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Growing Alaska Through Responsible Resource Development

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October 29, 2019

Attn: Objection Reviewing Officer

Chugach National Forest Land Management Plan USDA Forest Service, Alaska Region

P.O. Box 21628

Juneau, Alaska 99802-1628

Re: Objection to the Chugach National Forest Land Management Plan (36 CFR 219.54(c))

Dear Objection Reviewing Officer:

#### INTRODUCTION:

The undersigned Resource Development Council for Alaska Inc. (RDC), representing a broad coalition of its members, including the Alaska Forest Association (AFA), the Alaska Miners Association (AMA), the Associated General Contractors of Alaska (AGC), the Alaska Chamber (Chamber), and the Alaska Support Industry Alliance (Alliance) is writing to object to the Chugach National Forest (CNF) Land Management Plan (CLMP) noticed in the Anchorage Daily News on August 30, 2019.

RDC is a statewide non-profit business association comprised of individuals and companies from Alaska's oil and gas, mining, forest products, fisheries and tourism industries. RDC's membership also includes Alaska Native corporations, local communities, organized labor and industry-support firms. RDC's purpose is to encourage a strong diversified private sector in Alaska and expand the state's economic base through the responsible development of the State's natural resources.

This objection is being coordinated for RDC and its members listed above by its Deputy Director, Carl Portman, whose telephone number is (907) 276-0700 Ext. 2, whose physical address is 121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503, and whose email address is carl@akrdc.org.

This objection is linked to, and based upon, RDC's October 31, 2018 comments on the Revised CLMP Draft

Environmental Impact Statement (DEIS), a copy of which is attached.

## STATEMENT OF OBJECTIONS:

### Overall Objection:

As RDC explained in its October 31, 2018 comments: "The Chugach should be managed for all multiple uses, including recreation, commercial tourism, mining, timber production, and other resources, especially given the fact Alaska contains 70 percent of the nation's national park lands, 80 percent of its national wildlife refuge acreage and 53 percent of federal Wilderness. These units, like most of Alaska, are primarily roadless and wild. The Chugach should not be managed as a national park where preservation is an overriding management priority. RDC believes that true multiple uses as outlined above should be reflected in the plan revision as the Chugach should truly to be a land of many uses."

RDC objects to CLMP because the plan revision does not make the Chugach National Forest a "land of many uses." Instead, it is inconsistent with the Organic Act of 1897, the Multiple Use Sustained Yield Act of 1960, the National Forest Management Act of 1976 (NFMA) (16 U.S.C. [sect][sect] 1600 - 1614), and the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (PL 96-487). It fails to provide a reasonable range of alternatives, makes recommendations that violate ANILCA, provides for no commercial timber harvest, limited access for mining and renewable energy, and no plan for forest health (wildfire risk elevated by beetle-kill). In short, CLMP continues to propose to manage the Chugach National Forest as a National Park.

The NFMA requires the Secretary to develop and implement resource management plans for each unit of the National Forest System. In doing so, the Secretary must: use an interdisciplinary approach; coordinate with state and local resource management efforts; provide for public participation; and provide for multiple-use and sustained-yield of products and services.

### Failure to Provide a Reasonable Range of Alternatives:

RDC objects to the overall failure of CLMP to provide a reasonable range of alternatives for consideration as required by the National Environmental Policy Act (NEPA) (42 U.S.C.A. [sect][sect] 4321 to 4347). The Council of Environmental Quality (CEQ) regulations implement NEPA. CEQ regulation 40 C.F.R. [sect] 1502.14 states that the presentation of alternatives is the "heart of the environmental impact statement." "[I]t should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public." An EIS must evaluate "all 'reasonable [and] feasible' alternatives in light of the ultimate purposes of the project." *City of Carmel-by-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997)).

CLMP fails this CEQ directive and NEPA requirement in the following ways:

1. Nellie Juan-College Fiord Wilderness Study Area. Section 704 of ANILCA designates the 1.9 million acre Nellie Juan-College Fiord area as a Wilderness Study Area (WSA) and directs the Secretary to report to the President and Congress within three years [i.e. by December 2, 1983] "as to the suitability or unsuitability of all areas within such wilderness study boundaries for preservation of wilderness."

In 1985 the Forest Service recommended that 1.7 million acres of the 1.9 million-acre Nellie Juan- College Fiord WSA be designated as Wilderness. The Forest Service recommended 1.4 million acres during the 2002 land management plan revision process.

The No Action alternative (A) in the current CLMP recommends that 1.4 million acres be designated as Wilderness. Alternative B recommends that 1.4 million acres be designated as Wilderness. Alternative C recommends that 1.8 million acres be designated as Wilderness. The Selected Alternative (Modified Alternative C) recommends that 1.4 million acres be designated as Wilderness. Alternative D recommends that 1.8 million acres be designated as Wilderness.

An alternative that would have recommended NO areas for Wilderness designation was eliminated from detailed study. (Draft Record of Decision (ROD) at page 24). Full evaluation of this alternative could have provided a baseline for comparison of alternatives in the same role that the No Action alternative serves in NEPA analyses. The "No Wilderness" alternative should have been fully developed because of the public controversy surrounding the issue: the draft ROD acknowledges that "[t]here was approximately an equal interest from those who desired more recommended wilderness and those who preferred less recommended wilderness." (Draft ROD at page 10).

Even though some of the areas within the Alternatives were different, RDC objects on the ground that two alternatives proposing 1.4 million acres be designated as Wilderness and two alternatives proposing 1.8 million acres be designated as Wilderness is not the "reasonable range of alternatives" required by NEPA.

1. According to Table 28 on Appendix B of the CLMP, 1,058,195 of the 1,081,727 acres of "Lands Suitable and available for Projected Wood Sale Quantity" are Inventoried Roadless Areas (IRAs). Appendix B explains that IRAs are "[l]ands where [timber] harvest is generally not permissible[hellip]" (CLMP at page 109). Appendix B then explains: "Because no lands were identified as suitable for timber production, a projected timber sale quantity was not calculated for the Chugach National Forest." (CLMP at page 109).

It is remarkable that even though there were alternatives recommending the designation of more Wilderness on the CNF (that were not authorized by ANILCA (see next section)), there were no alternatives recommending a reduction in the number of acres of IRAs applicable to the CNF.<sup>1</sup> Arguably, if 97.8% of the suitable land base were not in IRAs, there would be enough suitable land to conduct a timber sale program on the forest.

Alternatives describing how removing the IRA barrier could have provided sufficient suitable land to allow a timber sale program should have been brought to the attention of the decisionmaker and the public. 40 C.F.R. [sect] 1502.14(c) directs that "agencies shall: Include reasonable alternatives not within the jurisdiction of the lead agency." (See also *NRDC v. Morton*, 458 F.2d 827, 834-836 (D.C. Cir. 1972) ("The mere fact that an alternative requires legislative implementation does not automatically establish it as beyond the domain of what is required for discussion, particularly since NEPA was intended to provide a basis for consideration and choice by decisionmakers in the legislative as well as the executive branch.")

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<sup>1</sup> While ANILCA [sect] 1326 prohibits additional studies for more withdrawals, it does not prohibit additional studies to reduce the number of withdrawals.

As described in detail in RDC's attached October 31, 2018 letter, IRAs also prevent or make more difficult access for mining, renewable energy, and tourism. As illustrated by USDA's ongoing consideration of changes to the 2001 Roadless Rule on the Tongass National Forest, alternatives to reduce IRAs on the Chugach are more within the ability of CLMP to be considered by senior USDA officials than recommendations to Congress for the designation of Wilderness or Wild and Scenic Rivers, which CLMP nevertheless makes.

For all these reasons, RDC objects to the fact that CLMP includes no alternatives that propose a reduction in the IRAs on the CNF and maintain that the failure to do so violates NEPA.<sup>2</sup>

1. At page 105, CLMP gives one "primary reason" why no lands were determined suitable for timber production:

The primary reason no lands were determined suitable for timber production is a sustainable flow of timber cannot be planned and scheduled on a reasonably predictable basis on this limited land area (criterion three) and timber production is not the desired primary or secondary use of the land (criterion one).

At page 112, CLMP states:

[N]o lands have been determined suitable for timber production within the Chugach National Forest based on the criteria outlined in Forest Service Handbook 1909.12-61.2. The primary reason for this determination is the limited land area that may be suited for timber production (6,060 acres) precludes planning a sustainable flow of timber on a predictable basis.

As explained in the previous section, there is no suitable forest land base because 97.8% of the forest land that would be suitable for timber production is in IRAs. Yet, the CLMP team did not propose any relief from the 2001 Roadless Rule. The "limited land area" restriction described by criterion three is thus self-imposed.

The criterion one limitation is highly subjective. Timber production on the CNF is not desired by whom? How did the Forest Service determine that timber production is not the desired primary or secondary use of the land? Without a reasoned explanation application of this criterion to reach such an impactful decision is arbitrary and capricious under the Administrative Procedures Act 5 U.S.C. [sect] 706 et seq. (APA).

Moreover, the above rationale for the determination that no lands were suitable for timber production is contradicted by the 1984 CLMP which provided an Annual Sales Quantity (ASQ) of 16,900 million board feet (mbf). The draft ROD dismisses the ability of small-scale mills because they are not currently active or of a large enough scale to consider in the economic analysis. Yet, the 1984 CLMP acknowledged the role of local mills and the ability of small-scale mills to react relatively quickly to increased local demand.

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2 RDC also objects to the failure of the draft ROD and CLMP to consider rulemaking to exempt the CNF from the 2001 Roadless Rule for the reasons set out in its comment letter at page 7.

There is no explanation of what has changed from the 1984 Plan that causes the second largest national forest in the United States to include no timber sale program. The failure of an agency to provide a reasoned explanation for contradicting its previous findings violates the APA for the reasons described in *FCC v Fox Television Stations Inc.*, 556 U.S. 502 (2009) and *Organized Village of Kake v. USDA*, 795 F.3d 956, 981-982 (9th Cir. 2015).

In any event, the future opportunity for local sawtimber-based businesses, especially for value-added niche products, should not have been dismissed as CLMP has done simply because they may not currently be significant to the overall local or regional economies.

RDC thus objects to the fact that CLMP includes no alternatives that propose a timber sale program for the Chugach National Forest.

RDC objects because for the above reasons, CLMP violates NEPA by failing to provide a reasonable range of alternatives

#### Violation of ANILCA

RDC adopts and incorporates by reference the objections to the draft ROD and CLMP made by the State of Alaska on the ground that they violate ANILCA.

In 1985 the Forest Service recommended that 1.7 million acres of the 1.9 million-acre Nellie Juan-College Fiord WSA be designated as Wilderness. Having made the recommendation required by ANILCA Section 704, USDA's job was done. CLMP failed to consider that Congress's failure to act on USDA's 1985 recommendation was a rejection of that recommendation. (Otherwise, an agency can treat any recommendation it might make to Congress as an Act of Congress. Thus, no action by Congress would have the same effect as an Act of Congress).

Instead of a further Act of Congress authorizing continued management of the WSA as Wilderness, the Draft ROD relies on "regional policy" as justification for USDA's continued management of the area as Wilderness "until such time as Congress acts on these lands" upon (Draft ROD at page 10):

In accordance with regional policy, all 1.9 million acres of wilderness study area must be managed to maintain its presently existing character and potential for inclusion in the National Wilderness Preservation System.

In addition, CLMP intends to continue to manage 82 miles of river segments as Wild and Scenic Rivers, notwithstanding the failure of Congress to act on a 2002 USDA recommendation to designate the river segments as Wild and Scenic Rivers (CLMP at page 79):

Until a decision is made by Congress or there is a change in eligibility or suitability status from a future study, river segments currently classified as eligible or suitable, will be managed under direction described in Forest Service Handbook 1909.12, chapters 84.2 and 84.3 and consistent with National Wild and Scenic Rivers System designation classes.

This is specifically prohibited by Section 1326 (b) of ANILCA which provides:

No further studies<sup>3</sup> of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation unit, national recreation area, national conservation area, or similar purposes shall be conducted unless authorized by this Act or further Act of Congress.

There is nothing in ANILCA that provides a legal basis for the continued management of the Nellie Juan- College Fiord area as a Wilderness. There is nothing in ANILCA that provides a legal basis for the continued management of the 82 miles of river segments listed on Table 14 on CLMP page 79 as National Wild and Scenic Rivers.<sup>4</sup>

Failure of the draft ROD and CLMP to Provide Adequate Access to the CNF:

RDC adopts and incorporates by reference the objections to the draft ROD and CLMP made by the State of Alaska on the ground that they fail to include alternatives that provide for adequate access to mineral claims, to renewable energy, for tourism, and for forest health.

In its October 31, 2018 comment letter RDC made requests for multiple use management that do not appear in the draft ROD or CLMP:

1. Mining. For the reasons stated at pages 3-4 of its comment letter, RDC requested that CLMP authorize road access to mining claims that meet the requirement of 36 C.F.R. Part 228 irrespective of whether those claims are in an IRA. Neither the draft ROD nor CLMP discuss or include alternatives regarding, or solutions to, the practical problems for accessing mining claims posed by the Wilderness Act and the 2001 Roadless Rule. RDC objects because the draft ROD and CLMP contain no consideration or discussion of the practical problems of access to mining claims posed by the Wilderness Act and the 2001 Roadless Rule;

2. Renewable Energy. For the reasons stated at pages 4-5 of its comment letter, RDC requested that CLMP authorize road access to renewable energy opportunities. Road access to geothermal sites is prohibited by the Wilderness Act and the 2001 Roadless Rule. Road access to new hydropower sites is prohibited by the Wilderness Act. Whether road access to new hydropower sites is allowed by the 2001 Roadless Rule is uncertain for the reasons stated at pages 4-5 of RDC's comment letter - the language in the Roadless Rule on this point is incomplete. RDC objects because the draft ROD and CLMP contain no consideration or discussion of alternatives that would allow access to geothermal and hydropower renewable energy resources posed by the Wilderness Act and the 2001 Roadless Rule;

3. Tourism. For the reasons stated at page 5 of its comment letter, RDC requested that CLMP consider alternatives authorizing more access, including helicopter and road access, for tourism. While the CNF provides endless opportunities and trails for healthy, young, backpackers seeking remote recreation seclusion, the 15 miles of road in the 5.4-million-acre National Forest provide scant opportunity for most visitors who do not fit that youth category or seek that type of recreational experience. There are two national parks and a national wildlife refuge adjacent to the CNF which also provide remote recreational opportunities for the same demographic to which the CNF is catering. As a national forest, the CLMP should include alternatives that provide for roaded and helicopter tourism. RDC objects because no such alternatives or consideration was provided in either the draft ROD or CLMP.

4. Forest Health. There has been significant acreage of beetle-killed trees in the CNF. There have been significant wildfires in the vicinity of the CNF. For that reason, CLMP should have included alternatives that considered road construction in the CNF to provide access to fight fires and to provide fire breaks. RDC objects because no such alternatives or consideration was provided in either the draft ROD or CLMP.

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3 A NFMA forest land management plan (such as CLMP), which takes a USDA interdisciplinary team years to develop and present in a multi-volume EIS, qualifies as a "study" under ANILCA.

4 RDC objects to new Wild and Scenic River designations in the CNF for the reasons set out at page 6 of its comment letter.

CONCLUSION:

For the reasons given above, RDC and its members, including AFA, AMA, AGC, the Alaska Chamber and the Alliance, object to the draft ROD and CLMP. The draft ROD and CLMP violate ANILCA with their Wilderness and Wild and Scenic River proposals and violate NEPA by failing to provide a reasonable range of alternatives, specifically for timber production, mining, renewable energy, tourism, and forest health. Accordingly, RDC requests that CLMP be remanded to the CNF planning team to revise CLMP by addressing these issues.

RDC strongly objects to the draft ROD and CLMP and welcome the opportunity to share our views on the future management of the forest.

Sincerely,

Carl Portman Deputy Director

cc: U.S. Senator Lisa Murkowski

U.S. Senator Dan Sullivan

Congressman Don Young

Governor Michael J. Dunleavy

Jeff Schramm

Sue Jennings