

# STATE OF ALASKA

## **ANILCA IMPLEMENTATION PROGRAM Office of Project Management and Permitting**

**SARAH PALIN, Governor**

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October 14, 2008

Patricia Sullivan, Project Manager  
U.S. Department of Transportation  
Federal Aviation Administration – Alaska Region  
222 West 7<sup>th</sup> Avenue, Suite 14  
Anchorage, AK 99513

Dear Ms. Sullivan:

The State of Alaska reviewed the Draft Environmental Impact Statement (DEIS) for the proposed improvements at the Sitka Rocky Gutierrez Airport. This letter represents the consolidated views of state agencies.

We appreciate the overall level of coordination that occurred during this planning process. Our primary comment results from the designation of State Park lands located adjacent to the airport, which occurred subsequent to the initiation of this planning process. The remaining comments are primarily informative or technical in nature and often request inclusion of additional information or clarification in the final EIS (FEIS). Comments are organized into three sections:

- Fort Rousseau State Historical Park
- Habitat
- Subsistence

### **Fort Rousseau State Historical Park**

On April 2, 2008, the Alaska State Legislature designated lands adjacent to the Sitka Airport as “Fort Rousseau State Historical Park,” thereby transferring management authority to the Division of Parks and Outdoor Recreation (DPOR) within the Alaska Department of Natural Resources. Designated park lands are managed by DPOR to promote and protect public use.

The history of public use of the newly designated lands began in 1945, when the military first vacated the area. Between then and construction of the Sitka Airport in the late 1960’s, the public had unrestricted access, including pedestrian access, to the old Fort Rousseau site. Following construction of the airport, the public was initially allowed to cross the runway with permission of the Airport manager. In the 1990’s, airport management restricted access across the airport to the old Fort Rousseau site and for public safety purposes discouraged civic organizations that

historically sponsored clean-up events from continuing those efforts. Since then, public access to the old Fort Rousseau site has been limited to boat access.

We understand there is local public interest in examining options to restore pedestrian access to the new State Park across airport lands. Given the park's proximity to the airport and the area's historical relationship, we agree it is appropriate to evaluate expanded public access opportunities within the context of this planning process. We recommend incorporating a study that includes a more in-depth review of past and present use and the options and issues associated with improving public access to the park. Doing so within the context of this planning process will ensure the public has an opportunity to provide valuable input and be fully informed of the outcome.

#### *Related Page Specific Comments*

Page 3.10.4, Existing Impact of the Airport on DOT 4(f) Lands: We recommend this section include a discussion of the potential effects of the Airport on access to State Park 4(f) lands.

Page 3.10.3, 4<sup>th</sup> bullet, WW II Causeway Trail: We request this discussion be updated to reflect the causeway is now a statutorily designated State historical park managed by the Division of Parks and Outdoor Recreation.

Page 4.7.1, Summary, second sentence: This sentence implies the "Makhnati Lands" are federal lands. We request clarification that the "submerged" lands are Federally-owned and the uplands within the causeway are State-owned. This comment also applies to Page 4.7.1, first paragraph, second to last sentence.

Page 5.5, second bullet: Planning efforts for the newly designated State Park are preliminary and no formal decisions on future development have been made to date. In addition, this description of the State Park as accessible only by boat implies a formal decision to limit such access. It also implies the Park is not yet designated. See comment for Page 3.10.3.

Page 5.16, first paragraph, last sentence: "*There have been no known significant past or present adverse impacts to recreational or public use facilities in the airport environs classified as Section 4(f) or 6(f) lands.*" We recommend the DEIS consider whether and how the limitation to pedestrian access impacts, or has impacted, State Park 4(f) lands.

#### **Habitat**

As a result of Executive Order 114, effective July 1, 2008, the Office of Habitat Management and Permitting (OHMP), formally located within the Alaska Department of Natural Resources, is now the Division of Habitat, within the Alaska Department of Fish and Game (ADF&G). We request references to OHMP and Title 41 Fish Habitat Permits be updated to reflect this change in the Final EIS (i.e. Section 4.2.1 Summary).

*Title 16 Permit*

No streams on Japonski Island are specified in the *Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes*, and therefore, Title 16 Fish Habitat Permits are not required for the Preferred Alternative.

*Timing Window*

We agree work restrictions during the usual herring timing window of March 15 – May 31 are necessary to prevent herring from being driven away from spawning areas and to allow larvae to hatch. To protect herring reproduction, we request these work restrictions be modified, as necessary, for any seasonal changes in herring presence that may arise during the construction phase of the project.

*Section 2.4.2 Parallel Taxiway Alternative*

It is not clear in the DEIS whether the fill footprint in the lagoon would match the grade of the existing lateral Runway Safety Area (RSA) or if a depression would remain between the new parallel taxiway and the runway. We request the FEIS clearly state the slopes for the parallel taxiway fill.

*Section 4.1.5 Environmental Consequences of the Alternatives*

It would be more informative and consistent if the DEIS discussed the Habitat Standard (11 AAC 112.300) of the Alaska Coastal Management Program (ACMP) in the same manner as the other ACMP standards. Habitats subject to the ACMP are:

1. offshore areas;

offshore areas must be managed to avoid, minimize, or mitigate significant adverse impacts to competing uses such as commercial, recreational, or subsistence fishing, to the extent that those uses are determined to be in competition with the proposed use;

2. estuaries;

estuaries must be managed to avoid, minimize, or mitigate significant adverse impacts to (A) adequate water flow and natural water circulation patterns; and (B) competing uses such as commercial, recreational, or subsistence fishing, to the extent that those uses are determined to be in competition with the proposed use;

3. wetlands;

wetlands must be managed to avoid, minimize, or mitigate significant adverse impacts to water flow and natural drainage patterns;

4. tideflats;

tideflats must be managed to avoid, minimize, or mitigate significant adverse impacts to (A) water flow and natural drainage patterns; and (B) competing uses such as commercial, recreational, or subsistence uses, to the extent that those uses are determined to be in competition with the proposed use;

5. rocky islands and sea cliffs;

rocky islands and sea cliffs must be managed to (A) avoid, minimize, or mitigate significant adverse impacts to habitat used by coastal species; and (B) avoid the introduction of competing or destructive species and predators;

6. barrier islands and lagoons;

barrier islands and lagoons must be managed to avoid, minimize, or mitigate significant adverse impacts (A) to flows of sediments and water; (B) from the alteration or redirection of wave energy or marine currents that would lead to the filling in of lagoons or the erosion of barrier islands; and (C) from activities that would decrease the use of barrier islands by coastal species, including polar bears and nesting birds;

7. exposed high-energy coasts;

exposed high-energy coasts must be managed to avoid, minimize, or mitigate significant adverse impacts (A) to the mix and transport of sediments; and (B) from redirection of transport processes and wave energy;

8. rivers, streams, and lakes and the active floodplains and riparian management areas of those rivers, streams, and lakes; and

rivers, streams, and lakes must be managed to avoid, minimize, or mitigate significant adverse impacts to (A) natural water flow; (B) active floodplains; and (C) natural vegetation within riparian management areas;

9. important habitat.

(A) designated under 11 AAC 114.250(h) must be managed for the special productivity of the habitat in accordance with district enforceable policies adopted under 11 AAC 114.270(g); or (B) identified under (c)(1)(B) or (C) of this section must be managed to avoid, minimize, or mitigate significant adverse impacts to the special productivity of the habitat.

*General ACMP Comments*

The Preferred Alternative would impact tideflats, offshore areas, and barrier islands and lagoons subject to the ACMP, pursuant to 11 AAC 112.300. The DEIS adequately describes and analyzes potential impacts to these habitats and the State looks forward to working with the FAA and other agencies to draft an appropriate mitigation plan for the unavoidable environmental impacts.

If you have any questions regarding these Habitat comments, please contact Kyle Moselle at 907-465-4287 or by email at [kyle.moselle@alaska.gov](mailto:kyle.moselle@alaska.gov).

**Subsistence**

*Page Specific Comments*

Page 3.16.1, Overview, first paragraph, seventh sentence: The federal subsistence priority is implemented only when the Federal Subsistence Board formally determines it is necessary. For accuracy, we request the following addition to this sentence:

*When necessary, the Federal Subsistence Board implements a priority for subsistence uses by rural resident over other consumptive uses on federal public lands.*

Page 3.16.1, Overview, second paragraph, first sentence: Section 102 of ANILCA defines public lands as federal lands except "... land selections of the State of Alaska which have been tentatively approved or validly selected ..." and "... land selections of a Native Corporation ... which have not been conveyed to a Native Corporation ..."; therefore, these lands are not the "public lands" referenced in Section 804 and not subject to the federal subsistence priority. For accuracy we request the following revision:

*State and Native-selected lands are ~~generally~~ not within the jurisdiction of the federal subsistence ~~management~~ program.*

Page 3.16.2, second paragraph: For clarity we request the following revision to this paragraph:

*The State of Alaska ~~administers~~ ~~regulates~~ hunting and fishing on all lands and waters in Alaska private, State, and most federal lands. ~~State hunting and fishing regulations generally continue to apply on federal public lands unless specifically superseded by federal regulations law.~~ Under state law, subsistence uses are defined without reference to rural residency, in contrast to the federal law. Therefore, all Alaska residents are eligible for State general, drawing, registration, and Tier II resident, or subsistence hunts, and for subsistence fishing.*

This comment also applies to Subsistence Appendix, page 6, last paragraph where the language is similar.

Page 4.17.6, Regulatory Setting, second paragraph: For clarity please continue the quote of ANILCA Section 802 as follows.

*ANILCA also states, in part, that "customary and traditional" subsistence uses of renewable resources "shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking ..."*

Page 4.17.6, Regulatory Setting, fourth paragraph: ANILCA does not guarantee the use of subsistence resources but rather the opportunity for use. Therefore, we request the following revision to this sentence:

*The provisions in ANILCA established that rural residents be accorded priority over other consumptive uses when necessary to restrict take in an attempt to ~~protect~~ provide subsistence resource-use opportunities.*

This comment also applies to Page 4.17.24, Future Conditions, second paragraph where the language is similar.

Page 4.17.7, third full paragraph: For clarity, we request the following revision:

*In Alaska state law, all Alaska residents are eligible for state general, drawing, registration, and Tier II resident, or subsistence hunts, and for subsistence fishing.*

This comment also applies to Page 4.17.24, Future Conditions, third paragraph where the language is similar.

Page 4.17.7, Regulatory Setting, fourth full paragraph, second sentence: As written this statement is misleading. The federal government only regulates subsistence activities when it is necessary to implement a federal subsistence priority. In addition, stating the acreage of all federal lands is again misleading as the federal government only regulates subsistence when it is formally determined to be necessary. We request the following revision of this sentence:

*As a result, the Federal Government regulates subsistence uses on federal public lands and waters with a federal reserve water right in Alaska when it is necessary to implement a federal subsistence priority, which equates to about 230 million acres or 60 percent of the land within the State.*

#### *Subsistence Appendix Specific Comments*

Page 2, Definitions and Legal Context, second full paragraph: Since a discussion of priority use follows, it may be unnecessary here. We recommend the following revision of this paragraph:

*ANILCA provides for “the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands.”*  
*ANILCA does not distinguish between native and non-native populations. It also states, in part, that “customary and traditional” subsistence uses of renewable resources “shall be the priority consumptive uses of all such resources on the public lands of Alaska.”*  
*ANILCA defines public lands as:*

Page 3, first and second full paragraphs: To ensure accuracy, we recommend direct quotation of ANILCA. We request rephrasing the section as follows:

*In regard to consumptive uses, The provisions in ANILCA state established that rural residents be accorded priority over other consumptive uses in an attempt to protect subsistence resource harvest.*

*Under ANILCA, in times of resource scarcity or when demand exceeds biologically sound harvest levels, rural residents have preference over other users in the harvest of fish and wildlife resources. Section 804 of ANILCA implements priority to rural residents through the following criteria:*

“ ...[t]he taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

1. ~~Customary~~ Customary and direct dependence upon the populations as a mainstay of livelihood;
2. ~~Local~~ Local residency; and
3. ~~The~~ the availability of alternative resources.” (ANILCA Section 804)

Page 5, Subsistence Management, first paragraph: The Department administers the harvest of fish and wildlife on all lands in Alaska, including for subsistence purposes, except as specifically superseded by federal law. For clarity, we request this paragraph be rephrased as follows:

The Sitka Airport area is comprised of private, State, and federal lands. Different legal frameworks govern regulate subsistence management on lands of different status. On federal public lands, the Federal Subsistence Board regulates subsistence hunting and fishing under the terms of Title VIII of ANILCA. The Federal Subsistence Board implements a priority for subsistence uses by rural residents over other consumptive uses on federal public lands. The State of Alaska administers the harvest of fish and wildlife, including for subsistence purposes, except as specifically superseded by federal law. When it is necessary to implement a federal subsistence priority under the terms of Title VIII of ANILCA, the Federal Subsistence Board regulates subsistence hunting on federally administered uplands and fishing on waters where a federal reserved water right exists. State and Native-selected lands are generally not within the jurisdiction of the federal subsistence management program.

Page 5, last paragraph, first sentence: The Department of Fish and Game is responsible for the sustainability of fish and wildlife on all lands in Alaska, except as specifically superseded by federal law. Under ANILCA, the Federal Subsistence Board assures a reasonable opportunity for the continued customary and traditional subsistence use of fish and wildlife of rural residents on federal public lands. The State also provides subsistence and other uses of fish and wildlife on all lands in Alaska except where closed by federal or state law. Therefore, we request the FAA use the term ‘regulates’ instead of ‘manages’ to better reflect the on-the-ground situation. We suggest a word search to address this issue.

Page 6, last paragraph, first and second sentences: For clarity we recommend the following revision:

The Department of Fish and Game State of Alaska administers the harvest of fish and wildlife, including for subsistence purposes, manages hunting and fishing on private, State, and most federal on all lands in Alaska. State hunting and fishing regulations

Patricia Sullivan  
October 14, 2008  
Page 8

*generally continue to apply on federal public lands unless except as specifically superseded by federal ~~regulations~~ law.*

Page 45, third paragraph: As written, the references to executive orders 8877 and 8216 (relating to federal land acquisition) are misleading as they might be confused with the authority for harvest of resources for subsistence purposes, which is under ANILCA. Additionally, we request the term "marine" be removed in the second sentence as harvest of marine resources is generally not authorized under ANILCA as implied. Therefore, we request the following revisions to this paragraph:

*Under the current regulatory structure for harvest of subsistence resources, on federal lands (~~E.O. 8877 and E.O. 8216~~), certain rural Sitka residents may harvest salmon, Dolly Varden, trout, smelt, and eulachon under federal and state regulations. In addition, ~~all~~ certain rural residents in Alaska may harvest other ~~marine~~-subsistence resources on federal lands under federal regulation. ~~To further complicate the issue, the~~ The Federal Subsistence Board has not restricted taking of subsistence resources by any non-federally eligible user, therefore all State harvest regulations apply as well. To place this in context, Sitka residents (or rural Alaska residents, depending on the resource) have the option of harvesting subsistence resources within federal lands in the project area under either federal or state regulations.*

Thank you for this opportunity to comment. Please contact me at (907) 269-7529 if you have any questions.

Sincerely,



Susan E. Magee  
ANILCA Project Coordinator

cc: Sally Gibert, ANILCA Program Coordinator