



File Code: 1570-1 (EMC)

Date: April 13, 1999

*Ms. Judith A. Stearns
Cleveland Users Coalition
P. O. Box 8171
Ketchikan, Alaska 99901*

RE: Appeal of the Record of Decision for the Tongass National Forest Land and Resource Management Plan (#97-13-00-0096)

Dear Ms. Stearns:

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 30, 1997. Your appeal on behalf of Cleveland Users Group 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 18, 1997. Many interested parties requested and were granted intervenor status (see enclosed list of parties). Intervenors whose comments were received are also listed on the enclosed list 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.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

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).*

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.

Your appeal contains various concerns related to the Cleveland Peninsula. Primary concerns relate to public involvement and roads. The forest-wide context of the 1997 Forest Plan as well as ASQ, although not specifically articulated as issues in your appeal, also appear relevant. As relief you request that the 1997 Forest Plan be amended.

You contend that "[t]he majority of comments about the Cleveland Peninsula expressed the wish that the Cleveland remain unroaded and unlogged, or, if some logging must occur, it would be done without roading" (NOA, p. 3). You "feel that the Forest Service has not given sufficient weight to citizens' comments . . ." (NOA, p. 4). You further contend that the Cleveland peninsula's habitat values "go beyond the needs of subsistence, sport hunting, commercial or sport fishing, and trapping" and that the "Peninsula's bays offer outstanding scenic values" (NOA, p. 6). Finally, "since there is no demonstrated need for timber from the Cleveland Peninsula . . .", you suggest that "the area from Spacious Bay to Camaano Point should be designated as Semi-remote Recreation" (NOA, p. 6).

Discussion

Context of the 1997 Forest Plan

Your appeal was focused on the Cleveland Peninsula. However, the Regional Forester must consider that Peninsula within the larger context of the entire National Forest. My discussion on the Modified 1997 Forest Plan is a programmatic framework for management of the entire Tongass National Forest.

Under the MUSYA, the Forest Service is directed to manage National Forests for multiple use and sustained yield of the renewable products and resources with consideration given to the relative values of the various resources in particular areas. The NFMA implementing regulations at 36 CFR 219.1(a) further require that "the resulting plans shall provide for multiple use and sustained yield of goods and services from the national forest in a way that maximizes long term net public benefits in an environmentally sound manner." The NFMA implementing regulations at 36 CFR 219.3 define Net Public Benefit, which includes both quantitative and qualitative criteria.

The purpose of the Modified 1997 Forest Plan is to direct all resource management activities on the Tongass National Forest. The Modified 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 and L-130).

The Regional Forester highlighted some of the specific 1997 Forest Plan land allocations for the Cleveland Peninsula in his discussion (1997 ROD, p. 10) on "Areas of Special Interest." He stated: "These allocations reflect concerns raised in public comments, and most provide additional protection to Areas of Special Interest or with specific resource values." Clearly the Regional Forester gave full consideration to special areas of concern, and these have been designated under specific LUD's. Maintaining options for a variety of social and economic uses of the Tongass, from continuing a timber harvest program that provides a sustainable supply of timber and other timber products to providing for subsistence opportunities and unspoiled settings for recreation and tourism, was a key factor in the Regional Forester's decision (1997 ROD, p. 15). After considering all the information, the Regional Forester selected an alternative he felt was designed to provide a mix of resources and uses to best meet the needs of the American people, as well as to maximize net public benefits (1997 ROD, p. 37).

In the 1997 ROD, the Regional Forester stated that: "The Forest Plan must be designed to provide a mix of resources and uses to best meet the needs of the American people. It must be designed to maximize net public benefits" (1997 ROD, p. 37). Also, "[a] forest plan must involve, by law, the entire forest" (1997 ROD, p. 37). The Regional Forester's difficult decision is to determine what the best mix of resources is, while considering the forest as a whole.

Decision

The preceding discussion demonstrates the Regional Forester's desire to find the best mix of resource uses. After reviewing the record, I find that the Regional Forester's decision was consistent with the NFMA, as well as other related law, regulation, and policy. However, I have decided to modify the 1997 Regional Forester's decision by changing the LUD's for the Cleveland Peninsula from Timber Production and Modified Landscape to Semi-Remote and Remote Recreation. This will provide additional protection for brown bear, marten, deer, and goshawk (see enclosed 1999 ROD, Areas of Special Interest Section).

Public Involvement

Regarding your concerns about "the majority of comments about the Cleveland Peninsula" (NOA, p. 3) and insufficient "weight to citizens' comments . . ." (NOA, p. 4), it should be noted that all substantive comments, written and oral, were summarized and responded to in Appendix L of the FEIS. These include comments made on the 1990 DEIS, the 1991 SDEIS, and the 1996 RSDEIS. The Regional Forester stated that "[o]ver the course of analysis, this public involvement has lead to substantial changes in the alternatives" (1997 ROD, p. 30). A summary of comments specific to the Cleveland Peninsula was made in the FEIS (Appendix L, pp. L-244 through L-245).

The FEIS (Appendix L, p. L-244) clearly states that the "Cleveland Peninsula's value as a special place for recreation, wildlife, and fish habitat has been recognized by both the public and the Forest Service."

To address these concerns, the Forest made various allocations on the Peninsula, as discussed in the FEIS (Appendix L, p. 244). In the 1997 Forest Plan and 1997 ROD the southern third of Cleveland Peninsula including Helm Bay, Caamano Point, Clarence Strait shoreline to Lemesurier Point, and Union Bay was allocated by the Regional Forester to Semi-Remote Recreation to provide for scenic and roadless recreation values. From Helm Point northward along Behm Canal including Port Stewart to Snail Point, the shorelines and visible slopes were allocated to a mixture of Modified Landscape and Old-growth Habitat to provide for scenic, recreation, and wildlife values while allowing timber harvest to be considered in a manner that minimizes visibility of activities. Along Ernest Sound from near Cannery Creek to Eaton Point north of Emerald Bay, the shorelines and most visible slopes have been allocated in a similar fashion. Also in the 1997 Forest Plan and 1997 ROD most of the inland areas and Spacious Bay were allocated to Timber Production to provide timber harvest opportunities. The National Forest lands around Meyers Chuck watershed were allocated to Semi-Remote Recreation, while the north shore of Vixen Inlet was allocated to Old-growth

Habitat. In addition, whenever the LUD selected for an area allows development activities, the Beach and Estuary Fringe Forest-wide standards and guidelines apply to all streams, beaches, and estuaries.

Your concern that "[t]he majority of comments about the Cleveland Peninsula expressed the wish that the Cleveland remain unroaded and unlogged . . ." (NOA, p. 3) suggests that a certain point of view should therefore prevail. The Forest Service welcomes and encourages public input. In fact, it is increasing opportunities for such input through establishment of World Wide Web sites on the internet for individual forests to bring planning issues to the attention of the public. This is in addition to continuing standard notifications through mail, news media and others. For example, information about the Tongass can be found at <http://www.fs.fed.us/r10/tlmp/>. Public comments help assure consideration of a full range of alternatives, and compliance with applicable laws, as decisions are made. However, public comments do not constitute a "majority rule" process. A Regional Forester weighs all comments in reaching a decision on maximum public benefit, from a forest-wide perspective.

Decision

After reviewing the record, I find that the Regional Forester fully considered all comments received through the public involvement process, in an orderly, thorough, and equitable fashion, and in accordance with NEPA. I affirm the Regional Forester's decision.

However, as discussed in the enclosed 1999 ROD, I have decided to add more protection measures to the Cleveland Peninsula. This will assure additional protection for this special area in Southeast Alaska.

Roads

Your concern that the Cleveland be left ". . . unroaded and unlogged, or if some logging must occur, it would be done without roading" was generally addressed in the 1997 ROD, the 1997 Forest Plan, and the FEIS.

Road construction for timber management will normally only occur in LUD's which allow timber harvest. Several other LUD's allow roads through them to access adjacent areas, but such uses will be infrequent. Therefore, most of the road construction will occur in the approximately 3.7 million acres covered by Timber Production, Modified landscape, and Scenic Viewshed LUD's.

Decision

While I find the Regional Forester afforded some protection to the southeastern portion of the Cleveland Peninsula in the 1997 ROD, I have given further consideration to suggestions made by commentors regarding local popular and community use areas on the Tongass. In recognition of these values, I have made LUD changes from development to mostly natural LUD's on the northeastern and central portions of the Cleveland Peninsula (1999 ROD).

ASQ and Market Demand

The appellant contends that because there is a predicted decreased demand for timber, there should therefore be no need to harvest timber on the Cleveland Peninsula (NOA, p. 6).

Discussion

ASQ Background

In NFMA, 16 U.S.C. 1611 (a), Congress required the Secretary to establish an allowable sale quantity or maximum amount of timber which could be commercially harvested over a decade.

The NFMA regulations define ASQ as the "quantity of timber that may be sold from the area of suitable timber covered by the forest plan for a time period specified by the plan" (36 CFR 219.3).² Thus, ASQ is the maximum level of timber that may be sold during the first decade after plan approval. The Forest correctly described ASQ in other terms as "an expression of the biological potential of the forest regulated to produce timber within the constraints of other resource needs; it is constrained by harvest limitations necessary to meet Long-term Sustained Yield requirements, multiple-use considerations, and environmental restrictions (FEIS, p. 3-276).

The 1997 Forest Plan ASQ is simply a ceiling on the level of timber that could be sold over a 10-year period taking into account other multiple-use values and compliance with the mandatory environmental protection standards and guidelines. This relationship between estimates of commodity productions such as ASQ and mandatory 1997 Forest Plan standards and guidelines was set forth in the Chief's letter of February 23, 1990.

As mentioned above, ASQ is subject to constraints. The "ASQ represents a planning 'snapshot' that can quickly become outdated as new forest management issues emerge and priorities change. As the value placed on timber production shifts toward other forest uses, ASQs established under earlier, somewhat different priorities may no longer reflect estimated sale quantities" (Record RS-G-12-a, TLMP 928). The ASQ estimates in the FEIS are more accurate than "such estimates included in the previous drafts" however, the ASQ process is "open-ended in that the ASQ as well as other elements of the forest plan can be changed at any time during the 10-year period if the forest supervisor determines that a change is necessary. Changes are made through amendments or revisions to the forest plan to accommodate such things as shifts in land management policy or other significant changes" (Record RS-G-12-a, TLMP 928 and 1997 ROD, pp. 24-25).

Market Demand

You mention in your appeal that with the predicted decreased demand for timber "should come a decreased necessity to cut timber from the Cleveland Peninsula" (NOA, p. 6). Market

²NFMA regulations, 36 CFR 219.3, allow ASQ to be expressed on an annual basis as the "average annual allowable sale quantity." Within the planning period, the volume of timber to be sold in any 1 year may exceed the average annual ASQ so long as the total amount sold for the planning period does not exceed the ASQ (36 CFR 219.27 (c) (2)). Although average annual ASQ is a convenient guide, it is not an absolute yield that must be achieved.

demand for timber is fraught with complexities and uncertainties tied to supply and demand of timber products.

"The demand for timber in Southeast Alaska is determined by the number, capacity, and efficiency of wood processors in the region, the type and value of products manufactured, the technology employed in manufacturing those products, and the cost of available wood supplies. Ultimately, the interaction of all these factors will result in the harvest (and import) of timber by processors and exporters in the region . . . the volume of timber purchased, harvested, consumed, and exported each year are all indicators of the demand for timber in Southeast Alaska" (Record RS-G-12-g, TLMP 1109). The many variables which affect demand for timber clearly demonstrate the level of uncertainty with which demand projections are made.

In addition, in the 1997 ROD, the Regional Forester directed the Region to develop a methodology to insure compliance with the "seek to meet market demand" standard established in the TTRA. On November 27, 1998, the Forest Service published in the Federal Register an announcement that a draft methodology, prepared by the Forest Service's Pacific Northwest Research Station, for evaluating market demand in order to meet the agency's obligation under the TTRA was available for review. As stated in the enclosed 1999 ROD I have reviewed that methodology and conclude that it is an appropriate methodology for determining market demand for the purpose of implementing the "seek to meet market demand" language of TTRA. I recognize that the methodology is not the only possible methodology for compliance with the congressional directive. Pending receipt and analysis of the public comments on the draft methodology, the 1999 ROD does not make a final decision on which methodology will ultimately be chosen to meet the requirements of the TTRA.

Decision

After reviewing the record, I find that your comment that there should be a decreased need to cut timber on the Cleveland Peninsula due to a predicted decreased demand in timber was discussed and considered. The FEIS and 1997 ROD specifically recognized the Cleveland Peninsula as a special place, and also recognized that there were multiple resource desires, including opportunities for timber and non-timber activities. The analysis clearly shows that the 1997 Forest Plan provided a mix of LUD's for the Cleveland Peninsula. However, based on my review I have decided to change a number of LUD's on the Cleveland Peninsula to mostly natural non-development LUD's, not because I find that the 1997 Forest Plan failed to meet mandatory requirements, but rather for multiple use reasons and to reduce the level of environmental risk (1999 ROD).

Sincerely,

/s/ James R. Lyons

JAMES R. LYONS
Under Secretary
Natural Resources and

Environment

Enclosures:

List of Parties
1999 ROD