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First name: Chad

Last name: Hutchison

Organization: Office of Alaska State Senator John Coghill

Title:

Comments: Please see attached comment from Alaska State Senator John Coghill's Office.

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November 12, 2019

Ken Tu, Interdisciplinary Team Leader

Alaska Roadless Rule, USDA Forest Service  
PO Box 21628

Juneau, Alaska 99802-1628

Re: Tongass National Forest[mdash] Support for Alternative 6 and Encouragement to the United States Department of Agriculture (USDA) Forest Service (Service) to Commence a New Revision Process for the Tongass Land Management Plan (TLMP) (Amended 2016)) to Allow Increased Harvest of Old-Growth Timber

Dear Mr. Tu:

This office has reviewed the proposed rulemaking for the Tongass National Forest on the Federal Register website 1 and supports proposed Alternative 6. In addition to the support for Alternative 6, the Forest Service is encouraged to revise the Tongass Land Management Plan (TLMP), to allow increased productive harvest of old-growth timber.

I. Support for Alternative 6.

Substantial weight should be given to the State's official policy preferences for exempting the Tongass from the Roadless Rule. Here, the Dunleavy Administration and the federal delegation agree that the Tongass should be exempt.<sup>2</sup> Their voices are joined by others in the State Senate, including this one.

After review of the State's January 19, 2018 petition (including the referenced exhibits),<sup>3</sup> the Forest Service has the basis for a good-faith, reasoned explanation for the current policy change. That policy change (proposed by the State) can provide a legal foundation, if the Service so chooses to incorporate. The reasoned explanation aligns with the requirements articulated in *Organized Vill. of Kake v. U.S. Dep't of Agric.*, 795 F.3d 956 (9th Cir. 2015).

Legally, as pointed out by the State's petition, Alternative 6 "fits" with the congressional vision found in the Alaska National Interest Lands Conservation Act (ANILCA)<sup>4</sup> and the Tongass Timber Reform Act (TTRA).<sup>5</sup> Both ANILCA and TTRA demonstrate the balance of "conservation" versus "the market demand for timber."<sup>6</sup> De facto creation of additional land withdrawals (via implementation of the Roadless Rule (because infrastructure cannot be reasonably developed)), should be avoided.

Alternative 6, if chosen, can be defended. Historically, the USDA defended the "well-reasoned" exemption in its 2010 brief in the Federal District Court of Alaska.<sup>7</sup> Substantially similar arguments can be made again.

Noteworthy: the vast majority of the Tongass National Forest already has protective restrictions on road building and timber harvest. These protections will continue irrespective of whether a Roadless Rule is implemented or not. Alternative 6, if implemented, would likely only affect a very small portion of the total forest area.

II. Request for the Forest Service to revise the 2016 Tongass Land & Resource Management Plan (TLMP) to Allow Increased Harvest of Old-Growth Timber.

Support for Alternative 6 is important, but the Forest Service should also recognize that restrictive elements incorporated in the 2016 TLMP (particularly the transition plan to young-growth timber) need to change back to increasing economically viable harvest of old-growth timber.<sup>8</sup> On this front, a change in focus by the Service would be a "step in the right direction."

The relationship between the October 17, 2019 proposed rule and the 2016 Forest Plan is referenced on listed page 8 of the proposed rule.<sup>9</sup> Although the proposed rule would direct the Tongass Forest Supervisor to provide notice of administrative change to lands "unsuitable" to the 2016 Tongass Forest Plan,<sup>10</sup> all other aspects of the Plan would remain operational. Chief among the "operational aspects" is the continued insistence upon a young-growth transition strategy."

The timber industry is dependent on old-growth harvest.<sup>12</sup> Timber companies still say a full transition to a young-growth industry is 20 years or more away.<sup>13</sup> In the meantime, this office agrees with the Ketchikan Chamber of Commerce that young growth transition is "not economically viable."<sup>14</sup>

Economic viability is key. If any underlying policy goal is to meaningfully assist the timber industry in Southeast Alaska, there must be an emphasis on the "economics of the harvest." If a Roadless Rule exception is implemented, but the harvest isn't economically viable (because of "young growth restrictions") then the industry will continue to struggle.

To the extent that the Forest Service can reconsider the relationship to the proposed rule and the current forest plan (particularly as it relates to old-growth harvest) all the better.

Sincerely,

[Signature]

Alaska State Senator John Coghill

1. <https://www.federalregister.gov/documents/2019/10/17/2019-22638/special-areas-roadless-area-conservation-national-forest-system-lands-in-alaska> (as of November 8, 2019 at 3:12PM).

2. <https://www.murkowski.senate.gov/press/releases/idegation-welcomes-draft-of-tongass-specific-roadless-rule> (as of November 8, 2019 at 3:12PM).

3. Submitted by DNR Commissioner Mack under Governor Walker and continued by the Dunleavy Administration.

4. See 16 USC 410hh-3233, 43 USC 1602-1784; Public Law 96-487, approved December 2, 1980, (94 Stat. 2371). In ANILCA Congress set aside another 5.5 million acres of the Tongass wilderness. This additional wilderness "set aside" represented a "proper balance" between restrictive conservation system units and lands

appropriate for more intensive use. The practical result in the Tongass? No more restrictive conservation units were needed. In fact, Congress (in an effort to restrain a, potentially, over-restrictive future executive branch) expressly stated that the executive branch is prohibited from withdrawing more than five thousand acres within the State of Alaska without the approval of Congress. 16 USC [sect] 3213(a).

5 See Pub.L. No. 101-626, 104 Stat. 4426 (Nov. 28, 1990). The TTRA "imposed additional planning requirements for the Tongass." *Natural Res. Def Council v. United States Forest Serv.*, 421 F.3d 797, 801 (9th Cir.2005). Those requirements include, imposing a unique duty by the Forest Service to consider the market demand for timber when crafting a forest plan. See *Se. Conference v. Vilsack*, 684 F. Supp. 2d 135, 138 (D.D.C. 2010).

6 Id.

7 See USDA Brief Ex 2 to Petition.

8 See [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fse527907.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fse527907.pdf) (as of November 8, 2019 at 3:12PM).

9 See <https://www.federalregister.gov/documents/2019/10/17/2019-22638/special-areas-roadless-area-conservation-national-forest-system-lands-in-alaska> (as of November 8, 2019 at 3:52PM).

10 See 36 CFR 219.13 (/select-citation/2019/10/17/36-CFR-219.13)(c)) and Tongass Forest Plan, Appendix A: Identification of Lands Suitable for Timber Production and Limitations on Timber Harvest.

11 See <https://www.federalregister.gov/documents/2019/10/17/2019-22638/special-areas-roadless-area-conservation-national-forest-system-lands-in-alaska> at listed page 8 (as of November 8, 2019 at 3:52PM).

12 See <https://www.eenews.net/stories/1061191089> (as of November 8, 2019 at 4:09PM).

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14 See <https://www.ketchikanchamber.com/t1mp-letter-to-sen-murkowski> (as of November 8, 2019 at 4:31PM).

[Position]

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