



Via e-mail: appeals-chief@fs.fed.us

Abigail Kimball, Chief
USDA Forest Service
Attn: Appeals
Ecosystem Management Coordination
Yates Building, 3CEN
201 14th Street, SW
Washington, DC 20250

May 13, 2007

Notice of Appeal Pursuant to 36 CFR 217;
Tongass Land Management Plan, Record of Decision and Final EIS

Dear Chief Kimball:

Kootznoowoo, Inc. in its capacity as Angoon, Alaska's Alaska Native Claims Settlement Act (ANCSA) corporation with the rights and responsibilities so conferred by Congress as amended by the Alaska National Interest Lands Conservation Act (ANILCA) and under its status as a federally recognized tribe files this letter as its appeal under US Forest Service regulation 36 CFR 217. This appeal is timely filed and provides the Chief the basis for changes in the recently published Record of Decision for the Tongass Land and Resource Management Plan Amendment (Plan) and the Final EIS published February 15, 2008. Reference is made to our comments to the TLMP under cover letter of April 30, 2007, which are hereby fully incorporated in this appeal and which are included in this email.

General Basis of Appeal

The Plan, the Record of Decision and the EIS do not adequately describe the socio-economic consequences of past plans and management actions associated with the Tongass and are insufficient to support an adequate Plan of the Tongass. The region's population decline and faltering economy as defined by levels of prosperity and quality of life among citizens and communities of the region were not adequately addressed by the Forest Service. Energy resources were not adequately analyzed in the Tongass and entirely missing from the analysis as was the cost disparity, racial composition and employment rates by community that would otherwise identify planning Needs and Goals. No complete analysis of timber markets and production can be done without understanding energy costs and their effects.

Dr. Walter Soboleff, an esteemed shareholder of Kootznoowoo, has eloquently described the regions decline in a "My Turn" Column published on Tuesday, April 8, 2008 in the

Juneau Empire. A copy of this article is attached and is incorporated herein for purposes of describing the lack of socio-economic perspective offered in the Plan.

Most, if not all, of Southeast Alaska's communities have been adversely impacted by the lack of access to the forest resources that surround them. These resources not only include Timber but also affordable energy and customary and traditional resources which the Forest Service considers Subsistence Resources. The goal of a vertically integrated Forest Products industry cannot be accomplished in an unpredictable regulatory environment that lacks abundant affordable energy, which is available in the Tongass and which has been studied for decades by the Forest Service.

The Tongass needs a realistic plan that recognizes multiple uses including timber, mining, energy production, recreation and tourism and that plan must provide for the all such uses and recognize that access to affordable power and access to markets is key to the regions economic health. The plan must provide the legal, policy and procedural foundation to attract long-term investment capital. Unpredictable and costly energy is a barrier to attracting investment capital. Kootznoowoo's substantial investment in land and resources resulting from ANCSA and ANILCA is only valuable if the Forest Service maintains the government's part of the bargain and produces a plan that fully addresses socio-economic and quality of life issue which it has not done.

The Southeast Alaska population declines; coupled with increased levels of unemployment and a reduction in quality-of-life values; and the lack of access to private or alternative natural resources is inextricably coupled to the fact that a preponderance (96 %) of government lands and resources surround most communities and completely surround Kootznoowoo's holding in Angoon.

Kootznoowoo understands that making planning decisions is hard work. When forced to look at alternatives as the Forest Service is required to the level of difficulty increases exponentially and we are therefore focusing our appeal to three considerations – 1) Planning associated with Admiralty Island and the Angoon area, 2) forest wide utility and energy corridors and 3) environmental justice with respect to disparate impacts of the Plan on Native rural communities in the Tongass.

However, decisions that are made without adequate information or without analysis are arbitrary and capricious. This is not permissible and must be remedied. The following specific examples of Plan make the case to gather additional information and amend the existing document to provide the Tongass the written documentation necessary to achieve its goals as well as the goals of the individual and community stakeholders going forward.

A. Angoon area Corridors, Environs and Wild and Scenic River Designation

Whether by accident or by plan, the provisions of ANILCA Section 506 that in part governs the management of lands and corridors in the vicinity of Angoon are appropriate highlighted and analyzed in the Plan. Planning maps which in the past have depicted

these areas (e.g. corridors Sec. 506 (a)(3) (C) and (E) have been modified to eliminate them. We request that all areas outlined in Sec. 506 be clearly depicted on the alternative Maps and the Final Map that make up the Record of Decision. Important property rights that inure to the benefit of Kootznoowoo and its Shareholders are possibly damaged by the Forest Service failure to depict these areas. Kootznoowoo recognizes that the hydro reserve is depicted for the first time on the Plan maps but the full boundary is not shown. This is inconsistent with the other areas shown on Admiralty. We specifically request that the Environs showing the drainage of Mitchell Bay, Kanalku Bay and Favorite Bay be clearly depicted as well as the corridors that have been conveyed to Kootznoowoo around these same bays.

The Final EIS (Environment and Effects 3) indicates that the "Wild and Scenic River" designations for the Admiralty Lakes is fully contained within the Wilderness designation and may be redundant but that no plans for declassifying these areas were being made at this time. Given the levels of complexity and management decision making currently affecting the Angoon area and the importance of clarifying these to minimize unnecessary conflicts and maximize positive interactions we request that all redundant provisions and extraneous provisions be resolved in the context of the Section 506 provisions as well as by recognizing the significant private in holdings in the area which are not shown on any map (e.g. native allotments awarded.)

The decision to add to the complexity of managing a potential visitor gateway to the Kootznoowoo Wilderness without recognizing the current economic reality and potential value of planning for such a need is a disservice to the public, to Kootznoowoo and Angoon. More importantly, without a proper set of facts these actions are arbitrary and capricious by not recognizing Kootznoowoo's role as an economic engine to the community of Angoon. It is also poor planning and violates the paramount Forest Service Policy of creating wealth in affected communities (See President Roosevelt's quote in Dr. Soboleff's essay which is attached).

In addition, Kootznoowoo estimates that approximately 8,000 acres of land in the immediate environs of Angoon and many more acres of water resources are affected by the Plans limited view of Kootznoowoo's 506 ANILCA provisions. Kootznoowoo has requested that a management agreement be implemented in accordance with the Tongass Plan and has included a Draft in the comments cited above. By not recognizing the area as unique and of value to Kootznoowoo the Forest Service has effectively taken the land and withdrawn these lands in violation of law. ANILCA Section 1326 states:

“(a) No future executive branch action which withdraws more than five thousand acres, in the aggregate, of public lands within the State of Alaska shall be effective except by compliance with this subsection. To the extent authorized by existing law, the President or the Secretary may withdraw public lands in the State of Alaska exceeding five thousand acres in the aggregate, which withdrawal shall not become effective until notice is provided in the Federal Register and to both Houses of Congress. Such withdrawal shall terminate unless Congress passes a joint resolution

of approval within one year after the notice of such withdrawal has been submitted to Congress.”

By effectively withdrawing these lands and fully classifying as “Wilderness” for purposes of all analysis under the Plan and its supporting documents the Forest Service is overstated true “Wilderness” throughout its analysis and at the same time isolating a valuable community to the region as well as trammeling on Kootznoowoo’s property rights. Importantly, the Forest Service has effectively violated Section 1326 of ANILCA that is also referred to as the “no more withdrawal” clause of that Act by failing to fully describe or otherwise “downplaying” these important buffer areas to Angoon and the Tongass.

B. Energy and transportation corridors

Kootznoowoo provided extensive corridor recommendation in its comments which relate to potential corridors across and around both Admiralty Island and across and around the southeast portion of Prince of Wales Island. Kootznoowoo believes these corridors are of significant value to the Tongass and the Southeast Region. Kootznoowoo’s analysis on the Admiralty corridor alternatives indicate and economic savings in excess of \$100,000,000 when compared to the existing corridors.

Notwithstanding applicable Executive Orders, Congressional statutory requirements and good planning precepts the Forest Service and the Plan ignored these corridor recommendations by Kootznoowoo. Indeed, corridor requests by the State of Alaska and others were in some cases adopted and in some cases not adopted without explanation, guidance or judgment about impacts to existing conditions.

Important to this discussion is the fact that ANILCA prescribes a specific method under Title 11 for addressing this important planning issue that is ignored by the Forest Service in the Plan and its supporting documents. No analysis of costs and benefits for alternative transportation and utility corridors was provided. The lack of facts to base the prescribed utility corridors and transportation corridors of the Plan is both arbitrary and capricious particularly given the fact that the Tongass planning team has a unique history of land information to draw upon given its history in planning for an electrical Intertie through the region. The lack of meaningful analysis and willingness to provide information on the utility of these corridors from a resource standpoint is difficult to understand. The National Forest Management Act of 1976 (P.L. 94-588) requires that planning and plan revisions assure that the Secretary ... shall assure that such plans ... provide for multiple use and sustained yield of the products and services and that in particular, include coordination of outdoor, recreation, range, timber, watershed, wildlife and fish and wilderness.” (16 USC 1604 (e)) Without recognizing energy in this mix the plan fails to address the “multiple use and sustained yield” provisions of law.

Congress provides specific guidance in this regard. Section 368 of the Energy Policy Act of 2005 requires the Secretary of Agriculture, the Secretary of Agriculture and the Secretary of Energy in consultation with the Federal Energy Regulatory Commission and interested members of the public and tribes to plan and design corridors for the transportation of energy including electricity by 2009 (Pub. L. 109-58, sec. 368.) In the face of such legislation it appears as if the Plan is an attempt to shortcut the intent of the Energy Policy Act cited above.

Kootznoowoo's energy and transportation (road corridors on Admiralty to FAA planned airport, coal mine and other in holdings) comments were not addressed adequately nor was the process to utilize the provisions of Title 11 of ANILCA to lawfully plan for such a need. Kootznoowoo believes lawful planning requires a complete analysis to be done by the Forest Service as prescribed by its own land management planning process (see FHS 1909.12 Land Management Planning Handbook at Chapter 10 under Land Management Plan 13.13d entitled Minerals and 13.13g entitle Land Use and Special Use.) Both Angoon and the Nation is in an energy crises, and the opportunity to address this need was avoided by Forest Service planners and managers as was the opportunity to describe an important untapped resource namely abundant energy that is "green, clean and renewable" in a region desperate for a diversified economic base (another fact missing from all plan documents.)

We urge that this appeal opportunity be utilized by the service to remedy this defect and flaw in planning for the Tongass and that at a minimum the impact to the Forest be put in terms of net present value of alternative transportation and utility corridors to the Tongass, the Region and the Nation. This analysis should include as an alternative the corridors prescribed by Kootznoowoo, Inc.

C. Environmental Justice. The Plan disproportionately impacts in a negative manner communities in the Tongass that are primarily rural and Native in population such as Angoon.

As stated earlier the Tongass comprises nearly 93% of the lands of Southeast Alaska and which is under the management of the Forest Service. The Tongass was intended to be managed in a way to create wealth and security for the communities within the Tongass and for the United States. The Plan and the supporting documents failed to adequately describe and accurately describe the economic condition of the region for planning purposes¹. Actually unemployment numbers are in excess of 90% and actual household income for Angoon is much less than cited in the Plan. The Plan does not provide a means of growing and maintaining a vibrant economy in Southeast, Alaska and fails to recognize that rural communities of Southeast, which have a majority Native population have a much higher than average unemployment rate which Kootznoowoo and others

¹ The Individual Community Assessments portion of the Final EIS state that "Approximately 13 percent of the labor force in Angoon was identified as unemployed and seeking work in 2000, compared to 7 percent for Southeast Alaska as a whole. Median household income was \$29,861, compared to a regional median of \$44,118 (Alaska DCED 2002.)

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calculate to be in excess of 60% in the region and nearly 90% in Angoon and that these rural communities are disproportionately impacted by the management prescriptions and policy implications associated with the Plan particularly in the area of access to affordable energy, ability to access and utilize natural resources surrounding them including those of a customary and traditional nature.

In addition to address fully the socio economic condition of the region and the Tongass, the plan should fully exploring the implications associated with 95% unemployment rates. Nowhere in the plan does the Forest Service analyze or state that energy costs are nearly 5 times higher for rural residences and 10 times higher for rural businesses compared to more urban communities in the region. Such disparity needs to be stated, understood and planned for and addressed.

Please find attached a letter sent recently to the Rural Utility Service of the USDA describing the inaccuracy of critical economic information relative to Angoon that is also cited in the Final EIS. Such a failure of planning gives rise to a plan that violates basic notions of fairness among communities, individuals and races in violation of the Equal Protection Clause of the Constitution of the United States and the and the USDA's prohibition against discrimination.

Kootznoowoo is recognized as by the Federal Government as the ANCSA for Angoon a community that is significantly affected by the Plan in such a way. We respectfully request that the Forest Service remedy this deficiency in the Plan immediately by planning and providing fully for a multiple use Forest which hallmarks, clean energy production, tourism, mining, a unique set of communities that have existed for thousands of years and a fully integrated timber industry which includes a role for all communities in the Tongass.

In closing we would like to acknowledge receipt of John Sandor's letter to you dated May 14, 2008 and by this reference incorporate and support his comments and suggested remedies to the Plan as part of Kootznoowoo's appeal to you.

Sincerely Yours,

Peter Naoroz
President and General Manager

Matthew A. Kookesh, Chairman
Forrest Cole, Forest Supervisor
Lee Kramer, Plan Amendment Project Manager
John Sandor