

**CONSOLIDATED DECISION
FOR APPEALS OF THE
CHUGACH NATIONAL FOREST
REVISED LAND AND RESOURCE MANAGEMENT PLAN**

/s/ Gloria Manning
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6/21/2004
Date

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Procedural Background

Decision under Appeal, Appellants, and Intervenors

This is my consolidated decision on the appeals of the Regional Forester's *Record of Decision* (ROD) for the *Final Environmental Impact Statement* (FEIS) and *Revised Land and Resource Management Plan* (Revised Plan, RP) for the Chugach National Forest in Alaska. The Regional Forester of the Alaska Region, Dennis E. Bschor, signed the ROD approving the Revised Plan on May 31, 2002. His decision was subject to appeal pursuant to the Code of Federal Regulations (CFR) at 36 CFR 217 (*Appeal of Regional Guides and National Forest Land and Resource Management Plans*).

The Revised Plan “. . . was developed under direction of 36 CFR Part 219 (1982, as amended)” (ROD, p. 1). The 1982 planning regulations, referenced by the Regional Forester, were last published in the CFR July 1, 2000.

The Chugach plan revision and appeal process were underway from April 1998, with the completion of the Analysis of the Management Situation (RP, p. 2-1), through the May 2002 signature of the ROD. Thus, the process spanned the evolution of new planning regulations adopted in November 2000.

Appellants sometimes referenced the 2000 planning regulations (e.g., NOA #0053, pp. 1 - 3; NOA #00361, p. 1; and NOA #00363, p. 1). As a result, some of the citations are inaccurate; however, I believe that many of these concerns merit consideration because the topics raised may be required under the National Environmental Policy Act (NEPA) or the National Forest Management Act (NFMA). As appropriate, they are addressed in my decision, such as portions of the issue concerning “Collaboration and Public Participation.” While this confusion is understandable, the ROD and associated documents cannot be evaluated against the requirements of the November 2000 planning regulations. In keeping with the Regional Forester's statement in the ROD (p. 1) that the Chugach Revised Plan was developed under the 36 CFR 219 regulations of the 1982 planning rule, I am using those regulations as the basis for my findings. My review of the appeal issues focused primarily on compliance of the ROD, Revised Plan, and FEIS, with the laws, regulations and policies under which these documents were prepared. Appendix A of this consolidated appeal decision contains applicable excerpts from laws, regulations and policies, relevant to appellants' concerns.

The appellants and appeal numbers are listed in Appendix B. Three hundred and sixty two (362) timely appeals were submitted and issued a tracking number. Of these, 313 were nearly identical letters or petitions raising several key issues; 48 were unique or otherwise individual appeals, raising the same or similar issues to the 313 appellants. Two appeals were dismissed: one due to eligibility and one because the appeal was withdrawn. The remaining 360 appeals were considered in my decision. The Regional Forester transmitted the appeal records to the Chief of the Forest Service as required by 36 CFR 217.15(a).

Three hundred and eleven (311) requests to intervene were filed by interested persons, or potentially affected persons or organizations. Intervention status was granted for all timely

requests in accordance with 36 CFR 217.14(a). Several of the requests were for intervention status on multiple appeals. The intervenors are listed in Appendix C. Each appellant and intervenor is receiving a copy of this decision. This decision is also being posted on the Forest Service Internet site at: <http://www.fs.fed.us/emc/>.

Summarized Requests for Relief and Stays

Collectively, the appellants requested the ROD be withdrawn or reversed with direction given to the Regional Forester to complete additional analysis.

None of the appellants requested a stay of the Regional Forester's decision approving the ROD.

Summary of Issues

The appellants raised numerous overlapping concerns that are categorized as follows: Planning and Process, Wildlife Effects Analysis, Air Quality and Soil Effects; Recreation and Wilderness, Access and Travel Management; and Other Issues. The appellants' individual issues are organized within these categories. Specific responses to each issue are provided. Appeal issues and contentions are found in Appendix D.

Closure of the Crescent/Carter Lake area to winter motorized activities was an issue raised in many of the appeals. On January 14, 2003, the Regional Forester withdrew that portion of the ROD closing this area to winter motorized access. The Regional Forester directed the Forest Supervisor to take another look at the closure to ensure fair consideration and disclosure with all potentially affected parties. Until this site-specific analysis is completed, the Crescent/Carter Lake area will remain open to winter motorized activities, as it was under the 1984 Chugach Forest Plan. On January 15, 2003, the Forest Supervisor executed an Order Modification reopening the Crescent/Carter Lake area to winterized motor activities. It is my understanding that scoping for this project has begun.

My review considered all of the appellants' concerns, even though they may not be presented verbatim or in the same format as they are in the appeals. I have also considered intervenor comments.

Decision

With regard to all of the issues, the Regional Forester met the requirements of Federal law, regulation, and policy with minor exceptions for wild and scenic rivers, soils and air quality. Therefore, I affirm the Regional Forester's decision to select the Preferred Alternative as described in the FEIS and approve the Revised Plan for the Chugach National Forest, as related to the issues addressed in this appeal decision. The relief granted relates to evaluations for wild and scenic rivers, soil, and air quality issues.

I am directing the Regional Forester to provide additional information from the planning record for the nine rivers (watersheds) identified in the table on page 56 of this decision, if it exists or, if

it does not exist, to reevaluate the eligibility of these rivers based on the process outlined in *Guidelines for Assessing Outstandingly Remarkable River Related Features*. Within 6 months this information is to be provided to this office and the appellants. If additional eligibility evaluation is required, any rivers subsequently found eligible are to be protected in the same manner as those rivers the Regional Forester determined suitable, with the protections maintained until such time as suitability is conducted. Eligibility is an inventory and does not require a decision under the NEPA.

I am instructing the Regional Forester to clarify access management direction relevant to cross-country travel in the Copper River Delta area. The clarified direction must provide for monitoring OHV effects to the soil resource including areas where OHVs are allowed to operate across the landscape, such as those identified in the Revised Plan on the Copper River Delta geographic area.

Also, I agree with the Regional Forester's determination that more detailed air quality analyses needs to be made so air quality changes over time can be detected. The Regional Forester plans to work with the State to assure responsible compliance with EPA's air quality standards.

The Regional Forester is instructed to resolve inconsistencies between the Motorized Recreation maps and Revised Plan as it relates to motorized access. Resolution must incorporate any remaining OHV inconsistencies, the results of the January 14, 2003 withdrawal of a portion of the ROD, and the subsequent site-specific analysis results. In addition, an Errata needs to correct the "Roaded Natural" (RN) classification in the Prescription Activity Matrix following Appendix Page F1 of the Revised Plan.

If they choose, appellants have the opportunity to participate in the evaluation of additional project-level planning, monitoring, evaluation, and future amendments of the LRMP, including amendments proposed as a result of additional analysis needed to comply with my instructions.

This decision is the final administrative determination of the Department of Agriculture unless the Secretary, on her own initiative, elects to review the decision within 15 days of receipt (36 CFR 217.17(d)). By copy of this letter, I am notifying all parties of this decision.

Chugach National Forest Revised Plan

The original Land and Resource Management Plan (Forest Plan) for the Chugach National Forest was approved in 1984. Forest Plans are required to be revised every 15 years; the Revised Plan at issue in these appeals satisfies this requirement.

The Revised Land and Resource Management Plan (Revised Plan) was prepared under the Multiple-Use Sustained-Yield Act of 1960 (MUSYA) (16 U.S.C. 528 et seq.; P.L. 86-517); the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) (P.L. 93-378) as amended by the NFMA of 1976 (16 U.S.C. 1600 et seq.; P.L. 94-588) and its implementing regulations (36 CFR 219); and the NEPA of 1969 (42 U.S.C. 4321 et seq.; P.L. 91-190) and its implementing regulations (40 CFR 1500-1508).

The Revised Plan establishes a framework for decision-making on the Chugach National Forest, using programmatic direction as a gateway for compliance with environmental laws at the project level. The ROD and the Revised Plan explain what the Revised Plan is and what it is not (ROD, pp. 1, 4, and 47; RP, pp. 1-1 and 1-7). The Revised Plan defines Forest-wide goals and objectives (RP, pp. 3-1 to 3-12). These goals and objectives are discussed in greater detail throughout the remainder of the Revised Plan, along with Standards and Guidelines (RP, pp. 3-20 to 3-48).

The Revised Plan does not mandate any project decisions. The Standards and Guidelines contained in the Revised Plan operate as parameters within which projects must take place. Approval of any project must be consistent with the Standards and Guidelines. If a project cannot be conducted within these parameters, the project cannot go forward (see *Swan View Coalition v. Turner*, 824 F. Supp. 923, 933 (D. Mont. 1992)), unless the plan is amended to allow for project execution. The Regional Forester states:

The decision does not directly authorize any new ground disturbing activities or projects, but rather ground disturbing activities and projects will be subject to additional site-specific environmental analysis that will tier to the FEIS for the Revised Forest Plan (ROD, p. 4).

Decisions on proposed projects will not be made until completion of environmental analysis and documentation for the specific project, in compliance with the National Environmental Policy Act (ROD, p. 47).

The Revised Plan also describes the monitoring strategy (RP, pp. 5-1 to 5-18). The monitoring strategy includes implementation, effectiveness, validation, and baseline monitoring. The implementation monitoring addresses whether or not projects are carried out in compliance with plan direction, project design, and the project-level NEPA decision. The effectiveness monitoring addresses the effectiveness of the Revised Plan's Standards and Guidelines to accomplish the goals and objectives. The validation monitoring addresses whether the assumptions used to develop the Revised Plan are still valid. And, the baseline monitoring addresses current or historic conditions (RP, p. 5-1). Table 5.1 of the Revised Plan identifies monitoring questions, measurements, and general methods, as well as category, frequency and precision (RP, pp. 5-6 through 5-18).

The continuing cycle of plan approval, project implementation, monitoring and evaluation, amendment, and revision allows a Forest Plan to be responsive to changing social and environmental conditions. A Forest Plan, approved at one point in time, is never the "last word" on management of a national forest, grassland, or prairie, but can be amended as needs for changes arise.

Response to Concerns by Issue Category

PLANNING AND PROCEDURAL ISSUES

Alaska National Interest Lands Conservation Act (ANILCA)

Traditional Activities

Contention:

Many appellants assert that traditional activities such as recreational snow machining were defined *too broadly* in the Revised Plan, and therefore the Forest Service definition is inconsistent with ANILCA Section 1110(a) and violates the Wilderness Act (NOA #0011, p. 10 and p. 4). ” (NOA #'s 0023; 0026;0028-0040; 0056-0204; 0206-0220; 0221-0344; 0346-0355, all p. 1); (also NOA #0010, p. 1, NOA #0011, p. 4, 10, 11; NOA #0017, pp. 18-19, 38).

Other appellants assert that traditional activities were defined *too limited* in the Revised Plan and therefore the Forest Service definition is contrary to ANILCA Section 1110(a) (NOA #0004, p. 2; NOA #0009, p. 1; NOA #0019, p. 7; NOA #0025, p. 2; NOA #0045, p. 6; NOA #0052, p. 2). Some appellants believe closures to motorized vehicles are in direct defiance of ANILCA (NOA #0001, pp. 2-3, NOA #0054, p. 6-7; NOA #0055, p. 3; NOA #0363, p. 1).

Findings:

Sensitivity to ANILCA is evident throughout the ROD, and is highlighted under “Findings Required by Other Laws and Authorities” (ROD, pp. 40 through 42). The Revised Plan (Appendix F, p. F-1) includes a “Management Prescription Activity Matrix” including “Use and Occupancy Activities.” The term “Traditional Activities,” as used in the Revised Plan, is specifically defined in the FEIS (p. Glossary-51), referencing both ANILCA (Section 1110(a)) and the FSM 2326.1-6.

ANILCA defines traditional activities “. . . the Secretary shall permit, on conservation system units . . . the use of snow machines, motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities (where such activities are permitted by this Act or other law) and for travel to and from villages and homesites” (Section 1110(a)).

Section 102(4) of ANILCA defines Conservation System Units as “any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument including existing units, units established, designated, or expanded by or under the provisions of this Act, additions to such units, and any such unit established, designated, or expanded hereafter.”

FSM 2326.1-6 defines traditional activities in wilderness to include, but not be limited to, recreation activities such as fishing, hunting, boating, sightseeing, and hiking. Such uses are subject to reasonable regulation to protect natural and other values of wilderness from damage. Traditional uses, which are legal, shall be allowed to continue in wildernesses where such use has occurred, and no proof of pre-existing use will be required in order to use a snow machine, motorboat, or airplane. No permits will be required in order to use a snow machine, motorboat, or airplane. No permits will be required by the general public to use these specific types of motorized transport or non-motorized surface transportation methods for traditional activities that are otherwise allowed in areas not specifically closed to their use. Neither the Forest Service nor ANILCA define *how* snow machines may be used. FSM 2328 addresses management of wilderness areas in Alaska.

Forest Service closures do not prohibit the use and operation of snow machines (snowmobiles and all motorized over snow vehicles, including off-highway vehicles) within a highway right-of-way granted to the State of Alaska. The applicable laws of the State of Alaska govern use and operation of snow machines within such highway rights-of-way.

I find the Regional Forester, in his approval of the Revised Plan, was particularly sensitive to the unique Alaska situation with regard to the definition of traditional activities, including snow machining in wilderness areas. I find the definition questioned by the appellants neither too broad nor too limited, but rather it is appropriately used in the Revised Plan in accordance with law, regulation, and policy. I find the ROD and Revised Plan consistent with provisions of ANILCA, the intent of Congress concerning Alaska wilderness as expressed in ANILCA, and consistent with the Wilderness Act.

Subsistence

Contention:

The Revised Plan fails to adequately manage the subsistence use of motorized vehicles (NOA #0011, pp. 4-5, 17; NOA #0361, p. 1)

Findings:

While ANILCA requires consideration of the effects of site-specific, project-level management proposals on subsistence uses, subsistence use, evaluation, and determination are not required for approval of a Revised Plan. A forest plan is a programmatic-level decision and is not a determination whether to “withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition” of National Forest System (NFS) lands. However, the Chugach National Forest made a forest-wide evaluation and determination for the Revised Plan to facilitate future project level planning and decision-making in compliance with Section 810 of ANILCA. The Revised Plan (pp. 3-41 and 3-42) includes standards for “access for subsistence activities on National Forest System lands” including traditional use of motorized vehicles.

During the alternative development process, people in the community of Cordova proposed that winter motorized access for subsistence uses in the Power Creek area not be allowed because

people like to cross-country ski in that area. The Revised Plan's preferred alternative applies the Primitive prescription to Power Creek, a prescription that would not allow motorized access. Although Section 811 of ANILCA allows "rural residents engaged in subsistence uses to have reasonable access to subsistence resources on public lands" and "shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents subject to reasonable regulation," where there is a compelling need and subsistence resource activities will not be significantly affected (ANILCA, Section 810), motorized use for subsistence activities can be prohibited. Therefore, access consistent with Section 810 is provided for Power Creek. In addition, ANILCA provides specific direction on limiting motorized access for subsistence if there are resource impacts.

I find the Regional Forester is in compliance with subsistence use requirements of ANILCA Sections 810, 811, as well as Section 1110.

Other ANILCA-Related Issues

Contention:

Appellants contend the Forest Service should have considered a recommended Wild and Scenic River corridor of 1/2 mile, consistent with the mileage allowance for rivers added to the National System under the ANILCA (NOA #0027, p. 15; NOA #0012, p. 15; and NOA #0017, p. 13).

Numerous ANILCA requirements are also raised by appellants concerning wilderness recommendations, the allocation of lands for motorized and non-motorized use, and the "...original intent of Congress to provide wilderness for Alaskans and the American people" (NOA #'s 0023; 0026; 0028-0040; 0056-0204; 0206-0220; 0221-0344; 0346-0355, all p. 1).

And, appellants question the validity of a road easement to the Chugach Alaska Corporation (CAC) (NOA, #0014, p. 2).

Findings:

Nothing in the Wild and Scenic Rivers Act or the ANILCA directs the Forest Service to consider or recommend a 1/2-mile river corridor boundary for eligible or suitable rivers in Alaska. This issue is further addressed under "Wild and Scenic Rivers" below.

The issues of wilderness and land allocations are specifically addressed in "RECREATION AND WILDERNESS ISSUES" and "ACCESS AND TRAVEL MANAGEMENT ISSUES" below.

A settlement between Chugach Natives Incorporated (CNI), the predecessor to CAC, under Section 1430 of ANILCA has the effect of pre-existing law, as subsequently described in the "CNI/CAC Easement Validity" issue.

In addition, the Department of Agriculture and the Department of Justice have entered into an agreement with the State of Alaska settling the state's lawsuit challenging the applicability of the

roadless rule in Alaska. The lawsuit challenges the consistency of the roadless rule with provisions of ANILCA. Under the terms of the settlement agreement, USDA agrees to publish in the Federal Register, an Advance Notice of Proposed Rulemaking to permanently modify the application of the roadless rule to both the Tongass and the Chugach National Forests. Changes in the roadless rule would not affect any of the environmental protections established by the Chugach Revised Plan.

Plan Integration

Contention:

The Forest Service failed to make an integrated plan for all the land and resources of the Chugach National Forest including the tidelands and submerged lands within the National Forest boundary (NOA #s 0010, p. 5; 0011, p. 3; 0017, p. 39; 0019, pp. 12-13).

The Forest Service did not adequately recognize the importance of interagency coordination in managing adjacent lands (NOA #0013, p. 7).

Findings:

The Forest Service planning regulations at 36 CFR 219.1(b) require that Forest Plans guide all natural resource management activities and establish management standards and guidelines for NFS lands. The “planning area” is defined as “the area of the National Forest system covered by a regional guide or forest plan.” (36 CFR 219.3). The FEIS defines the “planning area” as “the area of the National Forest System controlled by a decision document” (FEIS Glossary, p. 31). The regulations at 36 CFR 219.6 and 219.7 provide for coordination with other Federal agencies, State and local governments, and Indian tribes, as well as “early and frequent public participation” (Appendix A).

Management standards and guidelines are identified in the Revised Plan (Chapters 3 and 4), and described in the ROD (pp. 5 -6). They will guide the integrated “multiple-use goals and objectives for the Forest which are to sustain both human uses and enjoyment of the forest resources and the wild character of the Chugach” (ROD, p. 5). The “planning area” consisted of NFS lands established as the Chugach National Forest, consistent with the regulation requirements at 36 CFR 219.3.

At the time of the revision, the question of ownership was under litigation (FEIS, Appendix K, pp. K-15 to K-16). By agreement with the State of Alaska, “. . . the FEIS and Revised Plan address lands above mean high tide. If the Court finds in favor of the U.S. Government, submerged lands within the boundary of the Chugach National Forest would be managed consistent with adjacent federal uplands” (FEIS, appendix K, p. K-16).

The Forest Service and the State of Alaska do not agree and the Forest Service is acceding to state regulation of submerged lands until the disagreement is resolved (ROD, p. 45). The Regional Forester, in approving the Revised Plan, recognizes issues exist concerning uses and activities on waters of the Prince William Sound and within the administrative boundary of the Forest. Nonetheless, his decision does not violate law, regulation, or policy in this regard.

Plan integration and interagency coordination are evident in various parts of the record. For example, the FEIS describes the consultation process used in Chapter 1, pages 1-13 and 1-14. It notes that both the planning team meetings and the related forest leadership meetings were open to the public:

At key points during the planning process additional consultation meetings were conducted with representatives of other state and federal agencies and Native Alaskan tribes [who] were given an opportunity to review our current planning direction and offer suggestions or changes that would make it more compatible with the management strategies on their lands.

The purpose of the consultation meetings was to encourage dialogue between agencies, tribes and major landowners to promote coordination of various land management strategies and to integrate scientific and agency knowledge about problem situations in a systematic fashion.

Some agencies and landowners assigned one or more of their staff to attend all planning team meetings and work sessions. ... The Alaska Department of Natural Resources, Alaska Department of Fish and Game and the U.S. Fish and Wildlife Service assigned representatives to attend almost all planning team meetings.

The FEIS includes a special section concerning “Potential Conflicts with Goals or Objectives of Other Agencies and Landowners” (FEIS, Chapter 3, pp. 3-571 and 3-572). This includes a summary “. . . to help define areas of potential difference between the Forest Service policies, management, and responsibilities, and those of other agencies.” The areas included mining activities, management area prescriptions, state-owned tideland areas, float lodges and motorized recreation, private in-holding access, helicopter use, and others.

Potential conflicts are articulated in the FEIS (Chapter 3, p. 3-571). While clearly acknowledging potential conflicts, the Regional Forester’s decision shows a high level of coordination with appropriate state and federal agencies, as well as Tribal Governments, Native Corporations, and the general public. The decision did not violate law, regulation, or policy regarding plan integration or interagency coordination.

The appellants’ primary concern with interagency coordination and land management adjacent to the Chugach, is couched within a broader concern of wilderness representation across the forest and on adjacent lands, especially those of the Kenai National Wildlife Refuge, Kenai Fjords National Park, Chugach State Park, and the Wrangell-Saint Elias National Park (NOA #0013, p. 7). These issues are addressed specifically in “RECREATION AND WILDERNESS ISSUES” below.

The following is the Forest response to a comment about “complementary land use prescriptions for National Forest lands that are adjacent to other ownerships” in the FEIS (Appendix K, p. K-2):

While the Forest has strived to ensure the management prescriptions do not adversely affect adjacent land, national forest management is inherently different than the management of a National Park, National Wildlife Refuge, or tribal lands. Many times National Forest System lands provide opportunities for activities and uses that are not available on adjacent lands.

One of the five Basic Principles of the Proposed Revised Forest Plan was the coordination of any proposed management actions with the appropriate local, state or tribal governments, as well as other federal agencies (Revised Plan, Chapter 3, Forest-wide Direction). This has been done throughout the planning process, including meetings to discuss the revised Preferred Alternative.

The Regional Forester clearly considered the objectives of other agencies, as well as their plans and policies. I find that plan integration and interagency coordination were done with an understanding of, and adherence to, requirements of law, regulation, and policy.

Alternatives

Contention:

Year-long non-motorized winter access areas in the final decision are not expressed in any of the alternatives or in the draft preferred alternative the public was presented with during the scoping process (NOA #s 0015, pp. 2-3; 0051 p.2). Not a single alternative considered in the forest planning process would have closed the entire Forest to recreational snow machine users (NOA #0017, pp. 17 - 18).

The EIS does not provide enough information to distinguish between the alternatives (NOA #0019, p. 8). None of the alternatives in the DEIS resembled the plan that was ultimately adopted. The public had no opportunity to address this plan in comments (NOA #0017, p. 3).

One appellant raised a concern about distinguishing between alternatives within the larger context of wilderness recommendations for the Copper River Delta (NOA #0019, pp. 7 - 8). In discussing general concerns about wilderness, the appellants contend insufficient “information to distinguish between alternatives [with respect to] Roaded ROS classes along the Copper River Highway and Carbon Mountain Road” (NOA # 0019, p. 8). These roads, the ROS, and the wilderness recommendations are discussed below in “RECREATION AND WILDERNESS ISSUES” and “ACCESS AND TRAVEL MANAGEMENT ISSUES.”

Findings:

Requirements for the formulation of alternatives are described in the planning regulations at 36 CFR 219.12(f) and NEPA implementing provisions at 40 CFR 1502.14 (Appendix A).

About 30 comprehensive alternatives were identified through the application of management area prescriptions, in response to the “situation statements” developed early in the planning process (FEIS, Chapter 2, p. 2-11). This rigorous process is thoroughly discussed in the FEIS (Chapter 2, pp. 2-1 to 2-46). It considered six “situation statements” or issues, identified in the FEIS (Chapter 1, pp. 1-4 to 1-11) and summarized in the ROD (pp. 22-25). The 30 comprehensive alternatives that are considered represent public interests where there are conflicts and significant disagreement about solutions. The planning team reviewed all 30 alternatives and recommended a manageable number that addressed the range of situations identified for the Revised Plan (FEIS, Chapter 2, p. 2-11).

The Regional Forester describes eight alternatives that are addressed in detail, including the No Action and the Preferred Alternative (ROD, pp. 28-35). The FEIS (Chapter 2, Alternatives, pp. 2-26 to 2-46) discusses each in detail, and the environmental effects for each are described (Chapter 3, Environment and Effects, pp. 3-1 to 3-570).

I find that winter access was discussed and presented to the public in the alternatives; specifically, Alternatives D and E (DEIS, Vol. II, pp. F-59 and F-65). The Crescent Lake Trail was closed year-round under the No Action alternative, and partially closed under Alternatives D, E, and F (DEIS Vol. II, pp. F-30, F-60, F-66, and F-72). The Moose Pass Cooper Landing Winter Route (Old Sterling Highway) was closed to snow machines year-round under Alternatives D, E, and F (DEIS Vol. II, pp. F-61, F-67, and F-73).

The FEIS provides a summary of the changes made to the DEIS (Preface, pp. xxviii and xxix). The Revised Plan provides a summary of changes made in the Proposed Revised Plan (Chapter 1, p. 1-2). The Regional Forester’s ROD is clear where it deviated from the recommendations of the FEIS preferred alternative (ROD, p. 8 and p. 12). The Revised Plan is within the range of alternatives studied in detail.

The Regional Forester’s decision fully complies with both the relevant regulations at 40 CFR 1502.14 and at 36 CFR 219.12(f).

The alternatives are consistent with resource integration and management requirements. They were distributed between a minimum and maximum resource potential to the extent practicable, as required by the regulations at 36 CFR 219.12(f). Impacts are presented in comparative form providing a basis for choice among options by the decision-maker. Substantial attention is given to each alternative considered in detail, and a preferred alternative is identified.

Appeal Deadline

Contention:

Appellants contend that the Forest Service failed to properly notify the public of the deadline for submission of a Notice of Appeal and they had inadequate time to appeal (NOA #s0046, p. 5 and 0025, p. 2).

Findings:

The requirements for giving notice of decisions subject to appeal are detailed at 36 CFR 217.5, including distribution of the appropriate decision document and publication in a newspaper of general circulation.

A legal notice in accordance with 36 CFR 217 was published on July 26, 2002 (Record #39658). It included the deadline for submission of a Notice of Appeal, as well as where to send it, required content, and contact information. The ROD, FEIS, and Revised Plan were circulated in hard copy to interested parties and the ROD provides clear public notification of appeal rights and timeframes (pp. 46-47). It includes a requirement for written notice of appeal within 90 days, the filing address, and what should be included to conform with the requirements at 36 CFR 217.9.

In addition, all relevant information was also made available on the www at: <http://www.geographynetwork.com/chugach/> and <http://www.fs.fed.us/r10/chugach/>.

All appellants, including NOA #0046 and NOA #0025, met the time requirement. The latter two were both informed by letter of December 30, 2002 that their appeals were filed in a timely manner.

I find the Regional Forester fully complied with the regulations at 36 CFR 217.5 concerning notice of decisions subject to appeal, and that the public was properly notified of deadlines.

Collaboration and Public Participation

Appellant concerns center around two topics: (1) the “majority” of comments were not reflected by the decision and (2) participation by, and collaboration with, affected communities did not occur.

Public comments

Contention:

The Forest Service “. . . casual[ly] discount[ed] the vast majority of comments made by local residents, Alaskans, and citizens around the country who favor protecting the wild character of the Chugach . . . [including failure] to recommend wilderness protection for the Copper River Delta despite requests for wilderness from over 30,000 citizens, 3,000 Alaskans, and a majority of local Cordovan fishermen and residents who commented on the DEIS . . . recommendations to protect biologically critical parts of Prince William Sound . . . and wilderness designation for designated critical Brown Bear habitat as well as the critical salmon habitat of the upper Kenai River watershed” (NOA #s 0023; 0026; 0028 - 0040; 0056 - 0204; 0206 - 0220; 0221 - 0344; 0346 - 0355, all p.1).

Input by local governments such as the Kenai Peninsula Borough, City of Soldotna or the City of Seward was basically ignored by the Planning Team and Deciding Officer (NOA #0015, p. 3).

The decision to close the Carter/Crescent Lake area to snow machines did not take public comments into account (NOA #0003, p. 1).

Findings:

The primary requirements for collaboration and public participation are described in the planning regulations at 36 CFR 219.6 and NEPA implementing provisions concerning comments at 40 CFR 1503, both described in Appendix A. Several appellants also cited sections of the 2000 planning regulations (36 CFR 219.12 and 219.16) (NOA #0053, pp. 1 - 2; #0361, p. 1; and #0363, p. 1).

Input by local governments (cities and boroughs), and individual residents comprised most of the interest in motorized and non-motorized use on the Kenai Peninsula. Comments are evident in the FEIS (pp. K-16 and K - 17) under “Recreation and Tourism.”

As noted in the FEIS, “the response process is designed to . . . capture the meaning of each individual comment within that response, and provide the ID Team and decision maker information about the issues in an understanding form” (Chapter 6, p. 6-2). However, neither general public comment nor local community input constitutes a voting process. Public comments are analyzed to determine variety and intensity of viewpoints, facilitating the making of an informed decision by the responsible official, in this case the Regional Forester. I find that the public comments are considered individually and in groups to determine common areas of concern, in accordance with 36 CFR 219.6(e) (FEIS, Appendix K).

Community Participation

Contention:

No meetings were held in the communities most affected by motorized closure after the decision to close these areas had been made (NOA # 0001, p. 2). The residents of the communities of Moose Pass and Cooper Landing were not notified of meetings to discuss the issue of closing areas to motorized use, informed that major changes were being proposed, or that another draft was released for formal comment. Regulation 36 CFR 219.12 was not adhered to in the public scoping process (NOA #s 0009, p. 2; 0015, pp. 2 and 4; 0021, p. 2; 0024, p. 2; 0045, pp. 2-3; 0047 pp. 1-2; 0049, p. 2; 0050, p. 1; 0051 p.2).

The responsible official did not provide early, frequent and publicized opportunities to participate in the Final Plan approval process as provided for in 36 CFR 219.12 (NOA #s 0025, p. 1; 0045, pp. 2-3). The meeting conducted in Seward was not well advertised, especially to residents in Moose Pass (NOA #0045, pp. 2-3).

Findings:

Requirements for “early and frequent participation by communities” are found in the 2000 planning regulations, at 36 CFR 219.12, and discussed in the “Procedural Background.” The applicable public involvement and collaboration requirements are found in the 1982 regulations, under which the Revised Plan was prepared.

The public was encouraged to participate at all stages during the process. Public participation was invited at the onset through the Federal Register publication of the Notice of Intent to revise the forest plan on April 21, 1997 (RP, p. 1-5). Both the Revised Plan (Chapter 1, p. 1-6) and the ROD (pp. 26 and 27) detail public involvement undertaken during the planning process including meetings, newsletters (Record #39029), collaborative learning workshops, use of mailing lists, web sites, and team visits to communities.

Workshops were held in Whittier, Hope, Seward, Cordova, Valdez, Girdwood, Cooper Landing, Kenai, Chenega Bay, Tatitlek, Eyak and Anchorage (ROD, p. 26). Examples of revision-related public meeting notes exist in the record (Record #39175, 17pp). Open house meetings were conducted in Whittier, Moose Pass, Girdwood, Cordova, Anchorage, Valdez, Cooper Landing, Hope, and Soldotna (FEIS, Chapter 6, p. 6-1). The purpose was to share with the public the revision-associated documents, maps, “and other tools such as the compact disc and interactive web available to the public to help formulate and submit comments” (FEIS, Chapter 6, p. 6-1).

The FEIS devotes an entire chapter to “Public Participation and Comment on the DEIS and Proposed Revised Plan” addressing the public comment period, follow-up meetings, content analysis, and comment response. It also provides a summary of public comments in compliance with the NEPA regulations at 40 CFR 1503.1 (FEIS, Chapter 6, pp. 6-1 through 6-7). The FEIS at Appendix K describes substantive comments received on the DEIS and proposed revision. It also includes comment letters in compliance with requirements at 40 CFR 1503.4.

Comments were invited from other Federal, State and local agencies. They also were solicited from the public in general, as well as potentially interested or affected persons or organizations.

A Government Accounting Office (GAO) Report “Information on the Process and Data Used to Revise the Chugach National Forest” was completed in July 2002 in response to a request from The Honorable Frank H. Murkowski, Senate Committee on Energy and Natural Resources, and The Honorable Don Young, House of Representatives (Record #39666, 14 pp.) The GAO reviewed “actions the Chugach took to solicit and respond to key public concerns about the plan’s revision.” The GAO noted the Forest actions included:

(1) distributing frequent newsletters . . . , (2) maintaining a Web site on the Internet with links to key planning documents and making available compact discs containing these documents, and (3) holding over 100 meetings in which the public was invited to define key issues and formulate alternatives. These extensive actions went beyond those required under the agency’s planning process and those used in previous forest planning exercises (Record #39666, p. 7).

I find the Regional Forester’s decision complies with relevant regulations concerning collaboration and public participation.

Many of the comments associated with this issue are couched within larger concerns about wilderness recommendations and motorized closures that are discussed in more detail in “RECREATION AND WILDERNESS ISSUES” and “ACCESS AND TRAVEL

MANAGEMENT ISSUES” below. Concerns about adjacent land and water areas are addressed in “Plan Integration”.

Socio-Economic Impact Analysis

NFMA economic analysis requirements

Contention:

Appellants contend the economic analysis was not adequate, did not seek local business owner input, and “. . . violated 36 CFR 219.21 Social and Economic Suitability.” Appellants assert the Forest Service failed to adequately research and document the economic and social impact these closures will have on the Moose Pass Community” (NOA # 0016, p. 4; NOA # 0045, p.4; NOA #0053, pp. 1, 3-5; NOA #0361, p.1). Various appellants cited sections of the 2000 planning regulations at 36 CFR 219.21 (NOA #0016, p. 4; NOA #0045, p. 4; NOA #0053, pp. 1, 3-5; NOA #0361, p. 1).

Findings:

As discussed under the topic of Procedural Background, I am using the 1982 planning regulations as the basis for my findings. The social and economic stability requirements of the 2000 planning regulations are more detailed than those of the 1982 planning regulations. Appellants’ contentions, including those cited above, sometimes mixed requirements of both.

Decision to close areas

Contention:

Appellants generally felt the decision to close the Crescent Lake/Carter Lake areas along the Sterling Highway and Seward Highway from Cooper Landing to Summit Lake to Moose Pass, the Trail River Campground south of Moose Pass, the area north of Summit Lake, and the Russian Lakes Trail to Aspen Flats Cabin to all winter motorized use would have a significant negative impact on business and communities. The appellants contended there were inadequate input opportunities for business and snow machine owners (NOA #s 0009, p. 2; 0021 and 0024, pp.1-2), as well as negative effects on property value, population, and a local school (NOA #0047, p. 3).

Findings:

The Forest provided ample opportunities for input by local business owners. Documents in the appeal record show snow machine users were involved in forest planning (Record #s 38518, 38877, 39368, 39475, 38949, and 39499).

Economic and social impact analysis

Contention:

Numerous appellants contended the economic and social impact analysis for the Revised Plan was inadequate, specifically the effects on local area business during the winter months with the winter motorized closure. (NOA #0001, p.3; NOA #0004, p. 2; NOA #0015, pp. 2-3; NOA #0016, p. 4; NOA #0045, pp. 4; NOA #0046, pp.4-5; NOA #0048, p. 1; NOA #0049, p. 2; NOA #0050, p.2; NOA #0051, pp. 2-3; NOA #0054, pp. 3-4, 6; NOA #0356, p. 3; NOA #0361, p.1; NOA #0362, p. 2).

Findings:

The procedural requirements are described in the NEPA implementing provisions at 40 CFR 1502.6, 1508.8, and 1508.14, see Appendix A. The NFMA regulations at 36 CFR 219.5 require an interdisciplinary approach by the planning team, including economic and social sciences. The regulations at 36 CFR 219.12(g) (see Appendix A) require estimations and comparisons of social and economic effects in compliance with the NEPA regulations cited above.

The FEIS includes a thorough discussion of “Social and Economic Elements” (FEIS, pp. 3-508 - 3-570). This includes a detailed description of the affected environment (regional demographics, employment, income, etc.), forest resource related industries (fishing, mining, wood products, recreation and tourism), payments to states, community social and economic conditions, community demographics and employment. Included in the analysis are expected outputs for the planning period, economic effects of alternatives, present net value, receipts to the Federal Government, receipt shares to state and local government, significant resource trade offs, and opportunity costs.

Present Net Value (PNV) is addressed, based upon an economic analysis and comparison of plan alternatives (ROD, pp. 35-36). This includes “limitations on the practicality and usefulness of PNV” for non-timber forest outputs and non-market values. A roundtable discussion panel was “. . . convened to bring subject matter experts together to discuss . . . the total economic valuation of Forest market and non-market outputs” (FEIS, p. 2-14).

The FEIS also describes two community surveys carried out by Alaska Pacific University to learn about differences among communities: “Planning for the Future of the Chugach National Forest” and “Your Community’s Quality of Life” (FEIS, pp. 3-535 - 3-541). The Appeal Record includes an Executive Summary of the Quality of Life Study (#38067), the Planning for the Future survey results (#38068), and the Quality of Life Community Profile for Moose Pass (#38065). The two opinion surveys go beyond the requirements of both 36 CFR part 219 and 40 CFR parts 1502 and 1508. The FEIS also addresses community resiliency, subsistence, and environmental justice.

The FEIS underwent a “science consistency evaluation process that considered the quality of the information used, how the information was used, and whether risk and uncertainty were acknowledged” (ROD, p. 37). Included in that evaluation was “A science consistency evaluation

was completed on several sections of the DEIS including, recreation/tourism, social/economic . . .” And, “Changes and additions were made in the FEIS to respond to these evaluations” (FEIS, pp. 2-14 - 2-15).

The review of effects on subsistence and traditional activities (ANILCA Sections 810, 811 and 1110) were discussed separately in the “ANILCA” issue in this decision.

I find the Regional Forester’s ROD to be consistent with both the relevant NEPA and NFMA regulations concerning socio-economic impact analysis.

Civil rights impact analysis

Contention:

No scientific study was completed to identify and address the impacts of these closures on certain user groups such as families with young children, the elderly and people with disabilities (NOA #0015, p. 4).

The Revised Plan discriminates between user groups. The public improvements including highway parking, trailheads, bridges, trail clearing and cabins are disproportionately removed to the greater number of users (winter motorized). The USDA did not state the value of cabin rentals in the EIS and therefore cannot compare motorized vs. non-motorized usage. Non-motorized users have access to five times as many days as motorized users (NOA #0054, p. 7).

Findings:

The Regional Forester addresses civil rights impacts in the ROD (p. 44). He notes that a “civil rights impact analysis for environmental or natural resource actions is part of the social impact analysis package in a necessary environmental impact statement and not a separate report” (citing FSH 1709.11). He goes on to state:

. . . the Forest Service is committed to equal treatment of all individuals and social groups in its management programs in providing services, opportunities and jobs. Because no actual or projected violation of legal rights to equal protection under the law is foreseen under the Revised Forest Plan for any individual or category of people, no civil rights impacts are reported in the FEIS.

In addition, the Regional Forester addresses accessibility requirements for persons with disabilities in the ROD (p. 44). He cites relevant laws and regulations that mandate accessibility for persons with disabilities, and affirms that “the Chugach National Forest is following the Alaska Region’s *Regional Accessibility Strategy* for recreational programs and administrative sites/facilities.”

I find the Regional Forester’s decision does not disproportionately impact families with young children, the elderly, or persons with disabilities. The decision neither discriminates between user groups nor does it disproportionately favor one over another. I find that civil rights laws and accessibility for persons with disabilities were

appropriately analyzed within the overall context of a programmatic plan revision by the Regional Forester.

Motorized and non-motorized uses are discussed separately under the topic of “Off Highway Vehicles”.

WILDLIFE EFFECTS ANALYSIS ISSUES

Wildlife Cumulative Effects

Contention:

Two appellants assert that the cumulative effects presented for wildlife are inadequate (NOA #0013, p. 8; NOA #0017, pp. 19-20). In support of their assertion, they claim that, given the differences between alternatives, the FEIS statement on page 3-272 “[t]he cumulative effects are similar in all alternatives” cannot be true.

Findings:

The regulations implementing NEPA define cumulative effects (impacts) as the combination of past, present, and reasonably foreseeable future actions and require they be discussed in proportion to their significance (40 CFR 1508.7, 40 CFR 1502.2). The FEIS discloses both the relevant affected environment and the environmental consequences for biodiversity, aquatic and wildlife (FEIS, pp. 3-45 to 3-78, 3-104 to 3-108, 210 to 3-273). The *Affected Environment* depicts the present conditions, directly and/or inherently incorporating past conditions and events (FEIS, pp. 3-78 to 3-101, 3-108 to 3-127, 3-164, 3-210 to 3-228).

The *Environmental Consequences* section of the FEIS is divided into three topic areas: *Biodiversity, Aquatic Ecosystems and Essential Fish Habitat and Wildlife* with each section describing general and cumulative effects (FEIS, pp. 3-67 to 3-69, 3-78, 3-92, 3-95, 3-98, 3-101, 3-126, 3-127, 3-272, 3-273). The *Wildlife* section is further divided into five parts which address effects including cumulative effects (FEIS, pp. 3-228 to 3-273). The past and present conditions and events are addressed in the *Affected Environment* and *Environmental Consequences* sections of the FEIS. The Revised Plan alternatives represent reasonably foreseeable future actions. The differences between the Revised Plan alternatives are discussed in *Environmental Consequences* including biodiversity, aquatic ecosystems, management indicator species; species of special interest; threatened, endangered, and sensitive species; and general effects (FEIS, pp. 3-78 to 3-101, 3-104 to 3-126, 3-228 to 3-271).

The *Cumulative Effects* and associated affected environment and environmental consequences sections clearly describes past, present and reasonably foreseeable actions that are projected to occur (FEIS, pp. 3-126, 3-127, 3-272 to 3-273).

I find that the cumulative impacts to wildlife have been adequately addressed consistent with 40 CFR 1508.7 and 1502.2.

Brown Bear on the Kenai Peninsula

Brown Bear Viability

Contention:

“[T]he Brown Bear Core and stream buffers are not adequate to provide assurance that the Kenai brown bear populations will remain viable on the forest over the next several decades to 100 years”(NOA #0013 p. 4).

“The final decision does allow utility corridors in the Brown Bear Core prescription, and thus the Forest Service’s assertion that enough protections exist within the plan to maintain brown bear viability on the Kenai Peninsula is unfounded”(NOA #0017, p.32).

“[T]he entire rationale regarding Kenai Peninsula brown bear viability and how it is protected by the Brown Bear Core prescription and other forest wide standards and guidelines is flawed”(NOA #0017, p.32, 33).

“The entire concept of a Brown Bear Core prescription has been invalidated by this 11th hour action that was done without public comment or interagency review. Because of this action, the conservation strategy for maintaining viable brown bear populations on the Kenai Peninsula portion of the Chugach is seriously flawed”(NOA #0013, p.7).

Findings:

The revised plan is guided by the NFMA regulations addressing the need to maintain species viability within the planning area (36 CFR 219.29). Specifically, the requirements outlined in sections 219.19(a)(2) and 219.19(a)(6).

The Regional Forester states in the ROD that, as part of the Chugach Forest Plan revision process, 231 species were evaluated for viability concerns. Further, the Revised Plan identifies management indicator species and the appropriate monitoring to track trends and effects for these select species (ROD, p. 38). The largest potential for impact to brown bears from Forest management and permitted activity is on the Kenai Peninsula. The Revised Plan allocates the second largest number of acres to the Brown Bear Core Management Area.

The analytical process used by the Chugach NF in meeting the viability requirements of 36 CFR 219.19 is described within the FEIS, Appendices and appeal record (FEIS, pp. 3-42 through 3-48, 3-70 through 3-73, 3-111, 3-112, 3-203 through 3-209; FEIS, Appendix, pp. B-6 through B-8; Appeal Record Document #37998). A coarse and fine filter analysis is used to ensure habitat quantity, quality, distribution and viable populations. When elements of the coarse filter do not assure viability for a given species, that species undergoes additional evaluation through a fine filter review. The FEIS notes that, “the species on the Forest were reviewed to determine if any species needed further analysis because they were at risk of not maintaining viable populations due to management. These management actions and conditions needed to ensure viable

populations are addressed by guidelines for specific species or species groups. This is the fine filter approach to biological conservation.” The process is more fully discussed within the FEIS (pp. 3-203 to 3-209). The brown bear was selected as an MIS because its population changes are believed to indicate the effects of management, and a fine filter analysis was conducted specifically for the brown bear (ROD, pp 38, 39; RP, p. 2-11; FEIS, pp. 3-204, 3-207 through 3-209).

A habitat suitability index model (HSI) is used to estimate existing and future habitat capability for the brown bear (ROD, p.39; FEIS, pp. 3-208 and 3-209). The FEIS states that, “[h]abitat viability analyses [fine filter] therefore were concentrated in those few areas that contained specialized habitat or where the few management activities were planned” (FEIS, p. 3-209). For the brown bear, 1,830,140 acres of habitat is identified on the Forest with 538,660 acres on the Kenai Peninsula specifically, and that riparian habitat is listed as required for breeding, feeding and refuge (FEIS, Table 3-47, Table 3-48, pp. 3-212, 3-213). The FEIS discusses factors affecting brown bear indicating that “increases in human activity . . . may result in increased direct human-induced deaths and that the “brown bears access to the mainland from the Kenai Peninsula is restricted by the narrow gap between Turnagain Arm of Cook Inlet and Prince William Sound” and that “no work has been done to determine whether the physical or genetic isolation of the Kenai populations exists. . .” (FEIS, p. 3-214). Productive anadromous fish habitat and large unroaded areas are listed as important habitat components. Road density, road access, camp and community waste disposal sites are other important considerations. (FEIS, p. 3-230) The FEIS further discloses that freshwater and riparian habitats on the Kenai Peninsula are of particular interest to brown bears (FEIS, p. 3-231).

The Final Plan lists three conservation options for brown bears: (1) a 750-foot buffer to provide screened foraging habitat on anadromous fish streams, (2) managing human activity, and (3) concentrating human activities within the landscape (FEIS, p. 3-230). Potential risk factors are identified for riparian and freshwater habitat (FEIS, Table 3-51, p. 2-232). The brown bear MIS analysis [fine filter] identifies the late summer season as the most critical or limiting period; this period coincides with bears concentrating along the valley bottoms and salmon streams. This season is also when human use is the highest and the location is where the most intense resource developments occur (FEIS, p. 3-234).

Results of the modeling suggest that as a result of disturbance and mortality associated with human facilities and activities, habitat effectiveness for bears has been reduced by more than 70 percent, not just on the Chugach National Forest, but on a large portion of the Kenai Peninsula. Cover near salmon streams, available breeding habitats in the alpine, travel corridors, human activities and waste disposal are all considered in the analysis for brown bears (FEIS, p. 3-235).

Based on this analysis, standards and guidelines were developed to ensure that viable populations of brown bears are able to exist on the Forest. The brown bear core area addresses “the habitat for sustainable populations of brown bears” and “limits human-bear interactions and prohibits Forest Service road construction and utility corridors” (RP, p. 4-54; FEIS, p. 3-235). Forest-wide standards help maintain brown bear population and habitat viability on the entire Chugach National Forest, and particularly on the Kenai Peninsula” (FEIS, p. 3-235). The FEIS concludes that, “[t]he likelihood of management activities affecting the viability of the brown bear on the

Forest is low because the Forest standards and guidelines will be applied to help maintain the brown bear and its habitat. The largest potential impact from Forest management and permitted activities is on the Kenai Peninsula” and “strategies and mitigation measures are in place to protect the brown bear” (FEIS, p. 3-236).

The Revised Plan specifically identifies monitoring requirement and information and research needs related to brown bears (RP, pp. 5-9, 5-20). All three items listed in the Monitoring Plan describe obtaining better and perhaps more complete information on the status of brown bear on the Kenai Peninsula (RP, p. 5-20). Based on the discussion above, I find sufficient evidence in the record indicating the Forest has met the viability requirements described in 36 CFR 219.19 including the provisions described in (a)(2) and (a)(6) where MIS and monitoring actions are identified.

Brown Bear Core and Recreation Opportunity Spectrum (ROS)

Contention:

“The maximum recreational opportunity spectrum (ROS) class for the Brown Bear Core prescription was also changed between the DEIS and the FEIS and final Plan. There was no public discussion about this and we are unaware that there was any dialogue with bear experts...This change in the prescription is not compatible with minimizing negative bear-human impacts leading to increased bear mortality” (NOA #0013, p. 4).

Findings:

The contention is correct. The Forest issued an Errata Sheet with the Record of Decision (File Code: 1920, July 23, 2002, Errata Number 1, August 9, 2002, 242 – Brown Bear Core Management Area).

The ROS is addressed as a separate issue in “RECREATION AND WILDERNESS ISSUES” below.

Brown Bear Core Area and Utility Corridors

Contention:

The appellants are concerned that the switch of direction in the ROD related to utility corridors within the Brown Bear Core Area on the Kenai Peninsula undermines the analysis and findings in the FEIS, and invalidates the findings of the ROD and Final Plan (NOA #0013, p. 3, 4, 7; #0017, p. 30; #0032, p. 1).

“The FEIS, however, analyzed a different prescription for Brown Bear Core than is described in the Record of Decision and Final Plan . . . This serious discrepancy in analysis clearly invalidates the findings of the ROD and Final Plan regarding Brown Bear Core” (NOA #0013, p. 3). “The entire concept of a Brown Bear Core prescription has been invalidated by this eleventh hour action that was done without public comment or interagency review” (NOA #0013, p.7).

“The Environmental Effects Analysis in FEIS is flawed regarding Kenai Peninsula brown bears because the discussion and rationale in the FEIS regarding brown bear protections is based on a Brown Bear Core prescription that prohibits utility corridors, when the final decision does allow utility corridors in the Brown Bear Core prescription” (NOA #0017, p.30).

“[T]he protections afforded Brown Bears on the Kenai Peninsula were dramatically weakened when the Final EIS permitted utility corridors and associated roads through critical brown bear habitat”(NOA #0032, p. 1).

Another appeal points out that the FEIS p.3-235 says that its analysis is based on a prescription specific for brown bears that “limits human-bear interactions and prohibits Forest Service road construction and utility corridors”. The appellants believe that the issue is “confused” by the prescription matrix in the FEIS that lists utility systems as “conditional” use under the Brown Bear Core prescription (J-1) (NOA #0013, p.3).

Findings:

Sensitivity to the needs and an awareness of the impacts to brown bear by requiring mitigation of temporary roads construction and closing the roads, even those that might have been used for further maintenance of the utility corridors is found in the ROD where the Regional Forester states:

In a modification to the Preferred Alternative in the FEIS, I have decided to allow for the location of new utility system corridors in the Brown Bear Core prescription. Currently, there are few utility system corridors on the Kenai Peninsula. Although there are no utility system proposals pending for the area, there may be a future need for new utility systems to meet the needs of growing communities. Therefore, I have decided the Revised Forest Plan will allow utility system corridors to be located in the Brown Bear Core prescription. However, only temporary roads needed to facilitate the development of the system will be allowed and any temporary roads will be rehabilitated and then closed to further use after completion of construction of the utility system. Any future utility system or corridor maintenance would have to be done without roads. Therefore, potential effects from the development of utility corridors are expected to be short term. A specific Transportation/Utility Systems (522) prescription was developed in the revision process and applied to existing and foreseeable corridors (ROD, p. 8).

NEPA regulations at 40 CFR 1503.4(a) directs the agency to assess, consider, and respond to comments individually or collectively in the FEIS. The appellants highlight the fact that during the comment period for the DEIS there were strong objections from scientists and the public on allowing utility corridors with the brown bear prescription (Appeal Record document #29063, p. 12; FEIS, Appendix K, comment #32, p. K-53). Appellants note that despite these objections, the Forest Service chose to place utility corridors in the Brown Bear Core prescription. They contend including or excluding utility corridors was “an 11th hour decision made without public comment or agency review” (NOA #0017, p. 32). The response to comments acknowledges that “some adjustments to the Brown Bear Core Area” were made, and that “[c]urrently there are few

corridors on the Kenai Peninsula . . . Only temporary roads are needed to facilitate construction will be allowed and they will be rehabilitated and then closed to further use after construction . . . Therefore, potential effects from the development of utility corridors are expected to be short term” (FEIS, Appendix K, p. k-54; Appeal document #39647).

The FEIS states that the brown bear core area was developed to “ address the habitat for sustainable populations of brown bears” and that it “limits human-bear interactions and prohibits Forest Service road construction and utility corridors” (RP, p. 4-54; FEIS, p. 3-235). The Draft Plan identified that within the Brown Bear Core Area “utility corridors, power generation facilities, power transmission lines, marine transfer facilities, and administrative facilities are discouraged in this management area. They may be allowed if no feasible alternative is available” (Appeal Record Documents #39359, p. 3-56; #39113, p. 3-257). The effects anticipated for all proposed activities to the brown bear in the DEIS, including that from utility corridors, are described in *Environmental Consequences* (Appeal document # 39114, pp. 3-211, 3-212, 3-239).

Power transmission lines are not specifically addressed in the biological and social desired conditions for the Brown Bear Core Management; however, the desired social conditions specifically state “[p]ower generation facilities, marine transfer facilities and administrative facilities are not allowed in this management area” and “[m]otorized equipment of appropriate size and scale may be used to accomplish projects” (RP, p. 4-55). The Brown Bear Core Management Area prescription in the final Revised Plan lists utility systems as an allowed activity consistent with the management intent of the prescription (RP, p. 4-56; Appendix F, p. F-1). No other specific management guidance is provided in the prescription regarding utility corridors.

The Major Transportation/Utility Systems Management Prescription provides for existing and future transportation and utility systems. Power-lines and power generation sites are specifically defined as activities appropriate for this management prescription (RP, p. 4-88). Consistent with the ecological desired condition, both transportation and utility systems will be designed to be compatible with adjacent management areas. (RP, p. 4-88) Also, “[w]here effects on other resources occur, resource protection will be provided. Most utility and electronic site access roads will have a native surface with water bars to reduce erosion” (RP, p. 4-88). As described in the activities table for this management prescription, utility systems “...are allowed consistent with the management intent, standards and guidelines” (RP. p. 4-89). And, one general guideline is “[a]ctivities, identified in the underlying (initial) management area prescription, are allowed so long as they are compatible with transportation, utility system or electronic site activity and provide for public safety” (RP, p. 4-90).

The FEIS discloses the effects of transportation/utility corridors on wildlife. All alternatives provide the same acres of transportation/utility corridors (FEIS, pp. 2-16, 2-18 to 2-25, 3-271, 3-288, 3-290). The FEIS also discloses that “[l]and corridors set aside for roads and utility access can disturb or displace wildlife species by changing the arrangement of forested and non-forested vegetation types across the Forest. Some prescriptions within alternatives limit or preclude the construction of transportation/utility corridors as a wildlife habitat conservation measure” (FEIS, p. 3-271). Tables 3-50 and 3-51 provide a summary of the habitat surrogates used for brown

bear and the potential risk factors effected wildlife within these general habitat surrogates (FEIS, p. 3-231).

The Regional Forester's decision allowing for a utility corridor in the Brown Bear Core Management Area on the Kenai Peninsula also indicates that no pending requests for such a system exists (ROD, p. 8). The Plan identifies a Transportation Utility Management Area on the Kenai in the Brown Bear Core Management Area. Allocating a Transportation/Utility Management Area on the Kenai in the Brown Bear Core and implementing a site specific action will follow the NEPA process for site specific proposals. If necessary, any adjustments to the Plan will be made at the time the proposal is made. The ROD only provided the option. No actual management area was put over the Brown Bear Core Area. Those concerned with the project will have an opportunity to comment if the Forest makes such a proposal. It is clear that the requirements of 40 CFR 1503.4(a) are met.

Monitoring

Contention:

"Nor does the agency identify how it will monitor this (lynx) population with respect to potential motorized activity impacts" (NOA #0017, p.22).

Findings:

The NFMA implementing regulations at 36 CFR 219.11(d) require the Chugach to provide in the revised Plan "[M]onitoring and evaluation requirements that will provide a basis for a periodic determination and evaluation of the effects of management practices." The implementing regulations at 36 CFR 219.12(k) further state that, "[M]onitoring and evaluation at intervals established in the plan..." and that monitoring activities will provide a description of "the actions, effects, or resources to be measured, and the frequency of measurements" (36 CFR 219.12(k)(4)(i)). These requirements are found in Appendix A.

The appellant is correct, monitoring of lynx populations is not specifically identified in Table 5-1 as a monitoring item the Chugach expects to track and report on over the life of the Plan. The Roads Analysis and Access Management Plan in Appendix B states that, "[R]oads constructed for forest management, mining, or recreational purposes may increase the vulnerability of lynx to hunters and trappers . . . and increase opportunities for accidental road deaths" (Revised Plan, Appendix B, p. B-26).

Chapter 5 provides a complete discussion regarding the monitoring requirements the Chugach NF intends to implement during the life of the Revised Plan (pp. 5-1 to 5-23). The monitoring plan identifies five elements considered essential for a successful monitoring and evaluation strategy. They are: a monitoring and evaluation interdisciplinary team; a monitoring guide; an annual monitoring program of work; an annual monitoring and evaluation report; and a 5-year monitoring and evaluation report (RP, p. 5-3). The monitoring plan describes the methods, category, collection frequency, evaluation frequency, the precision and reliability and estimated annual costs (RP, pp. 5-4 to 5-5). Items the Chugach NF has selected to monitor are listed in Table 5-1, assess an array of resources, and cover all the requirements of 36 CFR 219.11(d), 219.12(k) and 219.12(k)(4)(i)) (RP, pp. 5-6 to 5-18).

Lynx were considered for the Species of Special Interest (SSI) list “. . . because there are reduced populations in much of their range in the lower 48 states” and not based on a specific concern for its viability or distribution on the Forest (FEIS, p. 3-208). The FEIS identified loss of early-seral habitat, and direct mortality as the greatest impacts on lynx viability (FEIS, p. 3-248). The Revised Plan projects that only “a small of total forest area will be modified into early seral stages by any of the alternatives, and then only under favorable conditions” (FEIS, p. 3-248). In addition, the Alaska State Fish and Game oversees legal trapping of lynx within the state (FEIS, p. 3-219). The Forest, in response to public comments, focused monitoring on the key monitoring information necessary to support the Revised Plan (RP, p. 1-3). That information and questions needed to support the Revised Plan is displayed in Chapter 5 (RP, pp. 5-1 to 5-18).

In response to public comments, monitoring is focused on the key monitoring information necessary to support the Revised Plan (p. 1-3). That information and questions needed to support the Revised Plan are displayed in Chapter 5 (pp. 5-1 through 5-18).

I find the Forest has developed a monitoring plan that clearly meets the regulations at 36 CFR 219.11(d), 36 CFR 219.12(k), and 36 CFR 219.12(k)(4)(i)), and the Regional Forester is committed to an effective and informative monitoring program.

Motorized and Road Effects on Wildlife

Contention:

“The analysis of the effects on biodiversity due to fragmentation and perforation from recreation and access management focuses on roads and trails and fails to take into account extensive cross-country snow machine . . . and ORV travel . . .”(NOA #0011, p. 14).

The Forest Service “. . . needs to consider impacts to the subnivean environment and ecology of the forest in relation to snow machine activities in the final plan. The agency has failed to do so, and thus the effects analysis regarding snow machine and other winter motorized use is deficient” NOA #0017, p.28).

Findings:

The NEPA implementing regulations at 40 CFR 1502.16 provide the analytical basis for comparing the alternatives, and for the disclosure of the “[D]irect effects and their significance” as effects are defined within 40 CFR 1508.8. The regulations are excerpted in Appendix A.

Biodiversity – Fragmentation and Perforation

Findings:

The FEIS identified Ecological Systems Management [Biodiversity] as one of six focus issues of the Revised Plan (FEIS, p. 1-5). Two decisions to be made are identified in the purpose and need: “[i]dentifying lands open or closed to motorized vehicle” and “[i]dentifying the methods of public access allowed/restricted on Forest Service roads, trails and route.” (FEIS, p. 1-12). The Regional Forester states, “I have chosen an alternative that emphasizes protection and

enhancement of fish and wildlife habitat along with maintaining and enhancing high quality recreation and tourism” (ROD, p. 3). Additionally, “I will manage access for motorized and non-motorized recreation as follows: . . . [o]n the Kenai Peninsula, maintain current road access and maintain and increase trail access. Emphasize non-motorized uses on the roads and trails in summer and motorized uses in winter (ROD, pp. 6 and 8). Specific areas have been identified for winter motorized and non-motorized recreation activities (FEIS, pp. 3-296, 3-297, 3-309, 3-315, 3-320, 3-347 to 3-374; 3-405 to 3-414; Appeal Record document #39645, Map, R10-MB-480g, 480n).

The FEIS describes the analytical process used to evaluate and disclose the effect forest programs have on biodiversity (pp. 3-42 to 3-78, 3-169 to 3-176, and 3-203 to 3-209). Key indicators are identified and the spatial hierarchy used in the biodiversity analysis is discussed (FEIS, pp. 3-43, 3-44, 3-47, and 3-50). Fragmentation is defined in the FEIS “as the breaking out of contiguous blocks of habitat into progressively smaller patches that are increasingly isolated from one another” and “perforation refers to holes within otherwise contiguous blocks of habitat” (FEIS, p. 3-76). The record identified some key sources of fragmentation such as the Sterling and Seward Highways, private and State land development activities (FEIS, p. 3-78). The “total miles of open roads and trails is the best measure of the effects of travel management on fragmentation/perforation” and that “. . . [n]o species on the Chugach has been identified for which roads would serve as a total movement barrier, but many species seek habitat away from roads” (FEIS, p. 3-97).

The FEIS discloses, by alternative and management prescription, the effect on species richness over the summer, migration and winter season (FEIS, Table 3-10, p. 3-99). Winter and summer activities and uses are displayed on the Forest maps which accompany the Plan (Appeal Record document #39645, Maps, R10-MB-480g, 480n). The coarse filter component provides an account of the existing vegetation features in the *Affected Environment* of biodiversity (FEIS, pp. 3-53 to 3-78). The *Affected Environment* description identifies acres and miles of winter snow machine and helicopter activities available on the Kenai Peninsula (FEIS, pp. 3-359 and 3-360). The FEIS discloses the number of miles of existing trails and roads and a projection for each alternative and activity (FEIS, pp. 3-355, 3-364, 3-371, 3-388, 3-408, 3-409, and 3-410). The effects of winter and summer access contributing to fragmentation and perforation are analyzed and disclosed in the *Environmental Consequences* sections of the FEIS (pp. 3-95 to 3-98, 3-270 to 3-272, and 3-410 to 3-413).

The record discloses that fragmentation and perforation resulting from access management would have a direct loss of habitat from the physical construction of the roads or trails, and there would be an associated level of impact from human use on these after construction. “These impacts are often more significant in the long term. Restricting or prohibiting motorized use on roads can greatly reduce the effects of the roads to most wildlife species” (FEIS, p. 3-97). All alternatives provide for strong connections, especially within the islands on the Prince William Sound, and on the Copper Rive Delta, but on the Kenai Peninsula would only be moderate due to the distance between old growth areas (FEIS, p. 3-101). The FEIS found “[t]here is little or no information available regarding differences in impacts in fragmentation between motorized and nonmotorized trail use” (FEIS, pp. 3-95 to 3-97).

After reviewing the record and as discussed above, I find the Forest does discuss and disclose the effects by forest management programs, including that of cross-country snowmobile travel on biodiversity. The Forest identifies the perforation and fragmentation vectors and discloses in the FEIS the potential impacts of the direction set forth in the Revised Plan. The Forest has met the requirements in 40 CFR 1502.16(a), 1502.16(b).

Subnivean Habitat

Findings:

The Department of Interior (DOI) provided comments and submitted some results from a study that specifically evaluated snow compaction impacts on small mammals (Appeal Record document #29063, p. 28). Review of the record indicates that while no studies have been done on the Chugach NF, there are several studies from other parts of the country where snowmobile impacts were reviewed. That information is included in the FEIS (Appeal Record document #29063, p. 28; FEIS, Appendix K). The Regional Forester stated, “. . . [t]he general rule is that the entire Chugach National Forest is open for winter-motorized recreation except where specifically closed. The map depicts the areas that are closed to meet the needs of other Forest users, protect resource values and manage the Wilderness Study Area” (ROD, pp. B-1 to B-3; Appeal Record document #39645, Map, R10-MB-480g).

The FEIS provides a thorough discussion of access management on the Forest including a detailed listing by alternative and geographic area of the appropriate seasons of use for the various recreational activities (FEIS, Appendix F, pp.F-1 through F-91).

The analytical process used in evaluating the impact of recreational activities on wildlife species looked at landscape stressors, such as miles of roads and trails and road densities. The analysis included measures, such as area closures or seasonal timing restrictions, to manage human activities to reduce impact on species (FEIS, Appendix B, p. B-8). The Revised Plan identifies areas that are open and closed to winter motorized use, and provides a detailed description by geographic area of the existing road and trail system and allowed uses (Revised Plan, Appendix B, pp. B-46 through B-56; Appeal Record document #3964, Map R10-MB-480g). The Revised Plan further defines the period and activity when species are most vulnerable to disturbance and for winter motorized use defines the operating period (RP, pp. 3-28, 3-35; FEIS, Appendix F, p. F-1).

The *Affected Environment* discloses the amount of trails, roads and other areas open to winter recreation activities open for snow machines in the FEIS (pp. 3-359, 3-360, 3-408, 3-409, and 3-410). The potential risk factors to wildlife species of concern are identified in the *Environmental Consequence* section of the FEIS. OHV other use is listed as a potential risk for all general habitat types except for the rocky coast (FEIS, pp. 3-232). The roads analysis acknowledges in the Revised Plan that “[m]uch of the access on the Forest is not by road and utilizes other motorized...methods...[m]otorized recreational surface travel off roads and trails is permitted only in winter with adequate snow cover (primarily snow machines)” (Revised Plan, Appendix B, p. B-33).

Contention:

The appellant is concerned with a statement made in the FEIS, “[m]any species of wildlife (such as lynx, marten, and three-toed woodpecker) depend on snags or downed woody material for sustaining portions of or all of their life requirements” (NOA #0017, p. 28).

Findings:

The Forest’s look at biodiversity through a coarse and fine filter analysis did not identify any species deemed to be at risk due to snow compaction activities. The Revised Plan provides appropriate management direction for retaining and managing standing dead and down habitat, important habitat components for certain species, such as lynx, marten and three-toed woodpecker (RP, p. 3-25).

Based on my review of the record, I find the Forest considered the impacts on the species and their habitat from a variety of proposed forest activities. The Forest used a rigorous process in evaluating potential impacts on biodiversity resulting from the direction described in the Plan. Any proposed motorized project will receive additional attention through site-specific analysis (ROD, p. 4; FEIS, Appendix K, p. K-13). I find sufficient evidence in the record that the Regional Forester evaluated the impacts on species and their habitats, such as subnivean habitat, and the FEIS adequately discloses the impacts, meeting the requirements in 40 CFR 1502.16(a), 1502.16(b).

Contention:

The Forest failed to consider the effects of snowmobiles, helicopters, road and trail building on the wolverine, lynx, wolf, brown bear, and moose. specifically helicopters, and road and trail building on moose, wolves and lynx. (NOA #0011, p. 14; NOA #0017, pp. 19, 21, 23, 24, 25, and 28).

Species of Special Interest (SSI) and Management Indicator Species (MIS)

Findings:

Wolverine, lynx and wolf are identified in the FEIS as species of special interest (SSI), whereas brown bear and moose are identified as management indicator species (MIS) (ROD, pp. 38, 39; FEIS, p. 3-209). These species underwent a fine filter review “because their habitat requirements are narrow enough that they may not be covered under the coarse filter approach, or because interest in them by the public or by land managers is best treated by highlighting them separately from other species” (FEIS, p. 3-207).

NEPA regulations require “the Forest Service to disclose the direct, indirect effects and their significance, and provide a means to mitigate adverse impacts. . .” (40 CFR 1502.16(a) and (b)).

In *Affected Environment* two key indicators that will be tracked through the analysis are identified: habitat and the distribution of habitat for MIS, SSI, and threatened, endangered and sensitive species (TES) (FEIS, p. 3-203). The analysis specific to brown bears and moose uses a habitat suitability index model to estimate existing and future habitat capability (FEIS, p. 3-208). Habitat viability analyses [fine filter] are “concentrated in those few areas that contained areas of

specialized habitat or where the few management activities were planned. For example, moose habitats were evaluated primarily on the portion of the Kenai Peninsula managed by the Chugach National Forest . . .” (FEIS, p. 3-209). The FEIS identifies “. . . risks and concerns for the species of concern . . .” and the “. . . risk factors and location where they occur on the Forest were a primary consideration in the analysis” (FEIS, p. 3-229). These risk factors and where general habitat types occur are identified in the FEIS (p. 3-232). The *Affected Environment* and *Environmental Consequences* for brown bear, moose, wolverine, lynx and wolf are discussed in Chapter 3 of the FEIS (pp. 3-214, 3-216 to 3-219, 3-223, 3-230 to 3-232, 3-234 to 3-237, 3-239 to 3-243, 3-246 to 3-248, 3-255 to 3-256, 3-263 to 3-265).

Wolverine

Contention:

The Forest did not analyze or disclose the impacts that snow machine use and/or access have on wolverines in the FEIS (NOA #0011, p. 14; NOA #0017, pp. 23, 24). Public comments received on the DEIS suggested that on the Chugach NF, and specifically the Kenai Peninsula, wolverine are considered extremely rare, susceptible to trapping and may be a unique genetic population. Public comments also suggested the DEIS failed to adequately address or protect wolverines from human impacts (Appeal Record document # 29063, p. 23).

Findings:

The record discloses that “[w]olverines are commonly trapped on the Kenai Peninsula, and the harvest rate has declined only slightly since 1980” (FEIS, p. 2-223). Factors influencing wolverine habitat selection at the both the landscape and stand level are identified: distribution and density of large mammal carrion, and level of human disturbance (FEIS, p. 3-223). In *Environmental Consequences*, the amount of potential wolverine habitat by management prescription is displayed. Management prescription categories 3 and 5, in the preferred alternative comprises the largest proportion on the Forest (FEIS, p. 3-255). The Revised Plan identifies approximately 1,196,370 acres open on the Forest for winter motorized use, of which 65 percent of those acres occur on the Kenai Peninsula (RP, p. 4-94).

The amount of access estimated on the Kenai Peninsula for winter-motorized activities in the preferred alternative is 82 percent of that currently available under the no action alternative (FEIS, p. 3-410). Although the Forest allows some level of winter snow machine use in all the alternatives, seasonal closures or areas closed to motorized use to address a variety of resource issues, including wildlife, are specifically identified (FEIS, p. 3-359; Appendix H, p. H-3). The Access Management Plan (AMP) identifies seasons of use for various motorized uses on the Forest and discloses the amount of winter motorized recreation access within the three Geographical Areas (RP, p. B-44 through B-56). Snow machines are addressed specifically in Forest-wide standards and guidelines where, “snowmobiles, motorboats and other means of surface transportation traditionally employed for subsistence purposes by local residents shall continue as per ANILCA, sec. 811” (RP, p. 3-41).

The FEIS identifies “three land management issues that affect the long-term health and persistence of wolverine populations; a consistent and diverse source of large animal carrion, the

presence of refugia from human disturbance, and an evaluation of management actions at the landscape level” (FEIS, p. 3-223). The FEIS stresses-evaluation of management actions at the landscape level.

Large animal carrion is discussed, their distribution identified, and the effects analyzed and disclosed in the FEIS (pp. 3-210, 3-216, 3-217, 3-221, 3-239 to 3-245, 3-252, and 3-253). The coarse filter process analyzes and discloses the effect on large blocks of habitat (FEIS, pp. 3-46, 3-70, 3-76 to 3-78, 3-80, 3-90 to 3-101). The effects from human disturbance on large refugia are analyzed and disclosed in the FEIS (pp. 3-97, 3-209, 3-236, 3-246, 3-248, 3-255, 3-256, 3-270, and 3-271). The assessment states that wolverines on the Kenai Peninsula would benefit from large blocks of habitat with few roads or trails (Appeal Record document #38464, Implication 2).

The *Environmental Consequences* also discloses that road density and roaded access for hunting and trapping on the Forest are important habitat components, and suggests area control of roaded access and working with the Alaska Department of Fish and Game (ADF&G) as suggested conservation options for wolverine (FEIS, Table 3-49). Human access on snowmobiles in the winter or early spring is identified as a potential factor affecting wolverine behavior and potentially impairing kit survival. The fine filter analysis concluded that increase human presence during early winter and denning may result in den abandonment or decreased reproductive rates and that “recreational activities with motorized and non-motorized access are reaching into remote areas and their impacts on early winter, denning and dispersal habitats are largely unknown” (Appeal Record document 38464, finding 4). However, the FEIS concludes that “neither construction of new motorized access points nor significant changes in existing snowmobile use is planned”, and that refugia, human access and development, and identification and conservation of important areas are some of the risk factors considered in the analysis for wolverine (FEIS, p. 3-255).

The FEIS discloses that “[i]ncreased road building, leading to human access, is not planned for the Chugach National Forest portion of the Kenai Peninsula . . . It is anticipated that the total available wolverine habitat would not decline on the Kenai Peninsula, thus maintaining viable populations of wolverine in the area” (p. 3-256). On the Kenai Peninsula, the preferred alternative has 97 miles of motorized trails (all alternatives project increases) and 6 miles of roads more than the no action alternative (FEIS, pp. 3-354, 3-411, and 3-412). However, only alternative B proposes “any roads solely to provide recreation access to areas currently unroaded” (FEIS, p. 3-354). The “[r]isks to the wolverine population or its habitat resulting from Forest Service management or permitted activities under any alternative are low.” Trade-offs in “large increase in winter motorized activities” (not likely to occur in steep alpine terrain), and in potential disturbance to an individual female with young (measured against the long-term benefits from an increased food supply using prescribed fire) are not clear. The preferred alternative will have a beneficial effect for the wolverines (FEIS, p. 3-255 to 3-256).

For all species, habitat is of sufficient quantity, quality, distribution, and abundance to allow the species to maintain breeding populations. Overall, large landscapes will have minimum disturbance and intact systems and processes, and managed landscapes will be within the range of natural variability (FEIS, p. 2-30). The FEIS notes-for recreation trends that “[n]ationally, we

can expect increasing levels in almost every form of recreation” (FEIS, p.3-343). “Indirect evidence indicates that activities such as whitewater rafting, guided hiking, snow machine tours, and helicopter skiing are increasing rapidly on the Chugach National Forest” (FEIS p.3-344).

Lynx

Contention:

The Forest did not analyze or disclose the impacts of widespread snow machine and helicopter use on lynx in the FEIS (NOA #0011, p. 14; NOA #0017, pp. 19, 21).

Findings:

Lynx are specifically listed as an SSI “because there are reduced populations in much of their range in the lower 48 states” (RP, FEIS, p. 3-208). The FEIS states that forested habitat types are the highest importance for lynx (FEIS, p. 3-213). OHV other purposes, OHV designated routes (summer), new trails and roads and trail reconstruction are identified as potential risks to wildlife, including lynx (FEIS, Table 3-51, p. 3-232).

Appellants also quote the proposed listing rule for lynx in the lower 48 states, and identify a passage where the U.S. Fish and Wildlife Service suggested the “the FS should consider diminished habitat quality, increased threats by competitors, elevated levels of human access, displacement, injuries and death as a result of increased access to humans in addition to what the agency has already considered with regard to lynx and widespread winter snow machine use on the forest”(NOA #0017, p.21). The FWS did not link any factors affecting the Alaska lynx population with the potential threats that are identified for the lower 48 lynx population. Lynx are identified as being vulnerable to hunters or trappers resulting from “roads constructed for forest management, mining, or recreational purposes”, and that “[c]urrent lynx populations are below historical levels” (RP, Appendix B, p. B-26; FEIS, pp. 3-218 and 3-219).

The FEIS does not identify any important habitat components or conservation options for lynx in the fine filter analysis (FEIS, p. 3-230). The amount of potential lynx habitat is listed in FEIS. Management prescription categories 3 and 5, in the preferred alternative, comprise the largest proportion of lynx habitat (FEIS, p. 3-248). The effect on lynx from widespread snow machine use is analyzed and disclosed in the FEIS (Appendix B, p. B-26; FEIS, p. 3-248, 3-270, and 3-271). Helicopter effects on lynx were not identified as a factor used by legal hunters and trappers (RP, Appendix B, p. B-26).

Wolves

Contention:

The Forest did not analyze or disclose in the FEIS the impacts of widespread use of snow machines or helicopters on the Forest (NOA #0011, p. 14; NOA #0017, p. 20).

Findings:

The wolf has a broad distribution, use a variety of habitats and suitable habitats mimic the distribution of their prey (FEIS, p. 3-212, 3-213, and 3-214). The FEIS discloses that the wolf is secure on the Forest “. . . but the relatively isolated subpopulation of the gray wolf in the Copper River Delta was potentially at risk from management actions” (FEIS, p. 3-218). The prey base effects analysis is addressed in the wolverine subsection of this decision. The FEIS identifies two factors leading to legal and illegal wolf kills: increased roaded access and an increase in human activity (FEIS, p. 3-218).

The *Environmental Consequences* identifies road density and roaded access for hunting and trapping, along with suitable prey species (especially moose) as habitat components or considerations. Early seral conditions on winter range for moose and control of roaded access are some of the conservation options available to assist the Forest in managing the Copper River Delta wolves (FEIS, p. 3-230). The FEIS discloses the effect from management activities, based on professional judgment and available scientific information, concluding that “[n]o change in . . . road density would result under any alternative” for the Copper River Delta. The road densities identified for the Copper River Delta are well below the threshold where wolves are likely to be extirpated (FEIS, pp. 3-246, 3-247; FEIS, Appendix B, p. B-8). The cumulative effects are addressed for the wolf in the wildlife cumulative effects section. The Forest concludes that “[t]he likelihood that the viability of wolves on the Forest would be affected by management activities is low. Habitat is of sufficient quality, distribution, and abundance to allow the species to maintain breeding populations distributed across the Chugach National Forest.”

Brown Bear

Contention:

The Forest did not analyze or disclose the effects in the FEIS on brown bears from widespread summer and winter motorized uses on the Forest, road and trail building on the Kenai and rising DLP kills (NOA #0011, p. 14; NOA #0017, p. 25).

Findings:

The Preferred Alternative allocates 96 percent of the acres on the Forest to category 1 Wilderness study, RNA, recommended wilderness) and category 2 (backcountry, 501(b)-2, EVOS acquired, municipal watersheds, fish and wildlife Conservation Area (FEIS, p. 2-219). The FEIS discusses the amount of brown bear habitat on the Forest for the various alternatives (p. 3-237). The FEIS notes past management activities have greatly reduced effective habitat for bears by as much as 70 percent specifically for the Kenai Peninsula (FEIS, p. 234).

The FEIS identifies three periods when brown bears are most affected by human activities: (1) availability of cover near salmon streams, (2) availability of breeding habitats in alpine, and (3) travel corridors. These important habitat components are considered in the analysis. Vegetation pattern and connections between landscapes, and impacts from human activities, such as road

access, mining operations, developed recreation, dispersed recreation, and waste disposal are all considered in the analysis (FEIS, p. 3-234, 3-235).

The Forest summarizes the effects to brown bears in the *Environmental Consequences* section of the FEIS (p. 3-234 to 3-236). The fine filter assessment in the FEIS discusses the potential impacts of management activities on the bear (RP, pp. 3-28, 3-29, 3-30, 3-41, 3-42, 3-45, 3-47, 4-54 to 4-58, 5-9, and 5-10; Appendix B, pp. B-44 to B-56; and FEIS, pp. 3-235, 3-236). The FEIS addresses protection along important salmon streams for bear foraging, the appropriate methods for disposing of garbage, establishment of management area either a or areas specifically designed to benefit brown bears, the effect access has on bears, and the potential impacts snowmobiling and skiing may have on bears when they emerge from the dens in the Spring looking for food (FEIS, pp. 3-234, 3-235, and 3-236).

The viability analysis for the brown bear indicates “fragmentation of and increased access into large unroaded landscapes; prey habitat and associated changes in prey abundance and distribution and human disturbance” as factors influencing brown bears (Appeal Record document #38464). Cumulative effects are addressed for the brown bear in the wildlife cumulative effects section.

The Forest addresses impacts on the brown bear with specific management requirements, a management prescription for brown bears and specific monitoring item to assess plan implementation (ROD, Appendix B, pp. B-1 to B-5; RP, pp. 3-28, 3-29, 3-30, 4-56, 4-57, 4-58, 5-9, and 5-15; and Appendix B, p. B-44).

Moose

Contention:

The Forest Service has failed to adequately analyze the impacts on moose from snow machine, and other winter motorized recreational activities, such as commercial helicopter skiing (NOA #0017, p. 25; NOA #0011, p. 14).

Findings:

The amount of moose habitat is displayed for each geographic area in the FEIS (p. 3-213). The Forest states that the moose population on the Chugach NF and moose habitat in south central Alaska is associated primarily with riparian and post-glacial early-successional habitats (FEIS, p. 3-216).

The effects of proposed activities in the various alternatives on the moose are analyzed in the fine filter assessment (FEIS, pp. 3-239 to 3-245, 3-270, and 3-271). The FEIS discloses that the factor limiting growth of the moose population is the availability of early-to mid-successional habitat, and that moose mortality is a result of predation, hunting, and vehicle collisions along highways and railroads (FEIS, p. 3-216). While “[h]igh impact prescriptions would cause the most disturbances to moose and their habitat” resulting from road construction to access for harvest areas. Prescribed fire on the Kenai Peninsula is the only activity proposed where there is a direct impact on moose habitat (FEIS, p. 3-239). The FEIS discloses that wildlife habitat

improvement projects, prescribed fire, timber harvest and new road construction have the greatest impact on moose habitat (FEIS, p. 3-239).

The FEIS discloses that “[m]oose are thought to be comparatively tolerant of humans and have the ability to develop a high level of habituation. In winter moose tend to move away from heavily used trails” (FEIS, p. 3-242). The FEIS discusses information from studies in Wyoming where the difference between motorized and non-motorized displacement of moose is discussed and the results indicate that non-motorized activities (skis and snowshoes) have a greater impact on displacing moose (FEIS, p. 3-242).

Road Construction Effects on Wolverines

Contention:

“The Forest Service has failed to sufficiently analyze the direct impacts road building on the Kenai Peninsula will have to the wolverine population” (NOA #0017, p. 23).

Findings:

The Regional Forester states that the Chugach National Forest will be managed to provide “access for motorized and non-motorized recreation,” explicitly stating that “[O]n the Kenai Peninsula, maintain current road access and maintain and increase trail access. Emphasize non-motorized uses on roads and trails in the summer and motorized uses in the winter. Establish specific areas for non-motorized winter activities. Establish areas for helicopter use in winter and summer to minimize conflicts with other uses” (ROD, p.6).

The FEIS includes a compilation of the existing roads available on the Kenai Peninsula and the type of public access allowed (FEIS, Appendix F, pp. F-3 through F-26). Allowed uses on Forest roads are disclosed by geographic area in the Access Travel Management Plan (RP, pp. B-46 through B-48). One of the assumptions made in conducting the analysis for roads is that “all harvest requires some road construction and reconstruction. If the area is classified as roaded, then the majority of roading activity is reconstruction” (FEIS, Appendix B, p. B-19).

Habitat for fish and wildlife was one of six issues identified by the public where they thought existing conditions could be improved by changing the 1984 Forest Plan (RP, p. B-10). Under the Preferred Alternative, 149,960 acres are in management areas to facilitate the treatment of timber stands damaged by the spruce bark beetle and to reduce fuel loads.

The FEIS states, “[i]ncreased road building, leading to increased human access, is not planned for the Chugach National Forest portion of the Kenai Peninsula” (FEIS, p. 3-256). The FEIS disclosed 149,960 acres are in the management prescriptions that permit the Forest Service to construct roads in the preferred alternative, all on the Kenai Peninsula (FEIS, p. 3-402). Many of these areas were allocated to these prescriptions to treat the spruce beetle epidemic where 2,000 acres could be treated in the first decade (FEIS, p. 3-402).

On the Chugach NF, the Revised Plan indicates “there are 97 miles of forest development roads, approximately 71 miles located on the Seward and Glacier Ranger Districts and 26 on the

Cordova Ranger District.” There are an additional 75 miles of Forest highways and 100 miles of state highways within the Forest. About 5,434,710 acres of roadless lands exist across 16 areas on the Forest, of which there is within these acres a 2,198,170 acre wilderness study area established in 1980 by Congress (RP, p. B-3). Of the 91 miles indicated on the Kenai Peninsula, 35 are open to motorized vehicles for specific management activities and the remaining 56 miles are open, but may have some seasonal restrictions (RP, p. B-34). There are no special conditions or management restrictions identified in Table B-8 specific to concerns of reducing disturbance impacts to wildlife (RP, pp. B-45 to B-48).

The FEIS discusses the effects from *Recreation and Tourism*:

[I]n all alternatives, there is new road construction proposed with the development of recreation and administrative facilities. Most of these roads are expected to be small segments to new recreation developments, such as campgrounds, trailheads and viewpoints. Most would be located within existing road corridors on the Kenai Peninsula. Additionally, Alternative B identifies potential roads (16 miles the first decade) into new areas for improved and easier access. All of these roads would be constructed on the Kenai Peninsula (FEIS, p. 3-411).

The projected activities and outputs identified on Table 3-10 of the Plan indicate a total of 3.3 miles of road would be constructed per year (3.2 miles construction for facilities, and 0.1 from trails converted to roads) (RP, p. 3-49).

Harvest of wolverines by trapping or hunting is one of the factors identified as affecting the population. The record concludes that reducing or maintaining current level of access on the forest by humans would not increase the loss of wolverines. “[T]he areas of the Kenai Peninsula accessible by road would remain at about current levels under all alternatives” (FEIS, p. 3-236). The Preferred Alternative is listed in the middle of all alternatives relative to its impact on wildlife (FEIS, p. 3-270). The *Affected Environment* discusses the status of wolverine on the Chugach NF stating, “neither construction of new motorized access points nor significant changes in existing snow machine use is planned” and that “human access and development” were important risk factors considered in the wolverine analysis (FEIS, p. 3-255).

Based on my review of the record, I find the Forest considered the impacts on the species including wolverine. Lynx, wolves, brown bears, and moose and their habitat can be affected from a variety of proposed forest activities. The Forest used a rigorous process in evaluating potential impacts on biodiversity resulting from the direction described in the Revised Plan. Any proposed motorized project will receive additional attention through site-specific analysis (ROD, p. 4; FEIS, Appendix K, p. K-13). I find sufficient evidence in the record that the Regional Forester evaluated the impacts on species and their habitats, such as subnivean habitat, and the FEIS adequately discloses the impacts, meeting the requirements in 40 CFR 1502.16(a), 1502.16(b).

Biological Assessment (BA)

Contention:

“The Forest Service’s biological assessment of the Forest Plan’s impacts was inadequate because it failed to consider the impacts of the vast majority of activities on the waters of Prince William Sound” (NOA #0019, p. 14).

Findings:

The ESA regulations at 50 CFR 402.12 (f) and 50 CFR 402.02 guide the Agency’s disclosure of cumulative effects in the BA.. Both are found in Appendix A.

The Forest identified three federally threatened or endangered species under ESA for which a biological assessment (BA) was conducted. The BA evaluated the potential impacts of implementing activities described in the Revised Plan on the Humpback whale, Steller sea lion and Steller’s eider including eight areas designated as Steller’s eider critical habitat (FEIS, Appendix G, pp. G-1 to G-4).

The BA lists the sources upon which information was extracted for use in discussing effects from proposed activities (FEIS, References, pp. 1 through 34). The BA further discusses the cumulative impacts from state and private activities that occur in coastal waters where these species are known to inhabit (FEIS, Appendix G, pp. G-2 to G-7). The Forest uses information from the U.S. Fish and Wildlife Service and National Marine Fisheries Service regarding activities having potential impacts on these species (FEIS, Appendix G, pp. G-2, G-3, G-6, and G-7).

Even though individual activities were not specifically identified, both Service’s felt the broad description of cumulative effects provided in the BA was sufficient information for both Services to concur on the Forests effects determinations (FEIS, Appendix G, pp. G-9 and G-10).

I find sufficient evidence in the record that the provisions provided for in 50 CFR 402.12(f) and 50 CFR 402.02 have been properly addressed.

Best Available Information and Science Consistency

Best Available Information

Contention:

The Forest failed to consider relevant studies regarding the impacts from motorized activities on brown bears demonstrating an insufficient and incomplete analysis of the impacts (NOA #0017, pp. 19, 30, 31, 32, 33).

Findings:

The NFMA regulations at 36 CFR 219.12(d) and the NEPA regulations at 40 CFR 1502.24 provide the basic requirements concerning best available information. These are excerpted in Appendix A.

One of the criteria used by the Regional Forester for selecting the preferred alternative is:

. . . the FEIS makes the best use of available scientific information, and has received an in-depth science consistency review. Part of this information was newly developed for the Forest, such as the assessment of Kenai Forest Vegetation, and will have broader application for all the communities and ownerships of the Kenai Peninsula. Other information has been developed in conjunction with other agencies and organizations, including the Interagency Brown Bear Study Team and scientific studies related to the Copper River Delta (ROD, p. 21).

The ROD goes on to state “the . . . science consistency evaluation process considered the quality of information used, how the information was used, and whether risk and uncertainty were acknowledged” (p. 37).

Comments on the DEIS regarding brown bears and the potential impacts from human disturbance were raised by the public, as well as other governmental agencies (Appeal Record document #29063, pp. 12, 16, 20; FEIS, Appendix K, p. K-2). Specifically, the Department of Interior (DOI) noted, “[t]here is an abundance of literature concluding that roads have negative impacts on bears. We believe this prescription needs to be rewritten to better protect brown bears, e.g., where no alternatives are feasible, access road use will be restricted to that essential for use of the facility only” (Appeal Record document #29063, p. 12).

Senator Murkowski from Alaska, requested the GAO to review “Information on the Process and Data Used to Revise the Chugach Forest Plan” with one of the review items specifically focused on the “data and analyses it [Chugach National Forest] used to develop the draft plan and whether any limitations in these data were appropriately disclosed in the final plan” (Appeal Record document #39666, p. 1). GAO found that with respect to the brown bear on the Kenai Peninsula:

The Forest Service did not have sufficient data to determine whether a stable brown bear population existed in the peninsula and the measures necessary to ensure the populations viability in the presence of human uses of the peninsula. The draft plan did not disclose these data limitations or any actions being considered by the Forest Service to fill data gaps and make appropriate adjustments to the plan.

The final plan, according to the GAO report, addressed these concerns about data limitations and how the Forest Service plans to fill in data gaps (Appeal Record document #39666, p. 3).

The Science Consistency Evaluation Team found that, “[s]ome of the major concerns shared by many reviewers . . . sole reliance on the science assessments, or on one particular information source, when considerable additional studies, reports, and other information were available . . .” (Appeal Record document, #39099, p. 1). In their final review of the Plan and FEIS and supporting appendices, the team found specifically for brown bears that “a summary analysis titled development *Conservation of Sustainable Populations of Kenai Brown Bears, Alternative Development Considerations*” is a good synthesis of the scientific documents and “these findings, along with key literature (e.g. Suring et al. 1998, and Titus and Beir 1999) represent a thorough consideration of the relevant information” (Appeal Record document #39099, p. 32). Other examples from the team’s findings indicate relevant scientific information was used for wolf, wolverine, and moose (Appeal Record document #39099, pp. 36, 37, 40). The team stated, “[I]n total, the major subject areas and specific topics reviewed by the SCE Team are now judged to be consistent with the scientific information; relevant scientific information considered, the scientific information is interpreted accurately and projected consequences are consistent with that interpretation, uncertainty and risk are acknowledged and adequately displayed” (Appeal Record document #39099, p. 2).

The FEIS identified in the affected environment and environmental consequences sections, information that was utilized to compare alternatives and to disclose environmental consequences as a result of the various array of management activities proposed in the plan (FEIS, pp. 3-214, 3-234, 3-235, 3-236). The list of references used in developing the plan relative to brown bears, and other species, is listed in the FEIS under the References Section (FEIS, p. References-1 through 34).

I find the Forest considered and used relevant scientific information in a credible manner in the developing management guidance, and in considering the potential effects to wildlife as a result of proposed management actions. I find no violation of law, regulation or policy, and that the forest has met the requirements of NFMA at 36 CFR 219.12(d), and NEPA at 40 CFR 1502.24.

Brown Bears – Science Consistency

Contention:

The appellants contend the “FEIS and ROD are inconsistent with the Interagency Brown Bear Study Team (IBBST) conservation assessment, although the ROD states, [t]he FEIS makes the best use of available scientific information, and has received an in-depth science consistency review” (NOA #0013, pp. 3, 4; ROD, p. 21). Their concern is the 750-foot buffer for foraging habitat along salmon streams does not provide adequate protection for brown bears on the Kenai Peninsula. The public comment on the Proposed Revised Plan also raised the same issue (Appeal Record document #39644; FEIS Appendix K, p. K-43 comment 13).

Findings:

The NEPA regulations at 40 CFR 1503.4, require the Forest Service to prepare a FEIS that assesses and considers comments both individually and collectively, and that the Forest Service in the FEIS must explain why the comments do not warrant further response, supplement the FEIS, modify the analysis or provide a factual correction. These are described in Appendix A.

The Forest identified two Forest-wide requirements, one specific to the Kenai and the other for areas outside the Kenai, for managing brown bears related to stream buffer widths (FEIS pp. 3-29, 3-30). Comments related to stream buffer guidance proposed by the Forest for the brown bear was received by the DOI and by interested publics (Appeal Record document #29063, pp. 11, 21; FEIS, Appendix K, p. K-43). The comments provided by DOI were on the findings from telemetry studies conducted by the Interagency Brown Bear Study Team (IBBST), which demonstrate that some brown bears using the Kenai National Wildlife Refuge (NWR) routinely utilize the Chugach National Forest north of the Kenai River for combined feeding and denning purposes. “Of special importance is the Russian River drainage, where brown bears feed on spawning sockeye salmon both on the CNF and Kenai NWR sides of the Russian River valley.” DOI recommended:

[T]he proposed management of forest cover for brown bears of approximately 750 feet from both sides of anadromous streams (Proposed Revised Forest Plan, pp. 2-12 - 2-13) appears to be inadequate to provide cover for brown bears, based on recent findings of the IBBST which suggest that the average distance of brown bears from streams was approximately 1.2 miles. We recommend that the width of the proposed forest cover corridor for brown bears be expanded beyond the current 750 feet (Appeal Record document #29063, p. 21).

DOI went on to say:

[W]e believe the Standards for Bear Habitat Management for CNF-wide application are inadequate. The Interagency Brown Bear Study Team (IBBST) on the Kenai Peninsula has documented that brown bears utilize areas up to 2 kilometers away from salmon streams for feeding and loafing. This is the "best science" available now and is based on thousands of bear observations. The 750-foot buffer zone proposed in the Forest Plan is not sufficient to provide cover for brown bears while feeding, or between brown bears and humans (AR document #29063, p. 11).

The IBBST report acknowledges “the 230’ meters used by Chugach is based on the best professional judgment and that “[t]he location data collected does not establish the necessary buffer width” In addition, “IBBST recognizes the buffers used are not based on data from Kenai bear movements and likely will need to be modified” (Appeal Record document #038533, pp 2, 3, 8). The record also indicates IBBST was reluctant to provide a buffer width for the Chugach, and that the data used on Tongass NF for setting buffer parameters was done using fewer data points (Appeal Record document #039649, p. 1).

The Alaska Department of Fish and Game provided the following comment on the DEIS:

[t]he current buffer width of 750 feet is very narrow and likely does not reflect the actual use of habitat by Kenai brown bears, as recently determined by DFG research. We recognize that this information was not available to the Service until recently, which is why it is imperative that new data be immediately incorporated

into the Plan. The Service must ensure that new information on streamside use by bears is incorporated into the Plan as soon as the data are made available (Appeal Record document #29062, p. 4; FEIS, Appendix K, Document #29062, p. 4).

The Chugach responded to the comments received in the FEIS:

[W]e are aware of the data collected by the Interagency Brown Bear Study Team. To date this data has not been analyzed. The Forest will consider modifying the 750-foot standard, through a Forest Plan amendment, when new information becomes available from the study team. The 750-foot standard is consistent with the Kenai Brown Bear Management Strategy developed by ADF&G and the stakeholder process. Important brown bear feeding areas are to be identified in cooperation with ADF&G field biologists during project planning. This requirement has been added to the Bear Habitat Management standard (FEIS, Appendix K, p. K-43).

The science consistency team found “that the distance is well within the range of professional judgment and is not at issue” (Appeal Record document #39099, pp. 32 to 34).

The Forest has acknowledged and responded appropriately to the comments raised by the public concerning this issue, and has met the requirements of 40 CFR 1503.4. The Forest has committed to reviewing the information from the IBBST, once it is published, to validate whether the buffer distance is still appropriate or whether a change needs to be made in Forest Plan direction. The Regional Forester’s decision complies with law, regulation and policy in this regard.

Fish and Wildlife Conservation Prescription

Contention:

Appellants contend there are discrepancies between management intent and standards and guidelines and that it is arbitrary and capricious to conclude this prescription best conserves wildlife (NOA #0013, p. 8; NOA #0019, p. 15).

Findings:

The regulations at 36 CFR 219.3, and 36 CFR 219.11(c) address multiple-use prescriptions and associated standards and guidelines for management areas. Excerpts from both are found in Appendix A.

The ROD provides for land allocations, and standards and guidelines to ensure that management objectives are being met, and to provide for the sustainability of resources on the Chugach National Forest (ROD, p. 1). The Regional Forester identifies that, “[t]he Fish and Wildlife Conservation prescription is focused on fish and wildlife habitat needs, and I selected it for areas of special fish or wildlife importance” (ROD, p. 8). The Fish and Wildlife Conservation Management Prescription (FWCMP) covers 260, 640 acres of land on Kenai Peninsula (64,240

and Prince William Sound (196,400) (ROD, p. 7; RP, p. 4-4). On the Kenai Peninsula, the FWCMP was applied to areas outside existing road corridors, while on Prince William Sound the FWCMP was applied to the Montague Island to “provide management emphasis on the northern end of island for migratory birds . . . [and] to actively manage the brown bear habitat on the island” (ROD, pp. 7, 9).

The FWCA management area prescription “was developed to address the “Management of Fish and Wildlife Habitat” interest and to provide options for addressing the “Habitat for Fish and Wildlife” (RP, p. 4-59). Management intent [desired future conditions] is broken into two categories to address ecological and social systems. Under the ecological systems the focus is on managing ecological processes to meet the needs of fish and wildlife. The social system provides for other multiple-use activities such as roads, access to trailheads, road management that emphasizes monitoring, regulating or restricting access to important fish and wildlife habitats, and timber harvest which meets the specific habitat needs for species (RP, p. 4-59).

In response to public comments on the Revised Plan, the Forest acknowledged that “[t]he analysis in the FEIS does not support increasing recreation developments on the Montague Island. The Revised Forest Plan will continue to manage Montague Island under the Fish, and Wildlife Prescription” (FEIS, Appendix K, p. K-47). In response to comments regarding more restrictive prescriptions on Montague Island the Forest states: “[u]nder the Revised Forest Plan, the Fish and Wildlife Conservation prescription with its emphasis on fish and wildlife conservation provides the best management for the northern Montague Island . . . A Primitive prescription would restrict activities needed for monitoring, management and restoration of fish and wildlife . . .” (FEIS, Appendix K, p. K-49).

The Revised Plan provides a list of multiple-use forest activities that are considered appropriate for this management area. Each management activity is then qualified in the activity table as to whether or not it is consistent with the management intent (RP, p. 4-60). The appellant contends the FWCA management prescription “appears to have some discrepancies between the management intent and the standards and guidelines” (NOA #0013, p. 8). Management intent provides a broad description of the types of activities that can occur within the FWCA. However, management area standards and guidelines, along with Forest-wide standards and guidelines are all designed to condition those activities to meet both the biological and social intents developed for this management area (RP, p. 3-22 to 3-48 and 4-60 to 4-62).

I find that the Regional Forester has developed a management prescription that clearly describes the biological and social management intents, and that appropriate standards and guidelines were incorporated in the management prescription to ensure the management intent is met. The Forest-wide and management area standard and guidelines are designed to provide appropriate protection from the multiple-use activities allowed to take place on the Forest, as well as within this management prescription. I do not find a discrepancy between the management intent and standards and guidelines as the appellant contends. I find the record supports that the management intent [desired future condition], goals and objectives, and application of standards and guidelines will be met and that the Forests application of these is consistent with the requirements provided for in 36 CFR 219.3 and 36 CFR 219.12(c).

AIR QUALITY AND SOIL EFFECTS ISSUES

OHV Impact on Soils

Contention:

“The effect of summer ORV use on soils is inadequately addressed” (NOA #0011, p. 4).

“While the FS discusses soil compaction related to foot trails, the agency fails to mention any soil compaction issues related to OHV’s. This is clearly a failure of the Final Plan” (NOA #0017, p. 28).

Findings:

The NEPA implementing regulations at 40 CFR 1502.16, and excerpted in Appendix A, provide the requirements for comparing the alternatives. Disclosure of the direct and indirect effects and their significance as effects are defined within 40 CFR 1508.8.

Appellants contend that the FEIS fails to disclose the effects of summer OHV use on soil resources (NOA #0011, p. 4; NOA #0017, p. 28). The *Affected Environment* and *Environmental Consequences* sections of the FEIS discuss the effects on soil resources (FEIS, pp. 3-11 to 3-21). The “Effects from Trails” part of the *Environmental Consequences* discusses the effects stating: “. . . the construction of recreational trails, both motorized and nonmotorized, would result in soil disturbance and a loss in soil productivity similar to that of roads” (FEIS, p. 3-16). The FEIS displayed, by management activity and alternative, the long-and short-term effects from trail construction on soil productivity in the first decade (FEIS, p. 3-17 Table 3-5).

The FEIS also concluded:

[I]n all alternatives proposed trail construction would disturb an area larger than that from road construction . . . An indirect consequence would result from overuse by people such as trampling of the stream banks of high use fishing rivers, trail development of fragile wetlands, and establishment of non-developed campsites (FEIS, p. 3-17).

Most of the analysis focuses on the construction of the trails rather than the subsequent use by the public (FEIS, p. 3-17).

The trail and road miles by alternative were discussed in the FEIS for the Kenai Peninsula, Prince William Sound and Copper River Delta geographic areas (FEIS, pp. 3-364, 3-355, 3-371). The *Environmental Consequences* section concluded for the Copper River Delta that “[a]ll alternatives propose dispersed recreation throughout the Copper River Delta geographic area” (FEIS, p. 3-367).

The FEIS defines dispersed recreation as:

[t]hat type of recreation use that requires few, if any, improvements and may occur over a wide area. This type of recreation involves activities related to roads, trails undeveloped waterways and beaches. The activities do not necessarily take place on or adjacent to a road, trail, or waterway, only in conjunction with it. Activities are often day-use oriented and include hunting, fishing, boating, off-road vehicle use, and hiking, among others (FEIS, Glossary-10).

The Revised Plan identified 165,870 acres on the Copper River Delta open to all motorized use. This acreage represents 99.8 percent of the total acres identified as “open to all motorized use” on the Chugach National Forest (RP, p. 4-97; FEIS Map R10-MB-480n). However, the Revised Plan *Roads Analysis and Access Management Plan* states:

During the summer season, recreational motorized surface travel off roads and trails is not permitted unless an area is designated as open on the Summer Motorized Access Map and addressed in a current Forest Order (RP, p. B-33).

The Revised Plan defines “open to all motorized use” as “. . . areas designed to allow a full spectrum of opportunities for summer motorized recreation. ORVs, helicopters, and airboats outside established flowing channels, and water bodies are allowed during the summer season. Site-specific or other closures may be implemented to avoid resource damage, wildlife conflicts or safety issues . . .” (RP, p. 4-96). The two prominent management prescriptions, the “backcountry” and “ANILCA 501(b),” encompass the area identified as open to all motorized vehicles. Both management areas identify motorized use as consistent with the management intent, standards and guidelines (RP, pp. 4-35 and 4-38). Season of use for OHVs is also specified in the Access Management Plan discussion in the Plan. OHVs are permitted to operate from June 1 to March 31 unless a specific Forest standard or guideline, or management area prescriptions change the use period (RP, Appendix B, p. B-44).

The Forest projects an increase in recreational use and notes since 1983, that off-road activities have increased by 89 percent. (FEIS, p. 3-326) The Forest projected a 23 percent increase in “off road recreation” by the year 2020 (FEIS, p. 3-332). The FEIS does not include any disclosure of effects on soils in the *Cumulative Effects* analysis for the *Recreation and Tourism* section (FEIS, p. 3-375). In the *Recreation Conflicts and Situation* section the Forest concluded:

Summer motorized recreation opportunities are almost the opposite of winter. Currently almost all lands within the Chugach National Forest and all lands adjacent to the Forest are either closed to surface motorized uses (OHVs) either because of special designation, written closures or unavailable for use due to the nature of the terrain (FEIS, p. 3-376).

Forest-wide standards and guidelines were developed to address the soil resource. One of the standards used by the Forest is to implement the Best Management Practices as specified in the Soil and Water Conservation Handbook - FSH 2509.22 (RP, p. 3-22). The Revised Plan contains three additional standards related to slope stability and landslide potential, and one to address the textured soils of lacustrine origin, found only on the Kenai Peninsula (RP, pp. 3-22 and 3-23).

In summary, the Revised Plan documents 165,870 acres on the Copper River Delta geographic area that are identified in the Revised Plan (Table 4-4, p. 4-97) as open to all motorized uses. This appears to be conditioned by the requirement that summer off-road travel only be permitted with a current Forest Order (Revised Plan p. B-33). The FEIS also states “access management direction on the Forest generally allows motorized use on roads, trails and areas unless a Forest Order specifically restricts it.”

The management practice of using Forest Orders for managing travel access, including summer off-road travel, is not clear. The environmental conditions to be considered when determining the need for a Forest Order for managing access need to be clarified. The record should provide a mechanism for consistent application of Forest Orders to be used to manage travel access.

In the discussion on access management effects, it states:

In summer (snow-free periods) the Forest is closed to all cross-country motorized travel. During this period, four-wheeled vehicles, trail bikes, and OHVs are allowed on existing roads, power line rights-of-way, and some outwash plains. Most trails on the Kenai Peninsula are closed to motorized use during this period (FEIS, p. 3-407).

The analysis for soil resources in the FEIS focuses on the impacts to soils as a result of trail and road construction. While the soils effects discussion in the FEIS does not focus specifically on OHV use, the FEIS does discuss disturbance associated with recreation including overuse caused by people. The FEIS recognizes access routes to remote sites that attract users to streams and wetlands accelerate impacts to stream banks, and the fragile organic soils in wetlands.

I am instructing the Regional Forester to clarify access management direction relevant to cross-country travel in the Copper River Delta area. In addition, the Regional Forester is instructed to develop a mechanism for monitoring OHV effects to the soil resource including areas where OHVs are allowed to operate across the landscape, such as those identified in the Revised Plan on the Copper River Delta geographic area.

Air Quality Analysis

Contention:

“The FEIS fails to discuss the deleterious health effects that can be caused in humans and animals from these emissions . . . What the Forest Service fails to consider is that air quality impacts increase with increasing altitude, which is relevant to the Turnagain Pass and other areas on the forest . . . If one hour on a two stroke engine used by the snowmobiles produces more smog-forming pollution than a modern car creates in a year, there is a lot of polluting going on the Chugach National Forest . . . These emissions affect all users and inhabitants of the Forest in negative ways. The Forest Service has failed to disclose this level of impact from widespread snow machine use across the forest in the FEIS” (NOA #0017, pp. 26, 27).

“[N]o mention is made of snow machine or other recreational motorized use emissions in the cumulative impacts analysis. Thus the Forest Service has done no direct, indirect or cumulative impacts analysis on the recreational motorized use of the forest related to air quality. . . which is a violation of NEPA” (NOA #0017, p. 27).

Findings:

Sections 176 and 110 of the Clean Air Act require the Forest Service to not violate or cause a violation of the provision described in the National Ambient Air Quality Standards (NAAQS) and State Implementation Plan. The Clean Air Act describes that health effects occur at all levels of air pollution and that evaluating health effects is done about every 5 years. For a 15-year-lived Land and Resource Management Plan, the scientific information will change several times. The NAAQS are the codified surrogate for the level of pollution that causes unacceptable health effects. Section 176 and 110 refer to the 6 criteria of pollutants that are considered. NEPA regulations at 40 CFR 1502.16, provide the analytical basis for comparing the alternatives, and for the disclosure of the direct and indirect effects and their significance as effects are defined within 40 CFR 1508.8. Excerpts from relevant laws, regulation and policy are found in Appendix A.

Contention:

The Forest Service contradicts itself regarding snow machines and air quality in the final Revised Plan. The appellant contends the “agency [Forest Service] states in one sentence, that snow machine use on the Forest will not produce any measurable effect regarding air quality, yet then acknowledges that the activity could degrade air quality in localized areas” (NOA #0017, pp. 25, 26, 27; FEIS, p. 3-8, 3-9).

Findings:

The two sentences referenced in the FEIS do appear to conflict. However, the disclosure of specific potential impacts is made clear. The FEIS states that the primary areas of air quality concerns are where high concentrations of snowmobiles assemble such as Turnagain Pass and Lost Lake.

The Regional Forester does, however, point out:

the overall level of activities proposed under this decision is not anticipated to degrade air quality or violate state implementation plans . . . Conformity determinations and more detailed air quality impact analyses will be made at subsequent levels of planning and analysis where emissions can be more accurately quantified, reasonably forecasted, and local impacts assessed (ROD, p. 42).

Contention:

The FEIS fails to discuss the deleterious health effects that can be caused in humans and animals from these emissions. The appellant cites a 1999 Petition to the Forest Service regarding ORVs which was attached to their appeal (NOA #0017, p. 25). The Appellant further contends the FEIS failed to consider that air quality impacts increase with increasing altitude (NOA #0017, p.)

Findings:

I find the FEIS did not discuss the deleterious health effects of air and pollutants in humans and animals. The NAAQS are the ones by which health effects are judged. The FEIS does discuss the relationship of emissions from different forest activities and the NAAQS (FEIS, pp. 3-5, 3-6).

The health effects of carbon monoxide on humans may be more pronounced at higher altitudes, but the NAAQS that are the measure of Clean Air Act compliance are fixed. A more detailed analysis would evaluate other altitude effects such as dispersion of the pollution, which generally is better at altitude. The appellant also contends that the FEIS admits that the Forest Service has no real information about air quality issues on the Chugach, yet the agency nevertheless surmises, without any information, that pollution levels would be minor (NOA #0017, p. 26; FEIS, p. 3-9).

I find the Revised Plan and FEIS does not have monitoring data related to carbon monoxide or nitrogen oxides, and does not address any modeling that would give estimates of the effects described in the FEIS:

[T]he relatively small number of snowmobile users in the area indicates that impacts to air quality from carbon monoxide or nitrogen oxide levels generated would be minor. This diminishment of air quality would likely be below federal standards for pollution, but additional monitoring may be needed to certify these standards are not being exceeded (FEIS, p. 3-9).

The studies cited in the FEIS provide insight into potential air quality problems in the West Yellowstone system; however, the FEIS does not make a quantifiable determination relevant to air quality. The method used for comparing effects across alternatives regarding air quality is miles of open unpaved roads by alternative and total recreation visits by alternative. These measures do not provide assurance that air quality standards are in fact being met (FEIS, p 3-8). The Monitoring Plan lacks requirements for monitoring air quality, although it does present two questions related to air quality as needing study (RP, p. 5-19).

Contention:

The appellant contends that the forest's perspective is that there are small numbers of snowmobile users in localized areas, and that even if that is true, which is disputed, there still can be very significant effects on air quality (NOA #0017, p 26). As part of this contention, the appellant states, "if one hour on a two-stroke engine used by snowmobiles produces more smog-forming pollution than a modern car creates in a year, there is a lot of polluting going on the Chugach National Forest"(NOA #0017, p. 26). The appellant also contended, "these emissions affect all users and inhabitants of the Forest in negative ways" (NOA #0017, p. 27).

Findings:

The FEIS acknowledges "snowmobile hydrocarbon emission exceeds emissions from most other motor vehicles, with exhaust carbon dioxide levels around 1000 times higher than an automobile operating at similar speeds . . ." (FEIS, p. 3-8). Beyond that, the record does not present any analysis that uses the emissions comparison with automobiles, nor does it quantify emissions.

While the appellants assert their concerns regarding emissions, the FEIS and the ROD assert that the NAAQS will not be violated, are within the margins of safety set by EPA in establishing the standards, and the effects will not be negative (ROD, p. 43; FEIS, p. 3-9). The appellant states “[t]he Forest Service has failed to disclose this level of impact from widespread snow machine use across the forest in the FEIS . . . decision to open approximately 87% of the National Forest to snowmobiling with out having completed a single study on the impacts of snow machines to air quality . . . not even fully commit to monitor this activity . . .” (NOA #0017, p. 27).

I find the FEIS does discuss the possible effects of snowmobile use on the Forest. It refers to a more detailed study done at West Yellowstone entrance to Yellowstone National Park. That study combined measurements, vehicle counts, and modeling. The FEIS discloses that under conditions like those at Yellowstone, the NAAQS could be violated, but only briefly relates reasons why those violations would not occur on the Chugach. The FEIS indicates the West Yellowstone study involved over 1000 snowmobiles moving through the National Park entrance per day compared with “significantly less use intensities” at Turnagain Pass, “with the highest snowmobile use concentrations on the Forest,” and about 100 vehicles per day (FEIS p. 3-9). An appropriate level of analysis and qualitative discussion is needed to follow the requirements of the Clean Air Act Section 176. The disclosure of air quality effects of snowmobiles does not provide a qualitative analysis needed to show that the Clean Air Act standards would not be violated. .

The record addresses direct and indirect impacts of emissions for the major activities that would generate air pollution on the forest (FEIS, p. 3-9). However, as part of a cumulative analysis, the Forest addressed only the major multiple emissions that could cause the air quality standards to be violated Sec. 176(c)(1).

I agree with the Regional Forester’s determination that more detailed air quality analyses needs to be made so emissions can be more accurately quantified, reasonably forecasted, and local impacts accessed (ROD, p. 43). Page 5-19 of the Revised Plan identifies the need to cooperate with the State to identify air quality changes over time and detect changes in air quality related to human activities on the Forest (RP, p. 5-19). The Regional Forester’s and the Forest’s work with the State will provide for a monitoring strategy to collect reliable qualitative air quality information to assure compliance with EPA’s air quality standards. This effort will conform to State air quality implementation plans.

RECREATION AND WILDERNESS ISSUES

Wilderness

Response to Public Comments

Contention:

The Forest Service’s decision to reduce wilderness recommendations is arbitrary and capricious, and is not based on sound science or the public process. The Forest Service has ignored public comment from both inside and outside Alaska regarding wilderness recommendations on both

the Kenai Peninsula and the Copper River Delta, and gave an unreasonable amount of deference to a small number of local individuals and organizations, in considering wilderness recommendations for the Copper River Delta. The Forest Service's decision allow the unfounded concerns of a very small number of people in one community to drive the future management of the Chugach National Forest is inconsistent with the agency's legal obligations (NOA #0017, pp. 8-11) (NOA #0019, pp. 10-11, 14) (NOA #0023, #0056-0204, #0206-0344, #0346-0355, pp. 1).

Findings:

Consistent with 36 CFR 219.17, and FSH 1909.12, Chapter 7, the Regional Forester conducted a thorough evaluation and analysis of each roadless area on the Chugach National Forest, for their potential inclusion in the National Wilderness Preservation System (NWPS). This analysis included the relative contribution each roadless area would make to the NWPS if designated (FEIS, Appendix C).

Consistent with 40 CFR 1501.7, the Regional Forester established an early and open process for determining the scope of issues to be addressed in the Forest Land and Resource Management Plan revision. Appendix A of the FEIS fully describes the processes used by the Regional Forester for public information sharing, participation, and involvement throughout the Plan revision process, including collaborative learning workshops held in communities in South central Alaska to facilitate community involvement (FEIS, Appendix A, pp. A-1 through A-3). Forest interdisciplinary team meetings and Forest Supervisor staff meetings were open to the public to facilitate the public's timely input to all stages of the planning process. Additionally, a website was established to enable public access to draft Plan revision documents and maps.

The Regional Forester fully explains his rationale behind the Revised Plan's wilderness recommendations in the ROD, which includes the consideration of other resource values and public comments received during the planning process (ROD, pp. 14-18).

In reviewing the record, I find that the Regional Forester's decisions on recommended wilderness were based on a thorough analysis of roadless areas and their potential for inclusion in the NWPS, a consideration of demands for other resource values, and public comments received throughout the planning process.

Roadless Lands – Wilderness vs. Non-Wilderness Recommendations

Contention:

The Forest Service systematically ignored the fact that 99 percent of the roadless lands on the Chugach National Forest are suitable and qualify for wilderness designation in favor of non-wilderness uses and development in its Revised Plan. The Forest Service underplays and dismisses these wilderness values in its wilderness evaluation and Plan analysis by assigning higher values to other non-wilderness uses and development (NOA #0017, pp. 4 and 12).

Findings:

The Regional Forester conducted a thorough evaluation and analysis of each roadless area (FEIS, Appendix C). Forest Service Handbook (FSH) 1909.12, Section 7.22, requires an evaluation of each roadless area's availability for wilderness designation. To be available for wilderness, the values of the wilderness resource, both tangible and intangible, should offset the value of resources that formal wilderness designation would forego. A review of the record shows that the Regional Forester did an availability analysis of each roadless area, which included an analysis of the values foregone as a consequence of wilderness designation (FEIS, Appendix C). Additionally, the Regional Forester fully explains his rationale behind the Revised Plan's wilderness recommendations in the ROD, which includes the consideration of other resource values (ROD, pp. 14-18). In reviewing the record, I find that the Regional Forester thoroughly considered the wilderness values in each roadless area and followed Forest Service policy in evaluating roadless areas for potential inclusion in the National Wilderness Preservation System.

Adequate Analysis of Potential Wilderness

Contention:

The Plan and FEIS do not adequately consider the wilderness resource in the analytical framework and the analysis process is inadequate, leading to Plan decisions that are flawed and do not sufficiently consider wilderness. The FEIS analysis of wilderness on the Copper River Delta is superficial, often incorrect, and sometimes based on faulty assumptions. The FEIS simply did not provide a clear and relevant basis for choice among the various options and therefore cannot justify the Forest's decision not to recommend any wilderness for the Copper River Delta (NOA #0017, pp. 5-7) (NOA #0019, pp. 7-9).

Findings:

The consideration and recommendation of roadless areas on the Chugach National Forest for additions to the National Wilderness Preservation System (NWPS) was identified as a significant issue in the Forest Land and Resource Management Plan revision (FEIS, Chapter 1, Purpose and Need, pp. 1-4 through 1-11), and recommendations for additions to the NWPS were a major decision in the Revised Plan.

I find that the Regional Forester clearly analyzed and addressed roadless areas and recommendations for wilderness. A broad range of recommended wilderness was considered in the development of alternatives (FEIS, p. 2-39). The Environment and Effects chapter of the FEIS clearly displays the affected environment and the consequences of wilderness designation, including direct, indirect, and cumulative effects to forest resources (FEIS, pp. 3-450 through 3-459).

A thorough analysis was conducted for each roadless area on the forest. This analysis included an assessment of each roadless area's capability, availability, and need for inclusion in the National Wilderness Preservation System, per direction found in FSH 1909.12, Chapter 7, Section 7.2, Evaluation of Potential Wilderness. Consistent with FSH 1909.12, Chapter 4, Section 4.19c, Appendix C (FEIS, Appendix C, pp. C-1 through C-176) displays the analysis of

each roadless area's capability and availability for wilderness designation, and includes the relative contribution each area would make to the NWPS. The "need" for additions to the NWPS was tested through the alternative development and analysis phase of the Plan's development, as discussed in Appendix B-Description of the Analysis Process (FEIS, Appendix B, The Forest Planning Model, pp. B-4 and B-5).

The Regional Forester clearly describes his rationale for wilderness recommendations in the ROD (ROD, Wilderness Recommendations, pp. 14-18). He stated that his decisions were based upon many factors associated with each roadless area, including their physical characteristics, current activities, mineral potential, potential future uses, public comments, and their potential contribution to the NWPS. While the Regional Forester excluded some areas from wilderness recommendation that have known and historic minerals values, and some areas where wildlife improvement projects may be desired in the future to enhance valuable wildlife habitat, he chose to recommend those areas that would complement and enhance existing wilderness on adjacent public lands and that represent several important ecosystems and unique areas of the forest (ROD, pp. 15-16).

As documented in the ROD, the Regional Forester considered the desires of many local residents, fisherman, and tribal officials who asked that the Copper River Delta area not be recommended for wilderness. His decision to not recommend this area for wilderness designation was also based on his understanding of Congressional direction, under ANILCA, to manage the area for the primary purpose of the conservation of fish and wildlife and their habitat. He was not willing to place additional constraints on management options for improving wildlife habitat by recommending wilderness designation (ROD, p. 17).

In reviewing the record, I find that the Regional Forester, consistent with law, regulation, and policy, adequately considered the wilderness resource in the planning process.

Ecosystem Representation

Contention:

The Forest Service has failed to protect a viable and representative range of ecosystem-types on the forest, which is a violation of the Wilderness Act. The Forest Service has failed to recommend significant ecologically rich and productive areas of the forest for wilderness designation for fish and wildlife habitat protection (NOA #0017, pp. 11-12).

Findings:

Consistent with the Wilderness Act, 36 CFR 219.17, and FSH 1909.12, Chapter 7, the Regional Forester evaluated the roadless areas on the Chugach National Forest to determine their suitability for inclusion in the National Wilderness Preservation System (NWPS), as part of the Plan revision process. The analysis included the relative contribution each roadless area would make to the NWPS.

As stated in the ROD, areas recommended for wilderness complement and enhance wildernesses on adjacent public lands, and represent several important ecosystems and unique areas of the Forest (ROD, pp. 15). Roadless areas not recommended for wilderness designation fall under a mixture of management area prescriptions, many of which provide for the protection and enhancement of fish and wildlife resources. These include 132-Recommended Wild River (Plan pp. 4-23), 141-Research Natural Area (Plan, pp. 4-32), 210-Backcountry (Plan, pp. 4-35), 213-501(b)-2 (Plan, pp. 4-37), and 312-Fish, Wildlife, and Recreation (Plan, pp. 4-63).

In reviewing the record, I find that the Regional Forester has fulfilled his responsibilities under law, regulation, and policy in regard to evaluation of roadless areas and recommendations for wilderness.

Effects of Recreation Development and Tourism

Contention:

Introduction of a large recreational facility in the northwestern portion of Prince William Sound is not compatible with protecting the wilderness values of the area, or the stated intent of the area. The FEIS does not address the impacts of placing 100 people in or adjacent to wilderness or recommended wilderness (NOA #0019, pp.14).

Findings:

As stated in the ROD, the Regional Forester applied a variant of the Backcountry prescription to two specific locations in Prince William Sound. The variant is the Backcountry Groups prescription, to accommodate tour groups of up to 100 people at two locations: Port Wells and Growler Bay (ROD, pp. 9). This prescription was developed specifically in response to a request from some tourism operators desiring an opportunity to bring large groups into a wild setting. It allows for the development of day-use and overnight facilities to support wild setting recreation opportunities. Two conditions would have to be met before any development would be allowed in the Backcountry Groups areas. First, congressional action on the Wilderness designation for Prince William Sound would have to be completed, releasing these areas from wilderness consideration. Second, there would have to be no opportunity for similar development on private or other public lands. Until Congress acts on the Wilderness Study Area, the entire Study Area will continue to be managed under the Wilderness Study Area prescription.

The FEIS does address the effects of the Backcountry Groups prescription (FEIS, pp. 3-360 through 3-367). The FEIS acknowledges that primitive recreation settings will be reduced, with semi-primitive recreation settings in Prince William Sound becoming the primary management emphasis in all alternatives except Alternative A and B, and that managing for a semi-primitive recreation opportunity in combination with the proposed primitive setting management (except Alternatives A and B) would allow the Forest to maintain the wild and natural character of most of Prince William Sound while also improving access (primarily trails) and allowing for nodes of concentrated developed recreation to serve increased recreation demand.

None of the alternatives evaluated in the FEIS proposed placing 100 people, in a concentrated group, in recommended wilderness or wilderness.

In reviewing the record, I find that the Regional Forester's decisions to recommend wilderness designation and to implement the Backcountry and Backcountry Groups prescriptions in the Prince William Sound are consistent with law, regulation, and policy.

Wild and Scenic Rivers

Eligibility

Contention:

The Alaska Center for the Environment (ACE), representing 11 other organizations, (NOA #0012, pp. 2-8) and the Wilderness Society (NOA #0017, p. 13) contend the Forest Service failed to properly conduct eligibility. ACE cites a number of facets to this issue (each of which I have addressed separately):

Restrictive Criteria - The Forest Service did not apply the evaluation criteria for eligibility as defined in the Wild and Scenic Rivers Act (WSRA), using instead "overly stringent evaluation criteria." Specifically, they contend too few rivers were determined significant at a regional or national scale, the areas of comparison were too restrictive, and rivers were eliminated because other streams adequately represented values (NOA #0012, pp. 4-5).

Findings:

The WSRA defines eligibility in Section 2(b) as a free-flowing stream that possesses one or more outstandingly remarkable scenic, recreational, geologic, fish, wildlife, historic, cultural or other similar values. It does not, however, provide criteria for evaluating the significance or river-related values. As stated in the Interagency Guidelines¹ (p. 39457) and FSH 1909.12, 8.21c, this determination is based on professional judgment of the study team and should be documented in the study report.

Consistent with agency policy, an interdisciplinary team was formed to develop a forest-specific process for identifying potential additions to the National Wild and Scenic Rivers System (National System). The interdisciplinary team established criteria for the values identified in Section 1(b) of the WSRA, including consideration of "other similar values" (*Guidelines for Assessing Outstandingly Remarkable River Related Features*, Appeal Record # 39356, pp. 3-11).

Forest staff also identified regions of comparison for determining the level of significance or river-related values. These geographic provinces were defined to provide meaningful comparison of rivers with similar physiographic and other characteristics (*Guidelines for Assessing Outstandingly Remarkable River Related Features*, Appeal Record # 39356, p. 3).

Forest staff evaluated more than 760 rivers, identifying "special river-related features" on river data attribute sheets as described in Appendix D (Revised Plan, Appendix D, p. D-2). Through

¹ *Department of the Interior and Agriculture Interagency Guidelines for Eligibility, Classification and Management of River Areas*, published in the Federal Register (Vol. 47, No. 173: September 7, 1982, pp. 39454-39461).

this process, 23 rivers were found to be eligible: free-flowing and possessing one or more outstandingly remarkable value.

I find the record establishes a detailed process for determining which rivers are free-flowing and significant within the region of comparison or the nation, consistent with agency policy. Eligibility has been determined based on professional judgment and appropriately documented.

Inventory

Contention:

The Forest Service in Appendix D, *Wild and Scenic Rivers Evaluation*, states that 760+ named and many unnamed streams were evaluated, yet appellants were provided data sheets for only 398 rivers (NOA #0012, p. 3). They also express concern that a significant majority of the provided data sheets are incomplete, particularly on the Glacier and Seward Ranger Districts (NOA #0012, p. 5). They identify 168 data sheets that do not evaluate (rate) outstandingly remarkable values, yet list rivers as ineligible (NOA #0012, p. 7).

Findings:

The wild and scenic river data sheets provided for the Cordova, Glacier and Seward Ranger Districts do not list 760 rivers (Appeal Record #s 39111, 39109, 39112). In response to appellant's contention, the Regional Forester stated the approximately 400 named rivers (i.e., identified on river attribute sheets) are those that passed an initial screening process and warranted further consideration. I could not verify this eligibility (inventory) process in the appeal record so requested the Regional Forester provide additional information to substantiate his approach (*Request for Additional Information Regarding Appeal #02-12-00-0012 of the Revised Chugach National Forest Land and Resource Management Plan*, May 28, 2003). The additional process records (Appeal Record # 39371) clearly indicate interdisciplinary team meetings at each District and additional consideration by Forest staff as a basis for determining which rivers to evaluate in detail. On the Cordova District, for example, the record states "A preliminary evaluation of the 330 forest inventory of rivers located on the Cordova Ranger District was completed on September 14, 1996, by an interdisciplinary team of district resource specialists." Records provided for the Glacier and Seward Ranger Districts similarly indicate consideration of all rivers within numerous, specified watersheds.

There is variation between the three Districts in how the data sheets were used. On the Cordova District the majority of the "Potential 'Outstandingly Remarkable Values' "rating table was completed. On other districts this table was left blank, with eligibility indicated by a checkmark in an appropriate box. This latter approach implies the respective district was not aware of any value of other than local significance. The significant majority of the nearly 400 forms are complete by one of these two methods. The record also indicates that the Districts' initial determinations of "potential" outstandingly remarkable values were further considered at the forest level.

I find Forest staff created and followed a process consistent with agency policy to survey rivers and streams on the Chugach National Forest and determine the level of significance of river-related values.

Fish Eligibility Criterion

Contention:

The Forest Service did not adequately consider stream evaluation conducted for the Revised Plan and, in particular, the identification of Class I streams with “anadromous and high-value resident fish” (NOA #0012, p. 6).

Findings:

The criterion for judging fish to be an outstandingly remarkable value includes evaluation of both population and habitat. The process record (*Guidelines for Assessing Outstandingly Remarkable River Related Features*, Appeal Record # 39356, pp. 7-8) indicates a number of factors in making this judgment, including habitat quality, diversity of species, value of species, number and size of runs, natural reproduction, size and vigor of fish, recreational importance, and historic and present significance to Native Americans.

Nine of the 23 eligible rivers were determined outstandingly remarkable for one or more aspect of these factors. I find the Regional Forester appropriately evaluated the significance of the fish resource on the Chugach National Forest and made his findings consistent with agency policy.

Eligibility Rating and Outcome

Contention:

The Forest Service identified 16 rivers with values of regional or national significance, yet found these rivers ineligible (NOA #0012, p. 7). Appellants also cite the Forest Service’s consideration of a number of rivers that by its own data sheets are identified as ineligible in the draft Revised Plan (NOA #0012, p. 8) as demonstration of the arbitrary nature of the process. They request the Regional Forester reconsider appellants’ list of 16 rivers, and another 25 rivers with incomplete data sheets or an arbitrary finding of only local significance (NOA #0012, pp. 7 and Addendum A, pp. 1-5). Note: Appellants list Gravina, and Nickawak Rivers on both lists. Appellant (NOA #0008, p. 1) identifies three rivers (Gravina, Eyak River Watershed, Scott Rivers) and “many others” on the Cordova Ranger District for which eligibility was inadequately conducted. The specific concern is that fish habitat will not be protected over the planning horizon.

Findings:

I considered the information provided in the record for each of the rivers identified (Appeal Record #s 39111, 39109, 39112). I first considered the identified rivers with ratings of regionally or nationally significant values. Initially I found insufficient documentation in the

record to explain why these rivers were subsequently determined ineligible. However, the material provided responsive to my request of May 28, 2003 (Appeal Record # 39371) resolved about a half of my questions. Please refer to the following table, which identifies these rivers, potential outstandingly remarkable value, information from the river data sheets, and supplemental information provided to the appeal record.

I also considered the 23 additional rivers listed as incompletely evaluated or arbitrarily rated of only local significance. A number of the river data sheets do indicate that historic/cultural values are partially or wholly unsurveyed. However, Forest staff evaluated historic/cultural and other values based on the best available information, consistent with agency policy. The river data sheets in question indicate river-related values of local significance and I do not find any description that suggests a rating inconsistent with forest-specific eligibility criteria.

I am directing the Regional Forester to provide additional supplemental information from the planning record for the 9 rivers (watersheds) identified in the following table if it exists or, if it does not exist, to reevaluate the eligibility of these rivers based on the process outlined in *Guidelines for Assessing Outstandingly Remarkable River Related Features*. Within 6 months this information is to be provided to this office and the appellants. If additional eligibility evaluation is required, any rivers subsequently found eligible are to be protected in the same manner as those rivers the Regional Forester determined suitable, with the protections maintained until such time as suitability is conducted. Eligibility is an inventory and does not require a decision under the NEPA.

Regionally or Nationally Significant Rivers found Ineligible

River Name	Rating ² and Potential Outstandingly Remarkable Value	Information from Data Sheets	Supplemental Information
Beartrap Creek	3 scenery, geology	“Waterfall from hanging lake”	Determined locally significant
Braided Creek	3 fish habitat	“No outstandingly remarkable feature.” Contributes to coho spawning and rearing habitat of Nellie Martin River”	No independent outstandingly remarkable value
Child’s Glacier	4 scenery, recreation; 3 geology, history	“Views of Childs Glacier, Copper River, and the dynamic interaction of the two resulting in small to massive calving activity.” “Draws people regionally and from outside US.” “300’ wall of ice, undercut by flow of Copper River” “Site of Million Dollar Bridge.”	
Constantine Creek	3 history, cultural	Fish weir “may date from ...early Russian colonial occupation of nearby Nuckek.”	Selected per ANSCA 14(h)(i)
Edwardes River	3 fish	“High producer but does not stand out in region”	
Eyak River Watershed	2/3 recreation	Recreation description focuses on Lake, which is not on NFSL	
Gravina River	2/3 recreation	“Lower portion is unique... since it provides a kayak portage between Port Fildago and Port Gravina.” “...one of two such portages in Prince William Sound.”	Kayak portage seldom used; as a geologic feature not river related
Hichinbrook Island	3 history, cultural	History—“not river or stream related” (old Russian outpost); cultural (fish weir at Constantine Creek)	

² 3—Regionally Significant; 4—Regionally or Nationally Significant

River Name	Rating ² and Potential Outstandingly Remarkable Value	Information from Data Sheets	Supplemental Information
Katalla Slough	3 history	Chilkat Oil Refinery	Refinery not river-related
Kayak Island	4 history; 3 cultural	History— island site of 1 st Russian explorer; cultural (culturally modified trees)	Values not river-related
Lynx Creek	3 geology	Copper deposit “unique to the region and of interest geologically”	Determined locally significant
Montague Island	3 recreation; 3 history, cultural	Recreation—relates to Nellie Martin River History and cultural—relates to San Juan and Rocky Bay Creeks	
Nichawak River	3 fish	“High producer along with Campbell and Edwardes but by itself does not stand out”	
Power Creek	2/3 scenery/recreation	Scenery—“locally significant to regionally significant” Recreation—“Twelve mile loop trail, FS cabin, scenic, pristine, easy access”	
Rude River	3 scenery	“Spectacular views of glaciers and waterfalls;” “majority of land adjacent to river is private or available for conveyance”	
Suny Creek	3 fish	“Outstandingly remarkable for unique genetic run of Chum salmon...unique due to size of fish and timing or run.”	

Ineligible Rivers

Contention:

The Forest Service should have reconsidered the eligibility of several rivers determined ineligible in the planning process, reflecting comments of citizens and citizens’ organization (NOA #0012, p. 7 and NOA #0027, pp. 15-16). Appellants specifically cite the Sixmile Creek complex, Resurrection River, and Gravina River.

Findings:

The eligibility finding for the Gravina River is addressed in the preceding issue. For Resurrection River, I find no information to suggest the Regional Forester did not apply established eligibility criteria in a consistent manner. Specific to Sixmile Creek complex, Forest staff considered and documented evaluation of other rivers in the area, finding them ineligible or, in one case, unsuitable. There is no requirement in agency policy to reconsider eligibility of ineligible rivers absent new information about the significance of river-related values.

Interim Management

Contention:

One appellant (NOA # 0017, p. 13) contends that the Revised Plan does not provide for “appropriate management and interim protection for **eligible** rivers in the final plan (emphasis added).”

Findings:

The Regional Forester completed the wild and scenic rivers study process: eligibility (inventory of whether river is free flowing and possesses one or more outstandingly remarkable value) and suitability (decision as to whether to recommend an eligible river be added to the National System). For rivers he deemed unsuitable there is no requirement for continued protection as eligible rivers. For suitable rivers the Revised Plan (pp. 4-20-4-24) includes a management area and specific measures for protection of the river’s “outstandingly remarkable values, free-flow, water quality, and classification.” I find the Regional Forester is providing appropriate interim direction for suitable rivers, pending further consideration by the Administration and the Congress.

Suitability

Suitability Factors

Contention:

One appellant (NOA #0027, pp. 1-2) contends the Regional Forester should not have considered factors for determining whether a river is a worthy addition to the National Wild and Scenic Rivers System (National System) in addition to those identified in Section 4(a) of the WSRA. They specifically question the criteria of public support or opposition, and whether wild and scenic river designation is the best method of protecting an eligible river.

Findings:

The WSRA identifies a number of factors for evaluation of a congressionally authorized study river in Sections 4(a) and 5(c). Nothing in the WSRA or agency policy, however, limits the consideration of other factors in determining whether a river authorized for study by Congress (Section 5(a)) or identified for study by a federal agency (Section 5(d)(1)) is a worthy addition to the National System. The FSH (1909.12, 8.23) lists the factors from the WSRA and also “other

issues and concerns identified during the planning process” in its description of conducting suitability.

In practice most study reports include additional suitability criteria to help inform the agency decision maker and subsequently the Congress should it choose to consider recommendations of the Administration. The Regional Forester appropriately included an estimate of public support or opposition and whether wild and scenic river designation was the best method of protecting river-related values in the suitability process.

Suitability Rationale

Contention:

Multiple appellants (NOA #s 0017, p. 13; 0027, pp. 7-14) contend the record does not provide adequate rationale for wild and scenic river recommendations. Appellant (NOA #0008, p. 1) specifically identifies the lack of any recommended wild rivers on the Cordova Ranger District as evidence of an arbitrary process. Many appellants (NOA #s 0023; 0026; 0028-0040; 0056-0204; 0206-0220; 0221-0344; 0346-0355, all p. 1) contend the rationale supporting suitability was “severely flawed and applied inconsistently and arbitrarily,” citing that outstanding rivers on the Copper River Delta were ignored.

Another appellant (NOA #0027, pp. 7-14) contends the Regional Forester’s rationale for his decision is flawed, citing specific failings for all 14 rivers determined unsuitable. Generalizing, this appellant contends the Regional Forester did not accurately reflect public comments, placed rivers in alternative management areas inadequate to protect identified values, and did not recommend rivers in complimentary management areas, such as wilderness. A second appellant (NOA #0012, pp. 13-14) also makes similar contentions for Martin River and Lake, Alaganik Slough and unnamed tributary, and Copper, Bering, Katalla Rivers. They incorporate “the entire administrative appeal of the Sierra Club regarding Cascade Creek, Columbia Glacier, Coghill Rivers and Martin River and Lake.” (NOA #0012, p. 11) Note: The Sierra Club appeal does not discuss Columbia Glacier.

Findings:

Forest staff considered the suitability of the 23 eligible rivers by evaluating each against an eight-factor set of criteria (Revised Plan, Appendix D, pp. D-2-D-3). These factors included criteria specified for congressionally authorized studies (WSRA Section 4(a)) and two additional criteria: public support or opposition, and whether recommending a river for wild and scenic designation is the best method of protecting river-related values.

Each river was evaluated in detail based on these factors, providing the Regional Forester substantial information upon which to base his decision as to which rivers to recommend as additions to the National System. In addition to the detail in Appendix C, the Revised Plan includes discussion of the generic effects of designation/nondesignation (pp. 3-443 to 3-449) and arrays and discloses the effect of alternative treatment of wild and scenic rivers based on the theme of specific Revised Plan alternatives (p. 2-40 and Appendix H).

Based on this information, the Regional Forester provided a detailed discussion of his rationale for wild and scenic river recommendations (ROD, Appendix A). He explains his decision, framed by geographic areas and management theme of the selected alternative.

As to whether his rationale for specific rivers was flawed, I reviewed appellants' detailed, river-specific issues. The Regional Forester considered public comments as only one factor in his decision (ROD, Appendix A). He also appropriately considered how his recommendations might affect other resource uses (e.g., mining), consistency with management of State lands, and alternative methods to protect identified values. Your concerns about alternative management areas are considered in detail in the following contention.

In summary, I find the Regional Forester provided adequate rationale for his conclusions. He satisfied law and policy in evaluating and making recommendation of potential additions to the National System.

Alternative Management Areas

Contention:

The Sierra Club (NOA #0027, p. 2) questions the effectiveness of alternative management area prescriptions to protect identified river values. The ACE (NOA #0012, pp. 10-11, 13-14) questions the protections of management area 501(b) and also contends its goals are not inconsistent with recommending rivers as part of the National System. Appellant (NOA #0008, p. 1) contends proposed management areas 501(b)-1 and 501(b)-2 will not protect rivers from multiple threats.

Findings:

The Regional Forester provided rationale for rivers he determined unsuitable in the ROD (Appendix A, pp. A-6-A-18). He cites forest-wide fish, water and riparian standards and guidelines and Revised Plan prescriptions as an adequate protection "for most values of these rivers while allowing other resource management objectives to be met." Specific alternative management areas include Fish and Wildlife Conservation management area (two rivers), Backcountry management area (one river), Wilderness or Wilderness Study management area (four rivers), 501(b)-1 and/or 501(b)-2 (seven rivers). Each of these prescriptions includes a number of protective measures for river-related values. There is, however, no requirement in agency policy that alternative management areas protect identified river-related values or at a level commensurate with the protections afforded an agency-identified recommended wild and scenic river.

Public Support

Contention:

Multiple appellants (NOA #s 0008, pp. 1-2; 0012, p. 14; 0027 p. 2 and 17) contend the Regional Forester discounted expressed support for wild and scenic river recommendations, while overemphasizing opposition.

Findings:

The Regional Forester considered public comments as one factor in his determination of which rivers to recommend to the National System (ROD, Appendix A). From the record I do not find an overemphasis on opposition to wild and scenic river recommendation. If Congress considers an amendment to the WSRA to add rivers in Alaska to the National System, appellants may advocate for additional rivers, including those determined not suitable in this planning process.

Recommendations

River Corridor

Contention:

The Sierra Club (NOA #0027, p. 15) contends the Forest Service should have considered an alternative in the environmental analysis process that recommended a river corridor of ½ mile, consistent with the mileage allowance of rivers added to the National System under the ANILCA. The ACE (NOA #0012, p. 15) and Wilderness Society (NOA #0017, p. 13) state the Forest Service should have followed the precedent in the ANILCA for its recommended rivers, to provide for the best protection.

Findings:

Forest Service policy (FSH 1909.12, 8.13) directs establishing a river corridor boundary at a minimum of one-quarter mile on either side of the river. This boundary may be expanded to include adjacent areas to protect river values. As described in the Revised Plan, Appendix D (p. D-1), Forest staff used a boundary of one-quarter mile on either side of the river with consideration of an expanded boundary as necessary to protect identified outstanding values.

Nothing in the WSRA or the ANILCA directs the Forest Service to consider or recommend a one-half mile river corridor boundary for eligible or suitable rivers in Alaska. If Congress considers an amendment to the WSRA to add rivers in Alaska to the National System, appellants may advocate for a one-half mile corridor as was afforded rivers added under the ANILCA and Elkhorn Creek, Oregon (P.L. 104-333).

Classification

Contention:

Multiple appellants (NOA #s 0012, pp. 12-13; 0017, p. 13; 0027 pp. 2-6) contend the Regional Forester did not provide adequate rationale for his decision to recommend suitable rivers at a classification other than inventoried at the time of eligibility. The Wilderness Society (NOA #0017, p. 13) further characterizes this contention as a failure to protect outstandingly remarkable values.

Findings:

The intent of the WSRA is to preserve a river's free-flowing condition (Section 7(a)) and to protect and enhance the values for which it was designated (Section 10(a)) applies equally to each of the three classifications. While a scenic or recreational classification allows a greater

range of in-corridor land uses, it implies no lesser protection. The Regional Forester provides rationale for the four rivers in which he recommends all or part at a classification that differs from that inventoried (ROD, appendix A-2 - A-5), including an ability to provide a greater range of recreation use or facilities, and consistency with other entities management of adjacent lands. Agency policy (FSH 1909.12, 8.33f) allows consideration of recommending eligible river segments with an alternative classification to “allow construction or other uses that alter the current preliminary classification by not the eligibility values.” I find the Regional Forester’s recommendation of alternative classification for four rivers is consistent with agency policy.

Regional Forester Recommendations

Contention:

The ACE (NOA #0012, pp. 8-11) contends the Regional Forester should have recommended “a much broader range of rivers.” Other appellants (NOA #s 0008, p. 1; 0014, p. 2; 0027, pp. 2-3) contend the Regional Forester should have recommended specifically identified rivers. Many appellants (NOA #s 0023; 0026; 0028-0040; 0056-0204; 0206-0220; 0221-0344; 0346-0355, all p. 1) identify “rivers of the Copper River Delta, Prince William Sound and Kenai Peninsula” as deserving protection under the WSRA. The Sierra Club (NOA #0027, pp. 4, 14-15) also contends the division of recommended rivers into two segments and proposing these segments as separate river recommendations is not authorized by the WSRA or consistent with designation of rivers currently in the National System.

Findings:

I appreciate the desire of appellants to see a broader range of rivers on the Chugach National forest recommended for designation into the National System. If Congress considers an amendment to the WSRA to add rivers in Alaska to the National System, appellants may advocate for the consideration of rivers in addition to the seven rivers identified in the Chugach National Forest planning process. I however find the Regional Forester provided detailed rationale for his recommendations, considering the many factors in his evaluation. For rivers he determined unsuitable, most are included in a management area which will protect identified values.

Recreation Opportunity Spectrum (ROS)

Contention:

Appellants contend that using the Roded Natural Recreation Opportunity Spectrum (ROS) classification for the majority of the Brown Bear Core prescription will increase human access to, and negative interaction with, brown bears. They feel using the Semi-primitive, Non-motorized ROS classification for backcountry settings would reduce negative human/bear impacts (NOA #0013 p.1-7). Using “semi-primitive groups,” which is not a standard ROS classification, raises the level of impact analysis that should be done to measure the implications of using this non-standard classification (NOA # 0017 p.37). ROS analysis alone is not sufficient to fully understand the effects of motorized use on the Forest. Motorized and non-motorized user conflicts should be integrated with setting (ROS) analysis (NOA #0011 p.4). Appellants feel that more of the Chugach should be managed in primitive or semi-primitive non-motorized settings than the Forest Plan proposes.

Findings:

Policy for using the Recreation Opportunity Spectrum (ROS) is found in Appendix A (FSM 2310 and FSM 2311).

The Errata Sheet (File Code:1920, July 23, 2002, Errata Number 1, August 9, 2002 242 – Brown Bear Core Management Area) accompanying the ROD for the FEIS for the Chugach Revised Plan makes the following changes that directly address the contentions:

Page 4-54 [of the Revised Plan the following change should be made.] In the 3rd paragraph titled Social Systems Desired Condition, fourth sentence should read:

‘The Recreation Opportunity Spectrum will range from Primitive to Semi-Primitive Non-Motorized.’

Page 4-56 [of the Revised Plan] Brown Bear Core Management Area Activities Table, Use and Occupancy Activities:

‘Maximum ROS Class is [Semi-Primitive Non Motorized] SPNM, not [Roaded Natural] RN.’

These changes address the concerns about roaded activity causing negative human/bear interactions in the Brown Bear Core Management Area – roads and motorized use are not part of the semi-primitive, non-motorized ROS classification.

However, there is an uncorrected use of the “Roaded Natural” (RN) classification in the Prescription Activity Matrix located following Appendix Page F1 of the Revised Plan. It is located at Prescription number 242 under the Maximum ROS column. “RN” should be changed to “SPNM” – Semi-primitive Non Motorized. This change is necessary to make this table consistent with the changes made in Errata Number 1.

Policy found in the Forest Service Manual (FSM 2311.12) permits subclasses:

“Each Recreation Opportunity Spectrum Class may be divided into subclasses to better reflect local or Regional conditions.”

“Semi-primitive groups” is a sub-class of the Semi-primitive Motorized Classification. The Chugach did not create a new ROS class but a subclass of an existing ROS Class.

I find the Forest properly followed the ROS policy with the exception of the apparent oversight on Appendix F1. The Regional Forester’s decision approving the Revised Plan and FEIS is consistent with relevant regulation and policy associated with the Recreation Opportunity Spectrum. The Regional Forester is directed to issue a modified errata to correct the oversight noted in the Prescription Activity Matrix.

ACCESS AND TRAVEL MANAGEMENT ISSUES

Off Highway Vehicles

OHV Natural Quiet/Sound

Contention:

The “Plan fails to adequately protect natural quiet and without even attempting to explain why, the Service deleted the Developed Recreation /Reduced Noise prescription” (NOA #0011, pp. 2, 3, and 9). The appellant’s concerns include helicopter skiing (NOA #0011, p. 3), their belief the “501(b)-1 prescription does not address the Natural Quiet interest as stated in the Forest Plan (NOA #0011, p. 4),” and “an adequate balance of relatively accessible and more remote winter opportunities for quiet recreationists” (NOA #0011, p. 9).

“Agreements made between different user groups such as ACE and the Quiet Rights Coalition and comments made on draft plans by the Anchorage Snowmobile Club were completely ignored. One agreement that was ignored was the area including Skookum Glacier would be closed to motorized use for the early season one year and then the next year it would be closed during the late season” (NOA #0364, p. 2).

The Forest Service Plan does not provide a balanced allocation of lands for motorized and non-motorized use (NOA #s 0023; 0026; 0028 - 0040; 0056 - 0204; 0206 - 0220; 0221 - 0344; 0346 - 0355, all p.1).

Findings:

I find the FEIS provides analysis which supports the Regional Forester’s decision. Developed Recreation/Reduced Noise prescription was not deleted. However, it was not selected for use in the Preferred Alternative. Comments pertaining to the Reduced Noise prescription were answered in Appendix K (FEIS, pp. K-49 and K-59).

The total numbers of acres in management prescriptions by alternative are listed (FEIS p. 2-44). The FEIS analyzed a range of motorized/non-motorized recreation opportunities in Access Management (FEIS, p.3-405 - 3-414). Summer motorized recreation use varied from 15 to 100 percent of gross acreage. Winter motorized recreation use varied from 77 to 98 percent of gross acreage. Based on the analysis in the FEIS, which incorporated historic patterns of use and comments from the public, the general philosophy used in allocating motorized and non-motorized recreation access was for summer, motorized use to be restricted to designated open roads, trails, and areas (Rod, p. 6). In compliance with ANILCA, the Forest is open for motorized subsistence activities (FEIS, p.3-410 table 3-68). A comprehensive analysis of motorized and non-motorized recreation activities was done in the FEIS (FEIS, p3-376 – 3-374). The ROS classes for the Preferred Alternative are shown on Figure 2-15 (FEIS p.2-35). The

gross acres available for winter motorized and non-motorized recreation are shown in Table 3-68 (FEIS, p.3-410).

The Revised Plan also addresses the Natural Quiet/Sound issue. Additional NEPA analysis will be done on a project-by-project basis (RP, p.1-7). The 501(b) – 1 prescription has a semi-primitive non-motorized recreation setting. The management intent is to “provide outstanding opportunities for solitude, quiet and isolation when traveling cross-country” (Revised Plan p. 4-25). The area is closed to all motorized recreation activities in the summer. It is open to snow machines in the winter (Forest Plan Maps, R10-MB-480 f, g, and n). Additionally, the Primitive Management Area was developed to address the “Natural Quiet” and “Nonmotorized Access” interests (Plan, p.4-8). Motorized access for subsistence purposes by rural Alaska residents are allowed throughout the forest, except for the small portion designated as “Primitive Management Area” (Plan, p.4-91). Information on effects of noise is included in the FEIS (Chapter 3, Wildlife and Recreation and Tourism).

The Forest Service took a hard look at areas that would provide motorized/non-motorized recreation opportunities. The Mt. Alice area, near Seward, is very steep and provides limited terrain for skiers. Lands adjacent to the Sunrise Inn in Cooper Landing are not National Forest System lands.

After much public input, split seasons or alternating weeks and months, such as that cited by the appellant for Skookum Glacier, were not popular. The FEIS provided appropriate analysis of OHV opportunities in accordance with Executive Order 11644, as amended and 36 CFR 295.2(a). Public comments to the Reduced Noise prescription were reviewed. The Regional Forester’s decision took the wide array of opinions under consideration concerning the Natural Quiet/Sound issue. A Forest Service study concluded that the sound level from helicopters do not pose a threat to hearing safety (USDA Forest Service 1994). The snow machine industry has adopted standards to limit the noise of snow machines when they leave the factory (FEIS, p.3-359). The Regional Forester states he will manage access for motorized and non-motorized recreation on the Kenai Peninsula and Copper River Delta by establishing areas for helicopter use in winter and summer to minimize conflicts with other users (Rod, p.6). I find he provided an adequate balance of recreational opportunities and he complied with existing law, regulation and policy in this regard.

Under the Preferred Alternative about 80 percent of the Kenai Peninsula will be available for motorized winter use (FEIS, p. K-63 - K-64). As discussed in the Procedural Background “Summary of Issues” the Regional Forester withdrew the portion of his ROD closing the Crescent /Carter Lake area to winter motorized activities, pending site-specific analysis. Appellants are encouraged to participate in this process.

OHV Environmental Analysis

Contention:

The appellants generally contend the environmental analysis is inadequate with regard to OHVs. This includes effects of snow machine use on wildlife (wolves, lynx, wolverine, and moose) and

the subnivean environment (NOA #0017, pp. 16, 19-25, 27), motorized use emissions (NOA #0017, p. 27), effects of OHV travel on soils, vegetation, water quality (NOA #0011, pp. 12, 14 - 17), impacts of OHVs on adjacent lands and waters (NOA #0017, pp. 14-15, 35). “There is no, or virtually no, discussion of the effects of jet skis, airboats, jet boats, other motorboats, and fixed-wing airplane landings and over flights on nonmotorized users” (NOA #0011, p. 16). The environmental analysis is inadequate and the effects of jet skis on forest resources are not analyzed (NOA #s 0023; 0026; 0028 - 0040; 0056 - 0204; 0206 - 0220; 0221 - 0344; 0346 - 0355, all p.1).

Findings:

The environmental analysis was completed using an open and public process. One of the significant issues identified by the public and carefully considered during the analysis was motorized and non-motorized use (FEIS, Appendix K-16). Thirty-six percent of the Kenai Peninsula, 9 percent of Prince William Sound, and 37 percent of the Copper River Delta are open to summer motorized recreation use. About eighty percent of the Kenai Peninsula, 84 percent of Prince William Sound and 96 percent of the Copper River Delta are open to winter motorized recreation use (FEIS, p.3-410). Most of Hinchinbrook and Hawkins Islands are closed to motorized recreation use. Polygons P476, P477, P478 and P487 are the only areas on these islands open to winter motorized use and summer motorized use on designated routes (FEIS, Appendix K, p.K-46). Analysis for motorized and non-motorized use was considered throughout the FEIS (FEIS Chapter 1-6). Winter helicopter use and snow machines were analyzed throughout the FEIS, Chapter 3 in accordance with 36 CFR 295.2(a).

Cumulative effects are also discussed (FEIS, p.3-7 to 3-9). The 211 – Backcountry and the 212 – Backcountry Motorized prescriptions in the DEIS were combined into one prescription, 210 – Backcountry, in the FEIS and Revised Forest Plan. The Revised Plan now separates direction regarding motorized use from the basic prescriptions. The new 210 – Backcountry prescription provides for a variety of recreational uses consistent with maintaining natural environments (FEIS, p. K-54 and p. 3-1 to 3-570). These include providing opportunities for motorized recreation use as shown on the summer and winter motorized recreation access maps that accompany the Revised Plan.

The management prescription activities tables (Appendix J) show the activities that are permitted, permitted with conditions, or prohibited for each prescription (FEIS, p. J-1 to J-3). The documents are equally clear about overriding rights, such as subsistence activities and traditional uses. In the DEIS, motorized/non-motorized use allocations were displayed by management prescription. This approach proved inflexible and confusing, therefore, in response to public comment on the DEIS, allocation of motorized and non-motorized recreation activities for the Preferred Alternative and in the Revised Plan were displayed separately from the prescriptions (FEIS, p. K-3). Winter motorized use is about 7 percent more restrictive in the Revised Plan than in the Proposed Plan (FEIS, p.3-319). The FEIS analyzed a range of motorized/non-motorized recreation opportunities. Summer motorized recreation use varied from 15 to 100 percent of gross acreage. Winter motorized recreation use varied from 77 to 98 percent of gross acreage (FEIS, p. 3-410). In the summer, the Forest is closed to all cross-country motorized travel. In compliance with ANILCA, the Forest is open for motorized subsistence activities. Over-snow-vehicles include snow machines, snow cats and 4-wheeler

type vehicles (FEIS, p. F-1; Plan, p. B-44 and B-49). For motorized/non-motorized impacts, all were considered equal in effect. In addition to monitoring visitor satisfaction with motorized and non-motorized opportunities on the Forest, human influences on several wildlife species will also be monitored (Plan, p. 5-8 to 5-10, p. 5-15, and p. 5-19 to 5-21). Information and Research needs also identified several additional items related to motorized use.

The Revised Forest Plan is a management plan for upland uses. The Forest recognizes several issues related to use and activities on waters within the Forest. At this time, the Forest is not identifying any management direction for use on waters within the Forest. Such activities are beyond the scope of the analysis (FEIS, Appendix K, p.K-18). However, wetlands are protected through Forest wide standards and guidelines for Fish, Water and Riparian Areas (Plan, Chapter3).

Most of the OHV environmental analysis contentions raised concerning wildlife, soil, and air are addressed elsewhere in this decision, primarily in the WILDLIFE EFFECTS ANALYSIS ISSUES and the AIR QUALITY AND SOIL EFFECTS ISSUES. The separate “Land and Water Ownership” issue and “Plan Integration” issue address adjacent lands and waters as well as integration of the Chugach Revised Plan with adjacent lands under various jurisdictions.

I find the FEIS does include appropriate environmental analysis concerning the OHV topic. The motorized/non motorized analysis was open and public. It included a range of potential activities. The Regional Forester’s decision took in to consideration specific ANILCA requirements (also discussed as a separate issue in this decision). I find the Regional Forester’s decision was consistent with law, regulation and policy concerning the OHV environmental analysis.

OHV Displacement/Conflict

Contention:

The Forest Service relied far too heavily on existing use patterns to make winter recreation allocation decisions on the Kenai Peninsula and Turnagain Arm. They believe “this is an inappropriate criterion since it fails to adequately consider the substantial impact that displacement has had on this region and therefore unfairly favors the dominant, displacing form of recreation, motorized use. Despite acknowledging the displacement problem, the Forest Service grossly underestimates its extent” (NOA #0011, pp. 5 to 7).

The appellants contend “a major flaw was the FEIS failure to adequately address the concept of quality of experience and in particular displacement. The effects of motorized recreational vehicle use on displaced users have not been quantitatively analyzed at all, nor adequately analyzed quantitatively” (NOA #0011, p. 15). “A substantial motorized bias is clearly evident and insufficient attention and consideration is given to truly, low impact, muscle powered forms of recreation” (NOA #0011, pp. 15-16).

Findings:

In the FEIS for the Revised Plan, range of motorized and non-motorized activities was analyzed (FEIS 3-409 - 3-114) in accordance with 36 CFR 295.2(a). For motorized summer recreation use on the Kenai Peninsula, the range varied from 19 to 100 percent of gross acreage available for access. Under the FEIS Preferred Alternative, 36 percent is available. For motorized winter recreation use on the Kenai Peninsula, the range varied from 42 to 100 percent available. Under the FEIS Preferred Alternative, about 80 percent is available (FEIS, p. 3-410). In both cases, more areas are allocated to non-motorized recreation activities than the current plan.

The reasons for managing access for motorized and non-motorized recreation on the Kenai Peninsula, Prince William Sound and the Copper River Delta are stated in the ROD (Rod, p. 6) in accordance with 36 CFR 295.2(a). As discussed in the Procedural Background “Summary of Issues” the Regional Forester withdrew the portion of his ROD closing the Crescent/Carter Lake area to winter motorized activities pending subsequent site-specific analysis.

The affected environment describing the current situation for recreation and tourism on the Chugach National Forest was divided into two major parts. The first part displays and discusses the existing situation with respect to recreation activities, recreation infrastructure, recreation settings and capability, commercial services, and interests and situations for the three geographic areas of the Chugach National Forest.

The second part discusses past, present and projected participation in recreation activities at the national, state and local levels (FEIS, 3-293 - 3-346). The existing winter recreation opportunities on adjacent lands are described correctly (Environmental Assessment for Commercially Guided Helicopter Skiing on the Glacier and Seward Ranger Districts, Chugach National Forest, September 1999, p. 34 TABLE 4.9- LOCATION and INTENSITY OF WINTER RECREATION USE MOTORIZED, p. 36 – 38, Cumulative Effects). The EIS recognized that as motorized uses have expanded a certain amount of displacement of non-motorized users from areas traditionally use has occurred.

The EIS describes the character and activities for each of the geographic areas (FEIS, p.3-304, 310, 31 and p.3-358 to 3-360). The effects of noise on other recreationists are discussed in the FEIS, Recreation Conflicts and Situations section (FEIS p.3-358 to 3-360 and p.3-376 to 3-377).

I find this approach, comparing past, present, and projected participation in recreation activities, to be a reasonable approach to the OHV Displacement/Conflict topic. The Regional Forester’s decision appropriately allocates non-motorized and motorized recreation. Displacement and conflicts were identified and discussed in the FEIS. No legal or policy requirements exist to further discuss the concept of experience quality quantitatively as the appellants prefer. I find the Regional Forester’s programmatic decision was not based on a flawed process and was consistent with law, regulation and policy.

OHV Inconsistencies

Contention:

The Revised Plan closures are “entirely inconsistent” and contrary to the Regional Forester’s stated goal to “maintain current road access and maintain and increase trail access” on the Kenai Peninsula (NOA #0046, p.2). They primarily are concerned about the decision to close four popular snow machine areas (NOA #0053, p.4). Appellants contend inconsistencies exist between text and maps (NOA #0054, p. 7). There are areas on the map which are shown to be closed to winter snowmobiling but these areas are shown as open in the EIS (Russian Lakes Trail, Primrose Trail, Old Sterling Highway). This makes it more difficult for the public to understand the changes (NOA #0046, p.6). There are inconsistencies between the EIS, the Revised Management Plan and the Winter Motorized map. Both the EIS access appendix and the Revised Plan show the Old Sterling Highway as being open to motorized winter use. The Winter Management Plan map shows the entire area as being closed to motorized use. The EIS and the RMP show this long-abandoned road as 0.9 miles long. This road actually is about eight to nine miles long (NOA # 0016, p. 6).

Findings:

The Preferred Alternative proposes better access than currently exists by constructing 24 miles of new road and 82 miles of new trail on the Kenai Peninsula during the first decade of the Plan (FEIS, p. 3-411 to 3-413). Many of these projects will benefit winter motorized users (Revised Plan, Appendix C-3 to C-4). The ROD is very clear on objectives for motorized/non-motorized uses on the Kenai Peninsula. Maintaining key winter motorized access where it is currently occurring and appropriate, while specifically identifying areas for winter non-motorized opportunities, where appropriate, (ROD, p. 24) in accordance with 36 CFR 295.2(a).

The Winter Motorized Recreation Map (FEIS Map Packet, Winter Motorized Recreation Access, Publication No. R10-MB-480g), the Revised Forest Plan (Plan, p. B-51 to B-52) and the Record of Decision (ROD, p. 24) identify the areas open to winter motorized recreation. Several changes were made between the FEIS and the Decision with regard to motorized recreation, therefore the tables in Appendix F of the EIS will not necessarily mirror those found in the Revised Forest Plan or on the Winter Motorized Recreation Map. One change, made as a result of input from a “follow-up” public meeting, was the decision to close the Russian Lakes Trail to the Aspen Flats cabin. The Old Sterling Highway Trail (0.09 miles) is on private land and should not have been included in Appendix B of the Revised Forest Plan.

The Regional Forester withdrew the portion of his ROD closing the Crescent/Carter Lake area to winter motorized activities as discussed earlier in the “Summary of Issues” in the Procedural Background section of this decision. I find the Regional Forester complied with relevant law, regulation and policy concerning preparation of FEIS, Revised Plan, and Winter Motorized map. Inconsistencies, which may have existed in the maps and the Revised Plan, may be further confusing to the public because of the subsequent Order Modification. The Regional Forester has requested the Forest Supervisor to further complete site-specific analysis and to take another

look at possible alternatives. This evolving situation could indeed result in confusion and the need for revised maps. Any map inconsistencies concerning OHV use in the Revised Plan though, were obviously inadvertent and are easily remedied.

The Regional Forester is instructed to resolve inconsistencies between the Motorized Recreation maps and Revised Plan as it relates to motorized access. This should incorporate any remaining OHV inconsistencies, the results of the January 14, 2003 withdrawal of a portion of his ROD, and the subsequent site-specific analysis results.

OHV Use Data

Contention:

The decision for snow machine closures for the entire winter is not based on sound use data that supports the need and demand for more areas to be closed to snow machining (NOA #0051, p. 3 and NOA #0364, p. 2). The decision to close this as well as other areas is not founded on nor based on sound data (NOA # 0205, p. 1). For the Resurrection River Trail no reason or justification of closure is given. The trail has been open to horses and snow machines since its construction (NOA #0359, p. 1).

Findings:

The issue of motorized/non-motorized recreation surfaced early in the planning process and was one of the significant focus items of the revision. During the public comment period on the DEIS/Proposed Revised Forest Plan most of the local comments dealt with motorized/non-motorized use on the Kenai Peninsula. Although use data was considered in areas where available, it was only one of several factors used to determine an appropriate balance between motorized and non-motorized public values in accordance with 36 CFR 295.2(a).

I find the effects of winter motorized recreation are well documented in the literature including several references used in the FEIS analysis (pp.1-4 to 1-5, 1-10, 6.1, and 1-132). Forest Service officials and additional follow-up public meetings (after the public comment period the planning team revisited five communities on the Kenai Peninsula to discuss options (ROD, p. 27)) on this issue made the decision on winter motorized/non-motorized use after a thorough discussion involving a wide range of perspectives and alternatives (FEIS, p.2-35 to 2-37).

The decision to close the Resurrection Pass Trail to snow machines after February 15 is documented in the 1984 Forest Plan. Because the closure has been in place so long and it is meeting the needs of both motorized and non-motorized users, the Forest did not see any reason to change it (Land and Resource Management Plan 1984, Chugach National Forest, p. IV-72, Facilities; L23 Trail System Management, B. and Plan B-52).

I find the decision to retain the closure of the Resurrection Pass Trail was appropriate. The decision was retained when the Regional Forester subsequently withdrew the portion of his ROD closing the Crescent/Carter Lake area to winter motorized activities as discussed in the earlier "Summary of Issues" in the Procedural Background section of this decision. I also find the

Regional Forester's decision was based on sufficient OHV use data to comply with existing law, regulation, and policy.

OHV Closure Impacts

Contention:

Appellants contend there was no scientific analysis done to determine the impact of snowmobile closures on user groups such as the elderly, people with disabilities, families with children, and the resultant Plan disparages these groups. Closure will leave very few areas accessible to families. The Barber Cabin is the only ADA-accessible cabin available to people with disabilities. There is a strong disparity in favor of backcountry recreation opportunities, which only benefit elite athletes, at the expense of the average recreationists (NOA #0046, p.6). The Plan limits use of many Forest Service cabins already in place by closing access to snowmobiles to these areas (NOA #0020, p. 1).

No scientific analysis was completed in determining the impact of year-round snow machine closures on certain user groups – families with young children, elderly, and people with disabilities, etc. (NOA #0356. p. 4).

Findings:

There are 19 cabins available for public use on the Kenai Peninsula (FEIS, Map Packet, Winter Motorized Recreation Access, Publication No. R10-MB-480g). Three are in areas closed to winter motorized use all winter and nine are in areas closed to motorized use after 2/15. Records show that nearly 95 percent of cabin use occurs in the summer. Under the Preferred Alternative, nine new cabins are proposed for the Kenai Peninsula (FEIS, p.3-354 to 3-355 and Plan, Appendix C-5, Cabin Construction). Many of these projects will benefit winter motorized users. Individual project analysis will identify specific opportunities to improve accessibility at appropriate levels. New or renovated public facilities (Plan, Table C-1) are required to meet accessibility standards (FEIS, p.K-18).

Areas closed to winter motorized recreation use, restrict or prohibit, all people from motorized access. This includes, but is not limited to families with young children, elderly, and people with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973. The FEIS addresses the effects of access management and the consequences of management prescriptions (FEIS, p. 3-409 - 3-410). The gross acres available for access from both motorized and non-motorized activities are displayed in the FEIS Table 3-68 for the Kenai Peninsula (p. 3-410).

The topic of OHV closure impact on the elderly and other groups specified by the appellant is addressed in the PLANNING AND PROCEDURAL ISSUES under the "Socio-economic Impact Analysis" issue (see Civil Rights Impacts Analysis). I find the Regional Forester's decision does not disproportionately impact families with young children, the elderly, or persons with disabilities because of OHV closure impacts. Civil rights laws and accessibility for persons with disabilities were appropriately analyzed within the context of a programmatic plan revision.

Carbon Mountain Road

Chugach Natives Incorporated (CNI)/Chugach Alaska Corporation (CAC) Easement Validity

Contention:

Page A-6 of the Revised Plan states that CAC's "easement for a road to Carbon Mountain, provided for in the 1982 CNI settlement agreement, 'was consolidated with the state's right to construct the Bering River Highway as granted under the Omnibus Bill of 1959.' . . . There was no discussion of such a consolidation at the time the Forest Service granted the easement to CAC. . . . See November 20, 1998 letter from Trustees for Alaska to the Regional Forester. The statement about consolidation with the state easement should be removed from the Revised Land Management Plan" (NOA #0014, p.2).

Appellants assert that "no valid road easement has been granted to CAC and that additional environmental analysis is required before any construction can begin across Forest Service lands" (NOA #0014, p.2).

Findings:

Land and resource management plans are authorized and defined by the NFMA. Under the NFMA (P.L. 94-588, Section 6(i)) plans are subject to all valid existing laws and regulations. This law is echoed in both Section 1920.1 of the FSM and the Revised Plan (Chapter 1, p. 1-4). The FSM states in Section 1920.1 that planning for the management and use of the National Forest System lands must conform to the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) as amended by the NFMA. FSM requirements are found in Appendix A.

The Revised Plan states in its introduction that the FSM and FSH are incorporated into the plan by reference (FEIS, p. 1-4). The Section 1920.1 of the FSM states that land and resource management plans are subject to valid existing laws. In addition, the Revised Plan also lists, in Appendix D, the laws and regulations to which the plan is subject. This includes the NFMA and the 1982 CNI Settlement between the State of Alaska and the U.S. Department of Agriculture.

I find that the Carbon Mountain Road Easement granted to Chugach Alaska across the Copper River Delta was issued pursuant to the 1982 CNI settlement agreement. This settlement was between the United States and CNI, the predecessor to Chugach Alaska, under Section 1430 of the ANILCA, and has the effect of binding, pre-existing law. (ANILCA is addressed as a separate issue earlier in this decision.) Revised Plans are subject to valid, existing law under the NFMA. Since the settlement is valid and binding on the United States, the Revised Plan must incorporate it. The easement granted pursuant to that settlement was properly granted by the Forest Service. The Regional Forester complied with laws, regulations and policies concerning this issue of easement validity.

Carbon Mountain Road Easement Width (501(b)-3) Prescription

Contention:

The Revised Plan applies the 501(b) 3 prescription to the Carbon Mountain Road for ¼ mile wide on each side of the road, which is inconsistent with the purposes of the easement (NOA #0014, p. 2).

The Forest Service has not adequately analyzed the impacts of the 501(b)-3 prescription to this remote area and “this prescription should be changed to 501(b) (Wilderness) to adequately protect Forest resources along this potential new road development” (NOA #0014, p. 2).

Findings:

The Regional Forester discusses the decision to modify the Preferred Alternative in response to public comments on the DEIS and proposed Revised Plan (ROD, p. 10). The ROD specifically addresses the changes made to prescriptions within the Copper River Delta Geographical Area which include “allocating the proposed routes of the Katalla to Carbon Mountain road corridor to the 501(b)-3 prescription, to provide for activities and uses associated with road corridors (as in Alternative A . . .” (ROD, p. 30).

The FEIS discusses the 30-mile Carbon Mountain Road and how prescriptions adjacent to the new road or within the “day use” radius of Whittier will dictate how Chugach lands will be accessed (p. 3-413). Table 3-71 of the FEIS indicates that both the No Action Alternative and Alternative A analyzed the effects of the 501(b)-3 prescription (FEIS, p. 3-414).

I find that in accordance with 40 CFR 1503.4, the Regional Forester has appropriately modified the Preferred Alternative in response to public comment as it relates to the Carbon Mountain road corridor. Appellant concerns primarily are associated with wilderness recommendations which are addressed separately in this decision under “RECREATION AND WILDERNESS ISSUES.”

Access and Transportation Guidelines Changes

Contention:

Significant differences exist in the Access and Transportation guidelines between draft and final Plan (NOA #0013, p. 9).

“Allowing an activity as ‘conditional’, but then not stating the conditions is equivalent to giving the activity a yes” (NOA # 0013, p. 9).

“...the criteria for deciding on new roads through areas with a Fish and Wildlife Conservation prescription will not be driven by the theme, management intent, standards, or guideline for this prescription, but by some other, unrelated prescription, such as Major Transportation/Utility Systems. We see this as a major policy shift” (NOA #0013, p. 9).

“[The]...subtle shift in policy by the Chugach National Forest establishes a permissive approach for a project that could impact wildlife and wilderness recreation on the forest” (NOA #0013, p. 9).

“[The]...policy change occurred without any explicit recognition of environmental effects or public input regarding the proposed road” (NOA #0013, p. 9).

Findings:

The Forest is currently 99 percent roadless, the most unroaded national forest in the Nation, and it will continue to be so. A very small portion of the Forest contiguous with existing roads may be developed for more intensive recreation, timber harvest, fuels reduction, and personal use firewood access, but the overall character of the Forest will not change. The vast expanse of roadless areas will continue to provide quality habitat for fish, wildlife, subsistence uses, hunting and fishing, and maintain the generally wild character of the Forest.

A Forest-scale roads analysis, as required by FSM 7710, Interim Directive 7710-2001-3, has been completed to determine within the context of current and likely funding levels, the minimum transportation facilities needed for public and agency access to achieve forest management goals and transportation system needs and to safeguard ecosystem values.

The ROD notes the standards and guidelines described in Chapters 3 and 4 of the Revised Forest Plan. Standards and guidelines govern resource management activities. Some standards and guidelines apply forest wide (Chapter 3), others to specific Management Area Prescriptions (Chapter 4). Standards are actions to be followed, or that limit activities, in order to achieve Forest goals. Deviations from standards will be analyzed and documented in Forest Plan amendments. Guidelines are courses of action that are normally expected to be followed. Deviations from guidelines will be analyzed during project-level analysis and documented in project decisions, but do not require a Forest Plan amendment.

Both Forest wide and Management Area Prescription standards and guidelines are applied to the planning and implementation of site-specific projects or other activities that occur on the Chugach National Forest. These standards and guidelines are written to meet, at a minimum, all requirements of applicable laws, regulations, and state standards. Implementation of site-specific projects or other activities that occur will address consistency of the proposed action with the Management Area Prescriptions and desired future condition of the management area. The Regional Forester has met the requirements of 40 CFR 1503.4(a).

Road Construction on Kenai (Roadless Areas)

Contention:

The FEIS contains serious inconsistencies regarding the impacts of road building in the Revised Plan on roadless areas, particularly on the Kenai Peninsula (NOA #0017, p. 13).

“The FEIS [p. 3-411, Table 3-69a] indicates that no new roads will be built for timber management during the first decade... [However] the FEIS also states [p. 3-402; p. 3-403, Table 3-403]: Under the Preferred Alternative, 149,960 acres are in management area prescriptions that

permit the Forest Service to construct roads...About 2,000 acres of roadless area could be affected during the first decade” (NOA #0017, p. 13).

“The agency has also created prescriptions that allow road building in roadless areas, and plan to build roads at a rate of approximately 3.2 miles/year, or 32 miles per decade” (NOA #0017, p. 13-14).

“...the Forest Service should uphold the Roadless Area Conservation Rule standards until the agency’s review of the policy is finalized”(NOA #0017, p. 14).

Findings:

The appellant contends that a discrepancy exists within the FEIS as to whether new roads will be built for timber management within the first decade under the preferred alternative. The appellant correctly states that Table 3-69a (FEIS, p. 3-411) indicates that under the preferred alternative no new roads will be built for the purpose of timber management within the first decade. However, Table 3-69b does indicate that under the preferred alternative new roads will be constructed for the purpose of “other uses”, which includes recreation and administrative facilities access (FEIS, p. 3-411). Although the FEIS does state that, under the preferred alternative, 149,960 acres are in management area prescriptions, which permit road construction, and 2,000 acres could potentially be affected within the first decade, it does not state that this is due to road construction for the purpose of timber management.

The appellant contends that the Chugach has developed prescriptions, which allow road building in roadless areas and should uphold the Roadless Area Conservation Rule (RACR) standards until the policy is finalized. At the time of the Plan revision, the legal status of the RACR was in question. On May 10, 2001, the Idaho District Judge issued a preliminary injunction against implementation of the RACR. On December 12, 2002, the 9th Circuit Court of Appeals issued a split decision on reversing the Idaho District Judge's preliminary injunction order, which was followed by a mandate issued on April 14, 2003, to the lower court to lift the injunction.

If the injunction is lifted, and the RACR and its prohibitions become effective, these prohibitions would supersede management area direction in the Chugach Forest Plan. They also would supersede the agency policy contained in the Interim Directive issued Dec. 14, 2001 (FSM 1925) for the Management of Inventoried Roadless Areas. Road building would be consistent with the RACR at 36 CFR 294.12 – Prohibition on road construction and road reconstruction in inventoried roadless areas.

Under the terms of a settlement agreement between the Department of Agriculture and the Department of Justice, USDA has published in the Federal Register, an Advance Notice of Proposed Rulemaking to permanently modify the application of the roadless rule to both the Tongass and the Chugach National Forests. Changes in the roadless rule would not affect any of the environmental protections established by the Chugach Revised Plan. This also is addressed in the separate “ANILCA” issue earlier in this decision.

As stated in the ROD and FEIS, “the Chugach National Forest will manage inventoried roadless areas [lands] consistent with the disposition of the final rule (ROD, p. 25 and FEIS, p. 3-402)”.

As such, I find the Regional Forester has complied with law, regulation and policy in effect at the time of preparation, and maintained the flexibility to deal with evolving circumstances.

OTHER ISSUES

Rotation Period (Forest Products)

Contention:

The appellant contends conditional (non-chargeable) timber harvest is allowed by the Fish and Wildlife Conservation Management Area (Management Area 244) but no conditions are explicitly established for that timber harvest. In particular the appellant contends that "...removing the extended rotation period removes any constraint to the amount of timber harvesting that might occur" (NOA, p. 8).

Findings:

The regulations at 36 CFR 219.11 establish the required content of land and resource management plans and state "[t]he forest plan shall contain...multiple-use prescriptions and associated standards and guidelines for each management area including proposed and probable management practices..." (36 CFR 219.11(c)). Both are found in Appendix A. The regulations allow flexibility in how the requirements are met.

Timber resource land suitability (suitability) is addressed at 36 CFR 219.14 which states "...[d]uring the forest planning process, lands which are not suited for timber production shall be identified . . ." (36 CFR 219.14). The regulations go on to state that "[n]o timber harvesting shall occur on lands classified as not suited for timber production pursuant to §219.14 except for salvage sales, sales necessary to protect other multiple-use values or activities that meet other objectives . . ." (36 CFR 219.27(c) (1)). These are found in Appendix A.

Timber rotation is a term used "[i]n even-aged management, [because] the selection of rotation age or ages materially affects the length of time required to achieve the desired distribution of age classes and LTSYC [Long-Term Sustained Yield Capacity]" (FSH 2409.13, Chapter 32).

On the Chugach NF the Regional Forester identified no lands as being suitable for timber production and determined "... tentatively suitable forestland . . . will be managed for resource uses other than commercial timber production" (ROD, p. 13). The Revised Plan specifies in a guideline for vegetation management in Management Area 244 (MA 244) "[v]egetation management, including silvicultural management and commercial timber harvest, can be used to create habitat conditions to meet objectives for species habitat requirements" (Revised Plan, Chapter Four, p. 4-61). Other, Forest-wide standards and guidelines are found on pages 3-22 through 3-48 of the Revised Plan. Those standards and guidelines are applicable to all projects and address wildlife habitat management, in addition to other resources.

There are no standards or guidelines specific to timber harvest, however, the Revised Plan projects that no acres will be harvested through even-aged systems and an average of 375 acres per year will be harvested through uneven-aged systems (Revised Plan, Chapter Three, p. 3-49).

In my review of the Record, I find the Regional Forester did provide standards and guidelines for each of the Management Areas established by the Revised Plan, including vegetation management guidelines for MA 244. He also provided Forest-wide standards and guidelines. Constraints on the amount of timber harvesting that might occur will be determined by what habitat conditions are needed to meet species requirements.

As discussed above establishment of a rotation age is associated with even-aged management of areas suitable for timber production. Because MA 244 is not suitable for timber production and no acres will be harvested through even-aged methods, a rotation age should not be specified. It is appropriate that the rotation age for MA 244 was not included in the Revised Plan. It is also appropriate that there are no standards or guidelines specific to timber harvest as other resource needs will precipitate timber harvest.

The record is clear that in MA 244 uneven-aged timber harvest of approximately 375 acres per year on average may be used to provide desired habitat conditions for fish and wildlife species. I find the Regional Forester has fulfilled his responsibilities under law, regulation, and policy in regard to timber harvest.

Land and Water Ownership

Contention:

The Appellants assert that the Regional Forester's ROD violated the National Forest Management Act because the Forest did not plan for all of the lands and resources with the Chugach National Forest. The appellants contend "the FEIS and Revised [LRMP] completely fail to address significant impacts to and management of tidelands and submerged lands that are a part of the Chugach National Forest" (NOA #0010, p. 5).

Findings:

Land and resource management plans are authorized and defined by the National Forest Management Act (NFMA). Under the NFMA (P.L. 94-588, Section 6(i)) plans are subject to all valid existing laws and regulations. This law is echoed in both Section 1920.1 of the Forest Service Manual and the Revised Chugach Land and Resources Management Plan (Chapter 1, p. 1-4). FSM requirements are found in Appendix A.

While the issue of ownership of the submerged and tidelands in the Chugach National Forest is contested, the United States has taken the position in a similar case involving the Tongass National Forest that the State of Alaska has a valid claim of ownership with regard to most of the submerged lands on the Tongass. The legal framework underlying ownership of these lands in both the Chugach and the Tongass is similar, although a different result could prevail for the Chugach due to different circumstances being involved. Pending the resolution of the questions about ownership of submerged lands, the Forest Service has consented to the State of Alaska's management of the Chugach's submerged lands in general. Accordingly, the Revised Plan does not address those submerged and tidelands.

I find the Regional Forester complied with existing law and regulation by not planning for the management of submerged and tidelands within the boundaries of the Chugach National Forest.

This is consistent with the position taken by the United States in the case *State of Alaska v. United States of America* (No. 128 Original (U.S. Supreme Court) (complaint filed Nov. 26, 1999)). While this case deals with the ownership of the submerged and tidelands on the Tongass National Forest, the legal requirements are similar to those governing such lands in the Chugach National Forest. Further, the Forest Service has generally consented to the State of Alaska's management of the submerged lands in the Chugach. Until the ownership issue is resolved, the existing management arrangement complies with all applicable laws and regulations.