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NOTICE OF INTENT TO SUE

Addressed to:

Governor Mitch Daniels
Office of the Governor
Statehouse
Indianapolis, IN 46204-2797

Attorney General Steve Carter
Office of Indiana Attorney General
Indiana Government Center South
302 W. Washington St.
Indianapolis, IN 46204

Thomas W. Easterly, Commissioner
Indiana Department of Environmental Management
Indiana Government Center-North
100 N. Senate Ave.
Indianapolis, IN 46204

Kyle Hupfer, Director of DNR
Department of Natural Resources
402 West Washington Street
Indianapolis, IN 46204

John Seifert, State Forester
Indiana Department of Natural Resources
Division of Forestry
402 West Washington Street Room W296
Indianapolis, IN 46204-2739

Dear Sirs,

Pursuant to the Indiana Environmental Policy Act (IEPA), Indiana Code section 13-12-4-1 et seq., the Indiana Administrative Orders and Procedures Act, Indiana Code section 4-21.5-1 et seq., and Indiana Environmental Protection Act, Indiana Code section 13-30-1 et seq. and specifically Indiana Code 13-30-1-2, NOTICE is hereby given that the Indiana Forest Alliance intends to bring suit against Governor Daniels, DNR Director Hupfer and the DNR under the above named laws to require compliance with Indiana law and to enjoin the imminent and significant destruction and impairment of Indiana State Forests and the resulting pollution and impairment of Indiana water bodies that will result from the Governor's and DNR Director's new plan to quadruple the amount of logging in the Indiana State Forests. These violations of law and this destruction, impairment and pollution of Indiana's environment are on-going and threaten to continue into the indefinite future.

This suit is also brought to require the State of Indiana to provide for meaningful public participation in State decision-making regarding major State actions significantly impacting the quality of the environment of the citizens of Indiana, such as the new State Forestry Strategic Plan. This suit is also brought to require the State to prepare site specific Environmental Impact Statements (EIS) to assess the adverse impacts from and alternatives to such actions.

IEPA, Indiana Code (IC) Section 13-12-4-1 et seq. requires all state agencies to include in every recommendation or report on proposals for legislation and other major state actions significantly affecting the quality of the human environment a detailed

statement by the responsible official on the environmental impact of the proposed action; adverse environmental effects that cannot be avoided; alternatives to the proposed action; the relationship between local short term uses of the environment and the maintenance and enhancement of long-term productivity; and any irreversible and irretrievable commitments of resources that would be involved. Before making the detailed statement (the EIS), the responsible state official must consult with and obtain the comments of each state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, and copies of the statement and the comments and views of the appropriate federal, state, and local agencies must be made available to the governor and to the public and must accompany the proposal through the agency review processes.

The DNR has failed to comply with these Indiana law requirements. The DNR has failed to adequately assess the adverse environmental impacts of this dramatic increase in logging of the State Forests. The DNR has failed to adequately consider significant adverse impacts of such logging on water quality, rare and endangered animal and plant species including the Indiana Bat, migratory birds and forest health. The DNR has also ignored the great educational, recreational, and aesthetic value of the State Forests for the public and the adverse impacts of the Governor's new plan on these important public interests.

As Karyn Moskowitz, a forest economist, noted in an IFA letter delivered previously to the Department of Natural Resources: "There are numerous costs associated with logging in Indiana's State Forests. For example, standing forest amenities such as biodiversity, water quality, recreation and tourism, and air quality all suffer as a

result of the State Forest logging program. These amenities can be defined in terms of their value to Indiana citizens. There are also many different studies available that describe the economic value of wild mushrooms, medicinal plants, and other special forest products in Indiana's State Forests. We would like the Division of Forestry to outline these different amenities, and describe their full value to Indiana's citizens, as well as the costs to citizens when these values are lost due to the state logging program.”

Indiana law requires that the Governor and DNR ensure that unquantified environmental amenities and values be given appropriate consideration in decision making along with economic and technical considerations. Governor Daniels' new “strategic” forestry plan blatantly violates this legal obligation and the State in its public announcements has attempted to disguise the true nature of its actions.

Governor and DNR Director were not honest with the people of Indiana in announcing this new “strategic” forestry plan. The new plan to quadruple logging is a thinly disguised effort to raise money and has nothing to do with protecting the environment or improving the health of the State Forests. It is indicative of the Governor's and DNR Director's real motives that they were very selective in only approaching Purdue University scientists and the Nature Conservancy rather than involving a broader range of environmental groups and scientists. While those supporting the new State plan are entitled to their opinion, the Governor has a legal and ethical obligation to consider the views of all of the State's citizens, not just those who support what the Governor wishes to do. It is particularly disturbing that even though the Indiana Forest Alliance (IFA) is in the middle of a lawsuit against DNR over the DNR's failure to perform Environmental Impact Statements on its logging of the State Forests,

the Governor and DNR Director did not see fit to invite comment and input from IFA until after the new plan had been prepared and the decision was a fate accompli.

Perhaps Governor Daniels and DNR Director Hupfer are remembering a few years ago the Indiana University Center for Survey Research polled over 500 Hoosiers, chosen at random from across the state, for their “Indiana Poll.” One of the questions asked was, “In your opinion, should the Indiana Department of Natural Resources continue to allow commercial logging by private companies on Indiana's publicly owned state forests?” The results showed that a majority, 55.8% of respondents said “no,” that the DNR should not continue this policy, under any circumstances. Another 10.2% said that their opinion “depends” on various circumstances. With such a high percentage of a random cross-section of Hoosiers opposed to commercial logging on state forests, it may not be a big mystery why the Governor and DNR Director chose to exclude IFA and most other Hoosiers in their selective and limited public input process prior to announcing the new plan to quadruple logging in the State Forests.

The Governor’s and DNR’s avoidance of public comment and participation reflected in the new “strategic” forestry plan is reminiscent of the State’s efforts to avoid addressing the merits of IFA’s environmental concerns in the on-going lawsuit regarding the State’s failure to perform an EIS on the impacts of the State’s forest management activities including timber sales. In that lawsuit the DNR has had the audacity to argue to the court that IFA’s suit to require DNR to comply with Indiana law should be dismissed because IFA did not exhaust “administrative remedies” even though the DNR admitted that there were no administrative remedies to exhaust, and that the IFA suit should be dismissed because IFA had not filed with the court the State’s administrative record on

the challenged State actions even though the DNR admitted no such administrative record existed. The State also argued that IFA lacked standing to sue because in the DNR's view the government, not the people, owns the trees and wildlife. In short, the Governor and DNR appear to have forgotten that the jobs they hold exist only to serve the needs of all the people of Indiana, and that they are not above the law.

The Governor's new "strategic" forestry plan has several additional flaws. One of those flaws is the plan to do only "random" checking on whether the loggers followed Best Management Practices (BMP) during the harvest of the timber sold by the State. This will compound the existing problem with DNR practice which is to allow a sale to be "released" before a post-harvest BMP review is completed. This means that the company's bond is returned before someone goes out to the site and does a thorough inspection to ensure that the BMP were followed. The consequence is often that the marking forester is responsible for fixing any problems on the site, including those that the logging operation may have caused. This problem will be worsened by the new policy of limited oversight.

IFA has been formed to protect and promote the health and well-being of Indiana's forests and public lands, including the plant and animal species therein; to promote the health and well-being of other forests, native ecosystems, and human communities; to conduct and support research and other scientific inquiry; to publish and otherwise disseminate information to the public; and to serve the public interest. The Indiana Forest Alliance is a cooperative network of groups and individuals working to provide accurate information to the people of Indiana and to involve them in efforts to protect and restore Indiana's forests, hold corporations and government agencies

accountable for their actions, and establish sustainable economic and political models that will ensure the long term well-being of Indiana's forests. We believe there should be no further commercial, industrial exploitation of public lands. We support greatly reducing demand for wood and we promote responsible, sustainable, and profitable forest stewardship on private lands. One of IFA's priorities is to ensure that the current generation and its government honors its ethical obligation to preserve and protect our natural heritage for the benefit of our children, grandchildren and generations to come.

Worldwide endangered species become extinct daily as a result of logging practices, reducing biodiversity forever and eliminating forever a portion of our legacy to our children and grandchildren. The issues raised in the lawsuit noticed today goes to the heart of this worldwide catastrophe in the making. It is the government's job to protect public lands, wildlife and resources at this critical time in history and IFA intends to hold public officials accountable and not allow Governor Daniels and DNR Director Hupfer violate our environmental protection laws with impunity.

The plaintiff Indiana Forest Alliance may be contacted at the following address or via the undersigned attorney: Indiana Forest Alliance, P.O. Box 1074, Bloomington, IN 47402, 812-332-4878. If you are interested in discussing resolution of this matter including the immediate cessation of logging of Indiana State Forests under the Governor's and DNR's new State Forest "management" plan, please contact attorney Mick Harrison at the address and telephone number listed below.

Respectfully submitted,

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