



Public Employees for Environmental Responsibility

962 Wayne Avenue, Suite 610 • Silver Spring, MD 20910

Phone: (202) 265-PEER • Fax: (202) 265-4192

Email: info@peer.org • Web: <http://www.peer.org>

May 21, 2017

VIA USDA OIG HOTLINE AND U.S. MAIL

Phyllis K. Fong, Inspector General
United States Department of Agriculture
Office of Inspector General
PO Box 23399
Washington, D.C. 20026-3399

RE: KOSCIUSKO FOREST TIMBER SALE – 17-GN-11100100-004

Dear Ms. Fong,

Public Employees for Environmental Responsibility (“PEER”) submits this request to the United States Department of Agriculture (“USDA”), Office of Inspector General (“OIG”), to employ its statutory authority to investigate illegal actions, fraud, and abuse occurring in the timber program of the Tongass National Forest. Specifically, we request an investigation of the Good Neighbor Agreement (“GNA”) entered into between the United States Forest Service (“USFS”), the Alaska Department of Forestry (“DOF”), and their subcontractor Alcan Timber (“Alcan”) for the Kosciusko Forest Timber Sale, Supplemental Project Agreement 17-GN-11100100-004 (hereinafter “SPA”, *see* Att. A).

This timber sale is not permitted under the claimed legal authority, because it does not prescribe the restoration projects or services required under the GNA authority granted through the Fiscal Year (“FY”) 2014 Appropriations Act and the Agricultural Act of 2014 (“2014 Farm Bill”). It also violates federal regulations and the USFS’s own procedural manual regarding the conduct of timber sales.

As shown below, the misuse of the GNA authority combined with these other violations results in allowing Alcan to buy federal timber at well below fair market value. It also appears to allow DOF to pocket much of the proceeds from the sale, and not use those proceeds for restoration activities in the project area as the GNA requires, depriving the U.S. taxpayer of most of the value of federal timber.

The Kosciusko GNA does not meet the requirements of the authorizing statute because it does not involve any authorized restoration services, but instead is a straight timber sale illegally invoking Good Neighbor authority.

Under the Good Neighbor authority,¹ Congress authorized cooperative agreements between federal, state, and local governments to allow for intergovernmental cooperation on forest restoration projects on federal lands when similar restoration projects are being carried out on adjacent state lands. As such, the GNA authority is intended to facilitate joint federal-state projects to improve forest health and fish and wildlife habitat. However, here GNA authority has been misused to support a project that does not serve these purposes and is not only *not* restorative, but in fact is environmentally damaging.

Additionally, while the GNA authority is designed to not cost the federal government money, this contract disposes of valuable federal timber at far below its market value and creates a windfall to the private timber purchaser. It also appears that the State of Alaska will not be required to return most of the proceeds of the sale to the U.S. Treasury, as required by regulation and U.S. Forest Service policy.

The GNA authorizing legislation does not provide funds to implement projects under the Good Neighbor authority. However, it does allow USFS payment to the state for its projected costs of administering the restoration project and, if there is a timber sale connected with the restoration work, the state partner is permitted to retain funds from that sale to pay the costs of administering authorized restoration services, including payment for time and materials associated with the work.²

By law, such income *may only be used for restoration activities identified in the GNA* – all other funds generated from the sale of timber must be returned to the U.S. Treasury. Yet nothing within this contract provides for any restoration projects that could justify the DOF retaining funds from the timber sale. However, there is also nothing in the contract providing for such funds to be returned to the Treasury, and the SPA is written so loosely that DOF can increase its administration costs at any time. As discussed further below, we are concerned that the bulk of the proceeds from the timber sale may be illegally retained by the DOF at the expense of U.S. taxpayers, and ask that this matter be investigated.

It also appears that this project has been carried out illegally under the GNA authority as a way to circumvent traditional USFS timber sale protocols in order to allow for a higher grading of the timber prescription, allowing the contractor to harvest more profitable tree species than the harvest prescription allows.³ This sort of over-harvest and improper high-grading due to abandonment of the USFS's designation by prescription⁴ has been seen recently in the Heceta stewardship project and the Tonka and Big Thorne timber sales, where it attracted attention from

¹ *Codified in.* 16 U.S.C. § 2113a.

² See USFS, *Good Neighbor Timber Sales Interim Implementation Instructions, Enclosure with Forest Management Director's Letter to Regional Foresters*, July 6, 2015 (hereinafter "Implementation Instructions"), Att. B, § 2.3 – Determination of Appraised Value.

³ See 16 U.S.C. § 2113a(b)(2)(A); 16 U.S.C. § 472a(g).

⁴ "Prescription by designation" is a USFS process whereby the USFS lays out a project area for a timber harvest and sets the prescribed cut based upon agency designation of specific trees and species within a harvest unit.

local media and the USFS Washington Office.⁵ It appears that USFS Tongass National Forest (“Tongass NF” or “Forest”) has elected to categorize this Kosciusko project as a GNA in part to avoid increased scrutiny surrounding the agency’s prescription by designation abuses with stewardship and conventional timber sale contracts. By turning over the sale administration to the State, as is permitted under GNA authority, accountability is being avoided by the USFS.

Additionally, this sale allows Alcan to lay out and select the trees to be cut in the two age prescription units; this means that the contractor – not USFS – selects what trees they wish to harvest regardless of the USFS prescription and NEPA documents. These two age cuts will be up to 2-acre patch clear cuts within the broader harvest unit that was already laid out by USFS within the project planning process, allowing for high-grading of the selected timber, contrary to the USFS prescription.

Furthermore, Alcan has entered additional contracts with both University of Alaska and Sealaska⁶ on Kosciusko Island, both of which have land adjacent to USFS land. While DOF’s Edna Bay Parlay sale has not yet been put out to bid, it can be anticipated that Alcan will be the purchaser of this sale, since Alcan is mobilized on this remote island already. It appears that this GNA is an attempt to give Alcan harvest rights across the entirety of Kosciusko Island, allowing Alcan to profit from reduced timber prices and ease of access, while not serving the authorized restoration purposes of GNA.

Moreover, this project is antithetical to the USDA’s official strategic goals, as it is environmentally damaging and fails to support local communities. The project contains a large acreage of environmentally damaging clearcuts that are not justified by any restorative purpose, and 100% of the timber from this sale is slated for export, rather than processing in local mills and processing plants that could benefit the local economy.

Compounding the basic fact that this sale is being conducted under a claimed authority that does not in fact apply, as described below, there are numerous other problems with the administration of this sale. This is particularly concerning given that there is a long history of mismanagement in the Tongass National Forest,⁷ most recently demonstrated by the USFS Washington Office’s review of the Tongass NF’s poor management of timber appraisal and sale administration.⁸ Following allegations of misconduct by the Tongass NF, the Washington Office

⁵ See Katie Moritz, *Environmental groups sue over Big Thorne sale*, JuneauEmpire.com August 26, 2014, <http://juneauempire.com/local/2014-08-26/environmental-groups-sue-over-big-thorne-sale>; USDA Forest Service, *Washington Office Activity Review of Timber Sale Administration, Sale Preparation, Stewardship Contracting, NEPA, and Timber Theft Prevention – Region 10*, June 12-20, 2016 (hereafter “WO Review”), Att. C.

⁶ Sealaska Corporation is the largest of thirteen Alaska Native Regional Corporations created under the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. §1601 *et seq.*, in settlement of aboriginal land claims. It is the largest private landowner in southeast Alaska and its principal economic enterprises have been the harvesting of timber and marketing of wood products to Pacific Rim countries and the Pacific Northwest.

⁷ See generally, KATHIE DURBIN, *TONGASS: PULP POLITICS AND THE FIGHT FOR THE ALASKA RAIN FOREST*, (1999); Jeff DeBonis, *Stealing the Tongass, Playing by Alaska Rules in the U.S. Forest Service*, PEER (Nov. 1996), https://www.peer.org/assets/docs/whitepapers/1996_stealing_tongass.pdf; Jeff DeBonis, *Unindicted Co-Conspirator: Timber Theft and the U.S. Forest Service*, PEER (Mar. 26, 1996), https://www.peer.org/assets/docs/whitepapers/1996_unindicted_co-conspirator.pdf.

⁸ See WO Review, Att. C; Joe Viechnicki, KTOO, *Tongass timber sale short on timber*, July 11, 2017, <https://www.ktoo.org/2017/07/11/tongass-timber-sale-short-timber/>; Scott Streater, E&E News, *Green group asks*

commenced a programmatic review of the forest, concluding in 2016 that the forest had been committing a series of ongoing errors in its timber sale administration; including improper project certification, failure to follow gate certification requirements, and improper delegation of authority – issues that all re-appear in this Kosciusko GNA.

The Tongass NF claims it has resolved its issues with the practices admonished by the Washington Office,⁹ but results from multiple Freedom of Information Act requests submitted to the Tongass NF by PEER have demonstrated that seemingly nothing has been done to address the issues raised by the Washington Office’s review – issues that were raised internally years prior to this review as well.¹⁰ On the contrary, as evidenced by the details of this sale and the internal review of the timber sale administration program by Tongass NF after receiving programmatic recommendations from the Washington Office, it appears that the Forest’s management is still maladministering timber sales in many of the same ways indicated by the Washington Office – at the expense of the U.S. taxpayer.¹¹

I. The Kosciusko Project Violates the Good Neighbor Authority

In the 2014 Farm Bill, Congress permanently authorized the Secretary of Agriculture to enter into cooperative GNAs with state agencies to perform authorized restoration services on National Forest System (“NFS”) lands.¹² “Restoration services” are defined in the statute as limited to “activities to treat insect and disease-infected trees,” “activities to reduce hazardous fuels,” and “any other activities to restore or improve forest, rangeland, and watershed health, including fish and wildlife habitat.”¹³ GNAs must “carry out authorized restoration services under this section.”¹⁴ The statutory requirements for carrying out these projects are reflected in the USFS Implementation Instructions for Good Neighbor timber sales.

The primary objective of these agreements is to coordinate state and federal cooperation *during restoration projects*.¹⁵ They are meant to allow USFS to partner with state agencies in order for states and local governments to perform the enumerated services on NFS lands through subcontracts that utilize state contracting procedures and provide compensation for state labor costs. The overarching objective of this authority is to better facilitate cooperation on restoration projects, not to establish cooperative timber sale agreements or to allow state forestry agencies to log on NFS lands.¹⁶

IG to probe Tongass timber sales, Apr. 3, 2017, available at https://www.peer.org/assets/clips/FY15_4th_quarter_clips/E&ENEWS_FOREST_SERVICE_Green_group_asks_IG_to_probe_Tongass_timber_sales.pdf.

⁹ See Forest Service Statement to Press, Apr. 4, 2017, Att. D.

¹⁰ See District Ranger Request for TM Program Review, Jan. 30, 2014, Att. E.

¹¹ See 2017 Tongass NF Internal Review – Sale Administration, at 7, Att. F.

¹² *Codified in*, 16 U.S.C. § 2113a.

¹³ 16 U.S.C. § 2113a(a)(3)(A)(i), (ii) and (iii).

¹⁴ 16 U.S.C. § 2113a(a)(4) and (b)(1)(A).

¹⁵ These projects consist of removal of hazardous fuels, insect and disease, and forest, rangeland and watershed restoration projects. Implementation Instructions, § 0.2 – Objectives; See 16 U.S.C. § 2113a(a)(4).

¹⁶ *Id.*

Despite the clear requirements of the statute, the SPA between DOF and USFS, as well as the contract between DOF and its contractor, Alcan, do not contain any description of any restoration projects to be performed – directly violating the statute that is claimed to authorize the agreement. On the contrary, the SPA Scope of Work states that the project “consists of preparing, offering, awarding, and contract administration of the Kosciusko GNA-Timber Sale.”¹⁷ The “Project Areas and Treatment Activities” discussion within the SPA only describes nine tasks relating to layout, providing maps with unit boundaries, determining total sales volumes, appraising timber value, preparing contracts, advertising and conducting the bidding process, and administering the timber sale contract.¹⁸ None of these are restorative as defined in the statute.¹⁹ Moreover, the requirement that the project be near areas where similar or complementary activities are occurring on non-Forest Service land is not met, since there are no such activities.²⁰ Clearly, the intention here is *not* to coordinate state and federal restoration projects, as intended by the GNA, but to allow the State to conduct a timber sale on federal land.

The Kosciusko Environmental Assessment (“EA”), as required for this project under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (“NEPA”), describes in detail the proposed projects to be completed and possible alternative actions.²¹ While the EA discusses *possible* restorative actions in a basically non-restorative timber sale, no such actions are *actually included* in the final contract.²² For example, the EA discusses how “[k]arst systems *may* be improved, such as by removing blockages and remedying diverted water flow[; i]nvasive plant infestations *may* be treated manually or mechanically, or monitored[; i]nstream restoration activities *may* occur on up to one mile of stream segments.”²³ However, no such activities are outlined within the final contract with Alcan,²⁴ whose sub-contractors, Southeast Alaska Resources, themselves have expressed hesitancy in proceeding due to a lack of restorative action in the final contract.²⁵

Upon review of the documentation surrounding the Kosciusko SPA, it appears that this agreement is specifically meant to enable DOF and its subcontractor to log and sell (for overseas export) approximately 75,000 cubic feet (“CCF”) of timber from nearly 1,500 acres of USFS land on Kosciusko Island in the Alexander Archipelago of southeastern Alaska. It is also quite apparent that there is no restoration planned of any kind on either federal or state lands, nor is there any restoration project outlined in the SPA or the signed contract between the purchaser, Alcan Timber of Ketchikan, and the State of Alaska. Furthermore, it appears that the Tongass NF did not even consider possible restoration projects until *after* this timber sale project had been approved, the SPA had been signed by the Forest Supervisor, the Alcan contract had been signed

¹⁷ See SPA, Att. A, Appendix A at 13.

¹⁸ See *Id.* at Appendix C.

¹⁹ 16 U.S.C. § 2113a(a)(3)(A)(i), (ii) and (iii).

²⁰ See Implementation Instructions, § 1.12 –Selection of Project Areas

²¹ See USDA, *Kosciusko Vegetation Management and Watershed Improvement Project, Final Environmental Assessment, Draft Decision Notice, and Finding of No Significant Impact*, December 2015, (hereafter “EA”), available at

http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/99488_FSPLT3_2595790.pdf

²² See generally Kosciusko GNA YG Timber Sale Contract, SSE-1362 K, Att. G.

²³ See EA at 3 (emphasis added).

²⁴ See generally SPA, Att. A.

²⁵ See E-mail from Clarence Clark, Jan. 2, 2018, Att. H.

by the Alaska Department of Natural Resources Commissioner, and a Freedom of Information Act request was filed seeking records surrounding this project.²⁶ It appears that the Tongass NF is now attempting to use a miniscule post-hoc restoration project, specifically designed only to mitigate environmental damage *caused by this project's own clear-cut logging* as an after-the-fact justification for this entire commercial timber sale.²⁷

Moreover, according to the USFS Implementation Instructions, in a GNA sale, it is appropriate to consider the costs of authorized restoration services performed by the State to recognize that the sale is: “(a) conducted under [GNA authority], (b) *primarily for watershed improvement as cited in the legislation*, and (c) *used to pay for the State's performance of authorized restoration activities*.”²⁸ The USFS Implementation Instructions further note that “*there would not be a timber sale unless the watershed restoration work could be accomplished*, as required under the Good Neighbor legislation.”²⁹

With regard to appraisals for timber sales, GNAs differ from other timber sales in that restoration work is generally not included in the appraised value of regular timber sale contracts administered under the National Forest Management Act of 1976, Public Law 94-588, and are usually stewardship work items under Stewardship authority contracts.³⁰ In GNA sales, restoration costs are included in the appraised value of the timber so that the State may be reimbursed for its restoration costs. However, here of course, such restoration costs were not considered because there were no restoration efforts planned. This is further evidence that USFS and DOF intend to administer this contract as a standard timber sale under the banner of GNA authority.

Such misuse of the GNA authority blatantly violates federal law, as it greatly exceeds the GNA authority granted to the USFS by Congress. This contract also contravenes the primary policy objective of the entire GNA contracting scheme, which is to facilitate restoration projects.

II. The Kosciusko Sale Violates Federal Regulations and USFS Implementation Instructions Regarding Timber Sales

Apart from the fact that Good Neighbor authority does not authorize straight timber sales at all, this sale violates numerous regulations and requirements regarding timber sales. This is prominently evidenced by the Tongass NF's unexplained decrease in appraised value for the timber for this project by nearly \$2 million, likely evidencing a failure to follow prescribed appraisal protocols and failure to correct problems highlighted within the 2016 Washington Office Review of the Tongass's timber sale administration program.

a. Violation of regulations regarding appraised value and program income

²⁶ See E-mail from Tyler Gunn, Kos GNA Restoration Possibilities, Dec. 7, 2017, Att. I.

²⁷ *Id.*

²⁸ See Implementation Instructions, § 2.3 – Determination of Appraised Value, Att. B; *see also* 16 U.S.C. §2113a(a)(4) (emphasis added).

²⁹ See Implementation Instructions, § 2.3 – Determination of Appraised Value.

³⁰ *Id.*

According to the USFS, under the Good Neighbor Authority, determination of appraised values follow normal Forest Service appraisal methods or methods established by the State when acceptable to the responsible line officer.³¹ This would require USFS and DOF to work together to establish an appraised value that will be the lowest rate that the State may use to advertise the NFS timber for sale. That rate will be either the established regional minimum stumpage rate (as defined in 36 C.F.R. § 223.61 and the Forest Service Handbook [“FSH”] 2431.31b) or the market rate (“fair market value”) as required under 36 C.F.R. § 223.60, whichever is higher.

Given the vast unexplained discrepancy in appraised value between the Forest Service's initial 2015 appraisal and DOF’s later 2017 appraisal used for the GNA contract, it appears that the USFS has inappropriately lowered the assessed value of its timber and failed to adhere to the necessary appraisal protocols.

The USFS initially appraised the timber sold within the Kosciusko project at \$2,894,960.00 in a 2015 appraisal;³² yet when this sale was initiated, the same timber was then re-appraised at \$926,750 for the purposes of the DOF contract – showing an unexplained drop in valuation of nearly \$2 million – all without being submitted for review to the pre-sale timber administrator tasked with managing timber appraisal of the sale.³³ Following that unexplained drop in valuation, DOF accepted a \$2.6 million bid for the project, which was nearly \$300,000 below the initial appraisal value, providing Alcan the timber at significantly below market rates. Through Alcan’s future payment of \$2.6 million to DOF for access to this timber, and DOF’s subsequent payment to USFS for the revised appraisal price of \$926,750, DOF could receive a windfall of \$1,673,250 in what is called “Program Income” in GNA sales.³⁴

In GNA sales, when a State sells USFS timber, the state is expected to set the bid price to cover the appraised value of the timber *plus* the state’s cost for the restoration work to be conducted under the GNA. The “bid premium” above the appraised value is called “Program Income.”³⁵ The USFS and the State may agree to use any amount of this income above the Minimum Rate (the Program Income) for restoration work on the instant project, including the State’s indirect costs, and its costs in administering the sale.³⁶ The amount that the state pays the Forest Service for the timber does not include such Program Income.³⁷ However, Program Income is Federal money and must be expended on restoration activities specified in the SPA, or be returned to the U.S. Treasury.³⁸ The Forest Service’s Implementation Instructions require that how the state handles amounts above the Minimum Rate value be fully addressed in the GNA SPA.³⁹

The problem here is that because of the highly deflated appraisal amount for this sale, the purchaser paid \$1.6 million more than the revised appraised value, *and this large amount*

³¹ *Id.*

³² See Kosciusko RV Appraisal, 2400-17 Summary, Att. J.

³³ See Timber Sale Bid Opening, Completion of Gate 5, Att. K; E-mail from Charles Strueli, Dec. 12, 2017, Att L.

³⁴ See Kosciusko GNA YG Timber Sale Contract, SSE-1362 K, At. G

³⁵ See Implementation Instructions, § 3.5 – Program Income.

³⁶ *Id.*

³⁷ See Implementation Instructions, § 2.3 – Determination of Appraised Value

³⁸ See Implementation Instructions, § 3.5 – Program Income

³⁹ See Implementation Instructions, § 2.3 – Determination of Appraised Value

becomes “Program Income,” which must be used for restoration projects or returned to the Treasury. However, here there are no restoration projects, and thus legally *all* of this money must be returned to the Treasury. Yet, despite the Forest Service requirement that the GNA Master Agreement or SPA must detail how Program Income is treated, there is nothing in these contracts that details how that money is to be disbursed, and we have seen no evidence that DOF is or will be returning this money to the Treasury as required by law. Thus, there is a serious concern that DOF may pocket this \$1.6 million through a variety of means, including potential modification of its administration costs. If this is the case, the Forest Service will receive only a third of the original value of the timber that was sold, and the U.S. Treasury will receive nothing, resulting in a tremendous loss for the USFS and the U.S. taxpayer.

This is not an isolated incident. The maladministration on the recent Big Thorne and Tonka sales has resulted in nearly \$4 million in lost income for the USFS, due primarily to timber theft and the high grading of the timber prescription.⁴⁰ While PEER’s request for an audit of these two sales was denied in 2017, this denial was based upon a brief statement that the office currently lacked the resources to complete such an audit – not that this complaint was without merit.⁴¹ A troubling trend of improper appraisal practices in various forms continues despite chastisement by the Washington Office for such behavior in the past.⁴² Given the Tongass NF’s past and ongoing conduct, it is apparent that if such behavior is not investigated and fully audited, the Tongass NF will continue to abuse its appraisal and contracting authority.

b. Insufficient authority

GNA contracts made to implement projects that include the sale of NFS timber must be approved by a line officer with delegated authority to dispose of the planned volume of timber.⁴³ It is evident from the Kosciusko SPA, signed by Earl Stewart – Tongass Forest Supervisor – that the project authorizes the harvest of 73,219.81 CCF of timber.⁴⁴ However, the authority granted to Earl Stewart as Forest Supervisor is limited to authorization of timber harvests up to 50,000 CCF.⁴⁵ Such a sale in exceedance of the line officer’s disposal authority would require approval from the Regional Forester, and thus violates Forest Service policy, specifically its delegated authority requirements.

Furthermore, it appears that Earl Stewart himself did not even sign the SPA on this project; rather a Mr. Francis Sherman, a deputy forest supervisor on a 120-day detail, signed in his stead under Earl Stewart’s name. This demonstrates a blatant disregard for the recommendations of the Washington Office to discontinue the practice of having staff sign “for”

⁴⁰ Scott Streater, *Green group asks IG to probe Tongass timber sales*, E&E News PM (Apr. 3, 2017), available at https://www.peer.org/assets/clips/FY15_4th_quarter_clips/E&ENEWS_FOREST_SERVICE_Green_group_asks_IG_to_probe_Tongass_timber_sales.pdf.

⁴¹ See USDA IG Denial Letter, May 3, 2017, Att. M.

⁴² See WO Review at 17-18, Att. C.

⁴³ See Implementation Instructions, § 0.3 – Policy.

⁴⁴ See Timber Sale Bid Opening, Completion of Gate 5, Att. K.

⁴⁵ See Forest Service Manual (“FSM”) Chapter 1230 – Delegations of Authority and Responsibility; Forest Service Manual Chapter 2450 – Timber Sale Contract Administration; see also FSM 2404.28 - Specific delegations of timber sale disposal authority.

a Line Officer,⁴⁶ and a disregard of USFS timber sale administration compliance requirements by the Tongass NF's management. Such behavior is particularly troubling given that the press office of the Tongass Forest has been informing the media that necessary changes are being made in accordance with the Washington Office Review.⁴⁷ This pattern of improper signatures, faulty paperwork, and sparse records appears to be how Forest officials avoid accountability by having the potential malfeasance of forest professionals instead appear as disorganization and ineptitude.

c. Violation of Forest Service requirements for gate certifications

Timber sale gate certifications, essentially quality assurances for each step of the sale, are required for GNA timber sales.⁴⁸ The Responsible Official for the project approves work completed in each gate by signing the Gates 1-4 Certification Reports (Plan, Design, Prepare, and Advertise) generated by the Natural Resource and Timber Information Manager, and this authority cannot be re-delegated.⁴⁹ Of note, the Tongass NF also failed to follow the Forest Service Manual requirements for completing and certifying completion of each gate sequentially in the Big Thorne timber sale.⁵⁰ Under the Kosciusko GNA, it appears that the Tongass NF has once again performed the gate certifications out of order; allowing Gate 2 Design be completed nine months before even initial Gate 1 Planning – only to sign off on Gate 2 at the same time as Gate 1.⁵¹

The Tongass NF has asserted that they have corrected procedural errors and will comply with the recommendations of the Washington Office Review; yet to this date, have failed to produce adequate documentation of how these issues were corrected and, based on the facts of this sale, appear to have done nothing to address these recurring issues. This lack of appropriate documentation demonstrates that management practices criticized by the Washington Office are still ongoing and uncorrected – in flagrant disregard of the recommendations for program compliance from senior management. Furthermore, the late dating of gate signatures after such activities have been completed raises questions as to the validity of other gate certification and contract datings related to this sale, and more broadly across the Forest's timber management practices.

III. The Kosciusko Project is Antithetical to the USDA Strategic Goals

In addition to failing to meet the statutory requirements of the GNA authority and USFS regulations and guidelines discussed above, the Kosciusko project is inconsistent with the clear policies and goals of the broader U.S. Department of Agriculture and USFS. As announced by Agriculture Secretary Sonny Perdue, USDA Strategic Goal 6 is to: “[f]oster productive and

⁴⁶ See WO Review at 8, Att. C. The Review states that Line Officer approval that cannot be re-delegated must be signed by the Line Officer or their designated Acting, and recommends that the practice of signing documents “for” the Line Officer be discontinued. See also FSM 2404 – Timber Management – Authority; FSM Chapter 1230.

⁴⁷ See Forest Service Statement to Press, April 4, 2017, Att. D.

⁴⁸ See Implementation Instructions, § 2.6 – Timber Sales Gates 1-6.

⁴⁹ *Id.*

⁵⁰ See WO Review, p. 9, Issue 4, Finding 1 (“For the Big Thorne project, Gates 1-6 were not implemented sequentially”), Att. C.

⁵¹ See Timber Sale Bid Opening, Completion of Gate 5, Att. K.

sustainable use of our National Forest System Lands.”⁵² The first objective to achieve this strategic goal is to “contribute to the economic health of rural communities through use and access opportunities.”⁵³ The Kosciusko agreement falls well short of this objective.

- ◆ *The harvested timber is for export.* While the GNA allows for the sale of timber harvested incidental to a restoration project, such harvests from the Kosciusko project do not meet this objective. First and foremost, 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.

However, it is clear that the harvest of the Kosciusko sale does not contribute to the local community because the timber is exclusively being exported to East Asia. The DOF has applied for and received approval from the Alaska Regional Forester of the USFS to allow export of *all* of the trees cut in this project⁵⁴, an exceedingly large volume compared to recent sales in the Tongass NF.⁵⁵ The local community will neither use, process, nor access the harvested and exported timber. No local mills will be involved in processing the harvested timber.

Because the trees are being exported, the harvest will have a minimal positive economic impact on the local community, while negatively impacting Alaska’s robust \$4.17 billion tourism industry through destruction of the Tongass’ iconic forested vistas.⁵⁶ It clearly violates the objective of the USDA to contribute to the economic health of rural communities.

- ◆ *The clear-cut of second growth negatively affects access to recreational and subsistence activities for local communities.* The clear-cutting of 396 acres of forested USFS land on Kosciusko Island jeopardizes habitat for native wildlife populations, as nearly all old growth forests on the island and the nearby Prince of Wales Island have been extensively logged. People within the Edna Bay, Prince of Wales Island and Ketchikan communities and elsewhere use this forest for a variety of recreational activities and subsistence hunting purposes, which they could no longer do after large swaths of it are clear-cut.

This project is also particularly troubling given the requirement under the Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. §§ 528 *et seq.*, for the USFS to manage “all the various renewable surface resources of the national forests so that they are utilized in the

⁵² USDA, *USDA Strategic Goal #6*, <https://www.usda.gov/our-agency/about-usda/strategic-goals> (last visited on May 10, 2018).

⁵³ *Id.*

⁵⁴ See Letter from Rebecca Nourse, June 21, 2017, Att. N;

⁵⁵ In 2013, the Heceta 2nd Growth Timber Sale was 137 acres and the 2014 Dargon Point Timber Sale was 57.7 acres, compared to Kosciusko GNA’s 1,461 acres of harvest area. See Heceta 2nd Growth Timber Sale, <https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=168949>; see also Dargon Point Timber Sale, http://www.sitkawild.org/dargon_point_timber_sale_local_wood_local_benefits.

⁵⁶ See Alaska Division of Economic Development, *Economic Impact of Alaska's Visitor Industry (2014-15 Update)*, <https://www.commerce.alaska.gov/web/ded/DEV/TourismDevelopment/TourismResearch.aspx>.

combination that will best meet *the needs of the American people*,⁵⁷ and in a manner that maintains “in perpetuity [] a high-level annual or periodic output of the various renewable resources ... *without impairment of the productivity of the land*.”⁵⁸ This sale demonstrates a failure to balance competing interests on the island and a lack of restoration activities to ensure sustained yield, instead heavily favoring timber harvest for short-term profit.

The second objective to achieve USDA Strategic Goal 6 is to “ensure lands and watersheds are sustainable, healthy and productive.”⁵⁹ The Kosciusko agreement falls well short of this objective.

- ◆ *The agreement does not ensure healthy, sustainable, and productive lands and watersheds.* Despite the EA’s passing references to possible restorative features, the contract agreements between USFS, DOF, and Alcan all exclusively describe the manner and means by which timber will be harvested and sold across 1,461 acres of fragmented parcels. This project masquerades as restoration work, but instead it is a standard USFS timber sale that does not in any way “ensure lands and watersheds are sustainable, healthy and productive.” In fact, the SPA signed by USFS does not even contain any reforestation requirements, stating, “that reforestation requirements will be met through natural regeneration.”⁶⁰ This lack of any actual restoration in this timber sale violates the objectives of the USDA’s Strategic Goals.
- ◆ *Clearcutting does not have a net-positive effect on watershed and land sustainability.* The effects of a clear-cut harvest on both soil and waterway health are detrimental,⁶¹ and inclusion of this practice on nearly 400 acres of public rainforest land clearly violates the primary objective of the GNA authority as well as the USDA Strategic Goal. The SPA and contract agreements make no mention of any efforts, other than minimal mitigation associated only with harvest activities, aimed towards maintaining sustainable land and watersheds in the area. Aside from the removal of healthy trees from the forest, clearcutting has an impact on mycelial and ectomycorrhizal fungal networks vital to a sustainable and productive forest.⁶² However, there was no mention of such possible impacts in the project’s NEPA documents. Furthermore, clearcutting methods like those employed in this SPA remove vast amounts of nutrients from forests, thereby diminishing nutrient availability and reducing soil depth.⁶³ This clearcut, with its lack of reforestation or restoration efforts, clearly violates of the Multiple-Use Sustained-Yield Act’s

⁵⁷ 16 U.S.C. § 531(a).

⁵⁸ *Id.* § 531(b) (emphasis added).

⁵⁹ USDA, *USDA Strategic Goal #6*, <https://www.usda.gov/our-agency/about-usda/strategic-goals> (last visited on Feb. 26, 2018).

⁶⁰ See Kosciusko GNA YG Timber Sale Contract, SSE-1362 K, at 6, Att. G.

⁶¹ Hornbeck, J W & Kropelin, W, *Nutrient removal and leaching from a whole-tree harvest of northern hardwoods*, 11 J. Environ. Qual. 309–316 (1982); R. A. Dahlgren & C. T. Driscoll, *The effects of whole-tree clear-cutting on soil processes at the Hubbard Brook Experimental Forest, New Hampshire, USA*, 158 Plant Soil 239 (Jan. 1994) available at <https://doi.org/10.1007/BF00009499>.

⁶² See Randy Molina, *The Role of Mycorrhizal Symbioses in the Health of the Giant Redwoods and Other Forest Ecosystems*, USDA Forest Service Gen. Tech. Rep.PSW-151, 78 (1994), available at https://www.fs.fed.us/psw/publications/documents/psw_gtr151/psw_gtr151_12_molina.pdf.

⁶³ See *supra* n. 61.

requirement that harvest must be “without impairment of the productivity of the land,”⁶⁴ and does not support the USDA’s own policy objectives for National Forest management.

CONCLUSION

PEER respectfully submits this request for investigation of the Kosciusko GNA timber sale, which, as shown above, clearly violates federal law, USDA regulations and USFS policies. Such mismanagement of the Tongass National Forest is not news, as knowledge of its illegal timber theft problems and faulty timber sale administration has been widely reported for over 20 years.⁶⁵ The Tongass NF has been chastised for its irresponsible timber management in the past. As such, the Inspector General should investigate and stop this fraud and abuse being committed by the USFS with the public property of NFS lands.

PEER requests the IG investigate this fraud, abuse, and violation of federal law and regulation. We request that the IG report that this sale is illegal and should be invalidated. Specifically, we request that the IG:

- Conduct a performance review for (a) compliance with the Congressional requirements for Good Neighbor Agreements and (b) compliance with USFS protocols and rules;
- Develop recommendations to prevent the recurrence of any problems that are found;
- Undertake a performance review of whether GNA goals are being met agency-wide and whether such sales are furthering Secretary Perdue’s strategic goals;
- Perform a full and complete financial audit of the Kosciusko Island sale to ensure the U.S. Treasury is provided the financial compensation it is due; and
- Recommend that any abuses that are found be corrected.

Respectfully submitted,

⁶⁴ 15 U.S.C. § 531(b).

⁶⁵ See Joe Viechnicki, *Tongass timber sale short on timber*, KTOO (July 11, 2017), <https://www.ktoo.org/2017/07/11/tongass-timber-sale-short-timber/>; Scott Streater, *Green group asks IG to probe Tongass timber sales*, E&E News (Apr. 3, 2017), https://www.peer.org/assets/clips/FY15_4th_quarter_clips/E&ENEWS_FOREST_SERVICE_Green_group_asks_IG_to_probe_Tongass_timber_sales.pdf; Jeff DeBonis, *Stealing the Tongass, Playing by Alaska Rules in the U.S. Forest Service*, PEER (Nov. 1996), https://www.peer.org/assets/docs/whitepapers/1996_stealing_tongass.pdf; Jeff DeBonis, *Unindicted Co-Conspirator: Timber Theft and the U.S. Forest Service*, PEER (Mar. 26, 1996), https://www.peer.org/assets/docs/whitepapers/1996_unindicted_co-conspirator.pdf.



Adam Carlesco, Staff Counsel
Public Employees for Environmental Responsibility
962 Wayne Ave, Suite 610
Silver Spring, MD 20910
Phone: 202.265.7337
Email: acarlesco@peer.org

List of Attachments:

- A. Kosciusko Forest Timber Sale, Supplemental Project Agreement 17-GN-11100100-004.
- B. USFS, *Good Neighbor Timber Sales Interim Implementation Instructions, Enclosure with Forest Management Director's Letter to Regional Foresters*, July 6, 2015.
- C. USDA Forest Service, *Washington Office Activity Review of Timber Sale Administration, Sale Preparation, Stewardship Contracting, NEPA, and Timber Theft Prevention – Region 10*, June 12-20, 2016.
- D. Forest Service Statement to Press, Apr. 4, 2017.
- E. District Ranger Request for TM Program Review, Jan. 30, 2014.
- F. 2017 Tongass NF Internal Review.
- G. Kosciusko GNA YG Timber Sale Contract, SSE-1362 K.
- H. E-mail from Clarence Clark, Jan. 2, 2018.
- I. E-mail from Tyler Gunn, Kos GNA Restoration Possibilities, Dec. 7, 2017.
- J. Kosciusko RV Appraisal 2400-17 Summary.
- K. Timber Sale Bid Opening, Completion of Gate 5.
- L. E-mail from Charles Strueli, Dec. 12, 2017.
- M. USDA IG Denial Letter, May 3, 2017.
- N. Letter from Rebecca Nourse, June 21, 2017.