

## **DECISION MEMO**

### **For Commercially Guided Helicopter Skiing, Chugach Powder Guides ten year permit**

#### **Glacier and Seward Ranger Districts, Chugach National Forest Alaska Region USDA Forest Service**

### **DECISION**

It is our decision to issue Chugach Powder Guides (CPG) a new special use permit, for a period of ten years, beginning January 2008 and expiring in December 2017, to replace their existing special use permit. The new permit will continue to allow for 1,800 priority use service days in the following "core" units:

- Glacier-Winner
- West Twentymile
- North Twentymile
- East Twentymile
- Placer-Skookum
- West Bench Peak
- North Bench Peak
- East Bench Peak
- Grandview

This decision will not result in any changes from the existing permit in terms of service days or units available for helicopter skiing. Other than the duration of the permit, the new permit's terms and conditions will not differ from the existing permit. In addition, all design features, mitigation, and monitoring described in the 2004 Heli-ski Record of Decision (ROD) will continue for the duration of the new permit.

This decision does not include or affect the 400 temporary use service days in the "exploratory" units. "Exploratory" units will be evaluated yearly to determine if the authorization would be reissued, modified, or not issued.

### **BACKGROUND**

In September 2004, the Forest Service prepared an Environmental Impact Statement (Heli-ski EIS) and Record of Decision (Heli-ski ROD) for Commercially Guided Helicopter Skiing on the Kenai Peninsula, authorizing helicopter skiing in the "core" areas under a five year permit. The Heli-ski ROD allows for helicopter skiing in two different types of units; "core" units and "exploratory" units. "Core" units are areas where helicopter skiing has been previously permitted (prior to 2004) and "exploratory" units are areas where helicopter skiing has never been previously authorized. "Core" units were assigned 1,800 priority use service days and "exploratory units" were assigned 400 temporary use service days.



In October 2006, Chugach Powder Guides requested that their 1,800 priority use service days in the "core" units be converted to a ten-year term.

## **RATIONALE for the DECISION**

We based our decision on four considerations: (1) consistency with Forest Service National Environmental Policy Act (NEPA) directives regarding categorical exclusions; (2) consistency with Forest Service directives regarding conversion of special use permits to a ten year term; (3) evaluation of monitoring efforts described in the Heli-ski ROD; and (4) comments submitted during the scoping period.

### ***Rationale for Category and Finding of No Extraordinary Circumstances.***

Forest Service directives allow an action to be categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA) if the proposed action is within a category listed in section 31.12 or 31.2 of Forest Service Handbook (FSH) 1909.15 and there are no "extraordinary circumstances." This decision is within the scope of section 31.2, category 15 which allows for:

Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are no changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.

This decision is within this category because it will only replace the existing CPG permit with a new term. The new permit's terms and conditions will not differ from the existing permit. The new term of CPG's permit is considered administrative, as the dominate mechanisms controlling the scope and intensity of CPG's use of National Forest System (NFS) lands is through number of service days, units available for helicopter skiing, monitoring, and mitigation measures; none of which change under this decision.

In addition, a review of public scoping and the Commercially Guided Helicopter Skiing on the Kenai Peninsula EIS (Heli-ski EIS) did not identify any extraordinary circumstances related to this decision on the seven resource conditions identified in FSH 1909.15, section 30.3. These resource conditions are discussed below:

- (1) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species. No threatened, endangered or sensitive wildlife species occur within the permit area during the permit operating season (Heli-ski EIS p. 3-7, Heli-ski EIS Appendix C, and Heli-ski ROD p. 17). Sensitive plants that do exist in the project area will not be affected by this decision (Heli-ski EIS p. 4-35 and Heli-ski EIS Appendix C).
- (2) Flood plains, wetlands, or municipal watersheds. Over the snow operations, such as helicopter skiing, have minimal impact to wetlands or floodplains and standard fuel spill prevention, containment and cleanup materials are required in fueling areas (Heli-ski EIS p. 4-35 and Heli-ski ROD p. 17).

(3) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas.

None of the permit area includes wilderness, wilderness study areas, or national recreation areas.

(4) Inventoried roadless areas.

The entire permit area is within inventoried roadless areas. However, helicopter skiing is not prohibited by the 2001 Roadless Rule (36 C.F.R. part 294) and helicopter skiing will have little effect on the character of the roadless environment (Heli-ski EIS pp. 4-35 through 4-36).

(5) Research natural areas.

None of the permit area includes research natural areas.

(6) American Indians and Alaska Native religious or cultural sites.

No American Indian or Alaska Native religious or cultural sites will be affected by the permit (Heli-ski EIS 4-35 and Heli-ski ROD p. 17).

(7) Archaeological sites, or historic properties or areas.

No archaeological sites or historic properties or areas will be affected by the permit (Heli-ski EIS 4-35 and Heli-ski ROD p. 17).

For the above reasons, we have determined that this decision falls within a category of administrative actions that can be categorically excluded from documentation in an EIS or EA and no extraordinary circumstances exist.

***Consistency with Special Use Permit Directives***

The Forest Service regulates occupancy and use of National Forest System (NFS) lands by outfitters and guides (O&G) through issuance of special use permits. Until April 2005, special use permits were issued for a maximum term of five years. In April 2005, Forest Service policy was revised to extend the maximum term to ten years (see Final Directive, Federal Register Vol. 70, No. 71, April 14, 2005). The directive documenting this revision cited three reasons:

- (1) To Support Small Business – The longer term provides greater business continuity for planning and investing, reducing an identified constraint to small business sustainability.
- (2) To Streamline Special Use Administration – The longer term decreases Forest Service administrative costs by reducing the analysis and processing required before issuing special use authorizations.
- (3) To Be Consistent with Other Agencies – The longer term is consistent with the permitting policies of the Bureau of Land Management and the National Park Service, which is important because many O&G operations include lands administered by more than one of these agencies.

This direction was incorporated into the Forest Service Handbook, 2709.11 – Special Uses Handbook, Chapter 40 – Special Uses Administration, 41.53 Outfitters and Guides, 41.53j Permit Terms and Conditions, point 1, which reads: “For new applicants, authorize use for up to 1 year. For holders assigned priority use, use may be authorized for up to ten years.”

The Forest Service’s revised special use permit directives allow for special use authorizations for a

term of ten years provided certain conditions are met, including: (1) the permit holder must be authorized priority use; and (2) the permit holder must demonstrate compliance with the terms and conditions of the permit authorizing the priority use.

CPG currently holds 1,800 priority use service days for "core" units and has received an "acceptable" rating on their annual performance evaluations every year they have operated on the Chugach National Forest. In addition, CPG has stated that a ten year permit will allow for greater business continuity for planning and investing. Therefore, we feel that this decision is consistent with the purposes of the revised special use policy.

### ***Monitoring Results***

An important part of this decision is the continuation of the monitoring program described in the Heli-ski ROD. This monitoring program will continue to evaluate whether resource management objectives are being met and to incorporate the findings of ongoing wildlife studies (see Heli-ski ROD, Appendix B). The results of the monitoring program and wildlife studies will be incorporated into the implementation of this decision. If monitoring indicates that resource objectives are not being met, changes to permit terms and conditions will be made during the term of the permit.

The results of the monitoring program to date are discussed below.

**Helicopter Flight Paths:** Procedures for submitting global positioning system (GPS) data were outlined in a March 2005 letter to CPG. Protocols for the use of GPS as a monitoring tool were developed in November 2005. Special use permit performance standards for compliance with the no-fly zones were established in January 2006. GPS monitoring has shown a highly successful rate of compliance. In both 2006 and 2007, compliance rates are 99%, exceeding the benchmark standard of 95%. The flight path information and run use reports have also been used to complete a monitoring survey of the cumulative winter recreation and human use activities. GPS monitoring of flight paths will continue.

**Goats and No-Fly Zones:** The model for goat habitat has been statistically validated. Preliminary results from the statistical validation of habitat indicate that the amount of winter goat habitat is larger than previously identified. The habitat model will be further validated with the results from actual goat locations and movement patterns from collared goats. In cooperation with ADF&G, 12 goats were collared in 2006 and four additional goats in 2007; information from these animals will be retrieved in 2008 and 2009.

The need for modifications to the no-fly zones, or additional no-fly zones will be assessed following analysis of the tracking data, as well as an assessment of the cumulative overlap of all winter recreation activities with goat habitat. Currently, the results of cumulative winter recreation activity are being compared to the statistically validated goat habitat model. Although the acreage of total winter goat habitat may be greater, the extent of overlap between winter recreation activities and goat habitat is unknown. Regardless of the extent of this overlap, the direct and indirect impacts to goats have not been shown to be significantly different from those described in the Heli-ski EIS.

In addition, the same data and information used during the Heli-ski EIS analysis has been peer reviewed and published (Goldstein 2005). The published report concludes that overt disturbance reactions to helicopter over-flights at a distance greater than 1500 feet were not severe or prolonged in nature. The 59 no-fly zones, approximately 95,500 acres in size, have been designed so that

overflights would occur at this distance or greater. As described above, compliance with these no fly zones are near 99%.

**Brown Bear Denning Habitat:** A validated denning model was completed in 2006, including a spatial representation predicting the probability of den occurrence across the analysis area. This information will be used in combination with the results of the winter recreation and human use surveys to identify overlap with denning bears. Results are expected in 2008.

There has been no further information on winter recreation impacts to denning bears on the Kenai Peninsula. Following the Heli-ski ROD, no specific den sites have been identified within the operating area by area biologists or CPG. Should significant overlap of denning bear habitat with winter recreation activity be noted, additional monitoring or studies of behavioral impacts may occur.

**Wolverine Denning Habitat:** Wolverine collaring efforts have been initiated, but so far have been unsuccessful in capturing animals. Efforts with ADF&G will be expanded this winter to allow for more traps, a longer season and a broader distribution across the analysis area in order to improve collaring chances. Similar to the bear denning information, we expect to compare this information with the winter recreation and human use surveys, with results available in 2008.

Harvest levels for wolverine have remained relatively stable for the past several years on the Kenai Peninsula. This trend may indicate a stable population; however ADF&G has no specific data on wolverine population levels.

**Spatial Distribution of Winter Recreation and Human Use Activities:** Winter recreation and human use monitoring have been completed. The Forest Service completed systematic aerial surveys and parking lot counts for two seasons, 2004 and 2005. Results from these efforts have been used to identify winter travel networks and use areas for three primary winter use activities; helicopter skiing, backcountry (non-motorized) skiing, and backcountry snowmachine use. Data have been used to map the temporal and spatial use patterns across the analysis area. Findings from this monitoring information identify:

- A lack of overlap between back country skiing and helicopter skiing. Backcountry skiing is primarily limited to portals of access along the Seward Highway, including Turnagain Pass East, Johnson Pass, Summit Lake and Lost Lake. Although a limited amount of overlap between backcountry skiers and helicopter skiers occurs in the Johnson Pass/Lynx Creek area, monitoring suggests that the areas identified for helicopter skiing use do not conflict with non-motorized recreation.
- Areas of overlap between backcountry snowmachine use and helicopter skiing occur primarily in the Placer Skookum area and East Seattle Creek. The Heli-ski ROD implemented a timing restriction on East Seattle Creek to allow helicopter skiing only on Friday, Saturday and Sunday. Although overlap between these motorized activities occurs, minimal conflicts have been reported.

The cumulative activity level (duration and spatial extent) of winter recreation have now been mapped for the analysis area. Findings from this study will next be compared to the wildlife distribution monitoring described above.

**Noise and Visual Impact:** Prior to issuance of the ROD, members from the Forest Service and the Moose Pass community monitored a test flight for noise and visual impacts at six observation points near the “exploratory” areas. This intensity of monitoring has not been conducted again primarily because CPG’s use has been minimal and there has been a lack of public observation when use has occurred. On March 16, 2005, CPG conducted one day of operation in East Moose Creek for a total of six runs. CPG attempted to operate in Mount Ascension on March 17, landing several times, but did not find suitable snow conditions. In 2006, they conducted one day of operations in East Moose Creek and again one day in 2007. No public comments or observations were noted.

Noise and visual monitoring of the “exploratory” areas, as well as the flight paths used in Girdwood will continue. Subsequent to the ROD, the Forest has received one comment regarding flight paths to and from Girdwood—one person called to compliment the flight path along Glacier Creek being used.

**Community Attitudes, Belief and Perceptions of Change:** In November 2005, Alaska Pacific University engaged in an “interactive community forum” in Moose Pass to assess the social perspective of residents to helicopter skiing, particularly in the “exploratory” units. Participants’ responses indicated that while many were unsure about the actual magnitude of direct impacts during one ski season, there was a belief that this action would start a decline or “snowball” into more significant impact in the future (APU study p. 31).

Although helicopter skiing in the “exploratory” units has been minimal and this decision does not affect use in “exploratory” units, if CPG begins to use the “exploratory” units more heavily, the Forest Service may engage the community to determine whether their perceptions on helicopter skiing have changed. Information from the APU survey will serve as a baseline assessment for identifying community values and determining social impacts as implementation continues.

#### **Summary of Monitoring Program Results**

In summary, the monitoring program indicates that CPG has a high level of compliance with no fly zones. In addition, studies on goats, wolverines, and brown bears are in progress, with additional information expected in 2008 and 2009. Further, monitoring of recreation use has provided some validation of the extent of overlap between helicopter skiing and snow machine or backcountry skiing use. To date, the monitoring information indicates that the effects of helicopter skiing are not significantly different from those described in the Heli-ski EIS.

### **PUBLIC INVOLVEMENT**

A letter describing the proposed action and requesting public comment was sent to individuals and organizations involved in the Heli-ski EIS planning process and posted on the Chugach National Forest website. In addition, a legal notice was published in the Anchorage Daily News on November 1, 2007. The Forest received 22 comments. A summary of the comments received and Forest Service response is provided below.

## ***Comments Summarized from the Scoping Period***

*Comment 1: The monitoring items identified in the Heli-ski ROD have yet to be completed, specifically for wildlife. The Forest Service should not grant a ten year permit to CPG until all the information is in hand and the impacts of heli-skiing are analyzed.*

Response: The extent to which monitoring has occurred and the findings from this monitoring are described above. We recognize that not all studies identified in the monitoring program described in the Heli-ski ROD are complete and there will always be a need to improve our wildlife knowledge base. Although some monitoring items and studies are still ongoing, the results we have to date do not indicate environmental or social impacts different from those described in the Heli-ski EIS or indicate a need to make changes to permit terms and conditions or mitigation measures. In addition, should monitoring indicate the need to make implementation changes, Forest Service directives allows for reconsideration of decisions and review of new information after a decision has been made (FSH 1909.15 section 18.1 and 18.2). If monitoring results indicate a need, changes will be made to the operating permit.

Specifically, the results from three years of the helicopter flight path monitoring show that helicopter skiing can occur consistently with designated no-fly zones. In addition, results from the spatial distribution of winter recreation activities shows very little overlap between helicopter skiing and non-motorized use and limited overlap with snow machine use. The spatial distribution of winter recreation is currently being compared with goat and brown bear and wolverine denning habitat models. Results will be used to validate the existing no-fly zones or potentially modify them, identify additional mitigation or design features, or make operational changes to helicopter operations.

*Comment 2: It does not appear from the reviews and evaluations that CPG has supplied any significant wildlife observation information.*

Response: Reporting of wildlife observation is a permit requirement. Wildlife observations are made daily in operation logs and reported to the Forest Service each operating season, particularly mountain goat observations. This information has been shared with both the Forest Service and with the Alaska Department of Fish and Game during annual pre-season information and coordination meetings. It will continue to be used to validate the goat habitat model.

There may be some confusion in the inspection operation reports which were made available during public scoping. For example, the 2006 and 2007 inspection reports identify wildlife sightings (item 8) as 'not checked' or 'not applicable'. However, the inspection report documents operating conditions on a particular day-- the permit terms require that the wildlife sighting be submitted cumulatively, at the end of the season.

*Comment 3: CPG operates on public lands which are effectively privatized and exclude the public for many months of the year.*

Response: The special use permit does not authorize exclusive use for CPG. Other winter recreation activities, including snowmobiling, backcountry skiing and hunting and trapping are allowed and can continue in the "core" units. Other commercial operations, which have overlapping use areas with CPG, will also continue—including guided helicopter tours and guided snowmobile tours.

Several permit terms and conditions insure that the public and other commercial operators are not excluded or adversely affected by CPG's operations. For example, CPG is required to maintain a distance of ½ mile horizontal distance or 1,500 feet above ground level from other users. In order to facilitate trip planning, CPG also provides a public "hot line" notifying the public of their planned runs for the day.

Monitoring of winter recreation activities suggests that there is very little overlap between non-motorized backcountry skiers and helicopter skiers. While it may be possible that backcountry skiers choose not to ski within approved helicopter skiing zones due to noise, lack of solitude or other values, the monitoring suggests that the great distance at which CPG operates within the backcountry is the primary factor which separates motorized and non-motorized users.

Backcountry skiers within the analysis area primarily take day trips leaving from and returning to the Seward Highway. CPG generally operates at a distance which would take most backcountry skiers more than a day to reach. The only observed exception is within Lynx Creek (West Bench Peak analysis area), where both helicopter skiers and backcountry skiers have been observed. Here, helicopter skiing is limited to Monday through Thursday, to allow backcountry skiers exclusive access on the weekends. A similar timing arrangement occurs in the East Seattle Creek analysis area.

Monitoring of winter recreation suggest a significant amount of overlap between backcountry snowmobile use and helicopter skiing in the Placer Skookum area, with limited overlap in the Twentymile, Spencer and Johnson Pass areas. The Forest Service has not received any public comment, either positive or negative, from backcountry skiers in these areas. Negative comments were received from a backcountry snow machine user and a backcountry fly-in (fixed wing) user in the Bench Peak areas.

*Comment 4: It seems the primary concern of the USFS is supporting business, particularly 'small' business . . . the number of service days the Forest can carry, and that CPG needs, are not known. The Forest Service should determine the carrying capacity, taking into account issues such as the increasing cost of fuel and the reality of global climate change.*

Supporting small sustainable businesses is a concern of the Forest Service, as many small businesses depend on the use of National Forest System lands for their activities. One of the reasons for allowing ten year authorizations is to help these businesses.

There are many factors which may determine the profitability of heli-skiing (Heli-ski EIS p. 5-13). Cost of fuel and reservations made during poor winter conditions are two of many financial variables which determine business viability. Converting CPG's permit to a ten year term will allow the operator to make longer term investments at lower costs and accommodate for business uncertainty, such as poor weather or snow conditions.

Providing an economically viable, safe and high quality recreation experience was one of the purpose and needs identified in the Heli-ski EIS and Heli-ski ROD (Heli-ski EIS p. 1-5, 1-6, and Heli-ski ROD p.1), incorporating both Forest Plan and Region 10 strategic goals to support sustainable recreation and small business opportunities. The appropriate level of helicopter days to meet this need was analyzed in the Heli-ski EIS (Heli-ski EIS p. 4-36 and 5-12) and identified in the ROD (Heli-ski ROD p. 6). This decision does not change the current authorized service days, but

does provide greater business continuity for planning and investing, reducing an identified constraint to small business sustainability.

#### **OTHER FINDINGS REQUIRED BY LAW**

**Chugach Land and Resource Management Plan 1984, (Forest Plan), as amended.** The decision continues implementation of a selected alternative that is consistent with the Forest Plan (Heli-ski ROD p. 16). The skiing units are also located within areas open to helicopter use. Implementation of this decision does not require an amendment to the Revised Forest Plan.

**ANILCA Section 810, Subsistence Evaluation and Finding.** The effects of this project have been evaluated to determine potential effects on subsistence opportunities and resources. There is no documented or reported subsistence use that would be restricted as a result of this decision.

**Bald Eagle Protection Act.** Management activities within bald eagle habitat will be in accordance to a Memorandum of Understanding (2/26/02) between the Forest Service and the U.S. Fish and Wildlife Service.

**Clean Water Act.** The project design is in accordance with Forest Plan standards and guidelines, Best Management Practices, and applicable Forest Service manual and handbook direction. The project activities are expected to meet all applicable State of Alaska water quality standards.

**Clean Air Act.** Emissions anticipated from the implementation of the Selected Alternative would be of short duration and would not be expected to exceed State of Alaska ambient air quality standards (18 AAC 50).

**Coastal Zone Management Act of 1972, as amended.** The Coastal Zone Management Act requires the Forest Service, when conducting or authorizing activities or undertaking development directly affecting the coastal zone, to ensure that the activities or development be consistent with the approved Alaska Coastal Management program to the maximum extent practicable. In accordance with Section 302 of the "Memorandum of Understanding between the State of the Alaska and the USDA Forest Service, Alaska Region, on Coastal Zone Management Act/Alaska Coastal Management Program Consistency Reviews (FS Agreement No.00MOU-111001-026, effective March 2, 2000), this decision does not require a consistency determination with the Coastal Zone Management Act.

**Endangered Species Act.** Biological evaluations were completed for threatened, endangered, proposed, and sensitive plant and animal species. No threatened or endangered plant or animal species would be affected by this activity.

**Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended.** The Magnuson-Stevens Fishery Conservation Act (the Act) requires that all federal agencies consult with the National Marine Fisheries Service (NMFS) when any project "may adversely affect" essential fish habitat (EFH). The Act also requires that agencies with existing consultation processes contact NMFS to discuss how the existing processes can be used to satisfy the EFH consultation requirements (50 CFR 600.920(e)(3)). None of the activities will cause any action that may adversely affect EFH as defined by this Act.

**Migratory Bird Treaty Act.** There will be no impacts to migratory bird populations. We find that the Selected Alternative complies with the Migratory Bird Treaty Act.

**National Historic Preservation Act of 1966.** Section 106 of the National Historic Preservation Act requires that all federal undertakings follow the regulations found at 36 CFR 800 to identify and protect cultural resources that are within project areas and which may be affected by projects. The Chugach National Forest will follow the procedures in the Programmatic Agreement among the Chugach National Forest, the Advisory Council on Historic Preservation, and the Alaska State Historic Preservation Office. A project-specific inventory of the activity areas has been conducted. Primarily because operations take place over snow, the project has been designed to avoid sites or mitigate the effects of the project on sites; therefore, the Selected Alternative will be consistent with the National Historic Preservation Act, the American Indian Religious Freedom Act and the Native American Grave Protection Act.

**Executive Order 11988 – Wetlands.** Wetlands occur in the project area. However, design features such as an over-the-snow operation, will minimize the impact to wetlands in accordance with E.O. 11988.

**Executive Order 11990 – Floodplains.** Floodplains occur in the project area. However, design features such as an over-the-snow operation, will minimize the impact the impact to floodplains in accordance with E.O. 11990.

**Executive Order 12962 - Recreational Fisheries.** No major adverse effects to freshwater or marine resources would occur with implementation of this project.

**Executive Order 13112 - Invasive Species.** Invasive species populations have the potential to spread in the project area. Over the snow operations will minimize the spread of invasive species in accordance with E.O. 13112.

**Executive Order 12898 - Environmental Justice.** Implementation of this project is not anticipated to cause disproportionate adverse human health or environmental effects to minority or low-income populations.

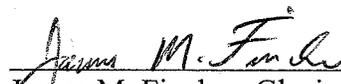
## IMPLEMENTATION

Implementation of this decision may occur immediately. This action falls within a category of actions that are not subject to appeal (36 CFR 215.8).

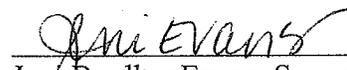
## CONTACT PERSON

For further information, contact Teresa Paquet at the Glacier Ranger District, Chugach National Forest, P.O. Box 129, Girdwood Alaska, 99587 or telephone 907-783-3242.

## RESPONSIBLE OFFICIALS

  
James M. Fincher, Glacier District Ranger

1/23/2008  
Date

  
Jeni Bradley Evans, Seward District Ranger

1-23-08  
Date