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COMMENT SUBMITTED TO THE
UNITED STATES DEPARTMENT OF AGRICULTURE FOREST SERVICE
ON THE RULEMAKING FOR THE ALASKA ROADLESS AREA
DRAFT ENVIRONMENTAL IMPACT STATEMENT

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

Submitted by:

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I. Executive Summary and Structure of Comment

In accordance with the National Forest Management Act and [sect]1503.1(a)(4) of the Council on Environmental Quality (CEQ) rules, 1 the undersigned parties are submitting the following comment on the Draft Environmental Impact Statement (DEIS) on Rulemaking for Alaska Roadless Areas and requesting their comments be considered by the United States Forest Service (USFS) as they decide whether to exempt the Tongass National Forest and areas of the Chugach National Forest from the 2001 Federal Roadless Rule and produce a final environmental impact statement (EIS) under the requirements of the National Environmental Policy Act (NEPA).

Public participation is a crucial part of agency decision making. Federal agencies are bound by 40 CFR. [sect]1506.6(a) of the CEQ rules to "make diligent efforts"² to include the public in the NEPA process, and by 40 CFR [sect]1503.1(a)(4) to request comments from the public. Public engagement is a unique right of individuals within a democracy to engage with their government. Thorough public engagement processes improve decisions by ensuring diverse viewpoints are considered and help build the public's trust in government institutions by incorporating public values into decisions. Soliciting feedback from the public is therefore a necessary part of good decision making. The public engagement process for this action has not been satisfactory; the DEIS for the proposed exemption of the Tongass is extremely long and important information is obscured amongst often contradictory statements, making it incredibly difficult for the public to exercise their right to engage with the government regarding this proposal. We have spent the

1 40 CFR. [sect] 1503.1 ("(a) After preparing a draft environmental impact statement and before preparing a final

environmental impact statement the agency shall: . . . (4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.").

2 40 CFR. [sect]1506.6 ("Agencies shall: (a) Make diligent efforts to involve the public in preparing and implementing NEPA procedures.").

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bulk of this comment analyzing these contradictory statements, demonstrating why overall the proposal is arbitrary and capricious.

A. About the Authors of this Comment

We are graduate students in the Masters of the Environment Program at the University of Colorado - Boulder, and are academically, professionally, and personally interested in public land management, conservation, and sustainable resource use.

Despite growing up in Massachusetts, Kate Oetheimer has been interested in the Tongass National Forest ever since the third grade, when she conducted a project about the state of Alaska. Upon graduating later this year, Kate plans to spend the spring season running outdoor programming at the World Association of Girl Guides and Girl Scouts Swiss Chalet before returning to Colorado and establishing her career in local, state, or federal land management.

Having grown up in the great state of Oregon, Christine Zenel has developed a deep appreciation of and value for the old-growth forests of the Pacific Northwest. While she has yet to visit Alaska, she attaches the same value to the Tongass National Forest, hoping to one day hike within its bounds and experience its pristine beauty. Upon graduation this year, Christine will continue her pursuit of establishing a career in local, state, or federal land management.

Given our love of exploring, studying, and advocating for the conservation of public lands we write this comment from a position of academic, professional, and personal interest. Actions taken upon or about the Tongass National Forest greatly impact our lives and goals. We therefore hope that this comment provides a testament to our deep and genuine interest in this Forest and its management.

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B. Purpose and Format of this Comment

In this comment, we will address and analyze the following:

1. The significance of the Tongass National Forest in terms of its unique social, economic, and environmental values that the proposal would adversely impact (Sec. II.).
2. Contradictory statements made in the DEIS regarding how the proposal overall compares to the Purpose and

Need Statement and the Key Issues it lays out (Sec. III.).

3. The arbitrary and capricious nature of the proposal (as defined in *Motor Vehicle Manufacturers Association v. State Farm Insurance Co.* 463 U.S. 29) (Sec. III.).

4. The absence of a reasonable and good faith effort on behalf of the agency to comply with the National Historic Preservation Act (NHPA) (Sec. IV.).

5. The absence of reasoning for not complying with the NHPA regarding conducting a historic property inventory of the Tongass National Forest to inform the proposal, a federal undertaking (Sec. IV.).

6. How the proposal compares to the Colorado and Idaho Roadless Rules, which both maintain the spirit of the 2001 Roadless Rule despite their roadless protection exemptions (Sec. V.).

7. The paradox of the proposal aligning with the existing 2016 Tongass National Forest Land and Resource Management Plan, which indicates that certain land use designations in the Forest are to be managed for their roadless characteristics (Sec. VI.).

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C. Requests Made of the USFS in this Comment

Based on our analysis presented in the preceding section, we request that the agency conduct the following before selecting any Alternative other than Alternative 1.

1. Adhere to the Purpose and Need Statement as outlined in the DEIS by:

1. Ensuring allowed road density is consistent with the goal of meaningfully addressing roadless area conservation needs as stated in the Purpose and Need.
2. Accommodating the unique social conditions of the Tongass National Forest as stated in the Purpose and Need.

2. Explain why Alternative 6 is preferred when the information presented in the DEIS contradicts that proposal by:

1. Illustrating how the proposal addresses Key Issue 1 (promote roadless conservation).
2. Illustrating how the proposal aligns with the DEIS's stated goal of managing for "intact ecological values."
3. Illustrating why characterizations of impacts to physical values made in the DEIS are considered "slight," despite entirely eliminating existing protections.
4. Illustrating how the proposal addresses Key Issue 2 (support local and regional socioeconomic well-being, Alaska Native cultures, rural subsistence activities, and economic opportunity across multiple economic sectors).

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1. Illustrating how the proposal supports economic opportunity across multiple sectors despite propping up the timber industry at the expense of the more lucrative tourism and seafood industries.
2. Illustrating how the proposal protects Alaska Native cultural purposes regarding tree harvest in the Forest.
3. Illustrating how the proposal addresses Key Issue 3 (conserve terrestrial habitat, aquatic habitat, and biological diversity).

3. Comply with Section 106 of the NHPA and address concerns regarding compliance of the NHPA by:

1. Consulting with Alaska Native Tribes and Corporations in reasonable and good faith effort.
2. Explaining why the agency formally engaged with Tribes through NEPA rather than the NHPA.
3. Conducting an inventory of historic properties in order to inform the proposal.
4. Explaining why the proposal does not qualify as an undertaking.

4. Explain how the proposal can both align with and supersede the 2016 Tongass Land and Resource Management Plan's goal of managing certain designated areas for their roadless characteristics.

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II. Significance of the Tongass National Forest

The Tongass National Forest, located in Southeast Alaska, covers nearly 17 million acres and contains the world's largest intact old-growth temperate coastal rainforest. This intact forest has unique social, economic, and environmental values that ought to be protected and preserved.

A. Social Values of the Tongass National Forest

The Tongass National Forest holds many important cultural values for Alaska Native peoples and other Alaskans. The Tongass National Forest includes the traditional homelands of the Tlingit, Haida, and Tsimshian people. For Native communities, tribal identity and history is closely tied to their traditional homelands. Richard Chalyee [Eacute]esh Peterson, the President of the Central Council of Tlingit and Haida Indian Tribes of Alaska, describes the relationship between his people and the Tongass as "immemorial" and explains that:

"our origin stories are derived from these lands. Our ancestors are buried here. Our songs and dances are created here. Our languages have always been spoken here...Our health and wellbeing, identity, and worldview are intricately woven into the fabric that is our homeland. "3

Removing roadless protections in the Tongass is a neocolonialist version of the land-grabbing acts and genocide directed at American Indians the federal government has practiced since the inception of our country. Removing roadless protections would significantly harm the abilities of Alaska Native tribes to continue their traditional ways of life.

One example of the relationship between the Tongass and the Native communities whose homelands it includes can be seen in the relationship between tribes and salmon; the Tongass

3 Richard Chalyee [Eacute]esh Peterson, "Op Ed: Respect Alaska Tribes Rights on the Tongass Question," Alaska Business, October 17, 2019, <https://www.akbizmag.com/industry/alaska-native/op-ed-respect-alaska-tribes-rights-on-the-tongass-question/>.

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supports some of the largest wild salmon populations in the world.⁴ Salmon are an integral part of tribal culture, religion, and sustenance in Alaska and the greater Pacific Northwest, both in terms of their historic cultural relevance and contribution to modern community survival.⁵ Given the important cultural significance the Tongass holds for many Native communities, the Forest Service must retain roadless protections in order for the Tongass to continue protecting and preserving these important values that are key to Alaska Native self-determination.

The Tongass National Forest also holds important social and cultural value for many non-Native Alaskans. About 17 percent of Alaskans (120,000 people) live in rural areas, and for many of these people subsistence (defined by the Alaska Department of Fish and Game as "noncommercial customary and traditional uses of fish and wildlife")⁶ is the most consistent and reliable way to support themselves. Approximately 95% of households in rural Alaska use fish to support themselves, and 86% use game.⁷ Although these are statewide figures, they help paint an important picture when it comes to the role the Tongass plays in supporting the livelihoods of Alaskans that live in and around the Forest. Maintaining habitat for fish and game by protecting the Tongass is essential to ensuring that subsistence living in rural Alaska remains feasible.

In addition to social and cultural value, the Tongass has a great deal of recreational and tourism value. As the largest intact temperate rainforest in the world and the largest National Forest in the country, the Tongass offers recreation and visitor experiences not found anywhere else. The Tongass holds value not only for those who live in or around the Forest, or who

4 "The Tongass," Alaska Conservation Foundation, accessed November 22, 2019, <https://alaskaconservation.org/protecting-alaska/priorities/protecting-lands-waters/tongass-rainforest/>.

5 "Tribal Salmon Culture: Salmon Culture of the Pacific Northwest Tribes," Columbia River Inter-Tribal Fish Commission, accessed November 22, 2019, <https://www.critfc.org/salmon-culture/tribal-salmon-culture/>.

6 "Subsistence Fishing," Alaska Department of Fish and Game, accessed December 7, 2019, <https://www.adfg.alaska.gov/index.cfm?adfg=fishingSubsistence.main>.

7 Azmat Khan, "Living off the Land in Rural Alaska," PBS Frontline, July 24, 2012, <https://www.pbs.org/wgbh/frontline/article/living-off-the-land-in-rural-alaska/>.

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consider the Tongass to be their traditional homeland, but also for the one million people who travel to the Forest annually. Moreover, the Tongass holds special value to those who dream of visiting the Forest in the future.⁸ As Martin Nie writes in *The Governance of Western Public Lands*, "As population and development run amok in the lower forty-eight states, Alaska becomes an increasingly iconic place."⁹ Should the Tongass lose its roadless protections, the Forest, an essential landscape to Alaska's national identity, will also lose its value to the entire nation.

B. Economic Values of the Tongass National Forest

As the largest intact temperate rainforest in the world, the Tongass holds immense economic value that hinges on maintaining its roadless characteristics. Tourism and commercial fishing are two of the most profitable industries in Southeast Alaska. These two industries employ over 10,000 people (over 25% of jobs in the region) and generate over two billion dollars in revenue annually. ¹⁰ Crucially, both of these industries rely on the preservation of the Tongass National Forest for the unique wild experiences the Forest offers and the

continuation of the region's hatcheries and fisheries. As compared to the tourism sector, the timber industry only provides 400 jobs (less than one percent of jobs in the region).¹¹ Additionally, the Tongass has significant economic value in relation to the subsistence livelihoods mentioned above. Clearly, the Tongass is more economically valuable as it is in its current natural state than it will be if logging is allowed to expand into areas currently protected under the Roadless Rule.

8 "Introducing the Tongass National Forest," Alaska Wilderness League, accessed December 5, 2019, <http://www.alaskawild.org/wp-content/uploads/2014/09/Introducing-the-Tongass-FINAL.pdf>.

9 Martin Nie, *The Governance of Western Public Lands* (Kansas: University of Kansas Press, 2008), 128.

10 Ryan Richards, "Fraud in the Tongass," Center for American Progress, October 3, 2018, <https://www.americanprogress.org/issues/green/reports/2018/10/03/458961/fraud-in-the-tongass/>.

11 "Fraud in the Tongass," Richards.

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C. Environmental Values of the Tongass National Forest

The Tongass National Forest holds unique environmental value that ought to be preserved through environmental protection. The Forest has approximately 17,000 miles of undammed creeks, rivers, and lakes, and 17 million acres of land that provide habitat for a wide range of different animals including the Alexander Archipelago Wolf, bears, bald eagles, five different species of salmon, deer, the Queen Charlotte Goshawk, and the Prince of Wales Spruce Grouse. ¹²

The Alexander Archipelago Wolf is a rare species of wolf that lives in the Tongass National Forest and throughout Southeast Alaska. The wolf is especially sensitive to human activity that causes disturbances and affects habitat loss for deer populations, one of the wolf's important sources of prey.¹³ Additionally, expanding road systems often leads to greater pressure on wolf populations from hunting and trapping. The Alexander Archipelago Wolf population in Southeast Alaska is likely lower than 1,000 individuals. This population is divided into island and mainland populations, meaning that certain isolated population segments may be especially vulnerable to expanded logging opportunities under the proposed state-specific roadless rule. ¹⁴ As apex predators, healthy wolf populations are crucial for maintaining ecosystem integrity in Southeastern Alaska. Furthermore, many people in both Alaska and in the lower 48 states see wolves as a symbol of wilderness.¹⁵ Wolf populations, and the habitat they rely on, are valuable

12 "Animals of the Tongass National Forest," Alaska Wilderness League, accessed November 22, 2019, <http://www.alaskawild.org/wp-content/uploads/2014/10/Animals-of-the-Tongass-FINAL.pdf>.

13 "Alexander Archipelago Wolves," Alaska Wilderness Alliance, last updated October 25, 2018, <https://www.akwildlife.org/animal-profiles/2018/10/25/alexander-archipelago-wolves>.

14 "Alexander Archipelago Wolves," Alaska Wilderness Alliance.

15 "Wolves and Humans," International Wolf Center, accessed December 5, 2019, <https://wolf.org/wolf-info/basic-wolf-info/wolves-and-humans/>.

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to both ecosystem integrity and the public, and therefore ought to be protected by maintained roadless characteristics.

Additionally, bears outnumber people in the Tongass National Forest by three to one. There are an estimated 30,000 brown (grizzly) bears in the Tongass, and the highest concentration of these bears in North America reside on Admiralty Island.¹⁶ Like wolves, these bears are apex predators and play an important role in regulating the moose, elk, caribou, and salmon populations in the Tongass National Forest.

Old-growth forests such as those found in the Tongass are crucial habitat for the Queen Charlotte Goshawk, a subspecies of the northern goshawk native to the southeastern coast of Alaska and the northern coast of British Columbia. Each nesting goshawk pair needs between 8,000 and 240,000 acres of forest to raise their young, depending on the degree of logging present within the pair's home range. According to the Center for Biological Diversity, the population of Queen Charlotte Goshawks has declined from over 1,200 breeding pairs to between 275 and 575.¹⁷ The Queen Charlotte Goshawk has had a long and turbulent relationship with the Endangered Species Act, but has been listed as a Threatened species under the Canadian Species at Risk Act.¹⁸ The sensitivity of the Queen Charlotte Goshawk is yet another reason why the Tongass National Forest ought to be protected from disturbance through roadless characteristics that prevent expanded road construction and logging.

The Tongass National Forest is also home to the largest concentration of bald eagles in the world. Around 2,000 bald eagles gather in the Tongass each spring for the salmon runs and to

16 Alaska Wilderness League, "Animals of the Tongass National Forest."

17 "Natural History, Queen Charlotte Goshawk," Center for Biological Diversity, accessed November 22, 2019, https://www.biologicaldiversity.org/species/birds/Queen_Charlotte_goshawk/natural_history.html.

18 "Saving the Queen Charlotte Goshawk," Center for Biological Diversity, accessed December 7, 2019, https://www.biologicaldiversity.org/species/birds/Queen_Charlotte_goshawk/index.html.

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nest in the old-growth trees.¹⁹ Not only are bald eagles valuable members of the forest ecosystem, they also hold a special symbolism as the national bird of the United States. As such, by proxy, the Tongass National Forest holds much of the same symbolism as the bald eagle: freedom and wildness.

We are also concerned that the Preferred Alternative would violate the Bald and Golden Eagle Protection Act, because road construction and logging could result in an increase in "taking" of bald eagles. This Act defines "take" to include disturbing individuals by interfering with "normal breeding, feeding, or sheltering behavior."²⁰

Finally, the Tongass National Forest is incredibly valuable as a carbon sink. The Tongass absorbs about eight percent of the nation's annual carbon pollution; no other National Forest in the United States sequesters as much carbon as the Tongass does. Furthermore, when old-growth forests like the Tongass are cut down, they release up to two-thirds of their sequestered carbon into the atmosphere, contributing to rising sea levels, increased storm intensity, more severe wildfires, and other climate change-related risks.²¹ Should the Tongass lose its roadless protections, so will the nation also lose one of its most valuable assets in mitigating increasing carbon

emissions.

19 Alaska Wilderness League, "Animals of the Tongass National Forest.

20 U.S. Fish & Wildlife Service, "Bald & Golden Eagle Protection Act," accessed December 5, 2019, <https://www.fws.gov/birds/policies-and-regulations/laws-legislations/bald-and-golden-eagle-protection-act.php>.

21 Gordon Orians and Dominick A. DellaSala, "Alaska's old-growth forests are our climate change insurance policy," Seattle Times, March 15, 2018, <https://www.seattletimes.com/opinion/alaskas-old-growth-forests-are-our-climate-change-insurance-policy/>.

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III. The Preferred Alternative outlined in the DEIS is arbitrary and capricious.

In the DEIS, the USFS proposes six potential rulemaking Alternatives and lays out three key issues to use as a "basis for developing and evaluating alternatives:" (1) roadless conservation; (2) supporting local and regional socioeconomic well-being, Alaska Native culture, rural subsistence activities, and economic opportunity across multiple economic sectors; and (3) conserving terrestrial habitat, aquatic habitat, and biological diversity. 22 In this comment, we focus primarily on Alternative 1 ("No Action,") and Alternative 6, the identified "Preferred Alternative," which would completely exempt the Tongass National Forest from the 2001 Roadless Rule (though we believe that Alternatives 2-5 will also result in significant harm to the Tongass National Forest). We argue that in this DEIS, the USFS fails to adequately explain in the record how Alternative 6 is the alternative that best addresses the concerns laid out surrounding these three key issues. In fact, Alternative 6 seems inconsistent with many of the concerns expressed in these three key issues. We argue that this proposal "offer[s] an explanation that runs counter to the evidence before the agency" and is therefore arbitrary and capricious.²³ In this section we outline the three key issues considered in the DEIS and the impacts that the Preferred Alternative would have on these issues. We also discuss the ways in which the record fails to adequately justify how Alternative 6 could be considered the Preferred Alternative based on the analyses presented in the DEIS.

22 United States Department of Agriculture: Forest Service Alaska Region (October 2019). Draft Environmental Impact Statement: Rulemaking for Alaska Roadless Areas, 1-5.

23 Motor Vehicle Manufacturers Association v. State Farm Insurance Co. 463 U.S. 29 (1983), In this case the court decided that the agency "failed to offer the rational connection between fact and judgment required to pass muster under the arbitrary and capricious standard."

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A. Alternative 6 is misaligned with the Purpose and Need Statement.

1. The increase in road density allowed under the proposed Alternative is inconsistent with the goal of meaningfully addressing roadless area conservation needs as stated in the Purpose and Need Statement found in the DEIS.

Alternative 6 is not in line with the Purpose and Need Statement²⁴ laid out in Chapter 1 of the DEIS. The Purpose and Need Statement calls for a "long-term, durable approach to roadless area management...that accommodates the unique biological, social, and economic situation found in and around the Tongass."²⁵ The USFS believes that the 2001 Roadless Rule "can be adjusted for the Tongass in a manner that meaningfully addresses...roadless area conservation needs."²⁶ However, we fail to see how a proposal that would eliminate all roadless area protections "meaningfully addresses...roadless area conservation needs." We believe that the agency has not offered a "rational connection between the facts found and the choice made."²⁷ Because the proposed Alternative does not align with the Purpose and Need Statement, the USFS must reject Alternative 6 and instead adopt Alternative 1, the only Alternative that we are confident will accommodate the unique biological, social, and economic qualities of the Tongass.

The proposal to name Alternative 6 as the Preferred Alternative is also inconsistent with the significance ascribed to roadless areas earlier in the DEIS. The record does not adequately explain why less regulatory protection of roadless characteristics is preferable to more protection of roadless characteristics, especially in an old-growth forest as significant as the Tongass. The

24 40 CFR [sect] 1502.13 Purpose and need "The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action."

25 DEIS, 1-4.

26 DEIS, 1-4.

27 Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168 (1962).

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lack of justification in the record makes the proposal to adopt Alternative 6 arbitrary and capricious; it offers "an explanation that runs counter to the evidence."²⁸

The DEIS states that Alternatives 4, 5, and 6 would "add the most road miles because they add more remote suitable timber acres, which may require the development of new road systems."²⁹ However, the record fails to explain how additional road miles will not affect roadless values as the DEIS states to be so important under Key Issue 1. In fact, these three alternatives appear to promote just the opposite of roadless values. Referring back to the Purpose and Need Statement,³⁰ it seems as though increasing road density would be inconsistent with the stated goal of meaningfully addressing roadless area conservation needs. This explanation again "runs counter to the evidence before the agency."³¹

The DEIS states that the USFS desires a "long-term, durable approach to roadless area management... that accommodates the unique biological, social, and economic situation found in and around the Tongass."³² Nowhere in the record does it explain how reducing protection for roadless areas will help accommodate the unique biological conditions of the Tongass National Forest.

2. The proposed action does not meet the Purpose and Need to accommodate the unique social conditions of the Tongass National Forest.

The USFS identifies multiple social values that are considered under roadless characteristics, and states that the "current condition of the Tongass is nearly pristine relative to these social values." Two social values likely to be impacted by the proposed Alternative 6 are

28 Motor Vehicle Manufacturers Association v. State Farm Insurance Co. 463 U.S. 29 (1983).

29 DEIS, 2-24.

30 DEIS, 1-4.

31 Motor Vehicle Manufacturers Association v. State Farm Insurance Co. 463 U.S. 29 (1983).

32 DEIS, ES-2.

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Scenic Quality and Traditional Cultural Properties and Sacred Sites. We argue that the Forest Service's treatment of these social values is arbitrary and capricious.

The DEIS states that Alternative 6 would likely result in more road development in remote areas, and would therefore have a "greater adverse effect" on scenic quality than Alternative 1.³³ We argue that this proposal does not fit the Purpose and Need to accommodate the unique social conditions of the Tongass, in this case the valuable cultural resources and values that this large intact temperate rainforest provides. Furthermore, we argue that the record does not adequately illustrate why Alternative 6 was preferable to Alternative 1 despite the "greater adverse effect" on scenic quality. Because this "runs counter to the evidence before the agency,"³⁴ proposing the Preferred Alternative is arbitrary and capricious.

B. By exempting the Tongass National Forest from the 2001 Roadless Rule the Preferred Alternative fails to promote roadless conservation and is thus at odds with Key Issue 1.

As discussed earlier in this comment, and acknowledged by the USFS in the DEIS, the "large scale of roadless areas, including wildernesses and national monuments, does not exist anywhere else in the [National Forest System] outside of Alaska," and "represents one of the largest, relatively intact temperate rainforests in the world."³⁵ The DEIS also recognizes that roadless areas are significant because of their "wildlife and fish habitat, recreation values, importance to multiple economic sectors, inherent passive use values, traditional properties and sacred sites for local indigenous people, and ecosystem services values they provide."³⁶ It appears from these excerpts that the USFS does indeed recognize the need to protect roadless

33 DEIS, 3-11.

34 Motor Vehicle Manufacturers Association v. State Farm Insurance Co. 463 U.S. 29 (1983).

35 DEIS, 1-5.

36 DEIS, 1-5.

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areas within the Tongass. Selecting Alternative 6 would clearly contradict the spirit of this acknowledgement.

Although the proposed Alternative would eliminate the 2001 Roadless Rule's protections for roadless areas, including prohibitions on road building and logging on the over nine million acres of inventoried roadless areas in the Tongass, the USFS states that the "proposed rule would not cause a substantial loss of roadless protection."³⁷ We do not find this to be a compelling argument because these two statements directly contradict one another. The agency cannot open nine million acres of roadless areas to logging and road construction and still claim that there will not be a substantial loss of roadless protection. The USFS characterizes roadless protection in terms of both the number of acres designated as roadless and the degree of protection provided for the roadless areas.³⁸ The DEIS states multiple times that Alternative 6 would remove all regulatory protections placed on roadless areas in the Tongass,³⁹ thereby reducing both the degree of protection provided for roadless areas and the physical acres of roadless areas. We fail to see how the USFS can argue that a proposal that removes protections for roadless areas on 9.2 million acres of forest "would not cause a substantial loss of roadless protection."⁴⁰ We believe that the agency has "offered an explanation that runs counter to the evidence"⁴¹ because this argument is irrational; it does not in any way justify the agency's choice of Alternative 6 as the Preferred Alternative.

37 "Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska: Notice of proposed rulemaking; request for comment," [vol. 84], Federal Register, [no. 201] (October 17, 2019), 55524.

38 DEIS, 2-18.

39 DEIS, 2-18.

40 Fed Reg., 55524.a.

41 Motor Vehicle Manufacturers Association v. State Farm Insurance Co. 463 U.S. 29 (1983).

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1. The proposed alternative has the potential to harm biological values in the Tongass National Forest and does not align with the DEIS's stated goal of managing for "intact ecological values."

Increased road density seems incompatible with the unique biological context found in the Tongass, which, as stated multiple times in the DEIS, is one of the largest intact temperate rainforests in the world. Alternative 6 would also have significant adverse effects on biological diversity and old-growth habitat because of entry into more remote watersheds and existing roadless areas due to the opening up of more acres for roads and logging.⁴² Again, we believe that these consequences are inconsistent with the stated Key Issues in the DEIS and the Forest Desired Conditions of the Tongass National Forest as laid out in Section 2 of its Land and Resource Management Plan. Some of these key Desired Conditions are:

1. "Viable populations of native and desired non-native species and their habitat are maintained and are not threatened by invasive species;"
2. "Fish and wildlife habitat is maintained and improved to ensure sustainable fish and wildlife and their uses;"
3. "The outstanding scenery of the Forest is a major attraction for resident and non[shy]resident recreation users...Users have the opportunity to experience independence, closeness to nature, solitude, and remoteness;" and
4. "The Forest is managed to sustain ecosystem services."⁴³

The DEIS implies that the remote watersheds that may be affected by Alternative 6 should be highly valued, and states that the Tongass contains "high-value, intact watersheds that were designated to be managed for intact

ecological values and aquatic habitat productivity."⁴⁴ The

42 DEIS, 3-9.

43 United States Department of Agriculture: Forest Service Alaska Region. (December 2016). Land and Resource Management Plan, Tongass National Forest, 2-1, 2-2.

44 DEIS, ES-3.

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record fails to show how Alternatives 4, 5, and 6 would manage these watersheds to achieve the previously stated goal. We argue that selecting any of these Alternatives would harm the ecological integrity of these watersheds and would be arbitrary and capricious, because the agency has "offered an explanation that runs counter to the evidence"⁴⁵ regarding the Preferred Alternative.

2. The characterization of "slight" impacts on physical values made in the DEIS "runs counter to the evidence before the agency."⁴⁶

Physical values are an important component of National Forests and roadless areas in particular. The physical values associated with roadless areas are typically related to soil, air, and water. In the case of the Tongass, roadless areas are "generally in near pristine condition" when it comes to soil, air quality, and water quality.⁴⁷ The DEIS argues that Alternative 6 would have a "slightly larger potential for adverse effects" relative to Alternative 1, as Alternative 6 is "expected to result in slightly more road development."⁴⁸ We argue that the characterization of "slight" impacts is neither fair nor accurate. Alternative 1 keeps remaining roadless area protections in place, while Alternative 6 removes all 9.2 million inventoried roadless acres on the Tongass from roadless designation and converts a net total of 165,000 old-growth acres and 20,000 young-growth acres previously identified as unsuitable timber lands to suitable timber lands.⁴⁹ Therefore, the characterization of the difference in road development between the two Alternatives as "slightly more" does not align with the agency's own statement of the facts. Additionally, the characterization of Alternative 6 as having "slightly larger" potential for

45 Motor Vehicle Manufacturers Association v. State Farm Insurance Co. 463 U.S. 29 (1983).

46 Motor Vehicle Manufacturers Association v. State Farm Insurance Co. 463 U.S. 29 (1983).

47 DEIS, 3-10.

48 DEIS, 3-10.

49 DEIS, ES-9.

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adverse effects seems equally inaccurate, as new development and continued road use will likely have adverse impacts on soil, air, and water quality in the region. This argument is arbitrary and capricious as it "runs counter to the evidence before the agency."⁵⁰

C. By exempting the Tongass National Forest from the 2001 Roadless Rule the Preferred Alternative fails to support local and regional socioeconomic well-being, Alaska Native culture, rural subsistence activities, and economic opportunity across multiple economic sectors and is thus at odds with Key Issue 2.

The USFS explains in the Federal Register that the rationale behind this proposed exemption is to give "substantial weight to the State's policy preferences...[and] to emphasize rural economic development opportunities."⁵¹ However, we do not believe that the proposed action to completely exempt the Tongass from the 2001 Roadless Rule would truly benefit rural economic development across multiple economic sectors. As acknowledged in the DEIS, the Tongass covers approximately 80% of Southeast Alaska and therefore plays an important role in supporting local and regional economies. The DEIS also notes that the "visitor and seafood industries are the largest private-sector employers across Southeast Alaska."⁵² For comparison, the visitor and seafood industry comprise 25% of employment in Southeast Alaska and 21% of total earnings in the region, whereas the timber industry comprises 1% of employment in Southeast Alaska and 1% of total earnings in the region.⁵³ Among natural resource-based employment in the region, visitor services comprise 60% of the region's employment, the seafood industry comprises 30%, and timber comprises 3%.⁵⁴

50 Motor Vehicle Manufacturers Association v. State Farm Insurance Co. 463 U.S. 29 (1983).

51 Fed. Reg., 55524.

52 DEIS, 1-6.

53 DEIS, 3-26.

54 DEIS, 3-27; the other 7% of the region's employment is comprised by mining activities.

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The DEIS also recognizes that the Tongass has significant value for "subsistence uses, recreational hunting and fishing, and independent travelers and outdoor enthusiasts," and that these activities yield high economic value.⁵⁵ As laid out in Section II. of this comment, logging constitutes only a small portion of the economy in Southeast Alaska, yet the logging industry is the only industry that would directly benefit from the proposed rule. Furthermore, the DEIS continuously states that Alternative 6 would have the highest level of potential consequences for local and regional socioeconomic wellbeing, Alaska Native culture, rural subsistence activities, and economic opportunity across multiple sectors. If the proposed rule thus has the potential to undermine some of the strongest economic sectors in Southeast Alaska, we fail to understand how the proposal actually supports the State of Alaska's policy preferences for rural economic development opportunities.

1. The DEIS does not explain how the proposed action will achieve its stated goal of supporting economic opportunity across multiple sectors.

As one of the largest remaining intact temperate rainforests, the Tongass offers unique opportunities for recreation and tourism. Visitor industries are one of the largest private-sector employers across Southeast Alaska. Changes to forest management and roadless area designations on the Tongass are likely to affect outfitter and guide operations, as many of these operations rely on the "high scenic integrity and undisturbed landscapes" present in roadless areas.⁵⁶ The outfitter/guide analysis conducted for this DEIS identified 15 areas where conflicts between existing outfitter/guide use and future management activities, especially timber harvest, could occur. Many of these areas were near parts of the Forest where development had occurred in the past,

especially along Forest road systems. Alternative 6 could increase the geographic

55 DEIS, 1-6.

56 DEIS, 2-21.

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extent of these areas by increasing the number of road miles present in the Forest. We argue that the increased development of roads allowed under Alternative 6 would increase the risk of conflict between outfitters/guides and management activities and could negatively impact the people that rely on the recreation and tourism industry as their main source of income, perhaps at the expense of the timber industry. This directly contradicts the DEIS's stated goal of supporting economic opportunity across multiple economic sectors.

Selecting Alternative 6 would only support a single economic sector that has minimal contribution to the overall economy in Southeast Alaska and would work to undermine the visitor and seafood industries, which rely on the roadless characteristics of the Forest to thrive.

2. Statements in the DEIS regarding Tree Harvest for Alaska Native Cultural Purposes are directly contradictory to the social values outlined in Key Issue 2.

The case for tree harvest for Alaska Native cultural purposes is curious because it is one of the few instances where the record indicates that Alternative 6 would rank highest overall for Alaska Native cultural purposes in terms of providing access to tree harvest, because it would remove all roadless restrictions. However, the record also states that Alternative 6 would provide "no protections for designated roadless characteristics, which are important for Alaska Native cultural purposes,"⁵⁷ but does not justify why Alternative 6 is still preferred despite this information. The seeming lack of justification for ignoring the roadless characteristics that are important for Alaska Native cultural purposes is another example of how the proposal of Alternative 6 is arbitrary and capricious. In this case the agency has "entirely failed to consider an important aspect of the problem"⁵⁸ which is that commercial tree harvest by Alaska Native

57 DEIS, 2-22.

58 Motor Vehicle Manufacturers Association v. State Farm Insurance Co. 463 U.S. 29 (1983).

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Corporations is not the only way the Tongass National Forest provides cultural value to Alaska Natives.

D. By exempting the Tongass National Forest from the 2001 Roadless Rule the Preferred Alternative fails to conserve terrestrial habitat, aquatic habitat, and biological diversity and is thus at odds with Key Issue 3.

The DEIS acknowledges the role the Tongass plays in providing habitat for many fish and wildlife species. It reiterates that the "scale and size of contiguous habitat" in the Tongass is "not available elsewhere in the NFS [National Forest System] outside of Alaska," and that although many wildlife species that live in this area are associated with more than one habitat type, the old-growth forests of the Tongass are especially important habitats for these animals or the species they prey upon.⁵⁹ Furthermore, the DEIS explicitly states that many

species find "optimal habitat in the more remote areas" of the Tongass because of their "predominantly undeveloped nature."⁶⁰ The Tongass National Forest includes "high-value, intact watersheds that were designated to be managed for intact ecological values and aquatic habitat productivity."⁶¹ Allowing roadless protections on the Tongass to be lifted would open the door to adversely impacting these remote areas and intact watersheds, significantly harming the species that rely on them for survival.

IV. The DEIS violates the National Historic Preservation Act.

To carry out the responsibilities under Section 106 of the National Historic Preservation Act, the USFS indicates that the agency,

"consulted with the State of Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation, Office of History and Archaeology, resulting in a letter

59 DEIS, 1-6.

60 DEIS, 1-7.

61 DEIS, ES-3.

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(10/08/2018) from the State Historic Preservation Officer concurring with the Forest Service's determination that changes in management direction for designated roadless areas on the Tongass would not result in undertaking, as defined in 36 CFR 800.16(y)."⁶²

In the following sections, we expound on our reasoning for why this does not constitute compliance with the NHPA.

A. Simply notifying Alaska Native Tribes & Corporations does not constitute a "reasonable and good faith effort" under the NHPA.

The NHPA states that:

"it is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations [NHO] that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss preservation issues and resolve concerns about the confidentiality of information on historic properties."⁶³

Nothing in the DEIS or the administrative record indicates that the USFS made a reasonable and good faith effort to consult with Native tribes, or that the USFS commenced any consultation with Native tribes early in the planning process to identify, discuss, and resolve concerns regarding historic properties. For example, in Section 5 of the DEIS ("List of Document Recipients and Those Notified or Consulted"), the USFS merely indicates that it notified the following Alaska Native Tribes and Corporations of the draft EIS: Alaska Native Brotherhood Grand Camp, Alaska Native News, Alaska Tribal Leader Committee, Angoon Community Association, Alaska Native Sisterhood Grand Camp, Cape Fox Corporation, Central Council Tlingit & Haida Indian Tribes of Alaska, Chilkat Indian Village, Chilkoot Indian Association, Craig Tribal Association, Douglas Indian Association, Goldbelt Incorporated, Haida

Corporation, Hoonah Indian Association, Huna Totem Corporation, Hydaburg Cooperative

62 DEIS 1-10.

63 36 CFR 800.2 (c)(2)(B)(ii).

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Association, Kake Tribal Corporation, Kavalco Inc., Ketchikan Indian Community, Klawock Cooperative Association, Klawock Heenya Corporation, Klukwan Inc., Kootznoowoo Inc., Metlakatla Indian Community, Organized Village of Kake, Organized Village of Kasaan Organized Village of Saxman, Petersburg Indian Association, and the Sealaska Corporation. 64

While the USFS certainly demonstrates the breadth to which the agency notified Alaska Native Tribes and Corporations, merely sending notification letters is not demonstrative of a reasonable and good faith effort to identify and address historic property concerns in consultation with Native tribes.

In *Pueblo of Sandia v. United States*, the Court found that "the record reveals that the Forest Service did request information from the Sandia Pueblo and other local Indiantribes, but a mere request for information is not necessarily sufficient to constitute the 'reasonable effort' section 106 requires."⁶⁵ Furthermore, the Court recognizes that Indiantribes may be hesitant to disclose sensitive information that may put the integrity of cultural sites and resources at risk. As such, information on historic properties from Native tribes cannot reasonably be obtained in good faith through one mode of communication only (in this case, notification letters).

Of the Alaska Native Tribes and Corporations that were notified, however, six did come forward to enter Memoranda of Understanding (MOUs) as cooperating agencies under NEPA.⁶⁶As cooperating agencies, these Alaska Native Tribes and Corporations provided input on the development of the DEIS.⁶⁷ We request that the agency explain why it seemingly skirts the Section 106 process of the NHPA in favor of cooperating with only six Alaska Native Tribes and Corporations under NEPA that are not representative of the list laid out on pp. 24-25 of this

64 DEIS 5-2.

65 *Pueblo of Sandia v. United States* 50F.3d 856 (1995).

66 40 CFR [sect] 1501.6 - Cooperating agencies.

67 DEIS 5-3.

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comment. Furthermore, six Alaska Native Tribes and Corporations cannot justly represent the voices of the nearly 30 Alaska Native Tribes and Corporations attached to the religious and cultural values embodied in the Tongass National Forest.⁶⁸ We request that in addition to this explanation, the agency comply with Section 106 by making "a reasonable and good faith effort" to consult with identified Alaska Native Tribes and Corporations to "discuss preservation issues and resolve concerns about the confidentiality of information on historic properties."⁶⁹

B. The USFS must conduct an inventory of historic properties under the NHPA in order to inform the DEIS.

Feedback received during the 45-day scoping period between August 30, 2018 and October 15, 2018 clearly illustrates that Native tribes attach religious and cultural significance to the Tongass National Forest. The Forest Service's summary of these comments outline common concerns "that an increase in road construction, timber harvest, and industrial development on the forest would harm the cultural livelihood and spiritual well-being of Alaska Native Tribes, communities, and individuals."⁷⁰ The DEIS additionally claims that "increasing risk to cultural resources may occur under Alternatives 4, 5 and 6 because of potentially greater road lengths and potential activity in areas currently and previously protected from development, associated with harvest activities."⁷¹ Based on this information, it appears likely that historic properties and significant cultural resources exist in the Tongass National Forest that may be eligible for inclusion on the National Historic Register. Yet it appears that the Forest Service has failed to meet its obligation to protect these resources under the NHPA by carrying out the Section 106

68 Section 101(d)(6)(B).

69 36 CFR 800.2 (c)(2)(B)(ii).

70 Alaska Roadless Rule Scoping Period: Written Public Comment Summary, 4.

71 DEIS 3-12.

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process in reasonable and good faith effort with relevant consulting parties. Consulting with the SHPO is not the be-all-end-all of NHPA compliance. In fact, Section 106 requires that Federal agencies consult with "Tribal Historic Preservation Offices (THPO) [and] Indian Tribes (to include Alaska Natives)"⁷² in addition to the SHPO. Furthermore, as mentioned previously in Section IV. A. of this comment, collaborating with Tribes as consulting parties under NEPA is not a proxy for consultation with Native Tribes under the NHPA.

We also believe that the Forest Service cannot meet its NHPA obligations unless it first conducts a cultural resource/historic property inventory in conjunction with the DEIS. It is not enough that such inventories will be completed on a site-specific basis as is currently proposed. ⁷³ While site-specific inventories provide a level of detail not provided in an overarching inventory, not conducting an overarching inventory to inform the DEIS fails to illustrate the potential cumulative impacts to cultural resources and historic properties in the Tongass due to the proposed site-specific rule, which is the intent of Section 106 under the NHPA. Section 106 requires Federal agencies to consult with relevant parties before funding, assisting, licensing, or permitting "any types of projects that may have adverse effects on historic properties."⁷⁴ "Projects" are also referred to as "undertakings" in the NHPA, and as outlined in the next section of this comment, we believe that the proposed state-specific Roadless Rule is an undertaking.

72 "National Historic Preservation Act, Section 106: A Quick Guide for Preserving Native American Cultural Resources," American Indian Liaison Office, National Park Service, 2012.

73 DEIS 3-11.

74 "Using the National Historic Preservation Act of 1996," National Park Service, accessed December 7, 2019, <https://www.nps.gov/articles/using-the-national-historic-preservation-act-of-1966.htm>.

C. Changes in management direction of the Tongass National Forest are undertakings.

The Alaska SHPO submitted a letter on 10/08/2018 concurring with the Forest Service that changes in management direction for designated roadless areas would not result in an undertaking as defined in 36 CFR 800.16(y). Undertaking is defined here as:

"a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval."75

In all proposed alternatives but Alternative 1 (the "no action alternative"), changes in management direction for designated roadless areas appear to necessarily lead to an undertaking. Therefore, the USFS must comply with Section 106 of the NHPA, which requires:

"Federal agencies to take into account the effects of undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) with a reasonable opportunity to comment. In addition, Federal agencies are required to consult on the Section 106 process with State Historic Preservation Offices (SHPO), Tribal Historic Preservation Offices (THPO), Indian Tribes (to include Alaska Natives) [Tribes], and Native Hawaiian Organizations [NHO]."76

Curiously, the Forest Service consulted with the SHPO and provided the ACHP an opportunity to comment not on "the effects of undertakings on historic properties" but rather on whether or not the proposal itself is an undertaking. Furthermore, we fail to understand why the Forest Service would consult with the SHPO in reasonable and good faith effort but not any THPO or Alaska Native Tribe. In light of our analysis regarding how the Forest Service approached consultation with Alaska Native Tribes to inform the DEIS, we demand that the agency comply with Section 106 of the NHPA.

75 36 CFR 800.16(y)

76 "National Historic Preservation Act, Section 106: A Quick Guide for Preserving Native American Cultural Resources," American Indian Liaison Office, National Park Service, 2012. Emphasis added.

1. The proposed Alaska Roadless Rule uniquely disregards considering other stringent protections for roadless areas.

Unlike the Colorado and Idaho Roadless Rules, the proposed Alaska rule does not provide adequate protection of the Tongass National Forest. Both the Colorado and Idaho Roadless Rules establish varying degrees of protection for those states' roadless areas that are similar to, or in some circumstances greater than, the 2001 Federal Rule. The proposed Alaska rule, on the other hand, simply states that "the 2001 Roadless Area Conservation Rule...shall not apply to the Tongass National Forest."77 This undermines the very purpose for which the 2001 Roadless Rule was originally adopted, and it does so on the largest and arguably most important National Forest in the entire system. Even though Colorado and Idaho have adopted Roadless Rules that are

more in line with their states' individual needs, they still maintain the spirit of the original 2001 Roadless Rule, whereas the proposed Alternative does not. As members of the public, we are concerned that the USFS would consider a proposal that completely overhauls the Federal Roadless Rule despite previous exceptions still accommodating the spirit of the 2001 Roadless Rule.

* The proposed Alaska Roadless Rule contradicts the 2016 Tongass Forest Plan.

The DEIS states that:

"all discretionary Forest Service activities authorized on the Tongass must be consistent with the Forest Plan as well as existing laws and regulations. The proposed Alaska Roadless Rule would supersede direction in the Tongass Forest Plan. In addition, as with other roadless rulemakings, the Alaska roadless rulemaking process does not require an amendment or revision of any forest plan."⁷⁸

77 Fed. Reg., 55528.

78 DEIS, ES-2.

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We find this statement to be incredibly paradoxical and request that the agency explain how the proposed Alaska Roadless Rule both maintains consistency with the Tongass Forest Plan and yet also supersedes direction in the Tongass Forest Plan - especially when the Tongass Forest Plan explicitly states its goal to manage certain land use designations in the Forest as a "roadless state to retain their wildland character."⁷⁹

The DEIS additionally states that "the proposed state-specific roadless rule would discontinue the existing regulation's prohibitions and instead rely upon existing statutory and management plan direction for managing roadless area characteristics on the Tongass."⁸⁰ We find this problematic because according to the 2016 Tongass National Forest Land and Resource Management Plan, certain land use designations are prescribed to be managed by strategies that maintain their roadless characteristics. The proposed Alternative directly contradicts this Plan. The USFS cannot go forward with the proposed Alternative without explaining how this Alternative aligns with the 2016 Land and Resource Management Plan, which explicitly calls for managing roadless characteristics in the Tongass, or without providing adequate justification for moving in a direction other than the one laid out in the Management Plan.

VII. Concluding Statements

The Tongass National Forest is an incredibly valuable landscape that embodies immense social, economic, and environmental values for a diversity of people both in and outside of Southeast Alaska. As the largest and most intact temperate rainforest in the world, these values are at serious risk of harm should the USFS move forward with this proposal. Until the USFS fundamentally changes its proposal based on our demands of the agency listed below,

79 USFS, Tongass Management Plan, 3-70.

80 DEIS 1-1, 1-2.

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selecting any Alternative other than Alternative 1 is not only ill-conceived, but arbitrary and capricious as demonstrated by the DEIS and the analysis found in this comment. We demand that the USFS:

1. Adhere to the Purpose and Need Statement as outlined in the DEIS by:

1. Ensuring allowed road density is consistent with the goal of meaningfully addressing roadless area conservation needs as stated in the Purpose and Need.
2. Accommodating the unique social conditions of the Tongass National Forest as stated in the Purpose and Need.

2. Explain why Alternative 6 is preferred when the information presented in the DEIS contradicts that proposal by:

1. Illustrating how the proposal addresses Key Issue 1 (promote roadless conservation).
2. Illustrating how the proposal aligns with the DEIS's stated goal of managing for "intact ecological values."
3. Illustrating why characterizations of impacts to physical values made in the DEIS are considered "slight," despite entirely eliminating existing protections.
4. Illustrating how the proposal addresses Key Issue 2 (support local and regional socioeconomic well-being, Alaska Native cultures, rural subsistence activities, and economic opportunity across multiple economic sectors).

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1. Illustrating how the proposal supports economic opportunity across multiple sectors despite propping up the timber industry at the expense of the more lucrative tourism and seafood industries.
2. Illustrating how the proposal protects Alaska Native cultural purposes regarding tree harvest in the Forest.
3. Illustrating how the proposal addresses Key Issue 3 (conserve terrestrial habitat, aquatic habitat, and biological diversity).

3. Comply with Section 106 of the NHPA and address concerns regarding compliance of the NHPA by:

1. Consulting with Alaska Native Tribes and Corporations in reasonable and good faith effort.
2. Explaining why the agency formally engaged with Tribes through NEPA rather than the NHPA.
3. Conducting an inventory of historic properties/cultural resources in order to inform the DEIS.
4. Explaining why the proposal does not qualify as an undertaking.

4. Explain how the proposal can both align with and supersede the 2016 Tongass Management Plan's goal of managing certain designated areas for their roadless characteristics.

If you would like more information or have any questions on the content of this comment, please reach out at your convenience. Thank you for your time and consideration.

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Sincerely,

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[Position]