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CERTIFIED MAIL R.R.R.

*Kim Heacox, President
Friends of Glacier Bay
P.O. Box 135
Gustavus, Alaska 99826*

RE: Appeal of the Record of Decision for the Tongass National Forest Land and Resource Management Plan (#97-13-00-0092-A217)

Dear Ms. Heacox:

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 September 12, 1997. Your appeal on behalf of the Friends of Glacier Bay was timely. The Regional Forester transmitted the relevant decision documentation and pertinent appeal records (AR) to this office on November 24, 1997. The Alaska Forest Association and City of Wrangell and Ketchikan Gateway Borough requested and were granted intervenor status October 9, 1997. Intervenor comments were received from Alaska Forest Association, dated November 8, 1997, and City of Wrangell and Ketchikan Gateway Borough, dated November 8, 1997.

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.

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.¹ 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 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

¹*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).*

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

Your appeal contains concerns related to Land Use Designations (LUD's) and cumulative effects from timber sales. Requested relief is that the 1997 Forest Plan be amended.

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.

Homeshore-Point Couverden Area

You contend that "the [1997] ROD Land Use Designation (LUD) map and defines the Homeshore-Point Couverden area as a developmental LUD (Timber Production) - in the same old way, seemingly without consciousness of changing times, demographics or socioeconomic conditions in Alaska" (NOA, p. 2).

Discussion

Recent demographic and socioeconomic conditions have been assessed in the Economic and Social Environment, Regional Economy, Subregional Overview, and Communities sections of the FEIS (pp. 3- 431 to 3-686). Included in these sections are extensive discussions on economic and social descriptions, cultural importance, regional, subregional, and community level assessments. The communities discussion includes "aspects of their histories, population trends, economic bases, and the subsistence resources used by each community" (FEIS, p. 3-523). In addition, extensive public involvement has been conducted throughout this NEPA process. Appendix L of the FEIS addresses comments made during the previous drafts and supplemental EIS's, NEPA processes, and includes a section on Socioeconomic comments (pp. 92-105). All of this information was considered by the Regional Forester while making his decision.

Decision

After review of the record, we find socioeconomic and demographic conditions were discussed adequately and considered by the decisionmaker. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Optimality

You are concerned that silvicultural methods should be evaluated prior to cutting to assess the potential environmental impacts (NOA, p. 2).

Discussion

The Tongass Forest Plan is a programmatic framework for management of an administrative unit of the National Forest System. The 1997 ROD explains what the Forest Plan is (p. 1), as does the Forest Plan itself. "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" (1997 Forest Plan, p. 5-2). It "will guide the management of the Tongass National Forest for the next 10 to 15 years" (1997 ROD, p. 1). 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" (1997 Forest Plan, p. 1-3). The 1997 Forest Plan sets forth goals and objectives (1997 Forest Plan, pp. 2-1 through 2-5) for management and establishes programmatic standards (1997 Forest Plan, pp. 4-1 through 4-122) to follow in pursuit of those goals. "Goals are achieved through the allocation of lands to the set of Land Use Designations (LUD's), through implementation of the Standards and Guidelines specified for the LUD's, and through other activities conducted on the Forest" (1997 Forest Plan, p. 2-2). Pursuant to the NFMA, the 1997 Forest Plan identifies land that is suitable for timber production and determines the ASQ, and other resource outputs; all of which are estimates.

Implementation of the 1997 Forest Plan will take place through project-level decisions which must be within the bounds of the programmatic framework (1997 ROD, p. 40). As stated in

the 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" (1997 Forest Plan, p. 5-1). Thus, the 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 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 Regional Forester stated in the 1997 ROD, "[d]ecisions on site-specific projects are not made in this document" and "[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. Each project or activity must be consistent with the programmatic environmental protection direction in the 1997 Forest Plan (16 U.S.C. 1604 (i)).

Finally, the 1997 Forest Plan established 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 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" (1997 Forest Plan, p. 6-1).

As discussed in the 1997 ROD, the Tongass National Forest will continue to allow timber harvest while maintaining sustained yield and multiple use goals. The forest-wide standards and guidelines for timber include general direction to "Ensure that silvicultural systems other than clearcutting are considered through an appropriate project level analysis process. However, uneven-aged management systems will be limited to areas where yarding equipment suited to selective logging can be used" (1997 Forest Plan, Chapter 4; 1997 ROD, p. 5).

Several Federal court decisions have held that NFMA does not require forest plans to make site-specific timber harvesting decisions including silvicultural methods for a project. Arguments similar to those raised in this administrative appeal of the 1997 Forest Plan were considered in Resources Ltd., Inc. v. Robertson, 789 F.Supp. at 1536-1537, affirmed, 8 F.3d at 1402. Plaintiffs alleged the Flathead Forest Plan violated NFMA (16 U.S.C. Sec. 1604(g)(3)(F)(i)) because it failed to demonstrate that clearcutting was the "optimum" method of harvest. The court rejected plaintiff's arguments, noting that NFMA, 16 U.S.C. Sec. 1604(f)(2), requires that forest plans estimate the "proportion of probable method of timber harvest." The court concluded that NFMA does not require the agency to make the optimality finding with reference to the Forest Plan. Instead, the court found that harvest method and the optimality finding for clearcutting were project level determinations under NFMA. The Ninth circuit affirmed the District Court, adding that "when the EIS or an environmental assessment (EA) for each specific site is drafted, Resources Limited will have the opportunity to challenge that EIS or EA if clearcutting is improperly endorsed as the optimum harvest method" (Resources Ltd., Inc. v. Robertson, 8 F.3d at 1402).

Your concern indicates that you feel the developmental LUD for the Homeshore-Point Couverden area predisposes timber harvesting to the clearcut silvicultural method. However, as the Regional Forester explained, "[t]he determination of which harvest methods to incorporate in a timber sale project will be made considering site-specific information as part of project-level decision-making, using Forest Plan standards and guidelines" (1997 ROD, p. 17). He went on to note, "[t]he project-level determinations of harvest methods will be discussed and disclosed in NEPA documents and will be subject to the notice and comment appeal [regulations] (36 CFR 215)" (1997 ROD, p. 17). In addition, the timber standards and guidelines (1997 Forest Plan, Chapter 4) include direction to "[u]se clearcutting only where such a practice is determined to be the best system to meet the objectives and requirements of Land Use Designations" (1997 ROD, p. 5).

The Regional Forester clearly recognized the need for additional information regarding use of alternative silvicultural methods. He noted that the Alaska Region and the Pacific Northwest Research Station are continuing to study alternative harvest systems. Monitoring and evaluation (as outlined in Chapter 6 of the 1997 Forest Plan) will be important in determining what alternative harvest systems may be appropriate for the Tongass, and where and when they will be used (1997 ROD, p. 17).

Regardless of the silvicultural method that may be selected at the project level, the Forest Service is committed to protection of soil and water resources. The FEIS contains standards and guidelines for the soils resource that "are used in all alternatives . . . and will apply to all site-specific projects. Forest-wide standards and guidelines are followed to mitigate the effects of management activities" (FEIS, p. 3-201). These are designed to "minimize accelerated soil erosion and maintain long-term soil productivity" and "include soil conservation practices and incorporate the applicable Best Management Practices (BMP's) . . . Annual monitoring of BMP s helps ensure that water quality goals, and standards and guidelines, are met during project implementation" (FEIS, p. 3-201). "Mitigation measures are an integral part of the standards and guidelines. Singularly and collectively, they avoid, rectify, reduce, or eliminate potential adverse environmental impacts of forest management activities" (1997 ROD, p. 28).

"Best Management Practices may be defined as: land management methods, measures or practices intended to reduce or eliminate water pollution" and the 1997 Forest Plan included numerous measures designed to minimize surface erosion, minimize mass failures, minimize sedimentation, and protect soil and water resources (1997 Forest Plan, pp. C-1 to C-6). In addition, the standards and guidelines included avoiding "irreversible or serious and adverse effects on soil and water resources" (1997 Forest Plan, p. 4-82).

Site-specific analysis and project-level decision making are emphasized at the time at which the silvicultural method is identified. The level of even-aged management projected by the plan is merely the "proportion of probable method of timber harvest" as required by NFMA. The optimality finding is determined at the project level and during site-specific analysis. The Alaska Region, the Tongass National Forest, and the Pacific Northwest Research Station will continue to study and experiment with alternative harvesting systems to forward the goal of further reducing the acres clearcut annually.

Decision

After my review of the record, I find that the Regional Forester analyzed all forms of timber management appropriate for the Tongass, as specified under NFMA. The 1997 Forest Plan is consistent with NFMA with regard to silvicultural methods analyzed and selected. Alternative were looked at that utilized harvest methods other than clearcutting and other forms of even-aged timber management. The FEIS adequately addressed the cumulative effects of clearcutting and road construction on the various resources for the Tongass National Forest. I affirm the Regional Forester's decision with further direction to move toward a reduction in the use of clearcutting on the Tongass. Nothing in the enclosed 1999 ROD affects the 1997 ROD on the issue.

Cumulative Effects - Scenic Viewshed

You contend that "a Chichagof Island Development LUD would further detract [add to "stripped" private lands across Icy Strait] from the scenic viewshed of the transportation corridor used by almost every visitor to Glacier Bay National Park . . ." (NOA, p. 2).

Discussion

The record indicates the decisionmaker did take into account the cumulative effects of the LUD's on Visual Quality and Scenery, including private lands in the analyses.

"It should be noted that the visual effects of timber harvest activities are not limited to the specific location of the activity. As seen from a travel route or use area, such alterations can affect the visual appearance of the entire viewed landscape . . . In this sense, the Forest-wide VQO's are best thought of as an indicator of long-term, cumulative effects" (FEIS, p. 3-178). Cumulative effects are defined previously in the document as resulting "from the incremental effects of actions, when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor, but collectively significant, actions taking place over a period of time" (FEIS, p. 3-1).

It should also be noted that cumulative effects analysis is also required during project level analysis. The Forest Service will examine cumulative effects in the context of future site-specific project decisions and NEPA documents.

The FEIS discusses the scenery management emphasis in many locations, including near the Homeshore-Point Couverden area. "The entire foreground and portions of the middleground seen from Icy Strait are allocated to the Scenic Viewshed LUD . . . Areas of suitable timber lands, seen in the middle to background distance, are allocated to the Timber Production LUD. Foreground views from these areas in Scenic Viewshed LUD have an adopted visual quality objective of retention, which means activities would be designed to not be visually evident to the casual observer, while activities seen from middle and background distance would be designed to remain subordinate to the characteristic landscape, meeting the partial retention visual quality objective" (FEIS, pp. L-90 to L-91). In addition, Appendix F lists

"viewpoints from which scenery will be emphasized. Viewpoints are either 'routes' or 'use areas,' and are the viewpoints used to assess the existing visual condition of any given project area and to develop project designs that will be consistent with the adopted visual quality objectives for each land use designation" (1997 Forest Plan, p. F-2). Appendix F listed the marine highway as "visual priority routes and use areas," including the Icy Strait (1997 Forest Plan, pp. F-15 to F-16).

The Tongass Forest also addressed public comments about the Homeshore-Point Couverden area during the Forest planning process. The LUD's for the Chilkat Peninsula were changed based upon public concerns about timber harvesting, hunting/subsistence, and scenery (FEIS, pp. L-242 to L-243).

Decision

After reviewing the record, I find that the LUD's adequately discussed and considered, timber harvest effects to scenery (visual quality) concerns. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Sincerely,

/s/ James R. Lyons

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

*Enclosures:
List of Parties
1999 ROD*