

- **Cascadia Wildlands • Greenpeace • The Center for Biological Diversity •**
- **Greater Southeast Alaska Conservation Community • The Boat Company •**

May 23, 2014

Mr. Forrest Cole
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Federal Building
648 Mission Street
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**Comments VIA ELECTRONIC DELIVERY to comments-alaska-tongass@fs.fed.us
Exhibits VIA POSTAL MAIL, as above**

**Re: Comments on Draft Supplemental Information Report on the Big Thorne Final
Environmental Impact Statement and Record of Decision**

Dear Forest Supervisor Cole:

Thank you for the opportunity to review and submit comments on the Draft Supplemental Information Report (SIR) for the Big Thorne Final Environmental Impact Statement (FEIS) and Record of Decision (ROD). These comments are submitted on behalf of Cascadia Wildlands, Greenpeace, the Center for Biological Diversity, the Greater Southeast Alaska Conservation Community, all of whom administratively appealed the FEIS and ROD, and The Boat Company. We appreciate that Regional Forester Beth Pendleton recognized the importance of the potential threats to the Alexander Archipelago Wolf, Sitka black-tailed deer and subsistence users in requesting that the Tongass National Forest conduct additional analysis in the form of a SIR.

The thrust of our comments is that the preparation of a Supplemental EIS (SEIS) for the Big Thorne project is required by law. We ask that an SEIS to be prepared for the reasons discussed below, and we consider the ecological need for this to absolutely crucial. We still have serious concerns that the Forest Service has not adequately disclosed to the public the potential direct, indirect and cumulative environmental effects of conducting 148.9 million board feet logging on 6,186 acres of old-growth forest near Thorne Bay and Coffman Cove on Prince of Wales Island. Populations of wolves in the Big Thorne project area have declined precipitously in recent years as a result of legal and illegal harvest facilitated by a history of aggressive logging and road building on Prince of Wales Island. Additional logging of more than 6,000 acres of old-growth will cause a further decline in deer populations, which will provide further incentive for local hunters to target the few remaining wolves, leading to a possible collapse in the predatory-prey system on this part of the island. This scenario, which Dr. Person, U.S. Fish and Wildlife Service and Brian Logan from the U.S. Forest Service all acknowledge is plausible, has never been disclosed to the public in the FEIS, and the Forest Service may not use a SIR to correct this procedural deficiency.

In the three major sections of our comments we discuss the SIR generally and its wolf-related aspects, the appendices on Old-growth Reserve and Legacy retention issues, and an additional matter that also requires the preparation of a supplemental EIS.

That additional matter concerns the viability and possible endangerment of the lesser Round-leaved orchid (*Platanthera orbiculata*, also called PLOR4). We raise the PLOR4 issue at this time because it is newly ripe, from our discovery through FOIA responses received in January and May that provide significant new information that was not contained in the Big Thorne FEIS or planning record.

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I. Comments on the SIR generally, and its wolf-related aspects.

As an initial matter, our organizations object to use a SIR to address dissenting scientific opinions. This information was available to the agency before the FEIS was prepared and the ROD was signed. Prior to the release of the EIS, Dr. Person expressed to the Forest Service his dissenting opinions that the Big Thorne project may threaten the viability of the wolf and that the conservation strategy in the 2008 TLMP may be inadequate to ensure viable populations of the wolf. As our organizations documented throughout the administrative process, this information was withheld from the Forest Service by the Alaska Department of Fish and Game as part of its “one voice” policy. We unearthed Dr. Person’s concerns, and carefully documented those facts for the Forest Service in our comments on the Draft EIS. In large part, therefore, Dr. Person’s opinions were available to the Forest Service well before the FEIS was released and the ROD was signed. The FEIS, however, does not contain a fair and up front disclosure of these dissenting scientific opinions or the Forest Service’s responses thereto. This error cannot be rectified through the preparation of a Supplemental Information Report. It may only be addressed by supplementation of the EIS and reconsideration of the Decision on the Big Thorne project, after public disclosure of the dissenting scientific views.

Moreover, the work that has been done since the ROD was signed, to the extent that it does address truly new information, irrefutably demonstrates that the Forest Service must supplement the EIS in this instance. In particular, the draft SIR and the Wolf Task Force Report (WTFR), along with Dr. Person’s rebuttal¹ and the additional information in the record, demonstrate that there is significant controversy and uncertainty regarding the environmental effects of the Big Thorne project on wolf viability and the effectiveness of the 2008 TLMP conservation strategy in ensuring viability of the wolf. The information in the record raises significant controversy and uncertainty as to whether the Big Thorne project is consistent with the standards and guidelines of the Tongass Land Management Plan (TLMP), and that the TLMP is not consistent with the requirements of the National Forest Management Act of 1976 and implementing regulations.

We are particularly concerned in this regard because the Draft SIR relies on the efforts of other agencies to address unsustainable wolf mortality when all of the available data documents that illegal harvest contributes to unsustainable wolf mortality in the Big Thorne project area. All of the available data demonstrates that regulatory mechanisms have not been adequate to ensure viable wolf populations, because illegal take has contributed significantly to unsustainable mortality levels. The Draft SIR does not reconcile a large body of data contradicting its assumption that harvest limits will be adequate, and Dr. Person, the U.S. Fish and Wildlife Service and others have questioned this conclusion. The substantial controversy over whether this project, in combination with the cumulative effects of past logging, complies with the 2008 TLMP and the National Forest Management Act therefore necessitates preparation of a supplemental EIS.

Because of these well-documented concerns over the viability of the wolf and impacts of the proposed logging of more than 6,000 acres of old-growth forest, the Tongass National Forest has no choice here but to prepare a Supplemental Environmental Impact Statement (SEIS). The focus of the SEIS should be to collect more data on current wolf and deer populations and population trends and to meaningfully address the significant uncertainty

¹ Ex.1, Dr. Person’s comments on the draft SIR and WTF report, June, 23, 2014.

and controversy regarding habitat requirements for the wolf and the efficacy of regulatory mechanisms regarding the legal and illegal take of wolves in response to declining deer populations. The Forest Service should also use this process to address significant uncertainty and controversy as to whether the conservation strategy in the 2008 TLMP is adequate to ensure viable populations of the wolf based on the habitat requirements of this unique endemic species. The SEIS should include a robust discussion of the opinions of Dr. Person and the U.S. Fish and Wildlife Service on the impacts of the Big Thorne project, which clearly differ from those of the U.S. Forest Service and the Alaska Department of Fish and Game. The Forest Service must clearly set forth its response to those dissenting scientific opinions in the supplemental FEIS.

In the remainder of this section, we will first provide some background information on the legal requirements of the National Environmental Policy Act and the procedures the Forest Service is required to utilize in addressing “new information.” We will then discuss why the Forest Service may not use a SIR to address the dissenting opinions of Dr. Person, which were provided to the Forest Service well before the publication of the Record of Decision. We then address the analysis that is contained in the SIR and discuss why, to the extent the information in Dr. Person’s statement is considered to be new, that the Forest Service must still disclose this information to the public in the supplemental EIS. There can be no question that if deemed to be new this information is “significant,” based on the criteria to be applied under the regulations issued by the Council on Environmental Quality (CEQ). The Draft SIR as currently written includes no consideration at all of these mandatory criteria. It therefore is arbitrary and contrary to law in its current form. Once those criteria are appropriately applied, it is plain that the Forest Service must supplement the EIS to disclose to the public Dr. Person’s dissenting opinions, scientific controversy, significant uncertainty, possible violations of the 2008 TLMP and the National Forest Management Act, and information on the cumulative effects of the Big Thorne project on wolves and deer.

Dr. Person has provided a rebuttal² to the analysis and conclusions in the Interagency Wolf Task Force Report (WTFR) highlighting areas of disagreement and identifying issues included in his original statement that were ignored or incorrectly addressed in the report. The information provided by Dr. Person in his rebuttal again establishes that the Forest Service must disclose this ongoing scientific controversy to the public in the form of a Supplemental EIS, rather than simply discounting his opinions in a Supplemental Information Report prepared after the Record of Decision was issued.

We then provide comments on the additional information on old-growth reserves (OGRs) and the legacy forest structure standard and guideline.

A. Background on the National Environmental Policy Act and New Information

The National Environmental Policy Act (“NEPA”) declares a broad national commitment to protecting and promoting environmental quality.³ Pursuant to the statute’s action-forcing procedures, federal agencies must prepare an Environmental Impact Statement (“EIS”) for all “major Federal actions significantly affecting the quality of the human environment.”⁴ This requirement serves two purposes: it ensures that the agency’s decision is based on detailed,

² Ex.1.

³ See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

⁴ 42 U.S.C. § 4332(2)(C).

relevant information, and that the public is informed of the environmental impacts of the project.⁵

Once an agency has prepared an EIS, it is required to “be alert to new information that may alter the results of its original environmental analysis.”⁶ CEQ’s regulations require the Forest Service to prepare a supplement to a final environmental impact statements when “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”⁷

When faced with new information, the agency must determine whether that information is significant;⁸ if it finds that the information is significant, the agency must then issue a Supplemental Environmental Impact Statement (“SEIS”).⁹ The choice of whether to issue a SEIS must be a “reasoned decision” based on the agency’s evaluation of the significance of the information.¹⁰ Where new information or changed circumstances “may result in significant environmental impacts ‘in a matter not previously evaluated and considered,’” the agency is required to supplement its EIS.¹¹

Neither the statute nor CEQ’s regulations authorize agencies to use a Supplemental Information Report (“SIR”) to address new information. Courts, however, allow agencies to use SIRs and similar “non-NEPA” evaluation procedures in limited circumstances.¹² A SIR may be used for the specific purpose of evaluating whether new information or changed circumstances are significant, but a SIR may not be used as a substitute for a SEIS.¹³ If the new information is determined to be significant, the agency must prepare a supplemental NEPA evaluation.¹⁴ Much of the relevant case law addresses the circumstances in which an agency must produce an initial EIS; the significance analysis is the same for determining whether an agency must prepare a supplemental EIS on the basis of new information.¹⁵

In determining whether new information is significant, the agency must consider both the context of the action (including “the affected region, the affected interests, and the locality”)¹⁶ and its intensity, defined as the severity of the impacts.¹⁷ The CEQ regulations identify ten factors that the agency is to consider in evaluating an action’s intensity.¹⁸ Two of these criteria are, first, the extent to which the action’s effects on environmental quality are

⁵ *Robertson*, 490 U.S. at 349 (1989).

⁶ *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000).

⁷ 40 C.F.R. § 1502.9(c)(ii).

⁸ *Friends of the Clearwater*, 222 F.3d at 557.

⁹ *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 378 (1989).

¹⁰ *Id.*

¹¹ *North Idaho Community Action Network v. U.S. Dept. of Transportation*, 545 F.3d 1147, 1157 (9th Cir. 2008) (quoting *Wetland Water Dist. v. Dept. of Interior*, 376 F.3d 853, 873 (9th Cir. 2004)).

¹² *Idaho Sporting Cong. Inc. v. Alexander*, 222 F.3d 562, 565-66 (9th Cir. 2000).

¹³ *Id.* at 566.

¹⁴ *Id.*; see also *Price Rd. Neighborhood Ass’n, Inc. v. U.S. Dep’t of Transp.*, 113 F.3d 1505, 1508-09. (9th Cir. 1997).

¹⁵ See *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 374 (1989).

¹⁶ 40 CFR §1508.27(a).

¹⁷ *Id.* § 1508.27(b).

¹⁸ *Id.* § 1508.27(b)(1)-(10), see also *Anderson v. Evans*, 371 F.3d 475, 487 (9th Cir. 2004).

likely to be highly controversial and second, the extent to which the possible environmental effects are highly uncertain or involve unique or unknown risks.¹⁹ The controversy and uncertainty factors must be analyzed within the context prong of the “significance” definition, including the locality.²⁰ Any one of the significance factors may be sufficient to require preparation of an EIS.²¹ The Ninth Circuit has declared that controversy or uncertainty regarding an action’s effects on a specific, local ecosystem and animal population can be sufficient to require an EIS.²²

“A proposal is highly controversial when there is ‘a substantial dispute [about] the size, nature, or effect of the major Federal action * * * .’”²³ Expert testimony that reveals inadequacies in an agency’s environmental impacts analysis and contradicts its conclusions can demonstrate that an action is controversial.²⁴ Controversy can also be indicated by the fact that the effects of an action are unknown.²⁵ Where such a dispute exists, NEPA requires that the agency produce a “well-reasoned explanation” for why the disagreement does not constitute a public controversy regarding potential environmental impacts.²⁶ A well-reasoned explanation is one that is “convincing.”²⁷ If an agency fails to deliver a well-reasoned explanation, it can be required to complete further NEPA analysis.²⁸

Similarly, an agency must prepare a supplemental EIS “if the environmental effects of a proposed agency action are highly uncertain.”²⁹ If the collection and publication of further data can increase certainty with regard to the effects, a NEPA analysis of the new data is favored to allow for peer review and public comment.³⁰ Though there is no clear rule for determining the certainty of environmental effects, analysis of uncertainty is guided by the purpose of NEPA’s procedural requirements.³¹ According to the Ninth Circuit, an EIS is required “where uncertainty may be resolved by further collection of data, or where the collection of such data may prevent ‘speculation on potential * * * effects.’”³² The court explained this holding by reference to the purpose of an EIS: to remove the need for

¹⁹ *Id.* § 1508.27(b)(4), (5).

²⁰ *Id.* § 1508.27(a).

²¹ *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 731 (9th Cir. 2001)

²² *Anderson v. Evans*, 371 F.3d 475, 490 (9th Cir. 2004) (stating that an EIS is required because “[n]o one... has a firm idea what will happen to the local whale population” if the action is approved).

²³ *Id.* at 489 (9th Cir. 2004) (citing *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998)); see also *Northwest Env’tl. Def. Ctr. v. Bonneville Power Admin.*, 117 F.3d 1520, 1539 (9th Cir. 1997) (stating that a proposal may be considered controversial if “substantial questions are raised as to whether a project ... may cause significant degradation of some human environmental factor”) (Reinhardt, J., concurring in part and dissenting in part).

²⁴ *Sierra Club v. U.S. Forest Serv.*, 843 F.2d 1190, 1193 (9th Cir. 1988).

²⁵ *Nat’l Parks & Conservation Ass’n*, 241 F.3d at 737 (explaining that the controversy lay in the plaintiff’s assertion of substantial effects and the agency’s response that the extent of the effects was unknown).

²⁶ *LaFlamme v. F.E.R.C.*, 852 F.2d 389, 401 (9th Cir. 1988).

²⁷ *Nat’l Parks*, 241 F.3d at 736 (9th Cir. 2001).

²⁸ See *id.* at 737.

²⁹ *Id.* at 731-2.

³⁰ *Native Ecosystems Council & Alliance for the Wild Rockies v. U.S. Forest Serv. ex rel. Davey*, 866 F. Supp. 2d 1209, 1229 (D. Idaho 2012).

³¹ *Anglers of the Au Sable v. U.S. Forest Serv.*, 565 F. Supp. 2d 812, 829 (E.D. Mich. 2008).

³² *Nat’l Parks*, 241 F.3d at 732 (citing *Sierra Club*, 843 F.2d at 1195).

speculation by gathering relevant information.³³ An agency is responsible for releasing detailed information; if an agency's assessment contains uncertainty due to a lack of data, the agency must justify its failure to provide more definitive information.³⁴

B. The Draft SIR cannot remedy the shortcomings in the original FEIS.

While the Forest Service may use a SIR to address information that is truly “new,” it is prohibited from “using the SIRs to present information and analysis that it was required [but] failed to include in its original NEPA document.” *Id.* The Ninth Circuit has explained that:

if the Forest Service were permitted to correct deficiencies in an EA or an EIS by means of an SIR or another non-NEPA procedure, the regulations governing the supplementation of NEPA documents promulgated by the CEQ, as well as the Forest Service's own rules on this issue, would be superfluous. See, e.g., 40 C.F.R. 1502.9(c)(4) (stating that agency “[s]hall prepare, circulate, and file a supplement to a[n] environmental impact] statement *in the same fashion* . . . as a draft or final statement (emphasis added); Forest Service Handbook 1909.15 Chs. 20, 40 (detailing procedures to be followed when preparing EAs and EISs); see also *Oregon Env'tl. Council v. Kunzman*, 817 F.2d 484, 492 (9th Cir. 1987) (“[CEQ’s] regulations govern the form, content, and preparation of an EIS.”).³⁵

Here, Regional Forester Beth Pendleton acknowledges in her letter to Larry Edwards dated September 30, 2013 that much of the information in Dr. Person's statement was already “transmitted to the Forest during the planning process for the Big Thorne project * * *.” Indeed, in our comments on the Draft EIS, we provided to your agency exhaustive evidence that the State of Alaska, pursuant to its “one voice” policy, had been suppressing the scientific opinions of Dr. Person as it relates to the impacts of the Big Thorne project on wolf viability.³⁶ At that time, we explicitly noted for the Forest Service that Dr. Person had provided the following information before the Draft EIS was released:

- “[t]here are simply no methods of mitigation that will compensate for that much loss of winter habitat;”
- the Big Thorne project “goes further to remove the most important winter habitat for migratory deer in the watershed;”
- With respect to the North Thorne, Big Lake, Luck Lake, and Gravelly Creek drainages, the “[c]umulative loss of productive forest habitat in those areas causes me to question the viability of those watersheds to maintain ecological functions and support a healthy predator-prey community;”
- “I doubt that a resilient and persistent wolf-bear-deer-human predator-prey system will be possible within the watersheds affected after the project is implemented, if indeed it is still possible as current conditions progress inexorably toward stem exclusion;”

³³ *Id.*

³⁴ *Blue Mountains*, 161 F.3d at 1213; see also 40 C.F.R. § 1502.22.

³⁵ *Idaho Sporting Congress v. Alexander*, 222 F.3d 562, 567 (9th Cir. 2000); see also *Seattle Audubon Soc’y v. Espy*, 998 F.2d 699, 704-05 (9th Cir. 1998) (an agency must re-examine its decision when the EIS “rests on stale scientific evidence and false assumptions”); *Rock Creek Alliance v. U.S. Forest Serv.*, 703 F.Supp.2d 1152, 1180-81 (D.Mt. 2010) (holding that Forest Service cannot use a supplemental report to present information it was required but failed to include in the original NEPA document); *Helena Hunters Ass’n v. Tidwell*, 841 F.Supp.2d 1129, 1139 (D.Mt. 2009) (same); *Olympic Forest Coalition v. U.S. Forest Serv.*, 556 F.Supp.2d 1198, 1208 (W.D. Wash. 2008) (same).

³⁶ Cascadia Wildlands et al. Comments on Draft EIS at 60-67 (Dec. 10, 2012).

- “The Tongass Land Management Plan may or may not be adequate for protecting ecosystem functions and species viability. * * * The TLMP S&Gs only address a fraction of the ecological problems associated with industrial-scale timber harvesting of northern Pacific rainforests.”

In comments at the scoping stage and on the DEIS, ADF&G and DNR (which submits all comments from the State) appear to have withheld Dr. Person’s opinions from the Forest Service. Once we identified this information for the Forest Service, however, your agency was under a legal obligation to disclose this information to the public in the Final EIS.³⁷

As we discussed in our administrative appeal, it is also well documented that Dr. Person provided this information directly to the Forest Service on his own accord. He provided maps to the Forest Service demonstrating how the Big Thorne project would log much of the remaining high quality deer winter habitat left in these watersheds,³⁸ and we provided similar maps of his to the Forest Service with our appeal of the Big Thorne ROD.³⁹ In his statement that was submitted with our administrative appeal, Dr. Person again emphasizes that he provided much of this information to the Forest Service during the administrative process before the ROD was issued.⁴⁰ “I explained during these informal discussions that the Big Thorne and Log Jam timber sales will have a serious impact on wolves and deer, and consequently on wolf viability.”⁴¹ Dr. Person also documents that he met specifically with you, Mr. Cole, and with representatives from U.S. Fish and Wildlife Service on April 13, 2013 to discuss concerns about the impacts of the project on the wolf and the fact that mitigation measures cannot address the threat to wolf mortality because of the extensive network of roads in the project area.⁴²

All of this evidence that is in the project record demonstrates unequivocally that Dr. Person’s dissenting scientific opinions were provided to the Forest Service well before the FEIS was issued and the ROD was signed. Nevertheless, as we discuss at length in our administrative appeal, these dissenting opinions from the world’s foremost expert on the wolf were never disclosed to the public as required by law. This conclusion is further supported by the Big Thorne Appeal Recommendations, in which the Appeal Reviewing Office concludes summarily and without explanation that the EIS does “disclose the controversy and dissenting scientific opinion regarding the current status of wolves on Prince of Wales Island.”⁴³ This statement acknowledges that Dr. Person’s dissenting scientific opinions were available to the Forest Service before the EIS was finalized; however, the Appeal Reviewing Office is unable to identify anywhere in the EIS where this controversy and the dissenting views of Dr. Person are disclosed to the public as required by NEPA.

³⁷ 40 C.F.R. § 1502.9; *see also* *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 492 (9th Cir. 2011).

³⁸ Statement of David K. Person Regarding the Big Thorne Project, Prince of Wales Island at ¶ 9.

³⁹ *See*: (1) Cascadia Wildlands et al. appeal Exh. 12.55 (a revision adding the newly APRA acquired maps to the earlier version of that exhibit submitted with our DEIS comments); *and see* (2) Ex.6, updated May 30, 2014 with newer APRA material added. (3) *See also* Cascadia Wildlands et al. Administrative Appeal at 111 (Aug. 16, 2013).

⁴⁰ Statement of David K. Person Regarding the Big Thorne Project, Prince of Wales Island ¶¶ 9-10.

⁴¹ *Id.* at ¶ 10.

⁴² *Id.* at ¶ 9.

⁴³ Big Thorne Record of Decision and Final Environmental Impact Statement Appeal Recommendations at 72 (Sept. 27, 2013).

In sum, it is contrary to law for the Forest Service to address Dr. Person's concerns in a SIR instead of supplementing the EIS before issuing a new decision document. ADF&G originally withheld his concerns from the Forest Service, but our organizations painstakingly documented that unfortunate process and asked that the Forest Service disclose this information to the public in the Final EIS as required by law. The Forest Service refused to do so, and we appealed. Now, the Forest Service attempts to address this information in a SIR prepared after the ROD has been signed and the decision has been made, without disclosing that information to the general public, and without allowing the general public to submit comments on how the agency should address and resolve the controversy. This is flatly inconsistent with the public disclosure purposes of NEPA and the requirements of CEQ's regulations, which apply here to the Forest Service. By omitting that information from the public NEPA documents, the Forest Service foreclosed open and public discussion and comment on those issues that otherwise would have meaningfully informed the decision, substantively prejudicing the process. As evidenced by the WTF report, if those issues had been disclosed, it is probable that additional facts and scientific opinion would have been provided in public comments. The Forest Service cannot rely on conservation groups to disseminate such information. It is not our job, and we lack the resources, contacts, and legal framework of the Forest Service. The public relies on the Forest Service NEPA process to provide this sort of information. The simple solution is to prepare a supplemental EIS that includes Dr. Person's concerns and the agency's responses to that information.⁴⁴ The Forest Service can then disclose to the public pursuant to CEQ's regulations whether important information is incomplete or unavailable.⁴⁵ After that full and fair discussion of the competing views of well-respected scientists has been included in a single comprehensive document, that is disseminated to all interested parties, the decision maker can then choose among the various alternatives, including the no action alternative. Otherwise, inherent bias results from analyzing dissenting opinions after a decision has been reached and a ROD signed.

C. To the extent that Dr. Person's statement contains new information, the Forest Service must prepare a Supplemental EIS because that information is significant.

As discussed above, we disagree that much of the information provided by Dr. Person is "new," because a great majority of that information was provided to the Forest Service before the Record of Decision was signed. If this information is deemed to be new, however, it clearly requires preparation of a Supplemental EIS, because it is "significant" pursuant to the CEQ regulations.⁴⁶ In either event the remedy is the same – the Forest Service must prepare a supplemental EIS for the Big Thorne project.

As an initial matter, however, it is very difficult if not impossible to understand how the Forest Service has determined what information is new and what information is not new. As discussed above, the analysis is not as straightforward as simply comparing what is in the Big Thorne EIS and/or the TLMP EIS to the Person Statement. The simple fact is that Dr. Person provided much of this information to the Forest Service before his statement was submitted along with our administrative appeal. The Forest Service, to capture accurately the requirements of NEPA, must at least compare what was in the project record before his appeal statement was submitted, and what information in Person's statement was truly "new" – i.e. not a part of the project record at the time that the Forest Service issued the FEIS

⁴⁴ 40 CFR § 1502.9.

⁴⁵ 40 C.F.R. § 1502.22.

⁴⁶ 40 CFR § 1508.27.

and ROD. Much of the information is not new, and the Forest Service's effort to identify new information is fundamentally flawed because it entirely ignores whether and to what extent this information was provided in DEIS comments.

Moreover, the WTFR asserts that "Table A" supposedly "points the reader to past analysis and contextual evaluation that was completed in the Forest Plan EIS rather than during the Big Thorne analysis."⁴⁷ Table A, however, does not include any citation to where this information can be found. Therefore we are unable to provide helpful input on whether these issues have, in fact, been addressed adequately in prior reviews. Asking us to comb through the entire record of the 2008 TLMP searching for a citation in support of the Forest Service's statement in Table A is patently unreasonable.

For example, Table A states that the Forest Plan considered the 25/40% thresholds that Dr. Person set forth in his appeal statement.⁴⁸ We have been unable to locate where the Forest Service considered this information in the 2008 TLMP amendments, and Mr. Brockmann, states in comments on the draft WTFR that the Forest Service did not consider this information at that time.⁴⁹ The burden here is on the Forest Service to explain its decision based on the record – and by refusing to provide citations to a record that consists of many thousands of pages of documents, the Forest Service has frustrated the ability of our organizations to provide constructive feedback on the Draft SIR and WTFR.

As stated, the Forest Service had most of the information in Dr. Person's statement before it finalized the EIS. That information for the most part described why the Big Thorne project would have a negative effect on a sustainable and resilient predator-prey dynamic on Prince of Wales Island. There also are some pieces of new information which provide further detail on how and why this dynamic is likely to play out. New information in Dr. Person's statement and other places in the record may include the following:

- Low numbers of deer would motivate hunters to target wolves through legal and illegal take (although Dr. Person notes that he reached this conclusion in prior studies, including Person 1997 and Person 2001);⁵⁰
- Far ranging indirect effects as hunters move to less depleted areas;⁵¹
- As much as 80% of the Big Thorne project area is accessible to hunters and trappers;⁵²
- OGRs are not sufficiently large to encompass a wolf pack home range;⁵³
- The Forest Service lacks an accurate road closure inventory;⁵⁴ and
- The most recent data on wolf populations in the Big Thorne project area, which shows unsustainable levels of mortality from legal and illegal hunting.⁵⁵

⁴⁷ WTFR at 1.

⁴⁸ WTFR at 19.

⁴⁹ Ex.2 at 1, Brockmann (FWS) email to WTF members, March 28, 2014.

⁵⁰ Person Statement at ¶ 29.

⁵¹ Draft SIR at 5.

⁵² Person Statement at ¶ 27.

⁵³ *Id.* at ¶ 34.1.

⁵⁴ *Id.* at ¶ 36.

⁵⁵ Ex.3 at 1-2, Logan (USFS) email to Brockmann (FWS) June 12, 2014.

1. Uncertainty and Unique and Unknown Risks (40 C.F.R. § 1508.7(b)(7))

The Forest Service must prepare a supplemental EIS here to address significant uncertainty created by new information relating to the effects of the project on the wolf.⁵⁶ This uncertainty is documented in the Wolf Task Force Report and in documents obtained from the U.S. Fish and Wildlife Service through the Freedom of Information Act, discussed in more detail below. We will now detail the specific areas of uncertainty.

a. Uncertainty as to current populations and population trends of the wolf on Prince of Wales Island

There is presently great uncertainty whether current populations of wolves in the Big Thorne area are viable as a result of unsustainable harvest related to the cumulative effects of past logging and road building in the Big Thorne area. The data that has become available over the last two years demonstrates that wolf populations have declined dramatically in the Big Thorne area as a result of legal and illegal harvest of wolves. Based on these steep population declines, there is significant uncertainty as to whether populations are resilient to future disruptions, such as severe winters, reductions in deer populations, and further pressure from legal and illegal hunting and trapping, or state-sponsored predator control.

Dr. Person documented in his 2013 progress report to the Forest Service that he and Larson could only account for six or seven wolves left in the Big Thorne project area (Person and Larson 2013).⁵⁷ As recognized by the Appeal Reviewing Officer in discussing Dr. Person's appeal statement, recent reports "demonstrate a localized decline in wolf numbers, and incompletely understood processes including wolf immigration and direct mortality attributed to hunting and trapping create uncertainty regarding the sustainability of wolf populations that utilize the Big Thorne project area."⁵⁸

On June 12, 2014, Brian Logan, for the U.S. Forest Service, provided some preliminary information on data collection from the 2013-14 field season to Steve Brockmann with the U.S. Fish and Wildlife Service.⁵⁹ As Mr. Logan states, the data "is currently being compiled and a progress report is anticipated in these next couple of weeks."⁶⁰ The preliminary results however showed that for "fall count we had 13 (aerial counts on the one collared animal and trail camera) in one pack that occupies the area that formerly was suspected to have 5 packs * * * looked like it was reduced from 13 to 4 in project area at trapping season end."⁶¹ Mr. Logan concluded by stating that "22 total known (a minimum count) and at end season minimum known alive were 4+1+1 * * *."⁶² This recent data could indicate a mortality rate of approximately 73%, about twice the sustainable rate of mortality.⁶³

This recent data documenting a precipitous population decline in recent years raises significant questions and uncertainty about populations trends and resiliency of wolf populations to future disruptions. USFWS and Logan note in the WTFR that agencies "are

⁵⁶ 40 C.F.R. § 1508.27(b)(5)

⁵⁷ Statement of David K. Person at ¶ 19.

⁵⁸ Big Thorne Appeal Recommendations at 72 (emphasis added).

⁵⁹ Ex.3 at 1-2, email from Brian Logan (USFS) to Steve Brockmann (FWS), June 12, 2014.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Person and Russell (2008).

actively developing more-effective approaches to estimate population characteristics of deer and wolves and are collaborating to that end. These Task Force members recommend that until better estimates of these isolated populations exist, any actions that can reduce the level of risk should be considered.”⁶⁴ The points matrix attached to the WTFR states that the Forest Service was aware of the information in Person and Larson 2013 but this “information was not disclosed and comes from an ongoing study designed to explore methods for estimating abundance.”⁶⁵ The WTFR also asserts without explanation that disclosure of this information “could have confounded the results of the ongoing wolf field project.”⁶⁶ If the study is ongoing – and if the Forest Service is unwilling to disclose population data to the public until the study is complete – then there is uncertainty as to current populations and population trends. Finally, in commenting on the draft WTFR, Brian Logan⁶⁷ noted that “[w]e cannot say that the wolf population is resilient. The current population may be at an all time low.”⁶⁸

Based on the information in the record, the only rational conclusion is that there is significant uncertainty as to existing wolf populations in the Big Thorne project area. This uncertainty could be addressed through the preparation of a supplemental EIS, including the collection and synthesis of additional data. The recent preliminary data documents that wolf populations are much lower than they once were. This has created significant uncertainty as to populations trends of the wolf in the Big Thorne project area. It additionally raises uncertainty regarding effects of the succession debt from cumulative past logging and road building. The succession debt will result in high and unsustainable levels of mortality resulting from both legal and illegal trapping. The Forest Service cannot rationally assess the impacts of the Big Thorne project on wolves without first addressing this uncertainty. It can only be addressed by documenting the current situation as it exists on the ground, a situation still evolving as a result of a history of cumulative habitat degradation. That work is ongoing because the Forest Service does not currently have adequate information, and yet it is clear – based on current information – that wolf populations face heightened risk from unsustainable mortality. The Forest Service should use a supplemental EIS to aid in the collection and synthesis of current data on wolf populations. That data and analysis would meaningfully inform a new decision and a new choice of alternative.

b. Uncertainty as to the efficacy of regulatory mechanisms in preventing unsustainable harvest of wolves.

Closely related to the question of current wolf populations is the issue of whether regulatory mechanisms such as harvest limits will be effective at preventing unsustainable mortality of wolves. As Person notes in his statement, documented by his previous research, wolves can annually sustain about 35-38% total mortality,⁶⁹ and of that about 5% is natural mortality.⁷⁰ Based on these figures, Dr. Person concludes that human-caused mortality

⁶⁴ WTFR at 12 (emphasis added).

⁶⁵ *Id.* at 26.

⁶⁶ *Id.* Our organizations also object to the Forest Service refusing to disclose this population data to the public before the studies are complete. There is no rational explanation provided by the Forest Service as to why public disclosure could “confound” the results of the research.

⁶⁷ Logan’s position is Forest Wildlife Biologist for the Tongass NF.

⁶⁸ See Ex.4 at 9 (comment by Logan in a markup of a draft of the wolf task force report).

⁶⁹ Person and Russell (2008).

⁷⁰ Person (2001); Person and Russell (2008).

(legal plus illegal take) cannot exceed 30-33% without compromising sustainability of wolf populations.⁷¹

The efficacy of harvest limits therefore depends upon accurate estimates of current wolf populations and the amount of illegal take. Unless management agencies know how many wolves currently make up the population, they cannot possibly establish reliable harvest limits to ensure sustainable populations of wolves. The WTFR acknowledges this connection, stating that “the current regulatory structure is designed to limit legal harvest of wolves to a specific fraction of the estimated population.”⁷² Indeed, the WTFR states explicitly that the “[e]ffectiveness of this approach relies on an indication of population size * * *.”⁷³ Uncertainty as to the population therefore necessarily creates uncertainty as to the efficacy of the regulatory structure designed to limit harvest of wolves.

Moreover, there is significant uncertainty as to whether regulatory mechanisms are actually effective at limiting wolf mortality. The WTFR concedes that “[w]hether residents of POW will increase their harvest of wolves in response to low deer numbers is unknown. * * * We note that understanding this characteristic of the predator/prey system is low and there is modest uncertainty in our conclusion.”⁷⁴ The WTFR also notes Dr. Person’s research that “widespread, chronically unsustainable harvest of wolves * * * has already been documented on Prince of Wales Island (Person and Logan 2012). A significant portion (up to half of the total wolf harvest) appears to be illegal (Person and Russell 2008).”⁷⁵ *Even if* regulatory agencies had accurate population estimates (they do not), and *even if* those estimates were to be reliably used to set harvest limits (which is uncertain), there would still be significant uncertainty as to whether hunters and trappers would comply and whether mortality would be controlled and limited to a sustainable level. All of the available information and data demonstrates that illegal harvest has already contributed to unsustainable levels of wolf mortality.

This body of scientific information also undermines the draft SIR’s conclusion that the Forest Service has “no basis to conclude that State and Federal agencies will not fulfill their responsibilities under the State constitution and State and Federal laws for setting and enforcing appropriate regulations, and conducting information and education programs to manage wolf harvest to achieve sustainable and viable populations.”⁷⁶ In fact, all of the available data, including peer reviewed and published studies from Dr. Person and others, demonstrates that illegal harvest has already contributed to unsustainable levels of harvest (Person and Logan 2012, Person and Russell 2008). In addition, in his March 7, 2013 edits to the draft Wolf Task Force Report, Mr. Brockmann notes that “experienced wildlife law enforcement officials report that wolf poaching cases are among the most difficult to detect and solve.”⁷⁷ The Draft SIR fails to reconcile its presumption of the efficacy of regulatory mechanisms, with the substantial body of data documenting the opposite. We ask that you clarify what data you rely upon in concluding that illegal harvest is not or will not contribute to unsustainable morality of wolves, and that the State and the Federal Subsistence Board

⁷¹ Person Statement at ¶ 12.

⁷² WTFR at 11.

⁷³ *Id.*

⁷⁴ *Id.* at 10.

⁷⁵ WTFR at 10.

⁷⁶ Draft SIR at 5.

⁷⁷ Ex.5 at 4, comment & edits by Brockmann (FWS) in a markup of a March 27, 2014 draft of the WTF report.

would be willing, able and reliable in implementing effective management to assure viability. We do not believe there is any data in support of that highly suspect conclusion.

Additionally, it is irrational to presume that the State of Alaska would, as a practical matter, manage wolf populations in the Big Thorne area to assure viability because state and federal law are not in alignment on this issue. There is no reason to shy from the plain truth that the State's conservation mandate for predators is many decades behind that of the rest of the country. Until a few years ago, the State's position was that deliberately driving wolves even to extirpation would be allowable. It is ironic that the State should rest on the Alaska Constitution's "sustained yield" mandate to assure viable wolf populations, given its vigorous opposition to that mandate.⁷⁸ Even if one presumes that the State now complies with that Supreme Court mandate, of its own accord and without error, it is an unfounded leap of logic to presume that what the State considers a wolf population adequate to assure "sustained yield" under its constitution, correlates with the federal mandate to assure a viable and sustainable population.⁷⁹ There is every reason to suppose the State will conserve wolves as little as it possibly can. The 2012 discussion between Doug Vincent-Lang, Dr. Person, Doug Larsen and others illustrates plainly that the State aggressively manipulates the outcome of its biologists' scientific endeavors, in order to convey an assurance of sustainability — even when its most-qualified scientists find otherwise. This approach has have even reached the point where scientists are forced to dissociate themselves from such outcomes as a matter of professional integrity.⁸⁰

Second, the Forest Service cannot presume, in making policy, that the State would apply the best available science and reasonable wildlife management,⁸¹ because of the "one-voice" policy that promotes timber production over science and wildlife conservation. As documented, there is abundant evidence of political suppression of science within ADF&G.⁸² Because of that policy it is impossible for the Forest Service, or the public, to ever know whether a given statement by the State reflects a political or a scientific judgment. The State considers the inferences and conclusions of its wildlife biologists to be deliberations over *policy*, not science.⁸³ The WTF process itself bolsters that concern.

⁷⁸ See *West v. State*, 248 P.3d 689 (Alaska 2010) (holding Alaska Constitution's sustained yield mandate applies to predators). Note that the applicable standard is not viability of wolf populations, but rather sustained yield of wolf harvest. Unlike the Forest Service, the State attaches no importance to wolf populations themselves, only to the value of hunting and trapping them.

⁷⁹ Further complicating the picture are the State of Alaska predator control statutes and regulations, as implemented by the Board of Game. While ostensibly managing wolves for sustainable harvest, in reality the State, guided more by political concerns than by science, feels free to eliminate up to 100% of wolf populations on whole islands using a predator-control rationale.

⁸⁰ *Id.* See in particular: (1) two May 31, 2012 emails from Dr. Person ("another example of systemic distortion," *Id.* at 6-7); and (2) the June 29, 2012 email from Dr. Person ("edits are unacceptable...I will not allow my name and integrity to be associated with [Doug Vincent-Lang]'s political agenda," *Id.* at 18.) See also: The Book of One-voice concerning the State's manipulation of ADF&G science in another venue (series of events Ex.9 at pdf pages 81, 106-108, 145, 167-168, 188-191, 402-403).

⁸¹ Ex.8 at 12, ADF&G Chief Scientist Kim Titus, saying concerning POW wolf issues, "Seems to me that we are often second class resource managers in all of this. ... There you have it."

⁸² See (1) Ex.6; (2) Ex.8; (3) Ex.9 (The Book of One Voice); (4) Ex.10 (An introduction to the state's one-voice policy).

⁸³ See Ex.9 (Book of One Voice), in particular pdf pages 654 – 666 (summarizing improper application of deliberative process privilege to scientific endeavors).

All this is relevant to the Big Thorne project and this SIR because these failings of the state in its wildlife management make the need for conservative management of habitat resources by the Forest Service the keystone both for providing subsistence deer hunting (ANILCA §801) and the viability and persistence of wolves on Prince of Wales Island.

c. Uncertainty as to the effects of the Big Thorne project on wolf populations and population viability.

There is also significant uncertainty as to the ultimate effects of the Big Thorne project on viability of wolf populations, largely as a result of the uncertainty discussed above. The Draft SIR acknowledges this uncertainty, and these open questions can and should be addressed through the collection of additional objective data relating to current wolf populations and their response to cumulative effects of past logging and road building.

In particular, the Draft SIR notes that members of the WTF “maintained that the Big Thorne project, when combined with the cumulative effects of past and foreseeable timber harvest and associated road building, increases the likelihood of low populations occurring on Prince of Wales Island and associated islands.”⁸⁴ The Draft SIR notes the uncertainty based on the views of FWS and Logan – “it is unknown whether a substantial risk of island-wide predator/prey collapse or loss of sustainable populations of deer and wolves will result.”⁸⁵ And the Draft SIR concludes by stating that “some uncertainty remains and [] there is some risk that the scenario presented in the Statement could occur if the responsible management and enforcement agencies do not maintain adequate deer winter habitat and restrict wolf harvest, both legal and illegal, to a sustainable level.”⁸⁶

The uncertainty here is compounded by the fact that FWS was not provided enough time to fully evaluate the concerns expressed by Dr. Person because of the artificial timelines imposed on the wolf task force by the Forest Service. On March 28, 2014, Steve Brockmann sent an email to other FWS officials noting that the short timeline did not allow FWS to evaluate Dr. Person’s statement and that FWS was currently in the process of evaluating a petition to list the wolf as endangered or threatened under the Endangered Species Act.

Given the short time frame allocated for the response to Dr. Person’s statement, we are unable to determine the validity of his statement that the Big Thorne timber Sale project, in combination with existing foreseeable cumulative impacts, may jeopardize viability of wolves on Prince of Wales Island. Our status review and decision will ultimately be the result of a more thorough evaluation of the best available information, and will analyze more than just the effects of the Big Thorne timber sale. We do believe, however, that there is compelling evidence that some concern is warranted, and that cautious approach would be prudent.⁸⁷

The preparation of a supplemental EIS could therefore serve several functions in this situation. Not only would it allow for the collection of additional data on wolf populations, but it would also allow the Fish and Wildlife Service adequate time to evaluate based on the best available information whether the Big Thorne project threatens wolf viability, and it would also allow the Forest Service to consider the data and analysis to be made available in

⁸⁴ Draft SIR at 6.

⁸⁵ *Id.*

⁸⁶ *Id.* at 6-7.

⁸⁷ (1) Email from Steve Brockmann (FWS) to Geoff Haskett (FWS) and Timothy Jennings (FWS), March 28, 2014 at 11:33. (Ex.12 at 3-4). (2) Email from Brockmann to Greg Hayward (USFS) and cc to the rest of the WTF members, March 28, 2014 at 3:09PM, subj: “USFWS comments on WTF wolf narrative). Ex.13 at 2).”

the FWS's upcoming status review of the wolf to be conducted pursuant to the ESA.⁸⁸ For all of these reasons, a supplemental EIS could serve to resolve the existing uncertainty and would allow the Forest Service's decision maker to revisit the decision in this project after being provided with complete information that provides some answers to these critical questions.

d. Uncertainty as to whether the 2008 TLMP is adequate to ensure viable populations of the wolf.

The final area of significant uncertainty that can be addressed through the preparation of a supplemental EIS relates to the efficacy of the conservation strategy included in the 2008 TLMP. Dr. Person concluded in this statement that the "wildlife conservation strategy in the 2008 TLMP is inadequate to deal with these issues both at the project level and at the biogeographic province."⁸⁹ He then provides a detailed list of deficiencies, which includes information that has become available after the current conservation strategy was last reviewed in conjunction with the 2008 amendments. Those deficiencies include scientific flaws in how the road density standard is applied, the size of old-growth reserves (OGRs) being too small as compared to a wolf pack home range, the lack of protections for deer habitat outside the OGRs, problems posed by illegal harvest of wolves and shortcomings in the regulatory system, and the nonlinearity of impacts to deer populations once habitat capability drops below 18 deer/sq. mi.⁹⁰

Dr. Person further details certain factors that have arisen since the conservation plan was last reviewed in 2008, including the "precipitous decline in the numbers of wolves on Prince of Wales" and "new information regarding levels of illegal take as compared to legal take."⁹¹

Moreover, the Draft SIR notes that certain members of the Wolf Task Force also expressed uncertainty regarding the efficacy of the conservation strategy in the 2008 TLMP: "members find a need exists for information related to [the 2008 TLMP's] effectiveness in maintaining sustainable populations."⁹² The WFR documents the views of the FWS and Logan about this uncertainty, and it notes their recommendation that "until better estimates of these isolated populations exist, any actions that can reduce the level of risk should be considered."⁹³

Dr. Person also states that the uncertainty around the efficacy of the 2008 TLMP is compounded by the lack of information on the existing road network in the Big Thorne project area. "The lack of information regarding the road system (i.e., what roads are open, what is the length of the road and its spurs, what is closed, how was it closed, is the closure being maintained, etc.), makes it impossible to fully assess the adverse consequences of hunting and trapping access throughout Prince of Wales Island, including the Big Thorne project area."⁹⁴

⁸⁸ A complaint, *Center for Biological Diversity et al. v. Jewell & FWS*, was filed June 10, 2014 to ensure a prompt decision by FWS on the ESA listing of the Alexander Archipelago wolf. See Ex.14.

⁸⁹ Person Statement at ¶ 13.d.

⁹⁰ *Id.* at ¶¶ 34.a-p.

⁹¹ *Id.* at ¶ 36.

⁹² Draft SIR at 7.

⁹³ WFR at 12.

⁹⁴ Person Statement at ¶ 35.

In sum, the statement provided by Dr. Person and the views of FWS and Logan both note the uncertainty regarding the efficacy of the 2008 TLMP in providing for viable wolf populations. The Draft SIR ignores much of this information and is unable to resolve this uncertainty. This information must be disclosed to the public and then resolved through the preparation of a supplemental EIS.

2. Scientific Controversy as to Environmental Effects (40 C.F.R. § 1508.27(b)(4)).

The Forest Service should also prepare an EIS in this circumstance to address significant controversy created by new information as to the effects of the Big Thorne project on viable populations of Alexander Archipelago wolves. While we acknowledge that the Forest Service retains some discretion to choose among competing scientific perspectives, your agency may only do so after it adheres to the procedural requirements of NEPA, first disclosing to the public and taking comment on those competing views. The Forest Service, therefore, may not resolve the controversy in a Supplemental Information Report but must formally supplement the EIS so that this information is meaningful for the public and for the decision maker.

On these procedural requirements, we remind the Tongass National Forest of pertinent lessons to be learned from prior analogous situations in the Pacific Northwest. In the 1990's, the Bureau of Land Management refused to prepare supplemental EIS's to address the impacts of timber sales given new information on declining populations of the spotted owl.⁹⁵ Judge Frye's holding is particularly apt in this case:

The BLM Admits that expert opinion varies and that responsible experts in population ecology and related disciplines believe that new information show that the [owl strategy] is inadequate to preserve the northern spotted owl subspecies. * * * The situation that the BLM is in is precisely the situation in which a Supplemental Environmental Impact Statement is necessary. * * * It is not up to the court to evaluate or to discount the opinions of responsible experts in the scientific field. It is the duty of BLM to identify, evaluate and address the new information, allow public comment, and formulate its plans accordingly. The only credible conclusion to be reached in this controversy, regardless of which 'responsible experts' the court chooses to believe, is that NEPA requires the public to be involved, and the BLM has not followed procedures to allow the public to be involved.⁹⁶

The Draft SIR does not so much as recognize the binding CEQ regulations that require supplementation in this regard, nor does the Draft SIR evaluate whether this level of scientific controversy requires preparation of a supplemental EIS. Instead, Mr. Cole, it appears you take the position that you have the discretion to choose among competing scientific interpretations without first disclosing to the public in the form of a Supplemental EIS this significant controversy relating to the effects of approving more than 6,000 acres of old-growth logging. We strongly encourage you to reconsider, because the path proposed in the Draft SIR is flatly inconsistent with the action-forcing procedures of NEPA.

The areas of controversy have been identified in the WTFR, with ADF&G and Hayward holding much different views from USFWS and Logan. And, of course, Dr. Person's views are set forth in his appeal statement, in which he concludes that the Big Thorne project "represents the final straw that will break the back of a sustainable wolf-deer-predator-prey ecological community on Prince of Wales Island, and consequently the viability of the wolf

⁹⁵ *Portland Audubon Soc'y v. Lujan*, 795 F. Supp. 1489, 1501-03 (D. Or. 1992) (emphasis added).

⁹⁶ *Id.*

population on Prince of Wales island may be jeopardized.”⁹⁷ We summarize a few of the key areas of controversy below.

There is clearly a significant controversy here as to whether the Big Thorne project could push deer populations past a threshold, resulting in a collapse in wolf populations. Dr. Person explains that the past cumulative effects of old-growth logging, road building, and unsustainable mortality from legal and illegal harvest of wolves has pushed the Big Thorne project area to a “tipping point with regard to a viable predator-prey dynamic between wolves and deer.”⁹⁸ Because of the “nonlinear dynamics that characterize predator-prey-habitat interactions,” Dr. Person concludes that “an incremental reduction in deer habitat capability likely will result in a much larger effect on the predator-prey system * * *.”⁹⁹ As deer populations decline, hunters will increasingly target wolves to boost deer populations.¹⁰⁰ And his past data indicates “regulations designed to sustainably manage wolf populations will then be ineffective, because of unreported and illegal take of wolves (Person and Russell 2008).”¹⁰¹ Dr. Person’s opinion is supported by his own research, which demonstrates that when approximately “40% of a wolf pack’s total range is logged and roaded, there is a very high risk that mortality (mostly from hunting and trapping) will exceed reproduction and the pack area becomes a population sink.”¹⁰² And he concludes that up to 80% of the Big Thorne project area is readily accessible to hunters and trappers.¹⁰³

The U.S. Fish and Wildlife Service and Logan assert that this scenario is plausible, noting that “evidence of a critical response from the wolf population on Prince of Wales island exists in the form of Person’s (2006) documentation that wolf mortality exceeds reproduction when logging and roading covers over 40 percent of a wolf pack’s home range.”¹⁰⁴ In particular, they cannot assess at this time how close the wolf/deer/habitat system may be to a threshold response level, but they are concerned that the removal of “much of the best remaining winter habitat” associated with the Big Thorne project “could have much greater influence on deer wolf populations following a series of extreme winters than indicated by the percentage loss of habitat capability.”¹⁰⁵ USFWS and Logan also note the possibility that Southeast Alaska “is predicted to become progressively colder with greater precipitation as the region moves into a 10- to 15-year cold phase of the Pacific Decadal Oscillation * * *.”¹⁰⁶ And USFWS and Logan also note the evidence provided by Dr. Person’s published research (Person and Russell 2008) that wolf trappers have operated “outside the existing regulatory mechanisms” in “an effort to improve deer populations.”¹⁰⁷

It is only ADF&G and Hayward that hold a minority view here that the “risk of catastrophic, sustained deer mortality or island-wide population sink dynamics is low.”¹⁰⁸

⁹⁷ Person Statement at ¶ 13.

⁹⁸ *Id.* at ¶ 31.

⁹⁹ *Id.* at ¶ 34.o.

¹⁰⁰ *Id.* at ¶¶ 23, 33.

¹⁰¹ *Id.* at ¶ 23.

¹⁰² *Id.* at ¶ 8.

¹⁰³ *Id.* at ¶ 27.

¹⁰⁴ WTFR at 7.

¹⁰⁵ *Id.* at 8.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 8.

This position apparently relies on “the potential for management regulation of wolf harvest in the system” and thinning activities in previously harvested stands, which can “contribute to deer habitat capability and reduce the cumulative effects.”¹⁰⁹

We disagree with the views of ADF&G and Hayward, and find those opinions to be in conflict with the best available scientific information. More to the point, however, there is clearly a significant scientific controversy over the effects of the Big Thorne project on population viability for the wolf, represented by the divergent views of well-respected experts in the field. Further, it is apparent from the “one-voice” record that we have compiled that ADF&G’s lead member of the WTF (Vincent-Lang) has exhibited a strong, consistent and we believe unreasonable bias against the recognition or release of any science under ADF&G’s control that may contribute to any ESA listing or a reduction of logging.¹¹⁰ The State of Alaska’s “one voice” policy raises the specter of political influence over what should be a scientific approach on the WTF panel.

It is also noteworthy that the many scientific papers and reports relevant to the issues in the SIR and WTR that Dr. Person has produced during his career, many in concert with various colleagues, remain to our knowledge unchallenged. Likewise, no challenges were raised to relevant points he made in presentations to the Tongass Conservation Strategy Review Workshop (2006) and to the Alaska Board of Game (1996 and 2010).¹¹¹

New evidence from the public comment period that ended May 30 concerning the 90-day Finding for the Archipelago wolf also supports Person’s concerns, including the comments of James Kelly (USFS retired, former Big Thorne IDT Leader)¹¹² and Coffman Cove resident Jacki Sunde. Neither support the ESA listing, making their observations all the more powerful. In particular, Sunde noted from her own observations:

“The “Wolf Patrol” (trappers using snares) killed nearly every wolf in the Coffman Pack. I know this because we live off grid out here and there used to be a den not far from where we live. ...This would have been 2006/2007 trapping season. The Coffman pack had a large route, Lower Coffman/Sweetwater up Coffman Mt. across Canyon Spur coming back around Eagle Creek and Luck Lake. I know this because I trapped. One solitary wolf is left. I see his tracks from time to time at the head of the bay not far from where we live.”¹¹³

Other new information shows that Dr. Person’s perceptions also struck home with Neil Barten, who at the time was the manager of all ADF&G area biologists in Southeast Alaska:

“Dave, after having spent a mere 3 days on POW, I came away frustrated with the scale of logging that is still taking place, and the proposed logging coming up. The landscape is so marginalized for deer and other species that it seems the whole house of cards will come tumbling down in the future. I know you have been

¹⁰⁹ *Id.* at 7.

¹¹⁰ See (1) (Ex.9) - “The Book of One-Voice,” submitted as an exhibit to these comments. (2) (Ex.10) - “An introduction to the State of Alaska’s ‘One-Voice’ policy.” (3) (Ex.6) – A compilation of additional “one-voice” emails (March-Sept. 2012) concerning the Person & Logan (2012) report. (4)(Ex.7) – The received FOIA’d files that are the basis of Ex.6.

¹¹¹ See Transcripts, audio and other materials from these presentations and events: (1) Person 1996a (Ex.15), 1996 presentation to the Board of Game (BoG) on the AA Wolf Cons. Assessment; (2) Larsen 1996b (Ex.16), 1996 presentation to BoG on AA Wolf Status, with help in Q&A from Person & Kirchhoff; (3) Ex.17, 1996 presentations and Board of Game deliberation on GMU2 wolf regulations; (4) Person 2006 (Ex.18) partial transcript of Wolf Panel at Tongass CSR Workshop (video & PPT already in BT record); and (5) Person 2010 (Ex.19), “Wolves in Southeast Alaska” presentation to BoG.

¹¹² Ex.20, James Kelly comments on AA wolf ESA listing, May 30, 2014.

¹¹³ Ex.21, Jacki Sunde comment on AA wolf ESA listing, May 30, 2014.

preaching the carrying capacity decline for deer and in concert wolves for a long time, but I never saw it first hand before. You touched on a very important concept below that isn't discussed nearly enough, and that is, the need to provide subsistence hunting opportunities. It frustrates me to no end when I am at RAC meetings and the RAC members as well as rural residents applaud the USFS for protecting their subsistence priority by going along with proposals that either increase rural user opportunity or decrease non-rural opportunity thereby eliminating competition for a declining resource. Yet, never do these same people seem to grasp the concept that the very same USFS that is providing the opportunity through regulating others, is damning the resource with their land practices. It seems like that would be such an easy link to make and one the USFS would have to address, but they get away with that because these rural users know that if times get tough, they can use regulation to eliminate other hunters and protect their opportunity."¹¹⁴

Extensive discussion of science concerning the Alexander Archipelago wolf, its habitat, and its management is contained in our recent (May 30) comments¹¹⁵ to FWS on the potential ESA listing of the species. Some of that information is new to the Big Thorne project, and equally important the discussion integrates the new information with the old.

Since the time of our appeal and the May 30 ESA comments we have acquired new, relevant science papers; Stronen et al. (2014)¹¹⁶ and Hedrick et al. (2014).¹¹⁷ The first paper concerns the relationship of the genetics of telemetered populations of similar wolves in coastal British Columbia, in relation to the vagility of the wolves and the insular nature of the pack home ranges. The second paper concerns the questionable persistence of wolves on Isle Royale due to genetic factors. The existence of the Isle Royale population in low numbers over a period of decades has played a consequential role in viability determinations for the Alexander Archipelago wolf going back at least to the mid-1990s wolf expert panels that were conducted for the 1997 TLMP. However, this study shows that even with some in-migration a small, insular population is difficult to maintain. Both studies are relevant to wolves on Prince of Wales Island and the environmental impacts the Big Thorne project would cause.

There is also significant scientific controversy here as to whether the 2008 TLMP and its conservation strategy are adequate to ensure continued viability of the wolf on Prince of Wales Island. Dr. Person lays out a cogent theory as to why the conservation strategy is inadequate.¹¹⁸ In addition to all of the above issues discussed above, Dr. Person also emphasizes that the OGR's are too small to support viable wolf populations and that the standards and guidelines in the matrix are too weak and poorly applied, resulting in road densities that result in unsustainable harvest of wolves and an excessive loss of deer winter habitat. We share Dr. Person's concerns. USFWS and Logan state that there is uncertainty as to whether the plan is effective or not, concluding that "a need exists for information related to its effectiveness in maintaining sustainable populations."¹¹⁹ We also note that the upcoming status review of the wolf, to be performed by USFWS, may very well provide additional information that can assist the Forest Service in resolving this issue.

¹¹⁴ Ex.8 at 8, Neil Barten email to Dave Person of March 2, 2011. This is material newly released by ADF&G, through an APRA appeal. Ex.8 is our [May 30, 2014 update](#) of our prior Exh. 12.55, of which two earlier versions (for the DEIS and appeal) are in the Big Thorne planning record using that number.

¹¹⁵ (1) Ex.22, Comments to docket FWS-R7-ES-2012-0093, Greenpeace et al. 2014; (2) Ex.23, an electronic folder containing documentation provided with the ESA comments.

¹¹⁶ Ex.24.

¹¹⁷ Ex.25.

¹¹⁸ Person Statement at ¶ 34.

¹¹⁹ WTRF at 12.

3. Cumulative effects (40 C.F.R. § 1508.27(b)(7))

The Forest Service must also prepare a supplemental EIS in this instance because the new information demonstrates that the effects of the Big Thorne project, when combined with the past, present and reasonably foreseeable future logging and road building, may have a significant impact on the environment, including population viability for the wolf and winter habitat for the deer. The role of cumulative effects in the dynamics of the predator-prey system on Prince of Wales Island has been documented by Dr. Person in his statement. In particular, Dr. Person notes that the “cumulative effects of the Big Thorne and Log Jam timber projects along with previous logging over 60 years, has and will erode the resilience of deer to severe winter, predation and hunting.”¹²⁰ Dr. Person provides information that was not considered in the EIS regarding the nonlinear response of deer populations to declines in deer habitat capability once the cumulative effects of logging push figure below 18 deer/sq. mi.¹²¹ Dr. Person also provides new information suggesting that, as a result of the cumulative effects of past logging and road building, up to 80% of the project area is readily accessible by hunters.¹²² And, ultimately, Dr. Person concludes that the cumulative effect of the Big Thorne project, when combined with this history of logging and road building, “represents the final straw that will break the back of a sustainable wolf-deer predator-prey ecological community on Prince of Wales Island * * *.”¹²³ This information all relates to the incremental impact of the Big Thorne project when combined with past, present and reasonably foreseeable management actions taken by the Forest Service, and it clearly demonstrates that this project may have a significant impact on the environmental and viability of wolf populations on Prince of Wales Island.

Again, this is not the type of information that the Forest Service may resolve through the preparation of a Supplemental Information Report. Because the new information provided by Dr. Person clearly raises the possibility that the Big Thorne project may have a significant impact on the wolf, the Forest Service must prepare a supplemental EIS in this instance.¹²⁴

4. Threatened Violations of the National Forest Management Act, its Implementing Regulations and the 2008 Tongass Land Management Plan (40 C.F.R. § 1507.27(b)(10)).

The Forest Service must also prepare a Supplemental EIS in this case to address threatened violations of the Standards and Guidelines of the 2008 Tongass Land Management Plan. Pursuant to the National Forest Management Act of 1976, each project approved by the Forest Service must comply with these requirements.¹²⁵

In particular, this new information, in conjunction with information that existed prior to the release of the FEIS, suggests that the Big Thorne project does not comply with standard and guideline XIV.A.2, which requires the Forest Service to “[p]rovide, where

¹²⁰ Person Statement at ¶ 10.

¹²¹ *Id.* at ¶ 34.o.

¹²² *Id.* at ¶ 27.

¹²³ Person Statement at ¶ 13.

¹²⁴ *See, e.g., Laflamme v. FERC*, 852 F.2d 389, 397 (9th Cir. 1988) (holding that a plaintiff “need not show that significant effects will in fact occur, but the plaintiff raises substantial questions whether a project may have a significant effect, an EIS must be prepared) (citing *Foundation for North American Wild Sheep v. U.S. Dep’t of Ag.*, 681 F.2d 1172, 178 (9th Cir. 1982)).

¹²⁵ 16 U.S.C. § 1604(i).

possible, sufficient deer habitat capability to first maintain sustainable wolf populations, and then to consider meeting estimated human deer harvest demands.”¹²⁶ The TLMP further notes that this “is generally considered to equate to the habitat capability to support 18 deer per square mile (using habitat capability model outputs) in biogeographic provinces where deer are primary prey of wolves.”¹²⁷ And the TLMP also states that “[l]ocal knowledge of habitat conditions, spatial location of habitat, and other factors need to be considered by the biologist rather than solely relying upon model outputs.”¹²⁸

The Person Statement documents that the Big Thorne project area will fail to provide sufficient deer habitat for both wolf populations and the needs for subsistence hunters as “succession debt”¹²⁹ inexorably reduces the carrying capacity for deer in coming years, and that the Big Thorne project will exacerbate this problem to the point of threatening the very existence of the wolf on Prince of Wales Island. This is reflected both in the outputs of the deer model and also in Dr. Person’s statements that dwindling deer populations motivate hunters to target wolves both legally and illegally to boost deer numbers. Moreover, the recent data on wolf populations in the Big Thorne area is precisely the “[l]ocal knowledge” that must be taken into account by the Forest Service. And, Dr. Person’s statement that deer populations will decline in a nonlinear fashion once habitat capability drops below 18 deer per square mile must also be considered by the Forest Service.¹³⁰

This new information also suggests that the Big Thorne project is inconsistent with standard and guideline WILD1.II.B relating to wildlife viability. The TLMP requires that the Tongass be managed to “[p]rovide the abundance and distribution of habitat necessary to maintain viable populations of existing native and desirable introduced species well-distributed in the planning area (i.e., the Tongass National Forest). (Consult 36 CFR 219.19 and 36 CFR 219.27).¹³¹

Here, again, Dr. Person’s statement and the new information he provides along with even more recent data demonstrates that wolf numbers have declined precipitously. Dr. Person also described why this project would exacerbate that problem, leading to a strong likelihood of even lower wolf populations or extirpation. This information establishes that the facts on the ground – the dwindling wolf populations combined with 6,000 acres of additional old-growth logging – are flatly inconsistent with the requirements of the TLMP to “maintain viable populations” of the wolf.

Finally, the new information provided by Dr. Person also raises the possibility that the conservation strategy in the 2008 TLMP is flawed and that the plan as a whole fails to comply with the mandates of the National Forest Management Act and its implementing regulations. NFMA requires that land management plans implemented by the Forest Service include standards and guidelines that “provide for diversity of plant and animal communities;”¹³² a statutory requirement the Forest Service implemented through the population viability

¹²⁶ TLMP at 4-95.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Ex.26, Person & Brinkman (2013). Succession debt and roads. Ch 6 in: Orians, G. & Schoen, J. (2013). North Pacific Temperate Rainforests: Ecology & Conservation. Univ. of Wash. Press.

¹³⁰ Person Statement at ¶ 34.o.

¹³¹ TLMP at 4-89.

¹³² 16 U.S.C. § 1604(g)(3)(B).

requirements of the 1982 Planning Regulations.¹³³ “Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.”¹³⁴ “In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed * * * in the planning area.”¹³⁵

Again, all of the information that is new in this instance suggests that the Forest Service is not managing habitat in a way that is sufficient to maintain viable populations of the wolf. This evidence includes recent precipitous declines in wolf populations, information from Dr. Person that up to 80% of the Big Thorne area is already accessible to hunters and trappers (along with the 40%/25% thresholds discussed by Person), prior studies that illegal harvest facilitated by logging and road building has contributed to unsustainable harvest of wolves, and Dr. Person’s conclusions that OGRs are too small as compared to a wolf pack home range. It is clear from available data that the Forest Service’s management of the Tongass does not “insure” viable populations of the wolf, because we are currently witnessing those populations crash in response to exactly the same type of logging and road building that is being proposed on a large scale in the Big Thorne EIS and ROD.

In sum, the information provided by Dr. Person raises the possibility that the Big Thorne project and the 2008 TLMP are not in compliance with federal law, including the National Forest Management Act, the 1982 Planning Regulations, and the 2008 TLMP. The Forest Service must prepare a supplemental EIS in this circumstance to address these threatened violations of federal environmental law.¹³⁶

D. The Forest Service’s “relevancy” filter raises new concern for scientific integrity and adequacy of its analysis of wolf

We recently became aware that, prior to the ROD, the Forest Service undertook to filter attachments and bibliographic material submitted with our DEIS comments. See AR 736_3607. This document was not included in the administrative project record provided to us during the appeal period.¹³⁷ The document raises several issues.

First, it was not included in the administrative record or made available to the public until after the appeal period had closed, in violation of NEPA and Forest Service procedures.¹³⁸ According to the project record index, the document is dated April 24, 2013, well before the FEIS and ROD were issued. There is no reason why it would not have been available for inclusion in the administrative record provided in response to FOIA. This is not harmless error. Had the public been aware that broad swaths of information were excluded from consideration, this would have enabled better explanation of its relevance, and for appellants and commenters to submit additional or alternative sources of data.

¹³³ 36 C.F.R. § 219.19, 219.27(a)(6) (1982).

¹³⁴ *Id.* § 219.19

¹³⁵ *Id.*

¹³⁶ 40 C.F.R. § 1508.27(b)(7).

¹³⁷ The record we received ended at document 736_2285.

¹³⁸ See 40 C.F.R. §1500.1(b) (“insure...information is available...before actions are taken”); §1500.21 (requiring agencies make all incorporated material available within the time allowed for comment); FSH Supplement No. 1909.15-2009-1(as authorized by Forest Supervisor Cole on March 1, 2009) (directing that the administrative record be prepared prior to the Decision).

Second, the document date (prior to the FEIS and ROD) clearly illustrates that the identified materials were explicitly omitted from consideration by the decision-maker for improper reasons. This reveals fundamental flaws in the Forest Service analysis. Rather than consider all the information available, as required by NEPA, NFMA and the APA, by taking what amounts to a page out of Alaska’s “one-voice” playbook the IDT aggressively sought out reasons not to consider things. The documents are, in fact, relevant, which is why we submitted them. Some striking omissions include the Person (2001) dissertation, Person et. al. (1996), and Person et. al. (1997). The relevancy document suggests these scientific papers—which in large part comprise the foundation of the USFS conservation strategy for wolves—are of “limited relevance” due to their age, and that their relevance is limited to showing changes in knowledge over time. Some other striking omissions include Exhibit 12.55 to our DEIS comments and appeal,¹³⁹ and an in-press copy of Person & Brinkman (2013)¹⁴⁰ about succession debt — both of which laid out subject matter the Forest Service is belatedly dealing with now. As explained in painstaking and patient detail by Dr. Person over the past decades, up to and including the present process, this information and scientific analysis is fundamental to an adequate understanding of wolf ecology and conservation. It is hardly surprising therefore that the agency was taken by “surprise” by Dr. Person’s appeal declaration.

Similarly puzzling, and improper, is the notion that “internal” state documents are not relevant for that reason. A large number of documents deemed irrelevant are identified as such because they are “internal.” Instead, the agency prefers to rest on the more limited information that seeps into the one-voice-filtered official state positions. There is no foundation in law, fact or reason to draw such a line, and the fact it has been done here indicates a failure to apply good science. Information is information. The relevant standard is found in NEPA’s mandates to ensure scientific and professional integrity,¹⁴¹ and that information be of high quality.¹⁴² The Forest Service is under no obligation to accept “official” state positions to the exclusion of dissenting or additional information from individual scientists. To the contrary, as discussed above, such “internal” dissent is an indication of controversy and uncertainty, itself an important consideration under NEPA. By drawing such a line at “internal” discussion, the Forest Service has effectively incorporated and adopted the governor’s one-voice policy.

Third, given the recent discovery of this extraordinary filter, and the omission of actually relevant documents from consideration by the decision-maker, the documents noted in AR 736_3607 should be considered “new” information and evaluated in an SIR and, to the extent they are significant, in an SEIS.

We had supposed the relevancy of the submitted internal state email documents was self-evident. As that message was apparently not received, allow us to be more blunt. The documents we have provided you prove that the State of Alaska systematically suppresses the best-available science with regard to wolves, in service to a political agenda driven by the Governor and political operatives such as Mr. Rossi, Mr. Vincent-Lang, Mr. Moselle and Mr.

¹³⁹ An updated version of Exh. 12.55 was provide with our appeal, and a further update is provided as Ex.8 to these comments.

¹⁴⁰ The published version, Person & Brinkman (2013), is included as Ex.26 to these comments.

¹⁴¹ 40 C.F.R. §1504.22.

¹⁴² See *e.g.* §1500.1.

Clark.¹⁴³ The State process begins and ends with a policy conclusion that comes from the top—*increase timber harvest*. In the middle, State-employed scientists are put to work building pieces of information to rationalize that pre-determined conclusion. These field-level biologists are the experts, and it is in this middle (or “internal”) process that the best available information is found. That is why we have gone to such lengths to dig up internal emails, hard facts from preliminary reports, and in-depth reports. The meat of the issues is in the middle. In addition to the inherent value of the factual and scientific information conveyed, taken as a whole they illustrate a pattern of bias, and a lack of scientific integrity in the State of Alaska’s wolf management, submission of comments on the Big Thorne EIS, and participation in the Wolf Task Force. We urge the Forest Service to squarely confront, and not hide from, this phenomenon.

II. The Forest Service Needs to Prepare an SEIS to Address Old-Growth Reserve Modifications and Legacy Structure Implementation

We believe you need to produce an SEIS to evaluate and provide for public comment on the implementation of the Old-Growth Habitat Conservation Strategy for the Big Thorne Project. The strategy has two basic components – the reserve network, and standards and guidelines for matrix lands. [TLMP FEIS, Appx. D at D-2]. Your decision made significant modifications to the reserve system that reduced habitat quality, and modified a controversial forest structure retention standard in a way that significantly weakened the existing, and deficient, Forest Plan standard. Both changes resulted in a significant loss of, among other things, deer winter habitat and interior forest acreage needed to support various wildlife species. These actions added significantly to the controversy and uncertainty about the possible environmental effects of the project and its direct, indirect and cumulative impacts on specific local ecosystems and animal populations and must be analyzed in an SEIS. [40 C.F.R. § 1508.27(a), (b)].

A. An SEIS is Required to Address Your OGR Modifications

The Big Thorne ROD modified the OGRs in ways that allocated important winter deer habitat to timber development and replaced it with a combination of higher elevation roadless habitat, second growth habitat, and legacy structure. The Appeal Reviewing Officer (ARO) recommended that you review whether the small OGR modifications complied with NEPA and Appendix K to the TLMP and whether “comparable achievement” was provided for wildlife habitat values and connectivity. [SIR at 8]. The ARO also requested a determination of “whether there was a possibility of greater effects to deer habitat, both winter habitat and elevational connectivity, between summer and winter range than was identified during the Big Thorne Project analysis based on information included in the Statement” which indicated that effects on deer and wolf populations would be greater than anticipated in the EIS and project record. [*Id.*; Big Thorne Appeal Recommendation at 67]. Dr. Person’s Statement expressed significant concerns about the adequacy of the reserve system, particularly in terms of preserving deer winter habitat in light of significant new information indicating a recent and precipitous decline in the wolf population.

¹⁴³ See: “The Book of One-voice” (Ex.9) and “An introduction to the State of Alaska’s “One-Voice” policy” (Ex.10).

1. The Wolf Population Decline is Significant New Information Bearing on the Impacts of the Reserve Modifications

Your evaluation of the OGRs in the SIR concluded that there is “no new information motivating further analysis or further modifications of OGRs.” [SIR at 9]. We strongly disagree - Dr. Person’s prior communications to ADF&G and your agency, as reiterated in his subsequent Statement, require consideration and public review in an SEIS when combined with new information about the declining wolf population. Specifically, the Statement explicitly identified problems with the small OGRs in terms of size, lack of connectivity, and a lack of adequate habitat capability for deer. [Person Dec’1 at ¶341, m]. Thus, Dr. Person indicated that efforts to reduce wolf vulnerability should focus on preserving high quality deer habitat within and outside the reserves. [*Id.* at ¶9, 34i]. Dr. Person explained that in order to prevent further declines in the wolf population:

...the remaining mid and low elevation deer habitat on Prince of Wales Island needs to be protected and the number and size of OGRs need to be increased to increase the likelihood that more wolf packs are protected from unsustainable mortality from hunting and trapping. [*Id.* at ¶13b](emphasis added).

However, your OGR modifications explicitly reduced deer winter habitat relative to the previous reserve system. [Big Thorne Project ROD at 12; Appx. 3 at A-3-6, 8, 10; IOGR Report at 24]. Additionally, the evaluation in the SIR rests on several unsupported and controversial conclusions about the extent to which forest clumps in matrix lands (legacy), second-growth, partial harvest and high elevation POG habitats can provide a “comparable achievement” to the low-elevation winter deer habitat that you moved from the OGRs into timber development lands. As we have previously explained, there is significant uncertainty as to the effects of the Big Thorne Project on wolf populations and the effectiveness of the 2008 TLMP conservation strategy both at the project level and in the Prince of Wales Island Archipelago. The draft SIR does not even contemplate whether or how restoring the biologically preferred OGRs would respond to the recent wolf population decline, nor does it address how the uncertainties about the adequacy of lower quality habitats factor into the OGR modifications. Because the wolf population decline is significant new information, and because prior NEPA analysis never sufficiently addressed responsible scientific opinion about the adequacy of the OGR system, you must produce an SEIS to disclose the uncertainties and provide the public with an adequate analysis.

2. Significant Uncertainty and Controversy Regarding Whether the Modifications Provide Comparable Achievement

The Appeal Reviewing Officer recommended that you take a closer look at OGR design in light of new information indicating that the Big Thorne Project would adversely impact deer and wolf populations to a greater extent than anticipated in the FEIS and project record. [ARO Recommendation at 67]. Specifically the ARO was concerned “about any OGRs that meet ‘comparable achievement’ in terms of overall acreage but not in terms of habitat connectivity or POG values.” [*Id.*]. The SIR did not and could not cure these flaws under NEPA. The SIR explained that:

As a result of multiple resource considerations, not all of the recommendations of the interagency team were incorporated (PR#736_2191). I concluded that the use of older young-growth (greater than 50 years old) and old-growth stands that were partially harvested maintain enough snow interception, would achieve comparable elevational connectivity for deer in these areas, and is consistent with the direction in the Forest Plan. (p.4-91). Therefore, based on these considerations, the fact that the Big Thorne decision resulted in a net increase of acreage of Old-growth Habitat LUD within the entire project area, and the OGR modifications in the ROD provided comparable achievement of the Old-growth Habitat LUD goals and objectives, I found that no further modifications to these small OGRs are needed. [SIR at 9].

We believe that you need to produce an SEIS that provides sufficient analysis to determine whether or not the modifications meet the “comparable achievement” standard needed to ensure consistency with Forest Plan goals and objectives for Old-Growth Habitat.¹⁴⁴ As explained in our administrative appeal, prior NEPA analysis failed to disclose plans to modify the reserve system at the very initial stages of the public process. [Cascadia Wildlands et al at 94]. Then, the analysis of Alternative 3 OGR modifications in the FEIS clearly showed that the modifications would not provide a “comparable achievement” of Old-growth goals and objectives. [Big Thorne Project FEIS at 3-55 – 3-59].

You modified seven of the eleven small OGRs in the Big Thorne Project area but only one modified OGR was evaluated in the FEIS while the other six OGR modifications were changed between the FEIS and ROD. [SIR Appx. B at 2]. Your conclusion departed from the Alternative 3 analysis in the FEIS by finding that the six OGR modifications would provide a “comparable achievement” relative to Old Growth Habitat LUD goals and objectives. [Big Thorne ROD at 15]. In making that determination, you cited a net acreage gain and referenced, without detailed analysis, various mitigation measures (partial harvest, legacy structure, high elevation corridors, etc.) that were purportedly sufficient to support a “comparable achievement” determination. [Big Thorne ROD at 15, Appx. 3 at A3-1; Draft SIR, Appx. B at 9 - 11].

The net acreage gain does not cure the deficiencies in the NEPA analysis. In particular, three of your modifications resulted in reduced POG and acreage in the OGRs. [ROD, Appx. A at A-13]. Further, the Forest Service has acknowledged that changes in the location and design of the OGR network can undermine the conservation strategy:

Replacing the old growth reserve areas with an equal number of acres from somewhere else within the forest does not resolve the effects on the land management plan’s conservation strategy; the location and design of the old growth reserve network is critical to the success of the conservation strategy. [Sherman, H. 2011].

The decision clearly removed habitat that met Old-Growth Habitat goals and objectives by acknowledging that the modifications:

reduce the amount of POG (including large-tree POG and low-elevation POG), interior forest acres, goshawk and marbled murrelet nesting habitat, and deer and marten habitat in some OGRs (see Table OGR-2 in the Big Thorne FEIS for a comparison). Some of the modifications reduce the size of the OGRs from what they were in the Forest Plan, and small OGRs still meet the Appendix K acreage criteria. [Big Thorne Project ROD, Appx. 3 at A3-2].

In light of these habitat quality reductions, it is impossible to proceed based on the conclusory assumption that the modifications satisfied the “comparable achievement” standard. For example, the purpose of the biologically preferred location for the VCU 5800 OGR was, in part, to protect the limited remaining POG and maintain connectivity in a fragmented landscape. [ROD at A3-8]. There was particular concern about modifications that would adversely impact an elevational migration corridor and winter range values. [IOGR Report at 24]. Even if the Selected Alternative did not modify the OGR as much as proposed in Alternative 3, it still would “likely result in the loss of [... an] elevation corridor”

¹⁴⁴ See TLMP at 3-57 (one of two goals is to “[m]aintain areas of old-growth forests and their associated natural ecological processes to provide habitat for old-growth associated resources” and the first two objectives are to: (1) “[p]rovide old-growth forest habitats, in combination with other LUDs, to maintain viable populations of native and desired non-native fish and wildlife species and subspecies that may be closely associated with old-growth forests and (2) “[c]ontribute to the habitat capability of fish and wildlife resources to support sustainable human subsistence and recreational uses”).

and rely on partial harvest to maintain connectivity to “some” extent. [ROD at A3-9]. Your review assumes, without further explanation or scientific reference, that young growth and partial harvest prescriptions can offset some of the adverse impacts. [SIR, Appx. B at 9]. Given the loss of the corridor, and the lack of support for the assumption that 50% removal maintains connectivity and other habitat components, it is uncertain whether or not “some” connectivity is enough – particularly in light of new information about the declining wolf population.

Similarly, although the Selected Alternative modification for the VCU 5810 OGR was less substantial than the modification proposed under Alternative 3, the modifications “will likely result in the loss of elevation corridor and a reduction of POG in the North OGR.” [Big Thorne Project ROD, Appx. 3 at A3-6]. The ROD relies on legacy retention in the matrix to provide “some level” of connectivity. [Big Thorne Project ROD, Appx. 3 at A3-6]. Indeed, the ROD itself questions whether this approach will be consistent the Forest Plan. [*Id.*].

The purpose of the VCU 5850 OGR was to protect the last remaining blocks of POG. [Big Thorne Project ROD, Appx. 3 at A3-8]. But the Selected Alternative only maintained “most” of the high value, low elevation stands and “most” of the remaining blocks of contiguous low-elevation POG but still resulted in a loss of POG. [SIR Appx. B at 9]. In fact, the Selected Alternative modification was even greater than disclosed in the EIS. [Appeal Reviewing Officer Recommendation at 64]. Your review suggests that legacy structure and partial harvest in one of the more critical clearcut units will mitigate the impacts but at the same time, you substantially reduced the amount of POG in the OGR, particularly within one of the largest contiguous blocks of old-growth forest. [SIR Appx. B at 9-10]. Finally, the ROD acknowledged that the VCU 5950 OGR did not provide a comparable achievement “on the ground” but then asserted that the addition of high elevation acres in portions of the OGR will provide comparable achievement in terms of connectivity. [ROD Appx. A at A3-10].

As explained in Section I of our comment letter, NEPA requires that you provide a well-reasoned explanation for your findings that addresses the substantial disagreement regarding your conclusions. In particular, there is significant uncertainty regarding your reliance on lower quality habitat types to mitigate low-elevation old-growth habitat loss. Indeed, as explained in Section II of our comments, Dr. Person had even provided information prior to the DEIS indicating that “[t]here are simply no methods of mitigation that will compensate for that much loss of winter habitat.” For example, the record shows that higher elevation habitat moved into the OGRs has significantly lower value for deer and wolves than low elevation deer winter habitat moved into timber development LUDs. [*See, e.g.* Big Thorne Project Inter-agency OGR Report at 5, 7, 10, 11, 14, 15, 19]. The petition to list the Alexander Archipelago Wolf under the Endangered Species Act clearly identified the most critical habitat features for deer and wolf and raises considerable uncertainty about your reliance on mitigation:

Critical winter habitat for deer is ... a useful measure for determining wolf habitat (Person 2001). Closed-canopy old-growth forests are characterized by high basal areas with uneven-aged trees, which allow for broken canopy cover where some light reaches the forest floor, promoting a mixed, diverse understory of forage plants, but which also provide enough cover to curtail heavy snow accumulation on the ground in winter (Kirchhoff and Schoen 1987, Schoen and Kirchhoff 2007). These forests are important for deer foraging at all times of the year (Schoen and Kirchhoff 2007). However, in winter deer concentrate in closed-canopy old-growth forests because they provide understory food sources that are not covered in snow, in addition to thermal cover. (Schoen and Kirchhoff 2007). Because of the importance of closed canopy old-growth forests to deer, wolves in Southeast Alaska use this habitat type (internal citation omitted)(Schoen and Kirchhoff 2007). [GP/CBD Petition at 11].

Brinkman et al. (2011) further undercuts your assumption that young growth and partially harvest habitats could mitigate the loss of winter deer habitat. The study shows that deer populations in unlogged areas were substantially higher than in recently logged areas, and areas that were logged more than 30 years ago had the most significant deer density declines. [Brinkman et al 2011]. Similarly, your decision to rely on legacy structure placed in unsuitable timberlands and partial harvest to mitigate the adverse environmental impacts caused by the OGR modifications is also inconsistent with Appendix D, which indicates that “[o]ld growth forest that constitutes scattered fragments of unsuitable timberland generally did not contribute to meeting small reserve design.” [TLMP Appx. D at D-7]. And finally, there is an internal consistency with your “comparable achievement” determination because the modifications only provide “some” or connectivity or habitat.

3. Conclusion

In sum, as explained in our administrative appeal, without further analysis in a NEPA document, there is no indication that the ROD changes went far enough to provide a comparable achievement. The conclusion that the selected OGR modifications present a “comparable achievement” was a conclusory statement that was not disclosed and discussed in the FEIS and is not supported by the record. We believe that you need to produce an SEIS in order to provide the public an opportunity to comment on the significance of the reserve modifications. The SIR and ROD rely on a net acreage increase for the 7 modified OGRs in determining that the changes are not significant. [Big Thorne Project ROD, Appx. 3 at A3-3; SIR, Appx. B at 10]. However, your reliance on net acreage increases assumes that the changes are an improvement without analyzing whether the modifications change the reserve system in a way that does not provide comparable achievement. As the ROD further explains:

Modifications to small OGRs that do not maintain comparable achievement of Old-growth LUD goals and objectives have the potential to reduce the functioning of the reserve system, either through reductions in the habitat elements maintained within the reserve system or connectivity provided by the reserve system. [Big Thorne Project ROD, Appx. 3 at A3-3].

Your decision and subsequent review focused on acreage and uncertain mitigation measures rather than responding to Dr. Person’s statement or addressing whether the failure to meet the comparable achievement standard renders the changes significant. The correct procedure under NEPA is thus to address the controversy and uncertainty about the significant effects of the modifications in an SEIS. As a final matter, an SEIS is also needed because the reserve modifications made substantial changes to the proposed action that were relevant to environmental concerns, particularly in light of Dr. Person’s comments on the importance of maintaining winter deer habitat in the OGRs. [FSH 1909.15 § 18.2].

B. The ROD Failed to Comply with Appendix K OGR Modification criteria

Appendix K to the Forest Plan provides for four “limited circumstances” which would allow you to modify the size and location of an OGR: (1) when critical site-specific information is lacking; (2) OGR habitat criteria are not met; (3) proposed actions will reduce habitat integrity in the OGR and (4) a land conveyance will affect the OGR. [TLMP FEIS, Appx. K at K-1-2]. Appendix B to the SIR acknowledges that you had previously conducted an intensive review of small OGRs as part of the 2008 Forest Plan Amendment and that few modifications were anticipated as part of project level analyses. [SIR Appx. B at 1]. Thus, no modifications were proposed during the initial development of the Big Thorne Project unit pool. [Appx. B at 1].

However, when the Tongass exemption to the Roadless Rule was vacated, you directed an evaluation of maximizing timber take acreage by relocating portions of the OGRs to development LUDs and replacing the acres with IRA acres. [Appx. B at 1]. Appendix B explains that “[t]he decision that vacated the Tongass Exemption for the 2001 Roadless Rule, a change not considered by the Forest Plan, affected roughly one-third of the Big Thorne Project Area; the Responsible Official determined that this warranted consideration of OGR modifications at the project level.” [SIR Appx. B at 4]. The SIR insists that this determination followed the Appendix K process. [Appx. B at 11]. But it entirely fails to address how the vacatur of the Tongass exemption fits within the triggering circumstances that allow you to initiate the modification process in the first place. In other words, your explanation explicitly concedes that the modifications were not undertaken in response to Appendix K criteria, thus making the modifications in their entirety inconsistent with Forest Plan requirements.

C. An SEIS is Needed to Review Legacy Forest Structure Retention in Matrix Lands

The ARO was concerned that legacy implementation in the project did not meet the intent of the standards and guidelines. [ARO at 31]. The SIR was to evaluate “whether the Forest Plan Legacy Standards and Guidelines are adequate, and whether they were appropriately applied to the Big Thorne Project, recognizing that the Legacy Standards and Guidelines are not meant to provide full habitat capability for connectivity, foraging, and nesting. Rather, they supplement old-growth forest structure on a harvest unit basis in those VCUs (roughly equivalent to watersheds) that are considered at higher risk of not having sufficient residual old-growth trees and snags for wildlife species due to previous harvest.” [SIR at 8]. Your SIR concluded that both legacy planning and later implementation changes followed Forest Plan direction. [SIR at 10].

1. An SEIS is Necessary to Review the Adequacy of the Guideline

The SIR did not review the adequacy of the guideline itself. [SIR at 9]. Instead, the review “focused on whether the areas of legacy were applied consistently with the Forest Plan.” [SIR at 9]. As an initial matter, there was significant uncertainty regarding the effectiveness of the legacy guideline, which lacked clear definition and an analysis of its expected effects. [Dunn et al 2007 at 10]. The standard required 30% retention even though there was “no clear scientific basis to support that 10 to 30% canopy cover retention mitigates the effects of clearcutting on wildlife.” [TLMP at 4-90; TLMP FEIS, Appx. D at D-42]. ADF&G and the FWS criticized the standard due to the lack of a scientific basis and analysis that assessed the benefits to wildlife. [TLMP FEIS, Appx. H at H-A14, H-A34]. Both agencies recommended that you retain the previous forest structure retention guidelines due to specific concerns about species viability. [*Id.* at H-A14, H-A39]. In fact, to date, you have never thoroughly evaluated whether the new guideline is effective or not. [Big Thorne FEIS, Appx. B at B-151].

Further, the TLMP FEIS assumptions about wildlife movements in the matrix anticipated much smaller clearcut openings than implemented in the Big Thorne Project. [*Cf.* TLMP FEIS, Appx. D at D-42 (openings are typically less than 40 acres); PR 2192 (42 units, individually, or combined, created openings in excess of 40 acres, including 5 openings in excess of 100 acres). Your own science review team questioned whether the legacy standard would be adequate to meet wildlife habitat needs particularly on Prince of Wales Island:

“The general non-explicit nature of the application of certain prescriptions raises uncertainty about the effectiveness of those prescriptions in achieving the stated or presumed wildlife objectives. For example, implementation of the Legacy Standard appears to be unrelated to the specific habitat components for wildlife needed to satisfy their life history needs. Also, simply implementing the Legacy standard without

spatially explicit consideration across the watershed/landscape of nesting and foraging habitat needs creates uncertainties.” [Dunn et al 2007].¹⁴⁵

Thus, despite the significant controversy about the legacy guideline and significant uncertainty about whether it would mitigate the effects of clearcuts of any size, let alone the massive clearcuts authorized under the Big Thorne Project, your NEPA analysis never even considered whether the implementation of legacy would provide the habitat qualities needed for wildlife viability in the project area. This flaw must be remedied with an SEIS.

2. An SEIS is Needed to Evaluate ROD Modifications to the Legacy Standard

An SEIS is specifically needed in order to review and enable public comment on the significant change made to the guideline through implementation of this project. The intent of the guidelines was to maintain forest structure as needed to provide connectivity and habitat conditions for goshawk and their prey, as well as foraging and dispersal habitat for marten. [ARO Recommendation at 31; Forest Plan ROD at 22]. The intent of the guideline was to provide forest structure in clumps “within the opening, therefore, clumps should be left well inside the unit.” [2008 TLMP at 4-90 (emphasis added)]. Further, “[l]egacy forest structure shall be representative of the existing old-growth stand characteristics” and include “some of the largest, oldest live trees” and other forest components needed by wildlife. [*Id.*].

For the Big Thorne Project, you created a bifurcated implementation method that diverged from the guideline described as “Legacy A” and “Legacy D.” [SIR Appx. C at 8]. Legacy A areas came from within the suitable forested portion of the unit, while Legacy D areas were located within unsuitable forested portions of timber units where standards and guidelines precluded timber harvest for other reasons. [SIR Appx. C at 8]. Legacy D areas were generally along the edges of harvest openings. [SIR Appx. C at 9]. The SIR appendix expressly acknowledges that implementation “may not be the optimum solution for meeting the intent of the standard and guideline.” [SIR Appx. C at 9]. You acknowledge that legacy was used for numerous non-wildlife objectives. [SIR Appx. C at 9]. The record shows that meeting other resource objectives drove the implementation of legacy throughout the units. [PR 2192 at 3 – 10].¹⁴⁶ Legacy implementation even included areas withdrawn from timber management in order to meet the requirement. [PR 2192 at 3- 10; PR 2220]. Neither the ROD nor FEIS disclosed that you planned to implement legacy through the bifurcated approach reflected in your decision. [Big Thorne ROD, Appx. 1 at 5 – 6; Big Thorne FEIS at 3-421].

Despite the absence of analysis, you concluded that “the process used to determine the placement of legacy met the intent of the Legacy Forest Structure Standard and will provide clumps of old-growth forest throughout the identified VCUs in the Forest Plan that are at a higher risk of not providing the matrix functions of the Tongass Conservation Strategy.” [Appx. C SIR at 10]. However, the Legacy D acres are clearly inconsistent with the intent of the guideline. The intent of the Legacy guideline was to provide for wildlife habitat needs in matrix lands, and it specifically replaced previous standards and guidelines for marten and

¹⁴⁵ TLMP Planning Record Doc. 603_0818 at 10 (Dunn, P.; R. Graham; T. Hanley; M. McClellan; D. Boyce; W. Smith & R. Gravenmier. 2007. Science Review of the Conservation Strategy for the R10 2007 Tongass Plan Amendment. Pacific Northwest Research Station, April 18, 2007).

¹⁴⁶ Our review of the Legacy Acreage Determination and Explanation by Unit indicated that wildlife was explicitly mentioned three times. Legacy was used at least: (1) 9 times to separate units by providing a screen buffer between units, or dividing an opening larger than 100 acres; (2) 31 times for reasons related to unsuitable soils or other timber economic limitations; (3) 21 times for windfirm and riparian buffers and (4) 9 times for sensitive plants.

goshawks. [See, e.g. Big Thorne FEIS at 3-187 (the Legacy standard and guideline ... is intended to provide for the habitat needs of marten).

Nearly half of the legacy acreage is “Legacy D.” [PR 2192 at 3 – 10].¹⁴⁷ Also, in 2007, your science review team expressed significant concern about the possibility of implementing legacy structure using the approach for “Legacy D”:

“The proposed 2007 standard provides for clumps of trees to be left in the interior of openings created during tree harvests. However, the 2007 standard allows clumps to be placed along the edge of the cutting unit lowering the value of the habitat for goshawks. In addition, when applying the legacy standard it is suggested that stand treatments be examined on a watershed/landscape scale to understand the risks and uncertainties to goshawks and disclose how the standard will be applied at different spatial and temporal scales. This is important for several reasons, particularly for nest area locations and adults that show stable spatial and temporal stability. (Reynolds and Joy 2006). The two higher levels of tree harvests described risk in the Legacy standard may increase risk to goshawk viability if treatments are not carefully planned on a watershed/landscape scale. Areas such as Prince of Wales Island may be particularly problematic due to historically high levels of harvest of productive old growth.” [Dunn et al. 2007 at 10].

Despite these concerns, the record is entirely devoid of any analysis that shows any consideration of wildlife needs in determining the spatial arrangement of legacy implementation across the landscape.

Further, your “Legacy D” approach essentially eviscerates the Legacy Standard, such as it is, in areas you identified as “high risk VCUs” by combining legacy implementation with other resource needs or allowing it to be subsumed within other standards and guidelines. The Legacy Standard assumed that in “low risk” VCUs, a mix of standards and guidelines and other conservation strategy elements would provide old-growth forest representation. [See, e.g. TLMP FEIS, Appx. D at D-40 – 41]. For project area VCUs (i.e. “high risk” areas), the intent of the legacy structure was to supplement old-growth forest representation by providing structure that was additive to that already provided by non-development LUDs, OGRs and other standards and guidelines. [See, e.g. TLMP FEIS, Appx. D at D-40 – 41]. In other words, your decision to combine legacy structure with other conservation strategy elements does not meet the intent of the guideline or the overall Tongass conservation strategy. To the extent the guideline offers some flexibility to allow for other resource needs, Legacy D has become an exception that swallowed the entire rule and must be disclosed and analyzed in an SEIS.

3. Conclusion

Legacy structure is an experimental and controversial forest structure retention guideline and the NEPA analysis failed to provide a site-specific evaluation of wildlife habitat needs in matrix lands to inform whether Legacy would be adequate to meet the intent of the guideline and where Legacy structure would be needed. Then, you carved out a new forest structure retention requirement from the guideline (“Legacy D”) that was inconsistent with the intent of the guideline, and essentially eviscerated forest structure retention requirements by subsuming them within other resource objectives. In order to disclose and enable public review of legacy implementation, you must prepare an SEIS.

¹⁴⁷ Sheets, R. 2013. Big Thorne Project Harvest Prescription Addendum, Legacy Requirements. June 3, 2013. (736_2192).

D. Cumulative Effects

An SEIS is also needed to analyze the cumulative effects of loss of habitat qualities through the modifications of the OGRs and use of the Legacy Standard in terms of the intent of the conservation strategy and effects on viable, well-distributed populations of old-growth associated species. For example, the OGR modifications would have removed as much as 368 interior forest acres from the reserve system; Legacy D implementation relocated to unit edges as much as 471 acres of habitat to meet non-wildlife resource objectives that should have been placed within openings, in order to meet wildlife objectives. [Big Thorne FEIS at 3-61; and 736_2194 at 3 – 10]. The FEIS only provided a brief and limited discussion of cumulative effects with regard to Alternative 3. [Big Thorne FEIS at 3-70].¹⁴⁸ Dr. Person's declaration explained that the Big Thorne Project would have significant cumulative effects on deer and wolves:

... [T]he Big Thorne and Log Jam timber projects along with previous logging over 60 years, has and will erode the resilience of deer to severe winter, predation, and hunting. In addition, land transfers to Sealaska Corporation and Alaska Mental Health Trust Authority, will reduce more deer habitat on other parts of the island such that the level of habitat loss within Big Thorne and Log Jam has been and will be duplicated in most of the Prince of Wales Archipelago. [Person Dec'l at ¶10].

Also, your cumulative effects analysis should disclose and discuss the potential for a non-linear response to further reductions in deer winter habitat:

[Analysis] is incomplete unless we discuss the non-linear response of populations to changes in habitat carrying capacity (or habitat capability as modeled by the Forest Service). As habitat capability is reduced, population response increases at a disproportionate rate. On POW, much deer habitat has already been impacted, so the response of the deer population to loss of the best remaining winter range is likely to be disproportionate, following a hard winter. This is why the non-linear response is so important. [Brockmann (FWS) comment is WTF draft document, March 2014].¹⁴⁹

In sum, the modifications of the OGR system, evisceration of forest structure retention requirements, combined with the cumulative effects of the Big Thorne project in combination with other state, federal and private land logging, require analysis in an SEIS.

III. An SEIS is Necessary Because Significant New Information & Formerly Withheld Information Is Available Concerning Viability of the PLOR4 Orchid.

Documents discovered in January and May 2014 through FOIA responses expose an apparent cover-up by the Forest Service of a viability and Endangered Species Act concern regarding the orchid *Platanthera orbiculata* (a.k.a. PLOR4) in relation to the Big Thorne timber project. Because critical information was withheld from the public in the project's FEIS and in the planning record that was available during the appeal period, the impacts of the project on PLOR4 did not become an appeal issue. However, with the more complete information that we now have in hand there is clearly a significant issue over PLOR4 that requires resolution through further NEPA process for the project. There is new information and an unresolved controversy among Forest Service scientists that must be taken into account through a supplement to the EIS. [40 C.F.R. § 1501.7(c)].

¹⁴⁸ The cumulative effects discussion in the ROD could not cure the failure to disclose these effects under NEPA and moreover limited its evaluation to the modification of LUD boundaries. See Big Thorne ROD at A3-16.

¹⁴⁹ Ex.5 at 6. Comment by Brockmann (FWS) in draft of "Interagency Wolf Task Force: Narrative in Response to Four Broad Conclusions in Person Statement." March 27, 2014.

A report¹⁵⁰ by Greenpeace of findings from inspection of the new records and a zip archive¹⁵¹ of the files are provided as exhibits.

Background: The present PLOR4 issue arose through FOIA response documents 62 and 157 that were received from the Forest Service on January 23, 2014.¹⁵² Although there is some mention of this in the planning record document 736_2193, in the record provided to us during the appeal period, that document made it seem that it was a settled matter that there is no PLOR4 problem regarding the project. However, the FOIA documents reveal that this was not truly the case. They show that the issue persisted within the Forest Service beyond the date that the ROD was signed and at least into the middle of the appeal period. In fact, the Forest Service has produced no evidence in response to our two FOIA requests that the controversy among scientists has even now been resolved. It is now apparent that the project planning record we had for review during the appeal period was incomplete (a violation of the Region 10 supplement to the Forest Service Handbook), and that additional significant events occurred after the time we received that record.

The first FOIA response led to a second FOIA request on February 23, 2014, and receipt of responding documents on May 14. In addition to documents relevant to PLOR4, this response included an updated Big Thorne planning record,¹⁵³ which included 1,016 documents that were added to the record after the record was provided to us during the appeal period. Some of these are documents should have been in the record then,¹⁵⁴ and others were created during subsequent months.

The report on findings from the FOIA'd documents (Ex.27) includes a chronological summary of documentation and relevant events which lead us to the conclusion that a Supplemental EIS is necessary under NEPA. Our review of the documents is not necessarily complete; however, here are our principal findings to date:

A. Summary of principal facts found on the PLOR4 viability issue:

- A) There remains an unresolved controversy among Forest Service scientists of whether the Big Thorne project will threaten the viability (or wide distribution) of the roundleaf orchid (*Platanthera orbiculata*) on the Tongass and make it tend toward an ESA listing.
- B) Relevant information was withheld from appellants because it was not in the planning record we received, and in addition new information has arisen since both that time and the time of the Big Thorne decision.
- C) The Biological Evaluation for plants was signed within one day before the signing of the ROD by someone without the authority to do so, at the direct direction of Forrest Cole, even though she told him she lacked the necessary authorization.
- D) The authorized signer for the BE (KL, Thorne Bay District Botanist) was unwilling sign.
- E) The record about the BE signing is contradictory and may indicate fraudulent statements.
- F) Other significant false statements, toward indicating no significant problem for PLOR4 from the Big Thorne project, are well documented.

¹⁵⁰ Ex.27, "New Information Exposing a Failed Decisionmaking Process Concerning the *Lesser Roundleaf Orchid (PLOR4)* in the Big Thorne Project." Edwards (Greenpeace), June 20, 2014.

¹⁵¹ Ex.28, Archive collection of PLOR4-related documents from the two 2014 FOIA responses.

¹⁵² The FOIA request had been filed on November 13, 2013.

¹⁵³ The term *planning record* as used throughout this report can also mean *administrative record*.

¹⁵⁴ In our appeal we pointed out we were provided an incomplete record, and that we had to specifically request certain documents that we found were missing.

- G) The NEPA contractor (TT) caused significant problems with the project, affecting the PLOR4 impacts analysis, the Botany Biological Evaluation, the FEIS, and the decision.
- H) The botany documents including the BE were received from TT very late, on 6/25, which was only three days before the ROD was signed. This tardiness impaired the planning work and the decisionmaking process.
- I) The Joint Review Team (JRT) member (RT) responsible for botany strongly continues to claim that PLOR4 viability is threatened and the species may tend toward an ESA listing. However, he was isolated from the process leading up to the signings of the BE and the ROD, through the false statements and other manipulations of the person who, without any documented authority, signed the BE.
- J) Upon seeing one of the involved documents about four months after the ROD was signed, the Regional Wildlife Program Leader (Carrothers, who is in a Forest Service section not concerned with PLOR4) commented:
- I had heard murmurings that there was some discussions of this nature occurring. Another unfortunate example of the professional opinion of the resource specialist not integrated into the project. (Emph. added.)
- K) Further, the unauthorized signer of the BE surreptitiously overrode the assigned JRT reviewer to get the first language below into the BE and FEIS instead of the second:
- New: *“may adversely impact individuals, but is not likely to result in a loss of viability in the Planning Area, nor cause a trend toward federal listing”;*
- Old: *“is likely to result in a loss of viability in the Planning Area, or in a trend toward federal listing.”*
- L) A viability assessment for PLOR4 was due April 1, 2014 and may convey new information. A budget listing for the assessment includes new information to the BT process:
- “PLOR4 continues to be an issue in project planning due to its occurrence in forested habitats that are planned for timber harvest ... projects. The issue of viability continues to be of concern for this species at the northern extent of its range. ...”
- M) The record notes a substantial 2011-2012 decrease in the populations of monitored PLOR4 populations in the planning area, but dismisses this. A further substantial decline occurred in 2013, and this is new information for the Big Thorne project.
- N) Importance of the new information and these findings is amplified because nearly all Tongass PLOR4 populations are affected by this and three other current timber projects.

IV. Closing Remarks

The preparation of a Supplemental EIS (SEIS) for the Big Thorne project is required by law. We ask that an SEIS to be prepared for the reasons discussed above, and we consider the ecological need for this to absolutely crucial.

V. Signatures (verifiable signatures on request)

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Appendix A — Exhibits List

Ex.1 - Person_2014__Rebuttal of Dave Person to the WTRF & Big Thorne Draft SIR (Final)__23Jun14.pdf	6/23/2014	6.83 MB
Ex.2 - 21 Mail - USFWS comments on WTF Narrative__28Mar14.pdf	6/13/2014	180 KB
Ex.3 - Logan email to Brockmann, status of collared wolves__12Jun14.pdf	6/21/2014	156 KB
Ex.4 - 20 attachment-Greg_NotesOn_Task_Force_Draft_Report_V bl sb 040714 v2.pdf.pdf	6/13/2014	912 KB
Ex.5 - 22 attachment-USFWS_Narrative_Attached_Matrix_Conclusions.pdf	6/13/2014	600 KB
Ex.6 - Compilation of additional "One-voice" emails (Mar-Sep 2012) about Person & Logan (2012) rept.docx	6/22/2014	164 KB
Ex.7 - March to Sept 2012 documents about Person & Logan (2012) report (June 2014 FOIA).zip	6/22/2014	12.5 MB
Ex.8 - ADF&G_2011__ Internal emails about Big Thorne (30May14 update to Exh.12-55).pdf	5/29/2014	876 KB
Ex.9 - The Book of One-Voice__The State of Alaska's suppression of science in SE-Ak__May-2014.pdf	6/6/2014	3.71 MB
Ex.10 - An introduction to the State of Alaska's 'One-Voice' policy__Greenpeace_2014.docx	5/30/2014	60 KB
Ex.11 - 10 attachment-Input_Task_orce_Draft_Report_V4_FWS_Logan.pdf	6/13/2014	264 KB
Ex.12 - 26 Mail - Fwd_ Big Thorne Timber Sale wolf appeal (UPDATED cover letter)__28Mar14.pdf	6/13/2014	220 KB
Ex.13 - 21 Mail - USFWS comments on WTF Narrative__28Mar14.pdf	6/13/2014	180 KB
Ex.14 - Complaint, CBD et al. v. Jewell & FWS, Alex Archipelago wolf, 14-991 Dkt 1, 10Jun14.pdf	6/10/2014	400 KB
Ex.15 - Person's report on the AA Wolf Conservation Assessment to Board of Game__28-Oct-96.zip	6/22/2014	10 MB
Ex.16 - Larsen's report on AA Wolf status, with Person & Kirchhoff in Q&A__to Board of Game_29-Oct-96.zip	6/22/2014	15 MB
Ex.17 - Board of Game's deliberations on Unit 2 wolf proposals & passage of Prop 14C__29-Oct-1996.zip	6/22/2014	15.4 MB
Ex.18 - Partial transcript of Person's wolf presentation at Tongass Cons. Strat. Review Workshop_2006.pdf	6/22/2014	744 KB
Ex.19 - Person's presentation 'Wolves in SE Ak' to the Board of Game__5Nov10.zip	6/22/2014	129 MB
Ex.20 - James Kelly__AA wolf ESA comments (docket FWS-R7-ES-2012-0093-503)__30May14.pdf	6/22/2014	24 KB
Ex.21 - Jacki Sunde__AA wolf ESA comments (docket FWS-R7-ES-2012-0093-0315)__30May14.pdf	6/16/2014	32 KB
Ex.22 - Petitioners et al. comments to FWS on AA wolf ESA listing__30May2014.pdf	5/30/2014	1.17 MB
Ex.23 - Documentation submitted with Petitioners et al. ESA comments__30May14.zip	6/23/2014	584 MB
Ex.24 - Stronen_e-a_2014__Wolf population genetics, island-mainland diff in a marine archipelago.zip	6/23/2014	3.68 MB
Ex.25 - Hedrick_e-a_2014__Genetic rescue in Isle Royale wolves - Genetic analysis, collapse of the pop...pdf	6/11/2014	472 KB
Ex.26 - Person_& Brinkman_2013__Succession Debt and Roads - Effects of Timber Harvest, SE-Ak .pdf	6/15/2014	320 KB
Ex.27 - Greenpeace_2014__New information exposing failed Big Thorne decisionmaking for PLOR4.pdf	6/23/2014	256 KB
Ex.28 - PLOR4 documents received by FOIA, 2014 (those not in BT appeal record provided to us).zip	6/23/2014	256 MB

Appendix B — References

N.B.:

- (1) We have endeavored to list all of the documents cited in the comments, but may have missed some.
- (2) Our comments cite to the Petitioners et al. (2014) comments to the FWS, on the potential ESA listing of the Alexander Archipelago wolf, submitted May 30, 2014. The May comments are more detailed than these comments regarding several relevant biological aspects of the wolf situation in the project area and more broadly on Prince of Wales Island. Those comments have not been repeated in these comments, in order to be concise, and we believe both sets of comments both need to be reviewed and considered.
- (3) The May comments include a different and much longer list of references than the one below. Although the two reference lists have some overlap, both have documents that are uniquely listed.

ADF&G **(2010-2014)**. Emails, attachments and other documents from various FOIA and APRA requests.

Center for Biological Diversity et al. v. Jewell & FWS. Complaint filed June 10, **2014**.

Dunn, P.; R. Graham; T. Hanley; M. McClellan; D. Boyce; W. Smith & R. Gravenmier. 2007. Science Review of the Conservation Strategy for the R10 2007 Tongass Plan Amendment. Pacific Northwest Research Station, April 18, **2007**. (2008 TLMP record at 603_0818).

Greenpeace **(2013-2014)**. (The Book of One-voice, and two topical compilations of ADF&G emails regarding wolves and the State of Alaska's "one-voice" policy, from materials obtained from FOIA and APRA requests and planning records). See Exhibits 6 through 10 to these comments.

Greenpeace **(2014a)**. The Book of One-voice. May 2014. (Ex.9, and explanatory material in Ex.10).

Greenpeace **(2014b)**. New Information Exposing a Failed Decisionmaking Process Concerning the *Lesser Roundleaf Orchid (PLOR4)* in the Big Thorne Project." Edwards, June 20, 2014.

Hedrick P., Peterson R., Vucetich L., Adams J., Vucetich J. **(2014)**. Genetic rescue in Isle Royale wolves: genetic analysis and the collapse of the population. *Conserv. Genet.* doi:10.1007/s10592-014-0604-1

Person, D. **(1996a)**. Presentation to Alaska Board of Game, Report on the Alexander Archipelago Wolf Conservation Assessment. October 28, 1996. See: transcript and Board tapes. Located in folder "Board of Game 1996."

Person, D. **(1996b)**. Expert answers during Q&A at the end of: the Larsen (1996) report to the Alaska Board of Game on Status of AA Wolves. Oct. 29, 1996. See: transcript Q&A items 52, 54, 56, 80, 82 and 86, ff. p.13. and board tapes.

Person, D; Kirchhoff, M; Van Ballenberghe, V.; & Bowyer, R.T. **(1997a)**. Letter to Regional Forester Phil Janik on August 17, 1997. See next References entry.

Person, D.; Kirchhoff, M.; van Ballenberghe, V. & Bowyer, R. **(1997b)**. September 19, 1997 letter to Beth Pendleton of the Tongass Land Management Planning Team, similar to the August 18, 1997, nearly identical to the Aug. 18, 1997 letter. Bowyer is the only signer who was not a co-author of the 1996 wolf assessment (Person et al., 1996), but is a published wolf researcher.

Person, D. **(2001)**. Alexander Archipelago wolves: ecology & population viability in a disturbed, insular landscape. Ph.D. dissertation. University of Alaska, Fairbanks. Fairbanks, Alaska. 145p.

Person D.K., Bowyer R.T., Ballenberghe V. (2001). *Density dependence of ungulates and functional responses of wolves: effects on predator-prey ratios*. *Alces*. 37:2:pp.253-273. Web: <http://www.cabdirect.org/abstracts/20123097020.html>

Person, D. (2006a). CSR wolf panel powerpoint

Person, D. (2006b). Video of CSR presentation (submitted with petition).

Person & Russell (2008). Correlates of Mortality in an Exploited Wolf Population. *Jrnl. Wildl. Mgmt.* DOI: 10.2193/2007-52

Person, D. (2010). Presentation to the Alaska Board of Game. Wolves in Southeast Alaska. Nov. 5, 2010. See: video, transcript, powerpoint, and Board tapes.

Person, D. & Logan, B.D. (2012). A spatial analysis of wolf harvest and harvest risk on Prince of Wales and associated islands, Southeast Alaska. Final wildlife research report, ADF&G/DWC/WRR-2012-06. Alaska Department of Fish and Game, Juneau, AK. USA.

Person, D. (2013). Statement (Declaration, Dec'1) filed with appeals of the 2013 Big Thorne decision. Aug. 16, 2013.

Person, D. & K. Larson (2013). Developing a method to estimate abundance of wolves in southeast Alaska. ADF&G Division of Wildlife Conservation. 2013.

Person & Brinkman (2013). Succession debt and roads. Ch 6 in: Orians, G. & Schoen, J. (2013). *North Pacific Temperate Rainforests: Ecology & Conservation*. Univ. of Wash. Press.

Person, D. (2014). Statement rebutting the Wolf Task Force Report and draft Big Thorne SIR. June 23, 2014.

Petitioners et al. (2014a). Comments to FWS on the potential ESA listing for the Alexander Archipelago wolf (docket **FWS-R7-ES-2012-0093**). May 30, 2014.

Petitioners et al. (2014b). Exhibits filed with Petitioners' et al. comments to FWS on the potential ESA listing for the Alexander Archipelago wolf (docket **FWS-R7-ES-2012-0093**). In a zip archive. May 30, 2014.

Plaintiffs' Motion for Summary Judgment, *Greenpeace v. Cole*, No. 08-cv-00162 RRB (filed Oct. 7, 2009).

Person, D. (2014). Rebuttal to the Wolf Task Force Report of May 2014. June 23, 2014.

Larsen, D. (1996). Presentation to Alaska Board of Game, Report on the Status of Alexander Archipelago Wolves. Oct. 29, 1996. See: transcript and Board tapes.

Stronen A., Navid E., Quinn M., Paquet P., Bryan H., Darimont C. (2014). Population genetic structure of gray wolves (*Canis lupus*) in a marine archipelago suggests island-mainland differentiation consistent with dietary niche. *BMC Ecology*. 14:11

USFS (1997). Tongass Land & Resource Management Plan (TLMP) FEIS, ROD and administrative record. May 1997.

USFS (2008). Tongass Land & Resource Management Plan (TLMP) FEIS, ROD and administrative record. Jan. 2008.

USFS (2010-2014). Emails, attachments and other documents from various FOIA and APRA requests.

USFS (2013-2014). Big Thorne project documents (FEIS, ROD, ARO's recommendations, planning record documents, and post-appeal period planning (or administrative) record documents.

USFS (2014). Draft SIR for the Big Thorne Project, and appendices. May 2014.

USFWS (2010-2014). Emails, attachments and other documents from various FOIA and APRA requests.

Wolf Task Force (2014a). Interagency Wolf Task Force Report. Appendix A to USFS (2014). May 21, 2014.

Wolf Task Force (2014b). Interagency Wolf Task Force emails and attachments, from June 2014 FOIA response from FWS.