



*File Code: 1570-1 (EMC)*

*Date: April 13, 1999*

*Mr. Louis S. Heins  
City of Tenakee Springs  
P. O. Box 52  
Tenakee Springs, Alaska 99841*

*RE: Appeal of the Record of Decision for the Tongass National Forest Revised Land and Resource Management Plan (#97-13-00-0117)*

*Dear Mr. Heins:*

*Pursuant to 36 CFR 217, this letter is our decision on your appeal of Regional Forester Phil Janik's May 23, 1997, Record of Decision (1997 ROD) which approved a revised Land and Resource Management Plan (1997 Forest Plan) for the Tongass National Forest in Alaska.*

*Your Notice of Appeal (NOA) was received on October 3, 1997. Your appeal on behalf of the City of Tenakee Springs was timely as it was postmarked September 25, 1997. The Regional Forester transmitted the relevant decision documentation and pertinent appeal records (AR) to this office on November 13, 1997. Many interested parties requested and were granted intervenor status (see enclosed lists of parties). Intervenors whose comments were received are also listed on the enclosed lists of parties.*

#### *Secretary Review and Evaluation*

*The 1997 Forest Plan is based on Alternative 11 in the Tongass Land and Resource Management Plan Revision Final Environmental Impact Statement (FEIS), with modifications as documented in the 1997 ROD. The decision to approve the 1997 Forest Plan was subject to appeal in accordance with Forest Service appeal regulations at 36 CFR 217. Thirty-three notices of appeal were filed on the May 23, 1997, decision. In addition, two lawsuits have been filed that involve the appeals of the 1997 ROD. Also, the 1997 Forest Plan is implicated in at least one other lawsuit unrelated to appeals.*

*As the Under Secretary for Natural Resources and Environment at USDA, I have elected to exercise discretionary review of the administrative appeals relating to the Regional Forester's approval of the 1997 Forest Plan. This is not a step I take lightly. It is my belief that the continuing controversy and exceptional circumstances surrounding the Tongass Land and Resource Management Plan warrant my direct and immediate participation in order to bring this controversy to closure as quickly as possible so that the Forest Service can move forward with the Modified 1997 Forest Plan implementation. The residents of Southeast Alaska, their communities and elected officials, as well as business and organizations from the region, have*

*long sought certainty in the management of the Tongass National Forest. A key to this certainty is ensuring the sustainability of the goods and services produced by the Tongass National Forest, and all the resources on which they depend. The enclosed 1999 ROD seeks to provide that certainty built upon a foundation of sustainable natural resource stewardship. Therefore, I have reviewed these appeals and related records. My decisions in the appeals reflect modifications contained in the enclosed 1999 ROD.*

*The 1999 ROD documents my decision and rationale to modify the 1997 Forest Plan. I am modifying some aspects of the 1997 Forest Plan, not because I find that it fails to meet mandatory requirements, but because I have concluded that, for multiple use reasons and to reduce the level of environmental risk, the Secretary's responsibilities and authorities should be exercised differently to improve the Forest Plan. The enclosed 1999 ROD changes development land use designations (LUD's) to mostly natural LUD's in 18 Areas of Special Interest totalling approximately 234,000 acres. The 1999 ROD also strengthens a standard and guideline (S&G) and adds another to address certain wildlife species, to improve subsistence opportunities and to reduce risk to old-growth ecosystem viability. Adjustments I made to management direction, together with unchanged portions of the 1997 Forest Plan, will hereinafter be referred to as the Modified 1997 Forest Plan. The Modified 1997 Forest Plan is the document titled "Land and Resource Management Plan - Tongass National Forest", dated 1997, and is based on Alternative 11 in the "Tongass Land Management Plan Revision Final Environmental Impact Statement" with modifications as noted in the enclosed 1999 ROD.*

#### *Regulatory Authorities*

*The regulations governing forest plan appeals are not based on statutes that require an appeal system, but instead are one way the Department meets its responsibilities under the Organic Act (16 U.S.C. 472, 551), the Multiple Use-Sustained Yield Act (16 U.S.C. 528-531) (MUSYA), and the National Forest Management Act (16 U.S.C. 1600, et seq.) (NFMA). As Under Secretary I am charged to provide leadership in resource management and assure the protection, management, and administration of the National Forests (7 U.S.C. 2.20). I also am charged under 7 U.S.C. 2.20(a)(2)(viii) to "exercise the administrative appeal functions of the Secretary of Agriculture in review of decisions of the Chief of the Forest Service pursuant to 36 CFR 215 and 217, and 36 CFR 251 Subpart C."*

*The regulations governing forest plan appeals (36 CFR 217.17) provide for discretionary review by the Under Secretary. Discretionary review is based on the appeal record presented to the Chief (36 CFR 217.17(e)). The appeal regulations grant broad latitude in deciding when to invoke discretionary review (36 CFR 217.17(a)). The 1997 Forest Plan falls within the scope of the identified factors that include, but are not limited to, the "controversy surrounding the decision, the potential for litigation, whether the decision is precedential in nature, or whether the decision modifies existing or establishes new policy." In fact, probably not since the Secretaries of Agriculture and the Interior jointly signed the 1994 "Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl" has there been as compelling a need for final resolution of such a long-standing land management controversy. An expedited discretionary review harms no appellant's interests as the Chief's decision would be subject to discretionary review in any event, and the review is based on the same record. In sum,*

*expediting the discretionary review portion of the appeal process, although unconventional, is in the best interest of the residents of Southeast Alaska and the public at large, and within the spirit and letter of the appeal regulations.*

*On February 12, 1999, Chief Dombek issued an 18-month interim rule temporarily suspending decisionmaking regarding road construction and reconstruction in many unroaded areas of the National Forest System. The interim moratorium is needed to safeguard the significant ecological values of unroaded areas from the potentially adverse effects often associated with road construction until a new, permanent road policy is in place. The long-term policy will guide decisions of where, when, and if new roads should be constructed in unroaded portions of the National Forest System. As explained in the interim rule preamble, the Tongass National Forest was exempt from the moratorium as a newly revised plan that had the benefit of considerable science and public involvement. The preamble also noted that the 1997 Forest Plan was still undergoing evaluation as part of the administrative appeal process under 36 CFR 217. The interim rule allows for any issues related to the construction of roads in unroaded areas to be addressed in the appeal decision. As such, the transportation system analysis in general, and as it relates to unroaded areas specifically, is discussed below where appropriate.*

*I find that the Regional Forester complied with applicable Federal law and agency policy in his approval of the 1997 ROD for the 1997 Forest Plan. However, as previously discussed, I feel modifications are needed to reduce the level of risk and uncertainty for ensuring environmental protection regarding three key issues which I found could be improved upon from the 1997 Forest Plan: (1) subsistence use and associated deer winter range/deer habitat capability; (2) assurance of adequate amounts and distribution of old-growth forest for species viability; and (3) protection of Areas of Special Interest.*

*My decision on the appeals reflects those modifications contained in the enclosed 1999 ROD and is the final administrative action by the Department of Agriculture.*

#### *The Modified 1997 Forest Plan*

*The Modified 1997 Forest Plan is a programmatic framework for management of an administrative unit of the National Forest System.<sup>1</sup> The enclosed 1999 ROD explains what the Modified 1997 Forest Plan does. "This Plan provides the broad, programmatic direction necessary to manage the resources and uses of the Tongass National Forest in a coordinated and integrated manner" (Modified 1997 Forest Plan). It "will guide the management of the Tongass National Forest for the next 10 to 15 years" (1999 ROD). The components of Forest Plan direction, "along with the Land Use Designation map, establish a management framework that governs the location, design, and scheduling of all Forest management activities. Within the management framework, project-level planning is undertaken to achieve Forest Plan implementation" (Modified 1997 Forest Plan). The Modified 1997 Forest Plan*

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<sup>1</sup>*The Modified 1997 Forest Plan and FEIS were prepared under the authority of the Multiple Use-Sustained Yield Act (MUSYA) (16 U.S.C. 528-531); the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by the NFMA (16 U.S.C. 1601-1614); the implementing regulations of NFMA (36 CFR 219); and the NEPA (42 U.S.C. 4321-4335 and its implementing regulations (40 CFR 1500-1508).*

*sets forth goals and objectives for management and establishes programmatic standards to follow in pursuit of those goals. "Goals are achieved through the allocation of lands to the set of LUD's, through implementation of the Standards and Guidelines specified for the LUD's, and through other activities conducted on the Forest" (Modified 1997 Forest Plan). Pursuant to NFMA, the Modified 1997 Forest Plan identifies land that is suitable for timber production and determines the allowable sale quantity (ASQ), and other resource outputs, all of which are estimates.*

*Implementation of the Modified 1997 Forest Plan will take place through project-level decisions which must be within the bounds of the programmatic framework. As stated in the Modified 1997 Forest Plan, implementation is "accomplished through the recurrent identification of proposed actions . . . consistent with activities anticipated in the Plan; the analysis and evaluation of such actions . . . ; related documentation and decisionmaking; and project execution and administration, in a manner that is consistent with the management direction of the Plan" (Modified 1997 Forest Plan). Thus, the Modified 1997 Forest Plan standards operate as parameters within which projects must take place. Approval of any project must be consistent with the management standards. If a project cannot be conducted within these parameters, these safeguard mechanisms in the Modified 1997 Forest Plan will prevent such development from going forward (see *Swan View Coalition v. Turner*, 824 F.Supp 923, 933 (D. Mont. 1992)).*

*The 1999 ROD (Section VIII, Appeal Rights) notes that decisions on site-specific projects are not made in the ROD and that such decisions will not be made until completion of environmental analysis and documentation for the specific project, in compliance with the National Environmental Policy Act (NEPA). Thus, approval of the Modified 1997 Forest Plan does not mandate any project decisions. Each project or activity must be consistent with the programmatic environmental protection direction in the Modified 1997 Forest Plan (16 U.S.C. 1604 (i)).*

*Finally, the Modified 1997 Forest Plan establishes monitoring requirements to help determine how well the standards and management direction are working and whether the goals remain appropriate throughout the plan period. As stated in the Modified 1997 Forest Plan, ". . . monitoring and evaluation comprise an essential feedback mechanism within an adaptive management framework to keep the Plan dynamic and responsive to changing conditions."*

*In summary, the Modified 1997 Forest Plan establishes a framework for decisionmaking on the Tongass National Forest using programmatic direction as a gateway for compliance with environmental laws at the project level.*

### *Response to Concerns*

*My response to your concerns provides a focused response to contentions involving complex resource management issues. Although every contention made by you may not be cited in this decision, all of your concerns have been considered. My review of the concerns has focused upon the Regional Forester's compliance with law, regulation, and policy.*

*The following section addresses your concerns about specific aspects related to wild and scenic river designations, the Kadashan Study, transportation planning goals, road building,*

*power transmission lines, LUD's, subsistence, and watershed analysis. As relief you request that the 1997 Forest Plan be amended and further analysis be conducted.*

### *Wild and Scenic River Designation*

*The appellant is concerned that the Forest Service has found all rivers in Tenakee Inlet except for the Kadashan River, unsuitable for designation without saying why. Additionally, the appellant contends Tonalite Creek should have been included in the Kadashan River designated area since it is a fork of the river and has greater values than the Kadashan River for wildlife habitat (NOA, p. 2).*

### *Discussion*

*The Wild and Scenic River Act (WSRA) of 1968, describes the requirements used to determine a river's eligibility for designation in the National Wild and Scenic Rivers System. As stated by the WSRA Section 1 (b) as amended, "[i]t is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in their free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes."*

*These "outstandingly remarkable" values should be a unique or exceptional representation for the area studied or within a geographic province when compared to other rivers (Record RS-G-6-a, TLMP 443). "For study purposes, the Act requires that the evaluation of a river's eligibility consider, as a minimum, the area within one-fourth mile of either side of the high water mark of the river. However, features outside this corridor may be considered if their inclusion is essential for protection of the outstandingly remarkable values of the river" (FEIS Appendix E, p. E-4).*

*The term "outstandingly remarkable" has not been defined with absolute criteria. The Regional Forester states, "[t]hese values should be a unique or exceptional representation for the area studied, and must be related to the river or its immediate environment" (FEIS Appendix E, p. E-4). "The determination of what features area outstandingly remarkable is largely a matter of professional judgement by the federal agency planners conducting the Wild and Scenic River study, although they may consult with recognized resource experts outside the agency. Any river, however, that has unique biological or geological characteristics, critical wildlife habitat, outstanding recreation, important historic or prehistoric sites, or is highly*

*representative of a geographic area, may be a good candidate for the system" (Record RS-G-6-a, TLMP #443). The Forest Service Handbook (FSH) 1909.12, section 8.21c states: "[t]he determination that a river area contains 'outstandingly remarkable' values is a professional judgment on the part of the study team." The Region's description is consistent with the FSH statement.*

*Determining a river's eligibility is the first step in the assessment of a river segment for potential inclusion in the National Wild and Scenic River System. As part of the forest planning process, river study teams determine eligibility for wild and scenic river designation by applying the criteria in sections 1(b) and 2(b) of the WSRA and the procedures established in the FSH (1909.12, 8.21). In summary, the Forest Service determination of eligibility for wild and scenic river designation, as part of the forest planning process, includes specialists' evaluations (based on criteria in section 1(b) of the WSRA) of identified rivers, consideration of public comments, and a determination of eligibility by the deciding officer.*

*The next step results in the classification of the study river as "wild," "scenic," or "recreational." For those rivers which the study teams finds eligible, the third and final step is a determination of whether the river is suitable for inclusion in the national system. This step can be done during the forest planning process or at a later date. Criteria of primary importance in determining suitability are the qualities that a river segment possesses, as identified through the eligibility evaluation (and as directed under sections 1(b) and 2(b) of the WSRA and FSH 1909.12, 8.21). However, there are several other important criteria that should be considered in determining suitability, as directed under FSH 1909.12, 8.23 and the Final Revised Guidelines for Eligibility, Classification and Management of River Areas, 47 Federal Register 39454 (September 7, 1982). The factors to consider include:*

- 1. The characteristics which do or do not make the area a worthy addition to the National System (e.g. "outstandingly remarkable" values identified during the eligibility analysis and the river segment's free-flowing condition).*
- 2. The current status of land ownership and use in the area, including the amount of private land involved and the uses on such land.*
- 3. The reasonably foreseeable potential uses of the land and water which would be enhanced, foreclosed, or curtailed if the area were included in the Wild and Scenic River System, and the values which could be foreclosed or diminished if the area is not protected as part of the System.*
- 4. Public, State, and local governmental interest in designation of the river, including the extent to which the administration of the river, including the costs thereof, may be shared by State and local agencies.*
- 5. The estimated cost of acquiring necessary lands and interest in land and of administering the area if it is added to the System.*
- 6. Other issues and concerns identified during the planning process.*

*Once these factors have been fully evaluated, a determination is made on whether the river segment should or should not be recommended for designation as part of the System. As provided at FSH 1909.12, 8.41(2), wild and scenic river suitability determinations conducted as part of the forest planning process are:*

*... a preliminary administrative recommendation for the wild and scenic designation . . . that will receive further review and possible modification by the Chief of the Forest Service, Secretary of Agriculture, and the President of the United States. The congress has reserved the authority to make final decisions on designation of rivers as part of the National Wild and Scenic Rivers System.*

*An evaluation was conducted for the purpose of determining the eligibility of rivers and streams on the Tongass National Forest. An inventory of all areas of the Forest by Forest Service personnel and others was done (Record, RS-G-6-a, TLMP #443). Using this information, streams and rivers with possible outstandingly remarkable values were identified and evaluated (Record, RS-G-6-a, TLMP #443 and FEIS, p. 3-331). The evaluation process used by the Forest Service to determine the eligibility and suitability of rivers and streams on the Tongass National Forest, employed the results from an inventory of the Forest conducted by Forest Service personnel, field personnel of the Alaska Department of Fish and Game and other individuals with knowledge of river resources. The inventory also included information sources, such as the Catalogue of Waters Important to anadromous fish (maintained by the ADF&G Habitat Division), the 1979 Forest Plan Value Comparison Unit ratings for fish, wildlife and recreation, the ADF&G 1983 Sport Fish Habitat Improvement Program ratings of streams, inventoried potential Research Natural Areas, and other special Management Area inventories (FEIS, p. 3-331).*

*All rivers on the Tongass were initially reviewed for outstandingly remarkable values (FEIS, p. 3-331). These rivers were evaluated for the purpose of determining the eligibility, potential classification, and suitability (FEIS, p. 3-331), as required under Section 5(d) of the WSR. The initial evaluation identified 300 rivers and streams for further study. Of those, 188 rivers were selected for further evaluation but were determined to be ineligible as wild, scenic, or recreation rivers including Trap River, Tonalite Creek, and Goose Flats River (Record RS-G-6-b). The remaining 112 rivers, including the Kadashan, were determined to be eligible for inclusion in the National Wild and Scenic Rivers System (FEIS, p. 3-332). The Trap River, Tonalite Creek, and Goose Flats River were found to be ineligible because they did not possess "rare, unusual or exemplary riverine features" and were not "unique within the region" (Record, RS-G-6-b). As explained above in the wild and scenic river process, if a river is found ineligible, it is no longer considered for suitability determination. Unlike the Dangerous River which was found eligible (FEIS Appendix E), the Trap River, Goose Flats and Tonalite Creek, were determined to be ineligible for WSR classification (Record, RS-G-6-b).*

*You would like Tonalite Creek recommended for wild designation as part of the Kadashan River complex because of its high wildlife values. As mentioned in the above discussion Tonalite Creek was determined to be ineligible for WSR classification. However, as explained in the FEIS Tonalite Creek was considered as a Research Natural Area (RNA) (1997 ROD, p.*

9). *Tonalite Creek has already been designated by Congress as a LUD II area, in which timber harvest is prohibited and road construction limited (FEIS, p. 3-159).*

*The Tongass National Forest correctly followed and adhered to the process to determine eligibility of the 112 rivers (1997 ROD, p. 9). The Regional Forester agreed with the process to determine eligibility and he recommended 32 of the 112 eligible rivers were suitable for inclusion in the National Wild and Scenic Rivers System (1997 ROD, p. 9). He explained in the 1997 ROD:*

*These recommendations are preliminary administrative recommendations that will receive further review and possible modification by the Chief of the Forest Service, the Secretary of Agriculture, and the President of the United States. Congressional action is necessary to designate rivers as part of the National Wild and Scenic Rivers System. With regard to the remaining 80 eligible rivers not recommended for designation as part of the National Wild and Scenic Rivers System, 37 of them have a majority of their eligible corridors within Wilderness areas or Legislated LUD II areas, and are therefore statutorily protected from development. In addition, 25 rivers have a majority of their eligible corridors within other non-development LUD's. There will be no scheduled timber harvest, and very little of other kinds of development, in these areas over the next 10 to 15 years. These rivers could be recommended for designation in future Forest Plan revisions (1997 ROD, p. 9).*

*The Regional Forester discussed the rationale for rivers that were determined to be unsuitable. He stated in his decision, "[e]ighty rivers have been determined as non-suitable for wild, scenic or recreational designation. The values of these rivers are adequately represented by others being recommended for designation. Moreover, the 1997 Forest Plan's riparian standards and guidelines and other direction will adequately protect most of the values of these rivers while allowing competing resource management objectives to be met. In addition, the public comment on these rivers is mixed" (1997 ROD Appendix A, p. A-7).*

*Decision criteria were used to determine if a river was "unique" in the regional context, or if other resource opportunities would be foregone by including a river in the National Wild and Scenic Rivers System. Often a river was recommended for scenic or recreational status rather than wild, depending on existing or potential future uses that would preclude classification as a wild river (1997 ROD Appendix A). Kadashan River was determined to be suitable for scenic river classification, rather than wild river designation. While the entire eight miles of the river meet the criteria for wild river classification, the Regional Forester stated his reasons for the recommended classification, "scenic designation to maintain future options for road and power transmission corridor development, although no such options are currently being pursued" (1997 ROD Appendix A, p. A-6). The Kadashan River area is just one part of a larger planning effort supported by other segments of the public to include a network of power transmission corridors in the 1997 Forest Plan for future options (see Transportation Planning and Power Transmission Routes sections).*

#### *Decision*

*After review of the record I find that the 1997 ROD and FEIS for the 1997 Forest Plan adequately determined and analyzed the eligibility and suitability of rivers in the Tenakee*

*Inlet. The 1997 Forest Plan is consistent with the WSRA and other law and regulations related to the recommendation of rivers for designation in the Wild and Scenic Rivers System. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.*

### *Kadashan Study*

*The appellant states that "despite the overwhelming intent of the House of Representatives to designate the Kadashan as Wilderness and thus prohibit any future road building in Kadashan, the Forest Service is still maintaining its options to build a road through the Kadashan LUD II" (NOA, p. 3). The appellant further, contends that "Part B of the Kadashan Study is fundamentally flawed because it fails to identify a legitimate need for a transportation route through the Kadashan River valley. The Forest Service should have completed needs assessment for such a road corridor and included it in the final study, but it did not" (NOA, p. 4).*

### *Discussion*

*Section 203 (Kadashan Study) of the Tongass Timber Reform Act (TTRA) required (a) an assessment of the natural, cultural, environmental, fish and wildlife (including habitat) resources and values of such area; and (b) an assessment of the need for, potential uses, alternatives to and environmental impacts of providing a transportation corridor route through the Kadashan river valley. Section 203 clearly states that the study would address the issue of providing a transportation corridor through the valley. The study did not make any decisions regarding timber harvest or the road, nor was it intended to. These activities could be proposed at a future date and would be subject to all the NEPA requirements of a site specific proposal (FEIS Appendix K, p. K-3). At that time, the 'no action' alternative would be appropriate and other alternatives could be developed based on resource and public issues.*

*The appellants also feel that "since the Tongass Timber Reform Act (TTRA) expressly directed the Forest Service to work in consultation with the City of Tenakee Springs in preparing the Kadashan Study, denying the valid requests of the City of Tenakee Springs violates the TTRA" (NOA, p. 4).*

*The Forest Service specifically worked with the City of Tenakee Springs and documented its approach in the Kadashan Study (FEIS Appendix K, p. K-3). Consultation was conducted in public meetings, as well as meetings between the Forest Service, City of Tenakee Springs Natural Resources Advisory Committee, and the general public. The Committee recommended several changes in Part B of the Study which were adopted by the Forest Service. Following that, the Committee identified several more changes they wanted made to the Kadashan study revision. The changes which were determined to be appropriate were made. Changes that were not made to the study were documented in a letter dated December 22, 1992 (FEIS Appendix K, pp. 78, 134-141; Record RS-G-18-f, #1481 and #1482). Clearly,*

*the Forest Service consulted with the City of Tenakee Springs and considered recommendations from the City.*

### *Decision*

*As demonstrated by the above discussion, the Forest Service worked with the City of Tenakee Springs Natural Resources Advisory Committee and the general public to prepare the Kadashan study, and the Forest Service incorporated some of the recommendations of the Advisory Committee into Part B of the study. The study is consistent with requirements of section 203 of the TTRA. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.*

### *Transportation Planning*

*The appellant contends that the Forest Service never "discloses its long-term transportation planning goals for the Tenakee Inlet in the new TLMP, thus violating the National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA)" (NOA, p. 6). The appellant also states that "analyzing the impacts of Forest Service road building schemes through the piecemeal individual project analysis as outlined by the Forest Plan's two-step planning process is inadequate and fails to address the cumulative impact of the long-term construction of a forest development road network in Tenakee Inlet" (NOA, p. 6).*

### *Discussion*

*The 1997 Forest Plan provides programmatic direction in the form of multiple-use goals and objectives, land allocations, and management direction to make site-specific project decisions in an environmentally and economically efficient manner (FEIS Appendix L, pp. L-129 through*

*L-130). In his decision, the Regional Forester explained, "[d]ecisions on site-specific projects are not made in this document" (1997 ROD, p. 43). He further noted, "[d]ecisions on proposed projects will not be made until completion of environmental analysis and documentation for the specific project, in compliance with the National Environmental Policy Act" (1997 ROD, p. 43). Thus approval of the 1997 Forest Plan does not mandate any project decisions, including specific road construction. Each project or activity must be consistent with the programmatic environmental protection direction in the 1997 Forest Plan (16 U.S.C. 1604 (i)). Therefore, any road construction that would occur is required to have environmental analysis and documentation, in compliance with the NEPA.*

*Although the 1997 Forest Plan does not make site-specific decisions on road locations, numerous sections of the 1997 Forest Plan discuss roads. "The transportation section of Chapter 3 of the FEIS (pp. 3-308 through 3-312) discusses the overall current and proposed road system strategy on the Tongass. Long range transportation planning has not been systematically pursued because of the island geography, lack of infrastructure, and relatively low population. Impacts of roads are discussed in the transportation section, as well as in the fish, soils and water, recreation and tourism, scenery, and wildlife sections. Again, decisions*

*to build specific road segments are project plans, and, as such, must be considered at the project level of NEPA analysis and documentation" (FEIS Appendix L, p. L-159).*

*For certain areas identified by the State of Alaska as appropriate for development of major transportation or utility systems (i.e., the Swan Lake-Tyee Intertie), a Transportation Utility System LUD has been developed (Record, RS-G-19-b, TLMP #1556; 1997 ROD, p. 6; 1997 Forest Plan, p. 3-155). Standards and guidelines throughout the 1997 Forest Plan address the need for road management planning (e.g., the Transportation and Wildlife Forest-wide Standards & Guidelines, and the Old-growth Habitat Land Use Designation; 1997 Forest Plan Appendix L, p. L-5).*

*Existing roads are displayed in the map packet in the FEIS. Potential new road miles are estimated in the Transportation section of the FEIS. Their location roughly correlates to the areas in development LUD's for each alternative (e.g., Timber Production, Modified Landscape, Scenic Viewshed, and Recreational River). Additional roads could be anticipated along the corridors allocated to the Transportation and Utility Systems LUD including the Sitka-Tenakee Springs-Hoonah Intertie. "These are road systems identified by the State of Alaska as priority potential routes. The overall effects of the road system on other resources are discussed in the transportation, recreation and tourism, fish, wildlife, roadless, soil and water, and scenery sections of the EIS" (FEIS Appendix L, p. L-159).*

#### *Decision*

*After reviewing the record, I find that the issue of transportation planning was adequately discussed and analyzed at the level appropriate for a programmatic document. As explained above, the 1997 Forest Plan does not make site-specific decisions on road building. Once a new road is proposed, at the project level, the appropriate analysis will occur as required by NEPA. The 1997 Forest Plan is consistent with NEPA and other law and regulations related to the detail of analysis required for a programmatic document. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.*

#### *Power Transmission Routes*

*The appellant contends that "the Forest Service needs to consider a reasonable range of realistic alternatives to help encourage local power needs instead of proposing pie-in-the-sky intertie routes across sensitive areas such as Kadashan" (NOA, p. 6).*

#### *Discussion*

*Alternatives prepared for consideration in the 1997 Forest Plan are to provide for a broad range of reasonable management scenarios for the various uses of the forest (36 CFR 219.12 (f)). A primary goal in formulating alternatives is to provide an adequate basis for identifying the alternative that comes closest to maximizing net public benefits in an environmentally sound manner (*id.*). Thus, the evaluation of the range of alternatives does not turn upon consideration of a single factor, such as ASQ, but rather must consider the alternatives as a whole.*

*Arguments raised by you are similar to those addressed by several Federal courts in their review of Forest Service land and resource management plans. The Ninth Circuit Court of Appeals has ruled that the range of alternatives required to be analyzed is determined by the scope of the proposed action (California v. Block, 690 F. 2d 753, 767 (9th Cir. 1983); NCAP v. Lynq, 844 F. 2d 588, 593 (9th Cir. 1988)). An EIS need only set forth alternatives sufficient to permit a reasoned choice (Sierra Club v. Robertson, 810 F. Supp. 1021, 1029 (W.D. Ark 1992) affirmed 28 F. 3d 753 (8th Cir. 1994), citing Minnesota Public Interest Research Group V. Butz, 541 F. 2d 1292, 1300 (8th Cir. 1975); Sierra Club v. Robertson, 845 F. Supp. 485,499 (S.D. Ohio 1994)).*

*An agency need only set forth those alternatives necessary to permit a "reasoned choice" (Friends of Endangered Species, Inc. v. Jantzen, 760 F.2d 976, 988 (9th Cir. 1985); see also Olmstead Citizens for a Better Community v. United States, 793 F.2d 201, 208-209 (8th Cir. 1986); Life of the Land v. Brinegar, 485 F.2d 460, 472 (9th Cir. 1973), cert. denied, 416 U.S. 961 (1974)). The NEPA does not require full discussion of land-use alternatives whose implementation is remote or speculative (Jantzen, 760 F.2d at 988). Moreover, "an agency's consideration of alternatives is adequate if it considers an appropriate range of alternatives, even if it does not consider every available alternative" (Resources Limited v. Roberston, 8 F.3d 1394, 1401 (9th Cir. 1993), citing, Headwaters, Inc. v. Bureau of Land Management, 914 F.2d 1174, 1180-1181 (9th Cir. 1990)).*

*In Sierra Club v. Robertson, 810 F. Supp. at 1021 (W.D. Ark. 1992), affirmed, 28 F. 3d 753 (8th Cir., 1994), plaintiffs argued that the Ouachita Forest Plan EIS was inadequate because it did not contain a "herbicide-free, selection cutting" alternative. The court noted that the Forest Plan EIS considered 13 alternatives and their environmental consequences and concluded that the Forest Service "considered sufficient alternatives to permit a reasoned choice."*

*Equally important, the Ninth Circuit Court of Appeals held in Idaho Conservation League v. Mumma, 956 F.2d 1508, 1520, 1522 (9th Cir. 1992) that "the inclusion of alternatives similar to that put forward by plaintiffs' was held sufficient by the court in Headwaters, Inc. v. Bureau of Land Management, 914 F.2d 1174 (9th Cir. 1990), and Northern Plains Resource Council v. Lujan, 874 F.2d 661, 666 (9th Cir. 1989)."*

*Arguments similar to those raised in this administrative appeal were likewise addressed in another Federal district decision. In Krichbaum v. Kelley, 844 F. Supp. 1107, 1119 (W.D. Va. 1994), the court found that:*

*So long as congress requires this [National] Forest to be managed with multiple-use principles, portions of the Forest must embody a compromise between "natural" Forest conditions and the need for Forest resources -- consistent, of course, with NFMA's substantive commands. Unless it acts irrationally, this compromise is the agency's to strike, and it need not consider alternatives which are consistent with that compromise.*

*For a forest plan, the choice is among management scenarios affecting all the multiple-use resources of the forest. Alternatives cannot be completely specified by a single output. Displays of estimated output levels for the various resources under the alternatives are presented to assist the public to better understand the possible consequences of implementing a particular alternative. Output levels themselves are not subject to the NEPA requirements for a broad range of reasonable alternatives. In developing a forest plan, it is reasonable to expect that alternatives designed to meet identified goals and objectives may produce similar results. The 1997 Forest Plan does demonstrate variation in management emphasis between alternatives.*

*In the development of a forest plan for a 10-15 year period, there is an infinite number of alternatives that could be evaluated in detail. Consideration of all these is obviously an impossible task. The process of narrowing the possible alternatives to be considered to a manageable and reasonable range is appropriate under NEPA. Detailing the infeasibility of every possible alternative would risk making trivial the environmental inquiry NEPA intends (Vermont Yankee Nuclear Power Corp. v. Natural Resource Defense Council, 435 U.S. 519 (1978)).*

*The planning regulations (36 CFR 219.1 (a)) state that "plans shall provide for multiple use and sustained yield of goods and services from the National Forest System in a way that maximizes long term net public benefits in an environmentally sound manner." Net public benefits include all outputs and effects, both positive and negative values that cannot be quantitatively valued, and, therefore, require the decisionmaker to subjectively balance such benefits with costs with each other and with those that can be quantified. The planning regulations (36 CFR 219.12 (f)) state that "the primary goal in formulating alternatives, besides complying with NEPA procedures, is to provide an adequate basis for identifying the alternative that comes nearest to maximizing net public benefits, consistent with the resource integration and management requirements of sections 219.13 through 219.27."*

*For purposes of NEPA compliance, the courts have established that an agency need only set forth those alternatives necessary to permit a "reasoned choice" (Friends of Endangered Species, Inc. v. Jantzen, 760 F.2d 976, 988 (9th Cir. 1985)). The NEPA does not require full discussion of land use alternatives whose implementation is remote or speculative. id.*

*The 1997 Forest Plan presented a range of reasonable alternatives which were evaluated by the Regional Forester. The alternatives varied by theme; emphasizing different land use designations, goals and objectives.*

*While you have stated there is no clear need for a utility route across the Kadashan, support for a network of transportation and utility intertie corridors throughout Southeast Alaska has been expressed by the Governor of the State of Alaska. The State believes that cost effective electrical generation and transmission for communities is important to the people of Alaska (FEIS Appendix L, p. L-162). The State of Alaska study was conducted by Harza Engineering, Inc., in 1987 for the Alaska Energy Authority. Based on the planning criteria used to guide the study, the most economic development would include three major transmission links, one of which is the Hoonah and Tenakee Springs link. This study indicated that a power line intertie Tenakee Springs-Hoonah would best be served by a power line through the Kadashan Valley. Neither LUD II or scenic river (or wild river) designation*

would preclude this kind of activity. If and when the State of Alaska pursues a segment of a utility route, including the Kadashan intertie network, the site-specific potential environmental impacts of alternatives in the corridor area would be assessed. Identification of a potential utility corridor does not approve construction, ut merely allows for it. Site-specific NEPA still has to take place. A detailed feasibility and financial analysis would also be conducted with public involvement (FEIS Appendix L, p. L-162).

### *Decision*

*After reviewing the record, I find that a reasonable range of alternatives was presented in the 1997 Forest Plan. The Regional Forester's decision did not turn upon consideration of a single factor, such as approving a utility corridor through the Kadashan, but rather he considered which alternative provided a mix of use of the resources to best meet the needs of the public. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.*

### *Land Use Designations*

*The appellant "urges the Forest Service to adopt a more honest designation system that acknowledges the extensive and excessive clearcutting that has already taken place on Chichagof Island" (NOA, p. 7). With regard to designated Old-Growth LUD, the appellant states that "many of the designated areas have been extensively clearcut or provide very little productive old-growth habitat" and ask that "instead of designating cutover areas as old growth habitat, the Forest Service should designate the remaining large patches of old growth left in Tenakee Inlet as protected LUDs" (NOA, p. 7).*

### *Discussion*

*For each alternative, LUD's were assigned to specific land areas depending on the resource issues being addressed. Additionally, LUD's have management prescriptions that specify which practices are allowed to be considered for site-specific projects and under what conditions. There are also standards and guidelines that impose limitations on how, where, and when management activities are carried out, usually for specific resource protection (FEIS, pp. 2-3 through 2-7).*

*East Chichagof Island has several LUD's including old growth, timber production, scenic viewshed, semi-remote recreation, LUD II scenic river, LUD II and LUD II Research Natural Area. An area within the Tenakee Inlet has been designated for timber production. This area should provide for local availability of wood products. The old growth LUD was applied to areas that met reserve criteria as described in Appendix K of the 1997 Forest Plan. Estimates of the amount and volume of old growth were based on recent timber inventory data. This information was used in conjunction with the reserve criteria to determine the size and distribution of reserves. In addition, one of the objectives for the old growth LUD is to allow existing natural or previously harvested early seral conifer stands to evolve naturally to old growth forest habitats, or apply silvicultural treatments to accelerate forest succession to achieve old growth forest structural features (1997 Forest Plan, p. 3-76). Abundance of*

*ecological biodiversity (composition), processes and functions (function) and connectivity (structure) were all considered in rating old growth (FEIS, pp. 3-31 through 3-35). The old growth LUD does not provide for planned timber harvest, and roads will be located outside the area when possible.*

### *Decision*

*After my review of the record, I find that the LUD designations for Chichagof Island were considered in the 1997 ROD.*

*However, I have modified the Regional Forester's decision by strengthening protection of old growth on Chichagof Island by changing development LUD's to mostly natural LUD's. I believe this change is necessary to protect old growth and maintain the roadless character of this area (1999 ROD, Areas of Special Interest section).*

### *Subsistence*

*The appellant contends that "the Forest Service has failed in its responsibility to insure subsistence harvest opportunities for rural residents" and that "[t]he Forest Plan treats subsistence like any other multiple use of the forest instead of giving it the priority it should under ANILCA" (NOA, p. 8).*

### *Discussion*

*Multiple-use as defined by MUSYA "means the management of all the various renewable surface resources of the National Forests so that they are utilized in the combination that will best meet the needs of the American people; . . . and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit of output" (P.L. 86-517 Sec. 4 (a)). This law gives the Forest the latitude of developing multiple-use direction without the constraint of obtaining the greatest dollar return or unit of output. The MUSYA directs the Agency to "cooperate with interested State and local governmental agencies and others in the development and management of the National Forests." It also states that "[i]n the administration of the National Forests due consideration shall be given to the relative values of the various resources in particular areas."*

*As one of the ten original issues for the 1997 Forest Plan, subsistence has been considered in the development of alternatives, and evaluated in the Environment and Effects section of the 1997 Forest Plan. "The subsistence issue revolves around ensuring subsistence opportunities and protecting traditional subsistence areas while managing for multiple resource uses. The potential effects of continued logging on resources and places important to subsistence users is the main concern. Another concern is roads, which can provide new access opportunities, but can also result in competition among sport and subsistence users" (FEIS, p. 1-5). Alternatives were modified to address subsistence under ANILCA between draft and final in a multiple use context as directed by ANILCA.*

*Subsistence is identified under Goals Common to All Alternatives in the FEIS, with the direction to "[p]rovide for the continuation of subsistence uses and resources by all rural*

*Alaskan residents" (FEIS, p. 2-25). The Forest-wide multiple use goal and objective for subsistence directs the Forest to "[p]rovide for the continuation of subsistence uses and resources by all rural Alaskan residents", and "[e]valuate and consider the needs of subsistence users in making project land management decisions" (1997 Forest Plan, p. 2-4).*

*With respect to the priority of uses, the 1997 Forest Plan states, subsistence uses "shall be the priority consumptive use of such resources . . . when it is necessary to restrict the taking of such resources" (1997 Forest Plan, p. 4-86). During 1997 Forest Plan implementation, the Regional Forester has directed that "[s]pecific public involvement and analysis requirements will be followed to ensure that management activities consider impacts upon rural residents who are subsistence users" (1997 ROD, p. 5).*

*The Ninth Circuit Court of Appeals ruled (March 24, 1999) that the Forest Service complied with statutory requirements concerning subsistence deer hunting in the Tongass National Forest. The ruling came in cases that two Southeast Alaska tribes filed over the Eight Fathom and Northwest Baranof timber sales, located on Chichagof Island and Baranof Island respectively. The appeals court held that the Forest Service decisions about the impacts of timber sales on subsistence hunting complied with section 810 of the ANILCA. In doing so, the court rejected the claims of the Hoonah Indian Association and the Sitka Tribe of Alaska that additional protections were needed. The court found that the Forest Service correctly determined, in accord with the terms of ANILCA, that the sales were "necessary, consistent with sound management principles" and "involve the minimal amount of public lands necessary to accomplish the purposes" of the sales.*

### *Decision*

*While the 1997 ROD adequately discussed and considered impacts to subsistence, I believe that additional measures are required. Impacts to subsistence were evaluated in a multiple use context, not solely as they relate to timber. It is also apparent that the Forest satisfied the procedural requirements under ANILCA section 810(a) and provided a basis to support the substantial determinations as directed, and included the appellants and associated tribes in the planning process. The 1997 Forest Plan was consistent with the policies of ANILCA, NEPA, as well as other law, regulation, and policy with regard to the evaluation of the impacts on subsistence uses and needs.*

*It is my decision to strengthen provisions related to subsistence in the enclosed 1999 ROD. Specifically, I have designated a large portion of the land base from development to non-development LUD's. In addition, I have added a standard which extends timber rotation from 100 to 200 years in 42 wildlife analysis areas (WAA's) where deer habitat capability concerns exist. This will increase the likelihood of meeting subsistence needs.*

### *Fish Habitat*

*The appellant feels that "by failing to require watershed analysis before timber sale project planning is conducted, the Forest Plan fails to fully implement the AFHA's (Anadromous Fish Habitat Assessment) recommendations" (NOA, p. 8).*

### *Discussion*

*A decision was made in the 1997 ROD (p. 18) to incorporate all the recommendations made in the AFHA report for additional protection of fish habitat. These include: 1) implement watershed analyses; 2) increase protection over the minimum required for headwater areas; 3) enlarge streamside buffers in flood plains and confined alluvial channels; 4) establish quantitative objectives for evaluating fish habitat capability; 5) increase monitoring of fish habitat protection procedures; and 6) evaluate and improve the Best Management Practices (FEIS, p. 3-54). This means that when site-specific projects, such as timber sale projects, are analyzed in the second step of the planning process, the recommendations of AFHA will be implemented.*

*After his consideration of trying to provide different levels of protection for different watershed needs, the Regional Forester stated that the "standards and guidelines will be applied in all watersheds on the Forest" and that they "meet or exceed all of those recommendations by AFHA" (1997 ROD, p. 18).*

### *Decision*

*After reviewing the record, I find that watershed analysis and use of AFHA was adequately discussed and considered. The 1997 ROD addressed using the AFHA recommendations which includes watershed analysis.*

*However, the protection measures I have included in the enclosed 1999 ROD (Fish Habitat section) will provide additional protection for watersheds and fisheries, and reduce the risk to old-growth ecosystem viability. The LUD changes I am making will reduce activity levels in upland sites. This reduced level of activity also will reduce risk to fisheries and riparian resources.*

*Sincerely,*

*/s/ James R. Lyons*

**JAMES R. LYONS**  
*Under Secretary*  
*Natural Resources and*

*Environment*

*Enclosures*  
*List of Parties*  
*1999 ROD*