**THE CAC RECOMMENDATIONS** **CAN ONLY BE ACHIEVED BY ADOPTING THE TOTAL EXEMPTION ALTERNATIVE AS THE FINAL RULE IN THE ROD.**

The Citizen’s Advisory Committee (CAC), (representing diverse interests) appointed by former Governor Walker to inform the State in its role a s a cooperating agency in the National Environmental Policy Act (NEPA) process associated with the DEIS, identified significant new road and timber harvest exceptions that would have to be added to the Roadless Rule to protect communities, renewable energy, and mining if IRAs were to remain in place.

Each of the current exceptions to the Roadless Rule (36 C.F.R. §294.12 (b)(1-7) is preceded by the words “if the Responsible Official determines that … a road is needed,” thereby leaving it up to the Forest Service’s “Responsible Official” to decide whether a road is needed. There are no criteria for making that decision. The language the CAC proposed to implement its new exceptions was specifically intended to eliminate the “Responsible Official’s” criteria-less ability to decide whether a road is needed even if the environmental and resource protection criteria for approval of 36 C.F.R. Part 228 were met.

The CAC implementing language (found at pages 7 – 10 of its Report) made granting a road mandatory if the applicant meets the environmental and resource protection criteria for approval of 36 C.F.R. Part 228. The thinking was as follows: It is the Forest Service’s job to protect the environment and other resources on the National Forests. As long as that obligation is satisfied, the Responsible Official should not have the discretion to disapprove an application because he/she doesn’t think a road “is needed” – particularly when, as here, there are no criteria for making that decision.

By simply comparing the language the CAC proposed to implement its recommendations for new Road and Timber Harvest Exceptions (found at pages 7 – 10 of the CAC Report) with the implementing language for DEIS alternatives 2 -5 set out in Appendix G and the language in 36 C.F.R. §294.12 (b)(1-7) of the 2001 Roadless Rule shows that this is not the case.

For example, the CAC proposed the following mandatory language to provide road access to mining exploration and development projects (so long as such road access meets the criteria of 36 C.F.R. Part 228) be included in each alternative 2 – 5:

Road Exception 11 (page 7): A road to access mineral operations authorized by the United States mining laws (30 U.S.C. § 22 et seq.) shall be permitted in IRAs if it meets the criteria of 36 C.F.R. Part 228 in the same way as if the application for the road to access such mineral operations were being permitted on non-IRA National Forest lands.

However, the Appendix G language implementing Alternative 5 (the most developmentally oriented of the alternatives other than Total Exemption) provides no change:

§294.52 (c) Notwithstanding the prohibition in paragraph (a) of this section, a road may be constructed or reconstructed in an Alaska Roadless Area designated as a Roadless Priority if the Responsible Official determines that one or more of the following circumstances exist:

(1) A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty;

This is exactly the same as the exception language currently used in the 2001 Roadless Rule 36 C.F.R. §294.12 (b)(3) that the CAC language was intended to change:

A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty;

This failure to change the existing regulatory language is replicated throughout each alternative. The CAC’s mandatory exception language that the State provided to USDA was not included in any alternative. (See Appendix G, alternatives 2 - 5). Instead, as is seen in the example above, each road and timber harvest exception is preceded by the words “if the Responsible Official determines that … a road is needed,” thereby leaving it up to the Forest Service’s “Responsible Official” to decide whether a road is needed without any criteria for doing so.

This is the existing situation already maintained by the “No Action” alternative. It is exactly what the CAC recommendations sought to change in order to provide regulatory certainty and predictability. The undersigned joins the Coalition in finding it “remarkable that ***not one*** of Appendix G’s alternatives 2 – 5 contains the CAC’s mandatory regulatory language to implement its proposed New Road Exceptions and proposed New Timber Cutting Exceptions.[[1]](#footnote-1)

**Comparing the CAC/Appendix G/2001 Roadless Rule regulatory implementing language is critical to understanding that USDA *did not* adopt the CAC proposals. This, in turn, explains why Total Exemption is the only alternative that achieves relief from the Roadless Rule access prohibitions for communities, renewable energy, timber and mining. The CAC recommendations** **can only be achieved by adopting the Total Exemption alternative as the Final Rule in the ROD.**

1. Consideration of alternatives is “the heart of the environmental impact statement.”  40 C.F.R. § 1502.14. “[A]n agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action, and sufficient to permit a reasoned choice.”   *Alaska Wilderness Recreation v. Morrison*, 67 F.3d 723, 729 (9th Cir.1995) (quoting *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1520 (9th Cir.1992)). The Coalition strongly maintains that the CAC’s mandatory authorization language to implement its New Road Exceptions 8 – 16 and New Timber Cutting Exceptions 1 - 8 is a reasonable alternative that should have been presented in at least one alternative the DEIS. [↑](#footnote-ref-1)