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VIA U.S. MAIL:

USDA Forest Service
Attn: Alaska Roadless Rule
P.O. Box 21628
Juneau, Alaska, 99802

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akroadlessrule@fs.fed.us

**RE: Comments on the Draft Environmental Impact Statement
Alaska Roadless Areas and Draft Record of Decision.**

Dear Secretary Purdue and Forest Service;

These are comments on proposed changes to the management of the Tongass National Forest under the Roadless Rule. I implore you, and the Forest Service, to not make any changes to the application of the Roadless Rule to the Tongass National Forest. The Draft EIS has no valid articulated reason why the Roadless Rule should be replaced with the complete absence of roadless protections. The Draft EIS also fails to take a hard look at the impacts of changing the Roadless Rule. This is particularly important to the people living in the Southeast Alaska region because the current Roadless Rule protects tourism, fishing and small scale timber industries that are currently the bedrock of the Southeast Alaska economy.

There is no “Why” in the Draft EIS Purpose or Need

All Draft and Final Environmental Impact Statements require an “underlying purpose and need to which the agency is responding”.¹ The purpose and need section of an EIS is supposed to describe “in detail why action is being proposed at that location and at that time. In this way, the purpose and need reflects the difference between the existing condition and the desired condition.”²

In the October 2019 Draft Environmental Impact Statement, Rulemaking for Alaska Roadless Areas, (the “Draft EIS or “DEIS”) the purpose and need for changing the Roadless Rule’s application to the Tongass National Forest (“the Tongass”) is stated as:

In response to the State of Alaska’s petition for rulemaking, the Forest Service and State of Alaska agree the controversy surrounding the management of Tongass

¹ 40 CFR 1502.13.

² National Environmental Policy Act HANDBOOK,
Amendment No.: 1909.15-2011-5, Effective Date: September 14, 2011, p 15.

roadless areas may be resolved through state-specific rulemaking. A long-term, durable approach to roadless area management is desired that accommodates the unique biological, social, and economic situation found in and around the Tongass.

DEIS p. 1-4. This supposed purpose and need doesn't meet the applicable regulation or handbook guidance because it is wholly manufactured.

Controversy

The controversy that the State government and Forest Service agree upon is never spelled out in the several hundred page Draft EIS. The Roadless Rule has been applied to the Tongass National Forest since 2011. Just three years ago the Roadless Rule was incorporated into the 2016 Forest Management Plan for the Tongass National Forest ("2016 Plan"). So there is not a controversy on the rule's face. It is the rule. It is being applied. And by all accounts this rule is steering timber harvests in the Tongass toward a young growth industry in accord with congressional mandates. The bare agreement between the State government and the Forest Service that they desire to change the Roadless Rule's application to the Tongass doesn't make the status quo controversial.³

Any controversy that does exist is actually generated by the State government's petition and this NEPA process. In other words, the State government and Forest service agreement to change the Roadless Rule is the controversy. The Scoping Report for this NEPA process documents that many many other individual and organizations in Southeast Alaska find the idea of changing the application of the Roadless Rule to the Tongass controversial.⁴ If an agency proposes an action that it knows will be controversial the agency can't then use that controversy as its reason why the action is needed. That is the very definition of circular reasoning which is arbitrary and capricious.

I have no doubt that any changes to the Roadless Rule that result from this NEPA process will create more controversy than maintaining the status quo. One reason is because the Draft EIS document does not come close to describing impacts of changes (discussed more below). Another reason is that any change to the Roadless Rule does not have regional buy-in. As mentioned already the bulk of the scoping comments were in favor of maintaining the Roadless Rule in its current form. I expect that my voice in this letter will be joined by the voices of tens or maybe hundreds of thousands of other voices expressing opposition to changes to the Roadless Rule's application to the Tongass. Indeed, the City and Borough of Sitka has resolved in favor of keeping the Roadless Rule in place⁵, as has the Sitka regional State Fish and Game advisory committee.⁶ Likewise the six federally recognized tribal governments in Southeast Alaska have expressed their lack of support for the preferred alternative.⁷ It is not my job or role as a private citizen to catalog all of the letters in opposition

³ By way of analogy - There is a 25 mile per hour speed limit on my neighborhood street. If my neighbors and I want change that speed limit to 55 our desire to do so doesn't make the 25 mph speed limit controversial.

⁴ <https://cara.ecosystem-management.org/Public//ReadingRoom?Project=54511>.

⁵ <https://sitka.legistar.com/LegislationDetail.aspx?ID=4249517&GUID=D638E4DD-A7D4-4395-B32D-73195F147EB3&Options=ID|Text|&Search=Roadless>

⁶ <https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=120087>

⁷ Sitka Daily Sentinel, October 17, 2019, p. 2 "Respect for Tribal Rights on the Tongass Question."

to changing the Roadless Rule. For the purposes of this letter it suffices to say that at the individual and regional organization level the opposition is substantial and well reasoned.

The vast number of people and organizations opposed to changing the Roadless Rule is important because if the existing rule were truly controversial then people and organization in this region would not be supporting the Roadless Rule. You and the Forest Service should hear that the voices of the region support the Roadless Rule or the No Action Alternative in the Draft EIS. Ignoring these voices, which is precisely what the Preferred Alternative and Draft ROD does, is going to stir the mother of all controversies among those of us living in the Tongass.

It is safe to say that by kicking off this review of the Tongass Roadless Rule the State government and Forest Service has only multiplied controversy. Law suits and procedural grid lock certainly will follow. The difference is that if the application of the Roadless Rule to the Tongass is changed via this NEPA process and your final ROD the law suits will be brought by the people living this region and regional organizations instead of the State government.

Including “controversy” in the purpose and need section of the Draft EIS makes it look like this NEPA planning process is actually kicked off to settle the lawsuits that the State government has maintained against the application of the Roadless Rule. In fact, the State government in its petition points out that it continues to litigate the application of the Roadless Rule to the Tongass and to the Chugach National Forest.⁸ The State government has pressed on with these suits even though it has continually lost when trying to get judicial changes to the Roadless Rule. The State government also has a record of past failures to convince the Forest Service to change the Tongass Roadless Rule as evidenced by the Forest Service’s rejection of the State government’s position when forming the 2016 Plan. Given the current State AG’s consistent failure to prevail in its suits meant to advance this Governor’s agenda I suspect that the State government’s law suits and other efforts regarding the Roadless Rule would be destined to continue. It would be nice if instead of burning tax payer money with no real benefits to the State of Alaska’s citizens the State government stepped back and listened to what the people living in the Southeast Alaska region have to say about changes to the Tongass Roadless Rule. I am urging you and the Forest Service to continue to be the bulwark against this bad State governance and not cave to the State government’s demands in its petition or pending lawsuits.

While on the topic of controversies I think it is important to point out that the State government’s petition relies heavily on the 2003 Exemption of the Tongass from the Roadless Rule. That 2003 Exemption was invalidated and never reinstated. Yet, the State government tries to gloss over the invalidity of the 2003 Exemption by saying the Exemption’s fatal issue was in Forest Service’s failure to adequately explain a change of position.⁹ It is twisted logic to claim, as the State government does, that the reasoning in the 2003 Exemption is golden over 15 years later because it was *only* inadequate.¹⁰ Without adequate underpinnings the 2003 Exemption is not valid at its very core. It makes no sense to go to that very stale decision and try to cherry pick. The 2003 Exemption as it stands should have had no part in the kicking off of this NEPA planning process.

⁸ DEIS Appendix A p A-5.

⁹ DEIS p. A-3, A-6, A-7. This last reliance on the 2003 Exemption is discussing an analysis of timber demand that the USFS apparently did in 2003 or before. Relying on a flawed analysis from 15 years ago is a controversial move.

¹⁰ DEIS A-3 (“No judge questioned the fact that the USDA had a right to change position on exempting the Tongass, if the change was adequately explained.”) & A-6.

If the State government or Forest Service wanted to underpin this NEPA process using the 2003 Exemption then the 2003 Exemption needed to be supplemented with legally adequate support. The 2003 Exemption should also be brought up to date since the invalid 2003 Exemption is about old enough to drive. The State government and Forest Service certainly have the resources to try to provide the necessary supplement as part of the State government's petition or in this NEPA planning process. Yet I see nothing in the State's petition or the Draft EIS which addresses the inadequacies of the 2003 Exemption. This problem makes the State government's petition and this NEPA process needlessly more controversial.

Long Term and Durable Planning and the 2016 Plan

The second purpose and need in the Draft EIS is a "long-term, durable approach" to the management of the Tongass. It is not explained why disposing of underlying rules that have guided development in the Tongass National Forest since 2011 is an action that is long-term or durable. Nor is it obvious that the current application of the Roadless Rule to the Tongass is not long-term and durable.

On closer inspection it seems clear that the State government is not seeking a long-term or durable approach. Nor does the Forest Service's Draft EIS or your Draft ROD propose a long-term durable approach. Instead the long-term and durable Roadless Rule management we already have is getting tossed.

The fact that the State government is not motivated by a noble search for a long-term and durable plan is made plain by the State's request that the Forest Service amend the December 2016 Land Resource Management Plan ("2016 Plan") at the same time the Forest Service changes the Roadless Rule.¹¹ Yet, according to the 2016 Plan:

By transitioning away from the harvest of old-growth timber, I expect adoption of the Selected Alternative to improve the capability of the communities in Southeast Alaska to support the network of relationships, traditions, culture, and activities that connect people to the Tongass National Forest and support vibrant communities.¹²

So, the 2016 Plan implements what is needed for long-term and durable planning for vibrant communities in Southeast Alaska. In addition the 2016 Plan finds that:

Based on my review of the Final EIS and the project record, I believe the best way to bring stability to the management of roadless areas on the Tongass is to not recommend any modifications to the Roadless Rule. Harvest in roadless areas is not necessary to meet the purpose and need of the amendment.¹³

Thus, the Forest Service already has its long-term durable planning in place. Within 13 months after the 2016 Plan became effective the State government petitioned for a change to the Tongass Roadless Rule and the 2016 Plan.¹⁴ The State government's January 18, 2019

¹¹ DEIS A-3, A-8. To avoid controversy the State should have relied upon this more up-to-date document to support its 2018 Petition. Of course it didn't do so because the 2016 Plan and the planning that went into that document contradicts the State's purported reason for its petition.

¹² 2016 Plan ROD p.18.

¹³ 2016 Plan ROD p. 19.

¹⁴ DEIS Appendix A, p. 8.

petition whines that it had objected to the implementation of the Roadless Rule in the 2016 Plan but didn't get what it wanted.¹⁵ It didn't get what it wanted at that time and so it is now seeking change to the Roadless Rule AND to the 2016 Plan. The State sounds a lot like a spoiled child. This move by the State government is a set up for interminable planning not long term-durable planning. Please just stop this madness! Please recognize in this NEPA process and the final rule making that the State's government's position on changes to the Roadless Rule and the 2016 Plan do not reflect long-term durable planning.

In short, the State government didn't have a legitimate articulated reason to ask the Forest Service to embark on this NEPA planning process in order to find long-term durable planning which already exists.

While the Forest Service has agreed to go along with a NEPA analysis for changes to the Roadless Rule (for flawed reasons across the board) the Draft EIS clearly states that the official Forest Service line is that amendment to the 2016 Plan is not on the table. Indeed, the Draft EIS continuously touts in its "impacts analysis" that little change will happen in the management of the Tongass because the 2016 Plan maintains the roadless values of the Roadless Rule. The Draft ROD does the same thing.

Let's get real - there is no way that the 2016 Plan will stand if the Roadless Rule is eliminated or altered. There is both motive and mechanisms to change that plan once the Roadless Rule is eliminated. As I get into more detail when discussing the Alaska government's "state specific" reason for seeking the elimination of the Roadless Rule the reason why this NEPA process is happening is to increase timber harvests. As the Draft EIS points out, even if the Roadless Rule is eliminated only modest increases in timber harvests can occur under the 2016 Plan. In order to have the potential increases in timber harvests the State government wants then the 2016 Plan will need to be revised or amended. This is the motive for changing the 2016 Plan. The State government is keenly aware that the 2016 Plan throttles timber harvest since the State government has already petitioned for changes to the 2016 Plan.¹⁶ And, given the deference you have given to the State government in the Draft ROD¹⁷ it is likely that if the Roadless Rule changes the 2016 Plan will change soon after.

The mechanisms for changing the 2016 Plan after the Roadless Rule is eliminated are simple. The 2016 Plan is actually a limited amendment to a 2008 Plan. Forest Service management plans have a life of 10 to 15 years and coming up with a new plan takes a couple of years. **After this NEPA process NOTHING stops the State government and Forest Service from deciding that it is time to go back and completely revise an already 11 year old plan.** Nothing! It would be very easy, and even logical, for the State government and Forest Service to take this simple approach which would give them what they wanted - more roads and more logging, albeit without an honest hard look at the impacts in a NEPA process.

Alternatively, the 2016 Plan could be amended. The applicable regulations gives the Forest Service "the discretion to determine at any time that conditions on a plan area have changed significantly such that a plan must be revised."¹⁸ Put differently the Forest Service should use plan amendments "to keep plans current and to help units adapt to new

¹⁵ DEIS Appendix A, p. 8.

¹⁶ Draft EIS Appendix A.

¹⁷ Draft ROD, 84 FR 55522, 55523.

¹⁸ 36 CFR 219.7(a).

information or changing conditions.”¹⁹ The regulations do not spell out when conditions in the plan area have changed significantly but I am pretty sure that modifying the Roadless Rule (alternatives 2-5) or eliminating the Roadless Rule (alternative 6) would suffice. Moreover, the regulations say that forest plans should “[i]dentify the maximum quantity of timber that may be removed from the plan area”.²⁰ If the Roadless Rule no longer applies to the Tongass then the maximum quantity of harvestable timber will change and so it seems inevitable that 2016 Plan would change too.

My expectation that the 2016 Plan will change once the Roadless Rule is eliminated is even supported by the 2016 Plan ROD and EIS. The 2016 Plan explains that:

[T]he Tongass has been subject to the Roadless Rule since 2011 and remains so today. While the analysis for the 2008 Tongass Plan Amendment assumed the 2001 Roadless Rule would not apply because it was prepared during the time the Tongass was exempt, the 2016 Tongass Forest Plan Amendment I am approving today — and the analysis in the associated Final EIS is fully consistent with the Roadless Rule.²¹

Thus, history shows that changes to the application of the Roadless Rule to the Tongass are sufficient to cause changes to the Tongass’s forest plan. It is reasonable to expect history will repeat itself if the application of the Roadless Rule is changed again.²² Also, the 2016 ROD says “I believe the best way to bring stability to the management of roadless areas on the Tongass is to not recommend any modifications to the Roadless Rule.”²³ Yet the Draft EIS says that the current Roadless Rule management of the Tongass is “controversial.”²⁴ If the 2016 decision causes controversy surrounding the management of the Tongass under the Roadless Rule that this NEPA process was kicked off to resolve (a point that I indeed find

¹⁹ 36 CFR 219.13(a). See also § 219.13(b)(1) The Forest Service “shall: Base an amendment on a preliminary identification of the need to change the plan. The preliminary identification of the need to change the plan may be based on a new assessment; a monitoring report; or other documentation of new information, changed conditions, or changed circumstances. . . .” (Emphasis added.)

²⁰ 36 CFR 219.11(d)(6)).

²¹ December 2016 ROD p. 4. See also p. 6 - explaining how the 2016 preferred alternative is consistent with the Roadless Rule. p. 19 “Inventoried Roadless Areas”

²² One might point out that the change in the applicability of the Roadless Rule was just one of several reasons given in the 2016 ROD to support amending the 2008 Plan. I would readily concede this point. But the other reasons for the the 2016 Plan amendment wouldn’t support keeping the 2016 Plan in tact if the Roadless Rule is eliminated. For example, one major reason given for the updates in the 2016 Plan amendment were the collaborative fruits of Tongass Futures Roundtable (which was disbanded in 2011). Cramming this NEPA process down the throats of the Southeast Alaska region’s residents based on the the State government’s bogus petition is inconsistent with that past collaboration. Moving forward with the preferred alternative it would be the death knell to that past collaboration.

²³ 2016 ROD p. 19.

²⁴ As laid out already this controversy is specious. I am pointing out here that if permitted to stand as a purpose and need for the Draft EIS then the purported controversy will undoubtedly be used to justify changes to the 2016 Plan.

laughable as already discussed in this letter) then it seems reasonably certain that the 2016 Plan will be amended to remove that controversy.

The practical certainty that the 2016 Plan will change is important for two reasons. First, it further shows that this NEPA process is not about long term and durable planning in the Tongass. Rather, the long term durable planning that is already in place is being undermined by this NEPA process. Second, **the Draft EIS and Draft ROD are wrong every time that these say that 2016 Plan will continue to maintain the roadless values of the Roadless Rule.** The 2016 Plan is not a backstop where the impacts analysis ends. Rather, a hard look at the impacts of changing the Roadless Rule would take into account the foreseeable changes to the 2016 Plan. The results are not academic. This is where the true impacts of changing the Roadless Rule will happen. Yet, the Draft EIS explicitly ducks this hard look.

The Forest Service could have, and SHOULD HAVE, rejected the State government's petition to change the Roadless Rule just like it has rejected (for now) the State government's request for change to the 2016 Plan. Despite having started this NEPA planning process you and the Forest Service can still decide the State government's petition lacks merit and pull the plug. Alternatively, the No Action alternative should be chosen to bolster the current long-term durable planning that is in place. Then the State government will have scratched its itch to fight over the application of the Roadless Rule in the NEPA forum and can go back to manufacturing controversy and wasting tax payer money in court.

State-specific Rule Making

Lastly, the Purpose and Need says state-specific rule making is necessary. State-specific rule making could be useful if there are state-specific issues at play. Put another way, legitimate state-specific rule making could constitute a solid "why" we should be looking at amending the Tongass Roadless Rule. Other state-specific Roadless Rules adopted in Colorado and Idaho are tailored to specific state issues: ski areas (Colorado), fire control (Colorado & Idaho), specific mines (Colorado & Idaho).

The State government's petition fails to clearly articulate a single state-specific issue that the State wants addressed in this rule making process. Instead the State government throws out some undefined references to serious socioeconomic consequences and devotes several pages to timber harvest.

The State government makes no effort to define the serious socioeconomic consequences we are suffering in Southeast Alaska except to state that these consequences are as compelling today as they were in 2003.²⁵ I have not found ANYWHERE in the Draft EIS what 2003 socioeconomic consequences are supposed to be addressed by this NEPA planning process. Nor is there any reason given in the State government's petition or the Draft EIS to conclude that the 2003 serious socioeconomic consequences that the State nebulously relies upon were not addressed in the 2016 Plan.

It makes no sense for the State government or the Forest Service to kick off this process using regional socioeconomics from before 2003 without laying out what is actually happening today. I have lived in Southeast Alaska for 11 years now²⁶ and take issue with the State government's lack of insight into the resilience of Southeast Alaska communities. I

²⁵ DEIS Appendix A, p. 7.

²⁶ I have lived in Alaska my entire 47 years except for time spent Outside going to undergraduate school and then law school.

understand that some communities here were once heavily dependent on logging. And I can readily concede that some communities shrunk considerably once large scale clear cut logging tapered off and in places ceased. However this is not a Roadless Rule issue. Everyone knows that the timber industry was in steep decline before the Roadless Rule was applied to the Tongass. Moreover the past and current socioeconomics of the Southeast Alaska region are not confined to one sector of our regional economy. Since 2003 tourism and fishing (commercial and charter) have taken up slack in the economy. So its pretty ridiculous to rely on 2003 socioeconomics and the timber industry interests, as the State government has done.

The ridiculousness of the State government's dated socioeconomic concerns is highlighted by the State government's recent shake up of regional socioeconomics by severely cutting back on the Alaska Marine Highway (aka ferry services.) What really should happen is the money that the Forest Service is willing to waste on building roads for timber harvesting should instead go to a Marine Highway System. I know that suggesting that the Forest Service or the USDA fund ferry service is bound to wind up in the "not our area" section of the Final EIS. But think about it for a moment. The changes that the State government requests and that you and the Forest Service are considering are all at their core about road building. The road we really need in Southeast Alaska is a functioning marine highway system. The socioeconomic benefits of the marine highway would benefit Southeast Alaskans more than costly roads and short term economic benefits of an expanded timber harvest.

More to the point though, the deep cuts to ferry service are actually substantive to the NEPA analysis and your rulemaking decision. The cuts to ferry service is a recent change that is impacting our region greatly (far more recent than the 2003 impacts that the State government's petition references.) Yet this regional impact is not noted in Draft EIS. If (big big IF) the economic timber boom that State government is betting on were to happen it would not take place with the Southeast Alaska regional transportation system that existed when timber harvests were an economic driver in this region. That's a pretty significant change. It's like planning a major project and ignoring the fact that the bridge to the project site is washed out. The State government's gutting of the ferry service raises current and timely impact issues because our regional transportation system is, for lack of a better term, a mess.

Besides the outdated 2003 socioeconomic impacts the State government's only other state-specific concern is logging. The State government's petition makes no secret that it wants to increase timber harvests.²⁷ Looking outside the State government's petition this state-specific interest is also pretty obvious. In a March 1, 2019 letter to President Trump Alaska Governor Dunleavy said that removing the Roadless Rule would be "a significant victory for the timber industry in Southeast Alaska and their efforts to increase the annual timber harvest".²⁸ News reports indicate that Governor Dunleavy discussed with President Trump removing the Roadless Rule protections in order to benefit the timber industry.²⁹ And it appears that President Trump has ordained which alternative would be chosen by you, although given this

²⁷ See DEIS Appendix A.

²⁸ <https://www.documentcloud.org/documents/5976294-030119-DunleavyLetterToTrump.html>

²⁹ <https://thehill.com/policy/energy-environment/459070-trump-moves-to-permit-new-logging-in-alaskas-tongass-national>

administration's lack of transparency the public is being kept in the dark on how involved the President has been in the decision making process.³⁰

Despite the fact that increased logging is THE primary driver for the State government's petition, this NEPA process, and possible rule changes the Draft EIS statement of purpose and need does not specify that the Draft EIS is intended to increase timber harvests. **I think it is safe to say that the Draft EIS goes out of its way to avoid stating that the reason why the Forest Service is analyzing changes to the Tongass Roadless Rule is to increase timber harvests.**³¹ Now is a good time to remember what exactly the statement of purpose and need in an EIS is supposed to do. The statement of purpose and need in an EIS is to lay out the "underlying purpose and need to which the agency is responding".³² "[T]he purpose and need reflects the difference between the existing condition and the desired condition."³³ Obviously the Draft EIS's statement of purpose and need fails at this very fundamental NEPA requirement.

The Draft ROD is euphemistic when addressing the State government's specific interest in increasing timber harvests where it says:

In selecting the proposed rule among the several alternatives considered, the Department has given substantial weight to the State's policy preferences as expressed in the incoming Petition. The State's preference to emphasize rural economic development opportunities is consistent with the findings of the Interagency Task Force on Agriculture and Rural Prosperity established by Executive Order 13790 (issued Apr. 25, 2017). . . . The State's views on how to balance economic development and environmental protection offer valuable insight when making management decisions concerning NFS lands within Alaska.³⁴

Translation - "This change is intended to benefit the timber industry." Why not just come out and say it? Instead the Draft ROD continues the Draft EIS's contorted charades.

³⁰ https://www.washingtonpost.com/climate-environment/trump-pushes-to-allow-new-logging-in-alaskas-tongass-national-forest/2019/08/27/b4ca78d6-c832-11e9-be05-f76ac4ec618c_story.html. For all we know President Trump directed you to start raking the forests like the Fins.

³¹ While communications between Governor Dunleavy and the Administration have been opaque it is obvious that Governor Dunleavy believed that the Forest Service was engaged in this NEPA process in order to increase timber harvests. <https://www.documentcloud.org/documents/5976294-030119-DunleavyLetterToTrump.html>.

³² 40 CFR 1502.13.

³³ National Environmental Policy Act HANDBOOK, Amendment No.: 1909.15-2011-5, Effective Date: September 14, 2011, p 15.

³⁴ Draft ROD, 84 FR 55522, p. 55523. The ellipsis in this block quote cuts out your reference to Executive Order 13771. This Executive Order calls for the elimination of two regulations for the adoption of any new regulation. The elimination of the Tongass Roadless Rule is a deregulatory action that would indeed help fulfill the eliminate two regulations for every new regulation quota established in Executive Order 13771. Draft ROD, 84 FR 55522, p. 55527. However, this two for one directive from the President does not trump congressional mandates on how an agency is supposed to fulfill its purpose. Rather it invites arbitrary and capricious actions by our federal agencies because it pushes for unreasoned decisions, like the one at hand.

The arbitrariness of giving deference in the Draft ROD to the State government's desire to increase timber harvests by eliminating the Roadless Rule is clear. Just 13 months before its petition the same arguments were made by the State government and were rejected in the 2016 Plan. It makes no sense to all of the sudden give the State government's unwise policy preferences any weight, certainly not substantial weight. Nor does the State government's position on the application of the Roadless Rule to the Tongass involve any valuable insight that the State hadn't offered in prior planning processes or in litigation.³⁵

Identifying that timber harvests are THE reason why this NEPA process is going on is not merely academic or legalistic. A clear statement of purpose and need in the Draft EIS would give the public a fair opportunity to comment on the true proposed government action. Hiding the ball, as the Draft EIS and Draft ROD do, frustrates the public, creating more needless controversy.

A clear and honest statement of purpose and need is also essential for the crafting of impacts analysis. Instead of giving a true and honest analysis of the impacts of likely increased timber harvests in the Tongass the Draft EIS says:

While environmental impacts should be disclosed as soon as information is reasonably available and at the earliest practicable stage, it is not reasonable or efficient to develop numerous timber harvest or other project-level scenarios, nor is the public served by developing worst-case, best-case, or other hypothetical activity scenarios. It is reasonable and efficient to limit detailed site-specific impact analyses to when specific proposals are brought before the agency.³⁶

In essence the Draft EIS comes out and says that it is not going to analyze the impacts of increased timber harvests. This is outrageous when increases in timber harvests are real reason for this NEPA planning process. Couple this with dubious reliance on the 2016 Plan as a backstop that protects roadless values and its clear Draft EIS's impact analysis will not hold up to scrutiny. Additionally, nowhere do the applicable NEPA regulations give the Forest Service the option to forego relevant analysis in an EIS just because the agency deems such analysis "not reasonable or efficient." Rather, the Forest Service is tasked with taking a hard look at reasonably foreseeable impacts of removing the Roadless Rule. Outright dodging this task is arbitrary and capricious.³⁷

Without this kind of analysis of the foreseeable increased timber harvests in the Tongass the Draft EIS cannot begin to look at the environmental, socioeconomic or cumulative impacts of the Preferred Alternative. No one can tell if the Preferred Alternative will have greater

³⁵ The Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity (Oct. 21, 2017) cited in the Draft ROD is a pretty bland overly broad document that does not have a secret equation for Southeast Alaska's prosperity. In particular this document does not address when resource extraction threatens other drivers of rural prosperity such as tourism, fishing or subsistence. The State government elevation of timber harvests above other regional economic interests fails in this regard too. One thing that this Task Force report gets right is the central importance that transportation plays in rural communities. Id. At 22. Southeast Alaska regional transportation issues are not a concern for this State's current administration so it is off putting when the State feigns interest in our rural prosperity.

³⁶ DEIS p. 1-12.

³⁷ The Forest Service did actually analyze future road building and reasonably foreseeable future timber harvests in its EIS for the Idaho Roadless Rule. Idaho FEIS p. 95, 96, 196, 2657.

negative impacts than its positive impacts. This is inconsistent with the applicable NEPA regulations requiring full analysis of “reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”³⁸

Further evidence that there is not a state-specific purpose for this NEPA Process, other than increased timber harvests, is found in the State government’s preference for Alternative 6 which has no specific management of local concerns built into it.³⁹ None! Let that sink in before moving on.

The purpose and needs section of the Draft EIS (but not the State government's petition) says that State government and Forest Service are seeking to develop a rule that “accommodates the unique biological, social, and economic situation found in and around the Tongass.”⁴⁰ This quoted language is probably another euphemism for something like “the State and Forest Service are seeking to increase timber harvests in the Tongass.” If this is correct then this letter’s discussions of the problems with not so stating and the problems with the Draft EIS’s lack of analysis of increased timber harvests apply equally to this part of the statement of purpose and need.

But, what if developing a rule that “accommodates the unique biological, social, and economic situation found in and around the Tongass”⁴¹ is supposed to mean something more than just increasing timber harvest? Then this sounds kinda nice nice - like maybe the Forest Service’s intention is to address some region specific concerns in this NEPA planning process even if the State government failed to articulate state-specific needs besides logging. But alas, these words are just window dressing. As already discussed, if the State government had specific concerns it wanted addressed in a change to the Roadless Rule the State government would have spelled those out in its petition.⁴² The Draft EIS does not recognize state interests articulated by our State government (even increased timber harvests.)

The distinct failure of you and the Forest Service to lay out any “unique biological, social, and economic situation found in and around the Tongass”⁴³ is evidenced by the choosing of the alternative (the State’s preferred alternative) in the Draft EIS and Draft ROD that would gut all the protections of the Roadless Rule. In other words, after all the work of the NEPA planning process you and the Forest Service intend to settle on rule making that is

³⁸ 40 CFR1508.7.

³⁹ DEIS 2-16, 3-19.

⁴⁰ DEIS p.1-4.

⁴¹ DEIS p.1-4.

⁴² The Roadless Rule Exemption Petition regulations that were invalidated required a state to spell out the specific reasons why it sought an exemption. While those regulation are not applicable here they provide some scaffolding that the State could have followed to make a petition that was tailored towards state-specific concerns.

⁴³ DEIS p.1-4.

inconsistent with the very stated purpose and need of the NEPA process.⁴⁴ In this regard it strikes me as odd that at its beginning the Draft EIS says:

The USDA and Forest Service believe the 2001 Roadless Rule prohibitions on timber harvest and road construction/reconstruction *can be adjusted* for the Tongass in a manner that meaningfully addresses local economic and development concerns and roadless area conservation needs. (Emphasis added.)

No reasonable person would call completely doing away with the Roadless Rule an “adjustment!” It seems that not all of the Draft EIS was scrubbed to meet the President’s orders.

Maybe there is room to argue that action alternatives two, three, four or five in the Draft EIS accommodates “unique biological, social, and economic situation found in and around the Tongass”⁴⁵ better than the Roadless Rule. As I understand it some aspects of these alternatives were developed using public input. To at least put lipstick on this pig of a NEPA process one of the alternatives developed with public input should have been chosen in the Draft EIS and Draft ROD.⁴⁶ Instead the public is presented with a the worst case scenario as the Forest Service’s preferred alternative. Fairness, and good decision making, would afford the public another chance to comment if you select an action alternative other than the Draft EIS Preferred Alternative. That would give the public a chance to focus comments on whether Tongass will be managed to accommodate local concerns.⁴⁷

Living in Southeast Alaska it is pretty obvious that actual specific regional concerns are best protected by the Roadless Rule as it is currently applied to the Tongass. My personal concern is that the Roadless Rule best protects the sustainability of the deer that my family relies upon. About half of the dinners I feed to my boys (ages 7 and 9) feature deer. Both boys are allergic to fish (and a number of other common staples such as dairy and eggs) which means that we cannot substitute deer with locally caught fish. For many years we couldn’t even safely substitute deer with commercial beef as my boys tested positive for allergies to beef. Lucky for us now we can at least substitute deer meat with lesser quality beef. But like most groceries in Southeast Alaska beef is expensive.

Protecting my family’s deer harvest is not as simple as me drawing a circle on a map or me listing the areas where I hunt and asking that these areas be kept off limits to road building and timber harvests. There are two reasons for this. First, where I hunt changes constantly and varies widely. I have a few places I regularly go to like Verstovia Mountain, Bear Mountain, Gavan Hill and the Indian River valley. These go to spots are local and easy to access. But

⁴⁴ Interestingly, Governor Dunleavy’s March 1, 2019 letter to President Trump says that the Forest Service is “working hard” to reverse the Roadless Rule. <https://www.documentcloud.org/documents/5976294-030119-DunleavyLetterToTrump.html>.

⁴⁵ DEIS p.1-4.

⁴⁶ DEIS p. 1-5. I think its pervertedly backwards that the heavy burden was put on the citizens of Southeast Alaska to advocate for their specific concerns when the State government kicked off this process with its petition of flimsy and out-of-date concerns.

⁴⁷ I wonder whether you might already expect to choose one of the less impactful alternatives laid out in the Draft EIS but have publicly preferred the most impactful alternative in the Draft EIS and Draft ROD to make the public less opposed to a final decision that protects at least some of the primary concerns of Southeast Alaska’s residents. I hope that I am being overly cynical.

these aren't the only places where my family's deer is harvested. A few years ago I could have said that I have never hunted north of Salisbury Sound. Lately though areas north of Salisbury Sound have become more important to our harvest. Some years all the deer we harvest are taken from above 1000 feet. Other years we get a significant portion of our deer from easy beach hunts. Some years too I have harvested a significant portion of deer south of Cape Brunof. My point is that the harvest of deer for my household is not a static trip to one or two areas. This is why a broad and wide ranging Roadless Rule provides the only level of protection to my family's deer harvest that I am comfortable with.

The second reason is that we aren't talking about drawing just one circle on a map that could protect my personal specific interests. There are thousands of other people in Southeast Alaska who rely on the harvest of deer to feed their families. Even if my broadest definition of a hunting area were protected and the hunting area of someone else who didn't comment in this process winds up being whittled away with new roads and new logging that means that there likely would be more hunting pressure in the areas where I go.

I don't intend for this letter to focus on a detailed discussion of my deer harvests in Southeast Alaska. But I get into this level of detail to make the point that the "unique biological, social, and economic situation found in and around the Tongass"⁴⁸ is complicated. It is very complicated. My personal deer harvest example is matched (or exceeded) by thousands of other social, biological and economic issues in the Tongass. This includes the subsistence and commercial fishermen sharing similar concerns about impacts to fish stocks, the tourism industry and its thousands of employees who have a stake in Southeast Alaska maintaining its premium wilderness experiences, the wilderness values of the people who live in Southeast Alaska and the accompanying cultural values of its native peoples.

By ending up with a decision to remove the Roadless Rule protections the Draft EIS and Draft ROD have downplayed or completely ignored these local regional concerns. The State government does not speak for us in its petition or by its involvement in this NEPA process. Please listen to our voices in our comments and keep the Roadless Rule in tact.

While on the topic of the actual concerns of the people living in the Tongass I also want to point out that even when the Draft EIS tries to address impacts of removing the Roadless Rule it does a crummy job. For example, regarding the impacts of timber harvests on deer the Draft EIS says:

Reduction in habitat quality can be reduced through management (i.e. thinning) of young-growth stands.⁴⁹

First off, this is not plain language.⁵⁰ I had to read this sentence over and over to get that it is supposed to say that thinning of second growth can improve deer habitat. Second, this, and other substantive impacts discussions are buried in the Draft EIS appendixes. Few people are going to read through the Draft EIS. Fewer people are going to take the time to go on to read the appendixes which one would understandably expect to contain back ground information

⁴⁸ DEIS p.1-4.

⁴⁹ DEIS p. E-15.

⁵⁰ An EIS "shall be written in plain language" 2012 Final Guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews Under the National Environmental Policy Act (see also 40 CFR 1502.8) "Environmental impact statements shall be written in plain language and may use appropriate graphics so that decision makers and the public can readily understand them.")

(like the State government's petition.)⁵¹ But most disturbing it how meaningless this sentence is. Just because thinning of second growth can improve deer habitat that doesn't mean that thinning is happening. In my personal experience I am aware of huge second growth swaths of the Tongass that have not been thinned. There isn't a plan in place (or even discussed as a mitigation measure in the Draft EIS) to tackle the problem that these areas are effectively choked out dead zones with hardly any life. This kind of meaningless discussion permeates the Draft EIS.⁵²

In summary, if this NEPA process was intended to take into account the complicated "unique biological, social, and economic situation found in and around the Tongass" then it couldn't have ended up with the gutting of the Roadless Rule as its Preferred Alternative.⁵³

Conclusion

For the reasons discussed in this letter I support the continuation of the Roadless Rule in the Tongass. The Roadless Rule protects not only my harvest of deer but also regional socio-economics. I urge you and the Forest Service to do the same by keeping the Roadless Rule as it is.

Moving forward with a change to the Roadless Rule would not be good for the people living in the Tongass. It would also spur grid lock and well founded controversy since the Draft EIS has failed to meet NEPA's requirements to clearly state a purpose and need. Finally the Draft EIS doesn't take a hard look at the impacts of changes to the Roadless Rule by either ducking the analysis altogether or by relying on the 2016 Plan as a backstop.

Thank you for your consideration.

Sincerely,

__Signed Hard Copy__
Brent Edwards

⁵¹ By now its pretty clear that I think that the State's petition is not worth the paper it is written on. Yet, it is the first appendix in the Draft EIS, placing it ahead of what is supposed to be the NEPA impacts analysis.

⁵² Road washouts are another persistent problem in the Tongass. These threaten salmon streams which one reason why the fishing community is pretty much united against getting rid of the Roadless Rule. As far as I can tell the Draft EIS has no plan to mitigate this problem. It is inconsistent with reality to think that building new roads using standards that are different from those used in the 1980s will eliminate the washout problem, and corresponding fish impacts. In my experience the roads in the Sitka area that were rebuilt to modern standards (St. John the Baptist Bay and Eagle River at the head of Krestof Sound) washed out again in just a few years after being reworked.

⁵³ If the application of the Roadless Rule to the Tongass National Forest can be gutted based on a purpose and need as flimsy as what is in the Draft EIS then there is nothing stopping the gutting of the Roadless Rule Nation-wide. Any state government can put forward the same nebulous reasons for change and, if this is NEPA process is allowed to stand, then the Forest Service can simply cook up an EIS and poof - the Roadless Rule is dead. I don't doubt that this current administration would like this result. But its not right, sustainable, durable or fair to the process.