



March 20, 2015

Leslie Grey, Lead Environmental Program Manager  
Federal Aviation Administration  
Alaska Region/Airports Division  
222 West 7th Avenue, #14  
Anchorage, AK 99513-7587

Dear Ms. Grey:

The State of Alaska reviewed the Draft Environmental Impact Statement (DEIS) for the proposed Angoon Airport. The following are consolidated comments from the State agencies, with the exception of the Alaska Department of Transportation and Public Facilities (ADOT&PF), the project proponent. ADOT&PF will submit separate comments directly to the FAA.

We support the overarching goal to provide the community of Angoon with a safe and reliable land-based airport. As recognized in the DEIS, since 1983 extensive studies and analyses have led to the identification of ADOT&PF's proposed action, Alternative 3a with Access 2. In 2004, the city of Angoon passed a resolution in support of ADOT&PF's proposed action (page 13). The DEIS also indicates that based on subsequent analysis, the Federal Aviation Administration (FAA) identified a new alternative developed for the EIS, Alternative 12a with Access 12a, as its preferred alternative. However, because ADOT&PF's proposed action is located within the Admiralty Island National Monument and the Kootznoowoo Wilderness, both conservation system units (CSU) under the Alaska National Interest Lands Conservation Act (ANILCA), the DEIS evaluates the proposed action and four additional action alternatives, including FAA's preferred alternative, pursuant to the National Environmental Policy Act (NEPA) and ANILCA Title XI. ANILCA Title XI provides "[the] *single comprehensive statutory authority for the approval or disapproval of applications*" for transportation projects within CSUs in Alaska (16 U.S.C. § 3162). Title XI is a mandatory process that must be complied with for any federal agency approval or disapproval to be valid (16 U.S.C. 3164(a)).

### **ANILCA Title XI Process**

As noted, ADOT&PF's proposed action is located within the congressionally designated Admiralty Island National Monument and Kootznoowoo Wilderness, both of which are defined as CSUs under ANILCA. As such, the proposed project is subject to the process established in Title XI of ANILCA. As recognized in the DEIS, the DEIS also serves as the supporting documentation for ADOT&PF's Title XI application, which was submitted to the FAA, the USDA Forest Service (USFS) and the U.S. Army Corps of Engineers (USACE) on January 9, 2015, following the release of the DEIS to the public.

Congress recognized in ANILCA Section 1101 that Alaska's transportation and utility network was largely undeveloped, that it would be extremely difficult to gain approval for projects affecting CSUs and other conservation areas designated under the Act using existing authorities; and that there was a need for "...a single comprehensive statutory authority for the approval or disapproval of applications..."<sup>1</sup>. ANILCA Section 1104 established a detailed process for evaluating transportation and utility systems (TUS) proposed within CSUs and other designated areas and requires all federal agencies to participate in the process even though other statutory requirements or regulatory guidance may apply to an individual agency's decision.<sup>2</sup>

Legislative history for ANILCA includes numerous statements, which clarify that a new, comprehensive process was critical to ensuring transportation and utility projects in Alaska receive appropriate consideration.<sup>3</sup> The preamble to the Department of Interior's 1986 Title XI implementing regulations at 43 CFR 36 also reiterates that intent.<sup>4</sup>

The development and public review of the EIS is part of the procedural requirements outlined in Section 1104. ANILCA Title XI ensures that any federal agency that "...has any function or duty under applicable law" (Section 1102(3)) will participate in the coordinated process in accordance with applicable timelines and procedures. In making its decision, each federal agency "...must consider and make detailed findings" (Section 1104(g)(2)) on eight separate criterion. Furthermore, these findings, upon which each federal agency bases its "decision" are made following hearings and the DEIS public comment period.

When a TUS is proposed within designated wilderness, the approval process is specified in Section 1106(b). Each federal agency decision, whether an approval or disapproval, is tentative. Tentative decisions must be promptly submitted by the participating federal agencies to the President for consideration. If after considering each agency's tentative decision the President approves the application, the recommendation is forwarded to Congress for further consideration. Presidential denials are considered final administrative actions, though applicants may subsequently file suit to challenge the President's decision (Section 1106(b)). Section 1106(c) outlines the process by which Congress can approve a recommendation forwarded by the President, and thereby approve a TUS project in designated Wilderness.

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<sup>1</sup> ANILCA Sec. 1101. Congress finds that - (a) Alaska's transportation and utility network is largely undeveloped and the future needs for transportation and utility system in Alaska would best be identified and provided for through an orderly, continuous decisionmaking process involving the State and Federal Governments and the public; (b) The existing authorities to approve or disapprove applications for transportation and utility system through public lands in Alaska are diverse, dissimilar, and in some cases, absent; and (c) To minimize the adverse impacts of siting transportation and utility systems within units established or expanded by this Act, and to insure the effectiveness of the decisionmaking process, a single comprehensive statutory authority for the approval or disapproval of applications for such systems must be provided in this Act.

<sup>2</sup> ANILCA Sec. 1104(a). Notwithstanding any provision of applicable law, no action by any Federal agency under applicable law with respect to the approval or disapproval of the authorization, in whole or in part, of any transportation or utility system shall have any force or effect unless the provisions of this section are complied with.

<sup>3</sup> The Committee does not agree with the arguments that existing law is sufficient to site transportation corridors across four systems units. First of all, existing law makes siting of roads and airports, particularly, but other modes as well, very difficult if not impossible in wildernesses, parks, wild and scenic rivers, and wildlife refuges (in descending order of difficulty). Secondly, existing law makes for bad decisions from a land planning and environmental standpoint because it is incremental in nature. Quite often, decisions are made and EIS's are written by the Federal land managers on individual facilities across individual tracts of land after investments have been made in the facility which make alternative [sic] uneconomic. There is insufficient prior state and federal cooperative planning on a statewide basis to develop other transportation routes. Statewide planning could result in fewer, less environmentally obtrusive and multi-modal transportation facilities. Based on these considerations, the Committee adopted a procedure for future siting of transportation facilities across four systems units which supersedes rather than supplements existing law. (S. Rep. 96-413, page 245-246)

<sup>4</sup> These regulations establish uniform procedures for the managing agencies to use in administering the body of applicable law pertaining to authorization and administration of TUSs. In other words, these regulations provide the procedural methodology regardless of an agency's existing regulations. However, the substantive standards of the existing statutory authorizations remain applicable to these TUSs. (51 FR 31620 September 4, 1986)

## **Preferred Alternative**

Overall, the DEIS appears to adequately summarize the Title XI process and clarifies that it applies to the proposed Angoon Airport project. In identifying its preferred alternative (Alternative 12a with Access 12a), the FAA identifies cost, social and environmental effects, and Section 4(f) of the Transportation Act regulations, as the factors on which it based its preliminary determination. While the DEIS is clear that FAA does not consider the identification of a preferred alternative as its final decision, it is also evident that the preliminary decision was made using incomplete information and before the National Environmental Policy Act (NEPA) process, which is part of the Title XI process, was complete. As noted above, the Title XI process requires federal agencies to consider public comments on the DEIS and an analysis of all criteria in ANILCA Section 1104(g)(2) before rendering a decision on a proposed project.

ADOT&PF's proposed action (i.e. Alternative 3a with Access 2) drives the Title XI process; however, the DEIS prematurely identifies a different NEPA preferred alternative. This appears to have caused confusion among participating federal agencies. For example, since the beginning of the EIS process, it was the intent and mutual understanding of both the FAA and ADOT&PF that the DEIS would be relied upon as supporting information for the Title XI process; however, recent correspondence from both the USACE and the USFS indicates that the DEIS does not provide sufficient information to support ADOT&PF's Title XI application.

In particular, correspondence from USFS, Alaska Region to ADOT&PF dated March 9, 2015 states that the recently revised and finalized Memorandum of Understanding (MOU) between the FAA and USFS (signed by the USFS on 10/31/14 and the FAA on 2/18/15) indicated that since the FAA identified a preferred alternative outside of designated Wilderness, the Title XI process would not be followed (page 8); therefore, the USFS's preliminary review of the DEIS did not evaluate the document in terms of its sufficiency as supporting documentation for ADOT&PF's Title XI application. This conflicts with statements in the DEIS, which indicate that the DEIS would be the supporting information for ADOT&PF's Title XI application (page ES 1-7).

Correspondence from the USACE to ADOT&PF dated January 29, 2015 and February 11, 2015 indicates that additional information is required to complete ADOT&PF's Title XI application; however, subsequent correspondence from ADOT&PF to the USACE dated February 20, 2015 identifies the specific locations in the DEIS where the requested information can be found.

We request the FAA, as the lead federal agency for the Title XI process, assist ADOT&PF in resolving any misperceptions or inaccuracies as represented in the correspondence from the USFS and the USACE to ADOT&PF, as well as the MOU between the FAA and the USFS. We also request the FAA clarify in the final EIS that the preliminary identification of a preferred alternative in the DEIS is not intended to preempt the full completion of the Title XI process or influence the independent federal agency analyses and decisions, which are required under ANILCA Section 1104(g)(2).

## **Effects Analysis**

Congress recognized the constraints existing agency authorities (or lack thereof) placed on federal agencies, such as the Transportation Act and the Wilderness Act, when it enacted ANILCA and the Title XI process in 1980 to address the potential impact of designating over one hundred million acres of CSUs on Alaska's largely undeveloped transportation and utility network (ANILCA Section 1101). Despite these constraints, the Title XI process *guarantees*

consideration of proposed TUS projects within CSUs in Alaska, including designated Wilderness.

The DEIS devotes considerable space to the effects of the proposed project and alternatives on wilderness character, and by extension the wilderness purposes of the Kootznoowoo Wilderness; however, the analysis provided is very limited. For example, the DEIS discloses the acreage of designated Wilderness that will be affected by the airport footprint without providing a corresponding perspective on the amount of actual “on-the-ground” or anticipated uses that will be impacted or displaced in the area, or conversely, the uses and remaining acreage of the Kootznoowoo Wilderness that would remain unaffected by the airport.

The resulting conclusion is that Alternatives 3a and 4, essentially due to the airport’s location and its incompatibility with wilderness character, cause significant impacts to the Kootznoowoo Wilderness. By the same measure, Alternative 12a, which is not located within the Kootznoowoo Wilderness, does not cause significant impacts (4.16.3.6.3, page 68—681). Since the impact analysis on wilderness character will be used to inform federal agencies’ (tentative) decisions and by extension, the President’s and, if applicable, Congress’ decisions, the analysis needs to provide more meaningful information as to the actual affects other than a generalized loss of Wilderness acreage and corresponding wilderness character.

Further, the emphasis in the DEIS on FAA’s *inability* to authorize a project that significantly affects Section 4(f) resources or properties (i.e. designated Wilderness) is inaccurate. The final EIS must also recognize that even though the FAA may be constrained by elements of the Transportation Act, just as the USFS may be constrained by the Wilderness Act, the final decision on this project rests with the President and Congress, who can authorize the proposed project regardless of the Section 4(f) impacts, if determined to be in the best interests of the community.

Additionally, both Section 4(f) of the Transportation Act and ANILCA Section 1104(g)(2) require the FAA to consider “feasible and prudent” alternatives to the proposed action. The EIS defines a “feasible” and “prudent” project in the context of Section 4(f) of the Transportation Act as “...*one that can be built as a matter of sound engineering judgment*” and does not compromise the project on a number of factors, including “...*even with mitigation, still causes severe social, economic, or environmental impacts, disruption of established communities, disproportionate impacts to minority or low-income populations, or impacts to environmental resources protected under other federal statutes*” (Page 162, emphasis added). While not identified in the DEIS, Department of Interior (DOI) implementing regulations for Title XI at 43 CFR 36.2(h) define an “economically feasible and prudent alternative route” as “...*a route either within or outside an area that is based on sound engineering practices and is economically practicable, but does not necessarily mean the least costly alternative route*” (Emphasis added).

While FAA’s preferred alternative (Alternative 12a with Access 12a) may be feasible from a sound engineering standpoint, we question whether the DEIS adequately considered socio-economic factors in its determination that the preferred alternative was also “prudent” as defined in the DEIS and DOI regulations. As noted, Congress also intended for each federal agency to objectively and fully consider several criterion (Section 1104(g)(2)), including “feasible and prudent” alternatives and the positive and negative impacts of the proposed project (and alternatives) on the local community of Angoon.

All of the alternatives appear to have a combination of positive and negative impacts for the community. For example, Alternatives 3a and 4 with either Access:

- Provide increased access to subsistence resources.
- Do not encroach into the community's limited supply of available land.
- Do not provide much room for expansion in the event new economic development opportunities arise and there is a need for additional airport capacity/facilities (as doing so would require expanding further into designated Wilderness).
- Have higher initial costs.
- Have greater ongoing costs associated with access maintenance, which could have the unintended consequence of reducing available resources for other community needs.

Alternative 12a with Access 12a:

- Provides easy and low-cost access.
- Has the effect of dedicating much of the community's available land to airport use.
- Removes some of the limited supply of residential lots from inventory.
- Reduces the availability of subsistence resources immediately adjacent to the existing community.

Beyond the immediate transportation needs of the community and the impacts and opportunities associated with construction and operation of the airport, the DEIS needs to give greater consideration to the community's long-term need to create viable economic opportunities. Improved access could be a catalyst for the community to develop new business enterprises, such as adventure tourism, seafood/mariculture and other areas that are not as yet foreseen. From an economic development perspective, ADOT&PF's proposed action provides for the transportation needs of the community while maintaining the existing inventory of available "private" land for future development, including residential use. We also request the FAA take a hard look at the limited socioeconomic analysis in the EIS as it relates to Environmental Justice.

In addition, The DEIS indicates the subsistence effects of all the alternatives did not rise to the level of the significance criteria identified in the EIS. Given the importance of subsistence to the community of Angoon (as recognized in the DEIS on page 538), we question the analysis that concludes that Alternative 12a with Access 12a, which causes a loss of land within the community that would no longer be readily available for subsistence use, does not create new access to subsistence resources (as does Alternatives 3a and 4 with either access), and increases competition for land-based subsistence resources, is of no consequence to the overall significance determination (page 569).

It is interesting to compare the subsistence impact analysis to the wilderness impact analysis. Even though the airport footprint directly eliminates the availability and use of subsistence resources within the airport footprint, the impact is not considered significant because it only represents a percentage of the total resources available for use, while the direct impact of the airport on wilderness character causes significant impact even though it also only represents a percentage of the total wilderness acreage. We similarly request the FAA take a hard look at these analyses and corresponding conclusions relative to Environmental Justice.

When completing the analyses required under ANILCA Section 1104(g)(2), participating federal agencies must also take into consideration comments from the community that provide individual or collective perspectives on current and future socio-economic needs and the trade-offs associated with the various alternatives.

## Fish Resources

The FAA's preferred alternative, Alternative 12a with Access 12a, will not negatively impact the resources and habitats for which the Alaska Department of Fish and Game (ADF&G) has responsibility. If the proposed action or another alternative is chosen to fulfill the project purpose and need, ADF&G will work with ADOT&PF through the fish habitat permitting review process to minimize short-term construction impacts. The overall impacts of any of the alternatives would not jeopardize resource sustainability or the State's ability to manage stocks.

The following technical comments are intended to correct inaccurate statements found in the DEIS:

General information: Dolly Varden is a species of char not trout and the name is typically written Dolly Varden char.

The following statement should be incorporated in the final EIS on marine sportfish use in the Angoon area:

*Statewide Harvest Survey (SWHS) results for the saltwater shoreline of Admiralty Island near the community of Angoon indicate that during at least one year during the 1996-2013 period, sport fishing respondents to the SWHS reported catching and/or harvesting hardshell clams, Dungeness crab, Dolly Varden char, cutthroat trout, chum salmon, pink salmon and coho salmon (Alaska Sport Fishing Survey database [Intranet]. 1996–2013. Anchorage, AK: Alaska Department of Fish and Game, Division of Sport Fish cited February 5, 2015. Available from: [https://intra.sf.adfg.state.ak.us/swhs\\_est/](https://intra.sf.adfg.state.ak.us/swhs_est/)).*

### *Page-specific Comments*

Chapter 4, Existing Conditions and Project Effects, page 220, paragraph 5: Dolly Varden char is not listed as a species present in Favorite Creek, but it is listed in the Anadromous Waters Catalog (AWC).

Chapter 4, Existing Conditions and Project Effects, page 223, Figure AHAS3, bullet 3: Favorite Creek supports sculpins and at least three species of salmon (pink, chum, coho), cutthroat trout, and Dolly Varden char. One adult sockeye salmon was documented by SWCA Environmental Consultants in 2009, but there is not enough supporting documentation to conclude that Favorite Creek supports a population of sockeye salmon or if the one observed was a stray.

Chapter 4, Existing Conditions and Project Effects, pages 237-246: Although mentioned elsewhere for each of the alternatives under stream habitat alterations, streams 112-67-10790(stream 3), 112-67-10780(stream 4), 112-67-10610(Stream 9D-G), and 112-67-10802(Stream 2) are left out of section titled "Reduction to aquatic resources and damage to aquatic habitats" and Favorite Creek is the only stream described as Class 1 that could be affected by additional harvest of aquatic species. These other streams all contain anadromous fish according to the AWC, as well as Class 1 habitat. Since there will be new or improved access to these streams, the possibility cannot be ruled out that these streams may have increased fishing and therefore more human use.

Chapter 7, Mitigation, page 737, bullet 4: Wording for "Time construction to minimize effects to aquatic species" should match page 229 so it reads May 15 to September 15.

Chapter 7, Mitigation, page 741, bullet 6: We recommend using U.S. Forest Service preferred seed mix on U.S. Forest Service managed lands and non-U.S. Forest Service managed lands to ensure invasive plant control. It would be helpful to define weed-free and clarify whether weed-free applies to invasive plants such as reed canary grass.

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

Sincerely,

A handwritten signature in black ink, appearing to read "S. Magee". The signature is fluid and cursive, with the first name "Susan" and last name "Magee" clearly distinguishable.

Susan Magee  
ANILCA Program Coordinator

cc: Beth Pendleton, USDA Forest Service, Alaska Regional Forester  
Linda Speerstra, USACE, Chief, Southeast Section  
Rob Campbell, ADOT&PF, Southcoast Region Division Director  
Kip Knudson, Director of State/Federal Relations, Office of the