reference Alaska residents from outside the region, it is not clear in this context.

Carol A. Goularte, District Ranger  
Sitka ATM EA  
February 2, 2006

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- Page 3-31, second paragraph. This paragraph is confusing as it combines discussion of a specific route within Sitka (Harbor Mountain Road) with an unrelated, remote timber sale (Finger Mountain). Does the Sitka Cross Trail need to be mentioned, particularly as there is a separate EA specific to Harbor Mountain Road? If it does, please clarify the relationship between Harbor Mountain Road and the Sitka Cross Trail.

The State understands this project is the first of several Service ATM projects to evaluate management of Forest roads with the intention of implementing the new national OHV regulations for all Districts on the Tongass National Forest. We request opportunities to work cooperatively with you to address these important issues with appropriate public involvement, not only for this project, but to lay the ground work for other Districts that will face similar challenges.

I will contact you to arrange a meeting with you and your staff and State agency representatives so that we can discuss these comments and respond to any questions that you may have. Thank you for the opportunity to comment.

Sincerely,



Susan E. Magee  
ANILCA Project Coordinator

cc: Sally Gibert, ANILCA Program Coordinator