



File Code: 1570

Date: April 14, 2006

Mr. Glen Ith  
P.O. Box 1612  
Petersburg, AK 99833

Dear Mr. Ith:

Pursuant to 36 CFR 215.17, I have reviewed the administrative record for the Scott Peak Project Area Final Environmental Impact Statement (FEIS) and Record of Decision (ROD). The ROD was signed by Forrest Cole, the Tongass Forest Supervisor. I have also considered the Appeal Reviewing Officer's (ARO) recommendation (enclosed) regarding the disposition of your appeal (Appeal No. 06-10-00-0005 A215).

Based on his review of the Scott Peak ROD, FEIS and planning record, the ARO found that, with the exception of cumulative effects, the analysis in the FEIS and record adequately addresses the issues raised in your appeal of the decision. With respect to the cumulative effects analysis, the ARO found that the potential cumulative effects of the Todahl/Backline Timber Sale and associated road reconstruction were not adequately addressed in the Scott Peak FEIS or planning record. Therefore, the ARO recommended that the Forest Supervisor's decision be reversed.

### **DECISION**

I concur with the ARO and I reverse the Forest Supervisor's decision. The Forest Supervisor is directed to review the concerns identified by the ARO regarding the cumulative effects analysis and to take appropriate action to address them, should he decide to proceed with the Scott Peak project.

The Forest Supervisor should follow the procedures outlined in FSH 1909.15, Chapter 10, Section 18, to conduct additional analysis and document the potential cumulative effects of the Todahl/Backline project, as well as any other past, present or reasonably foreseeable future projects that may have potential cumulative effects in conjunction with the Scott Peak project. I consider the corrective actions minor in nature and capable of being completed within a year if the project receives such a priority.



My decision incorporates, by reference, the entire administrative record, which includes the appeal and project planning records, and constitutes the final administrative determination of the Department of Agriculture (36 CFR 215.18(c)).

Sincerely,

*/s/ Dennis E. Bschor*  
DENNIS E. BSCHOR  
Appeal Deciding Officer

Enclosure

cc: Tongass Forest Supervisor  
Tongass Appeal Coordinator



**File Code:** 1570

**Date:** April 14, 2006

**Subject:** Scott Peak Project Area Record of Decision and Final Environmental Impact Statement

**To:** Appeal Deciding Officer

This is my recommendation, as Appeal Reviewing Officer, on the action you should take, as Appeal Deciding Officer, on the pending appeals of the Scott Peak Project Area decision. The following appeals were filed under 36 CFR 215:

- No. 06-10-00-0004 – Greenpeace, Sitka Conservation Society, Cascadia Wildlands Project, and the Juneau Group of the Sierra Club
- No. 06-10-00-0005 – Glen Ith

The decision being appealed is the decision by the Tongass Forest Supervisor, Forrest Cole, to authorize the sale of timber and the construction of roads in the Scott Peak project area on Kupreanof Island on the Petersburg Ranger District, Tongass National Forest. The project area consists entirely of Value Comparison Unit (VCU) 444, an area of approximately 24,112 acres. The selected alternative, Alternative C with modifications, would allow harvest of approximately 347 acres (providing approximately 8.3 million board feet (MMBF) of timber), and the construction of 2.1 miles of temporary road, reconstruction of one mile of existing classified road, and temporary reinstatement of one bridge over a Class I stream. The decision also includes a non-significant Forest Plan amendment to change the small old growth reserve (OGR) in VCU 444 to Interdisciplinary OGR Option 3.

### Background

A Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the Scott Peak project was published in the Federal Register on November 29, 2002. The Draft EIS (DEIS) was released for public comment in July 2005. The Notice of Availability of the Final EIS (FEIS) was published in the Federal Register on January 20, 2006, and the legal notice of decision was published in the Juneau Empire on January 16, 2006.

My review of these appeals was conducted pursuant to 36 CFR 215.19. The appeals and project planning record have been carefully reviewed in my consideration of the objections raised by the appellants and their requested relief. My recommendation hereby incorporates by reference the entire administrative record for the project.

The appellants list several interrelated issues in their appeals of the Scott Peak project. Although I may not have listed each specific issue, I have considered all the issues raised in the appeals and believe that they are adequately addressed in the following discussions.



## **Appeal No. 06-10-00-0004 – Greenpeace, et. al**

Appellants list 158 points of appeal and request that I respond to each one. Many of these points have been addressed in responses to previous appeals, notably their appeals of the Couverden and Emerald Bay Timber Sale projects, as well as the Forest Supervisor's December 14, 2005, letter to Mr. Larry Edwards. As noted above, although I do not list each point of appeal, I believe the following discussions accurately summarize and address the issues raised in their appeal.

### **Issue 1. Whether Forest Service policy supports adequate National Environmental Policy Act (NEPA) analysis and sound management.**

Appellants assert that there is a “command and control” system described in a series of email communications that results in inflexible, inadequate NEPA analysis at the project level. They contend that this system limited the ability of the Forest Service to fulfill its mission to make full disclosures, have full and fair discussions, and thoroughly compare alternatives in the Scott Peak FEIS.

#### Discussion

It is important to note that appellants' concerns with this issue appear to relate solely to the use of wildlife models and the way they are applied during project-specific NEPA analyses. I believe it is appropriate to use consistent methods in conducting NEPA analysis. The interdisciplinary team (IDT) may, with properly documented justification, choose from a range of options (such as the scale at which to conduct deer habitat capability modeling) in conducting analysis, but may not, for example, unilaterally change deer habitat capability values or apply the model in unapproved ways.

In challenging how the wildlife models were applied during the Scott Peak analysis process, appellants are arguing an issue that is outside the scope of a project-level EIS. As noted in the email cited by the appellants [Decision Document #015], it is inappropriate to adjust the model on a project-level basis. Any changes to the model will be the result of field observations, thorough analysis, and peer review. As noted in the Tongass National Forest Annual Monitoring and Evaluation Report for FY 2000 [Decision Document #012], the Forest and the Alaska Department of Fish and Game (ADF&G) continue to work on a deer-predator-habitat interaction study, which will enhance understanding of the effects of forest management on deer populations.

In my opinion, interdisciplinary teams have adequate flexibility to adjust analysis methods to fit site-specific conditions, but interdisciplinary teams must work within the “sideboards” of written direction provided by line officers.

**Issue 2. Whether the deer habitat capability analysis in the Scott Peak FEIS used the proper value for the deer multiplier and properly associated that value with the correct range of Habitat Suitability Index (HSI) values.**

Appellants assert that the Forest Service changed the range of HSI scores from a range of zero to 1.0 with a carrying capacity (deer multiplier) of 100 deer/square mile to a range of zero to 1.3 without adjusting the carrying capacity accordingly. They contend that use of HSI scores ranging from zero to 1.3 skews the deer model toward overestimating habitat and underestimating impacts. Appellants argue that the value of the deer multiplier that the Forest Service is using is 33 percent higher than the value they believe is correct (75 deer per square mile).

Discussion

The Scott Peak FEIS uses the deer habitat capability model developed for the Forest Plan to evaluate the quality of deer winter habitat in the project area [FEIS, p. 3-45]. The FEIS confirms that the “[d]eer habitat capability model HSI values range from 0, including no habitat value, to 1.3, indicating optimal habitat value” [Id.]. The use of this range of values is consistent with direction in the Tongass Forest Plan [TLMP FEIS, Part 1, p. 3-367]. The Scott Peak FEIS also states that “[t]he deer model assumes that an area with an HSI value of 1.0 could support 100 deer per square mile” [FEIS, p. 3-45]. This value is consistent with direction found in the Tongass National Forest Annual Monitoring and Evaluation Report for Fiscal Year 2000 [Decision Document #012], which adjusted downward the value used in the Forest Plan.

Information regarding the evolution of HSI scores for deer and the relationship between HSI scores and estimated carrying capacity were described previously in a December 14, 2005, letter from the Forest Supervisor to Mr. Larry Edwards of Greenpeace. As stated in other prior correspondence (notably the Appeal Reviewing Officer’s recommendations regarding the Emerald Bay Timber Sale appeal), there is no documentation to support the appellants’ repeated assertion that the 100 deer/square mile carrying capacity multiplier was intended to match an HSI score of 1.3. On the contrary, direction in the Monitoring Report cited above and in the instructions attached to the table of deer model coefficients [Decision Document # 020] clearly state that that a 100 deer/square mile carrying capacity multiplier is intended to match an HSI score of 1.0.

I find that the Scott Peak project analysis follows established direction and uses the appropriate values in the deer habitat capability model. As stated in the response to Issue 1 above, any changes to the deer model will be the result of field observation, thorough analysis, and peer review, and are not appropriate at the project-specific level.

**Issue 3. Whether the application of the deer model as used in the Scott Peak FEIS correctly estimates deer habitat capability and adequately analyzes the availability of deer for subsistence uses.**

Appellants assert that the effect of the deer multiplier error discussed in their previous appeal point means that the analysis of the effects on deer habitat capability for subsistence uses is

incorrect, and that the true number of deer available does not meet State of Alaska population objectives. Appellants further assert that because of this error, deer habitat capability must be considered cumulatively across the biogeographic province, not just for Wildlife Analysis Area (WAA) 5136. They contend that because deer habitat capability has been overestimated for nearly a decade, the effects on the subsistence use of deer has been underestimated in all timber sale projects approved during that time period.

### Discussion

In regards to the deer model, HSI scores and carrying capacity multipliers were discussed in response to Issue 2 above. Given that the values used in the deer model were correctly applied, the model outputs used to analyze the number of deer theoretically available for subsistence were also correct. The FEIS states that the “[c]urrent deer habitat capability in WAA 5136 is approximately 1,746 deer, with 1,118 deer theoretically available to hunters after accounting for wolf predation” [FEIS, p. 3-161]. In the current model, wolves in the area reduce the number of deer theoretically available to hunters by approximately 36 percent.

As the appellants note, the ADF&G set a population objective of 1,067 for this WAA. Model outputs for the current condition, therefore, estimate a theoretical population just slightly above this objective. Theoretical populations for WAA 5136 by alternative are displayed in the FEIS [Table 3-55, p. 3-162], with Alternative C showing a theoretical number of 1,106 deer. Model run results in the planning record [Decision Document #022] include “Alternative C Modified,” which shows a theoretical number of 1,107 deer for the alternative described in the ROD.

The appellants are correct that wording in the FEIS describing this theoretical number of deer available for subsistence use is sometimes inconsistent. However, the FEIS clearly states that the numbers represent a “[t]heoretical maximum number of deer available for hunters that the area could support over time. This is a rough estimate and is not intended to predict actual deer population numbers” [FEIS, p. 3-160].

I find that the Scott Peak FEIS subsistence analysis for deer is based on the correct use of the deer model and values; therefore, the outputs displayed in the FEIS are correct and not misleading to the public or cooperators. Because these values were used correctly, there is no need, as suggested by the appellants, to apply this model across the biogeographic province or apply it again to all projects over the past decade.

#### **Issue 4. Whether the subsistence analysis presented in the Scott Peak FEIS meets the requirements of the Alaska National Interest Lands Conservation Act (ANILCA) Section 810 and the Tongass Timber Reform Act (TTRA).**

Appellants make several allegations related to consistency with ANILCA Section 810 and TTRA. First, they contend that as a result of the alleged errors in the use of the deer model, the ANILCA Section 810 subsistence finding that there will not be a significant possibility of a significant restriction of subsistence is incorrect.

Appellants also assert that the determination that “[t]he project provides a reasonable balance between the projected need for timber from the project area to help meet the Forest Plan, ANILCA, and TTRA timber related objectives, and the continued protection of subsistence uses and resources” is invalid as it was based on an inaccurate deer habitat capability analysis.

Appellants contend that they have demonstrated that the project is not consistent with sustaining the yield of deer for subsistence and sport hunters as required by TTRA’s direction to “seek to provide a supply of timber from the Tongass National Forest” only to “the extent that it is consistent with providing for the multiple use and sustained yield of all renewable resources” [TTRA Sec. 705(a), emphasis added].

Finally, appellants assert that the ANILCA 810 finding that the Scott Peak project is “necessary as a component of the timber program designed to implement the Forest Plan...” is invalid in light of the 9<sup>th</sup> Circuit Court of Appeals ruling that the Forest Service has overestimated timber demand. They contend that nothing in the Scott Peak FEIS or ROD establishes the need for the project.

### Discussion

See my responses to Issues 1-3, above for a complete discussion of whether the use of the deer model and the analysis of the project’s effects on deer was appropriately conducted. In my opinion, the deer model was used correctly, and the Forest Supervisor’s finding that the project itself will not have significant possibility of a significant restriction on the subsistence use of deer is supported by the analysis in the FEIS and project record. Appellants’ assertions regarding the validity of the Forest Supervisor’s determinations with respect to Forest Plan and TTRA objectives are without merit.

In regards to whether the Scott Peak FEIS and ROD are consistent with the requirements of ANILCA, Section 810(a)(3) of the Act requires that no use or occupancy of lands under Federal jurisdiction can significantly restrict subsistence uses until the Federal agency determines that:

(A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

Although the effects of the project on subsistence uses was not identified as a significant issue for the Scott Peak project, the FEIS does discuss the potential effects of the project on subsistence uses (particularly Petersburg, Kupreanof, and Kake users) [FEIS, pp. 3-156 to 3-174], and the ROD indicates that the Forest Supervisor considered these effects in making his decision on the project:

I have carefully considered the needs of subsistence users in this decision... Throughout the planning process, the interdisciplinary team for this project has worked hard to

balance a range of timber sale opportunities, while still protecting subsistence resources. I believe the Selected Alternative responds to both needs.

[ROD, p. 8]. Based on the analysis in the FEIS, the Forest Supervisor concluded that the Selected Alternative by itself did not present a significant possibility of a significant restriction on the subsistence use of wildlife, fish and shellfish, marine mammals, other foods, and personal use timber resources. The Forest Supervisor did conclude that there may be a significant possibility of a significant restriction on the subsistence use of deer for all of the alternatives, including the no-action alternative [ROD, p. 23]. While the Selected Alternative by itself does not present a significant possibility of a significant restriction of the subsistence use of deer, the possibility of such a restriction exists when the Selected Alternative, together with other past, present, and reasonably foreseeable future actions, are considered in a cumulative manner and in relation to the projected human population growth and demand for deer forest-wide [Id.].

In accordance with Section 810 of ANILCA, the Forest Supervisor determined that the actions involved in the implementation of the Selected Alternative are necessary, consistent with sound management of public lands, and strike the best balance between meeting the needs of the public and protecting forest resources [ROD, p. 24]. Appellants challenge this determination, pointing to the 9<sup>th</sup> Circuit Court of Appeals decision in *Natural Resources Defense Council (NRDC) v. Forest Service*, 421 F.3d 797 (9<sup>th</sup> Cir. 2005) to support their assertion that the Forest Supervisor's determination that the project is necessary as a component of the Tongass timber program is invalid.

Appellants' argument is similar to those raised in *Hoonah Indian Association v. Morrison*, 170 F.3<sup>rd</sup> 1223 (9<sup>th</sup> Cir. 1999). In *Morrison*, the 9<sup>th</sup> Circuit held that the word "necessary" does not have the affect of prohibiting timber sales that affect subsistence uses and are not required by law. A significant restriction of subsistence use might not be necessary to achieve compliance with law, yet necessary to conform to "sound management principles" for the "utilization" of public lands. The "utilization" to which "sound management principles" refers to is multiple, and includes outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. The Scott Peak project is a timber sale project. The Forest Supervisor was required to consider the potential effects of the project on subsistence, but is not precluded from selecting an alternative that may cause a restriction of subsistence use if he determines that the actions involved are "necessary, consistent with sound management principles for the utilization of the public lands."

Appendix A of the Scott Peak FEIS discusses the reasons for scheduling the environmental analysis of the Scott Peak project area. As stated in Appendix A, and in the FEIS and ROD, the Scott Peak project is a necessary component of the Tongass timber management program designed to implement the Forest Plan and to meet the requirements of TTRA related to seeking to meet the market demand for timber from the Tongass National Forest. The Forest Supervisor considered Forest Plan and TTRA direction, and well as other laws and direction relating to management activities on National Forest System lands, and concluded that the Selected Alternative provides the best mix of resource uses and opportunities to meet these needs [ROD, pp. 5-8]. I do not believe the 9<sup>th</sup> Circuit Court's decision in *NRDC v. Forest Service*, 421 F.3d 797 (9<sup>th</sup> Cir. 2005) invalidates the Forest Supervisor's determination that the Scott Peak project is a necessary component of the Tongass timber sale program.

In my opinion, the Forest Supervisor's conclusion that the significant restriction of subsistence use is necessary is reasonable and consistent with applicable law and policy direction.

**Issue 5. Whether the deer model as applied in the Scott Peak analysis uses the appropriate data set to describe habitat.**

Appellants assert that the use of volume strata data (rather than timtype) in the deer model is inappropriate because it is poorly correlated to forest structure. They disagree with the Forest Service response to comments regarding this issue, which states, “[t]imtype was ruled inappropriate for the analysis of deer habitat because it was not designed to accomplish that kind of analysis (U.S. District Court for the District of Alaska, 1994).” The appellants obtained a copy of the court order and conclude that the Court's decision (that use of timtype was arbitrary and capricious) was specific to the issue of using timtype to determine proportionality in the context of TTRA Section 301. They contend that the Court neither ruled nor implied that using timtype in deer habitat analysis is inappropriate. Appellants also state that the fact that the Forest Service has recently reinstated the use of timtype data for assessing impacts to coarse canopy habitat is further evidence that abandoning the use of timtype in habitat analysis on the basis of the Order was an error. Appellants conclude that there is no basis in fact to the Forest Service dismissal of their concern that an inappropriate dataset is used in the deer model.

Discussion

The Scott Peak deer habitat capability analysis used the approved current habitat capability model. Components of this model include average winter snow depth, elevation, aspect, and timber volume strata. Use of the volume strata map is consistent with Forest Plan direction [TLMP FEIS, p. 3-365]. The ADF&G has funded and conducted studies, and published several papers in peer-reviewed journals over the past 20 years on how deer interact with their habitat. These studies have shown that timber volume is a good predictor of winter deer range, and ADF&G has argued that low elevation, high volume old-growth timber stands be conserved. This research was considered and used in development of the deer model.

A recent study published in the Journal of Wildlife Management [Decision Document #014] concluded that there was a lack of relationship between winter deer use and volume class. By contrast, these researchers “[f]ound a consistent relationship in habitat selection using timber volume strata.” Research has demonstrated that the volume strata map is a statistically valid method of stratifying the forest for timber volume.

It is reasonable that the deer model uses the volume strata map, since it was the only statistically valid map available at the time and it utilized research findings on deer habitat selection and timber volume. Currently, a new map is being researched to better evaluate forest structure. This map is undergoing peer review and is currently being tested for its utility for evaluating deer habitat. I conclude that the analysis in the Scott Peak FEIS used the appropriate and approved dataset for the deer model.

**Issue 6. Whether the Scott Peak FEIS fully and fairly discusses old growth structure and the related analysis of old growth habitat.**

Appellants assert that the failure to perform the canopy texture designation analysis requested in their DEIS comments, or at least to give a rational reason why it should not be done, is a serious failing of the FEIS that has prevented adequate disclosure of the effects of the project on habitat fragmentation, interior old growth patches, and connectivity.

Discussion

The FEIS contains several detailed analyses of old growth habitat in response to the old growth habitat fragmentation issue. The FEIS discusses productive old growth acreage, interior old growth habitat patches, key (high value) interior old growth habitat patches, and connectivity of key interior old-growth habitat patches in the project area and displays the estimated changes by alternative [FEIS, pp. 3-18 through 3-19, 3-20 to 3-28, 3-28 to 3-32, and 3-32 to 3-34]. This information is summarized and further discussed by alternative on pages 3-34 through 3-41.

Additionally, pages 3-82 through 3-83 of the FEIS discuss low-elevation, high volume old growth habitat and display percent changes by alternative. Volume strata (classified by high, medium, and low) are discussed on page 3-102, displayed in Figure 3-11 [p. 3-103], and the changes by alternative are displayed on page 3-105. Coarse canopy old-growth habitat is discussed on page 3-83, and the estimated changes by individual patch are discussed in detail on page 3-84. Coarse canopy patches for the project area and surrounding area are displayed in Figure 3-11. Anticipated changes in volume class 6 are displayed in Table 3-38 [FEIS, p. 3-105].

For the purposes of coarse canopy analysis, the FEIS followed Forest Supervisor direction to “[u]se volume classes 6 and 7 combined to portray the current best available information for coarse canopy stands” [Decision Document #019]. For the Scott Peak project area, 581 acres are classified as volume class 6 and no acres are classified as volume class 7. Per adjustments to Alternative C in the ROD, only two sale units will impact coarse canopy patches [Portage Creek Coarse Canopy Area, FEIS, p. 3-84].

The FEIS analyzes and displays old growth and coarse canopy habitat by many methods. Appellants, however, request a new, additional analysis above and beyond those already conducted in the FEIS. They request an analysis of coarse canopy stands involving photo interpretation and classification of the project area into four “texture designations” [as tested in Caouette et al, Planning Record #170]. We reiterate what was previously stated in response to comments on the DEIS [FEIS Vol. II, p. C-59], that the Forest does not currently have a peer reviewed method for delineating and mapping varying levels of canopy coarseness.

In my opinion, the analysis of the potential effects of the Scott Peak project in the FEIS is adequate for the deciding officer to make an informed decision, and no additional analysis such as that suggested by the appellants is necessary at this time.

**Issue 7. Whether the Scott Peak FEIS adequately discloses the effects of the project on wolves.**

Appellants assert that because the deer habitat capability analysis is flawed, the analysis of the impacts of the project on wolves is also flawed. They contend that the deer habitat capability is only about 17 deer per square mile, not 23 deer per square mile as indicated in the FEIS. They also contend that the actual deer habitat capability is below the Forest Plan wolf standard and guideline of 18 deer per square mile. Appellants further assert that the Forest Service's excessive estimate of deer habitat capability has misinformed biologists in other agencies, specifically Richard Lowell of the ADF&G, and that the FEIS and Wildlife Report do not fully and fairly discuss his opinions and local knowledge regarding long-term wolf mortality and viability.

Discussion

See my response to Issue 2 above for a complete discussion of the HSI scores and carrying capacity multipliers used to run the deer model for the analysis in the Scott Peak FEIS. Given that the values used in the deer model were correctly applied, the model outputs used to determine the number of deer theoretically available for wolves is also correct.

As the appellants note, deer habitat capability at the biogeographic province scale is approximately 23 deer per square mile. This number is a correct model output, and there was no misinformation provided to the public or cooperators. ADF&G Area Biologist Rich Lowell's March 3, 2004 letter [Decision Document #028] to the Petersburg District Ranger is in the project record, and relates his concerns regarding road densities and future habitat modifications. The Wildlife and Biological Diversity Resource Report summarizes these opinions by Mr. Lowell, stating that he "[r]ecognized that the cumulative harvest within this province may give rise to long term threats to deer and wolves due to the cumulative impacts associated with road building and timber harvest activities" [Decision Document #013, p. 62].

Mr. Lowell's letter [p. 3] also states that "[n]either wolf mortality nor viability are [sic] currently of immediate concern at the larger biogeographic province scale." This information is reiterated in the personal communication from Mr. Lowell in the planning record [Decision Document #029] and reported in the FEIS [p. 3-64].

I find that the deer model was correctly applied, providing correct output numbers for the analysis of the project's effects on wolves. In my opinion, Mr. Lowell's comments were summarized fairly in the Wildlife Report, and his local knowledge was utilized. The full text of his letter is in the Scott Peak planning record.

**Issue 8. Whether the Scott Peak FEIS adequately considers the relationship between deer and wolves.**

Appellants assert that the Forest Service has not addressed the issue of wolf predation and its affect on modeling deer habitat capability. They state that the model assumes a linear relationship between habitat capability and habitat quantity, but where there is wolf predation,

the relationship is non-linear. Appellants contend that due to this non-linear relationship where wolf predation occurs, the model underestimates the loss of deer habitat capability when habitat is lost.

Appellants contend that they raised this issue in their comments on the Scott Peak DEIS but their comments were not addressed in the FEIS or Wildlife report. They assert that the Forest Service response on the deer model linearity issue is contrary to the requirements of NEPA, is contrary to the principles of sound management of public resources, and is arbitrary and capricious. Further, they state that the 9<sup>th</sup> Circuit Court of Appeals has held that “NEPA...requires up-front disclosures of the relevant shortcomings in data or models,” and that the Forest Service has failed to do this regarding the model’s linearity problem, citing their concerns related to the model’s dependence on data that is poorly correlated to old growth habitat structural characteristics and the deer multiplier error.

### Discussion

As described in the Wildlife and Biological Diversity Resource Report, “[t]he deer winter habitat capability model predictions are run using the most current version of the Interagency Deer Model. This model has been peer-reviewed...” [Decision Document #013, p. 16]. Contrary to appellants’ assertions, limitations on habitat capability models are acknowledged. The FEIS states that the deer habitat capability model “[i]s useful for estimating changes in habitat capability resulting from timber harvest activities, but is not intended to estimate actual deer populations” [FEIS p. 3-45]. This point is reiterated in *The Role and Reliability of Habitat Capability Models*, which states, “[h]abitat models estimate habitat quality and do not predict actual populations” [Decision Document #032, p. ii-3].

Appellants are correct in that the current deer model assumes a linear relationship between habitat capability and habitat values, and that the estimated effects of wolves on theoretical deer populations do not vary. Model results are expressed as a “[t]heoretical long-term deer carrying capacity, or deer habitat capability, for the project area based on the area’s cumulative HSI values” [FEIS, p. 3-45]. Model results are most useful for comparing relative changes by alternative rather than indicating actual effects to deer populations. As stated in *The Role and Reliability of Habitat Capability Models*, “[i]t is important to remember that the link between habitat capability and actual populations has not been experimentally determined” [Decision Document #032, p. ii-5].

Appellants cite Person to support their assertions regarding deer model linearity. Person describes a deer-wolf population model (as opposed to a habitat model) in his dissertation [Decision Document # 031]. As stated in the FEIS [Vol. II, p C-54], this model has not been peer-reviewed or accepted for use on the Forest. The Forest and ADF&G continue to work on a deer-predator-habitat interaction study, which will enhance understanding of the effects of forest management on deer populations.

I conclude that the Scott Peak FEIS used the appropriate model for the deer habitat capability analysis. The planning team is not obligated to test population models that have not been reviewed or approved for use. Discussion of the current habitat capability model’s reliance on

volume strata can be found in the response to Issue 5 above, and a discussion of the values used in the current model can be found in the response to Issue 2 above.

## **Appeal No. 06-10-00-0005 – Glen Ith**

### **Issue 1. Whether the Scott Peak FEIS adequately discloses or addresses credible science that contradicts its proposed course of action and environmental analysis.**

The appellant asserts that the FEIS ignored and failed to disclose key findings in the wildlife resource report prepared by a Forest Service biologist. The appellant contends that the Forest Service chose to ignore its own science concerning the potential impacts to deer and other wildlife species.

#### Discussion

A professional wildlife biologist prepared the Wildlife and Biological Diversity Resources Report [Decision Document #013]. In my opinion, the report author had adequate training and experience necessary to produce a professional document. As this report notes [Decision Document #013, p. 5], much of the final report was based on information in an earlier draft prepared by the appellant. Resource reports such as this Wildlife Report may be developed using information from multiple sources and go through multiple drafts before being finalized. Although the appellant suggests that the analysis in the final Wildlife Report is not credible, during the informal appeal resolution meeting he acknowledged he had not read the report [March 15, 2006, Informal Appeal Disposition Meeting Notes, p. 6].

Public comments on the Scott Peak DEIS and the Forest Supervisor responses are found in the Scott Peak FEIS, Volume II, Appendix C. These responses indicate that many suggestions to strengthen the draft Wildlife Report (including those made by the appellant) were incorporated into the final Report.

The final Wildlife Report discloses the potential impacts of the proposed activities and recognizes that “[t]he resource most at risk by timber management in the Scott Peak area is large old-growth blocks, and the interior old-growth habitat component of those blocks, particularly high volume, low elevation habitats within those interior patches” [Decision Document #013, p. 17]. The report discloses and discusses historical and current conditions, and the estimated effects by alternative, for a number of wildlife habitat components including productive old growth, coarse canopy old-growth habitat, interior old-growth patches, connectivity between patches, deer habitat capability (including two different methods to evaluate deer winter range), marten habitat capability, and placement of the small old growth reserve. Information in the Scott Peak FEIS accurately reflects the contents of the Wildlife Report.

I conclude that the wildlife and habitat analyses in the Wildlife and Biological Diversity Resources Report [Decision Document #013] and the Scott Peak FEIS are thorough, reflect additional analyses as suggested in comments on the DEIS, and are adequate for the line officer

to make an informed decision about the proposed project and its potential effects on wildlife habitat.

**Issue 2. Whether the Scott Peak FEIS adequately analyzes the cumulative impacts of the project, along with all other past, present, and reasonably foreseeable future actions.**

The appellant asserts that the Scott Peak FEIS violates NEPA by not addressing and including the Todahl/Backline Road Reconstruction Project in its cumulative impacts analysis. The appellant contends that the intent of the road reconstruction was for improved access to NEPA cleared units left remaining as part of the Todahl/Backline Timber Sale Environmental Assessment (EA), but this intent was not disclosed in the legal notice for the road reconstruction. The appellant further asserts that the Scott Peak FEIS fails to disclose that the road reconstruction and foreseeable timber harvest associated with the Todahl/Backline project will further reduce habitat in old growth patch #70 and impact wildlife species in the immediate vicinity.

Discussion

The Todahl/Backline EA, Decision Notice (DN) and Finding of No Significant Impact (FONSI) were completed and signed in May 1998. The Todahl/Backline project area is located just to the north of the Scott Peak project area on Kupreanof Island. Based on my review of the Scott Peak record, it is unclear what authorized volume remains to be harvested under the Todahl/Backline DN. It appears that the majority of the authorized volume was sold in the Todahl/Backline Timber Sale, but as allowed by language in Section 339 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 2004, the sale was returned to the United States by the purchaser and subsequently cancelled in February 2005 [Decision Document #021]. Some of these units were offered for sale as “timber subject to agreement” in the Bocephus timber sale in 2005, which also included units authorized by the 1995 Bohemia Mountain Timber Sale ROD. The Bocephus offer did not sell and is not on the most current sale schedule.

A contract for road reconstruction work authorized in the Todahl/Backline DN was awarded on August 30, 2005, but the contract has not yet been implemented. In response to the *Earth Island* case in the Eastern District of California, the Petersburg Ranger District published a legal notice on October 13, 2005, initiating a 30 day comment period for projects categorically excluded from documentation in an EA or EIS. The Todahl/Backline Road Reconstruction project was included on this list, even though the road reconstruction associated with the timber sale had already been approved in the Todahl/Backline EA and DN. Based on further direction from the Washington Office related to *Earth Island*, the legal notice for the Todahl/Backline Road Reconstruction was withdrawn from public notice and comment on October 27, 2005.

The appellant contends that the Scott Peak FEIS fails to consider the cumulative effects of the road reconstruction and timber harvest associated with the Todahl/Backline Timber Sale Project. Based on my review of the record, I have to agree. The Scott Peak analysis does not specifically mention the Todahl/Backline project even though it is directly adjacent to the Scott Peak project area. The sequence of events described above, in conjunction with the timing of the Scott Peak analysis and signing of the ROD on November 25, 2005, lead me to conclude that the

Todahl/Backline project should have been included in the Scott Peak analysis as a reasonably foreseeable action. Meeting notes from the appeal resolution meeting with the appellant indicate that the Forest did not consider the remaining harvest units authorized under the Todahl/Backline project DN to be reasonably foreseeable as they did not sell when they were offered as part of the Bocephus sale in 2005, and are currently appraising as a deficit sale, which cannot be offered in accordance with the language of the 2004 Appropriations Act. The notes also indicate that the remaining harvest units may be considered for inclusion as “timber subject to agreement” in the Bocephus timber sale if it is offered again. The notes state that “[i]n the event that it [Bocephus] would be offered and sold, the probability that the purchaser would opt to include the timber from the Todahl sale is next to zero” [March 17, 2006 letter from the District Ranger to the Forest Supervisor in response to questions that arose in the informal disposition meeting with the appellant].

Regardless of whether or not the remaining timber harvest units authorized in the Todahl/Backline DN are likely to be offered and sold in the near future, NEPA requires that the cumulative effects be considered. The Council on Environmental Quality (CEQ) regulations implementing NEPA at 40 CFR 1508.7 define “cumulative impact” as:

The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

The regulations also state, in part, that a:

“Proposal” exists at that stage in the development of an action when an agency...has a goal and is actively preparing to make a decision... A proposal may exist in fact as well as by agency declaration that one exists.

[40 CFR 1508.23].

Finally, the regulations state that to “[d]etermine the scope of environmental impact statements, agencies shall consider 3 types of actions” which include:

(a) Actions (other than unconnected single actions) which may be:

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and therefore should be discussed in the same impact statement

(2) Similar actions, which when viewed with other reasonably foreseeable *or proposed agency actions*, have similarities that provide a basis for evaluating their environmental consequences together, such as common time or geography [emphasis added].

[40 CFR 1508.25].

In this case, there are clearly two proposed actions, the Bocephus Timber Sale, with harvest units authorized by the Todahl/Backline DN and Bohemia ROD, and the Scott Peak Timber Sale. Although the timing of these two proposed actions may be in question considering the likelihood of the remaining harvest units authorized under the Todahl/Backline DN being offered and sold, clearly there is a geographical relationship between these two projects. As pointed out by the appellant, old growth patch #70 overlaps the project area boundaries of both projects.

Finally, recent court opinions (*Lands Council v. Powell*) have raised the standard for evaluating and disclosing cumulative effects. In my opinion, the cumulative effects analysis contained in the Scott Peak FEIS does not meet this standard. Without disclosing the location and potential effects of the Todahl/Backline project, it is difficult to determine whether there may be cumulative effects associated with that project. Based on my review, I recommend that you reverse the Forest Supervisor's decision with respect to this issue.

### **Issue 3. Whether the Scott Peak FEIS sufficiently analyzes and discloses adverse impacts to important deer winter range.**

The appellant contends that the methodology used to determine important deer winter range is flawed as it overestimates the amount of habitat and underestimates the impacts to deer winter range. The appellant states that in comments on the DEIS, he proposed a model that, if applied to pre-harvest conditions in the Wildlife Analysis Area (WAA), would not identify current harvest areas as important deer winter range until they are fully mature. The appellant contends that the Scott Peak FEIS displays some harvested areas as important deer winter range but, in his opinion, these stands do not have the structural, compositional, or functional characteristics needed to be identified as important deer winter range.

#### Discussion

Deer winter range and habitat capability are analyzed and discussed at two scales, by two methods, and for multiple time periods in the Wildlife and Biological Diversity Resources Report [Decision Document #013].

As the appellant points out, “[t]he deer model is indifferent to landscape scale, it can be applied to any area for relative comparative purposes.” Although deer habitat capability is often analyzed by WAA, other scales may be used. For example, the Tongass Forest Plan analyzed deer habitat capability by Value Comparison Unit (VCU), aggregated into WAAs [Decision Document #031, p. 2]. For Scott Peak, the Wildlife Report analyzed deer habitat capability by ecological subsection (Wrangell Narrows Metasediments) and by project area (corresponding to VCU 444). As stated in the Wildlife Report:

For the Scott Peak planning area the HSI values for the analysis were derived from Deer Winter Habitat Capability Model at the Wrangell Narrow Metasediment Ecological Subsection scale as it is believed this area best represents the overall habitat within the planning area....It is larger than the Wildlife Analysis Area (WAA) concept and based on ecological parameters rather than the adjacency of watershed.

[Decision Document #013, pp. 16-17]. In my opinion, the analysis in the Report is adequate and an analysis by WAA is not required.

The Wildlife Report also analyzes high value or “important” deer winter range by two methods. One method divides acres of habitat (excluding those acres that have an HSI value of 0) into four approximately equal portions and compares effects to these “quartiles.” This is the analysis method described in the Tongass Forest Plan [TLMP FEIS, Part 1, p. 3-376, footnote 1] and in notes from the July 15, 2005, Wildlife Biologists conference call [Decision Document #029]. The Scott Peak FEIS [p. 3-49] states that “[o]ther methods of defining high value deer winter habitat were explored, but this method appears to give a better representation of the distribution and quality of deer winter habitat in the project area.”

The Wildlife Report describes another method and states “[t]here is some support to analysis [sic] the top 25 percent of the HSI value, rather than acres of deer habitat. This method is believed to reveal the truly important deer winter range” [Decision Document #013, p. 52]. This analysis method is displayed at the ecological subsection scale in the Wildlife Report [Decision Document #013, pp. 53, 55, 56]. Results of both methods are displayed in multiple tables in the Wildlife Report and in the Scott Peak FEIS.

I was unable to interpret appellants’ statement that “by applying this model to pre-harvest conditions in the WAA the harvested areas that are present now will not be identified as important deer winter range until they fully mature (in about 250 years).” If any model is applied to *pre-harvest* conditions, no harvested acres will be present to contribute to (or reduce) deer winter range.

The Wildlife Report and FEIS display historic (1954) deer habitat capability for the Project Area in summary [FEIS, p. 3-46, Table 3-16], divided by HSI scores [FEIS, p. 3-47, Table 3-17], in comparison to current and anticipated future conditions [FEIS, p. 3-48, Table 3-19], by acre quartiles [FEIS, p. 3-50, Table 3-21], and divided by “high value” HSI scores. Historic (1954) deer habitat capability is also displayed by Ecological Subsection by acre quartiles [FEIS, p. 3-50, Table 3-20]. I conclude that the Wildlife Report and FEIS adequately analyze and display historic deer habitat capability conditions.

As the appellant points out, harvested acres of important deer winter range never reach an HSI score of 0, as some value is ascribed to even low to moderate elevation pole timber stands. Low elevation south and west facing shrub-sapling stands are assigned relatively high values in areas of low snow conditions. These stands do not have the characteristics of old-growth habitat, but can provide forage during average winter conditions. HSI values have been reviewed and adjusted several times by groups of experts [Decision Document #031, attachment to Decision Document #028]. Professional opinions may differ as to the relative value of each described habitat component in the deer model, but Forest direction is that the most recent approved model be used.

In my opinion, the Wildlife Report and FEIS thoroughly analyze deer habitat capability by multiple methods and multiple scales. The analyses correctly applied the current deer model, including approved coefficients. I conclude that the deer habitat capability analysis in the

Wildlife Report and FEIS is adequate for the line officer to make an informed decision when comparing alternatives.

**Issue 4. Whether the Scott Peak FEIS sufficiently analyzes and discloses adverse impacts to marten winter habitat capability.**

The appellant asserts that impacts to marten winter habitat capability due to open road density were not displayed in the Scott Peak FEIS. The appellant contends that by not displaying the reduction in marten habitat capability, the impacts were not fully understood by the responsible official or the public, in violation of NEPA.

Discussion

Although road density is not a coefficient within the current marten model (which accounts for volume, stand size class, presence of beach or riparian habitat, and elevation), the suitability index for road density is applied to the outputs produced by the model runs. Open roads cannot be described as a “habitat” component, but the “[d]ensity of roads may affect the quality of habitat for marten through trapping” [Suring, et. al. model, 1992, not listed in index]. Whether the road suitability index is “inside” or “outside” the model is more a matter of semantics or perspective.

The road density index was applied to current road densities within the planning area and displayed in the Wildlife and Biological Diversity Resource Report, which states:

...the suitability index table for road densities (Suring et al 1992) would indicate that marten densities may be reduced by 62 percent using open road densities or over 90 percent using road densities from all classified roads.

[Decision Document #013, p. 58].

The road density index was apparently not applied by alternative because all alternatives would have the same open road density after the project is complete. This density (0.42 miles per square mile) is less than the current open road density of 0.47 miles per square mile, suggesting that the 62 percent reduction quoted above would be somewhat less.

Although not explicitly stated, I assume that this information is not described in the FEIS because the roads in the project area are not connected to any population centers. The Wildlife Report states that “[t]o trap within the planning area vehicles must be transported by boat or barge through Frederick Sound to Portage Bay to access the road system, a hazardous journey in the winter, and trapping is sporadic” [Decision Document #013, p. 58]. The apparent conclusion is that changed densities of open roads in the project area will not lead to a change in habitat capability because the roads will likely not be used for trapping over the long term, and the steep declines in capability produced by applying the road density suitability index are not accurate.

In my opinion, the marten model was used correctly. Although results from applying the road density suitability index are not found in the FEIS, these results are described in the Wildlife Report and were available to the decision-maker.

**Issue 5. Whether the Scott Peak FEIS sufficiently analyzes and discloses the continued fragmentation of old growth habitat.**

The appellant asserts that the FEIS fails to link past and foreseeable old growth habitat fragmentation with the consequences to wildlife species. The appellant argues for use of a method that applies habitat capability measures to the interior old growth patches in the project area, and then compares patches to each other to determine the most suitable patches for management indicator species. The appellant contends that use of this method will demonstrate that the most suitable areas for wildlife in old growth patches are the same areas that are impacted most substantially by the action alternatives. The appellant asserts that the Scott Peak FEIS does not clearly describe the scientific methodology used to assess impacts to old growth fragmentation.

Additionally, the appellant asserts that the cumulative impacts of this timber harvest proposal are not fully disclosed. The appellant contends that past impacts from timber harvest activities have resulted in major losses of low elevation old growth habitat and excessive fragmentation of contiguous interior old growth habitat patches.

Discussion

Old-growth habitat fragmentation is identified as a significant issue on pages 1-17 and 1-18 of the Scott Peak FEIS. The Wildlife and Biological Diversity Resource Report recognizes the importance of habitat patch size, and states that “[h]abitat patches that are composed of high volume (volstrata 5, 6, and 7), medium to low elevation (below 1500 feet) and low snow loads (a combination of medium to low elevation and southern or western facing aspects) are the most valuable habitat and support the greatest diversity of interior dependent species” and “[l]arge expanses of old-growth habitat may be critical for species that are locally endemic, occur in very specific forest conditions, or have limited dispersal capabilities” [Decision Document #013, pp. 10 and 12].

The fragmentation issue is discussed starting on page 3-17 of the FEIS, using the concepts of “Interior Old-growth Patches” and “Key (High Value) Interior Old-growth Habitat Patches.” Table 3-10 displays Interior Old-growth Patch changes, in terms of numbers of patches and average size of patches, between 1954 and the present time. Table 3-12 displays the acres remaining in Interior Old-growth Patches by alternative, and the percent changes from both current and historic (1954) conditions.

Five characteristics were used to identify eight “Key Interior Old-growth Habitat Patches” [FEIS, p. 3-28]. The FEIS [pp. 3-29 through 3-32] identifies these patches in Figure 3-2, describes their important characteristics, and discloses the effects on each (in terms of acres remaining) displayed by alternative (Table 3-14). Additional text [FEIS pp. 3-34 through 3-40] further describes the effects by alternative on each key patch.

The appellant suggests using habitat capability models to compare effects on patches between alternatives. However, models are best used at a larger scale to compare habitat capability between alternatives. The record discloses the concern about the use of habitat capability models to represent fragmentation or interior patch characteristics: “[u]sing the models could be somewhat problematic as both deer and martin are highly mobile animals and are not restricted to interior patches, and using the models to represent suitability could be misleading” [Decision Document #033].

Regarding cumulative effects, both the Wildlife Report and FEIS discuss and generally describe the cumulative effects of past timber harvest on old-growth patches. As mentioned above, FEIS Table 3-12 compares (for 1954, current conditions, and post-harvest) changes in acres of Interior Old-growth Habitat patches by alternative. The FEIS describes the effects of past actions on interior patches:

Past timber harvest has reduced the amount of interior old-growth habitat within the project area approximately 34 percent. As a result of previous timber harvest and road building, the number of interior old-growth habitat patches included wholly or partially within the project area has nearly doubled and the average patch size had decreased by 71 percent.

[FEIS, p. 3-34].

The FEIS also describes the cumulative effects on historic interior old-growth habitat acres for each alternative based on past timber harvest in the area [FEIS, pp. 3-35 through 3-41]. However, as discussed in response to Issue 2 above, there is no indication in the record that future (i.e. Todahl/Backline) timber harvest was considered in the cumulative effects analysis for the fragmentation issue.

In my opinion, while the Wildlife and Biological Diversity Resource Report (Decision Document #013) and FEIS analyze and display the effects of proposed alternatives on fragmentation of old-growth habitat, the cumulative effects analysis is not adequate as it does not discuss the potential cumulative effects of the Todahl/Backline timber sale and associated road reconstruction.

#### **Issue 6. Whether the Scott Peak FEIS sufficiently analyzes and discloses adverse impacts to Queen Charlotte goshawk nesting and foraging habitat.**

The appellant contends that the placement of a buffer around the goshawk nest located in project area is not sufficient to protect the goshawks from the impacts resulting from additional losses of important alternate nesting sites and highly suitable old growth foraging habitat in the entire project area. The appellant asserts that the loss of low elevation old growth habitat poses an existing risk of not providing enough suitable habitat to sustain the nesting pair of goshawks.

#### Discussion

An active goshawk nest was found in the Scott Peak project area in 2003. In 2004 and 2005, that same nest was found to be inactive; however, a goshawk was heard in the vicinity in 2005. The

Wildlife and Biological Diversity Resources Report acknowledges that “[a]dditional timber harvest activities resulting in further fragmentation of old-growth habitat may impact goshawks in the planning area” [Decision Document #013, p. 48]. This is reiterated in the FEIS [p. 3-78], which states “[g]oshawk nesting and foraging habitat would be reduced in all action alternatives.”

In order to avoid negative impacts to individual nest locations, the Forest Plan directs that nesting habitat should be preserved “[a]round all confirmed and probable goshawk nests whether or not they are currently occupied” [TLMP, pp. 4-90, 4-91]. This nesting habitat is defined as “[a]n area of not less than 100 acres of productive old-growth forest (if it exists) generally centered over the nest tree or probable nest site” [Id.]. It further directs that disturbance at the nest site should be avoided by prohibiting any “[c]ontinuous disturbance likely to result in nest abandonment within the surrounding 600 feet from March 15 to August 15” [Id.].

Consistent with this direction, the Scott Peak FEIS describes the establishment of a 131 acre nesting area buffer containing 102 acres of productive old-growth [FEIS, p. 3-77]. Additionally, the FEIS states:

The nesting area will be protected and monitored following Forest Plan protocols, which include timing restrictions for logging activities. Activities such as road building, helicopter operations, and operating chainsaws are restricted between March 15 and August 15 within 600 feet of a known nest site. Any new nests that might be discovered would also be protected [Id.].

In a report dated August 21, 2003 [Decision Document #037], the appellant recommended protection of a much larger nesting habitat area, based on concerns about availability of current and future foraging habitat due to high harvest rates in the area. The Scott Peak VCU is included in a group of VCUs that may have an elevated risk of not sustaining goshawks if more than 47 percent of the original productive old growth is harvested over a 100 year period and if less than 6700 acres of Potential Old Growth (POG) remains in the VCU [TLMP FEIS, Appendix N-44].

However, the Scott Peak FEIS states:

Only 15 percent of the original POG has been harvested to date in the Scott Peak project area (VCU 444) and there are approximately 11,801 acres of POG remaining in the VCU. The proposed harvest for this project would increase the cumulative harvest of POG in the VCU to a maximum of approximately 20 percent, and would reduce the amount of POG remaining in the VCU by no more than 634 acres. There would still be at least 11,167 acres of POG remaining in VCU 444 after the project is implemented.

[FEIS, p. 3-79].

The FEIS concludes that there would be no viability risk to goshawks as a result of this project. It further states that an additional 6,061 acres of POG would have to be harvested in the VCU in order to meet the elevated risk threshold described in the Forest Plan, and states “[t]his is not likely to occur in the foreseeable future, if at all” [Id.]. Additionally, although individual

goshawks and their habitat may be affected in certain VCUs of high timber harvest, the TLMP FEIS concludes that the Plan will provide a sufficient amount and distribution of habitat to maintain viable and well-distributed goshawk populations across the Tongass [TLMP FEIS, Appendix N-44].

The Scott Peak FEIS correctly tiers to the Tongass Plan, and correctly applies the goshawk standards and guidelines. Although POG will be harvested within likely foraging habitat of a pair of goshawks (assuming that the goshawks are still nesting in the Scott Peak project area), adequate foraging habitat is still available. In my opinion, the FEIS adequately discloses the potential effects on goshawks from the proposed activities.

### **Recommendation**

Based on my review of the Scott Peak ROD, FEIS and planning record, I find that, with the exception of cumulative effects, the analysis in the FEIS and record adequately addresses the issues raised in the appeals of the decision. With respect to the cumulative effects analysis, I find that the potential cumulative effects of the Todahl/Backline Timber Sale and associated road reconstruction were not adequately addressed in the Scott Peak FEIS or planning record. Therefore, I recommend that you reverse the Forest Supervisor's decision and direct him to follow the procedures outlined in FSH 1909.15, Chapter 10, Section 18, to conduct additional analysis and document the potential cumulative effects of the Todahl/Backline project, as well as any other past, present or reasonably foreseeable future projects that may have potential cumulative effects in conjunction with the Scott Peak project.

*/s/ Paul K. Brewster*  
PAUL K. BREWSTER  
Appeal Reviewing Officer