

STATE OF ALASKA

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CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

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Forest Service Planning DEIS
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RE: Notice of Proposed Rulemaking, National Forest System Land Management Planning Rule (36 CFR Part 219)

The Citizens' Advisory Commission on Federal Areas is a 12 member commission which was re-established by the State of Alaska in 2007. The original Commission operated from 1982 until 1999. The Commission is directed by Alaska Statute 41.37.220 to "consider, research, and hold hearings on the consistency with federal law and congressional intent on management, operation, planning, development, and additions to federal management areas in the state [and] on the effect of federal regulations and federal management decisions on the people of the state." We have reviewed these proposed revisions to the 36 CFR Part 219 regulations and the *Draft Programmatic Environmental Impact Statement* (DPEIS) within that context and offer the following comments for consideration in developing final regulations.

The original Commission participated in numerous planning efforts for the two units of the National Forest System in Alaska: the Tongass National Forest and the Chugach National Forests. We also reviewed the 1991 Advance Notice of Proposed Rulemaking and the 1995 Proposed Rulemaking for the Part 219 regulations.

This Commission appreciates that for nearly 30 years the Forest Service has attempted to promulgate planning regulations that meet the numerous statutory requirements for managing the National Forest System. However, the agency's efforts to respond to 1989 *Critique of Land Management Planning*, which found that the 1982 planning rule process was complex, costly, lengthy and cumbersome for the public to provide input, has not been particularly successful. Almost every effort to revise the original planning regulations has been met with administrative appeals and legal challenges. The result is a patchwork of court orders, policy changes and revisions to the regulations that have complicated rather than simplified the entire planning process and which is confusing to the public.

It is commendable that the Forest Service is once again attempting to implement the requirements of the National Forest Management Act by updating the planning process. However, as demonstrated over the years, this process is complex and difficult. It also requires considerable time for agencies, user groups and the general public to evaluate, analyze and provide comment. The original intent was to create a transparent and dynamic process of assessment, action and monitoring that can respond to changes facing the national forests. Unfortunately our review found a labyrinth of planning language and procedural requirements that is not only difficult to understand, but will do little to encourage the general public to participate.

Furthermore, we are surprised by the agency's decision to release the Summary Report of the *Science Review of the United States Forest Service Draft Environmental Impact Statement For National Forest System Land Management (Science Review)*. In our considerable experience with reviewing proposed regulations and NEPA documents, we have never seen a document of this nature released by an agency in the middle of a public review and comment period.

While this document is presented as an objective and non-partisan review of the DPEIS the timing of the release is questionable and may actually prejudice the public review process. The *Science Review* would better serve as background information that should have been made available to the public at the same time the DPEIS was released. That would have given reviewers adequate time to analyze all available information, including this review. Release of this review only 3 weeks before the comment deadline is unacceptable. It is unlikely that the Forest Service will receive many substantive comments on this document. For this reason we request an extension of the comment deadline by an additional 60 days to allow for adequate review of this document.

Public Outreach

The Forest Service on its Planning Rule website is quite self-congratulatory on the public outreach effort for this rulemaking, citing the numerous "national and regional forums to provide stakeholders with information about the proposed rule and respond to questions." We are compelled to point out that the public outreach effort in Alaska was less than adequate. For example, according to the published meeting schedule, Region 1 had public meetings at 3 locations, Region 2 had meetings at 4 locations, Region 3 held meetings at 2 locations, Region 4 had meetings at 25 locations, Region 5 hosted meetings at 3 locations, Region 6 had meetings at 3 locations, Region 8 held meetings at 7 locations, and Region 9 had public meetings at 16 locations. Most of these meetings consisted of 2 separate sessions held at the same location at different times.

Region 10, Alaska, the largest state with the two largest National Forests, had a single meeting in Juneau, although there were two sessions held. This Commission requested a second meeting be held in Anchorage, but that request was denied. While the regional forum was webcast, we should point out that most people in rural Alaska lack the necessary high-speed internet service to participate in a webcast. We also would like to remind Forest Service personnel who may not be familiar with Alaska's geography that Juneau is accessible only by air or boat. Travel there would have been difficult and cost prohibitive for a two hour meeting.

We were also disappointed that the public was not allowed to make comments on the proposed regulations or the DPEIS at the meetings. Our experience demonstrates that members of the public, as opposed to organizations or interest groups, are more inclined to present verbal comments at a public meeting or workshop than they are to submit comments in writing. We note that the proposed regulations allow for oral comments to be submitted on a planning document or proposal.

Issues relevant to Alaskans are often quite different than in other states due to the provisions of the Alaska National Interest Conservation Act (ANILCA). Requirements and responsibilities of federal public land managers in Alaska are significantly different under this statute. The draft planning rule fails to specifically address these different requirements and should be revised as follows:

Section 219.1(g), Purpose and Applicability

While we understand this is not intended as a complete list of laws and regulations with which plans must comply, we request the Alaska National Interest Lands Conservation Act (ANILCA) and the Tongass Timber Reform Act (TTRA) be included, especially in recognition that the Wilderness Act (which is listed) is amended by ANILCA. A significant percentage of the Tongass National Forest is designated Wilderness. These designated areas, as well as the Nellie Juan-College Fjords Wilderness Study Area, are subject to the special management provisions of ANILCA. In addition, there are other important provisions in ANILCA, such as Title VIII *Subsistence Management and Use*, which apply to *all* federal public lands in Alaska. This important and unique law, which provides specific direction on the management of and planning for federal lands in Alaska, deserves explicit recognition in this planning rule.

Wilderness and Wild and Scenic River Reviews

Section 219.7(c)(iv) New plan development or plan revision.

ANILCA prohibits further wilderness studies on Forest Service lands in Alaska. Section 708(4) states: *Unless expressly authorized by Congress the Department of Agriculture shall not conduct any further statewide roadless area review and the evaluation of National Forest System Lands in the State of Alaska for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.* [emphasis added]

The final rule must reflect this prohibition. We suggest the following revision:

Except where preempted by law, identify potential wilderness areas....

Section 219.7(c)(v) New plan development or plan revision.

ANILCA also prohibits new Wild and Scenic River reviews in Alaska. In particular, Section 1326(b) states: *No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation areas or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress.* [emphasis added]

The definition of “*conservation system unit*” in Section 102(4) includes wild and scenic rivers. Congress designated numerous rivers with passage of ANILCA and provided no direction to study additional rivers that would defeat the general applicability of Section 1326(b).

We recommend modifying this section of the rule as follows:

Except where preempted by law, identify the eligibility of rivers...

Section 219.10 Multiple Uses

Section 2(a) of the Wilderness Act states that the administering agency shall protect designated Wilderness by preserving its wilderness character. Section 2(a) also states “. . . *wilderness areas... shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness*” and “. . . *wilderness areas... shall be administered... for the gathering and dissemination of information regarding their use and enjoyment as wilderness.*” [emphasis added]

Section 4(b) of the Wilderness Act also states:

...Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

Similarly, Congressional direction found in the Wild and Scenic Rivers Act provides for protecting and enhancing the values that caused the river to be included in that system. However, the Act continues “. . .*without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values.*” [emphasis added] In addition, the Act does include Congressional direction to protect “*rivers eligible for inclusion in the national wild and scenic rivers system*” as stated in the proposed rule.

By referring *only* to “protection” in sub-sections (iv) and (v), the proposed rule inappropriately reduces both Acts to a single protective purpose. In addition, in stating that plans must “*protect the ecologic and social values and character*” (219.10(b)(iv)), the rule inserts new terminology and direction not found in the Wilderness Act. As such, it appears the Service is infusing agency *policy* into a rulemaking intended to establish a *procedural framework* for planning.”

The final rule should also include provisions for land exchanges (ANILCA Section 1302), conveyances (ANILCA Title IX) and boundary adjustments (ANILCA Section 103). The planning regulations should also recognize ANILCA Title XI – *Transportation and Utility Systems In and Across, and Access Into, Conservation System Units* for the permitting and development of transportation and utility system corridors and general public access in the case of designated Wilderness and Forest Service Monuments in Alaska. Access to inholdings within National Forests in Alaska (ANILCA Sections 1110(b) in the case of conservation system units and 1323(a) for the remaining National Forest lands) and recognition of the public’s rights of access, including motorized access, for subsistence activities (ANILCA Section 811) and general access to conservation system units (ANILCA 1110(a)) should be included in the final planning regulations. Recognition of the access provisions in Title XI in the final planning regulations is particularly important since the Forest Service has never promulgated regulations to implement the permitting procedures and protections found there.

In closing, as a body that strives to protect the rights of Alaskan to use and access federal lands within Alaska as provided for in ANILCA, the Commission hears from concerned citizens on a regular basis that, "...I didn't hear about that issue." or "...we need assistance on these issues.". We encourage the Forest Service to revise the proposed regulation at **§219.53** to broaden the scope of who may file an objection to a plan, plan amendment or plan revision. Provisions should also be made for an individual to submit an objection verbally. Definitions found in **§219.62** define *formal comment* as "Written comments submitted to, or oral comments recorded by, the responsible official...." Therefore, we believe that provisions need to be made for the filing of an objection or protest orally.

To have a truly transparent process any concerned party should be afforded the opportunity to comment at any point of the public process when comments are being sought. Opportunity to object to a plan, plan amendment or plan revision should not be limited only to those who previously submitted "substantive formal comments." This is particularly true when the proposed regulations provide no definition or even guidance on what constitutes a "substantive" comment.

We appreciate the opportunity to comment. We repeat our request for an additional 60 day comment period to allow public examination and analysis of the *Science Review*.

Sincerely,



Stan Leaphart
Executive Director