



**File Code:** 1570

**Date:** March 23, 2004

Mr. Robert Kling  
Sledogs, LLC  
P.O. Box 34136  
Juneau, AK 99803

Dear Mr. Kling:

This is my decision on your request for a second level review of the appeal you filed under Forest Service regulations at 36 CFR 251 (Appeal No. 04-10-00-0008). Specifically, you appealed the Juneau District Ranger's May 30, 2003 decision regarding the temporary use allocation of helicopter landings on the Juneau Icefield for the 2003 to 2007 operating seasons. You were not allocated any helicopter landings for this five-year period.

#### Background

The Helicopter Landing Tours on the Juneau Icefield Record of Decision (Juneau Icefield ROD) (signed on April 16, 2002) authorized the maximum number of helicopter landings available for the 2003 to 2007 time period. The Juneau District Ranger determined there was a competitive interest in the helicopter landings available. Pursuant to Forest Service direction in Forest Service Manual 2700 – Special Uses Management, the District issued the Prospectus for Guided Helicopter Landing Tours on the Juneau Icefield (Prospectus) on October 15, 2002. Proposals were accepted up to 5:00 p.m. on November 15, 2002, and four proposals were received by the closing date. These included proposals from Coastal Helicopters (with Godwin Glacier Dogsled Tours), NorthStar Trekking, TEMSCO Helicopters, and Sledogs, LLC (with Coastal Helicopters). A fifth proposal was received from Era Helicopters after the closing date, and was returned to Era unopened.

On December 2, 2002, an assigned team of six Forest Service employees met with the Juneau District Ranger to evaluate the proposals received in response to the Prospectus. At this time, the Juneau District Ranger informed the evaluation team that he had decided to issue priority use to all current operators with existing satisfactory performance. The team's task was to evaluate the four proposals received in response to the Prospectus and to make recommendations for allocating the remaining helicopter landings authorized in the Juneau Icefield ROD. The evaluation process began with each team member individually reviewing and rating each proposal. The team requested and received a summary of the performance evaluations for each proponent who had previously held a permit on the Tongass or Chugach National Forests. The team also met collectively with an agent of the Federal Aviation Administration (FAA) to discuss aviation questions specific to helicopter landings, FAA minimum requirements, and National Transportation Safety Board reports. The team then came together to develop team ratings for each proposal, along with compelling reasons for each rating. The team's final recommendation was given to the Juneau District Ranger on December 6, 2002.



The Juneau District Ranger issued his original decision allocating the remaining helicopter landings on the Juneau Icefield on December 19, 2002. You appealed that decision, and on April 28, 2003, the Appeal Reviewing Officer affirmed the District Ranger's award decision with respect to the issues raised in your appeal. In response to a separate appeal filed by NorthStar Trekking (Appeal No. 03-10-05-0002 A251), the Appeal Reviewing Officer remanded the award decision back to the Juneau District Ranger, with instructions to reconsider the recommendations for allocating use consistent with the Juneau Icefield ROD.

On May 30, 2003, the Juneau District Ranger withdrew his original award decision and issued a new decision that only allocated temporary use landings. As indicated in the May 30, 2003 award letter, the Ranger's decision was based on the team's recommendations with respect to the proponents they believed demonstrated the greatest strengths in safe operations, and those who the team believed would provide the most unique and high quality services to the public. The Ranger's May 30, 2003 letter indicates that past permit performance on National Forest System lands, historical use figures, and incentives for noise mitigation were also taken into consideration in awarding the temporary use landings on the Juneau Icefield. The May 30, 2003 decision indicates that NorthStar Trekking, TEMSCO Helicopters, and Coastal Helicopters (with Godwin Glacier Dogsled Tours) were allocated temporary use landings; Sledogs, LLC was not allocated any helicopter landings for the 2003 to 2007 time period.

You filed an appeal of the Juneau District Ranger's May 30, 2003 decision on July 14, 2003. On August 14, 2003, the Juneau District Ranger submitted his Responsive Statement to your appeal, and on September 3, 2003, you submitted a Reply to the District Ranger's Responsive Statement. You participated in an oral presentation regarding your appeal on December 12, 2003, and the appeal record was closed on December 15, 2003.

On January 14, 2004, the Deputy Tongass Forest Supervisor issued her decision on your first level appeal of the Juneau District Ranger's decision, affirming the District Ranger's decision with respect to the issues raised in your appeal. On January 29, 2004, you requested a second level review of the Juneau District Ranger's and Deputy Forest Supervisor's decisions.

My decision on your request for a second level review is based on the information in the appeal record, which includes your July 14, 2003 appeal, the District Ranger's August 14, 2003 Responsive Statement, your September 3, 2003 Reply to the Responsive Statement, and the Deputy Forest Supervisor's January 14, 2004 decision on your first level appeal.

In your July 14, 2003 appeal, you raised various issues related to the District Ranger's review of the proposal submitted by Sledogs, LLC and his decision to not award Sledogs helicopter landings for the 2003 to 2007 time period. Although my decision may not list each specific issue, I have considered all of the issues raised in your appeal and believe that they are appropriately addressed in the following discussions.

**Issue 1: Whether the District Ranger's decision is consistent with Forest Service Manual direction (FSM 2710) relating to the evaluation of the proposal submitted by Sledogs, LLC.**

Discussion

Forest Service Manual direction relating to Special Uses Management requires that a prospectus specify the criteria to be used in evaluating each proposal. These criteria should include, but are not limited to:

- 1) The kind and quality of service proposed in terms of meeting public need;
- 2) An applicant's experience in this or related fields and the applicant's qualification to fully satisfy the public need for service;
- 3) Verification of financial resources; and
- 4) Return to the Government.

[FSM 2712.1(3)]. The criteria to be used in evaluating the proposals received in response to the Juneau Icefield Prospectus were clearly indicated in Section V of the Prospectus. These included:

- 1) Safety;
- 2) The business experience and qualifications of the applicant in relation to the proposed use;
- 3) The kind, quality, amount, and location of the services to be offered;
- 4) Noise mitigation;
- 5) Monitoring;
- 6) The financial resources of the applicant; and
- 7) The fee offered for concession permit privileges (Return to the Government).

[Juneau Icefield Prospectus, Section V, pp. 11-14]. The October 29, 2002 Rating Point System for the Prospectus, which was provided to the evaluation team, restates these evaluation criteria and clearly indicates the total points possible for each criteria and the factors to be used in rating each proposal against these criteria [See Responsive Statement, Attachment F]. As indicated in the agenda for the evaluation team meeting, the objective for the team was "[t]o recommend to the Deciding Officer the proponent(s) who is/are the best qualified and will best serve the public need for providing outfitter guided helicopter landing tours, and associated activities, on the Juneau Icefield" [see Responsive Statement, Attachment E]. This agenda provided the following direction to the evaluation team:

- 1) Review all prospectus materials;
- 2) Review proposals;
- 3) Using a point system, rate proposals, with numerical assignments;
- 4) Determine how many landings should be assigned to which proponent and for what activity;
- 5) Write up the recommendation to the Deciding Officer.

Based on the guidance provided by the Juneau District Ranger, the Prospectus, and Forest Service Manual direction, the evaluation team rated your proposal, assigning the following scores to each criteria:

<b>Evaluation Criteria</b>	<b>Total Score Possible</b>	<b>Sledogs, LLC Score</b>
Safety record and plan	8	3
Experience and qualifications	8	2
Services offered	7	2
Noise mitigation	5	4
Monitoring	3	2
Financial resources	2	0
Fee offered	2	2
<b>Total score</b>	<b>35</b>	<b>17</b>

Many of the issues raised in your appeal relate to your assertion that the Forest Service did not appropriately consider the financial information you submitted with your proposal, and in both your appeal and in your Reply to the District Ranger's Responsive Statement, you assert that you qualified for seven out of the eight categories used to evaluate the proposals and that you should not have been disqualified because you did not receive points in the financial resources category.

With regard to your score in the "financial resources" category, the record indicates that you did not receive any points in this category because the evaluation team concluded that you had not provided adequate financial information with your proposal to determine if you had the financial capability to provide the services you were proposing [see, for example, Exhibit 7 to your July 14, 2003 appeal; see also Juneau District Ranger's August 14, 2003 Responsive Statement, pp. 2-4]. While your proposal did include Form FS-6500-24 (Financial Statement) and a list of credit references, the record indicates that the Forest Service was unable to verify the amount listed as a "note receivable" on this statement [see Exhibit 7 to your July 14, 2003 appeal, p. 7].

You disagree with the evaluation team's statement that they tried to verify this information, stating that none of your credit references had been contacted. While it is not possible for me to determine whether or not your credit references were in fact contacted, the Prospectus clearly stated that any "credit statement and the letter(s) of intent from the financial institutions must be mailed directly to the Forest Service" [see Responsive Statement, Attachment D, p. 14]. This information was not submitted for Sledogs, LLC as required by the Prospectus.

The evaluation team's review of the financial information submitted with your proposal also indicated that a business plan showing expected revenue, estimated expenses, and other information to determine financial capability for a new business was not provided as requested in the Prospectus [see Responsive Statement, Exhibit B].

The Juneau District Ranger provided all proponents the opportunity to meet with Forest Service representatives to go over any questions they may have had about the Prospectus prior to submitting their proposal. The record indicates that you attended this meeting [see Responsive Statement, Attachment H, October 29, 2002 Question and Answer Session Sign-In Sheet]. At

that meeting, the Forest Service explained the primary and secondary criteria that would be used in evaluating the proposals received in response to the Prospectus. If you had questions about the financial information that was required, you had the opportunity to raise them at that meeting.

In my opinion, the lack of financial information in your proposal made it difficult to determine if you had the financial capability to provide the services you were proposing, and a score of "0" in this category was appropriate. While you did not receive any points in this category, it did not disqualify you as you assert in your appeal and in your Reply to the District Ranger's Responsive Statement. Your proposal was rated against each of the 7 evaluation criteria, and the reason you were not awarded any helicopter landings was a result of your total score, rather than your score in any one category. As indicated above, you received a total of 17 points out of a possible 35 total points. This total score was lower than the other proposals received in response to the Prospectus, and the Juneau District Ranger's decision appropriately reflects this.

You also question the score you received in the "business experience and qualifications" category, and dispute the unacceptable performance evaluation Nunatak Kennels received in 1998. Business experience and qualifications was one of the evaluation criteria used to rate the proposals, as indicated in the Prospectus [see Responsive Statement, Attachment D]. In your Reply to the District Ranger's Responsive Statement, you disagree with the statement that there is not a historical record to show that Nunatak and Sledogs, LLC are viable businesses. You state that Sledogs, LLC is a new business, and indicate that you previously operated on the Juneau Icefield in 1997 and 1998. This is true, as the record indicates that you previously owned Nunatak Kennels, Inc., which operated on the Juneau Icefield in 1997 and 1998. However, the record also indicates that you have not received a permit since 1998 as you have not met minimum permit requirements [see Exhibit 7 to your July 14, 2003 appeal, Attachment 1d, evaluation team notes for Sledogs, LLC proposal].

You also dispute the unacceptable performance evaluation Nunatak Kennels received in 1998. The record clearly indicates that Nunatak Kennels received an unacceptable rating for the 1998 operating season due to various deficiencies in its performance that year, particularly compliance with the terms and conditions of its permit [see November 10, 1998 annual performance evaluation]. As stated in the Regional Forester's decision on your appeal of that performance evaluation, dogsled tours on the Juneau Icefield can be very dangerous, conditions on the Icefield are harsh, and access can be marginal due to weather. Therefore, it is extremely important that permit requirements, particularly those relating to the protection of the Icefield environment and public and employee safety, are closely followed. Effective and professional management of this type of operation is essential. At that time, the Regional Forester concluded that Nunatak's performance did not meet the standards required for this type of operation. You did not seek further review of the Regional Forester's decision with respect to that performance evaluation.

The Prospectus clearly indicated that a proponent's previous performance and compliance with the terms and conditions of prior permits would be considered in rating each proposal [Prospectus, Part VB], and you assert that your previous operations under Nunatak Kennels, Inc. demonstrate that Sledogs, LLC is a viable business. Therefore, it was appropriate for the evaluation team and the Juneau District Ranger to consider your past performance in rating the

proposal you submitted in response to the Prospectus. In addition to your past performance, the evaluation team considered other factors, including the fact that an Environmental Protection Plan was not included with your proposal. In my opinion, a score of “2” in the “business experience and qualifications” category is appropriate.

In your July 14, 2003 appeal and in your Reply to the District Ranger’s Responsive Statement, you raise various other issues relating to the scores you received in the “financial” and “business experience and qualifications” categories. I have considered and reviewed these issues, and in my opinion they are adequately addressed in the Deputy Forest Supervisor’s January 14, 2004 decision on your first level appeal. The scores you received in these categories are appropriate, and the process followed by the evaluation team in arriving at these scores was consistent with Forest Service Manual direction relating to Special Uses Management.

**Issue 2: Whether the District Ranger’s decision is consistent with the National Forest Management Act (NFMA), the National Environmental Policy Act (NEPA), the Juneau Icefield ROD, and Forest Service Manual direction relating to the terms of the Prospectus.**

Discussion

While you assert that the Forest Service failed to follow the procedural requirements set forth in NFMA, you provide no specific supporting reasons as to why you believe these requirements were not followed. You assert that the Forest Service did not comply with NEPA, as NEPA requires that an environmental impact statement [EIS] be prepared for projects such as this. The Helicopter Landing Tours on the Juneau Icefield 2003 – 2007 Final EIS was prepared in accordance with NEPA and its implementing regulations at 40 CFR 1500. The Juneau Icefield ROD, which is based on the analysis in the Final EIS and project record, identifies the maximum number of commercial use landings that are authorized on the Juneau Icefield for the 2003 to 2007 time period, and sets forth the limits and conditions of what can be allocated through special use permits. The Prospectus process and the subsequent special use permits actually allocate these landings to the successful proponents.

You further assert that the Forest Service did not follow Juneau Icefield ROD direction, as landings were awarded to Era Helicopters outside of the Prospectus process. Era Helicopters is a priority use permit holder, and direction in Forest Service Handbook 2709.11, 40.53(f) for renewal of priority use permits states:

When a permit of a holder assigned priority use terminates, the permit is subject to renewal without competition, provided the current holder has performed satisfactorily as demonstrated by acceptable performance inspections.

As stated in the Juneau District Ranger’s May 30, 2003 decision letter, companies with a history of satisfactory performance were awarded their priority use and the proposals they submitted in response to the prospectus were considered in awarding additional temporary use landings. As

the proposal from Era was not received on time, Era Helicopters was not allocated any additional temporary use landings. They did receive their priority use landings, and the District Ranger's decision to grant this use is within his discretionary authority and consistent with Forest Service Handbook direction.

With regard to your assertion that the Juneau District Ranger did not follow the direction set forth in the Forest Service Manual relating to the prospectus process, I disagree. The record clearly indicates that the information contained in the Prospectus, the process followed by the evaluation team to review and score the proposals received in response to the Prospectus, and the District Ranger's decision to award the temporary use landings to the successful proponents is consistent with the direction provided in the Forest Service Manual [see Responsive Statement, Attachment I]. The proposal submitted by Sledogs, LLC was rated with the same evaluation criteria as the other companies that submitted a proposal in response to the Prospectus, and in my opinion the process followed by the evaluation team in rating these proposals was equitable and consistent with applicable policy and direction.

### **Decision**

The Juneau District Ranger's decision to reauthorize priority use non-competitively is consistent with Forest Service direction and is within his discretionary authority. The record indicates that the District Ranger followed applicable Forest Service direction in issuing the Prospectus, that the evaluation team appropriately reviewed and rated the proposals received in response to the Prospectus, and that the District Ranger's decision to allocate the temporary use landings for the 2003 to 2007 seasons is consistent with the Juneau Icefield ROD and applicable Forest Service direction. Therefore, I affirm the Deputy Forest Supervisor's and District Ranger's decisions.

My decision on your appeal constitutes the final administrative determination of the Department of Agriculture [36 CFR 251.87(e)(3)]. It is not subject to further review by the Chief of the Forest Service.

Sincerely,

/s/ Steven A. Brink  
STEVEN A. BRINK  
Appeal Reviewing Officer

cc: Forrest Cole, Olleke E Rappe-Daniels, Peter M Griffin, Dennis Rogers, Larry L Lunde, Winnie Blesh