REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, ALASKA
JUNEAU REGULATORY FIELD OFFICE
JORDAN CREEK CENTER
8800 GLACIER HIGHWAY, SUITE 106B
JUNEAU, ALASKA 99801-8079

February 10, 2004

Regulatory Branch
East Section
POA-2004-202 (JCL)

Mr. Dave Carr
Project Team Leader
U.S. Forest Service
Juneau Ranger District
8465 Old Dairy Road
Juneau, Alaska 99801-8041

Dear Mr. Carr:

The United States (U.S.) Army Corps of Engineers, Alaska District (Corps) is providing this letter as written comment on the Environmental Assessment (EA) for the proposed Boundary Timber Sale, submitted on December 2, 2003 [**received in our office 09 FEB 2004,** two months later!]. The proposed project area would be located in the South Chilkat Peninsula area, in the Juneau Ranger District, Alaska. The preferred alternative allows for construction of new access roads, as well as the reconstruction of existing roads, plus the use of an existing Log Transfer Facility.

The Corps' regulatory authorities are based on two laws: Section 10 of the Rivers and Harbors Act (RHA) of 1899 (33 USC 403), which prohibits the obstruction or alteration of navigable waters of the U.S. without a permit from the Corps; and Section 404 of the Clean Water Act (CWA), which prohibits the discharge of dredged or fill material into waters of the U.S., including wetlands, without a Corps' permit. Based on information provided in the EA, and available to our office, portions of the proposed work would occur in wetlands and waters and would, therefore, be within the Corps' jurisdiction.

Wetlands are defined as areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include "muskegs", swamps, marshes, bogs, and similar areas.

Section 404(f)(1)(a) of the CWA states, in part, that normal silvicultural activities for the production of forest products, which are part of an established, ongoing operation, are not subject to regulation under Section 404 of the CWA. To fall under this exemption, the activities must not result in a conversion of an area of the waters of the U.S. to a use to which it was not previously subject, whereby the flow or circulation of waters of the U.S. may be impaired or the reach of such waters reduced (see 33 Code of Federal Regulations (CFR) 323.4(b). A conversion of a wetland to a non-wetland to bring a new area into timber production that is not currently part of an ongoing operation is a change in use of an area of waters of the U.S. that would not be exempt from Section 404 requirements.

The construction or maintenance of forest roads used for the sole purpose of silvicultural activities is exempt from regulation under Section 404 of the CWA. Section 404(f)(1)(e) of the CWA states that the construction or maintenance of forest roads for silviculture activities is exempt from

regulations under Section 404 of the CWA, provided the roads are constructed and maintained in accordance with Best Management Practices (BMP), which shall include the baseline provisions (BPs) listed in 33 CFR 323.4(a)(6). The use of BMPs assure that flow and circulation patterns and chemical and biological characteristics of waters of the U.S. are not impaired; that the reach of the waters of the U.S. is not reduced; and that any adverse effect on the aquatic environment is otherwise minimized. Please recognize that the forest road exemption applies only to roads that would be used solely for normal silvicultural activities, such as harvesting of trees. Forest roads that would remain open and that would provide more than incidental use for subsistence or recreational access, or other public use, would not be considered sole purpose roads and would not be exempt from Section 404 requirements. The Corps has the responsibility to assure that activities performed under the exemption meet the conditions included in the CWA, implementing regulations, BMPs and subsequent National guidance.

It appears, from the review of the EA, that all temporary roads used to support these harvests will be closed after the harvest is completed. To comply with BP No. 15, all temporary roads within the project area need to be obliterated (closed) or put into "storage". Drainage structures associated with roads that cross wetlands and streams also need to be designed to ensure that surface and subsurface flows are not restricted to comply with 404(f) BPs for forest roads.

Any road proposed to remain open may not be considered a single purpose road and might require CWA authorization if constructed in waters of the U.S., including wetlands. Authorization for proposals to discharge fill material in waters of the U.S. are available only for projects that clearly demonstrate compliance with the U.S. Environmental Protection Agency (EPA) Section 404(b)(1) Guidelines (40 CFR 230). The guidelines state that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge, which would have less adverse impact on the aquatic ecosystem, as long as the alternative does not have other significant adverse environmental consequences. In those cases where the activity associated with a discharge is not water dependent, practicable alternatives are presumed to exist unless clearly demonstrated otherwise. The burden is on the applicant to provide a detailed and verifiable discussion of alternatives for our consideration. An alternative is considered practicable if it is available and capable of being accomplished after taking into consideration costs, existing technology, and logistics in light of overall project purpose.

I appreciate your cooperation with the Corps' Regulatory Program. Please contact me at (907) 790-4490, or by FAX at (907) 790-4499, or by mail at the letterhead address. For additional information about our Regulatory Program, visit our web site at www.poa.usace.army.mil/reg.

Sincerely,

John C. Leeds, III
Project Manager