ALASKA RAINFOREST DEFENDERS

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November 10, 2023

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Attn: Thomas Bay Young-Growth Timber Sale
Submitted electronically at:
https://cara.fs2c.usda.gov/Public//CommentInput?Project=60639

Mr. Sherman:

This letter is a formal objection to the Thomas Bay Young Growth Project Draft Decision Notice, Finding of No Significant Impact (FONSI) and Environmental Assessment (EA) pursuant to 36 C.F.R. § 218.8. The Responsible Official is Petersburg District Ranger Vernon Born who will implement the project in the Tongass National Forest's Petersburg Ranger District. The objection letter is submitted on behalf of Alaska Rainforest Defenders (Defenders). Defenders submitted timely comments on the draft EA on May 5, 2023, and is eligible to file an objection under 36 C.F.R. § 218.5.[1] The Forest Service published the legal notice for this project on September 28, 2023, initiating a 45 day objection filing period, and objectors submit this timely objection letter on November 13, 2023.[2]

The EA analyzed three action alternatives: (1) Alternative 2 would remove 19.3 million board feet of timber (MMBF) from 841 acres; (2) Alternative 3 would remove 12.6 MMBF from 561 acres and (3) Alternative 4 would remove 7.9 MMBF from 351 acres.[3] The Responsible Official's Selected Alternative authorizes the sale of 12.6 million board feet (MMBF) of timber from 561 acres of second growth forest and construction of 6.8 miles of temporary road.[4] The majority of the timber volume would come from 9 cutting units where there would be several clearcuts of up to 30

[1] US Forest Service NEPA Project Public Reading Room - View Letter (usda.gov) We also submitted timely scoping comments on September 17, 2021:
https://cara.fs2c.usda.gov/Public/Letter/2777658?project=60639

[2] https://www.fs.usda.gov/project/tongass/?project=60639.

[3] USDA Forest Service. 2023. Thomas Bay Young-Growth Timber Sale Environmental Assessment, Finding of No Significant Impact at 4, Table 2. Alaska Region, Tongass National Forest, Petersburg Ranger District. R10-MB-880b. September 2023 (hereinafter EA/FONSI).

[4] USDA Forest Service. 2023. Thomas Bay Young-Growth Timber Sale Draft Decision Notice at 1. Alaska Region, Tongass National Forest, Petersburg Ranger District. R10-MB-880b. September 2023 (hereinafter Draft DN).

acres in size placed in close proximity to each other.[5] The proposed action would adversely impact our members, who use the project area and surrounding environment for multiple use values.

Contents

I. Introduction

Our major concerns about this project pertain to adverse impacts to wildlife and loss of other ecosystem services resulting from short-rotation clearcut harvests for recovering second-growth forests. The new clearcuts will prevent recovering forests from achieving old-growth characteristics, and reduce long-term habitat values for wildlife by prolonging the stem exclusion phase of forest succession. Winter deer habitat and project area watersheds have already been highly impacted due to past industrial scale logging. Any additional impacts to remaining habitat, even if of lesser quality, will exacerbate an already bad situation for wildlife.

The EA failed to take a hard look at project impacts. Agencies that reach a Finding of No Significant Impact (FONSI) conclusion must still meet the National

[5] EA/FONSI, Appendix at 3-5, 7-9, 11-13, 15-17, 27-29, 37-39, 42-44, 46-48, 50, 52.

Environmental Policy Act's (NEPA) hard look requirement, consider relevant factors, and "provide[] a convincing statement of reasons to explain why a project's impacts are insignificant."[6] The EA failed this standard, in violation of NEPA. The FONSI is arbitrary because it relied on a flawed EA and failed to address substantial questions about significant adverse environmental impacts associated with the second-growth logging in the project area. The decision will violate NEPA unless an EIS is prepared.

II. OBJECTION POINT 1: Pertaining to a Broad Failure to Produce an EIS

Our scoping comments and comments on the draft EA explained that the environmental impacts caused by clearcutting large areas requires analysis in an EIS.[7] Alternative 2 would clearcut 841 acres – nearly thirty percent of the second growth in the project area - and remove 19.3 MMBF of timber.[8] Clearcuts would be as large as possible, up to 100 acres in size.[9] The selected alternative, Alternative 2, would remove 12.6 MMBF of timber in the near-term, mostly through clearcutting 519 acres through "patch clearcuts" of up to 30 acres in size.[10] Both alternatives 2 and 3 plan for additional clearcutting beginning two or three decades later. [11] Alternative 3 would take nearly 35 MMBF of timber from over 700 acres between 2054 and 2063.[12] Alternative 2 would clearcut 1,800 acres between initial project implementation and 2063, causing a "future deficiency" of mature second-growth forest within three decades.[13]

Clearcutting is a logging method that removes most or all trees in an area which can be as small as 2.5 acres.[14] It is a controversial and "destructive" form of forest management because of long-term, adverse environmental impacts that include habitat destruction, impacts to the water cycle, watershed degradation, climate change acceleration, loss of ecosystem services such as storm protection and air quality regulation, and impacts to recreation and landscape values.[15] Forest Service clearcutting of public lands has been controversial since the 1950s. After a federal court determined that the practice violated federal law in 1975, Congress enacted the National Forest Management Act which included a compromise that allowed for clearcutting only when specific criteria were met.[16]

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[6] *Bark et al. v. U.S. Forest Service,* 958 F.3d 865, 869 (9th Cir. 2020)(citations omitted)

[7] US Forest Service NEPA Project Public Reading Room - View Letter (usda.gov) https://cara.fs2c.usda.gov/Public/Letter/2777658?project=60639

[8] EA/FONSI at 24.

[9] *Id.* at 25.

[10] *Id.* at 26.

[11] *Id.* at 28, Table 4 & 29, Fig. 7.

[12] *Id.*

[13] *Id.* at 24.

[14] What is Clearcutting? | Glossary | Resource Center (buschsystems.com); Clearcutting - an overview | ScienceDirect Topics; What is Clearcutting? • Earth.com; Clearcutting - Wikipedia

[15] What is Clearcutting? | Glossary | Resource Center (buschsystems.com); Clearcutting - an overview | ScienceDirect Topics; What is Clearcutting? • Earth.com

[16] *See* 16 U.S.C. § 1604(g)(3); *West Virginia Div. of Izaak Walton L. of Am., Inc. v. Butz*, 522 F.2d 945 (4th Cir. 1975); Charles F. Wilkinson, The National Forest Management Act: The Twenty Years Behind, the Twenty Years Ahead, 68 U. COLO. L. REV. 659 (1997), available at https://scholar.law.colorado.edu/faculty-articles/671.

As explained in the following Statement of Reasons, the Responsible Official for the Thomas Bay project failed to consider whether all of the project's clearcutting – including all of the acreage to be logged now and several decades later, including uneven aged prescriptions– may have a significant impact, and thus unlawfully failed to construe the significance of the project's actions and impacts and recognize the need to prepare an EIS.[17]

A. Statement of supporting reasons

NEPA requires federal agencies to analyze the foreseeable environmental impacts, including direct, indirect, and cumulative impacts, of "major Federal actions."[18] If the action *may* cause degradation of some human environmental factor, the agency *must* prepare an EIS.[19] In other words, the threshold issue for determining whether or not to prepare an EIS is *not* whether it has already been determined that significant effects will in fact occur. *Instead*, the trigger is if there are *substantial questions* about whether a project will have a significant effect on the environment.[20]

The proposed action is a large timber sale that the agency intends to clearcut, and that fact triggers questions about significant environmental effects. In the 2019 Central Tongass Project DEIS the Forest Service described the proposed commercial clearcutting of Petersburg Ranger District second-growth forests, including Thomas Bay, as a "*large-scale habitat alteration.*"[21] It seems impossible that a "large-scale habitat alteration" could occur without causing adverse environmental impacts.

The analysis in the EA/FONSI unlawfully reverses the agency's own findings without providing a reasoned explanation, violating the Administrative Procedure Act.[22]

The Tongass National Forest's own past environmental analyses indicate the need to produce an EIS. The agency has consistently prepared an EIS for timber sales that entail industrial scale clearcutting large amounts of timber. In between 1998 and 2006, the agency produced 10 timber project EAs for timber volumes that ranged between 2.6 and 8.7 MMBF, or an average volume of approximately 5.5 MMBF.[23] Between 1998 and 2011 the agency produced an EIS for 19 projects that proposed to extract similar or even considerably smaller amounts of forest (in some

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[17] EA/FONSI at 28, Table 4 (showing that the intent is to eventually log every acre in each unit of the project unless buffered, regardless of whether the prescription is called "clearcut," "two-aged" or "uneven-aged").

[18] 42 U.S.C. § 4332(2)(C).

[19] *Idaho Sporting Congress v. Thomas,* 137 F.3d 1146, 1149 (9th Cir. 1998); *Foundation for N. Am. Wild Sheep v. United States Dep't of Agric.,* 681 F.2d 1172, 1178-79 (9th Cir. 1982)(emphasis added); *see also Blue Mountains Biodiversity Project v. Blackwood,* 161 F.3d 1208, 1212 (9th Cir. 1998).

[20] *Idaho Sporting Congress v. Thomas,* 137 F.3d 1146, 1150 (9th Cir. 1998).

[21] USDA Forest Service. 2019. Central Tongass Project Draft Environmental Impact Statement at 3-115. R10-MB-832a. Tongass National Forest, Petersburg Ranger District and Wrangell Ranger District. July 2019 (emphasis added)(hereinafter Central Tongass Project DEIS).

[22] *Organized Village of Kake v. Dept. of Agriculture*, 795 F.3d 956 (9th Cir. 2015).

[23] These projects were the 1998 Nemo, Todahl and Twin Creek projects, the 2000 Doughnut and Polk projects, the 2004 Boundary and Shady projects, and the 2006 Goose Creek, Overlook and Soda Nick projects.

cases less than half) compared to action alternatives for this project.[24]

The only similar Tongass National Forest project analyzed in an EA was the Kosciusko Vegetation Management EA. We filed a formal objection to that project based primarily on the need to prepare a full EIS because the project was a large timber project that authorized large-scale clearcutting.[25] There is widespread recognition that large-scale clearcutting causes significant, adverse environmental effects. The Responsible Official's determination to prepare an EA fails to recognize how *the scale* of the project (collective acreage and anticipated timber volume of the units, and the size of the project area) and the nature of *the prescriptions* are intertwined with *significant environmental impacts* in the context of explanations by various courts.

In *Wyoming Outdoor Coordinating Council v. Butz,* the Forest Service refused to prepare an EIS analyzing a 15 MMBF sale that entailed 670 acres of clearcuts – less than the acreage proposed for clearcutting in Alternative 2 for the Thomas Bay Project.[26] The court concluded that the agency needed to prepare an EIS, recognizing that *"[t]he clearcutting of the timber planned obviously will have a significant effect on the environment for many years*."[27]

In 1995, a federal district court in Vermont considered a Forest Service project that would remove 3.2 MMBF of timber through 300 acres of clearcuts in a 5,561 acre project area.[28] The court determined that "[o]n its face, the proposed action, which includes clearcutting of over 300 acres and its admitted attendant effects such as intrusion into bear and neotropical bird habitats, is 'significant' under any reasonable construction of the term."[29] In comparison the project area here encompasses two watersheds encompassing 16,602 acres utilized by multiple wildlife species and fish and involves alternatives that would clearcut 519 and 841 acres, respectively.[30] In affirming the district court's decision in the Vermont case, the Second Circuit explained that:

> [w]hen it is a close call whether there will be a significant environmental impact from a proposed action, an EIS should be prepared. This view is reinforced by the CEQ Guideline's direction to agencies to consider "[t]he

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[24] These projects include the 1998 Crane and Rowan Mountain and Crystal Creek Projects (24 and 13 MMBF); the 1999 Canal Hoya Project (13 MMBF); the 2000 Kuakan, Luck Lake and Skipping Cow Projects (12, 12.9 and 19 MMBF); the 2001 – 2003 Woodpecker Project (16.3 MMBF); the 2003 Finger Mountain, Licking Creek and Madan Projects (21.4, 17 and 27 MMBF); the 2004 Three Mile Project (19.5 MMBF); the 2005 Couverden and Emerald Bay Projects (23 and 16.4 MMBF); the 2006 Scott Peak and Tuxekan Projects (8.3 and 18.3 MMBF); the 2007 Scratchings and Traitors Cove Projects (21 and 17.1 MMBF); the 2008 Baht Project (4.3 MMBF) and the 2011 Central Kupreanof Project (26.3 MMBF).

[25] *See* https://www.fs.usda.gov/project/?project=45037

[26] *Wyoming Outdoor Coordinating Council v. Butz,* 484 F.2d at 1247, 1251, n. 5 (10th Cir. 1973).

[27] *Id.* at 1250-1251 (emphasis added).

[28] *National Audubon Society v. Hoffman,* 917 F.Supp. 280, 287-288 (D. Vt. 1995) (adding that "[t]he magnitude of the instant proposals to extend road and conduct logging operations, as set forth in an EA totaling over 65 pages, undermines defendants' contention that the proposals are not significant").

[29] *Id.*

[30] EA/FONSI at 5, Fig. 1; 28, Table 4.

> degree to which the effects on the quality of the human environment are likely to be highly controversial" when determining significance. 40 C.F.R. § 1508.27(b)(4). Moreover, we think NEPA's policy goals require agencies to err in favor of preparation of an EIS when the proposed action is likely to have a significant environmental impact.[31]

In a 1997 timber sale EA case, *Curry v. Forest Service,* a Pennsylvania federal district court required the Forest Service to prepare an EIS for a project that would remove over 20 MMBF through clearcutting in an area where, like Thomas Bay, the agency had planned future timber extraction.[32] The district court in *Curry* identified a number of relevant factors that are applicable to the Thomas Bay project (here using numbering in the case): (1) a large number of acres and predominant use of clearcutting; (3) the presence of sensitive species and (4) the proximity of the project to old-growth forest to important watersheds and (5) a 49 page long EA accompanied by 349 pages of appendices.[33] All of these factors apply here in the Thomas Bay project, establishing that the Responsible Official failed to adequately consider the significance of the project:

> (1) the 841 acres directly affected by clearcutting under the action alternatives;[34]
>
> (3) the importance of the project area for deer and moose and utilization by Queen Charlotte Goshawks;
>
> (4) the presence of salmon streams and
>
> (5) the 59 page length of the EA, 52 page Appendix (Unit Cards) and 105 pages of analysis contained in 13 resource reports.[35]

Further, the 13 resource reports prepared for this project show the need for an EIS:

> The regulations appear to contemplate that an EA will be a concise public document which briefly presents sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI. 40 C.F.R. § 1508.9. Given the purpose of an EA, such restriction on the document does not appear unreasonable. As I explained above, the threshold for requiring an EIS is quite low. Thus *only in those obvious circumstances where no effect on the environment is possible, will an EA be sufficient for the environmental review required under NEPA.* Under such circumstances, the conclusion reached must be close to self-evident and would not require an extended document incorporating other studies.[36]

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[31] *National Audubon Society v. Hoffman,* 132 F.3d 7, 18 (2nd Circuit, 1997).

[32] *Curry v. Forest Service,* 988 F.Supp. 541 (W.D. Penn. 1997).

[33] *Id.* at 551-552.

[34] *See* EA/FONSI at 58 (describing the setting of the proposed action).

[35] https://www.fs.usda.gov/project/tongass/?project=60639

[36] *NRDC v. Duvall,* 777 F.Supp. 1533, 1538 (E.D. Cal. 1991)(emphasis added); *see also Sierra Club v. Bosworth,* 352 F.Supp.2d 909, 923 (D. Minn. 2005)

9th Circuit courts also require that timber agencies prepare an EIS for large timber projects. The Forest Service had to prepare an EIS for the Crystal Clear Restoration Project, a large project that primarily involved experimental variable density thinning.[37] An EIS was necessary to analyze the Forest Service's Goose Project which sought to improve stand conditions, reduce hazardous fuels and provide timber through commercial and non-commercial thinning.[38] The project consisted of 1,255 acres of commercial and non-commercial thinning (1,255 acres and 800 acres, respectively) rather than clearcutting.[39] One issue these cases share with the Thomas Bay project involved controversy over clearcutting maturing forests.

B. Conclusion and suggested resolution

It is unreasonable that this amount of clearcutting could occur without raising substantial questions about environmental impacts. The only possible resolution consistent with the nature and severity of these problems is to prepare an EIS.

III. The purpose and need and alternatives are unreasonable and reflect misleading economic assumptions

Defenders' comments on the draft EA questioned whether the timber objectives included in the purpose and need statement were the driving force behind the development of two alternatives proposing a large volume timber sale.[40] We requested that any further planning on this project include a revised purpose and need statement that more clearly accommodates non-timber forest resource values and downscales the proposed volume to amounts that are realistic for local operators.

Our comments on the draft EA also identified significant flaws with the analysis of timber economics.[41] The EA failed to show or describe how the two large-volume alternatives would meet local economic objectives. The timber volume far exceeds local processing capacity, raising serious questions about whether the project would instead supply raw log export markets and fail to meet the agency's desired conditions and objectives aimed at local processing.

The primary purpose of the project is to supply second-growth timber, ostensibly for local processors.[42] The purpose and need statement does reference restoration "opportunities" but those activities may occur independently of this project.[43] The EA describes each of the three action alternatives exclusively as a

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[37] *Bark v. US Forest Service*, 958 F.3d 865 (9th Cir. 2020); *see also Oregon Wild v. Bureau of Land Management,* Case No. 6:14-CV-0110AA (D. Or. 2015)(requiring the Forest Service to prepare an EIS for the 6.4 MMBF White Castle Project in large part because the agency proposed to clearcut 180 acres of "mature forest" – stands over 80 years old, which had wildlife habitat values).

[38] *Cascadia Wildlands v. U.S Forest Service,* 937 F.Supp.2d 1271, 1274, 1284 (D. Or. 2013).

[39] *Id.* at 1274.

[40] US Forest Service NEPA Project Public Reading Room - View Letter (usda.gov) https://cara.fs2c.usda.gov/Public/Letter/2777658?project=60639

[41] *Id.*

[42] EA/FONSI at 1.

[43] *Id.* at 1-4.

timber sale.[44] Project funding is exclusively for timber sale support and administration.[45] Alternative 2 proposes to clearcut 841 forested acres over 5 to 10 years and remove 19.3 MMBF of timber.[46] Alternative 3, the preferred alternative, would use "two aged management" and remove 12.6 MMBF of timber from 561 acres, mostly through clearcuts up to 30 acres in size.[47] Alternative 4 also uses "two aged management" to remove 7.9 MMBF of timber from 351 acres but with smaller clearcuts of up to 10 acres.[48]

A. OBJECTION POINT 2: NEPA requires a broader range of alternatives and revised purpose and need statement

Defenders' comments on the draft EA requested that the Responsible Official develop substantially downscaled alternatives that did not include clearcutting and tailor timber volume to local mills.[49] Two-aged management is a variation of clearcutting.[50] This system entails clearcutting forests adjacent to the immediately planned clearcut at some point in the future.[51] We also requested changes to the purpose and need statement that would more clearly direct the development of downscaled alternatives.

The Responsible Official violated NEPA by refusing to modify the overly narrow purpose and need statement and to consider downscaled alternatives. NEPA imposes an obligation to "[r]igorously explore and objectively evaluate all reasonable alternatives."[52] An agency must "consider such alternatives to the proposed action as may partially or completely meet the proposal's goal," meaning that it is reasonable to consider alternatives that meet other objectives, even if the alternative does not provide sufficient volume to meet some project purposes, such as fulfilling the Tongass Advisory Committee timber targets.[53] A "reasonable" range of alternatives includes alternatives "that are practical or feasible" and not just those alternatives preferred by the agency.[54] The key criterion for determining whether a range of

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[44] *Id.*

[45] *Id.* at 35.

[46] *Id.* at 4, Table 2.

[47] *Id.*

[48] *Id*. at 4.

[49] US Forest Service NEPA Project Public Reading Room - View Letter (usda.gov) https://cara.fs2c.usda.gov/Public/Letter/2777658?project=60639

[50] Bakos, T. 2023. Wildlife Report/Biological Evaluation/Subsistence Assessment Thomas Bay Young-Growth Timber Sale at 1-2 (describing the 30 and 10 acre openings as clearcuts).

[51] EA/FONSI at 28, Table 4.

[52] 40 C.F.R. § 1502.14(a); *see also Barnes v. U.S. Dep't. of Transp.,* 655 F.3d 1124, 1131 (9th Cir. 2011).

[53] *City of New York v. U.S. Dep't of Transp.,* 715 F.2d 732, 742-742 (2nd Cir. 1981); 2016 Tongass National Forest Land and Resource Management Plan at 5-2-5-3.

[54] Council on Environmental Quality (CEQ), Forty Most Asked Questions, Questions 2A and 2B; 40 C.F.R. §§ 1502.14, 1506.2(d); *available at* http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm.

alternatives is reasonable "is whether an EIS's selection and discussion of alternatives fosters informed decisionmaking and informed public participation."[55]

1. Statement of supporting reasons

In addition to the stated purpose of supplying timber for local operators, the EA references multiple forest plan desired conditions, objectives and guidelines for second growth forests from Chapter 5 of the Forest Plan as amended in 2016, many of which are duplicative.[56] Those desired conditions, objective and guidelines are at times *even in conflict with each other* — it is hard to see how intensive clearcutting fits with the multiple desired conditions, objectives and guidelines that reference accelerating old-growth habitat characteristics for wildlife.[57] Because the timber volume for sale in the action alternatives vastly exceeds the capacity of local operators, it is clear that, regardless of other stated purposes, the actual purpose for this project comes from four Forest Plan objectives: O-YG-01, O-YG-02, O-TIM-01 and O-TIM-02. The purpose and need for this project is overly narrow because each of these objectives aims solely at increasing the volume of second growth sales.[58]

Because of the emphasis on large timber sales, the EA failed to include a low volume alternative aimed at providing timber to local mills. The omission appears to be based on three assumptions: (1) that larger volumes for larger operators were necessary to meet "market demand"; (2) that local processors would purchase a 12.6 MMBF sale and (3) that the smallest volume alternative, 7.9 MMBF, would be insufficient to meet the purpose and need of providing timber for local processors.[59]

There has been no recent local activity to suggest a conversion to processing even the Alternative 4 volume of nearly 8 MMBF of second growth timber. Two mills in Petersburg processed 0.035 MMBF of timber in 2021.[60] One of those mills did produce mostly second growth timber products: 0.024 out of 0.030 MBF.[61] Three other small mills in Kake and Tenakee Springs processed 0.063 MMBF.[62] The largest nearby operator, in Wrangell, processed 0.35 MMBF of old-growth.[63] In total, three of these six closest mills processed 0.043 MMBF of second-growth timber.[64]

These data suggest that the range of the alternatives in the EA all propose

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[55] *Westlands Water Dist. V. U.S. Dep't of Interior,* 376 F.3d 853, 872 (9th Cir. 2004)(citations omitted); *New Mexico ex rel. Richardson,* 565 F.3d 683, 708 (10th Cir. 2009)(citations omitted).

[56] EA/FONSI at 1;*See, e.g.* DC-YG-02 & GL-YG-02 (promoting pre-commercial thinning in areas appropriate for future timber extraction) & O-YG-01 & -02 (directing the agency to offer increasing volumes of young-growth timber).

[57] O-YG-03; DC-YG-03 & -04; DC-YG-RIP-01.

[58] Tongass National Forest Land and Resource Management Plan at 5-2-5-3, 5-13-14.

[59] EA/FONSI at 16; USDA Forest Service. 2023. Thomas Bay Young-Growth Timber Sale Project Public comments received on Thomas Bay Young-Growth Timber Sale Project Environmental Assessment at 3. Tongass National Forest, Petersburg Ranger District.

[60] Daniel, J., P. Morris & D. O'Leary. 2022. 2021 Sawmill capacity and production report. USDA Forest Service, Alaska Region. Report to Ecosystem Planning and Natural Resources. August 2022.

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.*

volumes aimed at raw log export and are inconsistent with the stated purpose. The Forest Service must prepare downscaled alternatives in a new EA or EIS if you proceed with this project, or restate the purpose in an EIS so that it is clear to the public that the agency intends to supply a non-local raw log exporter, such as Alcan Forest Products.[65]

There have been several recent cases recognizing that the mandate to "examine all viable and reasonable alternatives" means that timber agencies must develop multiple alternatives for timber projects – particularly alternatives that include retaining higher volumes of older and larger trees.[66]

The Forest Service also has an obligation under NFMA to consider alternatives to clearcutting for this project.[67] The only applicable Forest Plan justifications for clearcutting are to achieve timber production objectives or where there is a risk of infection or disease, or high risk of windthrow.[68] Timber production considerations do not justify clearcutting. Uneven-aged management (generally, 67% forest retention) would produce more timber from the area over time.[69] Windthrow risks do not justify clearcutting as the agency has also stated that uneven-aged management, whether group or single tree selection, creates a mostly wind firm retention level.[70] Finally, the commercial young-growth stands in the Petersburg Ranger District "are mostly healthy and growing well with no foreseeable insect or disease issues."[71]

Due to the general lack of forested habitat on the mainland and potential for higher snowfall accumulations, the Forest Service also needs to consider alternatives to clearcutting that aim solely at wildlife habitat objectives in the development LUDs. Prior planning on this project as part of the larger, cancelled Central Tongass Project and other recent research shows that it is possible to develop a downscaled alternative that would reduce wildlife impacts relative to clearcutting.[72] The project could consider uneven-aged management through group or single tree selection that would provide timber to smaller operators while retaining 67 percent of the stand area.[73] Retention areas could advance from late stem exclusion to understory re-initiation structure over the next three decades.[74] This alternative could provide flexibility for future forest managers to defer or cancel future planned cutting and better provide for long-term wildlife needs as the retention areas would be trending

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[65] *See Curry,* 988 F.Supp. at 553-554 (explaining that NEPA requires the Forest Service to consider reasonable alternative that use more extensive alternative management techniques).

[66] *See Conservation Congress v. U.S. Forest Service,* 235 F.Supp.3d 1189, 1210-12 (E.D. Cal. 2017); *Oregon Wild v. Bureau of Land Management,* Case No. 6:14-CV-0110AA (D. Or. 2015).

[67] *See* 16 U.S.C. § 1604(g)(3).

[68] Tongass Land and Resource Management Plan at 4-68.

[69] Central Tongass Project Draft Environmental Impact Statement at 3-230.

[70] *Id.* at 3-233.

[71] *Id.* at 3-227.

[72] *Id.* at 3-62, Table 11; Bennetson, B. 2020. Tongass National Forest young-growth management guidelines for stands with a wildlife management objective.

[73] Central Tongass Project Draft Environmental Impact Statement at 3-221.

[74] *Id.*

toward old-growth structure by that time.[75] Other treatments would use very small openings "designed to improve the development and diversity of understory plants for wildlife including deer, create more structural diversity, and enhance snow interception by promoting tree crown development.[76]

The EA failed to consider an alternative limited to these other treatments that can improve recovering forest characteristics for old-growth associated wildlife – both in the short term and the long term while providing some second-growth timber appropriately scaled to the capacity of local processors. As noted in the agency's own reports, the relevant time frames for analysis should be "years to decades and multiple decades to centuries, respectively."[77] Short-term benefits may pertain to understory vegetation and plant species diversity, while long-term objectives could be more rapid attainment of old-growth conditions.[78] Local wildlife managers have indicated that habitat enhancement is the only way to prevent further decline of moose habitat.[79] The Alaska Department of Fish and Game recommends cutting deciduous vegetation in order to provide shorter browse plants as a better enhancement measure for moose forage than clearcutting conifers.[80]

2. Conclusion and suggested resolution

In sum, there is a need for a downscaled, no-clearcut alternative. Defenders requests that you either: (1) rescind the EA/FONSI and Draft Decision to the Responsible Official with instructions to re-scope the project with a substantially downscaled proposed action or (2) remand the EA/FONSI and Draft Decision to the Responsible Official with instructions to evaluate a broader range of alternatives in an EIS.

B. The timber economic analysis is misleading because the EA fails to show how the project will support local forest product employment

Defenders comments on the draft EA requested that the agency improve the analysis of timber economics.[81] NEPA requires that federal agencies (1) take a hard look at the environmental impacts of proposed projects and (2) ensure the availability of information to the public so as to enable public participation in the decisionmaking process.[82] NEPA analyses do not serve this second essential function based on misleading economic assumptions.[83]

Similarly, the Administrative Procedure Act (APA) requires that an agency "examine the relevant data and articulate a satisfactory explanation for its action,

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[75] *Id.*

[76] *Id.* at 3-85.

[77] *Id.*

[78] *Id.*

[79] Lowell, R.E. 2018. Moose management report and plan, Game Management Unit 1B.

[80] *Id.*

[81] US Forest Service NEPA Project Public Reading Room - View Letter (usda.gov)

[82] *Robertson v. Methow Valley Citizens Council,* 490 U.S. 332. 349 (1989)

[83] *Hughes River Watershed Conservancy v. Glickman,* 81 F.3d, 437, 446 (4th Cir. 1996); *see also Natural Resources Defense Council v. U.S. Forest Service,* 421 F.3d 797, 812)(9th Cir. 2005).

including a "rational connection between the facts found and the choice made."[84] An agency action is "arbitrary and capricious if the agency ... entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[85] The economic analysis fails these standards, particularly through the unsupported belief that there is local demand for such a large sale.

1. Statement of supporting reasons

A primary project purpose is to support the second-growth timber industry, local and regional economies, emerging markets and local timber processors.[86] The belief that any of the action alternatives would be more likely to support sales for smaller operators than for non-local raw log export companies is unreasonable.[87] Alternative 2 has negative value of $23.32/thousand board feet (MBF) for domestic processing and a positive value of $65.11/MBF for export.[88] Alternative 3 has negative value of $40.86/thousand board feet (MBF) for domestic processing and a positive value of $47.57/MBF for export.[89] The negative values are higher in the two Alternatives that implement smaller clearcuts and the positive value is highest for Alternative 2.[90] Logging costs drive the value disparity.[91]

These data suggest that the larger volumes are only viable for the region's largest timber sale purchaser, Alcan/Transpac, a company that does not have any processing capacity in the region.[92] The 2016 Forest Plan EIS projected that the available second-growth would not support investments in processing capacity for several decades.[93] Multiple NEPA analyses for second growth timber sales anticipate export. The recent Vallenar Project EA assumed 100% export of young growth timber due to the high cost of logging in the region and "absence of young growth manufacturing infrastructure."[94] The Petersburg Ranger District recently anticipated export of all second growth because there are no markets for domestically sawn young growth and no local mill designed to handle second-growth logs.[95] Moreover, the agency projected that raw log exports would provide the only available markets

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[84] *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Ins. Co.,* 463 U.S. 29, 43 (1983)

[85] *Id.*

[86] EA/FONSI at 1; Draft Decision Notice at 1-2.

[87] USDA Forest Service. 2023. Thomas Bay Young-Growth Timber Sale Project Public comments received on Thomas Bay Young-Growth Timber Sale Project Environmental Assessment Tongass National Forest, Petersburg Ranger District. September 2023 at 1-2.

[88] EA/FONSI at 32.

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] USDA Forest Service. 2016. Tongass Land and Resource Management Plan Final Environmental Impact Statement at 3-490.

[93] *See e.g. id.,* Chapter 3, Social and Economic Environment.

[94] USDA Forest Service. 2018. Vallenar Young Growth Project Draft Decision Notice, Finding of No Significant Impact (FONSI) and Environmental Assessment (EA) at 12.

[95] Central Tongass Project Draft Environmental Impact Statement at 3-66.

for at least a decade or more.[96] In 2018, the agency's analysis of Prince of Wales Island second-growth timber markets stated that:

> Young-growth-volume is assumed to be 100 percent export because there is currently no established market for domestically sawn young-growth .... This was assumed to be true for the life of this project since the amount of young-growth estimated to be available would not be enough to warrant the construction of a mill especially designed to be able to handle young-growth logs. Recent young-growth contracts with domestic processing have not been fully successful for the purchasers due to a lack of local markets for sawn young-growth. Contracts where export of young-growth was allowed have been more successful for purchasers.[97]

Nothing has changed in the last two or three years to suggest demand for 8 - 19 MMBF from local industry. The EA never identifies any local interest in processing the large volume of timber authorized under any project alternative. It does provide a link to an agency website that includes materials purporting to show demand from local operators.[98] Most of the materials on the website are outdated timber demand models that predate the current Forest Plan.[99] The EA and website also discuss the Forest Service's purchase of $300,000 worth of equipment for a small mill in Petersburg that has two owner-operators and the agency's 2022 Sawmill Capacity and Production report as evidence that "multiple local producers" would purchase timber from this sale.[100]

The 2022 Sawmill Capacity and Production Report does not provide evidence supporting the perceived demand for large second growth timber sales. As previously noted, five small mills in Petersburg, Kake and Tenakee Springs processed 0.098 MMBF of timber in 2021, including 0.043 MMBF of second growth.[101] The largest nearby mill in Wrangell processed 0.35 MMBF of old growth. [102] In total, Southeast Alaska mills processed 0.3 MMBF of second growth timber in 2021.[103]

There were six small mills on Prince of Wales Island in 2021 that processed 0.1 MMBF of second growth timber.[104] Most of these mills specialize in cedar, some almost exclusively.[105] Cedar comprised over three-fourths of the volume processed by these six mills in 2021.[106] In total, Southeast Alaska mills processed 0.3 MMBF of second growth timber in 2021 – half by one large mill in Klawock that is the only mill

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[96] *Id.*

[97] Prince of Wales Landscape Level Analysis FEIS at 116-17

[98] EA/FONSI at 31.

[99] https://www.fs.usda.gov/detail/r10/landmanagement/resourcemanagement/?cid=fsbdev2_038785

[100] EA/FONSI at 32; U.S. Forest Service awards grants to boost Tongass logging - Alaska Public Media; Wood Grants | US Forest Service (usda.gov)

[101] Daniel, J., P. Morris & D. O'Leary. 2022. 2021 Sawmill capacity and production report. USDA Forest Service, Alaska Region. Report to Ecosystem Planning and Natural Resources. August 2022.

[102] *Id.*

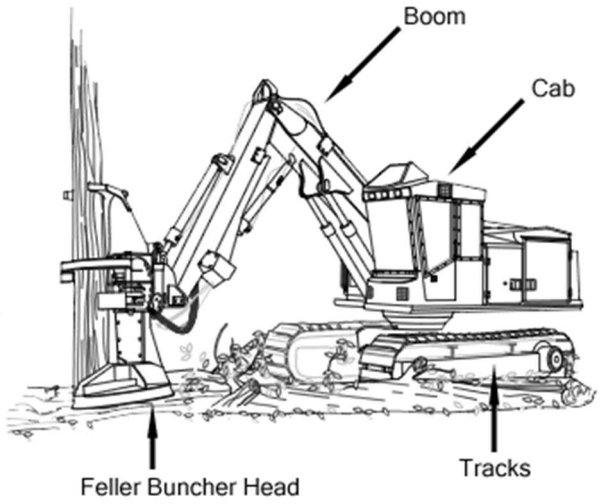
[103] *Id.*

[104] *Id.*

[105] *Id.*

[106] *Id.*

capable of handling the project volume.[107] The total value to that mill at the estimated value $40.86 loss per MBF is a loss of more than $500,000.00. These data suggest that the range of the alternatives in the EA all propose volumes aimed at raw log export and are inconsistent with the stated purpose.



Also, the EA's disclosed range of logging and domestic processing jobs is misleading. In addition to the improbability of domestic processing, the EA assumes ground-based yarding and felling by chainsaw in order to estimate logging jobs. The agency has never updated its Financial Analysis Spreadsheet Tool Residual Value (FASTR) to account for the need to use mechanized logging equipment for smaller diameter trees. Because of this error, the EA's its job and income estimates are highly exaggerated.[108] Purchasers of large second-growth timber sales in Southeast Alaska recognize that the most cost-efficient logging method involves mechanized equipment – a feller buncher (see sketch) – instead of loggers.[109] According to the Forest Service, clearcutting with a feller buncher requires "few personnel" and one person can clearcut 4-5 acres a day.[110] At that rate, a single timber sale purchaser could cut the entire project volume in one operating season, and the project would thus not produce even one annualized "logging" job. The logging employment estimate thus fails to disclose a realistic range of employment generated by this timber sale to a significant degree.

Finally, we also request that you direct the Responsible Official to reduce the project volume as a cost-saving measure that could save the public up to a million dollars in administrative costs.[111] The Tongass timber sale program has a long history of generating taxpayer losses which increase in proportion to timber sale volumes.[112]

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[107] *Id.*

[108] EA/FONSI at 34-35 Table 6.

[109] *Alcan Forest Prods., LP v. A-1 TIMBER CONSULTANTS*, 982 F. Supp. 2d 1016 (D. Alaska 2013). Graphic: Forest Operations Equipment Catalog: Feller Buncher (usda.gov)

[110] Working to see the forest for the trees: Logging project's 'messy phase' will give rise to diverse, healthy ecosystem | Aspen Public Radio. *See also:* Plumley Contracting Co. Inc. Likes the Heft and Durability of Caterpillar® Forestry Equipment | Timberline Magazine

[111] EA/FONSI at 35.

[112] https://www.taxpayer.net/energy-natural-resources/upcoming-and-ongoing-taxpayer-losses-from-timber-sales-in-the-tongass-natio/ ; https://www.taxpayer.net/energy-natural-resources/u-s-forest-services-tongass-timber-plan-proposes-increased-costs-for-taxpa/

2. Conclusion and suggested resolution

The economic analysis in the EA violated NEPA and the APA. The Reviewing Officer should remand the EA to the Responsible Official with instructions to revisit the relationship between the analysis and stated purpose and need and develop downscaled alternatives.

IV. The EA/FONSI failed to take a hard look at impacts to project area wildlife resources

A federal agency cannot avoid preparing an EIS based on "conclusory assertions that an activity will have only an insignificant effect on the environment."[113] A "convincing statement of reasons" must explain why the agency believes the environmental impacts will be insignificant.[114] If the action *may* have a significant effect, the agency *must* prepare an EIS.[115] In other words, the threshold issue for determining whether or not to prepare an EIS is *not whether* significant effects will in fact occur *but if there are instead substantial questions about whether* a project will have a significant effect on the environment.[116]

The FONSI concluded that up to 841 acres clearcutting would have limited, local effects in a 3,474 project area, none of which would have any significant environmental impact.[117] This conclusion is arbitrary. The EA itself acknowledges that the project would eliminate forested areas that provide some forage, thermal and hiding cover and, if not logged, would continue to develop over time into higher quality habitat for wildlife.[118] Alternatives 2 and 3 in particular would reverse forest succession in twenty to thirty percent of project area second-growth forests through large clearcuts between 30 and 100 acres in size.[119] This impact is sufficient to raise substantial questions about significant adverse impacts to project area wildlife that require analysis in an EIS.

A. Substantial questions about project effects to terrestrial wildlife require analysis in an EIS

Defenders comments on the draft EA explained that this project may have significant adverse impacts to project area wildlife that vary by species that require analysis in an EIS.[120] The Responsible Official violated NEPA by ignoring substantial questions about project impacts to terrestrial wildlife species such as bears, deer, marten and moose and preparing an EA/FONSI instead of an EIS.

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[113] *Alaska Ctr. for the Environment v. U.S. Forest Serv.,* 189 F.3d 851, 859 (9th Cir. 1999).

[114] *Blue Mountains Biodiversity Project v. Blackwood,* 161 F.3d 1208, 1212 (9th Cir. 1998).

[115] *Foundation for N. Am. Wild Sheep v. United States Dep't of Agric.,* 681 F.2d 1172, 1178-79 (9th Cir. 1982)(emphasis added)(an EIS was required where key questions were "ignored, or, at best, shunted aside with mere conclusory statements"); *see also Blue Mountains Biodiversity Project v. Blackwood,* 161 F.3d 1208, 1212 (9th Cir. 1998)(the "substantial question standard does not require a showing 'that significant effects will in fact occur").

[116] *Idaho Sporting Congress v. Thomas,* 137 F.3d 1146, 1150 (9th Cir. 1998).

[117] EA/FONSI at 58.

[118] *Id.* at 39.

[119] *Id.* at 39.

[120] US Forest Service NEPA Project Public Reading Room - View Letter (usda.gov)

Statement of supporting reasons

The EA arbitrarily relies in part on the availability of other adjacent habitat to reach a FONSI conclusion.[121] But over 16,000 acres of the limited amount of forested habitat in Game Management Unit 1B have been logged to date.[122] It is unreasonable to rely on the availability of other habitat outside of the project area to support a finding of no significant impact. Thomas Bay is a unique area on this portion of the Southeast Alaska mainland that supports diverse wildlife and fish species and human activities. Most of the clearcutting occurred between 1958 and 1975 and the area has some of the oldest and most extensive stands of second-growth in the Petersburg Ranger District.[123] The area is by far one of the most important habitats supporting Game Management Unit 1B wildlife populations.[124] Most of the high quality habitat in Unit 1B is the narrow area of forested landscape between the saltwater and coastal mountains. The large river valleys, including the Thomas Bay drainage, are the limited areas that support larger salmon runs and bears.[125]

Sitka black-tailed deer inhabit mainland areas in low densities except for isolated pockets, which include Thomas Bay.[126] Thomas Bay hosts an isolated moose population which occupies some of the most heavily logged areas.[127] Petersburg residents rely on deer hunting opportunities in the project area due to the earlier closure of Unit 3 islands west of the mainland and because of recent population and harvest declines in the northern Unit 3 islands.[128] Petersburg residents also rely on moose hunting in the project area, although declining populations are forcing moose hunters to seek out other areas.[129]

The moose population is declining due to reductions in carrying capacity caused by post-logging habitat changes.[130] The same changes "have and will

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[121] USDA Forest Service. 2023. Thomas Bay Young-Growth Timber Sale Project Public comments received on Thomas Bay Young-Growth Timber Sale Project Environmental Assessment Tongass National Forest, Petersburg Ranger District. September 2023 at 5.

[122] Lowell, R.E. 2014. Unit 1B black bear management report. Chapter 2, Pages 2-1 through 2-14 in P. Harper and L.A. McCarthy, editors. Black bear management report of survey and inventory activities. 1 July 2010-30 June 2013. Alaska Department of Fish and Game. Juneau, Alaska.

[123] Central Tongass Project Draft Environmental Impact Statement at 3-62, Table 11; Lowell, R.E. 2018. Moose management report and plan, Game Management Unit 1B: Report period 1 July 2010-30 June 20-15, and plan period 1 July 2015-30 June 2020. Alaska Department of Fish and Game, Species Management Report and Plan ADF&G/DWC/SMR&P-2018-3, Juneau.

[124] Lowell, R.E. 2017. Wolf management report and plan, Game Management Unit 1B: Report period 1 July 2010-30 June 2015, and plan period 1 July 2015-30 June 2020. Alaska Department of Fish and Game, Species Management Report and Plan ADF&G/DWC/SMR&P-2017-6, Juneau.

[125] Lowell, R.E. 2014. Unit 1B black bear management report.

[126] Lowell, R.E. 2015. Unit 1B deer. Chapter 2 pages 2-1 through 2-9 [*In*] P. Harper, editor. Deer management report of survey and inventory activities 1 July 2012-30 June 2014. Alaska Department of Fish and Game, Species Management Report ADF&G/DWC/SMR-2015-3

[127] Lowell, R.E. 2018. Moose management report and plan, Game Management Unit 1B.

[128] Lowell, R.E. 2015. Unit 1B deer.

[129] Lowell, R.E. 2018. Moose management report and plan, Game Management Unit 1B.

[130] *Id.*

continue to further reduce deer carrying capacity" in the area.[131] Black bears benefit temporarily from short-term forage increases but timber harvest is "the most serious threat" to their habitat in the project area over the long-term. [132]

The NEPA analysis failed to recognize that logging recovering forests prior to the re-initiation of old-growth forest characteristics can entail significant adverse impacts to wildlife. Sacrificing substantially regenerated second growth forests is a significant impact because the project area has already been heavily impacted by past logging. This is a particular concern for mainland areas where snow interception capacity is much more critical to the viability of project area wildlife. As previous Forest Service analyses recognized, clearcutting could increase short-term deer forage, but that forage "may not be available to deer during winter if covered by snow."[133] Further:

> In the long-term, commercial harvest of young growth would preclude these stands progressing toward old-growth habitat conditions that would again provide snow interception and forage within the stand. The forage created by clearcutting young-growth would only last for the short-term until the stand again reaches stem exclusion stage (around 25 years).[134]

Alaska Department of Fish and Game wildlife managers also believe clearcutting will have adverse long-term effects on project area wildlife populations. Clearcuts create a temporary forage enhancement that lasts for just the first 25 years of a 100 to 150 year timber harvest rotation.[135] After 25 years, the recovering forest shades out and eliminates forage species.[136] Local wildlife managers explain that "[t]he short-term advantages of clearcutting for moose may be offset by the longer period of reduced forage in the second-growth conifer forest and the loss of shelter habitat for moose during the time when the area is clearcut."[137]

The removal of older second-growth trees raises substantial questions about impacts to deer given mainland habitat conditions. Deer in the project area are highly susceptible to fluctuations caused by severe winter weather, and the deep-snow winter during 2006-2007 reduced already low populations in unit 1B.[138] Forest Service researchers have found that older stands "appear to provide some snow interception" and other features that may provide wildlife habitat values over the next few decades.[139] The importance of snow interception is much higher in "areas closer

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[131] Lowell, R.E. 2015. Unit 1B deer; Lowell, R.E. 2021. Deer management report and plan, Game Management Unit 1B: Report period 1 July 2011-30 June 2016 and plan period 1 July 2016-30 June 2021. Alaska Department of Fish and Game, Species Management Report and Plan ADF&G/DWC/SMR&-2021-18, Juneau.

[132] Lowell, R.E. 2014. Unit 1B black bear management report.

[133] Central Tongass Project Draft Environmental Impact Statement at 3-85.

[134] *Id.*

[135] Lowell, R.E. 2018. Moose management report and plan, Game Management Unit 1B.

[136] *Id.*

[137] *Id.*

[138] Lowell, R.E. 2015.

[139] Bennetson, B. 2020.

to the mainland that have greater snowfall" and "[i]ncreased snow depths also intensify deer preference for older young-growth forests, likely due to facilitated movement from snow interception from the closed canopy despite low forage."[140]

One of the most significant adverse impacts to deer thus pertains to the need for varying habitat needs within seasons or even over periods of years, particularly for snow interception.[141] The Forest Service's myopic focus on forage in clearcuts arbitrarily fails to address key winter habitat needs:

> For ungulates at temperate and higher latitudes, winter is often the limiting season for survival, when cold temperatures and snowfall restrict the availability of forage and increase costs of movement. In addition, vulnerability of ungulates to predators can be higher in snow-covered landscapes because of reduced nutritional condition and increased cost of movements for prey relative to predators. Subsequently, habitat selection of ungulates in winter can be strongly shaped by the landscapes of energetic costs and risk of death. *As snow depth increases, values of habitat to wildlife may be completely reversed from low-snow conditions.* As habitat types with abundant forage but little canopy cover to intercept snow become unusable, habitats with adequate forage and good canopy cover become preferred.[142]

There is little the Forest Service can do to address the need for forest cover to reduce snow accumulation other than allow juvenile trees to mature.[143] As Person and Brinkman, explain, even if climate change results in milder winters, precipitation and extreme storm probabilities may increase, increasing risks of deep snow events that can substantially reduce deer numbers to low levels for extended periods of time.[144] Because project area deer are susceptible both to predation from wolves and bears and to severe winter die-offs, the Forest Service's failure to plan for long-term winter range needs presents serious species-specific risks.

The cutting units consist mostly of larger trees in contiguous forested areas logged between fifty and seventy years ago.[145] The larger tree stands have habitat values for deer and moose as well as providing ground structure for small mammals and some forest birds.[146] If left alone, these stands would continue to develop overstory canopies, understory vegetation, connectivity to old-growth stands during winter, and retain other attributes that allow deer, moose and marten to survive

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[140] *Id.*

[141] Gilbert, S.L., Hundertmark, K.J., Person, D.K., Lindberg, M.S. and Boyce, M.S., 2017. Behavioral plasticity in a variable environment: snow depth and habitat interactions drive deer movement in winter. *Journal of Mammalogy*, *98*(1), pp.246-259.

[142] *Id.* (emphasis added)(internal citations omitted).

[143] Hanley, T.A., 1989. Forest habitats and the nutritional ecology of Sitka black-tailed deer: a research synthesis with implications for forest management.

[144] Person D. & T. Brinkman. 2013. Succession Debt and Roads: short and long term effects of timber harvest on a large-mammal predator-prey community in southeast Alaska. In: G. Orians & J. Schoen, eds. North Pacific Temperate Rain Forests, Ecology and Conservation.

[145] EA/FONSI at 35-36.

[146] EA/FONSI at 35-38.

severe winters.[147] The second-growth forests also reduce deer susceptibility to predation.[148]

Action alternatives would produce a temporary increase in forage, but the removal of overstory trees will make it inaccessible to wildlife during winters when extended periods of snow accumulation bury the forage.[149] During deep snow winters, the new clearcuts will also reduce connectivity to important wildlife corridors, residual patches of old growth and the old-growth reserve that are currently provided by the older second-growth forests.[150] Clearcuts larger than seven acres will hinder deer and moose movements during periods of deep snow and further reduce resiliency to severe winters by eliminating access to forage.[151]

1. Conclusion and suggested resolution

Through the action alternatives, the Forest Service is gambling against the likelihood of future severe winters in one of the colder portions of Southeast Alaska in the context of a changing climate that promises precipitation increases in fall and winter.[152] This gamble means that there are substantial questions about the environmental impacts resulting from setting forest succession back to the stand reinitiation stage and requires analysis *in an EIS*.

B. The project raises questions about impact to Queen Charlotte goshawks

Defenders comments on the draft requested that the Forest Service analyze impacts to Queen Charlotte goshawks in an EIS.[153] This project proposes to immediately clearcut some of the oldest second-growth forest in the area, and projects a plan for successive second-growth forest removals in the project area through the end of the century. The plan to log project area second growth forests under such short rotations will remove usable habitat for both foraging and nesting.[154] The EA failed to adequately explain or provide convincing reasons in support of the effects determinations for Queen Charlotte goshawks and further failed to provide the information necessary to understand and evaluate project impacts, in violation of NEPA.[155] When an activity can adversely impact a local wildlife population, particularly a sensitive species such as Queen Charlotte goshawks, even if it does not impact the broader population, there are substantial questions about impacts to the local population and ecosystem that are both

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[147] *Id.* at 39, 42.

[148] *Id.* at 43.

[149] Sept. EA/FONSI at 40, 43. (adding that there would be no hiding cover, increasing vulnerability to predators and hunters and reduced ground level structure).

[150] *Id.* at 39.

[151] EA/FONSI at 44.

[152] Lader, R., U. S. Bhatt, J. E. Walsh & P. A. Bieniek. 2022. Projections of Hydroclimatic Extremes in Southeast Alaska under the RCP8.5 Scenario. Earth Interactions. 26:1: 180–194.

[153] US Forest Service NEPA Project Public Reading Room - View Letter (usda.gov)

[154] Iverson, G.C., 1996. Conservation assessment for the northern goshawk in southeast Alaska. US Department of Agriculture, Forest Service, Pacific Northwest Research Station.

[155] *Ecology Center, Inc. v. Austin*, 430 F.3d 1057 (9th Cir. 2005).

uncertain and controversial within the meaning of NEPA and require analysis in an EIS.[156]

1. Statement of supporting reasons

Clearcut logging has caused extensive habitat loss and fragmentation and goshawk population declines.[157] There are two Queen Charlotte goshawk nesting areas on the Thomas Bay mainland, including one near the proposed clearcuts.[158] The EA acknowledged that clearcutting may impact goshawks foraging in the project area but provided no further analysis.[159] Forest-wide population levels are unknown; Southeast Alaska may support just a few to several hundred breeding pairs.[160] There likely are only 33 or fewer nesting areas in the Petersburg Ranger District.[161] Because of the low population level, any activity that reduces survival or reproductive rates implicates species viability risks.[162]

Action alternatives, particularly Alternatives 2 and 3, would clearcut maturing second growth forests that are now or soon will be old enough for use by Queen Charlotte goshawks for foraging or even nesting.[163] The potential for localized effects, and impacts to a smaller population creates significant uncertainties about significant environmental impacts that trigger the need for an EIS.[164] There is uncertainty about the effectiveness of Forest Plan conservation measures to provide sufficient habitat.[165]

Queen Charlotte goshawks relies primarily on forest-dwelling prey, and adequate amounts of suitable forest cover are critical.[166] New clearcuts and early seral stage habitats do not provide critical habitat features for Queen Charlotte goshawks.[167] Queen Charlotte goshawks use mature second-growth forests for

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[156] *Anderson v. Evans,* 371 F.3d 475, 490-93 (9th Cir. 2004); *see also Fund for Animals v. Norton,* 281 F.Supp.2d 209, 234 (D.D.C. 2003)(holding that uncertainty about impacts to a local populations is a basis for setting aside a FONSI).

[157] Smith, W.P. 2013. Spatially explicit analysis of contributions of a regional conservation strategy toward sustaining northern goshawk habitat. *Wildlife Society Bulletin*, *37*(3), pp.649-658.

[158] EA/FONSI at 47.

[159] *Id.* at 48.

[160] U.S. Fish & Wildlife Service, Alaska Region. 2007. Queen Charlotte Goshawk Status Review.

[161] EA/FONSI at 47.

[162] U.S. Fish & Wildlife Service, Alaska Region. 2007.

[163] U.S. Fish and Wildlife Service Alaska Region. 2007. Queen Charlotte Goshawk Status Review.

[164] *Anderson v. Evans,* 371 F.3d 475, 490, 493 (9th Cir. 2004); *see also Fund for Animals v. Norton,* 281 F.Supp.2d 209, 234 (D.D.C. 2003)(holding that "uncertainty as to the impact of a proposed action on a local population of a species ... is 'a basis for a finding that there will be a significant impact' and setting aside a FONSI").

[165] Smith, W.P. 2013; *see also* Mclaren, E.L. et al. 2005. Northern Goshawk (*Accipiter gentilis laingi*) post-fledgling areas on Vancouver Island, British Columbia. J. Raptor Res. 39(3): 253-263.

[166] Doyle, F., and T. Mahon. 2003. Do goshawk management strategies have to be tailored to specific ecosystems? Lessons we can learn from studying goshawks in different ecosystems (abstract). Page 39 in Proceedings of Annual Meeting, Raptor Research Foundation, Anchorage, Alaska.

[167] *Id.* U.S. Fish and Wildlife Service Alaska Region. 2007. Queen Charlotte Goshawk Status Review.

multiple habitat values.[168] Further fragmentation, however, reduces this potential value.[169] In its 2007 Status Review, the Fish and Wildlife Service stated that "[f]orest management *must* ... emphasize continued existence of *mature* and old forest to ensure preservation of the species."[170]

Scientists who considered the influence of forest rotations on the long-term viability of the species "generally agreed that older second growth resulting from timber rotations of 200 to 300 years could provide useful habitat, and would reduce risk to goshawks, as compared to 100-year rotations."[171] The review of the TLMP conservation strategy anticipated ecological rotations of 300 years as likely to sustain goshawks (i.e. 1/3 of the forest in second growth <100 years old, 1/3 of the forest <200 years old, and 1/3 >200 years old), but noted this scale masked localized effects which would create gaps in distribution.[172] The FWS anticipated that habitat quality could improve over the long-term as recovering forests mature – but not under a less than 100 year rotation as proposed here.[173]

2. Conclusion and suggested resolution

This project will likely maintain an excess amount of early seral forest, increasing long-term viability risks to Queen Charlotte Goshawks. Because these risks entail substantial questions about the environmental impacts to a sensitive species, the Reviewing Officer should direct the Responsible Official to significantly downscale the project or analyze impacts to Queen Charlotte Goshawks in an EIS.

C. Potential cumulative effects require analysis in an EIS

Defenders requested that the Forest Service redo the cumulative impacts analysis to account for potential changes in land ownership adjacent to the project area. [174] The EA failed recognize the significant cumulative impacts that may occur because of activities by other potential landowners in the area that would require analysis in an EIS. NEPA requires that agencies consider cumulative actions in determining the scope of environmental impact statements, meaning actions "which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement."[175] As explained by the Supreme Court, under NEPA, "proposals for ... actions that will have cumulative or synergistic environmental impact upon a region ... pending concurrently before an agency ... must be considered together."[176] The potential cuts on exchanged lands greatly increase the need for a detailed cumulative effects analysis because the

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[168] U.S. Fish and Wildlife Service Alaska Region. 2007. Queen Charlotte Goshawk Status Review.

[169] *Id.*

[170] *Id.* (emphasis added).

[171] *Id.*; *see also* Iverson, C. 1997. Summary of the 1997 Northern Goshawk Risk Assessment Panel at 1-7.

[172] Iverson, C. 1996a. Northern Goshawk Viability Assessment Panel Summary at 74.

[173] *Id.* at 76-78.

[174] US Forest Service NEPA Project Public Reading Room - View Letter (usda.gov)

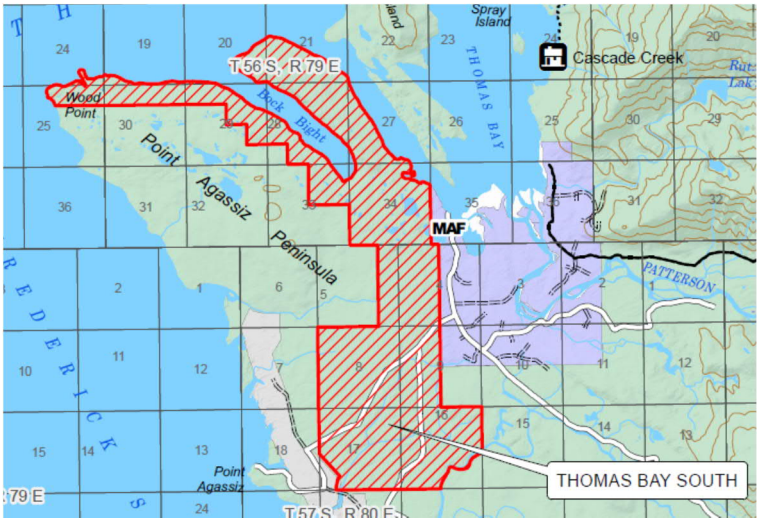
[175] 40 C.F.R. § 1508.25

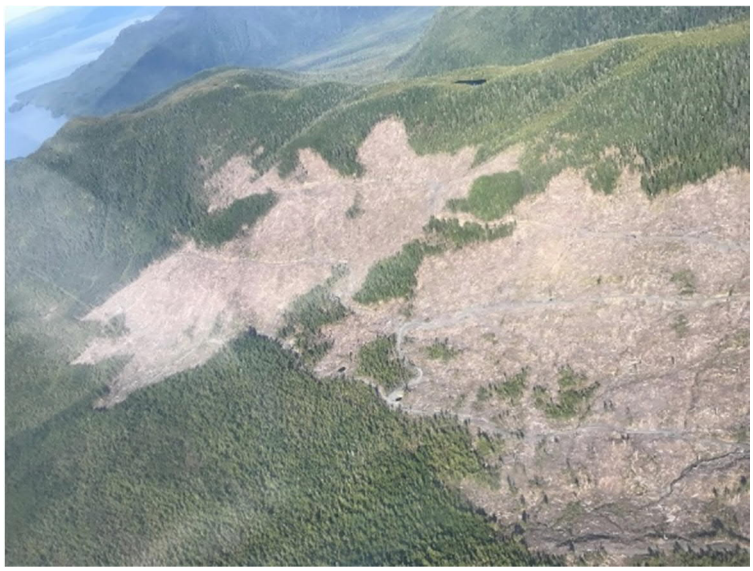
[176] *Kleppe v. Sierra Club,* 427 U.S. 390, 410 (1976); *see also Natural Resources Defense Council v. Forest Service,* 421 F.3d 797, 815 (9th Cir. 2005).

impact of future development may be greater than the impact of the analyzed project itself, making "the potential for ... serious cumulative impacts is apparent."[177]

1. Statement of supporting reasons

The Forest Service prepared the map shown below, which is part of new legislation proposed in Congress, the Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act.[178] The legislation would significantly alter landownerships in the project area and transfer ownership of 4,709 acres of second-growth forests currently managed by the Forest Service.[179] There is significant overlap between the clearcuts proposed for this project and acreage that may be developed by another landowner.[180] Often, lands legislatively removed or exchanged from the Tongass National Forest receive even more intensive land management than federal timber LUDs, such as recent activity on Cleveland Peninsula shown in the photo to the right.[181] Because of this impact, the EA should have considered potential logging of this area as part of its cumulative impacts analysis. Instead, the Forest Service stated that the "[t]he future use, if or when the land is conveyed, is unknown and not discussed in previously introduced legislation; therefore, it is not possible to say what land management practices are reasonably foreseeable at this time if land is transferred to private ownership."[182]





Given the recent history of land exchanges from the Tongass National Forest, it there was high need for the Forest Service to forecast and analyze

[177] *Te-Moak Tribe v. U.S. DOI,* 608 F.3d 592, 605-606 (9th Cir. 2010).

[178] EA/FONSI at 19.

[179] *Id.*

[180] *Id.*

[181] Resneck, J., E. Stone, E. Boyda & C. Aldern. 2022. Road to Ruin: The Roadless Rule is supposed to protect wild places. What went wrong in the Tongass National Forest? Grist. March 29, 2022.

[182] USDA Forest Service. 2023. Thomas Bay Young-Growth Timber Sale Project Public comments received on Thomas Bay Young-Growth Timber Sale Project Environmental Assessment at 7. Tongass National Forest, Petersburg Ranger District. September 2023

potential logging adjacent to the project area. A cumulative impacts analysis requires "'some quantified or detailed information; ... [g]eneral statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided."[183] Thus, "[t]he analysis 'must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present and future projects."[184] In general, the 9th Circuit has explained that:

> [P]rojects need not be finalized before they are reasonably foreseeable. NEPA requires that an EIS engage in reasonable forecasting. Because speculation is implicit in NEPA, we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as a crystal ball inquiry.[185]

The impacts of the land exchange significantly changes the cumulative effects of the project with regard to nearly every resource of concern, from wildlife to timber availability and supply to scenery to watersheds to public recreation and subsistence resource access. There may be drastic changes to remaining habitat conditions for wildlife, changed flow patterns in watersheds that share boundaries with private timberlands and other water quality concerns.

The 9th Circuit has articulated when a proposed land exchange is not too speculative to warrant consideration in a cumulative effects analysis. In 1996 the Forest Service prepared the Huckleberry Exchange EIS which analyzed the impacts of a land exchange between the agency and a private timber operator.[186] The EIS failed to analyze the cumulative impacts of a future land exchange involving another timber operator based on the assumption that the future exchange was too speculative to require analysis.[187] However, the 9th Circuit disagreed:

> Our review of the record suggests that the Plum Creek transaction was not remote or highly speculative. Rather, it was reasonably foreseeable and it should have been considered in the EIS. A summary of the proposed Plum Creek transaction already had been prepared by the Forest Service by 1995. On June 27, 1996, five months before the Huckleberry EIS was issued, Secretary of Agriculture Dan Glickman formally announced the proposed Plum Creek Exchange to the public. USDA Press Release (June 27, 1996) at 1.
>
> Moreover, the record reflects that the Forest Service was all but certain that the National Forest lands in the upper Green River Basin would be included in the Plum Creek exchange. The Huckleberry Exchange EIS was issued in November 1996. In July 1996, the Green River Watershed plan described the Plum Creek exchange, and in January 1997, two months after the Huckleberry Exchange EIS issued, a revised map showing lands to be exchanged in the Plum Creek Exchange was published. The Plum Creek Exchange was not too speculative in November, 1996, to be analyzed in the Huckleberry Exchange EIS.

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[183] *Klamath-Siskiyou v. BLM,* 387 F.3d 989, 993-94 (9th Cir. 2004).

[184] *Id.*

[185] *N. Plains Res. Council, Inc. v. Surface Transp. Bd.,* 668 F.3d 1067 (9th Cir. 2011)(citations and internal quotation marks omitted).

[186] *Muckleshoot Indian Tribe v. U.S. Forest Service,* 177 F.3d 800, 812 (9th Cir. 1999).

[187] *Id.*

> Given the virtual certainty of the transaction and its scope, the Forest Service was required under NEPA to evaluate the cumulative impacts of the Plum Creek transaction. (citations omitted). In the absence of an EIS that takes into consideration the cumulative effects of the planned land sales and resultant environmental impacts, we cannot conclude that the Forest Service took the necessary "hard look" at the cumulative environmental impacts of the Huckleberry Exchange.[188]

Also, cumulative impact analyses are insufficient when they cover only the direct effects of a project on a small area.[189] There are over 11,192 forested acres of second growth, spruce and hemlock in the larger area.[190] Timber operators had previously clearcut roughly a third of those acres.[191] The environmental analysis needed to expand in scale and address impacts on the larger area.

Finally, the EA does not identify significant cumulative effects in part because the project will not reduce old-growth habitats important to wildlife species.[192] The Forest Service also claims that other second growth forests would continue to mature "for the foreseeable future."[193] But the sale design plans for future logging of the project area that would prevent many maturing forests in the project area from ever attaining old-growth conditions.[194] This is a cumulative impact occurring later in time and a clear reduction in old-growth habitat.

2. Conclusion and suggested resolution

The potential for serious cumulative impacts here is readily apparent, and the EA arbitrarily failed to consider the impacts of logging in lands transferred for private timberland purposes or future planned logging in federal forests. The Reviewing Officer should remand the Draft Decision Notice and EA to the Responsible Official with instructions to redo the analysis so as to fully consider cumulative impacts.

V. Conclusion: request to cancel project or prepare an EIS

For the above reasons, Defenders requests that you remand the draft Decision Notice and EA to the Responsible Official with instructions to redo the analysis in an EIS. In the alternative, Defenders requests that you cease planning on this project and direct the Responsible Official to rescind the draft Decision Notice and EA.

Submitted for Alaska Rainforest Defenders

Larry Edwards, President

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[188] *Id.*

[189] *Bark et al. v. U.S. Forest Service,* 958 F.3d 865, 872 (citations omitted).

[190] EA/FONSI at 17.

[191] *Id*.

[192] EA/FONSI at 48.

[193] USDA Forest Service. 2023. Public comments received on Thomas Bay Young-Growth Timber Sale Project Environmental Assessment at 2. Tongass National Forest, Petersburg Ranger District. September 2023.

[194] EA/FONSI at 28.