

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES  
OFFICE OF PROJECT MANAGEMENT AND PERMITTING

**SARAH PALIN, Governor**

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October 7, 2008

Forrest Cole  
Forest Supervisor  
Tongass National Forest  
Federal Building, 648 Mission Street  
Ketchikan, AK 99901-6591

Dear Mr. Cole:

This letter constitutes the State of Alaska's Appeal of the Decision Notice by Lynn Kolund, Ketchikan-Misty Fiords District Ranger, dated July 11, 2008, to implement the Ketchikan-Misty Fiords Access and Travel Management (ATM) and Environmental Assessment (EA). The Ketchikan-Misty Fiords ATM Plan is not consistent with the Alaska National Interest Lands Conservation Act (ANILCA); therefore, this appeal is filed pursuant to 36 CFR Part 215. The State addressed needed ANILCA requirements, especially Section 811, in detail through scoping comments dated February 15, 2008.

On May 23, 2008, the Regional Forester distributed the "*Interim Guide: Providing Access for Subsistence Purposes (ANILCA 811) During Access and Travel Management Planning*" (*Guide*). The *Guide* is designed to clarify the relationship between Section 811 of ANILCA and Subpart B of the Travel Management Rule (36 CFR 212). While the Ketchikan-Misty Fiords ATM Plan made an attempt to comply with ANILCA (and the *Guide*), we find it deficient, specifically:

- 1) Justification for subsistence access closures is not provided, as called for in the *Guide* on page 5 under ATM Analysis:
  - (d) *Listing the route and/or area-specific justification for each designation and closure (e.g., the lack of legal access, resource protection, or other rationale, as identified in 36 CFR 212.55 and listed in item 8 and 9 above).*
- 2) The 30-day public notice following release of the January 2008 scoping letter was inadequate for purposes of complying with ANILCA Section 811. (ANILCA was not mentioned in the scoping newsletter.) The *Guide* provides specific direction to the Districts regarding how to address Section 811 in the context of ATM Plans. The *Guide* recommends, but does not require, public review of the associated EA; however part 4(d)(ii) of the *Guide* does require that "*Notice of the proposed closures and the reasons therefore shall be described in the proposed action and included in the legal notice and 30-day public comment period required by 36 CFR 215.5.*" [Emphasis added.] As noted above, justification for the closures was lacking in both the scoping letter and the EA.

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- 3) The document seems to singularly rely on the ANILCA Section 811(a) intent to ensure “*reasonable access to subsistence resources*” thereby illustrating a misconception about the difference between 811(a) and 811(b), the latter of which addresses closures or restrictions of specific **methods** of access, subject to “*reasonable regulation.*” Methods of access protected in Section 811(b) include snowmachines (which are not addressed in the ATM), motorboats, and other means of surface transportation traditionally employed (including ATVs). The “*reasonable regulations*” that restrict or close must be specific to the traditional method of access while still providing reasonable access.

These critical elements are procedural deficiencies, essential to adequately inform the public of their subsistence access rights along with the Forest Service’s responsibilities under ANILCA to appropriately assess and document the impacts of proposed access closures on subsistence use.

To remedy these deficiencies, we request the District Ranger provide documentation of the justification for each road and area closure, including for the Misty Fiords Wilderness Area. We also request improved (more thorough and complete) documentation of the impacts of the current closures on subsistence use. Documentation of such justification and subsistence impacts additionally establishes a foundation for future ATM planning and annual updates of the District’s Motor Vehicle Use Map (MVUM). Perhaps most importantly, we request a mutually-agreed-upon process to further ensure both the public and the Forest Service better understand ANILCA’s role in future decisions regarding access on the Tongass, including the Districts that are still working on their ATM Plans.

While we are appealing the Ketchikan/Misty Fiords ATM, we nonetheless appreciate and commend the Forest Service’s efforts to create the *Guide*. We support the *Guide’s* intent to assist District Rangers in the challenging task of simultaneously complying with ANILCA and the Travel Management Rule. We look forward to discussing how to further fine-tune implementation of the *Guide* so that it mutually serves both agency and public interests. Please contact me or Sally Gibert, State ANILCA Program Coordinator, to schedule a discussion as soon as practicable. Thank you for your consideration.

Sincerely,



Ed Fogels  
Director

cc: Dennis Bschor, Regional Forrester  
Lynn Kolund, Ketchikan-Misty Fiord District Ranger  
John Katz, Director of State/Federal Relations and Special Counsel to the Governor  
Joe Balash, Special Assistant, Governor’s Office  
Tom Irwin, Commissioner, Department of Natural Resources  
Denby Lloyd, Commissioner, Department of Fish and Game