

STATE OF ALASKA

SARAH PALIN, Governor

ANILCA IMPLEMENTATION PROGRAM Office of Project Management and Permitting

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February 15, 2008

Lynn D. Kolund, District Ranger
Ketchikan-Misty Fiords Ranger District
3031 Tongass Avenue
Ketchikan, AK 99901

Dear Mr. Kolund:

The State of Alaska reviewed the January 2008 Public Scoping Letter for the Ketchikan-Misty Fiords Ranger District's Access and Travel Management (ATM) Environmental Assessment (EA). The following consolidated state agency comments were compiled by the State's Alaska National Interest Lands Conservation Act (ANILCA) Implementation Program and cover issues relative to ANILCA and other state interests. The Division of Coastal and Ocean Management (DCOM) is the state agency responsible for providing any correspondence or response pursuant to the Coastal Zone Management Act and the Alaska Coastal Management Program (ACMP). DCOM may, in accordance with the "*Memorandum of Understanding between the State of Alaska and the USDA Forest Service, Alaska Region, on Alaska Coastal Management Act,*" separately provide National Environmental Policy Act (NEPA) scoping comments to the District that address both ACMP related issues and requirements and other state interests concerning the proposed federal action.

Overview

We begin these comments by outlining the State of Alaska's multiple interests in this project. Each of these should also be important considerations for the Ketchikan-Misty Fiords District as preparation of the ATM EA moves forward. First, we urge the District to make the EA available for public review *prior* to issuing a decision. As illustrated in several discussions below, the complexity and importance of the issues and anticipated impacts on both the environment and affected constituents warrant this additional public involvement.

Regarding the scope of issues in the EA, the following summarizes our collective state agency interests, as discussed in more detail in this letter:

- Maintain reasonable access to subsistence resources pursuant to ANILCA Section 811(a);
- Protect and enhance habitat for wildlife;
- Provide for sustainable protection of fish habitat, particularly with respect to stream crossings under the jurisdiction of the Office of Habitat Management and Permitting;
- Maintain access to important fishing areas; and
- Maintain maximum flexibility for future transportation and utility corridor development under the State's Southeast Alaska Transportation Plan.

We recognize that some of these are potentially competing interests, which further argues for an in-depth analysis and an opportunity for the State and public to meaningfully weigh in regarding the relative impacts of the proposed decision before it is finalized.

Finally, we urge you to be aware of the implications of ANILCA and the procedural requirements in Section 811(b) that triggered the State of Alaska's appeal of the Sitka District ATM decision process. We understand that some closures are necessary and desirable, and we want to make sure they are also legally defensible under ANILCA.

Public Review of the EA

We could find few specific Forest Service requirements regarding the appropriate amount of public involvement associated with the environmental analysis prepared pursuant to the National Environmental Policy Act or Travel Management planning. We note, however, that the Forest Service Handbook (FSH) contains the following guidance applicable to the Ketchikan ATM:

FSH 1909.15 Environmental Policy and Procedures

12.34 Expand Public Involvement as Appropriate

(2) Establish the level of needed public participation. Ensure that the level of effort to inform and to involve the public is consistent with the scale and importance of the proposed action and the degree of public interest.

FSH 7709.59 Travel Management

11.2 Public involvement. ...The success of implementing travel management can be directly dependent on public understanding and commitment to travel management goals. The public involvement process should identify issues, concerns, and opportunities, and assist in resolving travel management problems.

We believe that public review of the EA will be essential to meet the spirit and intent of the Handbook. In addition, such public review will go a long way toward meeting the supplementary needs of ANILCA, as discussed below.

Compliance with ANILCA

As you undoubtedly know, 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/anolca/pdf/08_01_07_FS_Stka_ATM_Appeal.pdf and take whatever measures possible to ensure that the Ketchikan-Misty Fiords District ATM complies with ANILCA. Our Sitka concerns are summarized for the record, which apply equally to the Ketchikan-Misty Fiords 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. In fact the scoping newsletter for the Ketchikan-Misty Fiords ATM does not even acknowledge ANILCA. The public is neither informed of its access rights nor Forest Service responsibilities to conduct an accountable process for closures when necessary for resource protection or other legitimate purposes.

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 EA include 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 geographical 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 color maps (ideally of a scale no smaller than 1 inch = 2 miles) with the following attributes to properly analyze issues associated with stream crossings.
 - all roads with road numbers
 - all stream crossing structures with a symbol denoting the type of structure (number of crossing structures should be listed by road number in EA)
 - stream crossing structure condition (from road condition survey data)
 - cataloged stream numbers
 - stream classes i.e. 1, 2, 3, water quality
 - 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. To be consistent with the quoted regulations, we also suggest de-emphasizing simple funding constraints and carrying the justification to the next level of actual on-the-ground impacts.

- 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. 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.

Open Road Ceiling

We question the objective on page 2 (first bullet) that establishes, based on budget constraints alone, an arbitrary, pre-established open road limit of ~100 miles. Other factors such as existing road conditions, stream crossings, type and intensity of use, all influence maintenance costs and must also be evaluated before deciding how much of the road system will be retained or closed. Establishing such a ceiling without also disclosing the road-specific information detailed above oversimplifies the decision process and severely limits the ability of the public and the State to work with the District to prioritize and resolve issues concerning the existing road system. If budget is such a major factor in making individual decisions about closures, then we request that the EA include the projected maintenance costs of each road segment to assist in determining how to maximize sustainable, environmentally sound access at the least cost.

Wildlife Concerns

The information provided in the scoping packet is insufficient to enable state biologists and other technical staff to fully assess the potential effects of the proposed action. In order to assess potential effects on fish, wildlife and their user groups, the EA needs to clearly identify which closed roads will be simply posted, and where physical barriers will be employed to effectively prevent motorized use. Because roads without physical barriers such as gates, trenches, or humps are often used by motorized vehicles despite administrative closures, knowing how a road will be closed is vital for assessing potential positive or negative effects.

We are especially supportive of evaluating the benefits to wildlife as an important consideration in decisions about road closures. These actions would be consistent with the intent of the recently approved Tongass Land Management Plan (TLMP) and the protections it provides for Old Growth Reserves (OGRs). However, because the documents do not provide information on the location and distribution of high quality wildlife habitat (for marten and deer habitat, specifically) in relations to roads, we are unable to fully assess the relative value of road closures for wildlife. We were, however, able to do a limited assessment concerning wildlife by evaluating the location of OGRs in relation to proposed road closures. Using readily available data, we identified 7 OGRs where roads occur within the boundary of these protected areas. We recommend that the Forest Service conduct a similar analysis using the most up-to-date road and OGR GIS layers in order to fully assess the extent of roads currently in and adjacent to OGRs. Because roads in, adjacent to, and between OGRs limit connectivity between important wildlife refugia, our biologists generally favor the closure of roads in these OGRs, regardless of road class. Furthermore, we highly recommend that physical closures/barriers be employed to assure

the effectiveness of these closures and full protection of OGRs, especially in areas susceptible to greater public use pressure. Again, this would be consistent with TLMP.

The State has developed guidelines for road density thresholds for marten and wolves as management indicator species. The Alaska Department of Fish and Game, Division of Wildlife Conservation recommends addressing total road density (as opposed to “open” road density) when assessing effects of roads on wolves and marten because, historically, “closed” roads are frequently still used for both motorized and non-motorized access, which will influence hunting and trapping success rates. However, where effective physical road closures are in place, the effects of hunting and trapping will be reduced because of the greater effort required to hunt and trap non-motorized areas. Road closures should be prioritized, regardless of road class, in areas where road densities in the given Wildlife Analysis Area (WAA) exceed established marten and wolf road density thresholds. No road density information is provided in the EA scoping documents, so we are unable to currently identify important areas.

Because habitat adjacent to road systems tend to be highly fragmented from previous timber harvest, we strongly recommend prioritizing closures of roads in, adjacent to, and between unharvested remnant patches of high quality marten and deer habitat. Since deer are the main prey species of wolves, deer habitat is also a surrogate for wolf habitat. Deer pellet surveys indicate that deer populations have been depressed in some watersheds for reasons that remain unclear. Selective closure of roads near high quality habitat will help protect wildlife resources and refugia while still allowing the opportunity for harvest by foot or bicycle.

We also request the upcoming EA assess the existing and projected human use patterns associated with the proposed action. Specifically, the EA should address data concerning the legal and estimated illegal harvest of wildlife, as well as the existing and projected impacts of ORVs on habitat within the management area. Harvest data are essential to assist managers in determining trends of wildlife populations and to show their importance for human use. Documentation of verifiable habitat damage can assist in evaluating which trails merit closure. Such information was provided in the recent Sitka ATM EA, and is necessary for the Forest Service, the public and the State to adequately assess the impacts of the proposed action. We also request the EA include a commitment to work with local area residents to identify trails with high incidents of illegal uses and the possibility of subsequently closing those trails during the annual review of this Plan if illegal use is not reduced following initial implementation.

After reviewing the scoping letter and map, we conclude that several road closures will adversely affect fishing access. Several systems currently accessed by ORV provide good fishing and are popular among anglers, such as Carroll River and Fish Creek. These systems are currently proposed for closure. Anglers from the long-established U.S. Coast Guard Shoal Cove Loran Station use the Shoal Cove road system to access the Fish Creek drainage and would no longer be able to do so using OHVs. We recommend reconsideration of these proposed closures.

Some road closures will undoubtedly improve fish habitat with the removal of dilapidated stream crossings; however, some proposed closures that currently provide fishing access may not be necessary. For example, the entire Carroll River road system has been selected for closure, even though it provides the only access to the upper drainage, including needed access to the power

line for maintenance purposes. We believe the main stem could remain open for OHV use with minimal impact. It is quite possible that some District roads would require very little (if any) maintenance and could be left open for little cost. Without more information than is provided in the scoping documents, we are unable to provide more constructive suggestions.

Southeast Alaska Transportation Plan

The Southeast Alaska Transportation Plan (SATP) needs to be clearly integrated into the assessment and decision process. Specifically, the SATP includes several essential transportation and utility corridors that align with existing roads under assessment. We request that, wherever possible, the District reserve and protect each of these corridors for future transportation and utility purposes. We have already mailed a paper copy to Linda Pulliam and asked that it be made part of the Planning Record. Electronic copies of the SATP are available at: http://dot.alaska.gov/stwdplng/projectinfo/ser/newwave/SATP_FINAL/index.shtml

Appendix A of the SATP includes corridor descriptions (identified by number) and maps, which are referenced in the following table:

ATM	Ketchikan ATM	SATP	SATP	SATP
Reference	Proposed Action	Corridor Description	Map	No.
Klu	All roads (11.6 miles) Closed (ML 1)	Revillagigedo Highway: Behm Canal to Georges Inlet	23	95
Upper Carroll	All roads (20.3 miles) Closed (ML 1)	Revillagigedo Highway: Behm Canal to Georges Inlet	23	95
Shelter	Road of concern is open for Mixed Use (ML 2)	Revillagigedo Highway: Behm Canal to Georges Inlet	23	95
Shelter	Road of concern is open for Mixed Use (ML 2)	George Inlet Road: Head of George Inlet to South Tongass Hwy.	23	97a
Shelter	Road of concern is open for Mixed Use (ML 2)	Harriet Hunt Lake Road: George Inlet to Harriet Hunt Lake	23	96a
Brown Mtn area	Road of concern is open for Passenger Vehicles (ML 3)	May be considered as an alternate route to reach Revilla Road	N/A	N/A

The State provided similar comments during scoping for the Sitka ATM. See attached modified excerpt from the final Sitka decision notice (with Ketchikan-specific details) that illustrates how the issue could be similarly addressed on the Ketchikan-Misty Fiords District.

Federal-Aid Highway Funding Restrictions

We appreciate that the Proposed Action map does not use the term “trail” in the context of ML2. We caution the District with respect to the use of the term “trail” or “OHV trail” in the EA and planning process. 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 development would displace a designated recreational facility or area. Our concern, therefore, does not involve the trail per se, but the implication of segregating the trail and surrounding area as

recreational. Our understanding is that the term “trail” is used for the purposes of roadway management and funding resources. Essentially, these are short-term decisions that do not bind future management of the forest. Please clarify in the EA 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.

Other Road-specific Recommendations

To the extent that any of the road systems also serve log transfer facilities, we request the road be maintained as ML2 rather than ML1. From a Forest Practices standpoint, these facilities need to be actively maintained.

The west (left) leg of the Brown Mountain road would be better categorized as ML3 instead of the proposed ML2 designation. This area gets considerable public use and is one of the only large District areas most accessible to Ketchikan residents.

Recognizing that other uses also must be considered in the District’s evaluation, from a Forest Practices standpoint, it may be appropriate to put some of the spur roads not anticipated for use in future timber harvest activities into “storage” rather than designated as ML1 as currently proposed. This would meet the Forest Practices standard of “Closed Roads,” where drainage structures are removed and the road left in a condition suitable to control erosion.

Applicability of ANILCA subsistence provisions

Finally, in the event there may be some confusion about the complex subject of the application of Title VIII to the Ketchikan-Misty Fiords ATM Plan, we offer the following clarification. Even though the community of Ketchikan is not a qualified rural subsistence community under the federal subsistence regulations, the Ketchikan-Misty Fiords District is still open for subsistence (and subsistence access) unless specifically closed by the Federal Subsistence Board. For example, residents from an adjacent community may use the Ketchikan District for subsistence purposes. It is also important to recognize that subsistence includes the year-around gathering of firewood, berry picking, etc., not just seasonal hunting and fishing.

Thank you for your consideration of these comments. If you have any questions or wish to further discuss any of our comments, please feel free to call me at 907-269-7477. State agency representatives are also available to work with your staff as the EA is prepared to facilitate completeness and accuracy.

Sincerely,



Sally Gibert
ANILCA Program Coordinator

Attachment

[Excerpt from Sitka ATM District Decision Notice with modifications specific to the Ketchikan-Misty Fjords District road system.]

The Southeast Alaska Transportation Plan

The Southeast Alaska Transportation Plan (SATP), as proposed in 2004, includes transportation and utility corridors designed to better link communities within the Ketchikan Ranger District to the continental highway system. Representatives of the State of Alaska Department of Transportation requested that the Forest Service retain the roads aligning with these routes. Our decision will not preclude future road development within the SATP identified corridors. Portions of the following road corridors would be retained indefinitely in the event they are needed for future road corridor development:

Road system in the Brown Mountain Area

Road system associated with the Shelter marine access facility

Road system associated with the Upper Carroll marine access facility

Road system associated with the Klu marine access facility

The Forest Service signed a Memorandum of Understanding (MOU) with the State of Alaska in 2006 to provide rights-of-way for the road corridors covered by Public Law 109-59. This agreement identifies right-of-ways the State needs for their transportation and utility corridors. The corridors are displayed on Map 92337 (part of the MOU). The corridor between Revilla Road and Behm Canal (via the west side of Carroll Inlet) is included in this MOU. The MOU also identifies marine access points the Forest Service needs for activities on National Forest Land and public access.