



KATIE SWEENEY  
*Executive Vice President & General Counsel*

December 16, 2019

Alaska Roadless Rule  
USDA Forest Service  
P.O. Box 21628  
Juneau, Alaska 99802-1628

Dear Sir/Madam:

**RE: Proposed Rule to Exempt the Tongass National Forest from the 2001 Roadless Area Conservation Rule and Accompanying Draft Environmental Impact Statement**

The National Mining Association (NMA) appreciates the opportunity to submit comments on the U.S. Forest Service's proposed rule to exempt the Tongass National Forest (Tongass) from the 2001 Roadless Area Conservation Rule (Roadless Rule) and its accompanying draft environmental impact statement (DEIS). 84 Fed. Reg. 55522 (October 17, 2019). NMA's members are producers of most of America's coal, metals, industrial and agricultural minerals; manufacturers of mining and mineral processing machinery and supplies; transporters; financial and engineering firms; and other businesses related to mining. Several NMA members conduct mining activities in Alaska either under the Mining Law or the Mineral Leasing Act and would benefit from increased access to the 9.2 million acres in the Tongass that are currently classified as inventoried roadless areas subject Roadless Rule.

NMA has engaged in many stages of the Forest Service's rulemakings to determine the types of development or construction activities that can occur in inventoried roadless areas. NMA strongly opposed the 2001 Roadless Rule as contrary to the agency's multiple use mandate and the Forest Service's obligations under the Mining Law and the Mineral Leasing Act. On the other hand, NMA strongly supported the Service's 2005 rule that allowed state governors an opportunity to petition for the establishment of management requirements for National Forest System inventoried roadless areas within their States as an alternative to the 2001 Roadless Rule.

The petition process properly restored local-level forest planning. As established by the National Forest Management Act (NFMA), local-level forest planning has long been the mechanism used to develop forest plan decisions by the people most knowledgeable about the national forest lands. Local forest plans have been developed through an open public process by agency personnel, industry representatives, environmentalists, elected officials, and community activists. In contrast, the 2001 Roadless Rule was a national top-down, one-size-fits-all roadless conservation rule that undermined the cooperative dialogue that takes place during each forest's plan revision and cancels out years of research, scientific analyses, collaboration, and compromise.

After years of litigation, the threat of application of the flawed 2001 Roadless Rule to the Tongass, led then Alaska Governor Bill Walker to resort to the process available under the Petition Rule. He submitted the petition on Jan. 18, 2018 and in June 2018, the Secretary of Agriculture agreed to address the State's concerns on roadless area management and economic development opportunities in Southeast Alaska. This rulemaking ensued.

### **Preferred Alternative in the Proposed Tongass Exemption Rule**

NMA strongly supports the Forest Service's selection of Alternative 6 – Total Exemption – as the preferred alternative as it appropriately gives “substantial weight to the state's policy preferences as expressed in the incoming Petition. . . and that the state's views on how to balance economic development and environmental protection offer valuable insight when making management decisions concerning National Forest land in Alaska.”<sup>1</sup> Importantly, Alternative 6 would exchange the 2001 Roadless Rule's inflexible prohibitions on access and development in the Tongass, for the more flexible Tongass National Forest Planning process. As the proposed Tongass Exemption Rule correctly acknowledges, the proposal returns “decision-making authority to the Forest Service, allowing decisions concerning timber harvest, road construction and roadless area management on the Tongass National Forest to be made by local officials on a case by case basis.”<sup>2</sup>

### **Proposed Tongass Exemption Addresses Concerns About Access to Minerals**

One of NMA's greatest concerns about the January 2001 Rule was that it failed to properly consider and account for the public laws that specifically control access and development of minerals on public lands. Whatever mandate, or authority, the Forest Service believes it can derive from the laws it administers generally for activities that affect surface resources within the National Forest Service System, they do not supersede, or override, the more specific mandates and requirements of the mineral

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<sup>1</sup> 84 Fed. Reg. 55523 (Oct. 17, 2019).

<sup>2</sup> *Id.* The Forest Service also correctly recognizes that the “proposed exemption would allow forest plan direction to guide other access needs that support isolated rural communities in the unique island archipelago environment of the Tongass National Forest. *Id.* at 55524.

laws. For example, the Mining Law of 1872 establishes the right to access public lands to explore and develop locatable minerals on public lands, and the Forest Service cannot materially interfere with prospecting, mining, and other incidental uses on those lands in the course of its management of surface resources. Likewise, the disposition of solid minerals subject to the leasing laws cannot be impaired by unilateral action by the Forest Service under the guise of its general authority to manage surface resources within the National Forest System. Again, by way of example, the disposition and development of federal coal under National Forest Lands is subject to the Mineral Leasing Act of 1920. This law establishes specific land use planning considerations for the availability of federal coal resources. These specific provisions control and cannot be superseded by Forest Service edicts or rules purportedly taken pursuant to the NFMA, Multiple Use and Sustained-Yield Act of 1960 (MUSYA), or the Organic Administration Act of 1897. Rather, the Forest Service's obligation is to assure that the Forest Service's actions conform to the specific laws providing for access and development of the mineral resources within the National Forest System.

The proposed Tongass exemption ameliorates NMA's concerns that the 2001 Roadless Rule will be misused to impede legal access to mining claims and leases. While the DEIS prepared in conjunction with the proposed exemption attempts to dismiss concerns about access, particularly under the Mining Law, NMA members have experienced situations where restrictions invoked as necessary to protect inventoried roadless areas have constituted a constructive denial of access. As pointed out in comments submitted by the Alaska Miners Association and other Alaskan Industries, while the Forest Service has issued 59 permits in inventoried roadless areas – mostly for mineral exploration – 33 of these were for non-roaded helicopter supported drilling and many of these approvals cover drilling the same area, but in a different year. Non-roaded helicopter supported drilling severely curtails the nature of the exploration activities that can be conducted due to limits the size of rig and volume of core that can be extracted. Thus, without roads, only *INITIAL* exploration data with limited usefulness can be obtained. Larger core and underground drilling cannot occur without roads, let alone extraction of bulk samples or actual mineral development. Without roads, exploration budgets would shoot up dramatically – by millions to tens of millions – to fly in large rigs, underground excavation equipment, camps, personnel, infrastructure, emergency response, environmental controls, and the like.

Under the Mining Law, U.S. citizens and firms have the right to explore for and stake claims to selected mineral on all public domain lands not specifically withdrawn from mineral entry and the Forest Service cannot unilaterally deny exploration access to National Forest lands. While the agency can affect the location and design of roads built on its lands and in some instances place stipulations on access (i.e., limiting road use to certain months or precluding surface occupancy), the rules and regulations may not be applied to prevent lawful mineral activities.

## **Proposed Tongass Exemption Is Consistent with Congressional Policy and Executive Order 13817**

Congress entrusted the Forest Service with both a responsibility to protect our nation's natural resources and a duty to balance important interests such as the need for domestic sources of minerals. These mandates are not mutually exclusive. Domestic production is encouraged by various statutes including the Mining and Minerals Act of 1970 (30 U.S.C. 21a) which states:

Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, and (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial security and environmental needs...

Similarly, the National Materials and Minerals Policy, Research and Development Act of 1980 asserts that the availability of minerals is essential for national security, economic well-being, and industrial production and directs "that the responsible departments and agencies identify, assist, and make recommendations for carrying out appropriate policies and programs to ensure adequate, stable, and economical material supplies essential to national security, economic well-being, and industrial production."

These congressional policies are in harmony with the multiple use mandate that governs the Forest Service's management of its lands. The establishment of the National Forest System in 1897 was followed over the ensuing decades by series of enactments in which Congress consistently and clearly specified that stewardship over the national forests would be guided by the principles of multiple use and sustained yield.<sup>3</sup> The multiple use concept acknowledges that in many instances management decisions will recognize that mineral exploration and development can occur concurrently or sequentially with other resource uses. These congressional policies and the multiple use mandate do not ignore the obligation to conduct mining activities in an environmentally responsible manner. Given the comprehensive framework of laws and regulations applicable to mining activities, mineral development and environmental stewardship are not mutually exclusive. Mining is one of the most heavily-regulated industries in the world. More than three dozen federal environmental laws and regulations govern the U.S. mining industry — in addition to laws at the state and local level.

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<sup>3</sup> The Multiple Use Sustained Yield Act of 1960, 16 U.S.C. §§ 528-31 (MUSYA); the Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C. §§ 1600-14; and the National Forest Management Act of 1976 (NFMA), 16 U.S.C. § 1600 *et seq.*. These statutes consistently endorse multiple use and sustained yield.

The need to promote mineral development in an environmentally responsible manner was most recently articulated by President Trump in Executive Order (E.O.) 13817, “A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals,” which declares that it “shall be the policy of the Federal Government to reduce the Nation’s vulnerability to disruptions in the supply of critical minerals, which constitutes a strategic vulnerability for the security and prosperity of the United States.” In recognition of the strategic vulnerabilities created by our mineral import reliance, the E.O. directed the creation of a multi-pronged federal strategy to ensure secure and reliable sources of minerals. Specifically, the order directs agencies to promote exploration and development of critical minerals through a variety of means including increased access to federal lands.

Our economy and national defense depend on a strong domestic mining industry, utilizing our nation’s vast minerals reserves. Access restrictions put critical U.S. supply chains for the manufacturing, infrastructure and defense industrial sectors at risk. The E.O. was in part prompted by data from the U.S. Geological Survey (USGS) on U.S. mineral import trends. According to the USGS, the U.S. is 100 percent import reliant for 18 minerals – 14 of which have been deemed “critical” by the Secretaries of Defense and the Interior – and more than 50 percent import reliant for another 30 minerals. U.S. mineral dependency is at a record-high, now double what it was 20 years ago. We are also experiencing a considerable decrease in U.S. exploration activities that are a prerequisite to expanded or new operations necessary to increase domestic mineral supplies.

These troubling trends are compounded by the fact that new mining operations are already either restricted or banned on more than half of all federally-owned public lands, and mining is not permitted in national parks, wilderness areas, wildlife refuges, recreation areas and more. This means a significant percentage of our nation’s mineral resources that reside on federal lands are already off limits. Given the vast amount of federal lands already closed to mining operations, caution should be exercised in placing additional lands off limits. The proposed Tongass exemption is an important step to ensure access to our vast mineral resources.

## **Conclusion**

NMA appreciates the opportunity to submit these comments in support of the preferred alternative articulated in the proposed Tongass exemption. Alternative 6 is the only alternative that appropriately recognizes the need for a balanced policy that promotes mineral development in an environmentally responsible manner. Minerals form the basic building blocks of our economy and our society. They are essential to technological innovation and national defense applications, and their production creates jobs in rural communities. Alaska’s petition for a complete exemption from the 2001 Roadless Rule is good policy and should be adopted.

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If you have any questions regarding these comments, please contact me

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Sincerely,

A handwritten signature in black ink that reads "Kate Doemey". The signature is written in a cursive, flowing style.