

James Ross Kelly



Regional Forester
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re: Objections to the Prince of Wales Landscape Level Analysis Project Draft EIS

I reserve my right of objection to this sale because of my Comments to the Prince of Wales Landscape Level Analysis Project Draft EIS (Jun. 12, 2018).

Dear Regional Forester Schmid,

1. Proposed Action

I present to you the following objections as a retired Tongass Forest Service employee with a good number of years as a NEPA practitioner, both as a writer-editor and as an Interdisciplinary Team Leader. It is my estimation that the proposal for action for the *Prince of Wales Landscape Level Analysis Project Draft EIS/ROD (POW LLA)* is triggered by logging interests based in Southeast Alaska wishing to profiteer from lucrative Asian markets and little else. Japan, Korea and China and other Pacific Rim markets have purchased logs and lumber from Alaska for several decades. By-passing local manufacture to these lucrative markets would be reasonable goal of profit seeking corporations, even if perceived as unethical to the common holdings of people and communities on Prince of Wales Island if the purchaser also owned the land it was logged from. Since the land instead is Federal Forest Service land the manufacture of this product is subject to legal scrutiny. Export of Federal timber as a practice has been ongoing and pervasive as Forest Service projects emerge from the planning stages, make it through court appeals and then timber is contracted and sold to purchasers. However, the Forest gets its authority to harvest timber from the Multiple Use and Sustained Yield Act of 1960 (MUSYA) of 1960, 16 U.S.C. §§ 528 et seq.,¹; with this law there is

¹ Multiple Use and Sustained Yield Act of 1980 SEC. 4. As used in this Act, the following terms shall have the following meanings: (a) "Multiple use" means: The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the

an implied ethic of restraint identified by Federal courts as to renewable surface resources (see, *Lands Council v. Powell*²). Abandoning such a reasoned ethic as the POW LLA project clearly does, is arbitrary and capricious and contrary to law. I strenuously object to this obfuscation of Federal process.

The Forest Service treats MUSYA as if it had no legal side boards, and instead relies on Forest Plan direction it gets from NFMA. In the response to comments the FS states, “Because this project fits within the Forest Plan, it meets the MUSYA.” NFMA sites MUSYA at as its authority and the sideboards that restrain the Forest Service from over harvesting Old Growth to the detriment of other resources such as deer and wolves are implicit in its plain English language states, “without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.” The Forest Service seeks the greatest dollar return local jobs, wolves and deer and other resources be damned. I strenuously object to this attempt to denigrate environment and communities for the bottom line of large timber industry that holds its Mid-sized industrial mill as a leverage point for Forest Service misapplication of law and reasoned environmental planning as this project would clearly impair the land if it is not revised.

The entirety of Prince of Wales Island is replete with a system of roads that have harvested virtually all the low elevation Old Growth on the Island. All the communities have sprung up around the logging camps that began to harvest these lucrative stands of timber in the early 1950s.

The CEQ regulations (40 CFR 1500-1508) which implements the NEPA process for Federal Action requires proposals or parts of proposals to be related to each other closely enough to be, in effect, a single course of action. Much of the Proposed action is not related to logging and while perhaps has projects with legitimate needs; the non-logging elements serve as a distraction to what may be timber harvest that blatantly does not adhere to applicable law, process, or Federal authority. I strenuously object to this obfuscation of Federal process.

This, notwithstanding the fact that the Forest Service with this project, is subject to National Environmental Policy Act of 1970 42 U.S.C. §4321 et seq. (NEPA). The Forest Service with this FEIS/ROD has a goal of planning Timber sales without site specificity and is actively preparing to decide without investigating the site specificity of action, without investigating the site specificity of environmental consequences, or the requisite field work to ascertain consequences of effects in the next 15 years. Appendix B suggests field work will be done, but without the scrutiny of a legal NEPA or National Forest Management Act process that requires comment; and without comment this project cannot be meaningfully evaluated over the long duration of various actions.

various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output. (b) "Sustained yield of the several products and services" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land.

² “Unlike other types of federal conservation statutes, the law regulating the use of national forests embraces concepts of “multiple use” and “sustained yield of products and services.” 16 U.S.C. § 1607.”

The National Environmental Policy Act³, itself mandates site-specificity by its requirement to disclose effects. While documents may be tiered to others, this document with its lack of site specificity attempts to authorize action without adhering to the basic investigative and analytical mandates of a Congressional Act, that would expose effects such as: adverse environmental effects in time and place, local short-term effects on environmental and economic effects, of the loss of long-term productivity, both environmental and economic, and the effects of irreversible and irretrievable commitments of resources by this project— both environmental and economic. See 40 CFR §1508.21, NEPA process.⁴ I object to this approach as arbitrary and capricious and contrary to a legal mandated process. Nothing in Appendix D of the FEIS meaningfully counters my assertions.

There cannot be responsible decision making when data appears in an implementation stage without being subject to the critical evaluation that should occur in the draft stage of the NEPA process. The danger is obvious: the ultimate decision-makers will believe that there is no controversy due to the lack of critical comment. The Forest Service seeks to avoid critical comments for 15 years by implementing this project in this arbitrary manner.

As presented, the effects of the project are not disclosed in context and intensity because the site specificity is undisclosed other than general areas. Appendix B a supposed Implementation plan whereby action would be authorized that makes no mention of analysis and decision about significant Federal Actions under the CEQ stipulation of “Context and Intensity,” as required by 40 CFR 1508.27. Instead the Forest Service seeks to use the landscape of Prince of Wales Island and the Tongass National Forest as a checking account for timber harvest log export without balancing the concomitant resources (cf MUSYA⁵) such as black bear, deer and wolves and local jobs in the long term as both MUSYA and the CEQ regulations would require. Without both “Context and Intensity,” the Forest Service actions run afoul of the mandate of a legal process established by Congressional Act.

Contrary to in Appendix D of the FEIS FS response to comments which states:

The approach described demonstrates the required hard look, and it allows the Responsible Official flexibility during implementation in order to integrate project activities at a landscape scale. This will allow the Project Area to move toward desired conditions as described in the Forest Plan.

The Desired Future Condition is predicated upon the Existing Condition of any project area. There has been little if any science-based effort to ascertain and analyze the Existing Condition, therefore desired conditions as per the Forest Plan cannot be ascertained in a meaningful site-specific manner.

³ Sec. 102. (2) (C) (i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

⁴ “NEPA process” means all measures necessary for compliance with the requirements of section 2 and title I of NEPA.

⁵ “harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land”

NEPA's "'action-forcing' procedures require the [Forest Service] to take a 'hard look' at environmental consequences,"⁶ before the agency approves an action. "By so focusing agency attention, NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct." and "NEPA promotes its sweeping commitment to 'prevent or eliminate damage to the environment and biosphere' by focusing Government and public attention on the environmental effects of proposed agency action."⁷

The Forest Service with the POW LLA FEIS/ROD has not addressed context and intensity as required by 40 CFR 1508.27 (a) (b) 1-10⁸ contrary to its assertions at FEIS, Appendix D at D-7-8, because: (1) the agency has not assessed site-specific project conditions and impacts; (2) the agency has not evaluated site-specific management prescriptions and silvicultural prescriptions; and (3) the agency has not used that information to inform the agency's environmental analysis and justify its substantive decision-making.

This proposal attempts to propose a Federal action while asking the public to trust that local jobs will be an outcome over the next 15 years; when in fact lucrative Asian markets are and have been an integral part of the implementation process and well known at the Supervisors Office and the Regional Office, if not the District planning process. While the response to comments decries export criticism as beyond the scope of the POW LLA, no effects analysis exists that shows either direct, indirect, or cumulative economic or environmental effects of export timber in either context or intensity that is planned and cleared through Tongass National Forest NEPA process. Nor does this planning document discuss alternatives to export of timber. Instead the response explains that this is all taken care of after contracts are awarded to make logs more salable for the purchaser. The

⁶ Metcalf v. Daley, 214 F.3d 1135, 1141 (9th Cir. 2000) (quoting Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 348 (1989))

⁷ Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 371 (1989) (quoting 42 U.S.C. § 4321)

⁸ §1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity: (a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short and long-term effects are relevant. (b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity: (1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the federal agency believes that on balance the effect will be beneficial. (2) The degree to which the proposed action affects public health or safety. (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial. (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks. (6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration. (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts. (8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources. (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973. 29 (10) Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment. [43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

response to comments cites the following web site

(https://www.fs.usda.gov/detail/r10/landmanagement/resourcemanagement/?cid=fsbdev2_038785) as Tongass export data for years 2001 through 2017.

This data suggests that approximately 57% of the Viking Lumber Companies timber for the past 10 years has been exported to Pacific Rim concerns. There is no effects analysis that shows what another 57% increase in timber volume would do the Prince of Wales Island community in the next 10 years should export of Federal timber be alternatively managed. There is no Alternative to compare this in POW LLA. Instead it seems that deals are made by the senior executive service outside of NEPA, MUSYA and perhaps other applicable laws. It is difficult for the Forest Service to show how timber resources are “utilized in the combination that will best meet the needs of the American people” when over half of the productive resource targeted as the need of the project to improve the economic viability of Prince of Wales area communities by providing a sustainable level of forest products to help maintain the expertise and infrastructure of the timber industry, are instead exported outside of the U.S. This practice has been ongoing and pervasive in timber sales of the past decade to the detriment of the American people and contrary to law. There is no reason to assume this ongoing and pervasive practice will cease in this project because the Forest Service has taken measures to make the export of federal timber more pervasive than it has been with revision to the 2016 Forest Plan.

The Bureaucratic value of changing past NEPA process to one that does not show the context and intensity of a project would allow the Forest Service to no longer need a planning department in either Thorne Bay and Craig Ranger Districts; nor would they have the expense of planning NEPA documents as they have produced for the past 10 years. Current downsizing on the Prince of Wales Island by Ranger Districts reflects this. This FEIS gives the public no action to meaningfully evaluate in *context and intensity* on the Landscape of Prince of Wales Island with POW LLA.

I object to absence of a legal NEPA process for this project because the Forest Service has obfuscated its reasoning and findings for this proposed action, by not disclosing the past environmental and economic effects of timber export, the Project is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §706(2)(A); and should be remanded to a SDEIS or reconstituted into several site specific NEPA projects that follow all applicable law.

2. Underlying Need

Economic arguments supporting expanded harvest of USFS timber rely upon the ability of such harvests to support jobs at local lumber mills and processing plants, thus supporting the broader community surrounding where these resources are extracted. The 2016 Record of Decision for the Forest Plan Amendment on page 32 states, “*Export allowances beyond that programmatically approved under the current policy will continue to be considered on a case by-case basis, even up to 100 percent export where it would further the goals and objectives of the Forest Plan and is consistent with statutory requirements.*” (emphasis added). This is likely contrary to what the Forest Service told the Government Accounting Office in 2016¹⁰.

⁹ Ibid, MUSYA

¹⁰ GAO 2016 Tongass National Forest Service's Actions Related to Its Planned Program Transition. Pages 18 and 19.

In the guise of a transition to young growth harvest this project seeks to harvest a massive amount of the remaining old growth, to the detriment of many other resources, by exporting timber from Federal Land and beyond accepted R10 guidelines. Unreasonable export of volumes of timber for a short-term gain for logging interests, would make the human environment pay with a long-term loss for bear, deer, wolf habitat, a lawful subsistence lifestyle for Prince of Wales Island residents, and local mill jobs for full-time residents of Prince of Wales Island and southeast Alaska.

By the Forest Service creating a seemingly legal loophole, it allows timber operators after planning efforts are complete, when implementation is underway, or finished, to export all or massively export over the previous somewhat reasonable limit and export policy with a simple agreement from the Regional Office, void of analysis of cumulative effect to the Landscape of Prince of Wales Island or the economy and human environment of its residents. This is arbitrary and capricious and contrary to applicable law.

Regarding the second growth harvest that may be premature unless it is done to replace wildlife habitat, the lack of an industrial capacity mill with second growth capacity, does not demonstrate the need to harvest healthy forests for Asian markets solely because they exist. This project is premature, as are the second growth forests it seeks log, perhaps 30 years before they would provide a real and effective timber base for the local economy. The FEIS makes no projection on waiting until the second growth trees can be harvested by the local timber industry. Previous EIS efforts have embraced action that would commercial thin young growth stands for wildlife enhancement (Big Thorne). Therefore, the Forest Service finding of an underlying need is mistaken, or contrary to law¹¹ and offered in bad faith when the FEIS it purports, fails to disclose the cumulative effect of past export harvest, reasonable expectation of export harvest, or to craft harvest through an alternative that seeks to limit or eliminate all export harvest for a benefit that “will best meet the needs of the American people;¹²” and thus a new finding of need in a SEIS should be prepared, or the project as planned dropped from consideration.

The most recent Tongass Forest Plan amendment that implements the Secretary of Agriculture’s direction for the Tongass National Forest to transition to Young growth timber harvest from Old Growth timber harvest states in the FEIS, “All of the alternatives are expected to support from 184 to 231 annualized direct jobs during the first decade, depending on the portion of harvest that is exported.” And, “it is unclear how quickly industry will be able to “retool” ..., this criterion is associated with a relatively high degree of uncertainty.” A careful look at the Multiple Use and Sustained Yield Act would suggest that this law would mandate that the government wait until industry has retooled, local markets are viable, and a higher degree of local prosperity achieved by the management of “renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people.” This project is likely to do the opposite.

The Forest Service track record is abysmal on this score. The logging jobs from recent Timber Sales mostly consisted of State of Washington and out of state jobs for fallers and timber crews. The

¹¹ 40 CFR §1502.13 Purpose and need. The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

¹² Ibid, ¹MUSYA

amount of export has hardly increased the output of timber in the Viking mill in Klawok which generally wins the bid for Timber contracts on POW since it is the only large Industrial mill left in Southeast Alaska. Only one shift has run with the past two sales not because of the paucity of logs, but because of the large log volumes exported as whole logs to Asia from Prince of Wales Island. To satisfy 40 CFR §1502.13 the FEIS must compare export volumes of all sales from the Log Jam project, and the Big Thorne Project and ascertain the likelihood of how much volume will be exported to foreign markets. Additionally, timber allocated and offered for the small timber operators by the Forest Service allows Viking to bid on these sales too, thus letting the large mill compete with the small mills at a disproportionate advantage. Any planning efforts that allows the big mill a piece of the small mill's economic pie that is promised in the FEIS, is in bad faith, despite Federal Acquisition Regulations, and obfuscates the scale of the Proposed Action.

Questioning the need for a Federal timber supply by subsidizing Timber Industry has come increasingly to the public's eye:

“Alaska Department of Labor notes the Prince of Wales Island area redefined its economy over the past decade around small, specialty wood mills and fishing, seafood and hospitality businesses. Southeast Conference's 2014 report shows population increases in Ketchikan and Wrangell and nearly all of Prince of Wales Island.”

“Federal and non-federal timber sales support less than 1 percent of regional employment and earnings, not even registering as a “key industry” in Southeast Conference's 2014 report. Viking Lumber employs a mere 34 mill workers (2015 USFS data). The Alaska Department of Labor says non-residents hold nearly half of the timber jobs in Southeast Alaska.”

“The agency [the Forest Service] also spends millions of dollars supporting Viking and Alcan. The fiscally conservative watchdog group *Taxpayers for Common Sense* estimates it will cost over \$100 million to keep Viking in business for the Big Thorne Project. Estimated government receipts are \$2.5 million — a huge public loss that follows five years of federal expenditures on timber sales and publicly subsidized infrastructure for Viking and Alcan that generated a \$130 million net loss.” *Juneau Empire* 2016

There is nothing that guarantees Viking ever will transition to young growth contrary to this assessment in the FEIS. It may be more likely, since the mill is not an Alaska owned mill, that they will close rather than retool after the Old Growth is harvested.

The lack of clear demonstration of need may require at least a supplemental DEIS with real numbers of local employment versus out of State employment, and employment lost to the export of whole logs to Asian markets. The small mills that employ more workers than Viking over time may provide more employment than POW LLA if sales were allocated to these businesses through contracts and stewardship awards that would implement an era of truly sustainable forest on Prince of Wales Island. The Tongass National Forest adopts an agronomic type of forestry that is driven by a maximum yield to industry model. Nature does not terminate the forest and start over again as the implementation of clearcut forestry on the Tongass does. Rather nature through its disturbance regimes that clearcut logging sometimes claims to emulate is spatially heterogenous—and extremely

“patchy.”¹³ That the Tongass would eliminate the protection of bear dens that are centuries old that would require less than an acre of a set aside to protect these dens and enhance the black bear’s sustainability is an example of the vicious effort to deliver timber to industry— the Multiple Use and Sustained Yield Act that requires “harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.” (see Black Bear page 15).

The “no action” alternative mentions none of the promises to small operators that have not been realized, (North Thorne FEIS canceled 2007). Such an alternative would be sustainable and reasonable in that it would bring a constant local job market. POW LLA violates CEQ regulation at 1502.13 by not demonstrating a finding of the existence of an underlying need that justifies the proposal to act if timber harvested is not processed locally, (past practice has seen Federal timber that was slated for local jobs lost to out of state workers and foreign timber interests).

There is little benefit to the local economy and thus no true underlying need if most of the Federal timber harvest is exported. Therefore, the Forest Service cannot authorize an ultimate agency action as the Forest Service loses its authority under Multiple Use and Sustained Yield Act of 1960 which requires management of “renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people”; clearly local jobs in the Viking mill and other US mills meet the need of the American people and export of whole logs to foreign mills and in some cases even to the lower contiguous states do not meet this need. Additionally, because the range of alternatives in this FEIS are rife with an enormous potential for a duplicity than actual need due to the Tongass export policy, the Proposed Action is unreasonable and thereby the Forest Service loses its authority with a failed NEPA process that ignores the intent of MUSYA and NEPA the act itself. Further, no basis can be formed to create a no-action alternative in true contrast to the action alternatives (including the proposed action alternative) because there is no alternative that would limit export policy and none of the Alternatives allow a cogent discussion of the cumulative effects of unrestrained log export on the local economy as has happened with past sales.

Every Purpose and Need statement for the Tongass National Forest in recent years seems as if it has been a process that ends up with the Washington mill owner exporting timber at great profit while relatively minimal jobs are created. Always the Forest service couches the need for local jobs and the down turn in the timber industry since the 1990s. This process is arbitrary and capricious and would violate Administrative Procedures Act and 40 CFR at 1502.13; 1502.14, 1502.15 and 1502.16. It also violates MUSYA as the National Forest timber resource utilized is not being utilized in a combination that will best meet the needs of the American people because local American jobs are being outsourced with blessing of the Federal government. The Forest Service has fostered a relationship that has exercised little restraint because of its insistence on maximum yield forestry that

¹³ Franklin, Jerry; “Forestry Talks-Ecological forestry-a Global view”—YouTube

has been abandoned in other timber regions. Additionally, each time the mill owner threatens to pull out the Forest Service gives in and allows more export product.

P.L. 93-120, October 4, 1973, Department of the Interior and Related Agencies Appropriation Act of 1974¹⁴ bans the export of Federal timber to foreign markets from the lower contiguous 48 States. This provision has been renewed, without controversy, on every annual Interior and Related Agencies appropriations bill to date. This ban wisely subsidizes local timber mills from foreign markets that take natural resources from Federal land and enhances the prosperity of rural communities. That this is not required of National Forests in Alaska by the 1974 Act, however more than a semblance of this reasonable course of action can be ascertained in MUSYA and NEPA. MUSYA by its language¹⁵ and NEPA and the CEQ regulations which require a reasonable range of alternatives. No one can make a reasonable case that it would not be wise to maintain the lion's share of Federal timber production to local mills for Prince of Wales Island, and its Alaskan workers.

The Forest Service must find a match between the need for action and the proposal for action. It has not. The proposal for action should meet the need for action. There is no match in this document that makes this connection because market demand from Asia is not an underlying need that trumps the productivity of the POW landscape and in need of harvest to that end. By holding that there is a need, the Forest Service is arbitrary and capricious and violates the Administrative Procedures Act and the Multiple Use and Sustained Yield Act of 1960 section 4 (a) in its entirety when its largest purchaser exports in the past decade over 50% of its timber from Federal Forest Service lands. The need for action should support the proposal for action. The small mills on Prince of Wales Island employ as many or more local people as the Viking Lumber Company does and all the product they produce from Federal timber is by Prince of Wales Island residents. The POW LLA project may cause some of these mills to close. The need for action must be supported by evidence that it is bona fide, that it really exists. The Forest Service has not done this other than making a case that they need to supply the market demand which may really mean the Asia market demand via the only Industrial sized mill left in southeast Alaska. Forest Service employees at the Supervisors Office in Ketchikan office are fully aware the jobs numbers projected are creative writing when the likelihood of a massive export of whole logs to Asia with current policy is overwhelming. That this pervasive and ongoing action is likely to continue is evidenced by the fact that the POW LLA FEIS/ROD has not considered a reasonable alternative that would allow no export sales.

The Forest Service is under national direction to provide for multiple use of the National Forests (Organic Administration Act of 1897, Multiple-Use Sustained Yield Act of 1960, and National Forest Management Act [NFMA] of 1976).

¹⁴ “No part of any appropriation under this Act shall be available to the Secretaries of the Interior and Agriculture for use for any sale hereafter made of unprocessed timber from Federal lands west of the 100th Meridian in the contiguous 48 States which will be exported from the United States, or which will be used as a substitute for timber from private lands which is exported by the purchaser: Provided, that this limitation shall not apply to specific quantities of grades and species of timber which said Secretaries determine are surplus to domestic lumber and plywood manufacture needs.”

¹⁵ See footnote.1

The underlying need for the POW LLA Project comes in part from the Forest Service's obligation, subject to applicable law, to seek to provide a supply of timber from the Tongass National Forest that meets market demand annually and for the planning cycle, and to restore and improve forest resources to a condition where they provide increased benefits to society (Tongass Timber Reform Act, Section 101).

Benefits to society clearly mean the U. S. society, local jobs and the quiet enjoyment of a sustainable landscape. The moon scape that would be created by this unsustainable logging for foreign markets is not the intent of TTRA.

It may be that the following notion of “need” from the FEIS: “to seek to provide a supply of timber from the Tongass National Forest that meets market demand annually and for the planning cycle” sounds good for Timber lobby, but, it does little for local employment when a bulk of the jobs may really be in Asia. Over the past ten years approximately 57% of logs sold to the Viking Lumber Company have gone to Pacific Rim Manufacturers. Market demand in Asia is not a need to obliterate some of the last rainforests in Southeast Alaska and all its concomitant resources. By this rubric none of the action alternatives meet the underlying need.

The FEIS must fully disclose the likelihood of large volumes of timber being exported to Asia, rather than processed locally and should estimate cumulative volume lost to the local economy over time and the number of jobs to be outsourced to Asian mills. Leaving this vital data out of the legally mandated process violates CEQ regulations at 1502.14; 1502.15, 1502.16. Stating that these affects cannot be ascertained, proceeds to an arbitrary capricious argument as past practices have exported large volumes of timber after the planning and NEPA process was complete and the project implemented, and this may be a violation of law.

There is no cogent “finding” of the existence of an underlying need that justifies POW LLA project, but rather, a veiled attempt to export prime old growth timber to Asian markets at the detriment of vital national resources on Prince of Wales Island; and harvesting second growth timber before it is mature enough for the Island's saw log industry. The project should be stopped, or a supplemental FEIS prepared that demonstrates in comparison form the, effect of exported timber, its likelihood, and an assessment of effects of past export of timber to Asian markets and analysis of the cumulative effects of social and ecological consequences when compared to a local market. As well a reasonable range of alternatives should be used that addresses such significant issues as Island wide restoration of Deer deep snow winter range and exporting federal timber as opposed to manufacturing timber in Alaska.

I object to absence of a legal NEPA process for this project because the Forest Service has obfuscated its reasoning and findings for this proposed action, by not disclosing the past environmental and economic effects of timber export, the Project is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §706(2)(A); and should be remanded to a SDEIS or reconstituted into several site specific NEPA projects that follow all applicable law.

3. Alternatives

If a massive portion of the timber harvest can be exported (up to 100 percent as in the ROD of the most recent LRMP amendment), none of the action alternatives meet the underlying need described for this project. Therefore, this project violates NEPA the act itself at section 102(2)(C) and 40 CFR 1500-1508 at 1502.14; 1508.25 (a) and (b) and 1502.9 (a). A supplemental DEIS¹⁶ needs to be assembled and the true effect analyzed with a reasonable range of alternatives and sent out again for review, this action or cancelation of this project would be the only legal course of action.

As described, not to meet this need may mean a net gain in employment on Prince of Wales Island if export of whole logs were not to take place. If this project fails, the market demand for timber will not disappear, nor will the opportunity to propose projects that adhere to all applicable law. This document portrays a desert of timber harvest that will not occur if the proposed action and alternatives are not implemented. A “no action” alternative would discuss the possibility of second growth milling efforts rising on the Island, as they have risen elsewhere when Old Growth forest harvest diminished. No efforts by State, Federal or local government to attract second growth milling Industry has been discussed. Vacant Industrial space is available at several POW communities, notably Thorne Bay, Alaska.

Letting second growth mature to 90 years while effecting commercial thin harvest, that produces saw logs that can be utilized in the future and providing wildlife habitat would be a reasonable alternative that is glaringly absent from this project.

Given the Forest Service’s reliance on the “condition-based” analysis, the agency never describes the location, configuration, sizes, and timing of the logging and road construction activities. The FEIS reiterates that the details regarding the logging will only come after the agency approves POW LLA:

The DEIS contains maps showing the specific areas (context) where potential commercial timber harvest and other activities may occur. No alternative will harvest all of the stands identified (DEIS, p. 20). No activities will occur outside of the areas delineated on the maps, with the exception of invasive plant removal on non-NFS lands at the request of the landowners. Detailed maps and information will be provided during implementation when specific harvest units are identified during activity development. The Implementation Process specifically describes additional opportunities for public input and involvement (Appendix B-1). The time frame for implementation is 15 years. The site-specific areas where projects may occur, and the defined time frame give the resource specialists specificity to analyze the activities proposed in the action alternatives.¹⁷

The Forest Service in POW LLA will not make decisions about when, where, and how much habitat will be logged (or where roads will be built) until some undisclosed point in the future, the FEIS fails to analyze alternatives to specific logging and road construction activities. Counting an alternative because more, or less activity is proposed, is not an alternative, because it is not a different activity.

¹⁶ 40 CFR 1502.9 (a) The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

¹⁷ FEIS, Appendix D at D-14.

NEPA requires Forest Service scientists to do the heavy lifting and propose different activity to address resource concerns (cf. Log Jam EIS, Big Thorne EIS).

If the Forest Service fails to examine the impacts and alternatives to logging any particular watershed, or forgoing logging in favor of improved habitat connectivity in a particular location, then it has not produced a reasonable range of alternatives.

Similarly, the agency fails to examine variations in the control of the logging projects and the sequencing of timber sale projects on any particular portion of the POW LLA project area (e.g., will a given area experience repeated years of adverse impacts, etc.). The FEIS also fails to consider whether the agency will allow a particular sale for export as compared to domestic processing (e.g., might a smaller logging project in a particular area support a larger number of Alaskan jobs with fewer adverse impacts).

Regarding roads, the FEIS fails to analyze the impacts of alternatives to particular roads and routes (e.g., building a permanent road versus a temporary road in any particular location, varying lengths and locations of that road, taxpayers paying for the roads instead of the timber operator, etc.). Finally, the FEIS fails to examine the site-specific impacts on communities and subsistence users arising from alternative locations, sizes, and timing of any particular timber sale project and road building. The FEIS amounts to little more than a disclosure that the Forest Service is approving 15 years of logging and road building somewhere within a 2.3 million acre project area. The Forest Service violates NEPA by refusing to examine alternatives to individual logging and/or road construction projects in the FEIS (e.g., location, distribution, connectivity, sizes, characteristics, methods of harvest, timing, etc.). The agency's all or nothing approach skews the consideration of alternatives in favor of the environmentally-damaging generic logging and road building alternatives, entirely frustrating NEPA's goals of fostering informed decision making.

The statement of underlying need determines the range of alternatives in an EIS. In this FEIS regarding timber harvest the underlying need seems to be presented as "At this time, a need exists to contribute to the economic viability of Prince of Wales area communities by providing a sustainable level of forest products to help maintain the expertise and infrastructure of the timber industry." Without alternatives that would provide a sustainable level of forest products absent foreign timber export, the FEIS fails by standards of relevant federal case law.^{18, 19, 20, 21, 22}

I object that the FEIS violates NEPA because the Forest Service fails to analyze reasonable alternatives to the POW LLA and the alternatives presented are not different actions.

4. No-action alternative— Existing Condition

What would it mean not to meet the need as described in this FEIS? One thing it could mean is that second growth timber would have time to mature and thus provide saw logs to small and mid-sized

¹⁸ *City of New York v. United States Department of Transportation*, 715 F.2d 732 (2d Cir. 1983), cert. denied, 465 U.S. 1055 (1984).

¹⁹ *Natural Resources Defense Council v. Morton*, 458 F.2d 827 (D.C. Cir. 1972)

²⁰ *Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810 (9th Cir. 1987)

²¹ *Center for Biological Diversity v. Bureau of Land Management*, 422 F.Supp.2d 1115, 1160 (N.D. Cal. 2006)

²² *City of Tenakee Springs v. Clough (Tenakee II)*, 915 F.2d 1308, 1310-12 (9th Cir. 1990)

industry. Secondly, depleted habitat for wildlife, which is counted as part of the “human environment by NEPA, may rebound. Thirdly, small mill operators can maintain a viable local timber industry if the industrial mill owners cannot operate without exporting of logs.

5. Impacts, “events”

To assess the environmental consequences and a Cumulative Effects Analysis that is credible the courts have required, a “catalog of past action” that allows a cogent assessment of how timber harvest and other actions that had direct and indirect effects on the landscape and cumulatively affect the landscape of Prince of Wales Island as a whole (MUSYA states, “*harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land*”). This FEIS instead uses a present and foreseeable action approach and refers the reader to each resource for past actions that have affect. There is no listing of individual past timber harvests for this FEIS. This violates what courts have said (see *Lands Council v. Powell*²³), and suggests the FEIS may have fallen off the cliff of interdisciplinary science that is mandated by NEPA sec.102 (2) (A) and 40 CFR 1507.2. Cumulative effects analysis requires the EIS analyze the impact of a proposed project considering that project’s interaction with the effects of past, current, and reasonably foreseeable future projects. See 40 C.F.R. § 1508.7. While there is a CEQ memo that this may not be necessary, courts have said such data is necessary and the CEQ memo has no real standing at law. While the response to comments in Appendix D seeks to gloss over or side-step this issue the courts likely will not. Prince of Wales Island has been heavily logged since the early 1950s, the logged stands have become stem excluded forging wildlife habitat with a course blanket of trees that are not effectively thinned. While freshly logged areas are good for wildlife and particularly deer, deep winter snow precluded their survival in these areas and the stem excluded stands offer no refuge. Only Old Growth stands of timber offer refugia in severe winter. Continued logging of deer winter range and the exacerbation of the project makes the disclosure of past action a necessity. The Forest Service has allowed that this issue is significant.

National Forest Management Act National Forest Management Act of 1976 (NFMA 16 U.S.C. 1600) requires that the Forest Service identify Management Indicator Species (MIS), monitor their population trends, and evaluate each project alternative in terms of the impact on both Indicator Species habitat and Indicator Species populations. The old growth forest analysis as it relates to the population and viability of species that require old growth habitat, the Forest Service is obligated to look deeper than the cumulative effects of the Project on Management Indicator Species by conducting a long-term viability study of these Management Indicator Species due to the extensive logging, road building and the down turn in species population. NFMA requires that the Forest Service identify Indicator Species, monitor their population trends, and evaluate each project alternative in terms of the impact on both Indicator Species habitat and Indicator Species populations.²⁴ The FEIS fails to credibly do this.

Therefore, a valid contention that the Environmental Impact Statement does not take a “hard look” at the effects of the proposed Project for five natural resource issues can be found:

²³ *Lands Council v. Powell* United States Court of Appeals, Ninth Circuit No. 03-35640. Decided: August 13, 2004.

²⁴ *Idaho Sporting Cong., Inc. v. Rittenhouse*, 305 F.3d 957, 971-74 (9th Cir.2002).

Alexander Archipelago Wolf

The Forest Service fails to take the requisite “hard look” on the cumulative effects of legal and illegal wolf harvest on Prince of Wales Island. A documented illegal wolf taking has persisted for decades by residents of Prince of Wales Island using Forest Service roads. They reason that wolves compete with them for subsistence harvest deer and often kill them for this reason rather than for pelts. USFS has no cumulative effects analysis of how this illegal taking of wolves cumulatively has affected wolf population. Past timber harvest analysis has failed to provide meaningful data. Yet the effect of the lawless taking of wolves along with the lack of deer winter range— that provides this mammal its prey species, is likely to have diminished this species population significantly as Forest Service science suggests (Person et al, 2016)²⁵. Cumulative effects of illegal taking of wolves has gone on for decades. The Forest Service has made no attempt to ascertain this effect which should be considered with legal taking of wolves. Admittedly this would be difficult data to ascertain, but the wolf literature on Prince of Wales Island does quantify this to some extent.

This project over time will add to increased roads, and access by persons intent on killing wolves outside ADF&G guidelines. Increased logging of deer winter range diminishes deer numbers and affects the wolf population. The wolf population has dropped precipitously over the past two decades. The FS with implementation of POW LLA is “arbitrary, capricious,” has committed an abuse of discretion, and has violated the Multiple Use and Sustained Yield Act of 1960 Sec. 4. By the hazarding the risk of pack depletion in numerous Wildlife Analysis Areas and may lead to an elevated risk of extirpating the Alexander Archipelago wolf from Prince of Wales Island and would violate the Multiple Use and sustained yield act of 1961, ANILCA, the National Forest Management Act (which prohibits Forest Supervisors from managing in a manner that would cause MIS species to trend toward extirpation), and the National Environmental Policy Act by impairing the productivity of the land to sustain Management Indicator Species such as Black bear, Sitka Blacktail deer and the Alexander Archipelago wolf.

The Forest Plan provides for protection of denning wolf cubs by restricting activity during wolf denning periods. Recent past Timber Sales have arbitrarily violated this standard of the Forest Plan. This project provides no further protection nor a mitigating plan to assure the Standard from the Forest Plan to protect denning wolves.

Alaska Rainforest Defenders et al, in their December 21, 2018, Objection to the Prince of Wales Landscape Level Analysis Project stated:

Regarding the increased access and wolf mortality, the Forest Service also fails to comply with the 2016 Amended Forest Plan’s requirement to “implement a Wolf Habitat Management Program.”²⁶ The agency not only refuses to implement the Wolf Habitat Management Plan,²⁷ but then fails to examine the impacts of that decision at either the island level (i.e., whether the wolf populations on Prince of Wales will be sustainable) or the

²⁵ “The Alexander Archipelago Wolf: A Conservation Assessment” David K. Person, Matthew Kirchhoff, Victor Van Ballenberghe, George C. Iverson, and Edward Grossman; Forest Service Pacific Northwest Research Station *General Technical Report PNW-GTR-384* November 1996

²⁶ 2016 Amended Forest Plan at 4-91 (XIV.A.1)

²⁷ Draft ROD at 10-12.

Tongass as a whole (i.e., whether wolves will be well-distributed and viable). The FEIS concludes “about 89 percent of the project area WAAs have some level of wolf mortality concern” related to road density.²⁸ The Forest Service acknowledges that increased road density negatively affects wolves,²⁹ but fails to explain whether and how it decides it is acceptable to pursue logging and roadbuilding in a specific location in light of those concerns. The agency, for example, does not examine connectivity concerns between wolf pack locations or travel corridors, or state whether it will maintain the 1200 and 600-foot road buffers around wolf dens or disclose the adverse impacts that will result if those buffers are not maintained.³⁰

I object that the FEIS violates NEPA because the Forest Service fails to analyze adverse impacts to the Alexander Archipelago wolf with the POW LLA.

Black Bears

The Forest Service fails to take the requisite “hard look” on the cumulative effects of Black bears. Black Bear do very well on Prince of Wales Island (an Island the size of Delaware the tourist brochures are fond of stating) until Sport magazines started writing articles about POW having the largest Black Bears in the world with lax hunting regulations for out-of-staters. Within less than 10 years the black bear population began to crash. The State drug their feet for a while before doing anything about it, now there are restrictions to slow the crash down. Locals only took about 50 bears a year, out of State hunters took a number close to, or above 500. There was a population of about 5,000 bears. This is easy math-- after ten years the bears were in trouble. ADF&G changed regulations to help the bear population rebound for this crash in their population. Now the Forest Service has a policy of logging over bear dens (two recent massive timber sales have done just that). Bear dens are mostly in the root systems of old growth trees. Before 2008, the Forest Plan protected the dens of this amazing population of black bears. Some of these bear dens have been used for centuries. The response to comments made no cogent discussion of black bear dens. As Black Bears are (a Management Indicator Species) and formerly had protection of their dens by the Forest Plan (a very small buffer that may have been less than a quarter acre was all that was required), there has never been a reason given by the Forest Service for the removal of den protection in subsequent plans. ADF&G have tracked collared bears and have shown they use the same dens year after year—some dens may have over one century of use by generations of bears. The Forest Service fails to take the requisite “hard look” on the cumulative effects on the black bear population because of bear den destruction during timber sales and the recent effects of over hunting these mammals. An EIS should contain a sufficient discussion of the relevant issues and opposing viewpoints to enable the decisionmaker to take a “hard look” at relevant environmental factors. The agency must articulate a rational connection between the facts and law found and the conclusions made. Instead Forest Service ignores this resource in favor of a miniscule addition to the timber base. This is an example of the timber resource taking precedence over the wildlife resource and shows the timber bias in administering the MUSYA allowing the unreasonable diminishing of wildlife resource. A non-significant Forest Plan amendment reinstating the buffer protection would rectify this

²⁸ FEIS at 235.

²⁹ FEIS at 228.

³⁰ 2016 Amended Forest Plan at 4-91 (WILD1.XIV.A.3).

thickheaded bias. I object that the FEIS violates NEPA because the Forest Service fails to analyze adverse impacts to the black bear with the POW LLA.

Sitka blacktail deer

The Forest Service fails to take the requisite “hard look” on the cumulative effects of this project on Sitka blacktail deer. The Multiple-Use Sustained Yield Act of 1960 authorizes the Forest Service to provide natural resources for economic benefit to communities. However, this act precludes extracting resources to the extent POW LLA would: “without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output,” The Forest Service by implementing POW LLA seeks to gain the greatest dollar return and maximizes timber harvest that previous Forest Plans sought to limit. It is scientific reasoning that shows the productivity of wildlife habitat resources would be impaired if timber harvest precluded adequate deer winter range and other wildlife concerns.

Losing deer in numbers in an unsustainable manner, certainly impairs the productivity of the land. Deep winter snow winters back to back with past, current, and foreseeable future clearcuts may likely decimate herds that have inadequate thermal cover now. The existing condition of massive areas of deer winter range due to logging of old growth stands and stem exclusion stands from untinned clear cuts have resulted in a subsequent heightened fawn mortality every severe winter. One, or two severe winters with ever increasing diminished winter range could crash the population of Sitka blacktail deer, greatly affecting or eliminating subsistence hunting. An adult Sitka blacktail deer is immobile in clearcuts with 4 feet of snow and will likely perish without winter range. I object that the FEIS violates NEPA because the Forest Service fails to analyze adverse impacts to the Sitka blacktail deer with the POW LLA.

Subsistence Hunting

The Forest Service fails to take the requisite “hard look” on the cumulative effects of logging on subsistence hunting. Alaska residents on Prince of Wales Island are supported by subsistence deer hunting, taking deer winter range violates Alaska National Interest Lands Conservation (ANILCA) by precluding a “reasonable opportunity to take fish and wildlife.” (TITLE 16 - Conservation Chapter 51 - Alaska National Interest Lands Conservation Subchapter II - Subsistence Management and Use Sec. 3114. Preference for subsistence uses). State wildlife biologists have already started to limit deer harvest because of population decline. Trading a viable deer population that puts food on the table for most Prince of Wales Island residents, for timber jobs for residents in the State of Washington or Asian lumber mills is a clear violation of ANILCA as well as MUSYA.

The Forest Service offers no meaningful analysis for POW LLA’s impacts on subsistence users for the 15-year duration of the project, nor does the Agency offer analyses of cumulative effects should abundance and distribution of deer be affected by the loss of deep snow habitat over the foreseeable future. The Forest Supervisor offers this as a possibility, but arbitrarily and without reasoning rolls the dice, and rolls the dice of timber harvest instead of making a reasoned decision based on analysis. Deep snow conditions occur in Southeast Alaska. The agency cannot or will not explain why specific adverse impacts (the further reduction of deer winter range that is vital deep snow conditions occur for deer) on subsistence users are necessary because it has not identified the adversely affected users, locations, or the reasonable steps the agency will take to minimize adverse

impacts as required by ANILCA. The agency's inadequate analysis fails to provide the required ANILCA findings or NFMA justification and violates the 2016 Amended Forest Plan which requires the Forest Service to consider the particular needs of specific subsistence users. The agency fails to do so in this case, because it fails to explain where and when it plans to conduct logging and road building activities.

Yet the ROD sets aside management activity for subsistence users, "North of the 20 Road" and in VCU 5280, who knew full well the impacts of this project on subsistence use and vociferously complained about it. The subsistence users from Coffman Cove, Craig, Edna Bay, Hollis, Hydaburg, Kasaan, Klawock, Naukati Bay, Thorne Bay, and Whale Pass may well complain as the POW residents in Point Baker and Point Protection did, but the Agency cannot explain where the affects will occur, nor how much of the effects, nor at what time they will likely occur in relation to other areas. All these communities are considerably below the poverty level (see Table 75 FEIS) and subsistence hunting is very important if not vital.

This becomes an arbitrary decision that impinges upon a vital wildlife resource necessary to Prince of Wales Island residents in favor of timber harvest, that while purported to contribute to the economic viability of Prince of Wales area communities, may likely be jobs exported to Asia if the pervasive and ongoing past practice of the last ten years continues. Residents of Point Baker and Point Protection may be the canary in the coal mine in this case, and to further the metaphor, the oxygen of Prince of Wales Island's deer population may be likely to diminish to unsustainable levels. Subsistence users in all these communities have protection under ANILCA³¹. The Forest Service unlawfully seeks to abrogate this protection by its paucity of analysis in it rush to harvest timber over deer populations vital to subsistence use.

Deer are clearly a resource under the Multiple Use and Sustained Yield Act. Subsistence hunting depends upon the sustainability of this resource. The facts found in the POW LLA analysis come short of a hard look as to analysis of this vital resource and the role it plays on subsistence hunting. Yet, on page 49 of the *Prince of Wales Landscape Level Analysis Project Final EIS* Response to Comments – Appendix D, the Agency asserts, "The POW LLA Project is neither "arbitrary" nor "capricious." Under the Multiple-Use Sustained Yield Act and the NFMA, all renewable resources are to be managed so that they are available for future generations." This is clearly a finding fraught with short-sidedness and error. Reasons are the antidote to arbitrary actions. The Forest Service with POW LLA predicates its reasons for harvesting timber in lieu of viable deer winter range, as a

³¹ 16 U.S. Code § 3120 - Subsistence and land use decisions. Factors considered; requirements: In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency—(1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 3115 of this title; (2) gives notice of, and holds, a hearing in the vicinity of the area involved; and (3) 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.

misconceived notion that the Forest Plan allows the timber harvest over deer viability, then claims it meets the mandate of Multiple Use and Sustained Yield Act. I object to this unreasoned course of action in POW LLA's potential and likely detrimental impacts to subsistence deer hunting on Prince of Wales Island because they *are* arbitrary and capricious and fail to manage wildlife resources so that they are available for future generations.

Local Jobs, the Local Economy, Social Effects and Environmental Justice

The Forest Service fails to take the requisite “hard look” on the cumulative effects of export of whole logs to foreign markets on local jobs, the economy, social effects and environmental justice. The National Environmental Policy Act at section 102 (C) (ii) and requires the disclosure of the adverse environmental effects which cannot be avoided should the proposal be implemented. This FEIS makes no mention that the trees harvested and exported and the cumulative effect of job loss of this irretrievable commitment of a resource that could otherwise be harvested later and processed by a US business, nor does it mention or examine the short-term use of export of logs with the maintenance and long-term productivity of the POW landscape (cf, 102 (C) (2) (iv), and (v). This would violate NEPA itself, as well as 40 CFR 1502.16 which necessitates that the Act itself be complied with in this regard. There is no listing of individual past timber harvests for this FEIS. This violates what courts have said (see *Lands Council v. Powell*³²) There appears to be no calculation timber export volume from past sales in any of the FEIS analysis whereby the effect to the local job market and the economic effect on the region might be ascertained. This constitutes a failure to account for similar actions, connected actions and cumulative actions.

Table 19. Annualized Timber Industry and Associated Jobs Supported by Alternative for Old growth page 118 of the POW LLA FEIS, is arbitrary and capricious or otherwise contrary to law if the number of jobs stated are subject to 100% export, as stated as a possibility in the most recent Tongass National Forest Plan.

Log exports are a recurring controversy. Generally, a million board feet of timber generates about five logging jobs and five mill jobs. Exporting raw logs adds a port job per million board feet, but the mill jobs are lost.³³ The Viking Lumber Company has a port and is in Klawok, Alaska, a largely native community. The mill handles Forest Service Timber Sales and SEALASKA timber sales, a native corporation. Export of timber effects this community with diminished jobs and job potential overtime. To export logs from Federal Timber sales when the project is predicated on creating local jobs makes this an issue of Environmental Justice. The project is clearly outside of Executive Order (EO) 12898. The FEIS reports that Klawok has a 48% native population and a 20% poverty rate³⁴.

The Tongass Limited Shipping Policy in 2007 allowed shipment of whole logs to the lower 48 states and to an undisclosed volume to foreign markets of unprocessed Sitka spruce and western hemlock with some size limitations, whereas only western red cedar and yellow-cedar had been allowed up to that time. Under this policy the Regional Forester could grant an exception in advance, based on case-specific unusual circumstances. A sizable percentage, most likely more than half of the Federal

³² *Lands Council v. Powell* United States Court of Appeals, Ninth Circuit No. 03-35640. Decided: August 13, 2004.

³³ “West Coast Log and Lumber Exports Jump in 2011, Fueled by China’s Export Boom,” Eric Mortenson, THE OREGONIAN (Portland), September 9, 2011

³⁴ Table 75. FEIS.

timber sales of Log Jam, and Big Thorne were granted these unusual circumstances. No cumulative effects analysis of impacts to the landscape that is purportedly used to supply timber to other than local markets exists in a comparative format in the FEIS. No volume of exported logs is accounted for as a past practice. Yet, MUSYA requires that management of Federal timber in “the national forests so that they are utilized in the combination that will best meet the needs of the American people;” the Forest service fails to make a case that export logs that could be jobs from an irretrievable resource can best meet the needs of the American people. There is no circuitous logic that the Agency can assemble that will do this. The export policy is outside Federal law and simply a back-room deal made between the Regional Office and the mid-size mill operator; if an analysis in the NEPA document as to export effects, and replete with a requisite non-export alternative action. The 2016 Forest Plan has attempted to legitimize an ongoing and pervasive effort to export Federal timber in an unlawful manner. This attempt fails, and its unethical and its perhaps illegal intent comes to light when we find an FEIS that suggests no reasonable alternative that would preclude the export of Federal timber.

The Forest Service fails to take the requisite “hard look” on the cumulative effects of the exporting whole logs on the economy of Southeast Alaska, because the purported underlying need is for timber sales from this EIS effort to supply local jobs. An EIS should contain a sufficient discussion of the relevant issues and opposing viewpoints to enable the decisionmaker to take a “hard look” at relevant environmental factors. The agency must articulate a rational connection between the actual trend of National Forest logs exported from the Tongass, applicable law, and the conclusions made for the proposed action and alternatives.

The Forest Service with POW LLA Project engages in a naïve idea of Land Use Management with statements like the following:

The POW LLA Project is an important component of the Forest Service’s plan to meet the goals of the Forest Plan and provide an orderly flow of timber to local industry. Sawmill employment in Southeast Alaska has historically been supported by Forest Service timber sales, with a smaller contribution from state timber harvest (USDA Forest Service 2012b). Much of the timber from non-National Forest System lands is exported. Since most sawmills within the project area rely on old-growth timber, the timber from this project is considered necessary to maintain these mills.³⁵

The notion of what “is considered necessary to maintain these mills” is contentious and perhaps double speak. The above statement shows the FEIS has completely forgone the duty to monitor Timber Sales and track the increments of volume in a meaningful manner, but rather suggests the State exports other logging projects from State land, therefore, to maintain the mills the FS will export as well. International Trade and the export demand to foreign markets is a moving target except for the fact these markets generally pay more to the operator when they ship whole logs to these markets rather than manufacture products locally. This would be acceptable perhaps if the operators owned the land the timber is growing on. They do not. This land is, and its resources are owned by the American people. The Forest Service motto, of “Protecting the Land and Serving the

³⁵ POW LLA FEIS, Effects Common to All Alternatives; Cumulative Effects page 120

People,” is abused by this proposed action and perhaps by past action, not to mention the applicable laws and court precedent cited herein these objections.

NEPA the act itself requires a disclosure of irreversible and irretrievable resources³⁶. The FEIS defines this as a requirement in perhaps a superficial way and suggests no effects of the project as irreversible and irretrievable.

Irreversible: This term describes the loss of future options. Applies primarily to the effects of use of nonrenewable resources, such as minerals or cultural resources, or to those factors, such as soil productivity, that are renewable only over long periods of time.

Irretrievable: This term applies to the loss of production, harvest, or use of natural resources. These decisions are reversible, but the production opportunities foregone are irretrievable. An example of such commitments is the allocation of LUDs that do not allow timber harvest to areas containing suitable and accessible forest land. For the time over which such allocations are made, the opportunity to obtain timber from those areas is foregone, thus irretrievable.

“Irreversible commitments” is a term that describes impact like the loss of soil due to erosion and mass failures is an irreversible commitment of resources and mass failures are common on Prince of Wales Island. The loss of soil resources need to be minimized to the extent feasible in all action alternatives by following Region 10 Soil Quality Standards, incorporating BMPs and applying mitigation measures specified in a site-specific manner.

Road construction is an irreversible action because of the time it takes for a constructed road to revert to natural conditions. Irreversible actions also include the associated rock quarries which are developed in conjunction with these roads. Soils and wetlands displaced by road construction activities are irreversible commitments of the project resources, due to the long-term loss of soil productivity. It is irreversible because the soils and wetland resources have deteriorated to the point that renewal can occur only over a lengthy period of time or at a great expense, or because the wetland soils have been destroyed or removed. In road construction, wetland soils are either scraped away or are buried beneath road fill, greatly limiting their pre-disturbance productivity.

Loss of cultural resource sites resulting from accidental damage or vandalism would be an irreversible commitment of resources. Standards and guidelines, survey methodology prior to activities, and mitigation measures specified are necessary to provide reasonable assurance that no irreversible loss of cultural resources would occur.

Inventoried roadless areas (IRAs) are set aside to determine their eligibility for inclusion into the National Wilderness Preservation System. Once an area is roaded, it is generally no longer available for wilderness consideration. Loss of acres due to timber harvesting or road building would have irreversible effects to the character of the affected acres in these roadless areas, thus reducing the roadless area total acreage.

"Irretrievable commitments" is a term that applies to the loss of production, harvest, or use of natural resources. For example, some or all the timber production from an area is lost irretrievably

³⁶Sec. 102. (2) (C) (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

while an area is serving as a winter sports site. The production lost is irretrievable, but the action is not irreversible. If the use changes, it is possible to resume timber production.

Old-growth forest structure converted to even-aged forest structure by timber harvest can be considered an irretrievable commitment of the old-growth structure, especially if the land is continually managed for optimum timber production. It is not expected that old-growth characteristics would naturally reoccur within harvest areas for approximately 100 to 150 years; old-growth forest structure would eventually return to the landscape. However, foregoing timber harvest opportunities at this time in certain areas, due to resource concerns or economics, may represent an irretrievable commitment of resources because that volume cannot be harvested. The commitment is irretrievable rather than irreversible because future entries could harvest those areas if they are still classified as part of the suitable timber base.

Extirpation of the Alexander Archipelago wolf from Prince of Wales Island by logging deer winter range and illegal hunting and trapping thus causing constant pack depletion, would be an irretrievable commitment of a wildlife resource. Wolves could be reintroduced, but their hunting denning and prey taking behavior have adapted over thousands of years and would likely be unsuccessful. Wolves might migrate onto Prince of Wales Island but that has not been observed.

Logging deer winter range is an irretrievable commitment of a wildlife resource should severe winters cause a massive winter kill of deer, depleting fawn replacement and limiting or eliminating subsistence hunting as a lifestyle. The suggestion of logging five miles away from communities to aid in subsistence hunting is laughable as that ship has already sailed. The Big Thorne project and State sales have logged to the city limits of the village of Thorne Bay and other communities.

The reduction in the visual quality of an area due to timber harvesting would be an irretrievable commitment of resources. The commitment is irretrievable because viewsheds will typically heal from a visual quality standpoint after about 40 years. Second-growth trees will have the color and height needed so as not to be evident to the casual observer after this time.

That the Forest Service in a NEPA document would hazard only a timber centric notion of these two key concepts of NEPA shows the disregard to law and sound land management principles. The FEIS is required to disclose “any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.”³⁷ All these resources are part of the human environment and should have these commitments analyzed in detail in the proposed action and alternative actions. The FEIS fails to do this and should be rewritten beginning as an SDEIS to allow lawful comment.

6. Purposes

In the entire history of POW planning almost every time the FS selected no other alternative than the maximum harvest Alternative. If this has led to the impairment of the Landscape as the public continually makes the case, then maximum yield alternative violates NEPA, MUSYA, and other laws. For example, 40 CFR 1502.23 which states, “an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.” These “decision factors” are relevant to an EIS,

³⁷ “National Environmental Policy Act.” Sec. 102. (2) (C) (v)

and relevant again at the time of decision in the Record of Decision. There never seems to be a space for a decision factor that would limit the export of whole logs to Asian markets that shows by alternative comparison if the R10 policy is circumvented by the recent Forest Plan amendment ROD (see page 1 of this comment). Therefore, once again the POW LLA alternatives do not meet the underlying need of local jobs.

This proposal violates the CEQ regulations at 1508.27 (a), (b); 1-10. “A decision must be made by considering context and intensity,” the FEIS does not consider the context and intensity of significant issues such as massive export logging of Federal timber land on the human environment with its concomitant resources such as Alexander Archipelago wolf, black bears, Sitka blacktail deer, Subsistence hunting and local jobs, the local economy of Prince of Wales Island; and specifically, 40 CFR 1508.27 (b) (5) POW LLA as proposed, projects uncertain effects on the human environment without site specificity and involves unique or unknown risks (economically, socially, on wildlife, the right to reasonable hunting for subsistence as per ANILCA, and to indigenous people, and local jobs). Context and intensity were not discussed in the draft ROD in any meaningful manner, so there is now no basis for the Forest Supervisor to make informed decisions or inform the public of the true environmental consequences of project implementation. Therefore, a supplemental DEIS is necessary as correcting the record in a FEIS would not allow for a lawful scoping or review of these issues. Alternatively, dropping this project and proceeding with an effort of site-specific planning that has been successful would put the Forest Service back on a lawful trajectory.

7. Mitigation

Mitigating adverse effects could entail not harvesting deer winter range. Commercially thinning and setting aside maturing young growth for replacement Old Growth in Wildlife Analysis Areas that are in danger of pack depletion, or in danger of extirpation of wolves due to pack depletion would be reasonable. Setting aside these areas as emergency wildlife areas as replacement old growth would be the only sound mitigation for the existing condition and an honest Desired Future Condition. Forests are complex and rich in terms of biological diversity employing legacy concepts into harvesting prescriptions are necessary. Natural stand development process should be implemented into treatments of established stands of young growth. Appropriate recovery periods are necessary for deer winter range to avert a massive winter kill. The FEIS fails to thoroughly investigate the effects of this project on Prince of Wales Island as a whole. Nor does it guarantee a thorough investigation from the projects planned from a collaborative effort during implementation. Thinned stands of young growth that are thinned purportedly for wildlife mitigation, may well be logged ten years later as there is no caveat for replacement Deer deep snow habitat because Tongass forester still view the timber LUDs in terms of stand rotation. Commercially thinned stands that begin to provide deep snow winter range can be logged as the remaining trees mature. Until a Tongass Forest Plan implements land use designation that replaces deep snow winter range for the long term, no mitigation is convincing. A non-significant Forest Plan amendment could remedy this.

8. Monitoring

Forest Service has a recent history of not monitoring timber sales and obfuscating actions like logging over bear dens and logging near and over denning wolves. The public has not been allowed to monitor areas that were subject to wind firmness, bear and wolf dens. The ADFG is no longer monitoring wolf populations and may allow this Management Indicator Species to be extirpated

soon. This will violate the National Forest Management Act as I'm sure environmental NGO's are reminding the Forest Service with their objections. I object to a continued lawless effort to log critical wildlife habitat in the lawless manner I've described in my comments and objections.

Timber export from Prince of Wales Island has long been a part of the economy because of the Island's unique position on the Pacific rim. Operators have always sought to utilize this means of selling their product often milling cants of timber for Asian dimensions different than domestic lumber production. This value-added effect contributes to the local economy and the Southeast Alaska job market. Shipping whole logs to Asia degrades an economy that may otherwise be healthy and prosperous. When Timber operators seek the bottom line and there is no restraint, or that restraint is removed by upper echelons of the Forest Service, an unethical relationship occurs as the operators seek again, and again to gain this advantage over small operators and other timber companies at the expense of the local economy.

Recently—Public Employees for Environmental Responsibility (PEER) submitted a letter to Congress that highlighted gross irregularities in Forest Service implementation and monitoring of Timber Sales to Congress by citing a letter from the Forest Service's Washington Office that reviewed Big Thorne Timber Sale and another Tongass Timber sale.

"June 20, 2016 Forest Service "Washington Office Activity Review," examined two large Tongass timber sales and found –

- Staggering monetary losses in each, "close to 2 million" in one sale, an amount "more than double the original stumpage" according to a post-harvest Monitoring Report. In the other sale, Forest Service maladministration led to "a reduction in sale value exceeding \$1,700,000";
- Despite being stewardship sales to improve forest health, the agency allowed companies to ignore prescriptions by "favoring removal in the larger diameter, more valuable species groups, such as western red cedar and spruce" while significantly undercutting far less valuable hemlock; and
- Required law enforcement timber theft prevention inspections appear to have been bypassed. Nor could the forest produce a written contract or other "pertinent documentation" for this high-volume sale. That sale also allowed "purchaser selection of trees without prior marking" and the forest's only follow-on monitoring was completely "reliant on the purchaser's own data."

Any of the findings mentioned above would constitute bad faith practices in Timber administration and would abrogate any reasonable trust by the American people. The Tongass Timber sale program should give assurance that nothing like this could happen in the future, punish or remove wrong doers, and the Forest Service should provide such assurance in any Record of Decision that reestablishes trust. Until such actions stop, are adjudicated in court, or without any reasonable doubt are eliminated from government action this FEIS should be stopped and taken up again as a Supplemental Draft Environmental Impact Statement at a time that guarantees the honesty and good faith of the Government.

The FEIS should have conclusions based on reasons the reasoning herein is very weak and ignores the significant issue of export of logs and other issues, reasons should be based on evidence the evidence of the amount of Federal timber exported from the Tongass National Forest is withheld from planning effects analysis.

The Forest Service suggests an adaptive management policy that absent applicable law and would set a precedent of no environmental or economic boundaries to their powers. Should this administrative decision go forward, Forest Service action would not have to be based on a “hard look” at evidence and a balancing of relevant factors; or on the mandate of law given by the legislative branch of our government. The Forest Service would be unrestrained and would be unchecked even if they acted arbitrarily. The monitoring of export timber is a significant issue as to the context and intensity of environmental and economic effects.

There can be no cogent argument that past timber harvest is not a cumulative effect on the Landscape of Prince of Wales Island and that exporting Federal Timber has a scaled effect on the economy of Southeast Alaska and Prince of Wales Island that may be adverse. Not factoring in that 57% of the timber that went to Viking Lumber company from Forest Service lands was exported to PACRIM companies, rather than made available to local industry, prohibits a reasoned finding for the effects of this project. I object to absence of a legal NEPA process for this project.

Findings reveal the reasoning process of agencies. If there is a finding of need to harvest timber to meet market demand the FEIS must disclose how much log export has been in play in the last decade and must reasonably submit a finding of how much log export is likely to be dispersed to foreign markets with this project. The direct, indirect and cumulative effects both economic and environmental must be disclosed. Since there has been an excessive amount of export in the past decade there should be a “no export Alternative” which may preclude profiteering of a mid-sized industrial mill in the short term, with no export of whole logs to Asian markets.

Instead such an alternative would insure small mills a steady timber base that produces lumber and specialty projects; while young growth can be managed as recovery stands and commercially thinned for wildlife enhancement and ensuring the viability of subsistence hunting. Then this may be found to “best meet the needs of the American people” (MUSYA). *The Prince of Wales Landscape Level Analysis Project FEIS ROD* must be supplemented with this information and the public would need to comment. Absent these requirements purports an irrational planning process contrary to applicable law.

A proper finding reveals a rational basis for the Forest Service decision. Those decisionmakers should appreciate publishing their decision-making process and be diligent in making findings in writing on the record. Those decisionmakers who are fearful of making written findings on the record, would be fearful for this very reason. The legal basis for writing down reasons has been summed up this way:

- (1) Reasons are the antidote to arbitrariness, and thus are a fundamental part of the decision-making process. Government works best when decisions are well thought out. Whether approached from the viewpoint of efficiency or legality, reasons contribute to the machinery of good Government. An arbitrary Government is probably not an efficient Government, and probably not a legal Government.
- (2) Reasons encourage public confidence in the Government. The giving of reasons shows a measure of impartiality — a freedom from bias and arbitrariness — that gives legitimacy to Government action.

(3) Reasons are essential to the functioning of the appeal process. Reasons enable affected persons to know whether there are grounds to challenge a decision and enable a reviewing authority to carry out the appellate function. Reasons reveal the basis for decisions, and thus inform both affected persons and appellate authorities.

(4) Reasons are part of the ideals of due process. The principles of natural justice and fairness cannot be carried out if Government does not state its reasons for its actions.³⁸

I object to the arbitrary manner of proposing timber sales that purports: to confuse cumulative effects of past timber harvest on the entirety of Prince of Wales Island that have ongoing and pervasive detrimental wildlife effects that will not be analyzed; obfuscates due process; abandons the machinery of good government; skews any notion of impartiality; seeks to escape appellate function, and blatantly betrays the public trust of the American people. *The Prince of Wales Landscape Level Analysis Project FEIS ROD* warrants such an objection.

Finally, it is my estimation with almost 20 years of NEPA experience and extensive Office of the General Counsel training in the NEPA process, that this, a somewhat of a programmatic or adaptive management EIS effort, will fail with any serious challenge in court largely from some, or all the applicable law cited. Programmatic Environmental Impact Statements such as the Northwest Forest Plan have been implemented as a tool to use the best science available to do sustainable forestry. *The Prince of Wales Landscape Level Analysis Project FEIS ROD* seeks to be a tool with no science available. Others, perhaps an adaptive management EIS effort in Arizona sought to administrate a silvicultural problem and fire danger in vast area of four states where there was a great danger of catastrophic stand replacement by wildfire. These projects were warranted by reasonable and impending need. *The Prince of Wales Landscape Level Analysis Project FEIS ROD* makes no such case.

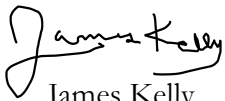
There is no silviculture need for the clearcutting of forested stands of old growth timber on Prince of Wales Island which has been by most all accounts, over logged and presents dangerous conditions to current wildlife populations. The Tongass Forest Plan calculates its Sustained Yield by calculating the landscape as if the National Forest was a contiguous land mass rather than an archipelago of islands with a biodiversity that has meticulously evolved since the ice age and subject to extinctions, extirpations and harm to the human environment by over utilization at the Island scale. At the island scale Prince of Wales Island forests are not being harvest with for a sustained yield, but rather more trees are being harvested than are being replaced. Producing Timber on Federal land is a necessity. However, doing it in a manner that circumvents sound reasoning and ethical management that has been a safeguard to overzealous industry over natural resources fails to “best meet the needs of the American people” (MUSYA).


The Forest Service with long-standing legal and scientific principles is now abandoning an environmental and legal ethic and trades it for a veiled attempt to approve a massive giveaway to the timber industry based on as little analysis and public disclosure as possible. I object to this as it is shameful.

³⁸ Antoine, R.M.B., “A New Look at Reasons — One Step Forward — Two Steps Backward,” *Administrative Law Review* 44(2): 453-460, 454, Spring 1992

It was sound reasoning and ethical management that founded the Forest Service in 1905. I urge Region 10, the Washington Office, and the Department of Agriculture to return to sound reasoning and ethical and sustainable management. This FEIS with the help of the most recent Tongass National Forest Amendment ROD, circumvents a reasonable and lawful NEPA process. If it does succeed (perhaps with a supplemental DEIS) it is my opinion that most projects planned out of this document will still require at least an Environmental Assessment, and in some cases another EIS thus negating any notion of a more efficient planning process. I personally, professionally and deeply object to this FEIS on all the above stated grounds.

Sincerely,


James Kelly



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NATIONAL ENVIRONMENTAL POLICY ACT