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RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

August 25, 2016

Mr. Earl Stewart
USDA Forest Service
Tongass National Forest Transition Plan Amendment
648 Mission Street
Ketchikan, AK 99901

Re: Objections to June 2016 Tongass National Forest Record of Decision

Dear Mr. Stewart:

The Resource Development Council for Alaska, Inc. (RDC) is writing to outline its objections to the June 2016 Tongass National Forest Draft Record of Decision (ROD). Our comments also apply to the Final Environmental Impact Statement (FEIS) and the Amended Land and Resource Management Plan (Amendment) for the Tongass National Forest.

RDC is a statewide non-profit business association comprised of individuals and companies from Alaska's oil and gas, mining, forest products, fisheries and tourism industries. RDC's membership also includes Alaska Native corporations, local communities, organized labor and industry-support firms. RDC's purpose is to encourage a strong, diversified private sector in Alaska and expand the state's economic base through the responsible development of our natural resources.

Summary of issues

• The purpose and need for the Amendment is too narrowly addressed, resulting in a violation of the National Environmental Policy Act, the Alaska National Interest Lands Conservation Act (ANILCA), the Tongass Timber Reform Act (TTRA), and other laws.

• The range of alternatives in the FEIS is too narrow, resulting in an inadequate analysis of the proposed transition to young-growth harvests.

• The demand analysis for the proposed transition is seriously flawed and based on false assumptions.

• A complete inventory of young-growth stands is needed in order to arrive at an accurate financial feasibility analysis of the proposed transition to young growth.

• Manufacturing of young growth in Southeast Alaska at this time is not economically feasible or competitive with operations elsewhere. Young-growth stands are too small and too few to support a manufacturing facility, let alone an entire industry. The Draft ROD itself acknowledges that there is no current market for young-growth timber.

• The previous commitment to a three-year supply of economic timber sufficient to support an integrated industry is abandoned without mention.

• The 2008 harvest constraints are not adequately addressed and the projected timber volumes are grossly overstated.

• The overestimation of non-federal timber supply is a major error that the Forest Service has relied upon in determining the 46 million board feet (MMBF) per year of timber supply under the Amendment to meet “residual” demand under TTRA and to otherwise maintain a viable forest industry and infrastructure in Southeast Alaska. Clearly, the Draft ROD fails to provide sufficient volume for an integrated timber industry.

The FEIS, like the Draft EIS, presumes an average of 70 MMBF of annual timber harvest from Native Corporation lands as well as 20 MMBF annually from State land for the first decade after the Plan Amendment. As pointed out in the comments of Sealaska Corporation, the Alaska Forest Association (AFA), and others on the FEIS, these estimates are substantially too high. Sealaska lands, which are the primary source of private timber in Southeast Alaska, will average less than a maximum of 45 MMBF per year for the next 20-25 years, and the harvest from village corporation lands will be far less. The State of Alaska has indicated that the estimate of 20 MMBF from State land is erroneously high. The AFA notes in its comments on the FEIS that the estimate of 90 MMBF average annual volume from Native Corporation and State lands during the next 15 years is overstated by up to 40 MMBF per year.

• The decision to protect certain watersheds known as the “Tongass 77” was made without complying with the “no more clause” – Section 1326 (a) of ANILCA. Moreover, the restrictions on timber harvest in the Tongass 77 and “conservation priority” areas were not proposed or discussed in Alternative 5 or other alternatives in the Draft EIS. As a result, the additional restrictions have not been adequately analyzed and supported in the EIS for their impact on the available timber base and timber supply for a viable forest industry. The existing land and resource use restrictions on the forest are already burdensome for a forest with a multiple use mandate. Given the large number of watersheds and areas of federal lands in Southeast Alaska where timber harvest and resource use are prohibited, and the small fraction of area remaining open for harvest, the additional restrictions for the Tongass 77 and “conservation priority” areas should be deleted from the final Amendment.

• The Forest Service should propose amendments to the Roadless Rule to allow for renewable energy development and access to mining claims. Provisions in the Draft ROD concerning renewable energy development and mining are lacking, representing a missed opportunity to further diversify the region’s economy.

These deficiencies and others lead RDC to strongly object to the Draft ROD. Our arguments objecting to the Draft ROD are outlined in detail in Attachment A and relate to our February 22, 2016 comments regarding the Draft EIS. Moreover, RDC supports the August 2016 comments of the Alaska Forest Association, the Alaska Miners Association, and Sealaska Corporation and urges the Forest Service to rescind and significantly revise the Draft ROD to address the concerns in our letter.

Thank you for the opportunity to provide comments objecting to the Draft ROD.

Sincerely,

Carl Portman
Deputy Director

ATTACHMENT A
RESOURCE DEVELOPMENT COUNCIL FOR ALASKA, INC.
DETAILED OBJECTIONS TO THE TONGASS LAND AND RESOURCE MANAGEMENT PLAN AMENDMENT DRAFT RECORD OF DECISION

In May 2010, Secretary of Agriculture Tom Vilsack unilaterally amended the 2008 Amended Tongass Land Management Plan (TLMP) by prohibiting timber harvest within Inventoried Roadless Areas (IRAs). The Secretary and his subordinates pledged to provide new jobs in renewable energy, habitat restoration, and recreation and tourism. The comments below compares the commitments given during the entire 2008 TLMP (2008 Amended TLMP) versus the commitments delivered in the Draft Record of Decision (ROD). As set out below, the Resource Development Council (RDC) objects to the failure of the entire transition plan to meet, and often not even mention, commitments previously made in during the 2008 Amended TLMP.

Most amazingly, the Draft ROD admits that there is no current market for the timber to which the Secretary and the Draft ROD would have the industry transition:

> Harvesting 55-year old trees does not appear to be practical or economic in Southeast Alaska at this time. The market for large volumes of young-growth logs has not been demonstrated and this is especially true for small logs from 55-year old stands.[1]

The Draft ROD fails to explain how this market will be developed. Accordingly, the Forest Service failed to consider “an important aspect of the problem" thereby making its decision arbitrary and capricious. In addition, it shows that the proposed Transition Plan cannot meet market demand as required by the Tongass Timber Reform Act (TTRA).

1. The Draft ROD introduction is incomplete and misleading

The Draft ROD is misleading about the origin of the transition plan because of relevant information that is not included which indicates that the Forest Service failed to consider “an important aspect of the problem" thereby making its decision arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L.Ed.2d 443 (1989); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council,* 435 U.S. 519, 535, 98 S.Ct. 1197, 55 L.Ed.2d 460 (1978).

The 2008 Amended TLMP was approved by the Under Secretary of Natural Resources and Environment by Memorandum on September 17, 2008. In that Memorandum the Under Secretary recognized that: “Given the precarious nature of the Tongass timber sales program over the last few years, no prudent investor would underwrite the cost of additional infrastructure to achieve higher levels of fiber utilization and higher value manufacturing.” The Under Secretary thus provided “additional direction to the Forest

[1] Draft ROD at page 10.

Service to assist in plan implementation in order to achieve the Agency's multiple use mandate:

> To the extent the Standards and Guides as modified still fall short of allowing economic timber sales, the Forest should develop a plan of work to further improve timber sale economics through additional work, including (if necessary) modifications to Standards and Guides;

a. Throughout the Amendment process the issue of the Forest Service's ability to produce economical timber sales has been a center of considerable controversy. I am directing the Forest to aggressively assess the economics of timber sales on the Tongass National Forest to address this issue;

b. As with the issue of economical timber sales, there is considerable controversy over whether or not the lands available for timber harvest provide sufficient volume necessary to reestablish an integrated industry[2] in Southeast Alaska. I am directing the Forest to assess volume availabilities both inside timber harvest land use designations and outside those lands (with the exception of Congressionally designated lands) to determine if additional acres will be needed to be included to accomplish the objective of establishing a fully graded integrated industry in the Southeast Alaska;

c. I am also directing the Forest to develop a work plan and proposed budget necessary to offer four 10-year timber sales, each with an average volume of 15 to 20 MMBF per year. These longer sales each are the best way to provide sufficient assurances to support the necessary investment in new and upgraded manufacturing; and

d. I would like the Forest to develop a work plan and proposed budget to accelerate opportunities for both commercial harvest of young growth and young growth management for wildlife and timber production and to assess how this would contribute to the objective of establishing integrated industry.

[2] An "integrated industry" is an industry with a range of manufacturing facilities that provides for the full development/marketing/sale of saw logs and pulp logs from a clear cut timber sale such that an operator of a sawmill can sell pulp logs and residual chips from a sawmill timber sale and from its sawmill operation to a pulp mill, and a pulp mill is able to sell saw logs from a pulp mill timber sale to a sawmill. "An integrated industry results in better utilization and larger volumes of operable wood, which in effect lowers unit operating costs." Brackley, Rojas, and Haynes *Timber Products Output and Timber Harvests in Alaska: Projections for 2005-2025* at page 13.

These commitments by the Under Secretary are not mentioned in the Draft ROD. Other than the Big Thorne Timber Sale (which environmentalists are litigating), none of these conditions, on which approval of the 2008 Amended TLMP was based, have been implemented. Accordingly, it is fair to closely scrutinize the Draft ROD and to seek assurances from the Forest Service that it will meet the Transition Plan commitments.

While conditions change and Secretary Vilsack is entitled to change policy, *FCC v. Fox Television Stations* 556 U.S. 502, 515-516 (2009) requires that when an agency changes its policy it must show an awareness that it has changed its policy and give a reasoned explanation for the adoption of the new policy. However, there is no mention of the September 17, 2008 Memorandum in the Draft ROD nor does the Draft ROD provide a reasoned explanation why the Secretary is no longer seeking an integrated timber industry, or economic timber sales, or four 10-year timber sales.

On page 3, the Draft ROD describes a logical flow from listening sessions "in the fall of 2009 in all 32 communities in SE" to the Secretary's July 2, 2013 Memorandum directing "management of the TNF to expedite the transition away from old-growth timber harvesting and towards a forest products industry that uses predominantly second-growth." No mention is made of the May 2009 and May 2010 Secretarial orders directing the top-down Transition from Washington, D.C.

Notwithstanding the fact that the Tongass Exemption from the Roadless Rule[3] was then in effect, the Secretary issued a Memorandum in May 2009 requiring that he personally approve all activities in Inventoried Roadless Areas (IRAs).

On May 25, 2010 he directed an immediate transition to second-growth, which was delivered in the form of a letter from Regional Forester Beth Pendleton to the Tongass Futures Roundtable:

> Building from the existing Tongass Land Management Plan, the Forest Service will continue to offer a limited number of old-growth sales in the near-term in roaded forest areas, in order to ensure that a bridge exists for the remaining forest industry infrastructure to make the transition. Allowing these sales and the proposed stewardship contracts to move forward expeditiously is critically important to maintaining a robust forest industry while we transition to young growth.
>
> Additionally, the Forest Service will focus on a broader suite of opportunities the Tongass can provide to support a diversified economy in Southeast Alaska, as described in the transition framework program above. Efforts will focus on creating restoration based jobs, restoring fish and deer habitat to support the fishing industry and subsistence users, and examining energy projects, including small hydroelectric projects and bioenergy, to provide lower cost energy and bring down the costs of doing

[3] 2001 Roadless Area Conservation Rule (Roadless Rule) 66 Federal Register 3244 (January 12, 2001).

> business in Southeast Alaska. We will also invest in facilities, trails, and other activities to attract increased recreation and tourism use and jobs.

Thus, old growth timber that the 2008 Amended TLMP made eligible for harvest within Inventoried Roadless Areas (IRAs) was placed off-limits. The 2008 Amended TLMP was amended from Washington, D.C. without a NEPA review.

Arbitrary and Capricious. The failure to consider these important aspects of the problem is a violation of NEPA.

2. The Draft ROD admits that there is no current market for young-growth timber but fails to explain how a market will be developed to make the transition feasible

The Draft ROD admits that there is no current market for the timber to which the Secretary and the Draft ROD would have the industry transition:

> Harvesting 55-year old trees does not appear to be practical or economic in Southeast Alaska at this time. The market for large volumes of young-growth logs has not been demonstrated and this is especially true for small logs from 55-year old stands.[4]

However, the Draft ROD fails to explain how this market will be developed. Accordingly, the Forest Service failed to consider "an important aspect of the problem" thereby making its decision arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L.Ed.2d 443 (1989); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council,* 435 U.S. 519, 535, 98 S.Ct. 1197, 55 L.Ed.2d 460 (1978).

In addition, it shows that the proposed transition plan cannot meet market demand and thus violates the TTRA. The TTRA requires the Secretary to "provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber from such a forest and (2) meets the market demand from such forest for each planning cycle. By having no plan to meet market demand, the Forest Service has abrogated its responsibility under the TTRA.

3. **The Draft ROD fails to explain the source of funds the Forest Service says is needed to implement the plan**

Additionally, there is no mention in the Draft ROD of the industry and Congressional funding needed to make the plan work. The 2008 Amended TLMP ROD states:

> Young growth could potentially comprise a substantial portion of the Tongass timber program in as little as three decades, with initial young growth operations beginning in earnest by the end of the current planning cycle. The ultimate success of this effort, however, will depend on several

[4] Draft ROD at page 10.

> factors, including investments by the timber industry in milling equipment designed for smaller young growth trees, integration of the industry to effectively process all products harvested from the Forest and funding decisions made by Congress.[5]

In a July 1, 2010 letter to Secretary Vilsack responding to the Secretary's May 25, 2010 transition announcement Senator Lisa Murkowski asked:

> The Regional Forester's letter repeats points made by Deputy Under Secretary Jay Jensen in his March 22nd [2010] testimony before the House Natural Resources Committee on the Sealaska Lands Bill. The Deputy Under Secretary asserted that the Obama Administration intended 'to expeditiously transition that [timber] program away from reliance on sales of old growth timber in roadless areas to an integrated program focused on restoration, development of biomass opportunities and sales of young growth timber in road areas.' Deputy Under Secretary Jensen's March testimony lists 'some initial steps to transition the timber program,' such as a 10-year stewardship contract and inventory of 'young growth management opportunities,' and 'retooling of existing large diameter based sawmills,' all of which he stated is contingent upon passage of 'the FY 2011 President's Budget proposal for an Integrated Resource Management line item, including $50 million in Priority Watersheds and Job Stabilization.

Even though the Forest Service failed to respond to Senator Murkowski, the Secretary continued to assert that congressional appropriations would be needed to "increase investments in young growth:"[6] "As soon as possible, allocate staff and financial resources to planning young growth projects, ramping down old growth sales and *increasing investments in young growth*." (Emphasis added).

While the Secretary's July 2, 2013 Memorandum is discussed on page 3 of the Draft ROD, the Draft ROD does not explain what happened to the need for these funds (or why they are no longer needed) or what level of second growth-timber volume can be achieved if the funding does not materialize.

Why public investment is needed in second growth timber was explained on page 23 of the Forest Service's May 2010 *The Economic Analysis of Southeast Alaska,* which came out at roughly the same time as the May 25, 2010 Obama Administration announcement of the plan to transition the Tongass timber program from old growth to second growth:

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[5] 2008 Amended TLMP ROD at pages 49 – 50.

[6] Secretary's July 2, 2013 Memorandum 1044-009 at page 3.

> Level of Public Investments in Young Growth Harvest Management
>
> Based on the best available information regarding the costs of conducting commercial thinning of young growth, the products that can be made from it, and the values of such products, *young growth management is not currently economically viable without substantial public investments to pay for thinning. This is because the vast majority of young growth currently available on the developed land base is too young and small to generate profits in excess of the logging and transportation costs used in this analysis* (see appendices C, D and E for cost and price details). Pre-commercial and commercial thinning activities in young growth stands in Southeast Alaska generally require investment. Final clearcut harvest of young growth under the assumptions and data used in this analysis are generally profitable. One purpose of this study is to determine what it would take to accelerate the transition to young growth management on the Tongass. For this analysis, we tested four possibilities. Some scenarios include no public investments in young growth management, to see when the young growth stands would be mature enough—and the products available from thinning them valuable enough—to be economically viable. We also examined a scenario under which sufficient public investments are made to start commercially thinning immediately at a relatively low level (2 MMBF annually); another that attempts to achieve 30 MMBF annually beginning in five years; and another that tests how much young growth could be sustainably harvested beginning immediately, to determine what that sustainable level is and the cost of achieving it. (Emphasis added).

Achieving 30 million board feet (MMBF) to 50 MMBF in 10-15 years is thus totally dependent on the level of investment in commercial thinning.

The Forest Service performs a limited amount of *pre-commercial* thinning every year. However, commercial thinning has not been fully tested as a silviculture technique. So how do we know that it will work?

The Draft ROD's preferred alternative (Alternative 5) continues to rely on commercial thinning as described on page 5. But, it does not set out the level of investment in commercial thinning that is needed to achieve 30 MMBF to 50 MMBF of young growth in 10-15 years or how in the face of decreasing Forest Service budgets and in the era of sequestration such additional funds will be obtained and increased to account for inflation to provide such a level of investment.

This raises a number of questions:

a. What is the level of investment in commercial thinning needed by year from 2016 through 2031 to achieve a young growth volume of 12 – 28 MMBF described on page 6 in the Draft ROD?

b. What level of investment in commercial thinning is needed by year from 2016 through 2031 to achieve a young-growth volume of 93 MMBF per year by 2033?

c. What has been the level of investment in commercial thinning of Tongass young growth from 2010 through 2015?

d. Why does the Forest Service think that a new Administration or Congress will increase the level of investment in commercial thinning of Tongass young growth?

e. What is the level of investment in commercial thinning of Tongass young growth in the current budget? What volume of Tongass young growth is available for harvest in 2016 at that level of investment?

f. If the level of investment in commercial thinning of Tongass young growth does not increase above that in the current budget, can the Forest Service achieve 12 MMBF – 28 MMBF of young growth in any year between 2016 and 2031 or 93 MMBF of young growth by 2033? What volume of young growth would be achieved?

The Forest Service's failure to consider these "important aspect[s] of the problem" makes its decision arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L.Ed.2d 443 (1989); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council,* 435 U.S. 519, 535, 98 S.Ct. 1197, 55 L.Ed.2d 460 (1978).

4. The Draft ROD fails to provide sufficient economic volume for an integrated timber industry.

The Draft ROD's Transition Plan provides an ASQ of 460 MMBF of timber per decade, or an average of 46 MMBF per year. Of this the Forest Service "expects to sell an average of about 12 MMBF of young growth and 34 MMBF of old growth per year during the first 10 years. From Year 11 through Year 15, and expects to sell an average of 28 MMBF of young growth in about 18 MMBF of old-growth per year."[7]

This is a major change in policy from the 2008 Amended TLMP that is not explained in the Draft ROD. As was pointed out by Senator Lisa Murkowski in a July 1, 2010 letter to

[7] Draft ROD at page 5.

Secretary Vilsack, the 2008 Amended TLMP ROD pledged[8] a three-year supply[9] of economic timber sufficient to support an integrated timber industry:[10]

> [T]he Regional Forester selected Alternative six in the 2008 Amended TLMP ROD. In part, he selected Alternative 6 to secure the objective of an integrated timber industry. Therefore, a reliable annual supply of at least 200 million board feet (MMBF) of economic timber would be needed from the Tongass to meet the objective of providing an opportunity for the reestablishment of an integrated industry. None of the alternatives with Allowable Sale Quantities (ASQs) lower than the amended Forest Plan will meet that criterion.

The Draft ROD does not commit to provide economic timber – just timber. Non-economic timber is the same as no timber. Moreover, because the Forest Service has consistently lost/been delayed by National Environmental Policy Act (NEPA) litigation before the 9th Circuit, its ability to supply timber is erratic and it has been unable to supply remaining operators with more than a year's volume ahead, and often not that much.

Moreover, it changes policy because it fails to commit to providing operators a three-year supply of economic timber, which it has previously supported:

> To be responsive to market demand, the Forest Service attempts to provide an opportunity for the industry as a whole to accumulate a supply of purchased but unharvested timber (i.e. volume under contract) equal to about three years of timber consumption. There are a number of reasons for allowing the accumulation of volume under contract. First, this allows the industry ample time to plan an orderly and systematic harvest schedule that meets all timing restrictions and permit requirements. Second, it allows the industry to better manage its financial resources and to secure financing on the basis of longer term timber supply. Third, it allows time for the necessary infrastructure (roads, log transfer facilities, and logging camps) to be put in place prior to timber harvest. Finally, an ample timber supply gives the industry more opportunity to sustain itself through market cycles. If demand for pulp or lumber in any year suddenly increases, producers will have access to enough timber to respond to the

[8] See Under Secretary Mark Rey's September 17, 2008 Memorandum conditioning approval of the 2008 Amended TLMP on sufficient economic timber for an integrated industry.

[9] In a June 24, 2003 letter from Alaska Regional Forester, Dennis Bschor, to Alaska Governor Frank Murkowski: "The Tongass's overall goal is to have three years of economical timber under contract."

[10] An "integrated industry" is an industry with a range of manufacturing facilities that provides for the full development/marketing/sale of saw logs and pulp logs from a clear cut timber sale such that an operator of a sawmill can sell pulp logs and residual chips from a sawmill timber sale and from its sawmill operation to a pulp mill, and a pulp mill is able to sell saw logs from a pulp mill timber sale to a sawmill. "An integrated industry results in better utilization and larger volumes of operable wood, which in effect lowers unit operating costs." Brackley, Rojas, and Haynes *Timber Products Output and Timber Harvests in Alaska: Projections for 2005-2025* at page 13.

increase in demand without waiting for the Forest Service or the Congress to take action. Normally, the unharvested volume under contract will be drawn down during high points in the market when mills increase production, and built up when markets are poor and production declines. In response to the volume under contract the Forest Service may consider adjusting its budget and timber program.[11]

5. Unaddressed problems with transition to second growth

The Draft ROD's premise that the industry operating on the TNF[12] can transition to second growth timber in 10-15 years is untenable for the following reasons:

a. As the Draft ROD admits at page 10, there is no profitable domestic or export market[13] for second growth timber from the TNF *that is subject to the management constraints of the NFMA and TLMP.*[14] Among other reasons small, second growth logs do not have the 3 – 5% by volume of incredibly valuable clear, fine-grained specialty wood, which makes old growth logs profitable. In addition, second growth lacks the strength and quality of Alaska's old growth, thus taking away the only market advantage that Alaska timber has. Second growth in Alaska is no different from second growth in the Lower 48, which has the economic advantage of being on the I-5 road network;[15]

b. There is an insufficient volume of second growth (for harvest *subject to the NFMA non-declining, even flow requirement, the TTRA stream buffer strip requirements and TLMP's 1,000 foot beach buffer zone requirement)* in economic units to warrant the risk (by bank or operator) to justify putting capital investment in a mill, even if there were a market. The Draft ROD does not propose a departure from the

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[11] Control Lake Timber Sale FEIS, Vol. II, App. A, at page 2.

[12] The above analysis is limited to federal management using NFMA and TTRA requirements. The NFMA prohibits the harvest of national forest timber until it reaches CMAI, which on the Tongass is 90-100 years. The Allowable Sale Quantity is based upon the non-declining even flow concept of sustained yield. The 2008 Amended Forest Plan requires 1000 foot setbacks from the beach for timber harvest. This is the area **in which a significant amount of second growth is present due to the A-frame logging of coastal shores that was authorized in the 1960s and 1970s.** Because none of these constraints would apply to State or private management of 2nd growth areas, if the Forest Service is serious about a Transition to 2nd growth timber, it should transfer all such timber to State or private management to facilitate this harvest.

[13] Defined as the ability to provide fiber to a buyer of a quality and at a price (including transportation) which the buyer is willing to pay.

[14] This is admitted at page 16 of *The Economic Analysis of Southeast Alaska* prepared in 2010: "Sawmills in Southeast Alaska will need to retool to effectively process young growth logs. The Beck Report (2009) estimated the cost for one sawmill on Prince of Wales Island to upgrade at about $12 million. It is not known how likely this is, ***due in part to a lack of understanding of markets for products that can be sawn from young growth. The Beck Report mentions concerns, also expressed by other experts, that it is uncertain who would invest in such retooling, and that investors will probably want guarantees of supply.*** (Emphasis added).

[15] The $50 + per MBF to transport volume (produced in Alaska and not purchased locally) to distributors in the Lower 48 is greater than the profit margins at which the Canadian and Lower 48 mills operate.

NFMA requirement that national forest timber be harvested on a sustained yield basis, which the Forest Service measures on a non-declining, even flow basis.[16] Nor does the draft ROD propose to modify TLMP's 1000-foot beach set back rule or the stream buffer rules set out in the TTRA;[17]

c. The draft ROD does not set out a five-year schedule of timber sales, as was provided in the 2008 Amended Forest Plan, to demonstrate that, when disaggregated, the second growth timber south of Frederick Sound that meets NFMA, TTRA, and TLMP requirements is in large enough blocks and is sufficiently connected to existing transportation infrastructure to be capable of economic harvest. This explains the need for Senator Murkowski's legislation requiring an inventory of young-growth timber before the transition plan is implemented;

d. The Roadless Rule and transition plan amendments to the 2008 Amended Plan and the industry's experience since the Alaska National Interest Lands Conservation Act (ANILCA) demonstrate that the Forest Service often fails, or is unable, to keep its commitments to make economic timber available to supply the industry.[18] Often there is a change of forest management policy, such as the major change which the Secretary's May 2010 and July 2013 Memoranda makes to the 2008 Amended Forest Plan a mere five years after it was promulgated.[19] In either case an operator (and those that finance that operator) cannot expect any stability or assurance of supply;

e. Second growth timber requires different equipment for harvest and milling than that required for harvesting and milling old growth. The Draft ROD has not explained how the change in equipment needed to harvest and mill second growth will be financed without an assurance of supply;[20]

f. As previously described above, the 2008 Amended TLMP made it clear that it would take investment by the industry and Congress and

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[16] Appendix B of *the Economic Analysis of Southeast Alaska* prepared in 2010 states that such a departure would be required "for the decade immediately following old growth harvest cessation." It would then be reinstated. The Secretary's Memorandum does not reference the *Economic Analysis of Southeast Alaska* prepared in 2010. So, the reader must assume that they are two separate documents with two sets of assumptions.

[17] Draft ROD at page 21.

[18] For example, at page 23 the 2010 *Economic Analysis of Southeast Alaska* states "young growth management is not currently economically viable ***without substantial public investments to pay for thinning.*** The Secretary's Memorandum fails to mention this and could provide no such assurance even if it did.

[19] The 2008 Amended Forest Plan called for an integrated forest industry and authorized an ASQ of 267 MMBF. The 2010 *Economic Analysis of Southeast Alaska* would provide 30-50 MMBF, depending on which Scenario is chosen. It is also noteworthy that the Secretary made this major change in policy two days after the close of the comment period for the 5 Year Review of the 2008 Amended Forest Plan. The comments were obviously not considered. The Secretary has not asked for comments on his Memorandum.

[20] See page 16 of the *Economic Analysis of Southeast Alaska.*

three decades to produce a sufficient volume of young growth to support the industry. The Draft ROD does not explain the level of investment from industry and Congress that is needed to make the transition plan work or how in the face of decreasing Forest Service budgets and in the era of sequestration such additional funds will be obtained and retained. The Draft ROD does not explain how the transition will occur in 10 to 15 years instead of the 30 years described in the 2008 Amended TLMP;

g. Alternative 5 results in an ASQ of 46 MMBF.[21] The Draft ROD does not explain what has changed since the 2008 Amended Forest Plan that would allow it to meet the market demand requirement of the TTRA which the 2008 Amended Forest Plan ROD said was 200 MMBF.[22] While the Forest Service has discretion to set the timber sale level, it does not have the discretion to nullify the TTRA by so encumbering the suitable land base to surrender its ability to meet market demand; and

h. Section 3 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesigned by section 2 of this Act, is amended by adding at the end thereof a new subsection (c) as follows:

The Secretary shall report in the 1979 and subsequent Assessments on:

> (1) the additional fiber potential in the National Forest System including, but not restricted to, forest mortality, growth, salvage potential, potential increased forest products sales, economic constraints, alternate markets, contract considerations, and other multiple use considerations;
>
> (2) the potential for increased utilization of forest and wood product wastes in the National Forest Systems and on other lands, and of urban wood wastes and wood product recycling, including recommendations to the Congress for actions *which would lead to increased utilization of material now being wasted* both in the forests and in manufactured products; (Emphasis added).

The Draft ROD does not quantify the waste of currently economic and harvestable old-growth timber the transition plan will cause to be wasted.

The Forest Service's failure to consider these "important aspect[s] of the problem" makes its decision arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm*

[21] See page 40 of the *Economic Analysis of Southeast Alaska.*

[22] See pages 64-66 of the 2008 Amended Forest Plan ROD. See also Appendix G of the 2008 Amended Forest Plan's FEIS.

Mut. Auto. Ins. Co., 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L.Ed.2d 443 (1989); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council,* 435 U.S. 519, 535, 98 S.Ct. 1197, 55 L.Ed.2d 460 (1978).

6. The Market Demand Analysis is skewed by litigation and Forest Service failures to make economic timber available

The Draft ROD devotes five pages (24-29) to explaining market demand and its role in determining the Projected Timber Sale Quantity (PTSQ) authorized by the Transition Plan Amendment. The procedures for determining market demand were developed in 2000 and have become known as the "Morse methodology." It is described as follows in the Draft ROD:

> Industry actions such as annual harvest levels are monitored and timber program targets are developed by estimating the amount of timber needed to replace volume harvested from year-to-year. The Morse methodology is adaptive, because if harvest levels drop below expectations and other factors remain constant, future timber sale offering would also be reduced to levels needed to maintain the target level of volume under contract. Conversely, if harvest levels rise unexpectedly, future timber sale targets would also increase sufficiently to ensure that the inventory of volume under contract is not exhausted.[23]

In a system not subject to serial litigation against timber sales by environmental groups and in which the Forest Service always made economic timber available this methodology would be a reasonable means of measuring market demand. But the theory fails and market demand spirals downward because of litigation and the Forest Service's failure to make economic timber available. Here is a simplistic explanation of why this occurs:

a. Timber is made available for sale;
b. If it is not economic no one will buy it;
c. If it is economic, environmentalists will sue to prevent its harvest and the timber will be unavailable during the period of litigation;
d. In either case the annual harvest level drops because of a lack of economic timber availability; and
e. Because it is not harvested the Morse methodology assumes that it is not needed to "replace volume harvested" and market demand is reduced.

The Morse methodology was modified by the Daniels Demand Report which basically stated that because the Secretary had directed the Forest Service to transition to young growth within 15 years, the agency had no choice but to limit the amount of old-growth

[23] See page 25 of the draft ROD.

that would be available.[24] Daniels then opines that since the young-growth volume has very poor economics and old-growth timber, there will be less demand for the lower value young growth timber, hence the market demand will decline.

As a consequence of the Morse system modified by Daniels, market demand has spiraled downward from 200 MMBF in the 2008 Amended TLMP to 46 MMBF in the Draft ROD. This volume is insufficient to develop an integrated industry or provide operators with the three-year supply of economic timber.

7. Timber Summary

In summary, the Draft ROD changes the 2008 Amended TLMP's commitment to a three-year supply of economic timber to the industry without explaining that it is doing so or the implications of doing so. The Draft ROD does not address the investments in young growth needed to achieve the volumes of young growth projected between 2016 and 2033. The Draft ROD does not explain how or why the industry will be able to make the transition to second growth. In short, the issues *not* addressed in the Draft ROD undercuts the ability of the transition to reduce the controversy surrounding the timber program.[25]

8. New Roadless Areas

The Draft ROD states:

> [U]nder the 1997 Forest Plan approximately 8500 miles of roads were anticipated to exist on NFS lands by 2095, whereas under the Selected Alternative less than 6100 total miles of roads are anticipated to exist by 2095. This translates to substantially lower road densities than under the 1997 Plan. The additional area of POG will function as additional reserves, enhancing the existing reserves, and increasing the habitat quality when located around harvest units. Thus, they substantially greater spatial extent of the old-growth forest on the landscape and fewer roads across the planning area will outweigh the local, adverse effects of young growth harvest proposed by the Selected Alternative in the Old-Growth Habitat LUD, the beach and estuary fringe, and the RMAs (Final EIS, Appendix D).[26]

The Draft ROD says nothing about the potential of the Forest Service's road decommissioning policy to result in new roadless areas on the Tongass. This policy was described in the Roads Specialist's Report attached to the 2001 Roadless Rule FEIS. The Specialist's Report stated that by decommissioning roads, the Forest Service will actually *increase* unroaded areas in the National Forests over time:

[24] draft ROD at pages 28-29.
[25] See page 14 of the draft ROD.
[26] See pages 20 -21 of the draft ROD.

> The combined effect of implementing the Roads Policy, proposed Roadless Rule, and individual land management plans all within the planning framework established in the Planning Regulations would likely be reductions in road densities and possibly the creation of the unroaded areas. The prohibitions on road construction and reconstruction proposed under Alternatives 2 through 4 would not apply to these newly created unroaded areas.[27]

At a later point the report stated "The Agency estimates that unroaded area acres are likely to increase 5% to 10% due to road decommissioning.

The Draft ROD is arbitrary and capricious because it says nothing about the Forest Service's opportunity to create new roadless areas in National Forest System and in the Tongass through road decommissioning. The Forest Service's failure to consider this "important aspect of the problem" makes its decision arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L.Ed.2d 443 (1989); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council,* 435 U.S. 519, 535, 98 S.Ct. 1197, 55 L.Ed.2d 460 (1978).

9. Renewable energy

Page 20 of the carefully worded Draft ROD says: "The Selected Alternative accelerates the transition to young growth timber harvest and alleviates Plan-related impediments to the production of renewable energy." The Draft ROD eliminates the Transportation Utilities System (TUS LUD) which is the "Plan-related impediment to the production of renewable energy" to which the draft ROD refers at page 20. The Draft ROD correctly states:

> [T]he 2008 Plan's direction regarding transportation and utility systems including the TUS overlay LUD, were overly complex, confusing, and difficult to implement, creating an impediment to development of hydropower, other types of renewable energy, and transmission lines needed to connect communities to sources of electric power. Alleviating plan related impediments to considering renewable energy projects is a key consideration to reduce the adverse effect of high energy costs on economic diversification and sustainable economic development in Southeast Alaska.[28]

However, non-Plan related impediments, such as the Roadless Rule, are not alleviated and will continue to prevent renewable energy development in the IRAs.

In areas on the Tongass outside the IRAs, elimination of the TUS LUD removes a barrier to renewable energy access and development. The Forest Service admitted in a July 20, 2009 letter to Alaska Power & Telephone (AP&T) that a renewable energy project, specifically a hydropower project, sited in a Remote Recreation TUS Avoidance

[27] Report at page 18.
[28] Draft ROD at pages 16 – 17.

Area could not be analyzed consistent with NEPA because of a fatal flaw in the management direction for that LUD in the 2008 Amended TLMP, that required the Forest Plan to be amended.

The management direction that replaces the TUS LUD is set out in Chapter 5 of the EIS. Chapter 5 provides that:

> All National Forest System lands may be suitable for renewable energy sites on a case-by-case basis in consideration of the LUD, ecological and social values, and benefit to Southeast Alaska communities.[29] Identifying renewable energy sites as suitable is not a commitment but only an indication that the use might be appropriate. The addition of the Renewable Energy plan components does not change the need to ensure that resource protection measures are incorporated throughout project level planning, construction and operation of renewable energy sites.[30]

Chapter 5 of the EIS states: "When a written proposal is submitted, beyond the initial stage, for a renewable energy project, the Chapter 5 plan components [Renewable Energy Standards and Guidelines] take precedence if there is a conflict with management direction in Chapters 3 and 4." However, Chapter 5 also specifies "consideration of the LUD," which indicates that Chapters 3 and 4 have precedence. The total effect is circular reasoning that is resolved through discretion of the Forest Service "on a case by case basis" rather than through some sort of predictable, repeatable, and objective process.

Thus, the new Renewable Energy Direction for areas outside IRAs leaves all decision-making power in the Forest Service without criteria for deciding. Saying that suitability as a renewable energy site "is only an indication that the use might be appropriate," cannot be interpreted in any other way.

Leaving all decision-making power for areas outside IRAs in the Forest Service without criteria for deciding makes the new management direction priorities for responding to renewable energy projects meaningless. The order of priority is:

> 1. A decrease in the number of Southeast Alaska rural communities powered by diesel generators;
>
> 2. An increase in energy capacity, efficiency, or storage at existing projects, or

[29] Use of the term "communities" rather than "ratepayers" throughout the discussion of renewable energy development creates a bias which favors municipally-owned (i.e. "community owned") utilities at the expense of investor-owned or even cooperative utilities.

[30] Proposed new section 5 – 8 of the Forest Plan.

3. An export of renewable energy resources without power benefiting Southeast Alaska communities.

The flaws inherent in these priorities include:

1. A decrease in the number of Southeast Alaska rural communities powered by diesel generators. Every community in Southeast Alaska will continue to be "powered by diesel generation" to some extent, as diesel generators are required for guaranteeing adequate back-up capacity, system reliability, maintenance activities, the ability to follow load and meet peak demand, and in some cases frequency control. Thus, there will never be an actual "decrease in the number of Southeast Alaska rural communities powered by diesel generators." This priority is therefore meaningless in that it would apply to all renewable energy development projects, regardless of market.

2. An increase in energy capacity, efficiency, or storage at existing projects. Every new renewable energy project results in "an increase in energy capacity, efficiency, or storage at existing projects" in that the new project can be operated in a manner which displaces and thereby frees-up capacity, energy, and or storage at existing projects. This priority is therefore meaningless in that it would apply to all renewable energy development projects, regardless of location.

3. An export of renewable energy resources without power benefiting Southeast Alaska communities. Due to the significant expenditures which occur through project development, construction, and operation, every renewable energy development produces significant economic benefits, and therefore fits the description of "power benefitting Southeast Alaska communities," regardless of market. The same could be said regarding investor-owned projects which generate tax revenue in southeast Alaskan communities. This priority is therefore meaningless in that it would apply to all renewable energy development projects, regardless of market.

There is also a realistic possibility that communities in Southeast Alaska might eventually complete additional transmission interconnections to one another, and possibly through the North American grid system through British Columbia. In this case, any renewable energy generation project which was developed within the Tongass under the TLMP may very well sell some of its output outside of Alaska, or engage in "export" activities of one type or another.

This ambiguous and flawed language demonstrates that the Forest Service should not be given broad, subjective discretion over such decisions; why reasonable criteria and guidance is necessary; and why the Forest Service should adopt the Renewable Energy Overlay LUD proposed by Alaska Power & Telephone, Alaska Electric Light & Power, and other utilities throughout Southeast Alaska:

> A Renewable Energy Resource Development LUD should be added to the Forest Plan to promote and support all forms of renewable energy development (including geothermal) and related transmission lines within the TNF consistent with Public Laws and National Security and National Energy Policies. The Renewable Energy Development LUD would take precedence over any underlying LUD (subject to applicable laws) regardless of whether the underlying LUD is an "Avoidance LUD" or not. As such, it would represent a "window" through the underlying LUD through which renewable resources could be accessed and developed.

The Renewable Energy Overlay LUD has been submitted to the Forest Service numerous times. At one point, the Forest Service specifically indicated that it would be utilizing this approach.[31] However, for unexplained reasons the Overlay LUD concept has been dropped.

Chapter 5 has no effect on Renewable Energy projects in IRAs. For example, the Roadless Rule expressly prohibits new geothermal development which the Draft ROD implies would be allowed by the Transition Plan.[32] In fact, the Roadless Rule denies access to new leases for minerals subject to the Mineral Leasing Act of 1920, including geothermal resources, because of the "potentially significant environmental impacts that road construction could cause to inventory the roadless areas."[33]

The Roadless Rule's Preambles' Responses to Comments shows that the Rule also prohibits construction of roads needed to access future hydropower sites and develop support facilities:

> Comment on Exiting Authorized Activities. Some respondents were concerned about the impact of the rule on special uses and requested clarification regarding the ability to construct or maintain roads in inventoried roadless areas to access electric power lines or telephone lines, pipelines, hydropower facilities, and reservoirs.
>
> Response. Section 294.14(a) of the proposed rule stated that the rule would not suspend or modify any existing permit, contract, or other legal instrument authorizing the use and occupancy of the National Forest System lands. Existing authorized uses would be allowed to maintain and operate within the parameters of their current authorization, including any provisions regarding access.[34]

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[31] A letter from Forrest Cole to Alaska Power & Telephone dated March 2nd, 2015 stated that: "A new Renewable Energy Overlay LUD is being developed that will also be included in the DEIS. Because we do not know where all future potential projects are, this new Standard and Guide will be used as an overlay, similar to the TUS overlay, allowing projects to proceed through the environmental analysis phase."
[32] Draft ROD at page 16.
[33] 66 Fed. Reg. at page 3256.
[34] 66 Fed Reg. *supra.* at 3259. (Emphasis added).

This conclusion that the 2001 Roadless Rule limits road construction to and development of hydropower sites existing at the time the 2001 Roadless Rule was promulgated is specifically stated in the Rule's Preamble:

> The final rule retains all of the provisions that recognize existing rights of access and use. Where access to these facilities is needed to ensure safe operation, a utility company may pursue necessary authorizations pursuant to the terms of the existing permit or contract.[35]

Finally, this conclusion is further supported by Table 1, which summarizes the costs and benefits of the Final Rule and describes the impact of the Final Rule on "Special Use authorizations (such as communications sites, electric transmission lines, pipelines)" as follows: "Current use and occupancies not affected, future developments requiring roads excluded in inventoried roadless areas unless one of the exceptions applies."[36]

Because there is no mention of future utilities, or any mention of hydropower, the application of the *inclusio unus, exclusion alterus* canon of construction, means that the 2001 Roadless Rule does not allow new roads for future development.

10. The Forest Service should propose amendments to the Roadless Rule to allow renewable energy development.

The Draft ROD could have addressed this problem by proposing changes to the Roadless Rule. Alternatives 2 and 3 that were considered in the draft ROD, but not selected, provided for rulemakings to modify the Roadless Rule or to reinstate the Tongass Exemption to allow timber harvest in specified IRAs. Thus, proposing rulemaking to amend the Roadless Rule to allow access to hydropower sites and development of hydropower facilities and other forms of renewable energy including geothermal was demonstrably within the authority of the Forest Service and the scope of the Transition Plan.

Amending the 2001 Roadless Rule to provide access to hydropower sites and development of hydropower facilities is supported by Public Law 106-511 Title VI, which pre-dated the Roadless Rule and provides:

> SEC. 601. SOUTHEASTERN ALASKA INTERTIE
> AUTHORIZATION LIMIT.
>
> Upon the completion and submission to the United States Congress by the Forest Service of the ongoing High Voltage Direct Current viability analysis pursuant to United States Forest Service Collection Agreement #00CO–111005–105 or no later than February1, 2001, there is hereby authorized to be appropriated to the Secretary of Energy such sums as may be necessary to assist in the construction of the Southeastern Alaska Intertie system as generally identified in Report #97–01 of the Southeast Conference. Such sums shall equal 80 percent of the cost of the system

[35] 66 Fed. Reg. *supra.* at 3256. (Emphasis added).
[36] 66 Fed Reg. *supra.* at 3270.

> and may not exceed $384,000,000. Nothing in this title shall be construed to limit or waive any otherwise applicable State or Federal law.

Southeast Conference Report #97- 01, which was prepared in 1998, provides for a Southeast Alaska wide hydro power intertie that would substantially lower the cost of power throughout Southeast Alaska. However, neither Public Law 106-511 nor Report #97–01 of the Southeast Conference is even referenced in the draft ROD. Nor are the impacts of the 2001 Roadless Rule upon the Southeast Intertie Project analyzed.

The Draft ROD should propose rulemaking to amend the Roadless Rule (36 CFR 294.13(b)(4)) to allow access to, and development of, all forms of renewable energy development (including geothermal) and related transmission lines. Such rulemaking would allow the implementation of Public Law 106-511 Title VI, which Congress enacted prior to the Roadless Rule on November 13, 2000. This Act authorized construction of a Southeast Alaska-wide intertie, (including in the Tongass National Forest).

In addition, the Draft ROD needs to authorize implementation of the Renewable Energy LUD. The Renewable Energy Development LUD would take precedence over any underlying LUD (subject to applicable laws) regardless of whether the underlying LUD is in an IRA or not. As such, it would represent a “window” through the underlying LUD through which renewable resources could be accessed and developed.

The Draft ROD contends that such amendments to the Roadless Rule are unnecessary because:

> In May 2012 the Chief of the Forest Service identified a process where the Chief reviews and may authorize certain activities to occur within roadless areas, when consistent with the Roadless Rule. Projects are reviewed by the Chief to ensure the Forest Service is applying a consistent approach to implementation of the 2001 Roadless Rule and that the agency is doing all it can to protect roadless area characteristics. Since 2012, the Tongass has requested and received timely approval from the Chief for qualifying activities within roadless areas, including those in support of hydroelectric energy projects and transmission, and roads rights of way under applicable statutes. Accomplishing the goals of the transition through the Selected Alternative will not be prevented by continued application of the Roadless Rule to the Tongass.[37]

This is a make weight argument. In essence, it claims that decisions regarding projects on the Tongass are better made on the authority of one man in Washington D.C. than by criteria set out in law or regulation. Using the same logic, it could be argued that both the transition and the Roadless Rule are unnecessary because the Forest Service already has complete authority regarding when and where to prepare a timber sale.

[37] Draft ROD at page 17.

11. Renewable energy summary

While the unworkable Forest Service TUS overlay LUD has been removed, the Roadless Rule continues to prohibit geothermal development and will continue to either prohibit, or constitute a significant barrier to hydropower access and development. The Draft ROD provided for rulemaking to modify the Roadless Rule had Alternatives 2 or 3 been selected. It should have provided for rulemaking to modify the Roadless Rule to make renewable energy development possible on the Tongass.

12. Failure to Address Mining

The Draft ROD fails to mention mining. This means that there will be no change from mining's status under the 2008 Amended TLMP. This represents a missed opportunity to modify the Roadless Rule to increase access to mining claims and development. In its comments on the Five-Year Tongass review and on scoping for the Transition Plan Amendment, the Alaska Miners Association proposed that a Mineral LUD be added to the plan:

> A Mineral and Strategic Mineral LUD should be added to the 2008 Forest Plan to promote and support mineral and strategic mineral development and related access roads consistent with National Security and National Strategic Mineral Policies. The Mineral and Strategic Mineral LUD would take precedence over any underlying LUD (subject to applicable laws) regardless of whether the underlying LUD is an "Avoidance LUD" or not. As such, it would represent a "window" through the underlying LUD through which minerals and strategic minerals could be developed.

Conclusion

The Draft ROD misleads by failing to address prior commitments. The Draft ROD admits that there is no current market for young-growth timber. The Draft ROD misses opportunities to resolve problems. The Draft ROD's only significant change is to reduce market demand from 200 MMBF per year to 46 MMBF and make economic timber harder to obtain. The commitment to a three-year supply of economic timber sufficient to support an integrated industry is abandoned without mention.

The decision to "protect" certain watersheds known as the "Tongass 77" identified by Trout Unlimited was made without complying with the no more clause - Section 1326 (a) of the Alaska National Interest Land Conservation Act.

Access to and development of geothermal and hydropower in IRAs is unchanged and continues to be prohibited. Access to and development of renewable energy in non-IRA portions of the Tongass is subject to the absolute discretion of the Forest Service without criteria for deciding. Access to and development of mining claims is unchanged. The Renewable Energy LUD and Mineral LUD should be adopted to provide access to the capability to develop these resources.