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May 14, 2008

**VIA FEDERAL EXPRESS:**

USDA Forest Service  
Ecosystem Management Coordination  
Attn: Appeals  
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**VIA E-MAIL:**

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Re: Notice of Appeal Pursuant to 36 C.F.R. Part 217,  
Tongass Forest Plan Amendment

Dear Chief Kimbell:

Pursuant to 36 C.F.R. Part 217, the Alaska Forest Association (“AFA”)<sup>1</sup> hereby appeals the USDA Forest Service – Alaska Region’s decision to amend the Tongass National Forest Plan as stated in the Tongass National Forest Land and Resource Management Plan Amendment (“Revised Forest Plan”), Final Environmental Impact Statement (“EIS”), and Record of Decision (“ROD”) (collectively the “Tongass Decision”). The ROD was signed by Dennis E. Bschor, Regional Forester, on January 23, 2008.

**APPELLANT’S INTEREST**

The AFA is one of the oldest trade associations in the State of Alaska and represents more than 120 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

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<sup>1</sup> The AFA’s offices are located at 111 Stedman Street, Suite 200, Ketchikan, Alaska, 99901, telephone number 907.225.6114.

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and communities. The AFA is committed to ensuring a reliable and sustainable supply of forest products from the Tongass National Forest that supports a fully-integrated industry. It has participated at every opportunity throughout the process that led to the challenged Tongass Decision because the fate of the Alaska timber industry literally hangs in the balance, a fact the Forest Service does not dispute. See ROD at 17 (acknowledging that if the Tongass Decision is “inadequate to meet the needs of the timber industry over the next 10-15 years, the industry simply will not be around for corrections to be made during the next Plan revision.”). The management of lands on the Tongass National Forest ultimately will dictate 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.

In addition to this appeal, the AFA joins in, and incorporates herein by reference, the appeal filed by the Southeast Conference, the Ketchikan Gateway Borough and a coalition of local Alaskan cities (“Southeast Conference Appeal”). The AFA particularly incorporates the Southeast Conference Appeal’s Attachments 1-3, 8-10, 12-17 and 19, which are identified more specifically on the exhibit list accompanying this filing.

#### **STATEMENT OF REASONS FOR OBJECTING**

1. **The Tongass Decision fails to seek to provide a supply of timber that meets market demand in violation of the Tongass Timber Reform Act, the National Forest Management Act and the National Environmental Policy Act.**

The AFA’s fundamental objection to the Tongass Decision is that it falls far short of 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 Tongass Decision is deficient both substantively and procedurally in violation of the Tongass Timber Reform Act (“TTRA”), 16 U.S.C. § 539d, the National Forest Management Act (“NFMA”), 16 U.S.C. § 1600 et seq., and the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et seq. (“NEPA”). All of these statutes are made actionable under the Administrative Procedures Act (“APA”), 5 U.S.C. § 701 et seq.

A. **The Tongass Decision does not reconcile the need to offer financially feasible timber sales with the TTRA’s mandate to ensure that timber sale offerings reflect market demand.**

Under the TTRA, the Forest Service must seek to provide a supply of timber from the Tongass National Forest 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

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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 National Forest – including “recreation, environmental protection, and timber harvest” – without elevating any one leg of “this tripod balance” above the others. NRDC, 421 F.3d at 808-09, 809 n.22. At the same time, the Tongass National Forest is prohibited by Congress from offering deficit timber sales.<sup>2</sup> See Consolidated Appropriation Act, 2008, Pub. L. No. 110-161, § 410, 121 Stat. 1844 (2007) (stating that “[n]o timber sale in Region 10 shall be advertised if the indicated rate is deficit when appraised using a residual value approach that assigns domestic Alaska values for western redcedar”). Given these Congressional mandates, it necessarily follows that the Forest Service must consider and disclose timber sale economics in its analysis of timber demand and the manner in which the agency plans to meet that demand. This is so despite the fact that the TTRA relaxes the requirement for consideration of economics during the suitable lands identification process. 16 U.S.C. § 539d(d).

There is a difference between the TTRA provision that economics need not be considered in identifying lands unsuited for timber production on the one hand, and the TTRA requirement on the other hand that the Secretary shall seek to provide a supply of timber to meet market demand from those lands identified as suitable for timber production. Section 539d(d) of the TTRA cannot be read in such a way that it nullifies the requirements of TTRA section 539d(a). See, e.g., Reiter v. Sonoton Corp., 442 U.S. 330, 339 (1979) (“In construing a statute we are obliged to give effect, if possible, to every word Congress used.”).<sup>3</sup> Indeed, the legislative history of the TTRA indicates that section 539d(d) was merely “designed to give the Forest Service some flexibility in harvesting marginal timber stands.” S. REP. NO. 101-261 (1990), as reprinted in 1990 U.S.C.C.A.N. 6232, 6238. In fact, the Conference Report emphasized that the economic exemption was applicable only to the determination of lands not suitable for timber production under NFMA Section 6(k) and that the Conferees “fully expect that the Forest Service will meet all other requirements of NFMA and other applicable law relating to the consideration of economic factors in land management planning for the Tongass.” H.R. REP. NO. 101-931 (Conf. Rep. 1990), as reprinted in 1990 U.S.C.C.A.N. 6267, 6268.

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<sup>2</sup> A deficit sale is a timber sale in which the appraised value of the timber, including a margin for profit and risk, is less than the cost of harvesting the timber.

<sup>3</sup> The Revised Forest Plan is not assessing just any supply of timber, but rather a supply of timber that will “meet” market demand. The definition of meet means to achieve, to provide for, or “[t]o satisfy (e.g., a need).” WEBSTER’S II NEW COLLEGE DICTIONARY 681 (1995).

Inexplicably, the Forest Service failed to consider the financial feasibility of timber sales in assessing whether the Tongass Decision's Allowable Sale Quantity ("ASQ") of 2.67 billion board feet per decade, or 267 mmbf on average annually from suitable lands, would supply the volume needed to meet market demand.<sup>4</sup> According to the Forest Service, even though timber sale economics "is an important consideration in determining whether lands should be harvested," assessing sale economics is "difficult to meaningfully assess" over the 10-15 year life of a forest plan. EIS 3-346. The Forest Service thus ignored this crucial factor, relegating its consideration to future timber sale-specific analysis. As a result, the Tongass Decision's determination of how much timber can be supplied from the suitable land base annually and during this current planning cycle does not reflect the reality of whether enough timber can be supplied to meet demand.

Because the Forest Service failed to consider the financial feasibility of selling and operating timber sales in the analysis on which the Tongass Decision is based, the AFA did so and provided the Forest Service with the resulting information. Specifically, the AFA hired Cascade Appraisal Services, Inc. ("Cascade Appraisal") to assist in the analysis by: (1) reviewing and refining your contractor Tetra Tech's Value Comparison Unit ("VCU") analysis, which Tetra Tech provided after the comment period on the draft EIS had closed;<sup>5</sup> and (2) appraising the timber in a sampling of VCUs to determine whether they would support financially feasible timber sales. The results are disheartening, do not bode well for the future of the timber industry in Alaska, and demonstrate that the Tongass Decision is not supported by the evidence before the agency.

Enclosed as Exhibits A and B are two versions of the Tetra Tech VCU analysis that differ only in whether they include all suitable lands, as opposed to the Phase 1 subset of

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<sup>4</sup> As discussed herein, see infra, the Forest Service's Timber Sale Program Adaptive Management Strategy effectively reduced the suitable land base and adopted a lower ASQ – an ASQ associated with EIS Alternative 2, ROD at 40 – for the foreseeable future by relegating current timber sales to Phase 1 lands. Regardless, for purposes of this discussion, it is assumed that the ASQ is 267 mmbf on average each year and that the suitable land base is as stated in the Forest Plan, i.e. about 663,000 acres. Revised Forest Plan, Appendix A, A-1.

<sup>5</sup> The omission from the draft and final EIS of the Tetra Tech analysis regarding the ability of the Forest Service to supply timber from the suitable land base to meet market demand violates NEPA, the TTRA and NFMA because such an analysis is essential to informed public comment and informed decisionmaking and central to the question that must be addressed in the environmental documents as to whether the Revised Forest Plan can meet timber demand.