



File Code: 1570

Date: August 17, 2006

Mr. Gabriel Scott
Cascadia Wildlands Project
P.O. Box 853
Cordova, AK 99574

Dear Mr. Scott:

Pursuant to 36 CFR 215.17, I have reviewed the administrative appeal record for the Whistle Stop Project Final Environmental Impact Statement (EIS) and Record of Decision (ROD). The Chugach Forest Supervisor signed the ROD. I have also considered the Appeal Reviewing Officer's (ARO) recommendation (enclosed) regarding the disposition of your appeal (Appeal No. 06-10-00-0010). The ARO recommended that the Forest Supervisor's decision be affirmed.

DECISION

I concur with the ARO's recommendation and affirm the Forest Supervisor's decision. Your requested relief is denied.

My decision incorporates, by reference, the entire administrative record, which includes the appeal and project planning records, and constitutes the final administrative decision of the Department of Agriculture [36 CFR 215.18(c)]. The ROD may be implemented 15 days following the date of this decision [36 CFR 215.10(b)].

Sincerely,

/s/ Dennis E. Bschor
DENNIS E. BSCHOR
Regional Forester

Enclosure

cc: Joe Meade
James M Fincher
Sharon Randall





File Code: 1570

Date: August 14, 2006

Subject: Whistle Stop Project Record of Decision and Final Environmental Impact Statement

To: Appeal Deciding Officer

This is my recommendation, as the Appeal Reviewing Officer, on the action you should take, as the Appeal Deciding Officer, on the pending appeals of the Whistle Stop Project decision. The following appeals were filed under 36 CFR 215:

- No. 06-10-00-0009 – Pelham L. Jackson and J. Dennis Stacey
- No. 06-10-00-0010 – Gabriel Scott, Cascadia Wildlands Project

The decision being appealed is the decision by the Chugach Forest Supervisor, Joe Meade, to authorize the development of five Whistle Stop stations, four of which would be connected through a trail system, along with dispersed campsites and public-use cabins that will facilitate a mix of day and overnight recreation opportunities for forest users. Specifically, the decision authorizes:

- Phase-in development of five Whistle Stop stations located at Spencer, Grandview, Bartlett Glacier, Luebner Lake, and Trail Creek.
- Development of one native rock viewing platform at Spencer Lake.
- Development of a seasonal information and education structure at Spencer Lake.
- Development of dispersed campsites at Spencer Lake (3 sites), Glacier Discovery Trail (10 sites), and the Whistle Stop stations (10 sites – 2 per station).
- Development of public-use cabins at Spencer Bench, Spencer Lake (3 cabins), Bartlett Glacier, and Trail Glacier.
- Development of the Spencer Lake group campsite with capacity for 25 people.
- Development of the following trails:
 - Glacier Discovery Trail (Class 3)
 - Luebner-Spencer segment (8 mi.)
 - Spencer-Bartlett segment (6 mi.)
 - Bartlett-Grandview segment (4 mi.)
 - Spencer Glacier Trail (Class 4 – 1.5 mi.)
 - Spencer Connector Trail (Class 4 – 1 mi.)
 - Bartlett Glacier Trail (Class 3 – 1 mi.)
 - Grandview Interpretive Trail (Class 4 – 1 mi.)
 - Trail Glacier Trail (Class 3 – 4 mi.)
 - Center Creek Pass Trail (Class 2 – 5 mi.)

The decision also identifies approximately 187 acres as a Developed Recreation Complex in the Spencer region, as allowed for in the Chugach National Forest Revised Forest Plan.



Background

A Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the Whistle Stop project was published in the Federal Register on May 16, 2005. The Draft EIS (DEIS) was released for public comment on January 27, 2006. The Notice of Availability of the Final EIS (FEIS) was published in the Federal Register on May 26, 2006, and the legal notice of decision was published in the Anchorage Daily News on May 26, 2006.

My review of these appeals was conducted pursuant to 36 CFR 215.19. The appeals and project planning record have been carefully reviewed in my consideration of the objections raised by the appellants and their requested relief. My recommendation hereby incorporates by reference the entire administrative record for the project.

The appellants list several interrelated issues in their appeals of the Whistle Stop project. Although I may not have listed each specific issue, I have considered all the issues raised in the appeals and believe they are adequately addressed in the following discussions.

Appeal No. 06-10-00-0009 – Pelham Jackson/Dennis Stacey

On August 14, 2006, I received a letter from the appellants withdrawing their appeal of the Forest Supervisor's decision, as their issues were resolved during informal resolution meetings. Therefore, I recommend that you dismiss their appeal without review in accordance with 36 CFR 215.16(a)(9).

Appeal No. 06-10-00-0010 – Cascadia Wildlands

Issue 1. Whether the business partnership between the Forest Service and the Alaska Railroad is misguided, illegal, and in violation of the National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA).

The appellants object to the proposed business partnership with the Alaska Railroad. They believe that the partnership is the wrong policy approach as it serves outside interests rather than local, public interests. They believe that the tour and cruise industries are the primary financial beneficiaries of the proposal, while the Forest Service is responsible for funding the majority of the capital costs.

The appellants also assert that the partnership violates the Chugach Forest Plan standards and guidelines (NFMA) limiting commercial usage in the area to 50 percent, as the Whistle Stop decision gives the Alaska Railroad a monopoly on access, resulting in 100 percent of the recreational use being commercial. Finally, the appellants contend that the public had no opportunity to know about or influence the project when it was in the early phases, in violation of NEPA.

Discussion

The FEIS clearly outlines the three main objectives of the project, which are to:

- Provide additional backcountry access and increase recreation opportunities available to Chugach National Forest visitors.
- Provide opportunities for visitor information and education.
- Provide a unique transportation and recreation experience found nowhere else in the United States, while encouraging alternative transportation methods and public safety.

[FEIS, pp. 1-2 and 1-3].

Each of these objectives is discussed in terms of how they meet National (USDA Forest Service Strategic Plan for FY 2004-2008), Regional (Alaska Region's Strategic Business Plan), and local (Chugach Forest Plan direction for the Kenai Peninsula Geographic area) direction. The Alaska Region Strategic Business Plan identifies increasing outdoor recreation opportunities as a high priority (Objective 3(1)). The Chugach National Forest Plan identifies the need to provide opportunities for recreation in the Whistle Stop project area, and directs that:

[D]uring the summer season non-motorized use will predominate across the area. These opportunities will include hiking, camping, mountain biking, fishing, hunting, and mountaineering with opportunities for canoeing, rafting, and other forms of boating on lakes and rivers...Campgrounds or similar developments (i.e., "Whistlestop") along the Alaska Railroad between Moose Pass and Portage may also be available.

[Forest Plan, p. 3-15].

In order to accomplish these objectives, the Forest Supervisor entered into a Memorandum of Understanding (MOU) with the Alaska Railroad. Authority for entering into the MOU is provided by Forest Service Manual (FSM) 1586, which defines an MOU as "[t]he instrument used for a written plan between the Forest Service and other parties for carrying out their separate activities in a coordinated and mutually beneficial manner and for documenting a framework for cooperation" [FSM 1586]. The policy is to use an MOU whenever "[p]rograms or activities benefit from coordination with Federal agencies, domestic institutions and organizations..." [FSM 1586.03]. The MOU clearly describes the mutual benefits and interests of the Forest Service and the Alaska Railroad, and specifically defines the responsibilities of each partner. Although the appellants object to the business partnership with the Alaska Railroad, I find the project is in line with National, Regional, and local policies and regulations.

With regard to appellants' objections to the capital investment and implementation costs of the project, NEPA requires the disclosure of effects on the human environment, not the administrative costs of implementing or managing the Whistle Stop project. The task for the agency is to weigh the economic and other benefits of the project against its *environmental costs*. The Forest Service is not required to consider, as part of the NEPA process, the administrative costs of preparing an EIS or implementing a project.

While not required in the FEIS, the financial aspects of the project are described in detail in the Business Plan [Decision Document #38], which states that “[t]he recovery of Operations and Maintenance (O&M) costs is the primary goal of the partnership...” [p. 4]. The Business Plan goes on to state that:

The Forest Service is expected to recover all O & M costs - approximately \$212 M during a regular season at full build out and \$85 M at initial start-up. The expenditures for the Railroad are not completely estimated at the time of writing this business plan, but early estimates foresee the expected ticket price to be sufficient to cover costs associated with the Railroad's O & M needs. Revenue sharing between the two partners will be agreed upon to ensure O & M costs are covered and public expectations are met. After agreed upon revenue sharing, each agency will cover its own respective shortfalls in O & M costs.

[Decision Document #38, p. 5].

Concerns regarding the cost of the project to the Forest Service and the appellants' perception that the project serves outside interests rather than local, public interests were also addressed in the response to comments received on the DEIS [FEIS, pp. 4-1 through 4-4]. I disagree with the appellants' contention that the Alaska Railroad will essentially have a monopoly on providing access to the area, resulting in 100 percent of the recreational use being commercial. Although the train may be the most convenient and reliable means of access, there are other ways (foot, air, or water) that the public can use to access the facilities developed for the Whistle Stop project. As discussed in the response to comments on the project, access to the facilities developed for the project by paying for a ticket on the Alaska Railroad is similar to others accessing difficult to reach Forest Service cabins in other parts of the Forest by paying for-profit businesses [FEIS, p. 4-6]. Furthermore, at this time, the Railroad will only allow certified outfitters to take visitors into the Chugach National Forest. With development of each Whistle Stop, more National Forest will be available for visitors to access without the services of outfitters and guides, thereby increasing non-commercial use of the area.

Finally, I also disagree with the appellants' contention that the public had no opportunity to know about or influence the project when it was in the early phases, or that the real decisions were made and prepackaged before the public process began. The Whistle Stop project record demonstrates that initiation of the public involvement process was timely and thorough. The ROD outlines the process used to solicit public comment from the initiation of scoping with the publication of the Notice of Intent and conducting public meetings, and then describes how comments received were used to develop alternatives [ROD, p. 19]. Comments on the DEIS are adequately responded to in Chapter 4 of the FEIS. The Forest Supervisor provides his rationale for selecting the modified preferred alternative by stating:

I have chosen the Preferred Alternative 2 from the DEIS (with modifications) as the most effective way to meet the purpose and need of the project, meet the needs of the ultimate recreation capacity in the area, and address public comments. Through this decision I addressed concerns with the level of recreation settings (social and physical), minimized

the potential impacts to wildlife, and greatly reduced the area of overlap between the recreation infrastructure and mining claims in the Spencer Lake area.

[ROD, p. 6].

Issue 2. Whether the FEIS adequately discusses cumulative impacts relative to Forest Plan standards and guidelines for recreation and wildlife resources.

Issue 2a. Whether over-development of the Forest will cause significant cumulative impacts in terms of recreation opportunities.

The appellants assert that the project will turn the recreational backcountry experience into a front-country experience. They point out that the proposal is only the first of several phases being planned by the Alaska Railroad, the Forest Service, and private companies, and that the Business Plan clearly envisions further commercial growth. They contend that the FEIS fails to adequately consider the off-facility impacts associated with increased access and visitors, the impact of train traffic in the project area, and the development of State lands at Grandview.

Discussion

Part of the purpose and need of the Whistle Stop project is to provide for a backcountry experience that was previously not available [FEIS, p. 1-2]. The FEIS not only describes the effects of developing facilities associated with the Whistle Stops, but it also describes the off-facility impacts of improved access to the backcountry, including social effects. The FEIS acknowledges that there will be increased use of the backcountry as a result of the project; however, the changes in the social setting will be consistent with a semi-primitive recreation opportunity spectrum setting as directed by the Forest Plan for the Backcountry Management Area [FEIS, p. 3-11; Forest Plan, pp. 4-34 through 4-39]. As indicated in the ROD, the Forest Supervisor responded to these concerns by including phased development, use of the minimum design necessary, and monitoring of recreation use to maintain backcountry values in his decision [ROD, pp. 9 through 11]. The Forest Supervisor states:

I received comments from the public that related to both the physical recreation setting (i.e., scope and scale of recreation facilities) and the social recreation setting (i.e., numbers of encounters). Therefore, as I made my decision, I took a close look at these issues and utilized a minimum design necessary to ensure that I did not approve recreation facilities that were not appropriate for both the intended use levels and management direction for particular management areas.

Additionally, my decision requires a phase-in approach to recreation facility development that is commensurate with demand, ensuring an appropriate level of encounters following Forest Plan direction and Management Area guidelines.

[ROD, p. 9].

The Forest Supervisor specifically addresses phased development and states:

Future phases of project development will include the Whistle Stops identified in my decision and their associated recreation facilities (trails, campsites, public-use cabins). Phase II of development would include a Whistle Stop at Grandview, and if so, construction will begin on facilities such as the Grandview Interpretive Trail and the Glacier Discovery Trail, linking the Grandview and Spencer Whistle Stops.

Prior to initiating future phases of project development, we will conduct an assessment of the following:

- visitor use and demand
- validation of Business Plan projections in terms of both revenue and use
- validation on recovery of project operations and maintenance costs

[ROD, p. 11].

With regard to the potential development of State land at the Grandview stop, the FEIS acknowledges that the State of Alaska Department of Natural Resources (DNR) has identified the potential for commercial recreation leasing on some lands surrounding the Grandview area [FEIS, p. 3-2]. The FEIS states that development of a Whistle Stop in the Grandview area may result in increased interest by the State to develop their lands [FEIS, pp. 3-8 and 3-12], but at this time the State does not have any reasonably foreseeable plans for development near the project area.

In my opinion, the FEIS adequately discloses that the visitor's backcountry experience will be different if they were to access the Whistle Stop project area today versus after potential future project implementation. The number of encounters that are predicted to occur within the Backcountry Management Area are within the standards and guidelines set forth in the Forest Plan [ROD, p. 23].

Issue 2b. Whether the decision is consistent with NEPA and the requirements of the Chugach Forest Plan with regard to cumulative impacts to wildlife and recreation opportunities.

The appellants assert that the decision violates Forest Plan requirements for protection of bears by allowing construction of facilities (1/2 mile of trail, one Whistle Stop) and increasing train traffic in the Brown Bear Core area. They contend that the decision fails to consider the cumulative impacts of increasing visitors and expanding centers of development at Spencer and Grandview. The appellants also assert that the decision is not consistent with the Forest Plan recreation management guidelines related to maximum group size and encounter requirements.

Discussion

Forest Plan standards and guidelines for the Brown Bear Core Management Area (BBCMA) related to recreation include:

- Provide visitor education programs that emphasize minimizing bear-human conflicts.
- Recreation/tourism developments and overlooks may be allowed to facilitate the reduction of bear-human interactions or to accommodate guided bear viewing. The emphasis will be to reduce bear-human conflicts.
- Public access to some sites may require training on bear behavior or carrying bear-proof food storage containers to reduce bear-human conflicts.
- Recreational gold panning may be seasonally restricted in areas where there is a high probability of bear encounters.
- Interpretation and signing within Brown Bear Core Area Management Areas will emphasize bear awareness and bear safety.
- New Forest Service cabins are discouraged unless necessary for the purpose of minimizing bear-human conflicts.
- Hardened campsites may be established to direct human occupancy away from sensitive brown bear areas.

[Forest Plan, pp. 4-57 and 4-58].

The brown bear core management area is under the semi-primitive ROS class, which is described as:

- On trail solitude is expected to be high to moderate, with the level of on trail encounters moderate (< 15 parties/day)
- Off trail solitude is expected to be very high, with the level of off trail encounters low (< 6 parties/day)
- Maximum party size is 24
- The degree of risk and challenge is high to moderate
- Surface access is non-motorized, with trails managed up to a Class 3 level and with the route and tread maintained regularly
- Air/water access is both motorized and non-motorized
- Facilities will be constructed to a Development Scale 2

[Forest Plan, pp. 3-38 and 3-39].

The FEIS discloses the effects of the action alternatives on brown bears, including the potential cumulative impacts on pages 3-23 through 3-25. The FEIS acknowledges that Alternative 1 and the Proposed Action may not be consistent with the intent of the Forest Plan Management Prescription for the BBMCA, and may have a high potential impact on brown bears. However, the other action alternatives, including the Selected Alternative, are consistent with the Forest Plan, and any potential impacts to brown bears could be mitigated by design features and mitigation measures. The Forest Supervisor specifically addresses his rationale related to the impacts of the Selected Alternative on brown bear:

I realize that my decision includes development adjacent to the Brown Bear Core MA at Grandview and includes a small section of trail that travels through the Core area. Furthermore, I recognize that Alternatives 3 and 4 do not include development in Brown Bear Core, but I am comfortable with my decision for the following reasons:

- a. The Trail Glacier Trail, which leads from the Grandview Whistle Stop station to the base of Trail Glacier, not only goes through the BBCMA for a relatively short stretch (approximately ½ mile), but the section of Trail Creek that parallels the proposed Trail Glacier Trail is classified as a Class III section of stream (fishless). Furthermore, the proposed trail is not adjacent to, but separated from Trail Creek by steep and rugged topography. Both of these facts greatly reduce the potential for human-bear interactions.
- b. My decision also scales back facility development throughout the project area, thereby reducing the potential for human-bear encounters. This decision reduces the number of dispersed campsites, minimizing the overnight capacity in the project area. Additionally, I have eliminated the proposed viewing platform at Grandview, which will also assist with minimizing the potential for human-bear encounters.
- c. I have identified that access to both the Trail Glacier Trail and public-use cabin will be subject to specific closures as needed to minimize bear-human interactions.

[ROD, p. 14].

With regard to appellants' contention that the decision is not consistent with the Forest Plan recreation management guidelines regarding maximum group size and encounter requirements, the ROD states that recreation use will be monitored and that:

If we find that use levels and numbers of encounters are exceeding thresholds established through the Forest Plan and Recreation Opportunity Spectrum (ROS), then to maintain a backcountry social experience, and to protect the natural and cultural resources throughout the area, I will consider limiting use so that encounters do not exceed established thresholds.

[ROD, pp. 11-12].

In my opinion, the record demonstrates that the FEIS and ROD adequately address the cumulative impacts of the Whistle Stop project on brown bears and recreation opportunities, and the decision is consistent with Forest Plan standards and guidelines.

Issue 3. Whether the FEIS adequately considers a reasonable range of alternatives.

The appellants assert that the FEIS failed to consider alternatives to development of Whistle Stops, such as building a foot or bike trail. They contend that restricting the alternatives considered violates NEPA's requirements to foster informed decision making and full public involvement.

Discussion

Regulations implementing the National Environmental Policy Act (NEPA) at 40 CFR 1502.14(a) state that agencies shall “rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives that were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” The Council on Environmental Quality (CEQ) has clarified these regulations, stating “[w]hat constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case” [CEQ’s Forty Most Asked Questions #1(b)].

With regard to the Whistle Stop project, the purpose and need for the project is to:

[T]o respond to the growing demand for recreation opportunities and recreation-based tourism by enhancing an infrastructure along the rail corridor through a series of interconnected recreation sites that will provide the public with a unique recreation and travel experience not found anywhere else in the United States. Utilizing the existing infrastructure of the Alaska Railroad, the Forest Service Proposed Action aims to create an array of primarily backcountry recreation opportunities for users of the Chugach National Forest. Access would be gained to spectacular ice-capped mountains, glacial lakes, wild rivers and dispersed backcountry campsites, cabins and trails, with transportation provided through Alaska Railroad passenger service.

[FEIS, p. 1-2].

Access to the backcountry provided by the Alaska Railroad is an integral part of the proposal, and with this purpose and need in mind, the interdisciplinary team (IDT) identified alternatives to the proposed action as described in Chapter 2 of the FEIS [pp. 2-1 through 2-5]. Those alternatives included a mix of infrastructure and development, including a no action alternative. All of the alternatives, to varying degrees, addressed the significant issues identified through public comment. Development of an alternative providing access only by a foot or bike trail would not meet the purpose and need of the project.

In my opinion, the range of alternatives considered for the Whistle Stop project is reasonable and consistent with NEPA, given the purpose and need for the project and current Forest Plan direction.

Conclusion and Recommendation

With respect to the appeal filed by Pelham Jackson and Dennis Stacey, I recommend that you dismiss their appeal without review in accordance with 36 CFR 215.16(a)(9).

With respect to the appeal filed by Cascadia Wildlands, I find that the analysis presented in the Whistle Stop FEIS and project record is sufficient to support the Forest Supervisor’s decision with respect to all the issues raised in their appeal. Based on my review of the FEIS, the ROD, and the project record, and all the discussions above of each specific appeal issue, I believe the FEIS and ROD meet all applicable requirements of law, regulation, and policy. Therefore, I

recommend that you affirm the Forest Supervisor's decision with respect to the issues raised by Cascadia Wildlands.

/s/Paul K. Brewster

PAUL K. BREWSTER

Appeal Reviewing Officer