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USDA Forest Service, Alaska Region

Ecosystem Planning and Budget Staff

P.O. Box 21268

Juneau, Alaska 99802-1628

Re: Comments Alaska Specific Roadless Rule.

Chugach Alaska Corporation ("CAC") submits the following comments on the Forest Service's Draft Environmental Impact Statement (DEIS) for Alaska specific Roadless Rule.

CAC is the Alaska Native Regional Corporation for the Chugach Region established pursuant to the Alaska Native Claims Settlement Act ("ANCSA"). CAC owns or has valid selection rights to over 625,000 acres of surface and subsurface estate within the boundaries of the Chugach National Forest. CAC and its shareholders are uniquely affected by the Forest Service's management directions on the Chugach, and have important historical, cultural, and economic interests that must be considered by the Federal government.

CAC's rights with respect to its property and adjacent Chugach lands are governed in part by the Alaska National Interest Lands Conservation Act ("ANILCA"). Through ANILCA, Congress acknowledged public lands in Alaska are "unique" and must be managed differently than those in the Lower 48. "ANILCA repeatedly recognizes that Alaska is different."' Congress clearly and unambiguously struck the balance it intended between providing "sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska" and securing "adequate opportunity for satisfaction of economic and social needs of the State of Alaska and its people."' The Roadless Rule's application to Alaska has disharmonized that balance, resulting in an unworkable framework for national forest management throughout the state.

I Sturgeon v. Frost, 139 S. Ct. 1061, 1070 (2016).
2 16 U.S.C. [sect] 3101(c).

It is into this "unique" legal and historical context the Forest Service once more forays. CAC supports the Forest Service's efforts to adopt a long-promised and much-needed state-specific roadless rule for Alaska. The Alaska roadless rule should determine which currently designated roadless areas require a different management direction from the status quo, while still conserving certain roadless areas for future use. As part of that effort, CAC strongly urges the Forest Service to include the Chugach in the state-specific rulemaking alongside the Tongass National Forest. All the policy reasons that support exempting the Tongass from the Roadless Rule's limitations on economic development apply to the Chugach, and a more defensible rule will result from treating Alaska's two national forests equally. The Chugach and the Tongass National Forests should be evaluated jointly in the rulemaking to determine appropriate management direction for roadless areas within both forests.

I. CAC supports the Forest Service's development of a state-specific Alaska Roadless Rule.

The current proposal for an Alaska-specific roadless rule has been a long time coming. In 2000, when the Forest Service first proposed the Roadless Rule, one of the few alternatives under consideration specifically exempted the Tongass.3 The Forest Service's "Tongass Exempt" alternative would have deferred the decision whether to apply the Roadless Rule's prohibitions on commercial timber harvest and roadbuilding to the Tongass until 2004, allowing more time for public comment and an adjustment period for the timber industry in southeast Alaska adapting to the recently-completed 1999 Tongass Land and Resource Management Plan. In January 2001, however, the Forest Service reversed itself and included the Tongass in the final Roadless Rule. According to the Forest Services' record of decision, including the Tongass was necessary for environmental protection despite the negative economic consequences that would result. The final Roadless Rule prohibited road construction, commercial timber harvest, and other development in 5.4 million acres (99 percent) of the Chugach and 9.2 million acres (55 percent) of the Tongass.

The Roadless Rule immediately resulted in contentious litigation that continues to this day. In January 2001 the State of Alaska sued the U.S. Department of Agriculture ("USDA") in Alaska federal district court over the Roadless Rule's applicability in Alaska.' The State pointed out correctly that various federal statutes, including ANILCA, the National Forest Management Act ("NFMA"), and the Tongass Timber Reform Act ("TTRA") prohibited the Forest Service from applying the Roadless Rule to national forests in the state.

In June 2003 the USDA, the State, and intervenor-plaintiffs (including CAC) entered a settlement agreement ending the lawsuit. Pursuant to the settlement agreement, the USDA published an advanced notice of proposed rulemaking concerning "the applicability of the

3 U.S. Dept of Agriculture, Forest Serv., Special Areas; Roadless Area Conservation; Final Rule, 68 Fed. Reg. 3244, 3254 (Jan. 12, 2001).

4 State of Alaska v. U.S. Dep't of Agriculture, No. 3-01-00039-JKS (D. Alaska 2001).

roadless area conservation rule t? both the Tongass and Chugach National Forests in Alaska,"5 and a notice of proposed rulemaking to exempt the Tongass from the Roadless Rule until a final statewide rule could be promulgated.' On December 30, 2003, the USDA promulgated a final rule known as the "Tongass Exemption," which exempted the Tongass from the Roadless Rule "fu)ntil the USDA promulgates a final rule concerning application of this subpart within the State of Alaska."' The Tongass Exemption was always intended to be an intermediate measure, giving the USDA more time to adopt a permanent Alaska-specific rule.

Under the Tongass Exemption, the Forest Service made commendable efforts to implement Congress's mandate

that Alaska public lands should be available for economic opportunities. Between April and July 2008, the Forest Service authorized three timber sales within inventoried roadless areas on the Tangass. But even the temporary Tongass Exemption was unexpectantly short-lived.

In December 2009, environmental groups and a southeastern Alaska tribe challenged the Tongass Exemption, arguing that it was arbitrary and capricious, along with violating the National Environmental Policy Act's ("NEPA") procedural requirements.' The Alaska federal district court granted summary judgment on the environmental groups' claims and enjoined the Tongass Exemption. The Ninth Circuit affirmed the injunction after rehearing en boric.' But the Ninth Circuit's decision was based entirely on the Tongass Exemption's procedural defects: "(T]he agency was unable to defend its flip-flop when the case was argued in the district court, and the agency chose not to participate in the appeal."1[deg]

In response to the Alaska federal court's injunction, the State of Alaska brought a new lawsuit in the D.C. federal district court[mdash]this time a facial challenge to the Roadless Rule. On September 20, 2017, the D.C. federal district court rejected the State's contentions that the Roadless Rule violated a slew of federal statutes, including ANILCA's prohibition on agency withdrawals of more than 5,000 acres of public lands in Alaska.' But the district court's analysis of ANILCA was cursory and overlooked the Supreme Court's precedent of interpreting provisions in ANILCA "differently" than other statutes. The State's appeal of that decision is currently pending in the D.C. Circuit.

5 U.S. Dep't of Agriculture, National Forest System Land and Resource Management Planning; Special Areas; Roadless Area Conservation, Advance Notice of Proposed Rulemaking; Request for Comment, 68 Fed. Reg. 41,864 (Jul. 15, 2003).

6 U.S. Dep't of Agriculture, Special Areas; Roadless Area Conservation; Applicability to the Tongass National Forest, Alaska, Notice of Proposed Rulemaking; Request for Comment, 68 Fed. Reg. 41,865 (Jul. 15, 2003).

' U.S. Dep't of Agriculture, Special Areas; Roadless Area Conservation; Applicability to the Tongass National Forest, Alaska, Final Rule and Record of Decision, 68 Fed. Reg. 75,136, 75,146 (Dec. 30, 2003) (codified at 36 C.F.R. [sect] 294.14(d)) (emphasis added).

8 Organized Vill. of Kake v. U.S. Dept of Agriculture, 776 F. Supp.2d 960 (D. Alaska 2011).

9 Organized VIII. Of Kake v. U.S. Dept of Agriculture, 795 F.3d 956 (9th Cir. 2015) (en banc).

1[deg] Id. at 971 (Christen, J. concurring).

11 State of Alaska v. U.S. Dep't of Agriculture, 273 F. Supp.3d 102 (D.D.C. 2017).

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The legal uncertainty surrounding the Roadless Rule and it's application in Alaska is a compelling reason to pursue an Alaska-specific roadless rule. The Forest Service has recognized "the great uncertainty about the implementation of the roadless rule due to the various lawsuits,"' and even if the D.C. case is resolved, it does not end the uncertainty over the Roadless Rule's compatibility with ANILCA, as applied in Alaska.

Creating an Alaska-specific roadless rule would allow the Forest Service to return a large aspect of federal land management in Alaska to the balance Congress originally intended. Alaska's national forests have always provided diverse opportunities for timber, mining, tourism, subsistence, and recreation. The multiple use mandate

required by the NFMA and the land management planning decisions made on the Forest and District levels provide adequate protections for all forest uses, including remote recreation and roadless area values. Because the legal authority for applying the Roadless Rule in Alaska is in doubt and sound policy reasons support allowing the Forest Service more flexibility in allowing economic development on both the Chugach and Tongass, this rulemaking process is a step in the right direction.

II. The Forest Service should include the Chugach National Forest in the proposed Alaska Roadless Rule.

CAC endorses the State's petition for rulemaking but urges the Forest Service to include the Chugach in the state-specific Alaska roadless rule. The Forest Service's Notice of Intent indicates the agency is willing "to evaluate other management solutions that address infrastructure, timber, energy, mining, access, and transportation needs to further Alaska's economic development.' All of those issues and economic concerns are present on the Chugach, just as on the Tongass. There is no reason to limit the current rulemaking to the Tongass.

Ninety-nine percent of the Chugach is currently subject to the Roadless Rule. Most of CAC's economically viable lands are adjacent to or surrounded by roadless areas. In most cases, CAC has no practical means of access to inholdings except across roadless areas. That fact creates a public perception problem: if the public believes there should be no roads in roadless areas, then CAC's lawful and appropriate activities become tainted with the false appearance of impropriety. More careful consideration of which areas in the Chugach should remain roadless is necessary to ensure CAC and other Alaska Native Corporations are not unfairly viewed because of their status under ANCSA and ANILCA.

12 U.S. Dep't of Agriculture, Special Areas; Roadless Area Conservation; Applicability to the Tongass National Forest, Alaska, Final Rule and Record of Decision, 68 Fed. Reg. 75,136, 75,138 (Dec. 30, 2003) (codified at 36 C.F.R. [sect] 294.14(d)).

13 U.S. Dep't of Agriculture, Roadless Area Conservation; National Forest System Lands in Alaska, 83 Fed. Reg. 44,252 (Aug. 30, 2018) (emphasis added).

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The Roadless Rule also makes it more difficult, confusing, and expensive for CAC to develop and access its property. CAC has a fiduciary duty to its shareholders to realize economic opportunities and a legal right to develop its resources pursuant to ANCSA. CAC has valid existing statutory and common law rights of access to its land, but the Roadless Rule often presents additional administrative and bureaucratic obstacles. Time, effort, and costs are unnecessarily expended and incurred to secure CAC's valid access rights, despite the Forest Service's efforts to facilitate CAC's activities. Countless future projects may never be implemented because of those administrative burdens, or simply because of the uncertainty the Forest Service has created in its management of the Chugach.

The Chugach, just as the Tongass, is governed by unique laws that guide economic development and must be considered in the context of roadless area conservation. In 1982 the Forest Service, CAC, the State, and other federal agencies entered the Chugach Natives, Inc. ("CNI") Settlement Agreement, resolving a legal dispute over ANCSA-authorized development and access rights on the Chugach. The CNI Settlement Agreement confirmed CAC's rights to acquire and exchange lands with the Forest Service; to explore, develop, and produce minerals and gas; and to access CAC property across Chugach lands. The CNI Settlement Agreement and the Roadless Rule's effects on CAC's rights were never considered before the Roadless Rule was applied to the Chugach.

In 2001 CAC joined the State's lawsuit challenging the Roadless Rule's application to national forests in Alaska because CAC believed the rule was inconsistent with ANILCA. CAC was a party to the 2003 Settlement Agreement in which the USDA promised to consider a rule exempting "both the Tongass and Chugach National Forests in Alaska." Fifteen years later, the USDA has not delivered on that promise.

The Chugach is important to the people of Alaska, and particularly Alaska Natives. CAC has a duty to provide its shareholders with opportunities for resource development and subsistence; rights that were enshrined in ANCSA as a settlement for the relinquishment of Native land claims from time immemorial. It would be a grave injustice for the Forest Service to decide the Tongass is more worthy of an exemption from the Roadless Rule simply because it has been the focus of more national attention and political controversy. Simply put, the Forest Service should not decide to allow resource development on the Tongass in exchange for environmental protections on the Chugach. The Forest Service should include the Chugach in the state-specific Alaska roadless rule.

CAC does support the State of Alaska's position, along with Alaska's Congressional Delegation in recommending Alternative 6, Total Exemption for the Tongass and urges reconsideration of adding the Chugach for the Alaska specific Roadless Rule.

Thank you for the opportunity to comment.

Chugach Alaska Corporation [bull] Anchorage, AK 99503

Sincerely,

[signature]

Sheri Buretta

Chairman of the Board

Cc: Christopher B. French, Acting Deputy Chief, U.S. Forest Service

[Position]