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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

CASCADIA WILDLANDS, GREATER
SOUTHEAST ALASKA
CONSERVATION COMMUNITY,
GREENPEACE, CENTER FOR BIOLOGICAL
DIVERSITY, and THE BOAT COMPANY,

Plaintiffs,

v.

FORREST COLE, in his official capacity as
Tongass National Forest Supervisor; BETH
PENDLETON, in her official capacity as
Alaska Regional Forester; THOMAS L.
TIDWELL, in his official capacity as Chief of
the United States Forest Service; and the
UNITED STATES FOREST SERVICE, an
agency of the United States Department of
Agriculture,

Defendants.

Case No.

**Complaint for Declaratory and
Injunctive Relief**

(National Forest Management Act, 16
U.S.C. § 1604; National Environmental
Policy Act, 42 U.S.C. § 4332;
Administrative Procedure Act, 5 U.S.C. §
706)

1. Plaintiffs bring this case under the Administrative Procedure Act (“APA”) to challenge the final agency action of Defendants Forrest Cole, Beth Pendleton, and the United States Forest Service (collectively the “Forest Service”) in approving the Big Thorne timber sale on Prince of Wales Island in the Tongass National Forest. The Big Thorne timber sale is the largest old-growth logging project on the Tongass National Forest in the last decade. The Big Thorne Record of Decision (“ROD”) authorizes the logging of 148.9 million board feet of timber (“MMBF”) from 6,186 acres of old growth forest and 2,299 acres of recovering second growth forest in a 232,000-acre project area on Prince of Wales Island. The ROD also authorizes the reconstruction of 36.6 miles of existing Forest Service roads and construction of 46.1 miles of new Forest Service roads, including 24.1 miles of “temporary” roads, which will be added to the 463 miles of roads that already exist in the project area. Plaintiffs seek a preliminary injunction, declaratory relief, and an order vacating the decision, because Defendants have failed to comply with the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§4321 *et seq.*, the National Forest Management Act (“NFMA”), 16 U.S.C. §§1600 *et seq.*, and the APA, 5 U.S.C. §§701 *et seq.*, in issuing the Final Environmental Impact Statement (“FEIS”) and ROD for the Big Thorne project.

2. The more than 6,000 acres of old-growth forest that would be logged as a part of the Big Thorne timber sale is in an area of Prince of Wales Island that supports important endemic species, including the Alexander Archipelago Wolf (the “wolf”) and the Sitka black-tailed deer (the “deer”), the main prey of the wolf and an important subsistence species for communities on Prince of Wales Island. Both species have been designated as Management Indicator Species (“MIS”) by the Forest Service because they are dependent upon and indicate the health of the old-growth forest ecosystem in the Tongass National Forest.

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3. This action challenges principally the Forest Service’s analysis of and determinations regarding impacts to populations of the Alexander Archipelago wolf. Prince of Wales Island and Game Management Unit (“GMU”) 2 have been heavily degraded by previous old-growth logging projects. Scientists studying the project area have recently documented evidence of an alarming decline in the wolf population. This decline is caused by the loss of old-growth habitat relied upon by deer and increasing wolf mortality facilitated by an extensive network of logging roads that provide access for hunters and trappers. As a result of these recent declines, the Forest Service has no reliable estimate of wolf populations or population trends on Prince of Wales Island or in GMU2.

4. The 2008 Tongass Land Management Plan (“TLMP”) requires that the Forest Service ensure viable and sustainable populations of the Alexander Archipelago wolf. In a separate but related provision, the 2008 TLMP also includes a standard and guideline providing for the Forest Service to provide enough deer habitat to meet the needs of both wolves and subsistence hunters. The Big Thorne timber sale will log important areas of the remaining deer winter habitat, *i.e.* low elevation, old-growth forest, and will exacerbate the already degraded condition of the planning area. This is likely to lead to even lower populations of deer and wolves and even more severe instabilities in the predator-prey system on Prince of Wales Island. Plaintiffs challenge the Forest Service’s determination that the project is consistent with the 2008 TLMP as required by the National Forest Management Act, 16 U.S.C. § 1604(i).

5. Plaintiffs also challenge the Forest Service’s failure to disclose to the public and to consider dissenting scientific opinions and significant controversy regarding the impacts of the project on viability of the Alexander Archipelago wolf as required by the National

Environmental Policy Act. Prior to preparation of the Final Environmental Impact Statement, *Cascadia Wildlands et al. v. Cole et al.*, Case No.

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Dr. David K. Person, the foremost expert in the country on the Alexander Archipelago wolf and a former wildlife biologist for the Alaska Department of Fish and Game (“ADF&G”), expressed to the Forest Service his opinion that the direct, indirect and cumulative effects of the Big Thorne project would threaten the viability of the wolf on Prince of Wales Island. The Forest Service failed to disclose Dr. Person’s dissenting scientific opinion and this scientific controversy to the public in the FEIS as required by NEPA’s action-forcing procedures.

6. Plaintiffs also challenge the Forest Service’s decision not to prepare a Supplemental Environmental Impact Statement for the Big Thorne project. Because the Forest Service did not consider and disclose Dr. Person’s dissenting opinions in the FEIS as required by law, Plaintiffs appealed the project and provided to the Forest Service a formal statement from Dr. Person regarding his opinions on the impacts of the project. In his appeal statement, Dr. Person concluded that the “Big Thorne timber sale, if implemented, represents the final straw that will break the back of a sustainable wolf-deer predator-prey ecological community on Prince of Wales Island, and consequently, the viability of wolf populations on the island may be jeopardized.”

7. After the ROD was issued and the decision was made, the Forest Service convened a Wolf Task Force (“WTF”) and prepared a Supplemental Information Report (“SIR”) to consider the information and opinions expressed by Dr. Person in his appeal statement. The WTF included scientists from the U.S. Forest Service, the U.S. Fish and Wildlife Service and the Alaska Department of Fish and Game. There were significant disagreements among members of the Task Force as to whether the Big Thorne project would threaten wolf viability. Nevertheless, the Forest Service refused to supplement the FEIS for the Big Thorne project to disclose to the public Dr. Person’s dissenting opinions, the controversy that resulted from the *Cascadia Wildlands et al. v. Cole et al.*, Case No.

proceedings of the WTF, and the great uncertainty that surrounds existing wolf populations and the direct, indirect and cumulative effects of the Big Thorne project. The Forest Service's refusal to prepare a supplemental EIS is arbitrary, capricious and contrary to law.

8. Plaintiffs also challenge the standards and guidelines of the 2008 TLMP, as interpreted and applied by the Forest Service, as inadequate to ensure viable populations of the Alexander Archipelago wolf and to comply with the National Forest Management Act and its implementing regulations. The standards and guidelines of the 2008 TLMP are too weak because: a) the Old-Growth Reserves ("OGRs") are not large enough to protect the home range of a wolf pack; b) the standard and guideline for deer carrying capacity has been interpreted by the Forest Service in a manner that allows the agency to authorize additional logging of old-growth habitat in areas that already fail to provide a carrying capacity of 18 deer/mi²; c) there is no enforceable limitation on road density and access for hunters and trappers; and d) the Forest Service has interpreted the 2008 TLMP to allow it to conduct extensive old-growth logging before preparing a wolf management plan, which has still not been completed more than six years after the TLMP was finalized.

9. Plaintiffs therefore seek preliminary injunctive relief prohibiting the Forest Service from authorizing implementation of the Big Thorne project and logging of irreplaceable old-growth forests on the Prince of Wales Island while this case is pending. Plaintiffs seek a declaration that the Forest Service has violated the National Forest Management Act, the National Environmental Policy Act and the Administrative Procedure Act in approving the Big Thorne Project and in refusing to prepare a Supplemental Environmental Impact Statement. Plaintiffs further seek a declaration that the standards and guidelines of the 2008 TLMP are inadequate to ensure viable populations of the Alexander Archipelago wolf and an injunction *Cascadia Wildlands et al. v. Cole et al.*, Case No.

prohibiting further logging of deer winter habitat. And Plaintiffs respectfully request that the Court vacate the Big Thorne Record of Decision, Final Environmental Impact Statement, and Supplemental Information Report.

10. Should Plaintiffs prevail, they will seek the attorney's fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

JURISDICTION AND VENUE

11. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (federal question), 2201 (injunctive relief), 2202 (declaratory relief), and 28 U.S.C. § 1346 (United States as a defendant). This cause of action arises under the laws of the United States, including the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; and the National Forest Management Act, 16 U.S.C. §§ 1600 *et seq.*

12. An actual, justiciable controversy exists between Plaintiffs and Defendants. Plaintiffs have exhausted their administrative remedies, and the Forest Service's decision denying Plaintiffs' administrative appeal constitutes the final administrative decision of the Forest Service regarding the Big Thorne project. The relief requested by Plaintiffs is proper under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e). The Big Thorne project that is the subject of this dispute is located in the Tongass National Forest in this judicial district, and the Forest Service employees that approved the project are also located in this district. Plaintiffs all have offices in this judicial district. Venue is proper in Anchorage pursuant to Local Rule 3.3.

PARTIES

14. Cascadia Wildlands is a non-profit corporation, headquartered in Eugene, Oregon
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with a field office in Cordova, Alaska, that focuses on the temperate coastal rainforest of the Cascadia bioregion. Cascadia has approximately 5,000 members and supporters throughout the United States. Cascadia has staff and/or board members working in Alaska continuously since 1998. Cascadia educates, agitates, and inspires a movement to protect and restore Cascadia's wild ecosystems. Cascadia envisions vast old-growth forests, rivers full of salmon, wolves howling in the backcountry, and vibrant communities sustained by the unique landscapes of the Cascadia Bioregion. Cascadia's members use the Big Thorne Timber Sale area for hunting, hiking, fishing, bird watching, and other recreational and professional pursuits. Cascadia's members and staff have been intimately involved throughout the administrative process for the Big Thorne project, commenting on the Draft EIS, appealing the FEIS and ROD, and commenting on the draft WTF report. The interests of Cascadia's members will be irreparably impaired if the Big Thorne Timber Sale is allowed to proceed without compliance with our federal environmental laws. Cascadia Wildlands brings this action on its own institutional behalf and on behalf of its members.

15. Greater Southeast Alaska Conservation Community ("GSACC") is a regional conservation non-profit corporation in Southeast Alaska. GSACC seeks to foster protection of southeast Alaska's fish and wildlife and their habitat. GSACC's membership uses public lands throughout southeast Alaska and the project area for commercial and subsistence fishing and hunting, professional scientific work, and a wide range of recreational activities.

16. Greenpeace, Inc. ("Greenpeace") is a non-profit environmental organization incorporated in California and headquartered in Washington, D.C., with offices in Sitka, Anchorage, and San Francisco. Greenpeace's mission is to raise public awareness about environmental problems and promote changes that are essential to a green and peaceful future. *Cascadia Wildlands et al. v. Cole et al.*, Case No.

There are approximately 250,000 current Greenpeace members in the United States, and Greenpeace brings this action on its own institutional behalf and on behalf of its members. Since the early 1990s, Greenpeace has worked to curtail the negative effects of logging and associated road building on ecosystems and the fish, wildlife, and subsistence users that depend upon them, as well as to protect the last remnants of old-growth forest in the United States and especially in the Tongass National Forest.

17. Center for Biological Diversity is a non-profit corporation incorporated in the State of California with a field office in Alaska. The Center works through science and environmental law to advocate for the protection of endangered, threatened, and rare species and their habitats throughout the United States and abroad. The Center has 775,000 members and online activists. Center members reside throughout the United States, including southeast Alaska, as well as in other countries. The Center works to ensure the long-term health and viability of animal and plant communities across the United States and elsewhere, and to protect the habitat these species need to survive. The Center believes that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked. The Center has been actively involved in protecting Alaska's wildlife since the early 1990s. With regard to the Tongass National Forest, the Center has filed petitions to protect the Queen Charlotte goshawk and the Alexander Archipelago wolf under the Endangered Species Act. The Center closely follows the fate of these and many other species that depend upon Tongass wildlands.

18. The Boat Company is a tax-exempt 501(c)(3) / 509(a)(2) charitable education foundation and Alaska non-profit corporation that was established in Juneau in 1979. As part of its educational mission, it operates nature-based cruises in southeast Alaska aboard two vessels, *Cascadia Wildlands et al. v. Cole et al.*, Case No.

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the 144' M/V Liseron and the 157' M/V Mist Cove. The Boat Company primarily caters to couples and families who have a wide range of interests, including natural history orientation, recreational fishing and wildlife viewing. A primary attraction of The Boat Company's week-long cruises is that they provide an opportunity for clients to view (and sometimes encounter close-up) wildlife species which have been largely extirpated in other parts of the country. All vessel cruise schedules include extensive periods of time spent on anchor in remote bays where there are opportunities to hear the howling of wolves in the wild, or perhaps to catch glimpses of them during hikes onshore. The Boat Company's business is dependent upon the health of the coastal island ecosystems of the Tongass National Forest.

19. Members of the Plaintiff organizations use and enjoy the old-growth forests and lands managed by the Forest Service in the Tongass National Forest on Prince of Wales Island, including in the northern portion of the island where the Big Thorne project is slated to occur, for hiking, camping, photographing scenery and wildlife, and engaging in other vocational, scientific, and recreational activities. Plaintiffs' members derive recreational, inspirational, spiritual, scientific, educational, and aesthetic benefit from their activities in old-growth forests on Prince of Wales Island. Plaintiffs' members use and enjoy, and intend to continue to do so on an ongoing basis in the future, areas of the Tongass National Forest on Prince of Wales Island, including places throughout or adjacent to the Big Thorne project area.

20. The aesthetic, recreational, scientific, educational, and spiritual interests of Plaintiffs' organizations, staff, and members will be adversely affected and irreparably injured if Defendants implement the Big Thorne project and authorize logging of irreplaceable old-growth forests. These are actual, concrete injuries caused by the Defendants' failure to comply with mandatory duties under NEPA, NFMA, and the APA. The injuries would be redressed by the *Cascadia Wildlands et al. v. Cole et al.*, Case No.

relief sought.

21. Defendant Forrest Cole is the Forest Supervisor of the Tongass National Forest, and he is sued in this official capacity. Mr. Cole signed the ROD authorizing the Big Thorne project. As Forest Supervisor, Mr. Cole has the responsibility to ensure that the Tongass National Forest is managed in accordance with applicable laws and regulations.

22. Defendant Beth Pendleton is the Regional Forester of the Alaska Region of the U.S. Forest Service, and she is sued in her official capacity. As Regional Forester, Ms. Pendleton was the Appeal Deciding Officer that denied Plaintiffs' administrative appeals of the Big Thorne project. Ms. Pendleton has the responsibility to ensure that national forests throughout Alaska are managed in accordance with applicable laws and regulations.

23. Defendant Thomas L. Tidwell is the Chief of the United States Forest Service. The office of the Chief of the U.S. Forest Service denied the administrative appeals of the 2008 Tongass Land Management Plan.

24. Defendant the United States Forest Service is an agency within the United States Department of Agriculture entrusted with the management of our national forests.

FACTS

A. The Big Thorne Project

25. The Big Thorne project is proposed for lands in the Tongass National Forest on Prince of Wales Island. The Big Thorne project area encompasses approximately 232,000 acres on north Prince of Wales Island, of which about 14,000 acres are state or private lands.

26. The Tongass National Forest includes unique temperate old-growth rainforest habitat, islands, and both coastal and inland habitat. The distinctive ecosystems of Prince of Wales Island provide habitat for a host of terrestrial and aquatic species. Prince of Wales Island *Cascadia Wildlands et al. v. Cole et al.*, Case No.

supports Alexander Archipelago wolf, Sitka black-tailed deer and numerous other wildlife populations, including the Queen Charlotte goshawk and endemic mammals such as the northern flying squirrel, and its streams and lakes provide habitat for both anadromous and resident fish species. It also supports local communities that depend upon wildlife and fish to provide part of their subsistence diet.

27. On February 9, 2011, the Forest Service issued a scoping letter for the Big Thorne project, proposing to remove 100 MMBF of timber from 5,800 acres in the project area.

28. On October 26, 2012, the Forest Service announced the availability of a Draft EIS for the Big Thorne project and a 45-day comment period. The Draft EIS evaluated five action alternatives. Four of the action alternatives proposed to remove more than 114 MMBF of timber.

29. On December 10, 2012, Plaintiff organizations jointly submitted comments on the Draft EIS and requested that the Forest Service rescind the Draft EIS.

30. On June 28, 2013, the Forest Service signed a Record of Decision for the Big Thorne project. On July 2, 2013, the Forest Service announced the availability of the Final EIS and Record of Decision for the Big Thorne project. The Forest Service selected a modified version of Alternative 3 – the highest volume alternative – from the alternatives discussed in the Final EIS. The ROD authorizes the logging of 148.9 MMBF from 6,186 acres of old growth forest and 2,299 acres of recovering second growth forest.

31. On August 16, 2013, Cascadia Wildlands, Greenpeace, the Center for Biological Diversity, the Greater Southeast Alaska Conservation Community and Tongass Conservation Society appealed the decision approving the Big Thorne project.

32. On August 17, 2013, while the Big Thorne project appeals were under *Cascadia Wildlands et al. v. Cole et al.*, Case No.

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consideration by the Forest Service, the agency released information on the first sale to go forward under the Big Thorne project: the Big Thorne Stewardship Contract.

33. Thereafter, on September 30, 2013, the Forest Service denied Plaintiffs' appeals of the Big Thorne project.

34. Big Thorne will reduce productive old-growth forest in the project area by 6,186 acres, increasing the cumulative loss of this kind of habitat to 38% since the beginning of industrial scale clearcutting in 1954. The Project will also increase the fragmentation of this kind of habitat.

35. Big Thorne will reduce high-volume productive old-growth forest in the project area by 3,238 acres, increasing the cumulative loss of this kind of habitat to 47% since the beginning of industrial scale clearcutting in 1954. The Project will also increase fragmentation of this kind of habitat.

36. Big Thorne will reduce large tree old-growth forest in the project area by 1,573 acres, increasing the cumulative loss of this kind of habitat to 45% since the beginning of industrial scale clearcutting in 1954. The Project will also increase fragmentation of this kind of habitat.

37. In the North and Central Prince of Wales Biogeographic Province, which includes the project area, the cumulative loss to date of the above three kinds of habitat is 49%, 59% and 57% respectively.

38. Currently, about 375 miles of Forest Service roads and 88 miles of other roads exist in the Big Thorne project area. Including decommissioned roads, which can often provide access for wolf hunters and trappers, the total road network is 580 miles.

39. The project will result in the construction of ten additional permanent miles of *Cascadia Wildlands et al. v. Cole et al.*, Case No.

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Forest Service road.

40. The project will also result in 36 miles of “temporary” roads. While these road miles are delineated as “temporary,” the effects from such roads are long-lasting well beyond the use of the road for a logging project. These “temporary” roads continue to provide access for wolf hunters and trappers long after they are constructed.

41. Road density (miles of road per square mile of land, or miles/mile²) is a factor in wolf mortality, because of the human access roads afford for the legal and illegal take of wolves by people. The Forest Service assesses road density with regard to wolves on the basis of road length and land area below 1200 feet elevation, at the scale of a wildlife analysis areas (“WAA”), which typically encompass several watersheds. Wildlife analysis areas are designated by the Alaska Department of Fish and Game (“ADF&G”).

42. The project includes all of WAA 1319 and substantial portions of WAAs 1315, 1318 and 1420. The current total road densities (i.e. including open and closed roads in all land ownerships) in the WAAs are: 1315, 2.7; 1318, 2.4; 1391, 1.6; and 1420, 2.4 miles/mile².

43. Implementation of Big Thorne would result in a total road density of 1.7 to 2.8 miles of road per square mile in the project area.

44. On August 17, 2013, the Forest Service sent a letter to prospective bidders regarding the Big Thorne Stewardship Contract, announcing that bids would be accepted on September 17, 2013, at 2:00 P.M. on an offering of 102.1 MMBF of timber in 180 harvest units totaling approximately 4,043 acres. The 102.1 MMBF of timber is more than two-thirds of the timber volume in the Big Thorne project decision.

B. The 2008 Tongass Land and Resource Management Plan

45. The 2008 TLMP is the land use plan governing the management of public lands in *Cascadia Wildlands et al. v. Cole et al.*, Case No.

the Tongass National Forest. The 2008 plan is a revision of the 1997 TLMP.

46. As part of the 2008 TLMP, the Forest Service designated Management Indicator Species. These species are selected for emphasis in planning and are monitored by the agency because they provide an indication of the health of the habitat type that they depend upon and can therefore represent other species that have similar habitat needs.

47. The Alexander Archipelago wolf and the Sitka black-tailed deer have both been designated as MIS by the Tongass National Forest because they depend upon low elevation old-growth forest.

48. The Alexander Archipelago wolf and the Sitka black-tailed are inextricably linked, because the deer is the main prey for the wolf. The deer, in turn, rely on old-growth forest habitat for their survival. Deer require old-growth on the Tongass, because the high, broken canopy intercepts snow during the winter, which allows for deer to find forage and shelter during periods of heavy snow.

49. The 2008 TLMP incorporates a multi-tiered approach to ensuring viability of old-growth dependent species. There are two principle components to this strategy: (1) a forest-wide network of reserve areas where logging is generally prohibited; and (2) management of the matrix of lands between reserves under Standards and Guidelines.

50. There is substantial disagreement within the scientific community and agencies as to whether this conservation strategy is adequate to ensure viable populations of the wolf on the Tongass National Forest. As Dr. Person asserts in his appeal statement, this is due in part to the fact that the reserves – “Old-Growth Reserves” (“OGRs”) – on Prince of Wales Island are not large enough to encompass a wolf pack home range. The reserve network, therefore, does not protect adequately any single wolf pack from hunters and trappers.

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51. Subsistence hunters also rely heavily on the deer as a subsistence species. When deer populations decline, due to logging of old-growth forest, hunters and trappers are motivated to target wolves both legally and illegally, because they perceive the wolf as a competitor for the limited number of deer available on the landscape.

52. Standard WILD1.II.B of the 2008 TLMP sets forth the following requirement:

Provide the abundance and distribution of habitat necessary to maintain viable populations of existing native * * * species well-distributed in the planning area (i.e. the Tongass National Forest). (Consult 36 C.F.R. 219.19 and 36 C.F.R. 219.27).

53. The requirements of 36 C.F.R. § 219.19 and 36 C.F.R. § 219.27 have been incorporated into the 2008 TLMP.

54. Standard WILD XIV.A of the 2008 TLMP requires the Forest Service to implement a forest-wide program to assist in maintaining long-term, sustainable populations of Alexander Archipelago wolves.

55. Standard WILD XIV.A.2 of the 2008 TLMP sets forth the following requirements:

Provide, where possible, sufficient deer habitat capability to first maintain sustainable wolf populations, and then to consider meeting estimated human deer harvest demands. This is generally considered to equate to the habitat capability to support 18 deer per square mile (using habitat capability model outputs) in biogeographic provinces where deer are the primary prey of wolves. Use the most recent version of the interagency deer habitat capability model and field validation of local deer habitat conditions to assess deer habitat, unless alternatives analysis tools are developed. Local knowledge of habitat conditions, spatial location of habitat, and other factors need to be considered by the biologist rather than solely relying on model outputs.

56. Standard WILD XIV.A.1.c of the 2008 TLMP provides that where road access and associated human-caused mortality have been determined, through an interagency analysis, to be a significant contributing factor to locally unsustainable wolf mortality, then both open and *Cascadia Wildlands et al. v. Cole et al.*, Case No.

total road density should be considered, and total road densities of 0.7 to 1.0 mile per square mile or less may be necessary.

C. Alexander Archipelago Wolf

57. The Alexander Archipelago wolf is a subspecies of the gray wolf found in southeast Alaska on the mainland and on certain islands including Prince of Wales.

58. The wolf population on Prince of Wales Island is isolated from other wolves on the Tongass National Forest. According to the best available science, loss of genetic diversity and inbreeding may lead to the extinction of isolated wolf populations (Hedrick et al 2014). Wolves in Game Management Unit 2 are genetically isolated from other wolves in southeast Alaska, and the best available science documents that wolves in Game Management Unit 2 already exhibit low genetic diversity (Weckworth et al. 2005).

59. The viability of the Alexander Archipelago wolf has long been a significant concern of federal agencies and the public.

60. In 1995 and again in 1997, the subspecies was considered for listing under the Endangered Species Act (“ESA”) by the U.S. Fish and Wildlife Service (“FWS”). 60 Fed. Reg. 10056 (Feb. 15, 1995); 62 Fed. Reg. 46709 (Aug. 28, 1997). In order to avoid the listing of the species under the Endangered Species Act, in 1997 the Forest Service included various requirements in the TLMP designed to provide protections for the wolf.

61. Based on the 1997 TLMP and the species’ ability to reproduce and disperse, the FWS concluded that listing of the subspecies was not warranted.

62. Sitka black-tailed deer are the primary prey of the wolf.

63. The greatest threats to the wolf are loss of habitat for the deer due primarily to logging and continued high levels of human harvest of wolves (including illegal take), which is *Cascadia Wildlands et al. v. Cole et al.*, Case No.

facilitated by the access afforded by open and closed logging roads.

64. According to the best available science, wolves can sustain approximately 35-38% total annual mortality (Person and Russell 2008) and average annual natural mortality is approximately 5% (Person 2001; Person and Russell 2008).

65. According to the best available science, to ensure sustainable wolf populations, mortality from legal and illegal harvest cannot exceed approximately 30-33%.

66. Harvest limits, to be effective at protecting sustainable wolf populations, are dependent upon accurate estimates of wolf populations and illegal take.

67. According to the best available science, illegal take of wolves contributes to unsustainable wolf mortality on the Tongass National Forest and in the Big Thorne project area (Person and Russell 2008).

68. According to the best available science, wolf populations in the Big Thorne project area have experienced recent declines resulting from a loss of deer winter habitat and mortality from legal and illegal hunting.

69. Neither the Forest Service nor the Alaska Department of Fish and Game have a scientifically credible wolf population estimate for the Big Thorne project area. Nor do they have scientifically credible estimates of wolf population trends in the Big Thorne project area.

70. Wolf mortality in the Big Thorne project area in recent years has greatly exceeded a sustainable level.

71. Since 2009, the Forest Service and ADF&G have cooperated to fund a study on wolf populations in Southeast Alaska, including Prince of Wales Island and the Big Thorne project area.

72. Dr. David K. Person participated in that study. Dr. Person estimates that in the *Cascadia Wildlands et al. v. Cole et al.*, Case No.

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mid-1990s, the Big Thorne project area had enough habitat to support 45-50 wolves in three or four packs.

73. In Fall 2012, Dr. Person and his colleague determined through DNA sampling that there were approximately 29 wolves in the Big Thorne project area and only two remaining packs. Two of the breeding females in the large pack were killed – one legally and one illegally.

74. In Spring 2013, Person and Larson prepared a progress report on the population research and noted that they could account for only six to seven wolves left in the Big Thorne project area (Person and Larson 2013). During the 2012 hunting season, trappers legally killed at least 15 wolves in the Big Thorne project area, which accounts only for legal take. More wolves were likely killed illegally.

75. On June 12, 2014, Brian Logan with the U.S. Forest Service provided some preliminary information on data collection from the 2013-14 field season to Steve Brockman with the U.S. Fish and Wildlife Service. Mr. Logan stated, “fall count we had 13 (aerial counts on the one collared animal and trail camera) in one pack that occupies the area that formally was suspected to have 5 packs * * * looked like it was reduced from 13 to 4 in project area at trapping season end.” He further concluded, “22 total known (a minimum count) at end season minimum known alive were 4+1+1 * * *.”

76. The Appeal Reviewing Officer stated that recent declines in wolf numbers “create uncertainty regarding the sustainability of wolf populations that utilize the Big Thorne project area.”

77. Mr. Brian Logan, biologist with the U.S. Forest Service, stated in conjunction with preparation of the Wolf Task Force Report for the Big Thorne project that, “We cannot say that the wolf population is resilient. The current population may be at an all time low.”
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78. Dr. Person prepared and presented an analysis at the 2006 Tongass Conservation Strategy Review Workshop demonstrating that when more than 40% of a wolf pack home range on Prince of Wales Island is logged and/or roaded, thus allowing access for hunters and trappers, the area likely becomes a population sink in which mortality exceeds rates of reproduction.

79. Over 80% of the Big Thorne project area is or will be accessible to hunters and trappers with full implementation of the Big Thorne Timber Sale and the approved Access and Travel Management Plan.

80. The Honker Divide is too small to encompass a wolf pack home range. The wolf population utilizing the Honker Divide area has declined markedly in recent years.

81. The Karta wilderness is too small to encompass a wolf pack home range. The Forest Service does not have any data demonstrating that a wolf pack has permanently occupied the Karta wilderness areas.

82. Wolves do not permanently occupy Wildlife Analysis Area 1531.

83. The expected total average annual wolf mortality for WAAs 1323, 1525, 1526, 1527 and 1531 exceeds 57%. This figure does not include unreported and illegal harvest. Because annual average mortality is above the level that is sustainable according to the best available science, these areas cannot serve as a source population for the rest of North Central Prince of Wales Biogeographic Province or the rest of Prince of Wales Island.

84. On August 10, 2011, Plaintiffs Greenpeace and the Center for Biological Diversity filed a petition to list the Alexander Archipelago wolf as endangered under the ESA.

85. On March 31, 2014, the U.S. Fish and Wildlife service issued a finding that the listing of the wolf as threatened or endangered “may be warranted” and stating that it will commence a status review of the species. These findings were based in part on the continued *Cascadia Wildlands et al. v. Cole et al.*, Case No.

impacts of old-growth logging in the Tongass National Forest and the associated reductions of deer winter habitat. The FWS expressed concern as to whether the standards and guidelines of the 2008 TLMP are adequate to protect wolf populations. That status review will include an analysis of whether the 2008 TLMP is adequate to ensure conservation of the wolf.

86. The Big Thorne project will both eliminate deer habitat, including some of the most important winter habitat for migratory deer in the Thorne watershed, and provide additional human access to wolves as a result of the road construction associated with the project.

D. The Sitka Black-Tailed Deer

87. Sitka black-tailed deer are an important part of the Prince of Wales ecosystem. They serve as prey for the Alexander Archipelago wolf and are a subsistence and game species for local communities. For these reasons, the deer is a Management Indicator Species on the Tongass National Forest.

88. Deer use a variety of habitats throughout the year. They typically have a home range of approximately 180 acres on Prince of Wales Island, which is reduced to about 100-125 acres during the winter.

89. During the winter, Sitka black-tailed deer depend upon low elevation mature and old-growth forests, especially those located on south facing slopes. The canopy cover in these forests blocks snow from accumulating on the ground, provides thermal cover for the deer, and supports availability of nutritious winter deer forage. Due to the reliance of deer on old-growth habitat during the winter, old-growth logging significantly impacts deer populations.

90. Wolves depend on deer for up to 90% of their diet during winter months. Deer are also an important subsistence species on Prince of Wales Island.

91. Subsistence hunters view wolves as competitors for available deer. When deer *Cascadia Wildlands et al. v. Cole et al.*, Case No.

numbers decline, hunters and trappers will increasingly target wolves to boost the numbers of deer available to subsistence hunters.

92. Traditionally, as required by the TLMP, the Forest Service has run the deer habitat capability model to analyze the impacts of land management decisions on Sitka black-tailed deer in the Tongass National Forest.

93. As stated in Standard and Guideline WILD XIV.A.2, the Forest Service generally presumes that a habitat capability (i.e. carrying capacity) of 18 deer/mi² is necessary to support actual numbers of deer necessary to meet the needs of both viable wolf populations and subsistence hunters.

94. The 18 deer/mi² guideline was developed by Dr. Person among other scientists and was peer reviewed. The U.S. Forest Service and ADF&G have accepted this standard and guideline as a minimum level below which there is a greatly increased risk of instability in the predator-prey system, inability to meet the needs of deer hunters, and increased human threats to wolves.

95. According to the best available science, once the carrying capacity dips below this level of 18 deer/mi², further reductions in carrying capacity for deer can result in disproportionately large changes in actual deer numbers. However, this crucial factor is not incorporated in the modeling and analysis methods the Forest Service employed for the Big Thorne project.

96. The Forest Service concluded that the Big Thorne project would result in deer carrying capacities of about 15.5 deer per square mile in wildlife analysis area 1315, 12.9 deer per square mile in wildlife analysis area 1318; 15 deer per square mile in wildlife analysis area 1319; and 10.8 deer per square mile in wildlife analysis area 1420.

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97. 15 of 21 Wildlife Analysis Areas in the North Central Prince of Wales Island Biogeographic Province are below the deer habitat capability level (18 deer/mi²) in the 2008 TLMP standard and guidelines.

98. The Forest Service has concluded that the Big Thorne timber sale will increase the risk that wolf populations will not be viable and sustainable because of the impacts to deer winter habitat.

99. The Forest Service also concluded that the Big Thorne project may cause a significant restriction in the subsistence use of deer.

E. The Dissenting Scientific Opinions of Dr. David K. Person

100. Dr. David K. Person is widely considered to be the foremost expert in the country on Alexander Archipelago wolf.

101. Dr. Person is a wildlife scientist with 22 years of experience studying Alexander Archipelago wolves and Sitka black-tailed deer in Southeast Alaska.

102. From 1998 until 2013, Dr. Person worked for ADF&G as a research scientist on wolf-deer predator prey dynamics in Southeast Alaska.

103. Dr. Person has authored or co-authored more than twenty (20) peer-reviewed papers on deer and wolves that have been published in scientific journals, books and agency reports and publications.

104. Dr. Person was the senior author on the wolf conservation assessment (Person et al. 1996), which forms the basis for the conservation strategy for wolves and deer in the Tongass Land Management Plan. The target carrying capacity of 18 deer/mi² in WILD XIV.A.2 is based upon the 1996 conservation assessment and follow-up correspondence from Dr. Person and two other authors to the Forest Service, which identified serious errors in the agency's interpretation *Cascadia Wildlands et al. v. Cole et al.*, Case No.

of the 1996 conservation assessment.

105. For the past 22 years, Dr. Person has studied wolves in Game Management Unit 2, which includes the Big Thorne project area. That research included tracking wolf populations in GMU2 to the extent that this work was funded by the agencies.

106. On February 28, 2011, several days after scoping on the Big Thorne project commenced, Dr. Person sent an electronic mail to six other ADF&G biologists expressing his concern about the impacts of the Big Thorne project on wolves. He stated that the “Big Thorne timber sale likely will have consequences for the future viability of the watersheds involved to sustain wolves and deer.” He also attached three maps documenting the cumulative impacts to date and the additional impacts of the Big Thorne project on deer winter range, emphasizing the impacts on the Thorne River and Steelhead Creek watersheds. He also concluded that there “are simply no methods of mitigation that will compensate for that much loss of winter habitat.” In sum, Dr. Person concluded, “I doubt that a resilient and persistent wolf-bear-deer-human predator-prey system will be possible within the watersheds affected after the project is completed, if indeed it is still possible as current conditions progress inexorably toward stem exclusion.”

107. When the State of Alaska submitted scoping comments to the U.S. Forest Service, the State did not notify the U.S. Forest Service of Dr. Person’s scientific opinions regarding the impacts of the Big Thorne project on viability of wolves and on deer.

108. In the Draft EIS for the Big Thorne project, published on October 26, 2012, the Forest Service did not disclose Dr. Person’s scientific opinions on the impacts of the Big Thorne project on viability of wolves and on deer.

109. Plaintiffs *Cascadia Wildlands et al.* submitted to the Forest Service comments on *Cascadia Wildlands et al. v. Cole et al.*, Case No.

the Draft EIS dated December 10, 2012.

110. In those comments, Plaintiffs notified the Forest Service that Dr. Person had expressed these concerns about the impacts of the Big Thorne project and provided supporting documentation, including the relevant email correspondence in which Dr. Person detailed his scientific opinions.

111. Greenpeace obtained the relevant documents from the State of Alaska pursuant to a Public Records Act Request.

112. Following the release of the Draft EIS but before release of the Final EIS, Dr. Person continued to express his concerns regarding the impacts of the Big Thorne timber sale on viability of wolves and on deer.

113. On April 9, 2013, Dr. Person met with Forest Service officials, including Defendant Forest Supervisor Forrest Cole and representatives of the U.S. Fish and Wildlife Service, regarding the Big Thorne project. At that meeting, Dr. Person emphasized that the existing condition of the project area was degraded as a result of past logging and road building and that to protect wolves and deer the Forest Service should focus on preserving the remaining deer winter habitat.

114. Dr. Person also communicated directly with Mr. Brian Logan, a Forest Service Wildlife Biologist, through email and phone conversations. Dr. Person again expressed his scientific opinion that the Big Thorne timber sale would threaten the viability of the wolf on Prince of Wales Island.

115. On June 28, 2013, the Forest Service signed the ROD for the Big Thorne project. On July 2, 2013, the Forest Service announced the availability of the FEIS and ROD.

116. The FEIS does not disclose, discuss or respond to Dr. Person's scientific opinions *Cascadia Wildlands et al. v. Cole et al.*, Case No.

that the Big Thorne project threatens the viability of the wolf on Prince of Wales Island.

117. On August 16, 2013, Plaintiffs Cascadia Wildlands *et al.* submitted to the Forest Service an administrative appeal of the ROD and FEIS.

118. In their appeal, Plaintiffs asserted that the Forest Service violated the procedural requirements of NEPA by failing to disclose to the public and to respond to the dissenting scientific opinions of Dr. Person on the impacts of the Big Thorne project. Although the State of Alaska withheld this information from the Forest Service during scoping, as alleged above Plaintiffs discovered Dr. Person's dissenting opinions and provided this information to the Forest Service in their comments on the Draft EIS. Plaintiffs asserted in their appeal, "While ADF&G appears to have suppressed that information, the Forest Service, once it was provided with those responsible scientific opinions, was under an obligation to disclose that information to the public prior to making a decision on the project."

119. In conjunction with their administrative appeal, Plaintiffs also provided the U.S. Forest Service with the "Statement of David K. Person Regarding the Big Thorne Project, Prince of Wales Island." By this time, Dr. Person had left his employment with ADF&G.

120. In his statement, Dr. Person provided additional details on his earlier communications with the Forest Service regarding the impacts of the Big Thorne project.

121. Dr. Person stated, "I wrote this statement because I have concluded that the Big Thorne timber sale, if implemented, represents the final straw that will break the back of a sustainable wolf-deer predator-prey ecological community on Prince of Wales Island, and consequently, the viability of the wolf on the island may be jeopardized." Person Statement ¶

13. In sum, his scientific opinion on the impacts of the Big Thorne project are based upon the following:

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- a. Wolf populations in the Big Thorne project areas have declined rapidly in recent years a result of prior logging of old-growth forest and road building;
- b. The Big Thorne project will result in the harvest of much of the best remaining deer winter habitat in the planning area;
- c. Because so much deer winter habitat has already been lost, deer populations could decline significantly in response to a winter of heavy snows;
- d. Hunters and trappers will increasingly target wolves that they perceive as competition for deer;
- e. The extensive road network ensures that hunters and trappers will have access to wolves;
- f. Bag limits and harvest restrictions are ineffective because of illegal and unsustainable harvest of wolves, combined with inadequate information on wolf populations;
- g. Habitat conditions and wolf populations in surrounding areas are inadequate to provide a source population for wolves; and
- h. The wildlife conservation strategy in the 2008 TLMP is inadequate to address this issue and to ensure the viability of the wolf.

122. On September 27, 2013, Ms. Ruth Monahan, the Appeal Reviewing Officer, issued the Big Thorne Appeal Recommendation. In response to appellants' assertion that the FEIS failed to disclose the substantial scientific controversy on impacts to the viability of the wolf and the dissenting scientific opinions of Dr. Person, the Appeal Recommendation stated that the "[p]ublic comments, including those of dissenting scientific opinion, are part of the project record and were considered in the final decision [ROD, pg. 4]." Pg. 4 of the ROD says *Cascadia Wildlands et al. v. Cole et al.*, Case No.

nothing about whether or how the Forest Service considered and responded to the dissenting scientific opinions of Dr. Person on impacts of the Big Thorne project on wolf viability.

123. The Appeal Reviewing Officer concluded that “recent reports, including the Person Statement demonstrate a localized decline in wolf numbers, and incompletely understood processes including wolf immigration and direct mortality attributed to hunting and trapping create uncertainty regarding the sustainability of wolf populations that utilize the Big Thorne project area.” Big Thorne Appeal Recommendation at 72. She concluded that Dr. Person’s statement “suggest[s] that cumulative effects on the Prince of Wales deer and wolf populations (including both habitat effects and wolf harvest) may be higher than that anticipated in the Big Thorne EIS and project record.” *Id.* at 72-73. She then recommended that the Forest Service convene “the Interagency Wolf Task Force to evaluate this new information, re-evaluate the public concerns over the potential effect of the project on deer and wolf populations, and make any necessary changes to the Big Thorne project as a result of this review.” *Id.* at 73.

124. On September 30, 2013, Defendant Regional Forester Beth Pendleton formally denied the administrative appeal filed by Plaintiffs and upheld the Record of Decision, including the alternative selected. At the same time, she directed the Forest Supervisor to “engage the Interagency Wolf Task Force to jointly evaluate Dr. Person’s August 2013 Statement to determine whether it presents ‘significant new circumstances or information relevant to’ cumulative effects on wolves (including both habitat effects and wolf harvest) (40 CFR 1502.9(c)(1)(ii).”

F. The Proceedings of the Interagency Wolf Task Force and Dr. Person’s Rebuttal.

125. The WTF conducted in 2014 consisted of officials from the U.S. Forest Service,

the U.S. Fish and Wildlife Service, and the Alaska Department of Fish & Game, including the following:

- a. Brian Logan, Wildlife Program Leader, Tongass National Forest, U.S. Forest Service;
 - b. Greg Hayward, Regional Wildlife Ecologist, Alaska Region, U.S. Forest Service;
 - c. Socheta Lor, Field Supervisor, Anchorage Field Office, U.S. Fish and Wildlife Service;
 - d. Steve Brockman, Southeast Alaska Coordinator, U.S. Fish and Wildlife Service;
 - e. Doug Vincent-Lang, Director, Division of Wildlife Conservation, Alaska Department of Fish & Game
 - f. Kim Titus, Chief Wildlife Scientist, Division of Wildlife Conservation, Alaska Department of Fish & Game
126. The Wolf Task Force held a meeting during March 5-6, 2014.

127. On March 28, 2013, Mr. Steve Brockman of the U.S. Fish and Wildlife Service sent an email to members of the Wolf Task Force and U.S. Forest Service stating that the short timeline would not allow FWS to evaluate fully Dr. Person's statement. Mr. Brockman stated, "Given the short time frame allocated for the response to Dr. Person's statement, we are unable to determine the validity of his statement that the Big Thorne timber Sale project, in combination with existing foreseeable cumulative impacts, may jeopardize the viability of wolves on Prince of Wales Island."

128. In the same email, Mr. Brockman stated that the conclusions in Dr. Person's appeal statement are based on several pieces of information not fully considered in the earlier analyses conducted for the Big Thorne project, including:

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- a. Evidence that when over 40 percent of a wolf pack's home range is logged or roaded, the area typically becomes a mortality risk for wolves;
- b. Recent analysis indicating that over 80 percent of the Big Thorne project area is or will be accessible to hunters and trappers;
- c. Information documenting that hunters and trappers are likely to increasingly target wolves in response to declining deer populations; and
- d. The likely non-linear response of predator-prey system and the likelihood that a relatively small reduction in habitat capability is likely to have a disproportionate effect on deer populations because so much deer habitat has already been lost.

129. The Wolf Task Force produced the Interagency Wolf Task Force Report on May 21, 2014. The objective of the Wolf Task Force Report was to evaluate whether Dr. Person's statement "offered information, analysis, and conclusions substantially different from the Forest Service analysis for the Big Thorne Project."

130. On or about May 23, 2014, the Forest Service released a draft Supplemental Information Report. The Wolf Task Force Report was attached as Appendix A to the Draft Supplemental Information Report.

131. The Wolf Task Force members were unable to reach agreement on the conclusions set forth in Dr. Person's Appeal Statement, in particular as to whether the loss of additional deer winter habitat from the Big Thorne Project could cause a collapse in the predator-prey system on Prince of Wales Island. In particular, the two biologists that participated from the U.S. Forest Service disagreed with each other on central conclusions in the Wolf Task Force Report.

132. Mr. Hayward (USFS) and the representatives from the ADF&G disagreed with *Cascadia Wildlands et al. v. Cole et al.*, Case No.

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Dr. Person's scientific opinion.

ADFG and Hayward (USFS) suggest a negative threshold response in deer to loss of winter habitat from the project at a broader scale would have a low probability of occurring. Moreover, the existence of such a threshold dynamic in deer/wolf systems has not been documented, nor is it likely given the relationship of predator/prey body size and the potential for management regulation of wolf harvest in the system.

133. Mr. Logan (USFS) and representatives from USFWS disagreed with Hayward and ADFG.

Alternatively, USFWS and Logan (USFS) believe that evidence of a critical response from the wolf population on Prince of Wales Island exists in the form of Person's (2006) documentation that wolf mortality exceeds reproduction when logging and roading covers over 40 percent of a wolf pack's home range. Recent evidence from the Big Thorne Project area suggests that about 80 percent over-winter mortality for wolves in the local area (16 of 18 harvested legally) during winter 2012-13 – the first year of the interagency project (Person and Larson 2013) – over double the estimated sustainable rate.

134. On June 23, 2014, the USFWS submitted to the Forest Service its comments on the Draft SIR and WFR, signed by Ms. Socheta Lor, Field Supervisor. USFWS stated:

We are concerned that statements in the SIR regarding the conclusions of the Wolf Task Force, with respect to viability of wolves on Prince of Wales Island, are misleading. As you know, there were disagreements among members of the Wolf Task Force on the risks posed to wolves by the Big Thorne Project. The SIR states that "Neither perspective held by the Task Force members agrees with the ultimate conclusions of the Statement" (that wolf viability on Prince of Wales Island is at risk from implementation of the Big Thorne Project) (p. 7), implying that the wolf population is believed by all members of the Task Force to be secure. In fact, the Fish and Wildlife Service explicitly declined to state whether or not we believe this to be the case.

* * *

The report of the Wolf Task Force actually does conclude (p. 12) that there is some risk that wolves on Prince of Wales Island could be jeopardized if adequate deer winter range is not protected and wolf harvest is not adequately regulated.

135. In the Wolf Task Force Report, Logan (USFS) and USFWS also disagreed with Hayward (USFS) and ADF&G on the risks that logging of deer winter habitat associated with

the Big Thorne Project could exacerbate unsustainable harvest of wolves.

ADF&G and Hayward (USFS) suggest that several factors support a conclusion that the probability of a scenario resulting in sustained overharvest of deer and wolves occurring is unlikely to be high.

* * *

USFWS and Logan (USFS) note that widespread, chronically unsustainable harvest of wolves (defined as ≥ 5 wolves per 300 km² ≥ 5 years over a 25 year period) has already been documented on Prince of Wales Islands (Person and Logan 2012). A significant portion (up to half of the total wolf harvest) appear to be illegal (Person and Russell 2008).

136. And, ultimately, there was substantial disagreement as to whether the Big Thorne Project would threaten the viability of the wolf on Prince of Wales Island and whether the 2008 TLMP is adequate to ensure the viability of the wolf.

ADFG and Hayward (USFS) argue that the evidence fails to suggest a substantial risk of island-wide predator/prey collapse or loss of sustainable populations of deer and wolves in the context of active regulation of deer and wolf harvest. The conservation fabric developed in the 1997 and 2008 Forest Plan is still intact and a sound regulatory framework is in place to modify harvest of deer and wolves. Furthermore, agencies are aware of the need to develop more-objective approaches to estimate population characteristics of deer and wolves and are collaborating to that end.

USFWS and Logan (USFS) believe that some uncertainty remains, and that there is some risk that the scenario presented in the Person Statement could occur if the responsible management and enforcement agencies do not protect adequate deer winter habitat and restrict wolf harvest, both legal and illegal to a sustainable level. While the conservation strategy was designed to provide a high probability of maintaining viable and well-distributed populations of wolves and deer, a need exists for information related to its effectiveness in maintaining sustainable populations. Agencies are actively developing more-effective approaches to estimating population characteristics of deer and wolves and are collaborating to that end. These Task Force members recommend that until better estimates of these isolated populations exist, any activities that can reduce the level of risk should be considered. This could include modification of wolf harvest, increased enforcement effort, access management, and conservation of important winter habitat for deer.

137. On June 23, 2014, Plaintiffs submitted comments on the Draft SIR and Wolf Task Report to the Forest Service. At that time, Dr. Person also submitted a review of and rebuttal to *Cascadia Wildlands et al. v. Cole et al.*, Case No.

the Draft SIR and Wolf Task Force Report.

138. In his rebuttal provided to the Forest Service, Dr. Person sharply criticized the positions of Hayward and ADF&G as set forth in the Wolf Task Force Report. In particular, Dr. Person states that the opinions of Hayward and ADF&G ignore critical facts and the best available science, including:

- a. The fact that neither the Forest Service nor any other agency has reliable estimates of wolf populations in the Big Thorne project area;
- b. Peer reviewed science conducted by Dr. Person and others that illegal harvest contributes to unsustainable levels of wolf mortality, and indicating that regulation of harvest is not effective at ensuring sustainable wolf populations;
- c. Peer reviewed science that sustainable rates of wolf mortality are approximately 35% per year, thus meaning that agencies must have accurate estimates of populations before they can establish accurate limits on harvest of wolves to ensure sustainable populations persist on the landscape;
- d. Empirical work from Dr. Person that when more than 40% of a wolf home range is roaded or logged, there is a high risk that it becomes a population sink in which mortality exceeds recruitment;
- e. The risk posed by further limiting the genetic diversity in an insolated population that already exhibits low genetic diversity; and
- f. The habitat conditions and wolf populations in the neighboring WAAs are not adequate to provide a source population for the areas that will be impacted by the Big Thorne project.

G. The Final Supplemental Information Report

139. On August 20, 2014, the Forest Service released the Final Supplemental Information Report. In the Final SIR, the Forest Service did not eliminate any areas from harvest, but the Forest Service did decide to “defer” certain units within existing old-growth reserves from the “initial sale offering.” The SIR does not clarify precisely which units these are, nor does it discuss the acreage or volume of timber included in these deferred units.

140. In the Final SIR, Defendant Forest Supervisor Cole concludes “there are no significant new circumstances or information relevant to environmental concerns that require the preparation of a Supplemental EIS for the Big Thorne project in accordance with the direction in FSH 1909.15, Section 18.” SIR at 23.

141. The Final SIR does not respond directly to the dissenting scientific opinions expressed by Dr. Person in his rebuttal.

142. Defendants Forest Supervisor Cole stated that, “I have no basis to conclude that State and Federal agencies will not fulfill their responsibilities under the State constitution and State and Federal laws for setting and enforcing appropriate regulations, and conducting information and education programs to manage wolf harvest to achieve sustainable and viable populations.”

143. Forest Supervisor Cole did not acknowledge or respond to Dr. Person’s dissenting scientific opinion based on his own peer-reviewed research that illegal wolf mortality has been well-documented to contribute to unsustainable wolf mortality on Prince of Wales Island (Person and Russell 2008). Nor did Forest Supervisor Cole reconcile his conclusions with any of the available data on the effects of illegal take of wolves in GMU2 and the Big Thorne project area, despite the fact that Dr. Person and other scientists have collected, analyzed and published this *Cascadia Wildlands et al. v. Cole et al.*, Case No.

data.

144. Forest Supervisor Cole did not acknowledge or respond to Dr. Person's dissenting scientific opinion based on his own peer-reviewed research that effective harvest limits depend upon an accurate estimate of wolf populations and that neither the Forest Service nor any other agency has accurate estimates of wolf populations in the Big Thorne project area.

145. Forest Supervisor Cole did not acknowledge or respond directly to Dr. Person's dissenting scientific opinion that habitat conditions and wolf populations in surrounding areas are not sufficient to serve as a source populations for areas that will be impacted by the Big Thorne project.

146. Forest Supervisor Cole did not acknowledge or apply the criteria set forth in the Counsel of Environmental Quality ("CEQ") Regulations for assessing whether new circumstances or information relevant to environmental concerns is significant. *See* 40 C.F.R. § 1502.9(c)(ii); 1508.27(b)(1)-(10).

Statutory and Regulatory Framework

A. National Forest Management Act

147. In 1976 Congress enacted the National Forest Management Act ("NFMA"), 16 U.S.C. §§ 1600-1614, which governs the Forest Service's management of all national forests.

148. NFMA establishes a two-step process for forest planning. It first requires the Forest Service to develop, maintain, and revise Land and Resource Management Plans ("LRMP") for each national forest. 16 U.S.C. § 1604(a). The LRMP guides natural resource management activities forest-wide, setting standards, management area goals and objectives, and monitoring and evaluation requirements.

149. Once an LRMP is in place, the Forest Service implements the plan through site-

specific projects. Each site-specific project must be consistent with the plan. 16 U.S.C. § 1604(i).

150. NFMA imposes a duty on the Forest Service to preserve and enhance the diversity of plants and animals, consistent with overall multiple-use objectives for the forest, as stated in the forest's plan. 16 U.S.C. § 1604(g)(3)(B).

151. In 1982, the Forest Service promulgated implementing regulations that apply to the development and implementation of land and resource management plans.

152. The Tongass National Forest developed the 2008 TLMP pursuant to the 1982 NFMA planning regulations, and those regulations therefore apply to the Big Thorne project.

153. The Forest Service must manage wildlife habitat “to maintain viable populations of existing native * * * vertebrate species in the planning area.” 36 C.F.R. § 219.19 (1983).

154. A “viable population” is “one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area.” 36 C.F.R. § 219.19 (1983).

155. The NFMA planning regulations further provide that implementation of forest plans shall “[p]rovide for adequate fish and wildlife habitat to maintain viable populations of existing native vertebrate species and provide that habitat for species chosen under §219.19 is maintained and improved to the degree consistent with multiple use objectives established by the plan.” 36 C.F.R. § 219.27 (1983).

B. The National Environmental Policy Act

156. The National Environmental Policy Act (“NEPA”) is the nation’s basic charter for the protection of the environment. NEPA makes it national policy to “use all practicable means and measures * * * to foster and promote the general welfare [and] to create and maintain
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conditions under which [humans] and nature can exist in productive harmony.” 42 U.S.C. § 4331(a). NEPA’s purposes are to “help public officials make decisions that are based on [an] understanding of environmental consequences, and to take actions that protect, restore, and enhance the environment.” 40 C.F.R. § 1500.1(b)-(c).

157. To accomplish these purposes, NEPA requires all agencies of the federal government to prepare a “detailed statement” regarding all “major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C). This statement is commonly referred to as an Environmental Impact Statement (“EIS”). NEPA further provides that agencies “shall * * * study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” *Id.* § 4332(2)(E).

158. An EIS must describe (1) the “environmental impact of the proposed action,” (2) any “adverse environmental effects which cannot be avoided should the proposal be implemented,” (3) alternatives to the proposed action, (4) “the relationship between local short-term uses of [the] environment and the maintenance and enhancement of long-term productivity,” and (5) any “irreversible or irretrievable commitment of resources which would be involved in the proposed action should it be implemented.” 42 U.S.C. § 4332.

159. NEPA’s disclosure goals are two-fold: (1) to ensure that the agency has carefully and fully contemplated the environmental effects of its action, and (2) to ensure that the public has sufficient information to challenge the agency’s action.

160. The Council on Environmental Quality (“CEQ”) – an agency within the Executive Office of the President – has promulgated regulations implementing NEPA that are binding on all agencies. *See* 40 C.F.R. §§ 1500-1508.
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161. The Forest Service is not entitled to deference in its interpretation of CEQ's regulations.

162. The CEQ regulations provided that the direct, indirect, and cumulative effects of the proposed action must be analyzed under NEPA. 40 C.F.R. §§ 1508.8, 1508.27(b)(7).

163. When the agency prepares an EIS, it must take a hard look at the impacts of the action and ensure "that environmental information is available to public officials and citizens before decisions are made and before actions are taken," and the "information must be of high quality." 40 C.F.R. § 1500.1(b).

164. In preparing NEPA documents, federal agencies "shall insure the professional integrity, including scientific integrity, of the discussions and analyses" and "identify any methodologies used and * * * make explicit reference by footnote to the scientific and other sources relied upon for conclusions * * * ." 40 C.F.R. § 1502.24.

165. NEPA requires that the Environmental Impact Statement contain high-quality information and accurate scientific analysis. 40 C.F.R. § 1500.1(b). If there is incomplete or unavailable relevant data, the Environmental Impact Statement must disclose this fact. 40 C.F.R. § 1502.22. If the incomplete information is relevant and essential to a reasoned choice, and costs are not "exorbitant," the information must be compiled and included. *Id.* § 1502.22(a). Under NEPA, a helpful scientific analysis must be performed where it is "reasonably possible." *See Pacific Rivers Council v. US Forest Service*, 668 F. 3d 609, 624 (9th Cir. 2012). If the information is relevant, but costs to obtain it are exorbitant, the agency must include statements indicating this fact, the relevance of the missing information, a summary of existing relevant, credible, scientific evidence, and an evaluation of impacts based on a method that is "generally accepted in the scientific community." 40 C.F.R. §1502.22(b)(1) – (4).
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166. A final EIS must “discuss an appropriate point in the final statement any responsible opposing views which was not adequately discussed in the draft statement and shall indicate the agency’s response to the issued raised.” 40 C.F.R. § 1502.9(b). The EIS must “respond explicitly and directly to the conflicting views in order to satisfy NEPA’s procedural requirements.” *Earth Island Inst. v. U.S. Forest Serv.*, 442 F.3d 1147, 1172 (9th Cir. 2006).

167. An EIS must discuss possible conflicts between the proposed action, and the objectives of other Federal, regional, State or local plans and policies. 40 CFR §1502.16(c).

CLAIMS FOR RELIEF

Claim One

NFMA - Failure to Ensure that the Big Thorne Project Complies with the Wildlife Viability Requirements of the 2008 TLMP

168. Plaintiffs incorporate by reference all preceding paragraphs.

169. All projects implemented by the Tongass National Forest must comply with the 2008 TLMP. 16 U.S.C. § 1604(i).

170. The Big Thorne project will reduce the habitat carrying capacity for deer in the project area to a level well below 18 deer/mi².

171. The Big Thorne project is likely to cause declines in populations of wolves and deer in the Big Thorne project area.

172. The Forest Service does not have any reliable data on populations of wolves or populations trends in the Big Thorne project area.

173. The habitat conditions and wolf populations in neighboring areas of Prince of Wales Island are not adequate to serve as a source population for those areas impacted by the Big Thorne project.

174. The Forest Service has failed to provide a rational explanation for how the FEIS, the ROD, and the Big Thorne project complies with standard and guideline WILD1.II.B in the 2008 TLMP

175. The Forest Service has failed to provide a rational explanation for how the FEIS, the ROD, and the Big Thorne project comply with standard and guideline WILD XIV.A of the 2008 TLMP.

176. The Forest Service has failed to provide a rational explanation for how the FEIS, ROD, and the Big Thorne project comply with 36 C.F.R. § 219.27 (1983), requiring that habitat for Management Indicator Species be “maintained and improved to the degree consistent with multiple use objectives established by the plan.”

177. In failing to provide a rational explanation for how the FEIS, ROD, and the Big Thorne project comply with the requirements of the 2008 TLMP, defendants have acted arbitrarily and capriciously, abused their discretion, and acted contrary to law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

178. Plaintiffs are entitled to an award of costs and attorneys’ fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

Claim Two

NEPA – Failure to Disclose Information on the Direct, Indirect and Cumulative Effects of the Big Thorne Project on Viability of Alexander Archipelago Wolves

179. Plaintiffs incorporate by reference all preceding paragraphs.

180. The FEIS fails to respond explicitly and directly to Dr. Person’s dissenting scientific opinion regarding the impacts of the Big Thorne project on viability of the Alexander Archipelago wolf on Prince of Wales Island.

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181. The FEIS failed to disclose significant scientific controversy regarding the impacts of the Big Thorne project on viability of the Alexander Archipelago wolf on Prince of Wales Island.

182. The FEIS failed to disclose missing information on populations of and population trends of the Alexander Archipelago wolf on Prince of Wales Island and in the Big Thorne project area.

183. The FEIS failed to disclose the potential threats to deer populations, wolf populations and wolf viability that result from additional logging in areas that already fail to provide for a carrying capacity of 18 deer/mi².

184. The FEIS fails to disclose adequately the direct, indirect and cumulative effects of logging on wolf viability.

185. The FEIS for the Big Thorne project is inconsistent with the procedural requirements of the National Environmental Policy Act and CEQ's implementing regulations.

186. In violating the requirements of NEPA, Defendants have acted arbitrarily and capriciously, abused their discretion, and acted contrary to law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

187. Plaintiffs are entitled to an award of costs and attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

Claim Three

NEPA – Failure to Prepare a Supplemental Environmental Impact Statement

188. Plaintiffs incorporate by reference all preceding paragraphs.

189. In his Appeal Statement, Dr. Person provided to the Forest Service new information on the impacts of the Big Thorne project on viability of the Alexander Archipelago *Cascadia Wildlands et al. v. Cole et al.*, Case No.

wolf.

190. Based on this new information, the impacts of the Big Thorne project are highly controversial as reflected in the fact that even the Forest Service's own scientists did not agree on whether the Big Thorne project may threaten viability of the Alexander Archipelago wolf.

191. The Wolf Task Force was unable to reach consensus on its evaluation of Dr. Person's Appeal Statement.

192. Based on this new information, the impacts of the Big Thorne project are highly uncertain because the Forest Service does not have reliable estimates of populations or population trends of wolves in the Big Thorne project area.

193. Based on this new information, the cumulative effects of the Big Thorne project may be much worse and of a different nature than discussed in the FEIS.

194. Based on this new information, there is a greater risk that the Big Thorne project does not comply with the 2008 TLMP and the requirements of the National Forest Management Act.

195. Based on this new information, there is a greater risk that the 2008 TLMP does not comply with the requirements of the National Forest Management Act and its implementing regulations.

196. The Forest Service's decision not to prepare a supplemental EIS for the Big Thorne project is arbitrary, capricious and contrary to law in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

197. In violating the requirements of NEPA, Defendants have acted arbitrarily and capriciously, abused their discretion, and acted contrary to law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2). In the alternative, Defendants' failure to prepare a *Cascadia Wildlands et al. v. Cole et al.*, Case No.

Supplemental Environmental Impact Statement is agency action unlawfully withheld in violation of Section 706(1) of the APA, 5 U.S.C. § 706(1).

198. Plaintiffs are entitled to an award of costs and attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

Claim Four

NFMA – Failure of the Standards and Guidelines of the 2008 Tongass Land Management Plan to Ensure Viable Populations of the Alexander Archipelago Wolf

199. Plaintiffs incorporated by reference all preceding paragraph.

200. NFMA requires the Secretary of Agriculture to “develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System.” 16 U.S.C. § 1604(a). The forest plans “guide all natural resource management activities” on the national forests. 36 C.F.R. § 219.1(b).

201. The 2008 TLMP was adopted pursuant to the requirements of the 1982 Planning Regulations. Those regulations thus apply to the implementation of the 2008 TLMP.

202. Forest plans promulgated pursuant to NFMA must “provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives * * *.” 16 U.S.C. § 1604(g)(3)(B).

203. To carry out this statutory mandate, the 1982 planning regulations require the Forest Service to manage habitat for fish and wildlife “to maintain viable populations of existing native * * * vertebrate species in the planning area.” 36 C.F.R. § 219.19 (1983).

204. The Record of Decision for the 2008 TLMP was approved by Regional Forester Dennis E. Bschor on January 23, 2008. Plaintiffs participated extensively in the public notice and comment process and appealed the Record of Decision based on the lack of protections for

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viability of the wolf.

205. The standards and guidelines of the 2008 TLMP, as interpreted and applied by the Tongass National Forest, are inadequate to maintain viable populations of the Alexander Archipelago wolf well distributed in the Tongass National Forest, resulting in violations of 16 U.S.C. § 1604(g)(3)(B) and 36 C.F.R. § 219.19 (1983).

206. The standards and guidelines of the 2008 TLMP threaten the viability of the Alexander Archipelago wolf in numerous ways, including, but not limited to:

- a. None of the Old-Growth Reserves on Prince of Wales Island are large enough to protect the home range of a wolf pack;
- b. There is no enforceable limit on road density and human access to habitat utilized by wolves;
- c. The standards and guidelines as interpreted by the Forest Service do not prohibit logging of old-growth forest from reducing or further reducing carrying capacity for deer below 18 deer/mi²;
- d. Where wolf mortality concerns have been identified, there is no requirement to prepare a wolf management plan before the Forest Service authorizes and implements additional logging of deer winter habitat and construction and reconstruction of logging roads; and
- e. The legacy standard of the 2008 TLMP does not protect adequately habitat for wolves.

207. The Forest Service never provided a rational and objective evaluation of whether the 2008 TLMP would ensure the viability of the Alexander Archipelago wolf. Instead, the Forest Service assessed and ranked the alternatives relative to each other.

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208. Defendants' failure in the 2008 TLMP to ensure the viability of the Alexander Archipelago wolf violated and is continuing to violate NFMA, 16 U.S.C. § 1604(g)(3)(B), and 36 C.F.R. § 219.19. Defendants' implementation of the 2008 TLMP by its approval of the Big Thorne project also violated and is contrary to NFMA, 16 U.S.C. § 1604(g)(3)(B), and 36 C.F.R. § 219.19, and is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

PLAINTIFFS' PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) Declare that the Forest Service violated the National Forest Management Act by failing to ensure that the Big Thorne project complies with the standards and guidelines of the 2008 TLMP relating to viability of the Alexander Archipelago wolf;
- (2) Declare that the Forest Service failed to disclose adequately the direct, indirect and cumulative effects of the Big Thorne project on the Alexander Archipelago wolf and failed to disclose and respond to the dissenting scientific opinions of Dr. David K. Person;
- (3) Declare that the Forest Service violated NEPA by failing to prepare a Supplemental EIS for the Big Thorne project to address significant new information contained in the Appeal Statement of Dr. David K. Person;
- (4) Declare that the Forest Service violated NFMA by developing and implementing the 2008 TLMP, which does not ensure viability of populations of the Alexander Archipelago wolf;
- (5) Hold unlawful and set aside the Final Environmental Impact Statement, the Record of Decision, and the Final Supplemental Information Report for the Big Thorne project;
- (6) Issue preliminary and permanent injunctive relief prohibiting the Forest Service *Cascadia Wildlands et al. v. Cole et al.*, Case No.

from authorizing implementation of the Big Thorne timber sale or any other timber sales that would log deer winter habitat on Prince of Wales Island until such time as the Forest Service can demonstrate compliance with the requirements of NFMA and NEPA;

(7) Issue any other relief that the Court deems appropriate; and

(8) Award plaintiffs their costs and expenses (including reasonable attorney, expert witness and consultant fees).

Respectfully submitted this 26th day of August, 2014,

/s/ Christopher G. Winter_____

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