United States Department of Agriculture | Forest Service | Alaska Region | P.O. Box 21628 Juneau, AK 99802-1628

**File Code:** 1570 **Date:** June 9, 2011

**Subject:** Central Kupreanof Timber Harvest Appeal Recommendation

**To:** Appeal Deciding Officer

This is my recommendation, as the Appeal Reviewing Officer, on the action you should take, as Appeal Deciding Officer, on the State of Alaska's appeal of the Central Kupreanof Timber Harvest project on the Petersburg Ranger District.

The decision being appealed is the Record of Decision (ROD) signed by the Tongass National Forest Supervisor, Forrest Cole, for the Central Kupreanof Timber Harvest project, which is located on Kupreanof Island, about 30 air miles northwest of Petersburg, Alaska. The Selected Alternative would allow the harvest of approximately 26 million board feet (MMBF) of timber, the construction of approximately 1.83 miles of new National Forest System (NFS) road and 2.3 miles of temporary road, and the reconstruction of about 2.8 miles of existing road. The proposed activities do not affect inventoried roadless areas.

The planning process for the Central Kupreanof project began with the publication of the Notice of Intent to prepare an Environmental Impact Statement (EIS) in the Federal Register on December 27, 2006. The Notice of Availability for the Draft EIS was published in the Federal Register on December 18, 2008, which began a 45-day comment period that ended on February 2, 2009. The ROD was signed on February 4, 2011, and the 45-day appeal period ended April 25, 2011. The State of Alaska and Greenpeace, along with other conservation organizations, appealed the ROD. Both appellants have standing to appeal the decision as they submitted comments during the 45-day comment period on the Draft EIS, and both appeals were submitted within the appeal period.

This letter constitutes my review of the State of Alaska's appeal, and was conducted pursuant to 36 CFR § 215. I will respond to the appeal filed by Greenpeace, et al. in a separate response. In considering the State's appeal, I have carefully reviewed the appeal and planning records and the objections raised by the State. The Petersburg Ranger District office prepared indices of the documentation supporting the Forest Supervisor's decision, which are keyed to specific points raised by the appellant. My recommendation hereby incorporates the entire appeal record.

The State raised several interrelated issues in its appeal of the Central Kupreanof project. While this letter may not specifically address each issue, I have carefully reviewed all of the issues and believe that they are adequately addressed in the following discussions.

The State's main concern is that the Forest Service "drastically reduced the volume of timber available for sale" in the decision on the project, and they believe this is the result of the "implementation" of the Transition Framework. They also apparently believe that the Forest Service has violated the Tongass Timber Reform Act (TTRA) by failing to authorize a higher volume of timber in the decision on the Central Kupreanof project, and that this in turn makes the project inconsistent with the Tongass Forest Plan, constituting a violation of the National Forest Management Act (NFMA). I disagree with all of the State's assertions.

To begin with, I believe the State misconstrues the Forest Supervisor's intent in his statement that he has "incorporated the goals and objectives associated with the Transition Framework" (February 4, 2011 cover letter for Central Kupreanof ROD; see also ROD, pp. 1, 5). The Forest Service has not "implemented" any kind of formal decision on the Transition Framework that constrains management of the Forest in any way, as the State suggests. As the State correctly points out, the Transition Framework is a "work in progress". Therefore, I believe the State's assertions regarding whether the "Transition Framework" is consistent with NEPA, NFMA, and TTRA are premature.

What is clear in the Central Kupreanof ROD, FEIS, and project record, and in all documentation regarding the Transition Framework, is that the United States Department of Agriculture (USDA) and the Forest Service have a common goal for the Tongass National Forest and the communities of Southeast Alaska, and I assume the State would also share in this goal. As stated repeatedly in the correspondence from USDA and the Forest Service with regard to the Transition Framework, "[o]ur overarching goal is to work with members of the communities to create jobs in Southeast Alaska" (see, for example, your May 24, 2010 letter to the Members of the Tongass Futures Roundtable).

True, the "vision" for the future management of the Tongass National Forest described in the documentation relating to the Transition Framework includes "transitioning from timber harvesting in roadless areas and old-growth forests to long-term stewardship contracts and young growth management" (Id.). However, it is just that - a vision - and the overarching goal of "providing jobs and community economic stability" will drive our continued review and analysis of this "propose[d] new approach to forest management on the [Tongass]" (see May 26, 2010 news release, USDA Forest Service, Alaska Region).

It is apparent in the Central Kupreanof ROD that the Forest Supervisor considered the goals of job creation and community economic stability in making his decision on the project:

> I have incorporated the USDA goals and objectives associated with the Transition Framework… into this decision… Components… include renewable energy, forest

> restoration and young growth management, fisheries and mariculture, tourism and recreation, and subsistence, while sustaining a viable timber economy.
>
> I considered the needs of the community of Kake and the opportunity to potentially provide some economic benefits with this project. … This decision incorporates timber opportunities, forest restoration projects, recreation enhancement projects and the opportunity to pursue implementing these projects through stewardship contracts. These projects have the purpose of resource restoration and protection, Forest user benefits, and providing job opportunities for the community of Kake.

(Central Kupreanof ROD, p. 5; see also ROD, pp. 3-4 for a specific listing of projects the Forest Supervisor decided to implement as part of the Central Kupreanof project in his "consideration of the economic opportunities for Kake…"). These actions are not only consistent with the goals envisioned by the Transition Framework mentioned by the Forest Supervisor, but are also entirely consistent with the goals and objectives for the Tongass Forest Plan (see, for example, Forest Plan, p. 2-5, Goals and Objectives for Local and Regional Economies).

It is also apparent that the Forest Supervisor considered the need to "provid[e] economical timber sale offerings and the need to [seek to] meet annual market demand for timber" (ROD, p. 5; see also ROD, pp. 1-3, 6, 8, 21). The State apparently believes that by "implementing" the Transition Framework, the Forest Supervisor "drastically reduced the volume of timber available for sale." It is clear in the ROD (and project record) that this is simply not true. While the Forest Supervisor did drop numerous units from Alternative 3 (as originally displayed in the Draft and Final EISs for the project), the vast majority of these units (and associated roads) were dropped or modified by the Selected Alternative to improve timber sale economics, as is apparent in the following discussions:

> The following modifications were made to Alternative 3 in creating the Selected Alternative:
>
> Economic efficiency and flexibility were increased by including harvest units that meet the needs of a variety of operators. Included are all harvest units within the project area that are closest to the community of Kake, and adjacent to the existing Kake road system… eliminating the need for more expensive helicopter logging systems. Portions of units specifically requiring a helicopter were also dropped… .
>
> The following units were ranked as the least economical at this time… and dropped to improve the overall economics of the project. Several factors including the high cost of road building to access some units, the need for a helicopter logging system, and long haul distances attributed to the low ranking… .

> Due to the high cost of road building, those units, or portions of units, requiring extensive new NFS road construction for access were dropped.

(Central Kupreanof ROD, pp. 2-3). The other units that were removed or modified in the Selected Alternative include those dropped in response to public comments and concerns about the headwaters of the Castle River watershed, and those modified by changing the prescription from clearcut (even aged) to clearcut with reserves (30 percent retention) or a two-aged prescription to retain stand structure for wildlife, reduce visual impacts, and ensure habitat connectivity (which also improved timber sale economics through the retention of lower value trees in those units) (ROD, p. 2). Table R-1 in the ROD indicates that dropping these units and/or modifying the amount of retention in some units greatly improved the economics of the Selected Alternative. While the Selected Alternative remains negative (- $51.17 per MBF), it is more economical than Alternative 3 (- $116.63) and the other action alternatives considered for the project (ROD, p. 27). In my opinion, these modifications in the Selected Alternative are entirely consistent with current direction in the Tongass Forest Plan, including the goals and objectives for the timber resource (Forest Plan, p. 2-7) and the management prescriptions for lands that fall under the "Timber Production" land use designation (Id., pp. 3-116 to 3-121).

Contrary to the State's assertions, the Forest Supervisor's Selected Alternative (Alternative 3, with the modifications described above) is entirely consistent with the TTRA's "seek to meet" provision regarding market demand for timber from the Tongass National Forest as well. Section 101 of TTRA states:

> Subject to appropriations, other applicable law, and the requirements of [NFMA]… , the Secretary shall, to the extent consistent with providing for the multiple use and sustained yield of all renewable forest resources, seek to provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber from such forest and (2) meets the market demand from such forest for each planning cycle.

In compliance with this direction, the Tongass National Forest continuously seeks to build and maintain a supply of NEPA-cleared timber volume from which economical timber sales can be offered. This NEPA-cleared timber volume is derived from many projects. From the start of the timber sale preparation process to the actual sale of timber from any given project area takes several years, and this process occurs in stages (or "gates"). The first stage (Gate 1) involves the completion of a "Position Statement," a brief analysis of the project area with the intent of determining the feasibility of the potential timber sale. Gate 2 entails gathering public comment and conducting environmental analysis in accordance with the NEPA. The remaining gates are plan implementation and field layout (Gate 3), sale appraisal and advertisement (Gate 4), bid opening (Gate 5), and sale award (Gate 6). The NEPA process in Gate 2 comprises the bulk of

work devoted by the Forest Service to a timber harvest project, and ends with a signed NEPA document. The volume cleared by a NEPA decision is often broken up into separate sales of various sizes and configurations, and a single NEPA decision (such as the Central Kupreanof ROD) is not intended to supply all of the timber offered from the Tongass in any given year. Although the ROD for the Central Kupreanof project was signed in 2011, the volume may not actually be sold until years later. As stated in the ROD, "[o]nce cleared by this decision, units from the Selected Alternative may be packaged and sold to a variety of different operators locally and throughout Southeast Alaska, depending on the *market* and *demand* at the time of purchase" (emphasis added) (ROD, p. 8).

The annual market demand for timber is calculated each year, and represents a short-term goal for the Tongass timber sale program (ie., a guideline for the amount of volume the Forest Service plans to offer from the shelf volume available in Gate 3 (described above) for sale that year, pending market conditions, economics, and sufficient funding). The annual demand projections for Tongass timber acknowledge that: 1) forest products markets are volatile, particularly in the short run; 2) it takes years to prepare a timber sale; 3) it is difficult to estimate demand for timber from the Tongass; and 4) the industry must be able to respond rapidly to changing market conditions to remain competitive. Accordingly, the annual demand projections consider factors such as mill capacity and utilization, the amount of timber currently under contract to timber operators, and annual harvest levels. The "goal" of the annual market demand projection is to replace the volume harvested from year to year and build or maintain a 2-3 year supply of timber under contract to operators to allow the industry to respond promptly to market fluctuations. The Tongass responds to this goal and "seeks to meet" market demand for timber in any given year by offering timber sales from the shelf volume available in Gate 3. Having NEPA-cleared volume available in a variety of project areas from which these timber sales can be developed is critical to the Forest Service's ability to seek to meet demand for timber on the Tongass.

As stated on page 5 of the Central Kupreanof ROD, the Forest Supervisor:

> … considered the need to manage this timber resource on the Tongass in order to produce an even-flow of saw timber and other wood products. Appendix A of the Central Kupreanof Timber Harvest FEIS, as updated in Appendix 3, describes the process that maintains a steady supply of timber and how each project goes through a series of steps before timber can be offered from the National Forest. I considered the concerns for providing economical timber sale offerings and the need to meet annual demand for timber. This decision provides about 26.3 MMBF of timber volume for the Southeast Alaska timber industry.

Providing a range of various-sized, economical timber offerings is an important part of the process the Forest Service follows in its efforts to seek to meet market demand, and in my opinion, the volume cleared in the Selected Alternative for the Central Kupreanof

project will provide sufficient flexibility to package and sell a range of economical timber offerings to a variety of different timber operators near Kake and throughout Southeast Alaska in the years to come.

**RECOMMENDATION:**

In my opinion, the analysis in the Central Kupreanof ROD, EIS and project record is sufficient to support the Forest Supervisor's decision with respect to the issues raised in the State's appeal, and the decision is consistent with all applicable law and the direction in the Tongass Forest Plan regarding management of the timber resource. Therefore, I recommend that you affirm the Forest Supervisor's decision.

Ruth M. Monahan

RUTH MONAHAN
Appeal Reviewing Officer

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**File Code:** 1570
**Date:** June 9, 2011

Mr. Thomas E. Lenhart
Assistant Attorney General
Dimond Courthouse
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Dear Mr. Lenhart:

Pursuant to 36 CFR § 215.18, I have reviewed the administrative record for the Central Kupreanof Timber Harvest Final Environmental Impact Statement (FEIS) and Record of Decision (ROD). The Tongass Forest Supervisor signed the ROD. I have also considered the Appeal Reviewing Officer's (ARO) recommendation (enclosed) regarding the disposition of your appeal (11-10-00-0002 A215). The ARO recommended that the Forest Supervisor's decision be affirmed.

**Decision**

After careful review of all the information in the record, I concur with the ARO's recommendation and I affirm the Forest Supervisor's decision. The requested relief is denied.

My decision incorporates, by reference, the entire administrative record, which includes the appeal and project planning records, and constitutes the final administrative decision of the Department of Agriculture (36 CFR § 215.18(c)). Pursuant to 36 CFR § 215.9(b), the ROD may be implemented 15 business days following the date of this decision.

Sincerely,

*/s/ Beth G. Pendleton*
BETH G. PENDLETON
Regional Forester

Enclosure

cc: Forrest Cole
Christopher S Savage
Patrick Heuer
Robin Dale