

# STATE OF ALASKA

**SEAN PARNELL, Governor**

## **CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS**

**3700 AIRPORT WAY  
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October 3, 2011

Beth Pendleton  
Regional Forester  
U.S. Forest Service Regional Office  
P.O. Box 21628  
Juneau, AK 99802-1628

Dear Ms. Pendleton:

Pursuant to the regulations at 36 CFR Part 215, the Citizens' Advisory Commission on Federal Areas is appealing a portion of the decision on the White Sulphur Springs Cabin, Bathhouse and Trail Project, as described in the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI). The Commission has standing to appeal under §215.13 as we submitted timely and substantive comments on December 22, 2010. A copy of those comments is attached for your reference.

The Commission is appealing the selection of Alternative 2 as the final action for this project. Specifically, we are appealing that portion of the decision to remove, but not replace the bathhouse at the White Sulphur Springs site. We note that the selected alternative, Alternative 2, is the only one of the 5 alternatives discussed in the EA under which the bathhouse was proposed for removal. The November scoping letter lists several possible actions, but the June 17, 2011 public notice for the project in the *Ketchikan Daily News* states that the proposed action is to replace the bathhouse, soaking tub and holding tank in their current location. While the final selected action was within the range of proposed alternatives, the late change in the proposed action may have been misleading to the public.

The rationalization for the decision to remove the bathhouse attempts to justify the action by citing the "ambiguity of the laws and policy involved in this area's management." While we agree that both the Wilderness Act and the Alaska National Interest Lands Conservation Act (ANILCA) may not provide specific guidance on every aspect of wilderness management, Forest Service wilderness management policies on the Tongass are clear. Unfortunately, these policies are precisely the types of overly restrictive policies that Congress cautioned against in debating and passing ANILCA.

These policies, as currently applied on the Tongass National Forest, fail to adequately reflect Congressional intent with regard to management of wilderness areas in Alaska. During the various Congressional committee and subcommittee hearings and meetings held throughout Southeastern Alaska during the ANILCA debates, numerous members of the public expressed concern about the potential for overly restrictive management in designated wilderness areas and the loss of traditional uses of those areas.

Responding to those concerns, in *House Report No. 96-97* on H.R. 39, one of the bills forming the basis for the final version of ANILCA, the House Committee on Interior and Insular Affairs Congress made the following statements:

*“For over 10 years, the Committee on Interior and Insular Affairs has been deeply involved in considering legislation to establish wilderness areas on public lands throughout the country. As a result, some members of the Committee probably are more conversant with the Wilderness Act, the legislative intent of its drafters, and interpretation of that act than anyone else in the country. After a decade of experience, the Committee recognizes that differing interpretations of the Wilderness Act do create questions in certain situations. However, the Committee does not view the Wilderness Act as being as restrictive as many people believe it to be. Rather, the Committee is convinced that the restrictive management policies of the administering agencies- not founded in law- have led to a view by the public that virtually nothing can take place in a statutorily designated wilderness.”* (House Report No 96-97, pg. 227, emphasis added)

In the same report, the Committee singled out the Forest Service for its overly restrictive wilderness policies:

*“During the 95<sup>th</sup> Congress the Committee, concerned that the restrictive wilderness policies of the Forest Service were not in accord with the past directives of the Committee, held extensive hearings on the subject of ‘wilderness purity’ practices in the national forests in connection with the RARE II program. Enactment of Public Law 95-237 on February 24, 1978, not only confirmed the Committee’s past interpretations, but laid to rest once and for all the notion that administering agencies could interpret the Wilderness Act in an unduly restrictive way contrary to the intent of Congress.*

*Nonetheless, the Committee is concerned that Wilderness units may be managed in too restrictive a fashion in Alaska. In particular, the standard Wilderness constraints imposed on mechanical forms of access, cabin construction and maintenance, fisheries management activities, etc. could have severe impacts if used in Alaska. Accordingly the Committee amendment includes special Wilderness management provisions authorizing greater flexibility. These provisions shall apply only to Wilderness units in Alaska.”* (House Report No. 96-97, pg. 227, emphasis added)

This Commission is already on record objecting to recent changes made to long standing wilderness management policies on the Tongass that unnecessarily restrict wide spread uses and activities that were occurring in the various wilderness areas prior to designation. This decision to remove the bathhouse in order to “enhance the wilderness character of this area” (*Decision Notice, pg. 8*) is contrary to Congressional intent to prevent the same “wilderness purity” practices on the part of the Forest Service that the ANILCA provision were specifically designed to prevent.

The Decision Notice makes several qualifying comments, including “reducing development in our Tongass National Forest wilderness areas;” “enhancing wilderness character;” “important enhancement of the quality of wilderness at this site;” and “moves the site to a more undeveloped state and improves upon the primitive and unconfined qualities,” all of which are intended to rationalize the decision to remove the bathhouse. We are compelled to point out that the presence of a cabin, bathhouse, outhouse, woodshed and trail in various forms for at least the last 45 years and possibly as much as the last 95 years did not intrude or adversely impact the wilderness character of the area to a sufficient degree to disqualify it from designation in 1980.

It is both unnecessary and inappropriate to remove the bathhouse. Replacing it with a well designed structure built with materials that blend in, as is planned for the replacement cabin, outhouse and woodshed, will not result in any additional loss of wilderness values, if indeed, any realistic loss has occurred to date. What the removal of the bathhouse does accomplish is to eliminate a key part of the history of the site without any tangible benefits.

There was also confusion regarding the public process and public notices about this project. As stated above, the Commission submitted comments in response to a scoping letter from the district ranger outlining the project in December 2010. We received no further information on the project until we received an e-mail on July 29, 2011 from the district ranger with an update of the project. It was not clear from that e-mail that an EA had actually been completed at that point and a 30 day comment period previously provided.

Our research turned up a notice published in the Ketchikan Daily News on June 17, 2011 announcing a 30 day public comment period on the project. That notice stated that the Sitka Ranger District is “*preparing an Environmental Assessment for the White Sulphur Cabin, Bathhouse and Trail project.*” The wording in this notice, which also briefly describes the project, indicates that an EA was in the works, but does not state that it is available for public review. However the August 17, 2011 notice in the Ketchikan Daily News announcing the completion of an EA stated: “*The Assessment was distributed for public comment for the 30 day period ending July 17, 2011.*” Neither our office or the State of Alaska ANILCA Coordinator’s office received a copy of the EA, nor were we advised that an EA was available for public review during the June 17 to July 17 comment period. The next e-mail received was on August 15, 2011 with a copy of the completed EA, Decision Notice and FONSI attached. This was the first time we had seen any completed documents for this project.

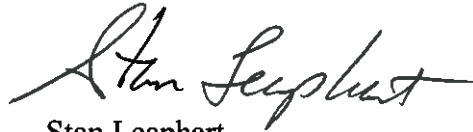
We are concerned that, while we were afforded the opportunity to comment during the November 2010 comment period, we did not have the opportunity to review an actual draft document, with fully developed alternatives and a discussion of impacts from those alternatives.

Certainly, we accept responsibility for not following up after receiving the July 29 e-mail, but at that point the public comment period apparently had already passed. The public's ability to comment may have also been compromised as a result of the confusing sequence of events.

In conclusion, the Citizens' Advisory Commission requests that the Decision Record be modified to select the originally proposed Alternative 1 which would replace the bathhouse and cabin, move the cabin away from the bathhouse and reconstruct the trail. This action is allowed under the provisions of the Wilderness Act, ANILCA and within the scope of the wilderness management policies of the U.S. Forest Service.

Please advise us of your decision on our appeal at your earliest convenience. If there are questions about our appeal, our office can be reached at 907-374-3737 or at 3700 Airport Way, Fairbanks, AK 99709.

Sincerely,

A handwritten signature in black ink, appearing to read "Stan Leaphart". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stan Leaphart  
Executive Director