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Title:

Comments: omments on Roadless Ruleuy EIS-- Alaska

Please accept the attached comments for he pending AK Roadless ES

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Reston, VA 20190

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Honorable Sonny Perdue December 16, 2019

Secretary of Agriculture

1400 Independence Ave, SW

Washington DC 20250

US Forest Service

Juneau, AK 99801

Delivered by Email: akroadlessrule@fs.fed.us

Dear Sirs:

This is a comment on the Draft Roadless EIS which is now under consideration by the USFS. I have been involved in the Tongass Land Management Plan and the Raodless EIS for 43 years. I began this work as the Legislative Director for Sen. Ted Stevens from 1976-1981). Since then I haev been a private PR actioner in Alaska and now in the Washington DC area. My clients have included a number of companies, Cities, and other municipal governments vitally interested in the TLMP and Roadless issues.

To that end, please accept these comments for your consideration. I strongly favor the full exemption embodied by Alternative 6 in the current EIS. This is the only way to insure that the revised Forest Plan can be fully revised and implemented. Over the years, there have been many promises that TLMP Plans and the current Roadless

EIS will provide sufficient timber and other land proscription which will allow the Southeast Alaska Region to prosper. These promise have not been kept.

The only way to being this process so it can help the diverse interests in Southeast Alaska including mining, timber, renewable energy, transportation and municipal government needs is to implement a full Roadless exemption as is and has been supported by the last six Governors and the entire Congressional Delegation.

Please make a decision to choose Alternative 6 as the final alternative for the pending Roadless EIS. I attach a further explanation as to why the other Alternatives will not work.

Thanks very much

Steve Silver

Robertson, Monagle, and Eastaugh

Reston, VA 20190

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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 as 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. [sect]294.12 (b)(1-7) is preceded by the words "if the Responsible Official determines that [hellip] 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. [sect]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. [sect] 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:

[sect]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. [sect]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 [hellip] 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]

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." [ensp]40 C.F.R. [sect][ensp]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." [ensp] 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.

[Position]