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Re: Alaska Forest Association and Southeast Conference Objection to U.S. Forest Service's Draft Record of Decision to Amend Tongass Forest Plan

Pursuant to 36 C.F.R. Part 219 Subpart B, the Alaska Forest Association (AFA) and the Southeast Conference file this objection to the proposed decision of the U.S. Forest Service, Tongass National Forest, Earl Stewart Forest Supervisor, to amend the Tongass Land and Resource Management Plan (TLMP) as set forth in the June 2016 draft Record of Decision (Draft ROD).

Objectors:

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Objectors' Interests

The AFA is one of the oldest trade associations in the State of Alaska and represents approximately 110 members sharing an interest in the timber industry and public lands of Alaska. Its mission is to advance the restoration, promotion and maintenance of a healthy, viable forest products industry that contributes to the economic and ecological health in Alaska's forests and communities. The AFA is committed to ensuring a reliable and sustainable supply of forest products from the Tongass National Forest to support the Alaska wood products industry. It has participated throughout the process that led to the Draft ROD, including through the submission of comments on the draft TLMP amendment environmental impact statement (Draft EIS) on February 22, 2016 and on the final TLMP amendment EIS (FEIS) on July 30, 2016, which comments are incorporated herein by reference under authority of 36 C.F.R. § 219.54(b)(4) (and attached as Exs. 1 and 2). The AFA did so because the Forest Service's management of lands on the Tongass National Forest affects not only the health of Alaska's natural resources but also the viability of AFA members' businesses and the economic health of their local communities. A listing of the AFA's membership, along with other information about the AFA, is available on its website at www.akforest.org.

Southeast Conference is comprised of more than 150 members who are concerned about the future of Southeast Alaska and who share a collective desire to build and support strong economies and a quality environment in Southeast Alaska. Its history dates back to 1958 when an association of communities joined to advocate for the establishment of the Alaska Marine Highway System. Over the ensuing decades, the Southeast Conference's mission and membership broadened to the point that it now works to advance the collective interests of the people, communities, Native organizations and businesses throughout Southeast Alaska. Among other roles, the Southeast Conference is the state-designated Alaska Regional Development Organization, the federally-designated Economic Development District and the federally-designated Resource Conservation and Development Council for the region. Among its members are communities located in and around the Tongass National Forest, Alaska chambers of commerce, Native organizations, nonprofit and community organizations, independent power authorities, public utilities, and private individuals and companies, including companies having ties to regionally important industries like the Southeast Alaska timber, hydroelectric, mining and transportation industries. Southeast Conference participated in the process that led to the Draft ROD, including through the submission of comments on the draft TLMP amendment EIS on January 21, 2016, which are incorporated herein by reference under authority of 36 C.F.R. § 219.54(b)(4) (and attached as Ex. 3). A listing of the Southeast Conference's membership, along



with other information about the Southeast Conference, is available on its website at www.seconference.org.

Reasons for Objection

1. The Draft ROD Embodies a Forest Service Change in Position With Respect to the Need for Development of an Integrated Southeast Alaska Timber Industry in Violation of the Administrative Procedures Act (APA) Because the Agency Fails to Even Acknowledge That It Is Changing Position.

Under U.S. Supreme Court precedent, an agency like the Forest Service "may adopt a change in position without running afoul of the APA if it 'provide[s] a reasoned explanation for its action,' including by 'display[ing] awareness that it *is* changing position' and 'show[ing] that there are good reasons for the new policy.'" Brief for the Federal Respondent, *Alaska v. Organized Village of Kake*, No. 15-467, 2016 WL 692854, at *14 (U.S. Feb. 19, 2016) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)) (alterations in original). The federal government wrote those words on behalf of the Forest Service in the context of the Tongass National Forest, further explaining that where the agency's "'new policy rests upon factual findings that contradict those which underlay its prior policy,'" the APA requires the agency to provide "'a reasoned explanation . . . for disregarding facts and circumstances that underlay *** the prior policy.'" *Id.* (quoting *Fox*, 556 U.S. at 515-16).

Fox, and the Forest Service's reliance on same earlier this year, is instructive here because the Forest Service's Draft ROD nowhere acknowledges the agency's change in position for the Tongass from that articulated in the summer and fall of 2008. Specifically, on September 17, 2008, the Under Secretary for Natural Resources and Environment sent a memorandum to the Forest Service Chief to "provide additional direction to the Forest Service to assist in [TLMP] implementation in order to achieve [the] Agency's multiple use mandate." Memorandum from Mark Rey to Abigail Kimbell, *Discretionary Review of the Tongass Land Management Appeal Decision* (Sept. 17, 2008) (Rey Memo, attached as Ex. 4) at 1. The Rey Memo explained that in order for the Southeast Alaska timber industry to survive, it would "require additional integration Given the precarious nature of the Tongass timber sales program over the past few years, no prudent investor would underwrite the cost of additional infrastructure to achieve higher levels of fiber utilization" *Id.* The Rey Memo further emphasized the need for an integrated timber industry by acknowledging that it was unclear whether the TLMP "provide[d] sufficient [timber] volume necessary to re-establish an integrated industry in Southeast Alaska." *Id.* at 2. Thus, the Rey Memo directed, the Forest Service needed "to determine if additional acres will need to be included to accomplish the objective of establishing a fully integrated [Southeast Alaska timber] industry." *Id.* Further, in a paragraph titled "A Fully Integrated Forest Products Industry," the Rey Memo stated:

I am also directing the Forest to develop a work plan and proposed budget necessary to offer four ten-year timber sales, each with an average volume of 15-20 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 facilities.



Id.

As instructed by the Rey Memo, the agency provided a written response explaining "how the Forest Service will address this direction." *Id.* at 3. See generally Memorandum from Dennis Bschor to Forest Service Chief, *Response to Letter of Direction in Lieu of Discretionary Review of the Tongass Land Management Plan Appeal Decision* (Oct. 27, 2008) (Bschor Memo, attached as Ex. 5). Although constrained by the TLMP, the agency committed itself to exploring how to achieve the goal of an integrated industry, for example one "with multiple mills of each type (e.g., sawmills, veneer mills, and medium density fiberboard plants), to ensure that competition exists within Southeast Alaska for each type of log available from the Tongass National Forest." *Id.* at 6. The Forest Service also outlined how it would go about offering four ten-year timber sales to support the development of an integrated timber industry. *Id.* at 7-8. In addition, the Forest Service detailed how the TLMP had addressed the issues identified in the Rey Memo. See, e.g., *id.* at 12 (stating that "[t]he need to re-establish an integrated forest products industry in Southeast Alaska was an important consideration during the development of the 2008 Forest Plan Amendment," and proceeding to offer details about same).

Ironically, the Bschor Memo recommended that rather than prematurely amending the TLMP to provide additional acreage in support of an integrated timber industry in Southeast Alaska, "the 2008 Forest Plan be given time to work" *Id.* at 6. Yet less than five years later, the Forest Service reversed course as embodied in Memorandum 1044-009, *Addressing Sustainable Forestry in Southeast Alaska* (July 2, 2013) (Memo 1044-009, attached as Ex. 6). Without explanation or acknowledgement, the Forest Service in Memo 1044-009 abandoned its prior direction for establishing an integrated timber industry in Southeast Alaska supported by ten-year timber sales. Instead, the Forest Service announced its plan to transition prematurely to "a forest industry that utilizes second growth – or young growth – forests." *Id.* at 1. See also *id.* at 3 (abandoning the commitment to four ten-year timber sales in favor of quickly "allocat[ing] staff and financial resources to planning young growth projects, ramping down old growth sales and increasing investments in young growth"). Memo 1044-009 thus became the foundation for amending the TLMP via the Draft ROD. See, e.g., Draft ROD at 3, 14; FEIS at 1-8 ("Amending the Forest Plan originates from the July 2013 memo from the Secretary of Agriculture . . ."). And this happened without *any* recognition by the Forest Service of the agency's prior direction and commitments regarding the need for an integrated timber industry in Southeast Alaska. See AFA Feb. 22, 2016 Comments on Draft EIS at 15. Because "an agency may not . . . depart from a prior policy *sub silentio*," the agency's reversal of course runs afoul of the APA. *Fox*, 556 U.S. at 515.

2. The Draft ROD Runs Afoul of the Tongass Timber Reform Act (TTRA), the National Forest Management Act (NFMA), and the National Environmental Policy Act (NEPA) by Relying on a Flawed Market Demand Analysis that Underestimates the Demand for Tongass Timber and By Capping Supply.

The Draft ROD is incompatible with the Forest Service's obligation to seek to provide a supply of timber that meets market demand, both on an annual and a planning cycle basis, from the Tongass National Forest. The Draft ROD is deficient both substantively and procedurally in



violation of the TTRA, 16 U.S.C. § 539d, NFMA, 16 U.S.C. § 1600 et seq., and NEPA, 42 U.S.C. § 4321 et seq., all of which are made actionable under the APA.

Under the TTRA, the Forest Service must seek to provide a supply of timber from the Tongass that meets market demand. 16 U.S.C. § 539d(a). Under NEPA, the Forest Service must fully inform the public and the decisionmaker of the relevant factors considered in seeking to meet that demand. *Natural Resources Defense Council v. U.S. Forest Serv.*, 421 F.3d 797, 811 (9th Cir. 2005) (*NRDC*) (NEPA is a procedural statute that mandates fully-informed decisionmaking). Under NFMA, the Forest Service must properly balance multiple use goals on the Tongass – including "recreation, environmental protection, and timber harvest" – without elevating any one leg of "this tripodal balance" above the others. *NRDC*, 421 F.3d at 808-09, 809 n.22. The Draft ROD comes up short under all these laws.

An agency's decision is unlawful under the APA if it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). In assessing agency action under this standard, a reviewer should determine "whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971). Unless the agency considered the relevant factors and articulated a "rational connection between the facts found and the choice made," its determination should be set aside. *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). See also *id.* (an agency's action is arbitrary and capricious if "the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise"). Here, the agency did not consider relevant factors such that a rational connection is lacking between the Draft ROD and the evidence before the agency.

The Draft ROD does not satisfy the TTRA's mandate that the Forest Service seek to provide a timber supply that meets market demand both annually and over the current 10 to 15 year planning cycle basis. The Forest Service employs the so-called Morse methodology "to estimate the timber offer target (supply)" for Tongass timber on both an annual and planning cycle basis, something it has done since about 2000. FEIS at G-2. See Kathleen S. Morse, *Responding to the Market Demand for Tongass Timber*, USDA Forest Service, Alaska Region (2000). See also FEIS Appendix G (discussing timber demand and supply calculations); Draft ROD at 25 (discussing the Morse methodology). Estimates of the demand for Tongass timber feed into the Morse methodology, with the most recent Southeast Alaska timber demand estimate being that of Daniels et al. (2016). See generally Jean M. Daniels et al., *Tongass National Forest Timber Demand: Projections for 2015 to 2030*, USDA Forest Service, Pacific Northwest Research Station (2016) (Daniels Demand Study). See also FEIS at G-2 (discussing demand estimates). As explained below, the way in which the Forest Service is amending the TLMP pursuant to the Draft ROD invalidates the agency's reliance on the Morse methodology, and there are fundamental flaws in the agency's estimate of demand for Tongass timber that render the Draft ROD unlawful.



A. The Forest Service's Reliance on the Morse Methodology is Arbitrary and Capricious Given the Forest Service's Artificial Cap on Supply.

With respect to the Morse methodology, the Draft ROD acknowledges that the agency:

adopted the Morse methodology as the means by which the agency complies year-by-year with the annual demand portion of the TTRA "seek to meet" requirement. Similarly, the agency intended to comply with the requirement to seek to meet demand "for each planning cycle" through a series of annual applications of the Morse methodology.

Draft ROD at 25. The Morse methodology was developed to incorporate and react to such metrics as timber harvest levels and is intended to be "adaptive," meaning that "if harvest levels drop below expectations and other factors remain constant, future timber sale offerings would also be reduced to levels needed to maintain the target level of volume under contract." *Id.* Likewise, because the Morse methodology is intended to be adaptive, it envisions that "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." *Id.* Here, however, the agency's amendment of the TLMP pursuant to the draft ROD prevents future timber sale targets from increasing in response to rising harvest levels (but still allows future timber sale targets to be adjusted downward to curtail supply). Until at least 2030 when the agency envisions old-growth harvest volume having been curtailed to 5 million board feet (MMBF) per year, the supply of Tongass timber will not be allowed to increase above 46 MMBF. It is only at that point – when the agency plans to have completed its premature young-growth transition – that "the amount of timber offered for sale would be *allowed* to increase above 46 MMBF" FEIS at 3-507 (emphasis added). In other words, "total supply is *capped* at 46 MMBF," FEIS at 3-511 (emphasis added), regardless of whether the adaptive Morse methodology estimates a higher timber harvest target. Truncating the application of the Morse methodology in this fashion, i.e., by ensuring that it can be used only to curtail the supply of timber both on an annual basis and for the current planning cycle, invalidates the Forest Service's use of the Morse methodology as a means of complying with the TTRA and renders the Draft ROD arbitrary and capricious.

B. The Forest Service's Estimate of Demand for Tongass Timber Ignores Multiple Important Aspects of the Problem and is Arbitrary and Capricious.

The Forest Service's demand projections also are flawed, including because of the agency's overestimation of the amount of timber available for harvest from State lands, the intrinsic error in relying on past harvest levels as an indicator of current demand, and the agency's circular reasoning that equates an agency-imposed artificial supply constraint (i.e., the premature transition to young growth harvest) with a lower demand for Tongass timber. *See generally* AFA Feb. 22, 2016 Comments on Draft EIS at 10-15 (discussing these and other fundamental flaws in the agency's demand analysis); AFA July 30, 2016 Comments on FEIS at 3-4 (same).

Regarding State lands, the FEIS reports that 25.7 MMBF was the average volume of timber harvested from State lands from 2002-2014, while admitting in a footnote that the average was



biased by "an increase in State harvest [over several years that] was an effort to provide additional timber to make up for a shortfall in supply from the Tongass." FEIS at 3-486. The FEIS further reports that the projected baseline timber harvest from State lands over the planning cycle – 2015 to 2030 – ranges from a low of 17.8 MMBF to a high of 23.3 MMBF, with nearly all years during the planning cycle projected at or over 20 MMBF. FEIS at 3-493. *See also* FEIS at 3-350 (assuming 20 MMBF per year from State lands); FEIS at G-2 to G-3 (referring to State lands supplying "nearly one-quarter (21%)" of timber volume while admitting that State lands "cannot indefinitely supply such a high proportion of timber"); Draft ROD at 26 (similarly stating that "nearly one-quarter of sawn wood originated from State of Alaska lands," while acknowledging that State lands "cannot indefinitely supply such a high proportion of timber").

Inexplicably, the Forest Service relies on these high projections of future timber volume coming from State lands despite the State of Alaska having pointed out critically in its comments on the draft EIS that the average volume of timber harvested from State lands "for the last seven years is a *much lower* 12.3 MMBF. The last seven years is a better indication of future volume based on the fact that Alaska Mental Health Trust and the University are not bound to manage on a sustained-yield basis." State of Alaska Comments on DEIS (Feb. 22, 2016) (excerpt attached as Ex. 7) at 7 (so stating under the heading, "Corrections or Revisions Needed") (emphasis added). *See also id.* at 3 (pointing out that the Daniels Demand Study "is flawed in part because of its incorrect assumptions of volume available from State . . . lands Timber resources managed by the University of Alaska Lands Office and the Alaska Mental Health Trust will not contribute as much timber harvest in the near future as they have in the recent past."). The Forest Service's refusal to acknowledge this reality in its analysis renders the Draft ROD arbitrary and capricious because the agency estimates the timber volume needed from the Tongass *as a residual*:

The demand model calculates the quantity of national forest timber needed . . . as a residual necessary to balance the model. In other words, Daniels et al. (in press) estimated the roundwood equivalent of all material used to produce products from Alaska and subtracted estimated future volume harvested from other landowners to derive national forest roundwood needs (i.e., the "residual").

FEIS at G-4. *See also* Daniels Demand Study at 21 ("[D]emand for Tongass timber is computed as a residual—the quantity of national forest timber necessary to balance the market."). Thus, based on the State of Alaska's estimate of about 12 MMBF of timber on average available per year from State lands, as opposed to the Forest Service's overestimate of about 20 MMBF per year from State lands, the Draft ROD misleadingly ignores an average timber supply deficit of at least 8 MMBF per year.¹ And it deceptively does so while giving lip service to the need for

¹ This estimate of the average timber supply deficit that is being ignored by the Forest Service is conservative. The timber supply deficit that will result from the Draft ROD's adoption likely will be larger, including because of recent opposition to Alaska Mental Health Trust timber sale plans in Ketchikan and also on Mitkof Island that may delay (or thwart) the realization of timber volume from these State lands. Ironically, the Alaska Mental Health Trust has stated publicly that one of the reasons it is starting the process to log State lands on Deer Mountain in Ketchikan is a concern for the pending demise of the Southeast Alaska timber industry – without a local

preserving a viable timber industry in Southeast Alaska despite the agency's premature transition to young growth harvest. *See, e.g.*, FEIS at ES-3 (stating that Memo 1044-009 "directs that the transition must be implemented in a manner that preserves a viable timber industry").

Regarding the error in relying on past harvest levels as an indicator of current demand, which is a key parameter in the projection of future demand, the Forest Service purports to acknowledge that factors outside the control of the Southeast Alaska timber industry and unrelated to market demand – like serial litigation by those opposed to multiple use management of public lands on the Tongass – have depressed timber harvest. For example, the Forest Service states that timber supply, which is a prerequisite to timber harvest, has been constrained by "legal and procedural challenges to federal timber sales." FEIS at G-3. *See also* FEIS at G-8 (stating that compared with other areas in the region, timber supply is more constrained and less predictable, including because of litigation); FEIS at 1-4 ("[M]anagement of the Tongass National Forest has been very challenging due to a number of factors, including administrative and judicial proceedings."); FEIS at 3-347 ("[F]actors that may affect the amount of timber actually sold include . . . administrative appeals and lawsuits (which may delay or forestall sales) . . ."). In a more candid assessment of the sorry state of timber supply on the Tongass, the FEIS reports that "[s]ince 2008, litigation filed on individual Tongass timber sales is hindering the ability of the Forest to accomplish the objective of providing a reliable Federal timber supply." FEIS at 1-5.

Absent the constraints on timber supply that are beyond the control of the timber industry, actual historic harvest levels necessarily would have been higher. Yet the Daniels Demand Study essentially ignores this constraint on supply and hence on harvest. Indeed, rather unprofessionally, the Daniels Demand Study actually includes a graph depicting historical harvest figures attributed to Earthjustice attorney Waldo (who is no stranger to Tongass litigation), Daniels Demand Study at 3, while half-heartedly cautioning the reader that "it is important to remember that the interaction between demand and supply is what ultimately determines trends in markets. Figure 1 displays generally declining trends in timber harvest; however, caution is recommended when inferring causality between timber harvest and market demand."² *Id.* at 2-3. *See also id.* at 3 (stating that Tongass timber supply "is constrained by

timber industry, the value of the Trust's standing timber asset will decrease compared with its current value. The timber supply deficit also will be larger because of the Forest Service's gross overestimate of the volume of timber that will be available from private lands, including because for the most part such volume will be exported. *See, e.g.*, AFA Feb. 22, 2016 Comments on Draft EIS at 12 (pointing out errors in the agency's private timber assumptions); AFA July 30, 2016 Comments on FEIS at 3 (discussing same in the "Demand" section). As the AFA previously pointed out, the Forest Service's young growth transition strategy "may sustain a few log export jobs, but the manufacturing industry will perish" due to the lack of supply. AFA Feb. 22, 2016 Comments on Draft EIS at 15.

² The Daniels Demand Study is questionable in other ways, including because of its off-topic commentary on the Alexander Archipelago wolf. Daniels Demand Study at 41. Not only is the wolf discussion frivolous to the demand analysis, it also overlooks the fact that the U.S. Fish and Wildlife Service concluded in its 12-month finding that listing the wolf under the Endangered

several factors," but failing to acknowledge that litigation-induced delay is one of those factors, despite the juxtaposition of the Earthjustice graph). Given the flaws with a methodology that links timber supply levels with unnaturally-constrained past harvest levels, the Forest Service is not fulfilling its statutory obligations to seek to provide a timber supply from the Tongass that meets market demand.

Regarding the Forest Service's conflation of its own imposition of an artificial supply constraint, i.e., the premature transition to young growth harvest, with a purported lower demand for Tongass timber, the simple fact is that an artificial constraint on supply does not reduce demand. It simply starves the Southeast Alaska timber industry of the supply needed to survive and thrive. *See generally* AFA Feb. 22, 2016 Comments on Draft EIS at 13-14; AFA July 30, 2016 Comments on FEIS at 3-4 (discussing same in the "Demand" section).

The Daniels Demand Study inexplicably turns a blind eye to the agency's circular reasoning. For example, in a section discussing changes in lumber product type and markets from 2005 to 2011, the Daniels Demand Study notes a "statewide lumber production decline[] by more than half," accompanied by changed "product type and destinations" Daniels Demand Study at 20. The agency concludes that "southeast Alaska producers have been refocusing toward providing dimension lumber to domestic markets, and away from high-quality shop grades to Pacific Rim markets." *Id.* Inexplicably, the agency seems never to consider (or isn't willing to admit) that its failure to provide sufficient timber volume has had deleterious effects on timber companies – without access to a sufficient supply of Tongass timber, any observed changes in lumber product type and market cannot rightfully be attributed to intentional "refocusing" on the part of the Southeast Alaska timber industry.

The Forest Service cannot claim ignorance of the fact that the demand for Tongass timber exceeds the agency's supply of same. For example, when AFA/Southeast Conference member Viking Lumber Company, Inc. (Viking) intervened on the side of the Forest Service in the lawsuit challenging the Big Thorne Timber Sale, Viking representative Kirk Dahlstrom testified by way of a November 2014 declaration that:

- Viking is entirely dependent on a steady supply of timber sales, the majority of which are offered by the Forest Service on the Tongass National Forest in Alaska. Timber from the Tongass has always been and continues to be a critical source of supply for Viking's operations. Declaration of Kirk Dahlstrom (Dahlstrom Decl., excerpt attached as Ex. 8) ¶ 4.

Species Act was not warranted, and that the wolf actually was not a listable entity. *See generally* 81 Fed. Reg. 435 (Jan. 6, 2016). In addition, the Forest Service recently announced an increased Prince of Wales Island federal subsistence winter quota for the wolf based on a larger wolf population compared with that in 2015. Some of the flaws in the Daniels Demand Study may have been remedied had the lead author not been "ordered to wrap up her study before she had time to check many of the assumptions" in the demand analysis. AFA July 30, 2016 Comments on FEIS at 3.



- The forest products industry in Southeast Alaska has the capacity to process at least 120,000 MBF of logs annually. Even this capacity is greatly diminished over what it once had been due to a shortage of Forest Service timber sales being offered. Over the past several years, the volume of timber on Forest Service timber sale offerings has been far below that level. In short, there has been *significantly* more demand for, than supply of, Forest Service timber sales for the past several years. *Id.* ¶ 5 (emphasis in original).
- Unlike the new home construction and related lumber markets in the lower 48 states, the market for the products produced by Viking has remained relatively strong. This is due to the fact that Viking produces piano and guitar stock from Spruce; doors, windows and moulding from Hemlock; and decking, gazebo stock and finished wood for Cape Cod-style homes from Cedar. Despite the recession, the market for Spruce to make instruments remained good, as did the markets for the other products produced by Viking because they are typically purchased by individuals who are renovating existing homes, not building new ones. In fact, prices for Hemlock and Spruce products have remained strong since 2008 and Cedar prices have rebounded since 2009. *Id.* ¶ 9.

This evidence, which is in the public record and was before the Forest Service in the Big Thorne lawsuit, belies the Forest Service's assertion that its imposition of an artificial supply constraint can be equated with a purported lower demand for Tongass timber. *See also* AFA Feb. 22, 2016 Comments on Draft EIS at 13 (pointing out that Viking has "repeatedly told the Forest Service that [it] would like to purchase more timber sales because [its] customers have additional capacity and Viking wants to more fully utilize [its] mill"). *Cf.* Daniels Demand Study at 18 (erroneously stating that a decline in domestic shipments of Tongass timber saw product "reflect[s] recessionary pressures on the housing industry felt nationally"). Put simply, the demand for Tongass timber, particularly "the demand for high value lumber from Alaska's mills[,] greatly exceeds the volume of mature timber [being made] available to produce the high value lumber. Artificially reducing the supply doesn't affect the demand for high value lumber, it will simply starve the remaining mills out of business." AFA July 30, 2016 Comments on FEIS at 3. In this respect, the Daniels Demand Study is akin to a premature post-mortem examination of the Southeast Alaska timber industry that is being conducted by the entity that will be responsible for the industry's demise by way of adopting the Draft ROD.

The holding in the above-cited *NRDC* case supports the conclusion that the Draft ROD is arbitrary and capricious in violation of governing laws. In *NRDC*, the Ninth Circuit held that where the Forest Service had mistakenly overestimated the demand for Tongass timber in its analysis, and tied the TLMP's allowable sale quantity³ to that demand, the error fatally undermined the agency's analysis in violation of the APA. 421 F.3d at 807 (concluding that

³ Because "[t]he term allowable sale quantity (ASQ) is not used with the 2012 planning rule," the Draft ROD instead speaks in terms of a projected timber sale quantity, or PTSQ. FEIS at ES-5.

because of the mistake, the Forest Service's explanation in the decision document ran "counter to the evidence before the agency"). In reaching that holding, the court explicitly acknowledged that depending on demand, "the need for timber harvest may outweigh" competing multiple use goals. *Id.* at 808. Here, the Forest Service has similarly erred by *underestimating* the demand for Tongass timber in its analysis. The Forest Service's approach runs afoul of the TTRA's "seek to meet market demand" requirement, NEPA's requirement for full and informed disclosures, and NFMA's requirement that the agency strike a proper balance between the multiple use goals of "recreation, environmental protection, and timber harvest." *Id.* at 809 n.22.

The Forest Service is poised to adopt the fatally flawed Draft ROD despite the agency's recognition of the ensuing dire consequences: "Southeast Alaska timber purchasers have few alternative suppliers if they cannot obtain timber from the Tongass National Forest. Oversupplying this market has relatively few adverse economic effects; undersupplying it can have much greater negative economic consequences." FEIS at G-1. *See also* FEIS at G-8 ("[I]t is important to anticipate the consequences of decisions. . . . [O]ver-supplying the market is less damaging than under-supplying it. . . . [A] significant shortfall in timber supply available for harvest can be financially devastating to the industry."). Yet by ignoring the evidence before it, the Forest Service erroneously concludes that because each of the alternatives considered in the FEIS "is expected to meet the projected demand for Tongass timber," FEIS at ES-12, including the selected Alternative 5, Draft ROD at 1, amending the TLMP pursuant to Alternative 5 "is expected to meet the criterion of maintaining a viable industry." FEIS at ES-12. *But see id.* (stating that "this criterion is associated with a relatively high degree of uncertainty"). Actually, this criterion is not uncertain – thanks to the agency's flawed analysis, it is a certainty that the Forest Service will fail to meet (or even seek to meet) the demand for Tongass timber on an annual or planning cycle basis. The Draft ROD thus runs contrary to the evidence before the agency and fails to adequately consider aspects of the problem, rendering it arbitrary and capricious in violation of NEPA, the TTRA and NFMA.

3. The Draft ROD is Fatally Flawed Because It is Based on a NEPA Analysis That is Tainted by a Flawed Demand Analysis, and Because the Underlying NEPA Analysis Starts with an Overly Narrow Statement of Purpose and Need that Leads to an Inadequate Range of Alternatives.

As set forth above, the Daniels Demand Study incorporates numerous faulty assumptions that collectively lead to a significant underestimate of demand for Tongass timber both on an annual and planning cycle basis. The erroneous estimate of demand – a static 46 MMBF per year that is unreasonably capped at least for the planning cycle – renders the Forest Service's NEPA analysis arbitrary and capricious under the APA. This is because each alternative considered by the agency, including the no action alternative, was "designed to correspond with current [erroneous] demand projections . . . of about 46 MMBF per year during the next 15 years . . ." FEIS at ES-5. Thus, if the Forest Service were to amend the TLMP by adopting the Draft ROD, the result would be a TLMP divorced from reality with respect to timber demand. Adopting the Draft ROD therefore would be arbitrary and capricious in violation of multiple statutes, including NEPA. *See, e.g., NRDC*, 421 F.3d at 807.



The NEPA analysis underlying the Draft ROD also is flawed for reasons fully described in the AFA's comments on both the Draft EIS and FEIS. *See generally* AFA Feb. 22, 2016 Comments on Draft EIS at 2; AFA July 30, 2016 Comments on FEIS at 1-3. As explained therein, the agency's statement of purpose and need was impermissibly narrow, as a result of which the alternatives considered by the agency preordained an unduly hastened and impractical transition to young growth timber harvesting. This violates not only NEPA but also the TTRA and NFMA.

The AFA's prior comments, which again are fully incorporated into this objection letter, explained that it is unlawful for a federal agency to define its objectives so narrowly as to preordain a desired result. *See, e.g., City of Carmel-By-The-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997). Yet here, the Forest Service started its analysis from the premise of an unreasonable and arbitrary goal, namely transitioning timber harvest on the Tongass to young growth within 10 to 15 years, despite the young growth trees being decades away from maturity or even reaching their culmination of mean annual increment of growth.⁴ The AFA's comments on both the Draft EIS and FEIS included a graph showing that the majority of young growth on the Tongass is less than 50 years old. AFA Feb. 22, 2016 Comments on Draft EIS at 9; AFA July 30, 2016 Comments on FEIS at 6. The Forest Service admits in the Draft ROD that "[h]arvesting 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 yet been demonstrated and this is especially true for small logs from 55-year-old stands." Draft ROD at 10. Thus, the Forest Service admits that its stated purpose and need is grounded in an impossibility, which again is the unrealistic goal of transitioning to young growth timber in 10 to 15 years. This admission is consistent with the AFA's comments pointing out that the FEIS discloses, including at pages 3-517 to 3-518, that the proposed young growth harvest will be uneconomic (negative net present value) for the first 25 years, and that the deficit supposedly will be offset by profits from the old growth harvest which will substantially *end* after 15 years. AFA July 30, 2016 Comments on FEIS at 8-9 (pointing out that after 15 years, i.e., during the fourth five-year period of the transition, the Forest Service is projecting a net loss of more than \$10 million due to the uneconomic nature of the young growth harvest).⁵ The Forest Service's

⁴ The culmination of mean annual increment, or CMAI, "is designed to restrict harvest to stands where the rate of growth has slowed, which maximizes forest growth." Daniels Demand Study at 5. The Forest Service's insistence on prematurely harvesting young growth trees that have not yet achieved CMAI does a disservice to the public by truncating the opportunity for a return on investment, and it also runs counter to the fact that "[c]arbon sequestration is actually maximized by allowing the young growth trees to mature until they reach" their maximum rate of growth. AFA July 30, 2016 Comments on FEIS at 9.

⁵ The uneconomic nature of the proposed transition actually is much worse. As the AFA pointed out when commenting on the FEIS, the Forest Service has been able to implement only about 25% of its planned timber sale projects in recent years due to various self-imposed harvest restraints. AFA July 30, 2016 Comments on FEIS at 9. The Draft ROD does nothing to address this issue, which likely will worsen given the proposed transition and certainly will not improve. Yet inexplicably, the Model Implementation Reduction Factor estimates used by the agency in the FEIS are lower, thereby painting an unduly optimistic picture for the future of the Tongass

unreasonable and arbitrary purpose and need impermissibly tainted the agency's analysis of alternatives, because the agency arbitrarily rejected any alternative that did not accomplish a transition to young growth harvest within the agency's stated time frame. *See, e.g.*, Draft ROD at 10 (rejecting the State of Alaska alternative "because it would require about 30 years to implement the transition to young-growth management, rather than the 10 to 15 years identified in the purpose and need." *Id.* Thus, the Draft ROD rests on a faulty foundation that renders it arbitrary and capricious under NEPA, and also in violation of the TTRA and NFMA.

REQUESTED RELIEF

The Forest Service should not adopt the Draft ROD, despite the political pressure being applied to imprudently hasten the Tongass transition to young growth harvesting on the current administration's watch, before a change in administrations following the 2016 presidential election. Rather, the Forest Service should do the right thing by returning to the analytical table to cure the many flaws identified in the agency's TLMP amendment analysis. In particular, the agency should:

- Cure the agency's overly narrow statement of purpose and need and the resulting inadequate and unreasonable range of alternatives considered by the Forest Service. *See generally* AFA Feb. 22, 2016 Comments on Draft EIS at 2; AFA July 30, 2016 Comments on FEIS at 1-3;
- Cure the agency's pervasive flawed financial and economic assumptions. *See generally* AFA Feb. 22, 2016 Comments on Draft EIS at 2, 7-9, 10-12; AFA July 30, 2016 Comments on FEIS at 7-9;
- Cure the agency's flawed assumptions regarding young growth timber stands on the Tongass, including by conducting the necessary young growth inventories and assessing the cost of accessing and harvesting the young growth stands. *See generally* AFA Feb. 22, 2016 Comments on Draft EIS at 8-10; AFA July 30, 2016 Comments on FEIS at 4-7;
- Cure the agency's failure to truly consider renewable energy development on the Tongass. *See generally* Southeast Conference Jan. 21, 2016 Comments on the Draft EIS at 2; and
- Admit the reality that transitioning to young growth harvesting on the Tongass within approximately 15 years cannot be accomplished while preserving a viable timber industry in Southeast Alaska, *see generally* AFA Feb. 22, 2016 Comments on Draft EIS at 1-2, 14-15, and recommit the agency to "preserv[ing] a viable timber industry that provides jobs and opportunities for residents of Southeast Alaska," Memo 1044-009 at 1, including by providing an adequate suitable timber base to sustain an integrated timber manufacturing industry in Southeast Alaska.

timber supply in violation of governing laws, including NEPA.



RESOLUTION MEETING REQUESTED

Pursuant to 36 C.F.R. § 219.57(a), the AFA and Southeast Conference request a meeting to discuss the issues raised in this objection letter.

Thank you for your consideration of this objection. The AFA and Southeast Conference look forward to meeting with you, and hopefully to the Forest Service's resolution of the AFA and Southeast Conference concerns.

Sincerely,

Owen Graham,
Executive Director,
Alaska Forest Association (Lead Objector)

Shelly Wright
Executive Director,
Southeast Conference



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/s/ Shelly Wright

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