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Attorney for State of Alaska

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

SOUTHEASTALASKA CONSERVATION COUNCIL, )  
SKAGWAY MARINE ACCESS COMMISSION, LYNN )  
CANAL CONSERVATION, INC, ALASKA PUBLIC )  
INTEREST RESEARCH GROUP, SIERRA CLUB, and )  
NATURAL RESOURCES DEFENSE COUNCIL, )

Plaintiffs, )

v. )

FEDERAL HIGHWAY ADMINISTRATION; UNITED )  
STATES DEPARTMENT OF TRANSPORTATION; )  
MARIO CINO, in her official capacity as Acting Secretary )  
of Transportation; DAVID C. MILLER, in his official )  
capacity as Division Administrator for the Federal Highway )  
Administration; UNITED STATES FOREST SERVICE; )  
UNITED STATES DEPARTMENT OF AGRICULTURE; )  
MARK REY, in his official capacity as Under Secretary of )  
Agriculture; and DENNIS E. BSCHOR, in his official )  
capacity as Alaska Regional Forester )

)CaseNo. J06-00009CV(JWS)

**INTERVENOR STATE OF ALASKA'S ANSWER TO  
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

STATE INTERVENOR'S ANSWER TO COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF  
SEACC, et al. v. FHWA

Page 1 of 26

Case No. J06-00009CV (JWS)

ATTORNEY GENERAL, STATE OF ALASKA  
DIMOND COURTHOUSE  
P.O. BOX 110300, JUNEAU, ALASKA 99811  
PHONE: 465-3600

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3 **INTRODUCTION**

4 1. The first sentence of paragraph 1 of the complaint is prefatory language  
5 and does not state any fact that is pertinent to, or an element of, a cause of action, and  
6 no response is required. The second sentence is denied.

7 2. Deny that the road extension will traverse Berners Bay or the Lynn Canal.  
8 Deny that the entire area has been specifically identified by Congress as deserving  
9 special protection, but admit that certain land on the east side of Berners Bay has a  
10 congressional designation. It is not clear exactly what "[t]hat area" encompasses, or  
11 what is meant by "outstanding natural resources," and therefore those allegations are  
12 denied, but admit that natural resources will be impacted by the project as discussed in  
13 the FEIS. Admit that certain old-growth forest exists, but unable to admit or deny  
14 whether such amount is "significant," and admit that many species of wildlife exist.  
15

16 3. Intervenor defendant is without knowledge or information sufficient to  
17 form a belief as to the truth of how plaintiff organizations use the area. No admission or  
18 denial necessary regarding the plaintiffs' description of the types of relief sought.  
19

20 **JURISDICTION, RIGHT OF ACTION, VENUE**

21 4. The allegations in paragraph 4 are conclusions of law, and the statutory  
22 citations speak for themselves.  
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5. The allegations in paragraph 5 are conclusions of law, and the statutory citation speaks for itself.

**PLAINTIFFS**

6. Intervenor defendant is without knowledge or information sufficient to form a belief as to the truth regarding facts about the Southeast Alaska Conservation Council.

7. Intervenor defendant is without knowledge or information sufficient to form a belief as to the truth regarding facts about the Skagway Marine Access Commission.

8. Intervenor defendant is without knowledge or information sufficient to form a belief as to the truth regarding facts about the Lynn Canal Conservation, Inc.

9. Intervenor defendant is without knowledge or information sufficient to form a belief as to the truth regarding facts about the Alaska Public Interest Research Group.

10. Intervenor defendant is without knowledge or information sufficient to form a belief as to the truth regarding facts about the Sierra Club.

11. Intervenor defendant is without knowledge or information sufficient to form a belief as to the truth regarding facts about the Natural Resources Defense Council.

ATTORNEY GENERAL, STATE OF ALASKA  
DIMOND COURTHOUSE  
P.O. BOX 110300, JUNEAU, ALASKA 99811  
PHONE: 465-3600

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3 12. Intervenor defendant is without knowledge or information sufficient to  
4 form a belief as to the truth regarding facts about plaintiff organization members' use or  
5 uses of areas subject to this lawsuit.

6 13. Admit that most of the plaintiff organizations participated, without  
7 admitting or denying whether such participation was "active." APIRG did not submit  
8 comments during scoping or in response to the SDEIS or FEIS. NRDC only submitted  
9 comments on the SDEIS. No comments have been received from an entity called  
10 "Skagway Marine Access Commission," although comments were received from a  
11 similar named entity, the "Skagway Marine Access Committee."  
12

13 14. Intervenor defendant is without knowledge or information sufficient to  
14 form a belief as to the truth regarding the impact of defendants' actions on plaintiff  
15 organizations, on the plaintiff organizations' general activities, or on their members.  
16 Deny that defendants have violated any laws.  
17

18 **DEFENDANTS**

19 15. Admit that the Federal Highway Administration is an agency of the  
20 United States Department of Transportation. The remainder of the paragraph is denied  
21 except to the extent of recognizing that safety, security and environmental impact are  
22 factors that either can, or do, play a part in most road construction or maintenance, but  
23 only in accordance with the law and facts specific to each project or road.  
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16. Admit.

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21. Admit.

22. Admit.

### FACTS

23. The first sentence is denied because Juneau has a National Highway System route within its boundaries. The remainder of the paragraph is admitted.

24. Admit sentences one through three. Deny that the Lynn Canal route is "lucrative." Intervenor defendant is without knowledge or information sufficient to form a belief as to the truth regarding a relative comparison of costs and revenues according to route.

25. Admit the first sentence except to note that the planned route terminates north of the Katzehin River delta. Admit that passengers would board the proposed shuttle ferries, but deny to the extent the sentence ignores the proposed vehicular use of the shuttle ferries. Admit daily proposed shuttle ferry departures, but deny that the departures are limited to between 8 am and 8 pm.

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26. Admit first two sentences. The final three sentences are denied because state funding is projected only.

27. Deny.

28. Admit except to the extent that the paragraph implies that travel will be stopped for more than thirty days per year.

**Recreation and Wildlife Values**

29. Admit that most of the road will be through an inventoried roadless area, but note that approximately eight miles of the road will be over private land. Admit that the inventoried road area is generally unmodified and natural. Admit that scoring under the United State Forest Service Wilderness Attribute Rating System is high, but otherwise deny the allegations in the final sentence.

30. Admit, except that intervenor defendant is without knowledge or information sufficient to form a belief as to the truth regarding whether the habitat is "important" for "hundreds" of species and, if so, in what respects.

31. Admit.

32. Intervenor defendant is without knowledge or information sufficient to form a belief as to the truth regarding whether tens of millions of eulachon gather every spring and make a spawning run, or as to the scope or specific species intended by the "abundant array of wildlife" reference. Admit the final sentence.

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3 33. Admit the first and second sentences. Deny that the specific Berners Bay  
4 area has been designated a Scenic Byway because the designation belongs to the entire  
5 Alaska Marine Highway System corridor, and Berners Bay is not a part of that corridor.

6 34. Admit. Intervenor defendant is without knowledge or information  
7 sufficient to form a belief as to the truth regarding the number of acres designating the  
8 Berners Bay LUD II area.

9  
10 35. Deny that Berners Bay and Lynn Canal are easily accessible from Juneau,  
11 Haines and Skagway. Admit sentences two and three, however without admitting either  
12 the precise level of use, or whether the use is "extensive," or whether the area is  
13 uniformly "treasured."

14 36. Admit that the area would be changed, but deny a "dramatic" change.  
15 Deny the second sentence because it fails to distinguish between forest habitat and  
16 terrestrial habitat. Deny the third sentence, except to the extent of an impact upon  
17 apparent naturalness.

18  
19 37. This paragraph purports to characterize the project as described in the  
20 FEIS and ROD. These documents speak for themselves, and are the best evidence of  
21 the contents. Any allegations contrary to the plain language of the FEIS or ROD are  
22 denied.

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3 **The Planning Process**

4 38. Admit that improving access to Juneau has been debated and has proven  
5 contentious. Deny that a majority of residents in the three communities most affected  
6 do not support it.

7 39. Admit that of 11,799 votes cast in Juneau during the year 2000, 5,840  
8 residents indicated a preference for ferry service and 5,761 preferred a road. The  
9 second and third sentences are admitted.  
10

11 40. Admit.

12 41. Admit, except to note that the new terminal under Alternative 4, Options  
13 B and D, would be at Sawmill Cove, not Sawmill Creek.

14 42. Deny.

15 43. Admit that Governor Murkowski took office in 2002. Work on the EIS  
16 was ordered completed, not reinitiated. The last sentence is denied.  
17

18 44. Admit that in January, 2005, the DOT and FHWA issued a Supplemental  
19 Draft Environmental Impact Statement (SDEIS), and that Alternative 2 was identified as  
20 the preferred alternative. Admit that four alternatives with a highway on the east side of  
21 Lynn Canal, a west-side of Lynn Canal, and four marine alternatives were evaluated,  
22 but deny evaluation of anything called "all marine" options in the SDEIS. Deny that the  
23 No Action Alternative did not contemplate use of existing assets more effectively. The  
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3 SDEIS specifically stated that No Action language was used instead of No Build to  
4 reflect that "AMHS has and would continue to implement new actions in the Lynn  
5 Canal corridor," but would not encompass actions contained in the build alternatives.

6 45. Admit the first and second sentences. The last two sentences are denied  
7 because Alternative 2B extends north of the Katzehin River delta, and vehicles as well  
8 as passengers would be allowed to board ferries.

9  
10 46. Denied to the extent that "options" means something different from  
11 Alternatives. Admit that Alternatives 2, 2A and 2C were determined not reasonable.  
12 Deny that any element of the Klondike National Historical Park was within the Area of  
13 Potential Effect (APE) of the alternatives. Admit the final sentence.

14 47. Admit that on January 18, 2006, DOT&PF and the FHWA issued the  
15 Final Environmental Impact Statement (FEIS). Deny the second sentence because  
16 seven alternatives were analyzed. Deny the third sentence because the No Action  
17 Alternative is not a mere continuation of current ferry service, and the FEIS describes  
18 No Action as "including" a continuation of mainline service but with the projection that  
19 AMHS would be implementing reduced mainline service from Juneau, and adding  
20 shuttle service between Haines and Skagway. Admit Alternative 3 requires construction  
21 of a highway on the west side of Lynn Canal, and that the alternative was deemed  
22 unreasonable in the 1997 DEIS. (DEIS at 3-1 through 3-4.) Deny that four "marine"  
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3 options exist. Four marine alternatives exist (4A, 4B, 4C, 4D). Two of the marine  
4 alternatives would end in Sawmill Cove, not Sawmill Creek. The general descriptions  
5 of the marine alternatives are admitted.

6 48. Admit the first sentence. Deny that the No Action Alternative in the FEIS  
7 reflects a continuation of current service. The No Action Alternative included changes  
8 in service that occurred during the preparation of the SDEIS and included projections of  
9 future AMHS service changes.

10  
11 49. Deny that using existing Alaska Marine Highway System assets to  
12 optimize service in Lynn Canal was raised as an alternative in comments to the SDEIS,  
13 or that DOT and the FHWA refused to consider alternatives presented. Admit that the  
14 issue was raised in response to comments to the FEIS, but note that the issue was  
15 addressed in an addendum to the Record of Decision.

16  
17 50. Admit the total number of comments, but deny that twenty-six comments  
18 accurately gauges road support since, among other reasons, Alternative 2B was just one  
19 of several road alternatives.

20 51. Admit.

21 52. Admit the first sentence. The second sentence is denied because the  
22 FHWA authorized the expenditure of funds in August, 1994, for preparing an  
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3 environmental document. The April, 2006, authorization was to complete plans,  
4 specifications and estimates (PS&E) as well as to appraise and acquire right-of-way.

5 53. Admit the first sentence. Deny that all permits need to be issued before  
6 construction can begin as FHWA stated that construction could begin in Zones 1 and 3  
7 (Echo Cove to Antler River, and Lace River to Sweeney Creek, could begin as soon as  
8 permits for those areas were issued) before all permits are received Zone 2.

9  
10 54. Admit, but at the time of filing this Answer the bid opening date has been  
11 changed to October 31, 2006.

#### 12 Old-Growth Habitat

13 55. Intervenor defendant is without knowledge or information sufficient to  
14 form a belief as to the truth regarding the allegations in paragraph 55.

15 56. Sentences one, three and four discuss requirements of the National Forest  
16 Management Act and the Tongass Land Management Plan. These documents and legal  
17 provisions speak for themselves, and intervenor defendant denies any allegations,  
18 characterizations or conclusions that differ from the documents or legal provisions.  
19 Unable to admit or deny when the Tongass Land Management Plan was implemented,  
20 but admit that plan was approved in 1997.

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22 57. Intervenor defendant is without knowledge or information sufficient to  
23 form a belief as to the truth regarding whether the primary wildlife conservation  
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3 strategy implemented by the Forest Service in TLMP is a system of reserves protecting  
4 a limited amount of old-growth habitat throughout the forest.

5 58. Paragraph 58 discussed provisions of the Tongass Land Management  
6 Plan. The provisions contained therein, including Land Use Designations, speak for  
7 themselves, and intervenor defendant denies any allegations, characterizations or  
8 conclusions that differ from the TLMP. Admit generally that the TLMP contains Land  
9 Use Designations which guides natural resource decision making by establishing  
10 management standards and guidelines for a variety of activities, including a designation  
11 called "Old-Growth Habitat."  
12

13 59. Paragraph 59 discussed Old-Growth Habitat LUD provisions of the  
14 Tongass Land Management Plan. The Land Use Designation OG, Old-Growth Habitat,  
15 provisions of the TLMP speak for themselves, and intervenor defendant denies any  
16 allegations, characterizations or conclusions that differ from the TLMP. Deny that road  
17 construction is barred in the Old-Growth Habitat LUD or is necessarily inconsistent  
18 with Old-Growth Habitat goals.  
19

20 60. Paragraph 60 discussed Transportation and Utility Systems LUD  
21 provisions of the Tongass Land Management Plan, and the interaction of that LUD with  
22 other LUDs. Intervenor defendant admits that a Land Use Designation called  
23 "Transportation and Utility Systems" exist within the TLMP, and that the TLMP  
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identifies several Transportation and Utility System corridors. The Land Use Designation TUS, Transportation and Utility Systems, provisions of the TLMP speak for themselves, and intervenor defendant denies any allegations, characterizations or conclusions that differ from the TLMP as applied to the LUD TUS, or its interaction with other LUDs.

61. Admit that the proposed highway route will cross old-growth reserve areas, but deny that construction will result in a violation of the TLMP either as to old-growth reserves or to Old-Growth Habitat LUDs.

62. Paragraph 62 alleges when and under what circumstances construction through an Old Growth Habitat LUD area may occur under the Tongass Land Management Plan. The provisions of the TLMP speak for themselves, and intervenor defendant denies any allegations, characterizations or conclusions that differ from the TLMP.

63. Paragraph 63 describes the content of a letter dated May 4, 2006, written by the FHWA and submitted to the USDA Forest Service pursuant to 23 U.S.C. 317. The letter dated May 4, 2006, is the best evidence of its contents. Allegations contrary to the plain language of the letter are denied.

64. Paragraph 64 describes the contents of a letter dated May 22, 2006, written by the USDA Forest Service and submitted to the FHWA. The letter dated May

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3 22, 2006, is the best evidence of its contents. Allegations contrary to the plain language  
4 of the letter are denied.

5 65. Intervenor defendant is without knowledge or information sufficient to  
6 form a belief as to the truth regarding the specific Forest Service evaluation process or  
7 conclusions regarding feasible alternatives to the proposed road.

8  
9 **Stellar Sea Lions**

10 66. Admit.

11 67. Sentences 1, 2, 4 and 5 purport to characterize critical habitat identified in 50  
12 C.F.R. 226.202 for Stellar sea lions. The provisions of 50 C.F.R. 226.202 speak for  
13 themselves and are the best evidence of their content. Intervenor defendant denies any  
14 allegations, characterizations or conclusions that differ from the regulation. Admit that  
15 two haulouts exist in the vicinity of the project, but deny the remaining allegations of  
16 the third sentence.

17  
18 68. The allegations in paragraph 68 purport to characterize project specific  
19 details which are documented in the FEIS and ROD. Any allegations contrary to the  
20 plain language of those documents are denied.

21 69. Admit a potential effect, except that the sentence is denied to the extent that  
22 it implies any adverse effects are likely from noise or human access from construction,  
23 operation, and maintenance of the proposed highway.

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3           70. Deny the first sentence because defendants have determined the project is  
4 not likely to adversely affect Steller sea lions. The second sentence cannot be admitted  
5 or denied because it is not clear what "human activity" is being referenced.

6           71. The allegations in paragraph 71 purport to characterize the Revised  
7 Biological Assessment and letter of concurrence (NMFS September 27, 2005, letter).  
8 These documents speak for themselves. Any allegations contrary to the plain language  
9 of those documents are denied.

10  
11           72. In response to allegations in the first sentence, admit only that  
12 construction plans have not been developed or submitted to NMFS, and deny all  
13 remaining allegations of the first sentence. Deny the second sentence both because it is  
14 vague in not defining what a "full assessment" is, and because the National Marine  
15 Fisheries Service concluded based on existing mitigation measures, including review of  
16 construction plans, that the proposed action is not likely to adversely affect Stellar sea  
17 lions. The allegations in paragraph 72 of the Complaint appear to be derived from the  
18 September 27, 2005, NMFS letter. The provisions of the NMFS September 27, 2005,  
19 letter speak for themselves, and intervenor defendant denies any allegations,  
20 characterizations or conclusions that differ from the letter.

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22           73. Deny.  
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74. The first sentence is an analysis of ESA requirements. The provisions of the ESA or associated regulations speak for themselves, and intervenor defendant denies any allegations, characterizations or conclusions that differ from the requirements of the ESA or associated regulations. Admit second and third sentences. Admit that a Revised Biological Assessment was prepared which concluded that the project was not likely to adversely affect Steller sea lions and would not adversely modify the Gran Point critical habitat. The remainder of the last sentence is denied.

75. Admit that concurrence in the Revised Biological Assessment determination was sought by DOT and the FHWA, but otherwise deny the first sentence. As to the remaining allegations, the NMFS September 27, 2005, letter speaks for itself, and intervenor defendant denies any allegations, characterizations or conclusions that differ from the letter.

76. Admit that additional mitigation measures broadened the monitoring program, but deny the remainder of paragraph 76. To the extent paragraph 76 of the Complaint relies on the NMFS September 27, 2005, letter, the provisions of the NMFS September 27, 2005, letter speak for themselves, and intervenor defendant denies any allegations, characterizations or conclusions that differ from the letter.

77. Admit that additional mitigation measures were accepted, and deny that boat access measures were rejected. Admit that one of the additional mitigation



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3 measures requested by NMFS was "[n]o boat launches or structures that enhance boat  
4 access will be constructed by DOT&PF as part of the East Lynn Canal Highway," but  
5 deny remainder of the second sentence. Admit that DNR has authority to grant permits  
6 or easements for use of tidelands in the state instead of DOT. The last sentence is  
7 denied.

8  
9 78. Deny the first sentence. Admit that NMFS will conduct a limited review  
10 of final plans in accordance with the mitigation measures, but deny to the extent the  
11 allegation implies that NMFS has blanket approval authority over final plans for  
12 construction. Deny that the mitigation measures preclude construction within 3,000 feet  
13 of the Gran Point haulout when sea lions are present. To the extent this paragraph of the  
14 Complaint relies on the NMFS September 27, 2005, letter, the provisions of the NMFS  
15 September 27, 2005, letter speak for themselves, and intervenor defendant denies any  
16 allegations, characterizations or conclusions that differ from the letter.  
17

18 79. Deny.

19 80. It is not clear what "strict limits or prohibitions" means, and therefore  
20 intervenor defendant denies the first sentence. A mitigation measure may act as a  
21 prohibition, or strict prohibition, for example. Admit that portions of mitigation  
22 measures numbered 1 and 4 from NMFS September 27, 2005, letter were properly  
23 quoted. To the extent this paragraph of the Complaint relies on the NMFS September  
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3 27, 2005, letter, the provisions of the letter speak for themselves, and intervenor  
4 defendant denies any allegations, characterizations or conclusions that differ from the  
5 letter.

6 81. Deny the first sentence. Deny that the chosen measures are inadequate or  
7 impractical. Intervenor defendant is without knowledge or information sufficient to  
8 form a belief as to the truth regarding whether the measures "might" ultimately prove  
9 ineffective, or whether circumstances "may" make the measures impractical, and  
10 therefore deny the allegations.  
11

12 82. Deny first sentence. Admit the remaining sentences except to deny any  
13 errors in data resulting from daily monitoring.

14 83. Deny.

15 84. Admit that a sixty-day letter was submitted as provided in this paragraph,  
16 but deny that all plaintiff organizations signed the letter.  
17

18 **Bald Eagles**

19 85. The allegations of paragraph 85 purport to characterize the content of the  
20 FEIS. The FEIS speaks for itself, and is the best evidence of its content. Any  
21 allegations contrary to the plain language of the FEIS is denied.

22 86. Admit first sentence. Admit that persistent noise may cause individual  
23 eagles to abandon a nest, but otherwise deny the second sentence.  
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87. Admit the first sentence and deny the second sentence. The FEIS only concludes that individual eagle pairs may relocate.

88. Admit the first two sentences, and deny the final sentence.

89. In response to the allegations of paragraph 89, intervenor defendant admits and avers that no statute or regulatory requirement exists for obtaining a permit or other approval for the "taking" of bald eagles associated with a proposed highway project.

**Traffic Demand**

90. The allegations in sentences 1, 3 and 4 are denied. Admit that an Appendix C exists called the "Traffic Forecast Report," and was prepared for DOT&PF and the FHWA by the McDowell Group with assistance from Kittelson & Associates.

91. Sentences 1, 2, 3, 5 and 6 are denied. The allegations contained in the fourth sentence are admitted.

92. Admit first sentence. Deny the remaining sentences.

93. Deny.

94. Deny.

95. Admit that the EIS includes a calculation of net present value for each reasonable build alternative, but deny remainder of sentence one. Admit that the net present value calculation is used to compare one calculation of relative costs and

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3 benefits of alternatives, but deny remainder of sentence two. Admit generally the  
4 statements in sentences three, four, five and six, but deny that No Action Alternative  
5 had a net present value assigned.

6 96. Deny the first sentence. Deny that evidence was presented to the FHWA  
7 and DOT in response to the SDEIS. Admit that comments were submitted in response  
8 to the FEIS regarding frequency delays, but deny the remainder of the sentence. The  
9 final sentence is denied because the ROD addressed the comments.  
10

11 **COUNT I**

12 Failure to Comply with Tongass Land Management Plan

13 (National Forest Management Act)

14 97. This paragraph does not call for an admission or denial.

15 98. The provisions of the National Forest Management Act (NFMA) speak for  
16 themselves, and intervenor defendant denies any allegations, characterizations or  
17 conclusions that differ from the NFMA.  
18

19 99. The Tongass Land Management Plan speaks for itself, and intervenor  
20 defendant denies any allegations, characterizations or conclusions that differ from the  
21 TLMP.

22 100. Intervenor, State of Alaska, lacks sufficient knowledge or information to  
23 form a belief as to the truth of the remaining allegations and, therefore, denies the same.  
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101. Intervenor, State of Alaska, lacks sufficient knowledge or information to form a belief as to the truth of the allegation and, therefore, denies the same.

**Count II**

**Bald Eagles**

102. This paragraph does not call for an admission or denial.

103. The Bald Eagle Protection Act speaks for itself, and intervenor defendant denies any allegations, characterizations or conclusions that differ from the Bald Eagle Protection Act.

104. Deny.

105. Deny.

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**Count III**

**Failure to Consider Reasonable Alternatives**

**(National Environmental Policy Act)**

106. This paragraph does not call for an admission or denial.

107. The National Environmental Policy Act (NEPA) speaks for itself, and intervenor defendant denies any allegations, characterizations or conclusions that differ from NEPA.

108. The National Environmental Policy Act (NEPA) speaks for itself, and intervenor defendant denies any allegations, characterizations or conclusions that differ from NEPA.

109. The National Environmental Policy Act (NEPA) speaks for itself, and intervenor defendant denies any allegations, characterizations or conclusions that differ from NEPA. The second sentence is denied.

110. The Title 23, Code of Federal Regulation provisions speak for themselves, intervenor defendant denies any allegations, characterizations or conclusions that differ from the Title 23, Code of Federal Regulations.

111. Deny.

112. Deny.

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COUNT IV

Misleading Traffic Demand Forecast

(Department of Transportation Act, Administrative Procedure Act,  
National Environmental Policy Act)

113. This paragraph does not call for an admission or denial.

114. The provisions of 23 U.S.C. §§ 106, 109 speak for themselves, and intervenor defendant denies any allegations, characterizations or conclusions that differ from 23 U.S.C. §§ 106, 109.

115. Deny.

116. Deny.

117. Deny.

118. Deny the first sentence. The provisions of 40 C.F.R. §§ 1502, 1503 speak for themselves, and intervenor defendant denies any allegations, characterizations or conclusions that differ from those federal code provisions.

119. Deny.

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**COUNT V**

Failure to Initiate Formal Consultation for Steller Sea Lions

(Endangered Species Act, Administrative Procedure Act)

120. This paragraph does not call for an admission or denial.

121. The ESA speaks for itself, and intervenor defendant denies any allegations, characterizations or conclusions that differ from the ESA.

122. Deny.

123. Admit.

124. Admit that the FHWA agreed to implement a series of mitigation measures. Deny the remainder of paragraph 124.

125. Deny.

**PRAYER FOR RELIEF**

WHEREFORE, the intervenor State of Alaska respectfully requests the following relief:



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3 1. That the Complaint for Declaratory and Injunctive Relief be dismissed  
4 and judgment be entered in favor of defendants;

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6 2. Award the State of Alaska the costs of this action, including reasonable  
7 attorneys' fees; and

8  
9 3. Grant such other relief as this Court deems just and proper.

10 RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of October, 2006.

11 DAVID W. MÁRQUEZ  
12 ATTORNEY GENERAL

13 

14 By: /s Peter Putzier  
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**CERTIFICATE OF SERVICE**

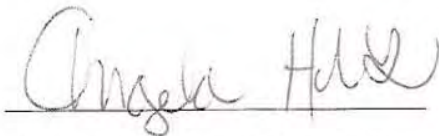
I, Angela Hobbs, certify that on October 19, 2006, a copy of the foregoing document, was served via e-mail and regular mail to Michael C. LeVine. Courtesy copies were also sent via e-mail and regular mail to United States Attorney Nelson P. Cohen and United States Department of Justice Attorney Dean Dunsmore, and via e-mail to United States Department of Justice Attorney Coby Howell.

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