

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

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September 25, 2007

Dennis Bschor, Regional Forester
USDA Forest Service
Alaska Regional Office
P.O. Box 21628
Juneau, Alaska 99802-1628

Dear Mr. Bschor:

I am writing to ask your help in resolving some significant issues we are having with several aspects of Forest Service planning and decision making with respect to the Alaska National Interest Lands Conservation Act (ANILCA). Specifically, we have concerns with the Access and Travel Management (ATM) plans currently being developed by the Tongass District, especially regarding consistency with Section 811 of ANILCA. We also need to move forward with Alaska-specific Forest Service regulations implementing Title XI of ANILCA. Each of these concerns is addressed in more detail below.

We have attempted to reach out to the Forest Service at several levels in the last few years to address these concerns, but so far we've had little response. We need effective communication between the Forest Service and State agencies on the ATM plans and other major decision documents, and to begin developing the ANILCA regulations. State representatives would like to meet with you to discuss how to make progress on these longstanding issues. Allowing them to languish further is increasingly problematic.

Sitka District Access and Travel Management Plan

Yesterday, the State submitted comments on the recently revised Environmental Assessment for the Sitka District Access and Travel Management (ATM) Plan, copy attached. Throughout the Sitka ATM planning process, we have raised fundamental questions and concerns about Forest Service implementation of ANILCA. In particular, we have pointed out apparent inconsistencies between implementation of the November 2005 national rulemaking for Travel Management; Designated Routes and Areas for Motor Vehicle Use (36 CFR Parts 212, 251, 261, and 295) and the Alaska-specific access provisions of ANILCA. While the Sitka District has addressed some of our concerns in part, the larger issues remain and require a regional office perspective.

As you will recall, the State expressed significant concerns with the national Travel Management rule during public review.¹ We had hoped to focus attention on how to resolve the potential for

¹ See letter at http://www.dnr.state.ak.us/opmp/anilca/pdf/04_09_12_USFS_draft_ohv_rule.pdf

inconsistencies with ANILCA before the national rule was finalized. Decision makers in Washington, D.C. chose instead to defer the hard questions back to Alaska. Thus, except for snowmachine use, the Preamble to the final rule simply relegated ANILCA as a "valid existing right" without further guidance. We value the informal commitments made by the Forest Service to consult with the State in addressing this issue, and in April 2005 sent a follow up letter to the Tongass Forest Supervisor to initiate this consultation in advance of the ATM Plans.² We were disappointed that we received no response.

Our primary concern in the context of ATM plans is the treatment of ANILCA Section 811, which governs access for subsistence opportunities. The nationwide Travel Management rule established a process by which all routes that are not designated for motorized use will automatically be closed to motorized access. In contrast, ANILCA Section 811(b) says federal managers "shall permit" access for subsistence purposes, "subject to reasonable regulation." Thus the national direction amounts to a "closed unless open" approach while ANILCA is premised on an "open until closed" approach, with rulemaking as the tool for implementing closures.

The State is not systematically opposed to all Tongass road closures. We recognize that the Forest Service is under pressure to reduce operating expenses, and that local Districts do not control the size of their budgets. We understand that some road closures will be necessary to maintain the integrity of the remaining road system and to prevent habitat damage. Instead, we are concerned that local District Rangers have insufficient guidance about how the ATM plans should address subsistence when evaluating the need for closures and how to implement closures that may be necessary. A process consistent with ANILCA Section 811 and applicable to all District ATM plans appears to be lacking.

We also want to discuss federal funding realities that are essentially compelling individual Districts to close a large number of roads and ORV access routes. Perhaps there are ways to re-program existing funds and/or seek additional funding. The sudden closure of so many routes important to local communities may have more impacts than anticipated.

Consultation and Coordination with State Agencies

The ANILCA Coordination office was taken aback last week upon learning that the Wrangell Ranger District completed an ATM plan with a signed Finding of No Significant Impact (FONSI) in August 2007. Most state agency personnel were completely unaware of this plan. A few local area staff saw the scoping announcement and requested that they be added to the distribution list, and one biologist was asked to review a segment of the pre-public review draft. As far as we can determine, however, no state employees were sent copies of the public review draft. This is particularly disconcerting given that the 810 Analysis portion of the FONSI found that the Plan would "have a significant adverse effect on subsistence resources and opportunities." In addition to local personnel, please add Sally Gibert, State ANILCA Program Coordinator, to all District ATM plan mailing lists. We also request a current schedule for ATM plans for all Tongass Districts.

Forest Service regulations Implementing Title XI of ANILCA

As we wrote to you in June of this year,³ the State supports Forest Service efforts to develop ANILCA Title XI access regulations. Basing such Forest Service regulations on longstanding

² See letter at http://www.dnr.state.ak.us/opmp/nilca/pdf/05_04_14_Tongass_ATM_Plans.pdf

³ See letter at http://www.dnr.state.ak.us/opmp/nilca/pdf/07_06_28_USFS_Title%20XI_req_request.pdf

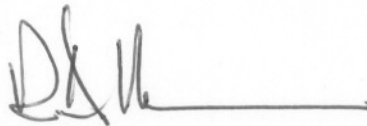
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rulemaking for Department of the Interior agencies is the logical way to proceed since the Interior rule has already been litigated and upheld in District Court. We are anxious to know your intentions.

In conclusion, communication is the most effective tool for addressing issues of mutual concern. We therefore request a discussion of these important matters.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'DL', followed by a horizontal line extending to the right.

Dick LeFebvre
Deputy Commissioner

cc: Forrest Cole, Tongass Forest Supervisor
Ed Fogels, Acting Director, DNR Office of Project Management and Permitting (OPMP)
Sally Gibert, State ANILCA Program Coordinator, OPMP