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# RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

October 31, 2018

Ms. Terri Marceron  
Forest Supervisor  
Chugach National Forest  
161 E. 1<sup>st</sup> Avenue, Door 8  
Anchorage, AK 99501

Re: Draft Land Management Plan and Draft Environmental Impact Statement

Dear Ms. Marceron:

The Resource Development Council for Alaska, Inc. (RDC) appreciates the opportunity to provide comments on the Revised Chugach National Forest Land and Resource Management Plan Revision (CLMP) and the Draft Environmental Impact Statement (DEIS).

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 our natural resources.

## Introduction

RDC has wide ranging concerns regarding the future management of the Chugach National Forest. Our concerns can best be addressed through the implementation of a true multiple-use mandate, which has been a cornerstone of Forest Service policy. This mandate sets national forests apart from national parks and refuges. Our national forests were established under a working forest model. Unlike the national parks that were created for preservation, the national forests were established under the authority of the Organic Administration Act of 1897 to conserve water flows and to furnish a continuous supply of timber and other resources for the American people. The notion of the working forest has been with us for over a century.

As our nation grew and demands on our forests increased, additional acts of Congress refined but did not supersede the Organic Act. The 1960 Multiple Use Sustained Yield Act added outdoor recreation, range, fish, and wildlife to the balance of national forest uses. The 1976 National Forest Management Act (NFMA) established a framework for forest planning, however, nowhere did Congress alter the fundamental mandate to balance multiple use, including water, timber, mining, recreation, range, fish, and wildlife.

Multiple use includes more than recreation, subsistence, and wildlife habitat. RDC recognizes these uses are important, but urges that they must and can coexist with

responsible resource development. 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 be a land of many uses. Unfortunately, the draft forest plan revision and DEIS falls well short of this mandate.

In the DEIS, all the alternatives, including the No Action Alternative, would designate more than a million acres of federal Wilderness in the forest. Alternatives C and D would designate nearly 2 million acres. Moreover, the No Action Alternative would designate at least 74% of the forest in Primitive and Semi-primitive non-motorized classification. Alternatives B through D would designate up to 76 percent in Primitive and Semi-primitive non-motorized recreation. The revised management plan and DEIS would leave less than 1 percent of the nation's second largest national forest in Roaded classification and 2 percent in Roaded natural classification. We find these classifications disturbing and disappointing. Under the revised management plan, there is really no true multiple-use management remaining in the Chugach.

### **Timber production/harvest**

Although the Organic Administration Act provides that timber production is a key statutory mission of the National Forest System, the Chugach is the largest national forest in the nation with no Allowable Sale Quantity (ASQ) and with no Forest Service timber program. This is inappropriate and unacceptable. The Chugach provides no timber for local wood product businesses, even though it is a fully capable of doing so. The revised forest plan contains conflicting standards and guidelines that essentially prevent an ASQ. The revised plan does not provide for any level of timber production and considers it unsuitable across the entire forest. RDC strongly disagrees with this assessment and considers it a glaring example of how the revised forest plan is biased and predisposed to non-development designations. Sustainable and responsible commercial timber harvesting is no more discretionary than habitat preservation, ecosystem management, watershed protection, and recreation.

There is a need for a small, viable timber program in the Chugach consistent with management of the forest prior to 2002. The availability of small timber sales in Southcentral Alaska in recent years has enabled small operators to expand operations. However, many of these businesses are struggling in part due to the lack of a suitable timber supply, but not due to a lack of resource.

Prior to 2002, the ASQ in the Chugach was approximately 75 million board feet (mmbf) annually with 58 mmbf coming from sawlog and 17 mmbf from utility. The 2002 plan included alternatives with an ASQ from 0 to 163 mmbf annually. RDC requests that a final plan allow for an annual ASQ to help supply local demand for timber. An annual ASQ of 30-50 mmbf would impact a very small portion of the 5.4 million acre forest over the next 100-plus years, but would provide timber for local mills, help stimulate the economy, and provide jobs for Alaskans.

The revised forest plan should also allow for specific actions to restore forest health and reduce the risk of wild fire. It should include measures for ecological restoration on the Chugach, which has seen forest ecosystems convert to grass and sedge ecosystems in the wake of beetle outbreaks. The re-introduction of an ASQ would aid in restoration work and possibly support biomass production or other commercial endeavors in the region. A program of scheduled timber sales should be provided to meet a predetermined allowable sale quantity.

The revision should also provide for modern silviculture practices to encourage natural regeneration.

Forested portions of the Chugach should be managed toward a varied species composition and different age classes to reduce the risk of large beetle infestations in the future and help restore long-term forest health.

### **Mining and minerals access**

Mining is an important multiple use in the Chugach. There are many areas within the Chugach National Forest that contain valid, active mining claims, and many more that may have moderate to high mineral potential. Yet mineral entry and mining is insufficiently and inconsistently addressed in the revised plan. The right to “reasonable access” to locatable minerals is authorized by the 1872 Mining Act and recognized in the Preamble to the Roadless Rule (66 Federal Register 3244 at 3253). However, the Preamble states that “reasonable access” includes access by helicopter and non-motorized transport.

There are no criteria by which the Forest Service official determines when a road is needed to support mining exploration and development. This leaves “reasonable access” determinations to the discretion of the Forest Supervisor. RDC believes this is subjective and provides uncertainty about whether advanced exploration, which requires road access, will be allowed to move forward. This, in turn, will impact a decision whether or not to spend the money to begin serious exploration of a claim.

Because of the cost of helicopter access and the limitations of non-motorized transport in Alaska, road access is needed to actually realize the right to “reasonable access” to locatable minerals in the Chugach. Exploration requires an ever-increasing level of investigation to add certainty to resource/reserve information to support financing in public markets. The Security and Exchange Commission requires greater certainty of resource/reserve estimation than initial exploration can provide.

However, without roads, only initial exploration data can be obtained. Helicopter access limits the size of rig and volume of core that can be extracted. While NQ (1.9 inch diameter) core can be obtained with lighter drills, HQ (2.5 inch diameter) or PQ (3.4 inch diameter) core is necessary for higher certainty of assay and structure. These larger drills and cores require road access.

Larger core and underground drilling cannot occur without road access to move equipment to the site. Large tonnage metallurgical test mill ‘bulk’ samples require road access to move it to a port. This cannot be accomplished without roads. Exploration budgets would shoot up dramatically – by millions to tens of millions – to fly in large rigs, underground excavation equipment, camps, personnel, infrastructure, emergency response, environmental controls, etc.

This deters investment in costly exploration in the Chugach, in particular for costly advanced exploration and the opportunity to develop a mine.

The Forest Service uses 36 C.F.R. Part 228 (a) to authorize locatable mineral Plans of Operations (PoO) on non-IRA lands within National Forests. An operator presents a draft PoO, which includes roads if the operator determines the need for road access to the mining claim. The PoO is analyzed through the National Environmental Policy Act (NEPA) process. If an operator meets the Part 228 (a) criteria it will be permitted to access the locatable mineral by road.

This is not inconsistent with the Roadless Rule, which states that for all National Forests:

Determination of access requirements for exploration or development of locatable minerals is governed by the provisions of 36 C.F.R. Part 228.

The difference is that in applying 36 C.F.R. Part 228 to the Chugach the forest plan must recognize that the prohibitive cost of helicopter access and the limitations of non-motorized access for mining on the Chugach. In other terms, failure to approve road access in the Chugach represents a constructive denial of access to locatable minerals. Accordingly, the revised forest plan should make it clear that road access will be approved anywhere in the Chugach if the PoO meets the Part 228 (a) criteria.

Furthermore, no additional areas should be withdrawn from mineral entry unless they are closed to mining by the Secretary of Interior under the federal Land Management Policy Act and statutorily closed to mining by the Alaska National Interest Lands Conservation Act (ANILCA). The Forest Service does not have authority to close areas to mineral entry, which is reserved to the Secretary of Interior, that are merely being considered for inclusion into a conservation system unit. Much of the forest has yet to be adequately explored for its mineral values. Closing an area to mineral entry forecloses future exploration and development opportunities.

### **New hydropower sites**

Future hydropower and support facilities will be subject to the prohibition on road construction. See 66 Fed. Reg. at 3256: "The final rule retains all of the provisions that recognize existing rights of access and use. Where access to these facilities is needed to ensure safe operation, a utility company may pursue necessary authorizations pursuant to the terms of the existing permit or contract." It is unclear whether future facilities fall within that exception.

The summary of Roadless Rule costs and benefits displayed in Table 1 indicates that for "[s]pecial-use authorizations (such as communications sites, electric transmission lines, pipelines)," existing facilities are not affected but "future developments requiring roads [are] excluded in inventoried roadless areas unless one of the exceptions applies."

There is a reference in the Rule's Preamble regarding application of § 294-14 (a) to continued access to *existing* facilities operated by utilities:

The final rule retains all of the provisions that recognize *existing* rights of access and use. Where access to these facilities is needed to ensure safe operation, a utility company may pursue necessary authorizations pursuant to the terms of the *existing* permit or contract.

Because there is no mention of *future* utilities, or any mention of hydropower, the application of the *expressio unius est exclusio alterius* canon of construction, would mean that the 2001 Roadless Rule does not allow new roads for such development.

The response to comments discussion in the Preamble leads to the same conclusion that road construction in support of future hydropower projects is prohibited in IRAs:

*Comment on Exiting Authorized Activities.* Some respondents were concerned about the impact of the rule on special uses and requested clarification regarding the ability to construct or maintain roads in inventoried roadless areas to access electric power lines or telephone lines, pipelines, hydropower facilities, and reservoirs.

*Response.* Section 294.14(a) of the proposed rule stated that the rule would not suspend or modify any *existing* permit, contract, or other legal instrument authorizing the use and occupancy of the National Forest System lands. *Existing authorized uses* would be allowed to maintain and operate within the parameters of their current authorization, including any provisions regarding access.

Finally, Table 1, which summarizes the costs and benefits of the Final Rule, describes the impact of the Final Rule on “Special Use authorizations (such as communications sites, electric transmission lines, pipelines)” as follows: “Current use and occupancies not affected, future developments requiring roads excluded in inventoried roadless areas unless one of the exceptions applies.”

The forest plan should clarify whether access to hydropower sites and their related infrastructure are prohibited by the Roadless Rule. If not, the forest plan should specifically state that access to future renewable energy projects, including hydropower, and their transmission infrastructure is authorized by the plan throughout the forest.

Access by road is often required for energy projects, and many hydro projects are major construction projects that require heavy machinery and equipment. In many cases a road for access from tidewater to the hydropower site would be required. If road access is denied where IRAs exist between tidewater and a hydropower site, such facilities will not be able to be built.

Further, the cost to maintain a transmission line that is constructed without road access is significant. The rights-of-way (ROW) for such lines have to be maintained and brushed continually. Any structures would have to be inspected on a frequent basis. With road access, this work can be done by a crew in a vehicle. Without road access, this work will likely need to be helicopter supported at a higher cost.

Accordingly, the revised forest plan should make it clear that road access for hydropower and other forms of renewable energy and their transmission infrastructure will be approved anywhere in the Chugach if the PoO meets criteria similar to those set out in 36 C.F.R. Part 228 for mining.

## **Access**

Currently approximately 99 percent of the Chugach is roadless. Roadless areas, as well as Wilderness and Wild and Scenic River designations, make access permits more difficult, thereby resulting in greater restrictions. Despite future needs, Wilderness designations would prevent the Forest Service from providing additional access, whether for resource extraction, forest health, recreation, or tourism. Less access to the public lands essentially means fewer multiple uses for the public and industries that provide products for consumers and jobs for local residents.

Access to timber, mining, renewable energy, recreation, and inholdings should not be precluded. The revised forest plan must explicitly acknowledge congressionally guaranteed rights of access to surface and subsurface lands conveyed to Alaska Native Corporations within the forest boundaries. The revised forest plan should be abundantly clear that the Alaska Native Claims Settlement Act (ANCSA) and ANILCA guarantee access to these lands to achieve the goals of ANCSA, a fair and just land settlement that addresses the real economic and social needs of Alaska Natives.

Moreover, improved access for destination tourism opportunities must be provided for in the revised forest plan. The plan should place a growing emphasis on how to accommodate a larger number of visitors, not just on how to limit or block access.

Since much of the forest is roadless, helicopter overflights and landings should be allowed in a variety of areas. Statistics show helicopter flightseeing and landings are among the most popular and highest-rated activities for Alaska visitors. Helicopters often afford the only viable access to remote areas. It is often the only way for the physically impaired, aged or a traveler on a tight time schedule to experience remote, rugged lands up close.

## **Wild & Scenic Rivers and Wilderness designations**

RDC opposes new Wild and Scenic River designations in the Chugach as they are overly restrictive and would diminish multiple-use access, and potential mining and timber production activity. These single-purpose designations are not needed and could very well be used as a tool to block economic development, including activity on Native corporation land. As noted earlier, the Chugach is a national forest with a multiple-use mandate, not a national park or refuge.

RDC also opposes the designation of Wilderness in the Chugach. RDC believes strict management for Wilderness is neither appropriate or necessary. ANILCA was intended to resolve the issue of what lands in Alaska should be designated Wilderness. Beyond the Nelle Juan – College Fjord Wilderness Study Area, additional Wilderness suitability studies and recommendations are not allowed in Alaska under ANILCA Section 708(b).

As previously noted, Alaska already contains 57 million acres of federally-designated Wilderness – 53 percent of all federal Wilderness in the U.S. In addition, the state contains other vast national park and refuge lands that remain in their original state. Alaska also includes vast acreage of state parks, putting it at the top of the list for acreage preserved under state conservation units.

Further, consideration of federal conservation system units, including Wilderness and Wild and Scenic Rivers, is not consistent with ANILCA. Section 101(d) which states that the need for future conservation system units in Alaska has been obviated by the ANILCA withdrawals and Section 102(4) includes Wilderness in the definition of a CSU. In addition, Congress recognized that for Alaska to “satisfy the economic and social needs of the State of Alaska and its people” access is essential. This point is acknowledged in Section 1326(a), which states that administrative closures, including the Antiquities Act, of more than 5,000 acres cannot be used in Alaska. Section 1326(b) adds emphasis to the “No More” clause in noting that federal agencies must first seek the permission of Congress before even studying lands in Alaska for Wilderness consideration.

The areas of the Chugach that are currently being managed as Wilderness should be re-evaluated and a more flexible management regime applied. Wilderness designations limit recreational and multiple use opportunities, impair access, and prohibit resource development. They would also hinder access for future generations and restrict tourism. These designations represent an economic opportunity cost.

Furthermore, no lands with existing valid mining claims, approved mining activities, and legal access routes to valid mining claims should be given a non-development management prescription. These lands are especially not suitable for Wilderness and Wild and Scenic River designations and such designations would preclude future mining and other multiple use activities that are not compatible with the Wilderness Act. All forest lands that are open to mineral location and entry under the federal mining law should not be considered suitable for Wilderness, nor should they be proposed for Wilderness designation.

Furthermore, the Forest Service should not consider existing intensive motorized recreation areas such as snow machine corridors as suitable for Wilderness. These areas have a long history of allowing motorized uses and have attracted thousands of motorized enthusiasts over the years.

The cumulative socio-economic impacts of numerous withdrawals and proposed withdrawals of land from multiple-use management is not addressed in the plan. There should be a no net loss in the economic resource base. The Forest Service, in its revised forest plan, does not, but should balance increases in land withdrawals with increases in resources available for multiple use. The current draft falls well short of such a balance.

## Roadless Rule

ANILCA repeatedly recognizes that Alaska is truly different from the Lower 48 states. Congress struck a balance in with ANILCA providing protection for the national interest in scenic, natural, cultural, and environmental values on public lands in Alaska and securing adequate opportunity for the economic and social needs of the State of Alaska and its people. The Roadless Rule application to Alaska has disrupted that balance, resulting in an unworkable framework for proper multiple-use management of national forests in the state.

The legal uncertainty surrounding the federal Roadless Rule and its impact in Alaska on the forest products industry, mining, and renewable energy development is good reason to pursue an Alaska-specific roadless rule. RDC supports the Forest Service's development of a state-specific Alaska Roadless Rule for the Tongass. In addition, RDC supports a subsequent rulemaking applying a state-specific roadless rule for the Chugach. As noted, the federal Roadless Rule applies to 99 percent of the Chugach. Most Native corporation economically-viable lands are adjacent to or surrounded by roadless areas. Additionally, subsurface estate within the forest boundaries where the surface estate is owned by the Forest Service, is classified as inventoried roadless areas. In most cases, Native corporations have no practical means of access to their inholdings or subsurface estate except across roadless areas. This stifles investment in economic and resource development opportunities.

RDC believes the economic health of the region would be strengthened if the Chugach is removed from the federal Roadless Rule and managed as originally intended. We believe that tourism, fishing, mining, energy development, and a regional forest products industry can coexist in the forest and benefit the entire Southcentral Alaska region.

## Conclusion

While RDC appreciates and values recreation, tourism, salmon fisheries, and wild renewable resources, the Chugach National Forest offers much more to local communities and economies and should be managed to include other multiple uses such as timber harvesting, mining, energy development, and broader access for these activities and recreation. The Forest Service should include a reasonable and sustainable ASQ in the Forest Plan. Rulemaking should apply an Alaska-specific Roadless Rule to the Chugach. Given the Roadless Rule is intertwined into the revised management plan for the Chugach, the U.S. Department of Agriculture should pause the current revision process should the department move forward with a proposed rulemaking.

RDC appreciates the opportunity to comment on the revised plan and DEIS and share our view on the future management of the forest.

Sincerely,



Carl Portman  
Deputy Director