

December 11, 2019

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RE: Comments of Ian Oxenham on Special Areas; Roadless Area Conservation;
National Forest System Lands in Alaska, 84 Fed Reg. 55,522 (proposed Oct. 17,
2019) (to be codified at 36 C.F.R. pt. 294)

I oppose the United States Department of Agriculture's (USDA) proposal to exempt the Tongass National Forest from the Roadless Area Conservation Rule (Roadless Rule). Instead, I urge USDA to select the no action alternative, or at the very least amend the proposed rule to explicitly prohibit any increase in total timber harvests from the Tongass National Forest beyond those already authorized in the current Tongass Forest Plan.

The Tongass National Forest is the largest national forest in the United States and one of the few remaining intact temperate rainforests in the world. This makes it the most important carbon sequestration resource in the U.S. National Forest System. *See* U.S. Dep't of Agric., Draft Environmental Impact Statement Rulemaking for Alaska Roadless Areas 3-123 (2019) [hereinafter DEIS] ("The Tongass stores more forest carbon than any other national forest in the United States . . ."). Yet nowhere in the proposed rule rolling back critical protections for this forest or its rationale does USDA even once mention the words "climate," "carbon," or "sequestration," let alone discuss the climate implications of enabling greater logging in the Tongass National Forest. *See* Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska, 84 Fed Reg. 55,522 (proposed Oct. 17, 2019) (to be codified at 36 C.F.R. pt. 294). The DEIS likewise illegally fails to analyze the climate implications of the substantially increased timber harvesting that allowing logging on vast swathes of currently protected land could enable.

USDA's apparent rationale for ignoring such an important category of impacts is that "projected [timber] harvest levels are not expected to be materially different" under the proposed rule. *Id.* at 55,525. This conclusion apparently follows from USDA's assumption that there will be no future increase in timber harvest levels beyond those authorized in the current Tongass Forest Plan. *See id.* ("[T]he DEIS for the proposed Alaska Roadless Rule assumes that the harvest levels projected in the Tongass Forest Plan will remain the same."). USDA bases this

assumption on a market forecast for Tongass timber suggesting that current harvest levels will meet future demand. *Id.* Yet USDA itself admits that “estimating long-term market demand for Tongass timber is inherently uncertain and there are differences in opinion regarding long-term forecasts of market demand.” *Id.* USDA is thus relying on “inherently uncertain” and contested market forecasts to claim that opening vast swathes of forest to timber harvesting will not lead to increased timber harvesting. *Id.* Although that might well happen, such an outcome is far too speculative to use as a starting assumption to analyze the likely environmental impacts of exempting the Tongass from the Roadless Rule.

USDA must consider the significant possibility that it is underestimating future demand for Tongass timber and how in higher demand scenarios the proposed Roadless Rule exemption could result in much greater environmental harm. Most significantly, if the Roadless Rule were no longer to protect the Tongass National Forest, an increase in timber demand could spur the Forest Service to use its broad discretion to vastly increase the amount of authorized clearcutting. See 84 Fed. Reg. at 55,523 (“[T]he proposed rule would return decision-making authority to the Forest Service, allowing decisions concerning timber harvest . . . on the Tongass National Forest to be made by local officials on a case-by-case basis.”); *id.* at 55,525 (“[T]he Forest Service has broad discretion during forest plan revision to modify management direction . . .”). It is thus reasonably foreseeable that USDA’s proposal to remove vast swathes of the Tongass National Forest from such protections could enable more timber harvesting. Therefore, the cumulative impact of exempting the Tongass Forest Plan from the Roadless Rule in combination with reasonably foreseeable changes to the Tongass Forest Plan could cause material climate impacts.

Council on Environmental Quality regulations require USDA to consider such cumulative impacts in its Environmental Impact Statement. 40 C.F.R. § 1508.25(c)(3); *see also* 40 C.F.R. § 1508.7 (“Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and *reasonably foreseeable future actions*. . . .” [emphasis added]). USDA’s failure to do so here by not considering the climate impacts of reasonably foreseeable future revisions to the Tongass Forest Plan in response to changes in market demand renders the DEIS legally insufficient. At minimum, USDA’s Final Environmental Impact Statement must analyze the climate impacts of scenarios in which timber harvesting in the Tongass National Forest increases as a result of the Roadless Rule rollback.

USDA also should consider how the significant possibility of such material climate impacts affects the wisdom of its decision to give “substantial weight to [Alaska’s] policy preferences . . . to emphasize rural economic development opportunities” over other considerations. 84 Fed. Reg. at 55,523. By USDA’s own admission, the Tongass National Forest is the single largest carbon sink in the U.S. National Forest system and “an important component in the global carbon cycle.” DEIS at 3-123. The Tongass National Forest, more than any other U.S. national forest, thus provides crucial environmental benefits to the entirety of the United States and the globe. Undue deference to the preferences of the local political authority here would lead to decision-making biased against the interests of the hundreds of millions of

American stakeholders who do not live in Alaska. Yet nowhere in its proposed rule or rationale does USDA discuss such an important policy trade-off, despite the existence of an ongoing climate crisis.

Instead, USDA appears to be actively side-stepping this issue by simply disregarding the existence of any potential climate impacts. Ignoring this issue also serves to help rationalize USDA's preferred course of action, which implies USDA may be choosing to ignore considerations that do not support a decision it has already made. If so, then USDA has again failed to carry out its duties under the National Environmental Policy Act (NEPA). See *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, (9th Cir. 2011) (quoting *Earth Island Inst. v. U.S. Forest Serv.*, 442 F.3d 1147, 1159 (9th Cir. 2006), *abrogated on other grounds by Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7 (2008)) (“[T]he final EIS must include a ‘discussion of adverse impacts that does not improperly minimize negative side effects.’”); *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000) (“[T]he comprehensive ‘hard look’ mandated by Congress and required by [NEPA] . . . must be taken objectively and in good faith . . . and not as a subterfuge designed to rationalize a decision already made.”). If USDA wishes to exempt the Tongass National Forest from the Roadless Rule, it must analyze the implications of higher timber demand scenarios and forthrightly discuss and address any policy trade-offs such additional analysis reveals.

Another option that would at least prevent most adverse climate impacts—though not all potential environmental harm—would be to cap by rule the total amount of timber harvests in the Tongass National Forest at the level allowed in the current Tongass Forest Plan. This would effectively convert the mere assumption upon which USDA's DEIS is based into an actual regulatory requirement, thereby ensuring the timber harvest scenarios USDA failed to analyze cannot occur. At the same time, such a cap on total timber harvests would in no way interfere with USDA's stated goals of enabling “greater flexibility in the selection and design of future timber sale areas” and providing for “access needs that support isolated rural communities.” 84 Fed. Reg. at 55,524. Such an amended rule could also allay public suspicion that these stated goals are a mere pretext for allowing the timber industry to expand harvesting operations in one of the most ecologically valuable national forests in the United States.

For these reasons, I oppose withdrawing the protections of the Roadless Rule from the Tongass National Forest, especially in the absence of any regulatory prohibition against increasing total timber harvests from the forest following such a rollback. I urge USDA to choose the no action alternative, or at a minimum cap the total allowed annual timber harvest in the Tongass at current levels.

Sincerely,

Ian Oxenham