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Title:
Comments: Comments on the Draft Environmental Impact Statement and proposed Alaska Roadless Rule

Madam/Sir. Please find attached James F. Clark's Comments on the Draft Environmental Impact Statement and proposed Alaska Roadless Rule. Please acknowledge receipt of the comments. Regards, James F. Clark.

The following text was copy/pasted from an attached letter. The system cannot display the formatting, graphics, or tables from the attached original.

LAW OFFICE OF JAMES F. CLARK

Juneau, Alaska 99801

December 16, 2019

Alaska Roadless Rule

USDA Forest Service, Alaska Region

Ecosystem Planning and Budget Staff

P.O. Box 21628

Juneau, Alaska 99802-1628.

Re: Comments on Draft Environmental Impact Statement (DEIS) and Alaska-specific Roadless Rule.

Dear Madam/Sir.
INTRODUCTION

The undersigned hereby incorporates by reference and endorses the comments made by the State of Alaska to the Secretary of Agriculture in its January 19, 2018 "Petition for USDA Rulemaking to Exempt the Tongass National Forest from the Application of the Roadless Rule and other Actions" which: 1) explained the enduring significance of USDA's 2003 Record of Decision (ROD) that totally exempted the Tongass National Forest (Tongass) from the application of the 2001 Roadless Rule; 2) explained that after analyzing the requirements and limitations of the Alaska National Interest Lands Conservation Act (ANILCA) and the Tongass Timber Reform Act (TTRA) "the USDA concluded that the best way to implement the spirit and letter of these laws was to exempt the Tongass from the Roadless Rule;" 3) explained that USDA also concluded that exempting the Tongass was consistent with the intent of Congress, but also with sound management of the Tongass because roadless areas in the Tongass are adequately protected without adding the additional barriers of the Roadless Rule; 4) explained that even without

the Roadless Rule only about four percent of the Tongass is designated as suitable for timber harvest; 5) described the litigation regarding the 2001 Roadless Rule and the 2003 Roadless Rule including the Department of Justice's rational for its aggressive defense of USDA's 2003 ROD; 6) explained why the serious socioeconomic consequences to Alaskans and complying ANILCA and TTRA are as compelling today for totally exempting the Tongass from the Roadless Rule as they were when offered by USDA for that purpose in 2003; and 7) explained why the Secretary should direct the United States Forest Service (Forest Service) to commence a Tongass Land Management Plan (TLMP) revision or amendment to remove provisions of the Roadless Rule that have been incorporated into the 2016 Tongass Transition Plan.

The undersigned also incorporates by reference and endorses the December 17, 2019 Comments of the Alaska Roadless Rule Coalition (Coalition) that represent the views of the Alaska Chamber, the Alaska Forest Association, the Alaska Miners Association, the Associated General Contractors of Alaska, the Resource Development Council for Alaska, Inc., the Alaska Support Industry Alliance, First Things First Alaska Foundation, Hyak Mining Co., the Juneau Chamber of Commerce, Coastal Helicopters, Inc. the Ketchikan Chamber of Commerce, the City of Ketchikan, Red Diamond Mining Company, the Southeast Alaska Power Agency, the Southeast Conference, Alaska Electric Light & Power, Alaska Marine Lines, Alaska Power & Telephone, Tyler Rental, First Bank, and Southeast Stevedoring Inc. The Coalition, that includes urban and rural Alaskans, and businesses and associations having a membership composition representing tens of thousands of Alaskans, has joined the State of Alaska and Alaska's Congressional Delegation in urging USDA to Totally Exempt the Tongass from application of the Roadless Rule for the reasons given by the State in its January 19, 2018 Petition. As noted in the Coalition's Comments every Alaska Governor and Congressional Delegation member since the Roadless Rule was promulgated in 2001 has supported Total Exemption of the Tongass from the Roadless Rule.

The undersigned agrees with the Coalition that Total Exemption would exchange the Roadless Rule's inflexible national prohibitions on access and development in the Tongass, for the more flexible TLMP process. Since the goal of the 2016 Tongass Transition Plan is to foster change, it is only logical to use the more flexible land planning system to accommodate to achieve that goal. The undersigned also agrees with the State and the Coalition that the Secretary should direct the Forest Service

to revise or amend TLMP to remove the provisions of the Roadless Rule that have been incorporated into the 2016 Tongass Transition Plan.

USDA'S FAILURE TO INCORPORATE THE CITIZEN ADVISORY COMMITTEE'S NEW EXCEPTIONS FOR ROAD CONSTRUCTION AND TIMBER HARVEST LEAVES TOTAL EXEMPTION AS THE ONLY MEANS OF OBTAINING RELIEF FROM THE ACCESS AND OTHER UNNECESSARY BARRIERS TO REASONABLE DEVELOPMENT ON THE TONGASS

The Citizen's Advisory Committee (CAC), (representing diverse interests) appointed by foinier Governor Walker to inform the State in its role a s 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 ... 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 [mdash]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" [mdash] 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 [mdash]

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 [mdash] 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 ... 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 [mdash] 5 contains the CAC's mandatory regulatory language to implement its proposed New Road Exceptions and proposed New Timber Cutting Exceptions.'

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.

Respectfully submitted,

[signature]

Consideration of alternatives is "the heart of the environmental impact statement." 40 C.F.R. [sect] 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." 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 [mdash] 16 and New Timber Cutting Exceptions 1 - 8 is a reasonable alternative that should have been presented in at least one alternative the DEIS.

THE ALASKA ROADLESS RULE COALITION

ALASKA CHAMBER, THE ALASKA FOREST ASSOCIATION, THE ALASKA MINERS ASSOCIATION, THE ASSOCIATED GENERAL CONTRACTORS OF ALASKA, THE RESOURCE DEVELOPMENT COUNCIL OF ALASKA, INC., THE ALASKA SUPPORT INDUSTRY ALLIANCE, THE CITY OF KETCHIKAN, FIRST THINGS FIRST ALASKA FOUNDATION, HYAK MINING CO., THE JUNEAU CHAMBER OF COMMERCE, COASTAL HELICOPTERS, INC. THE KETCHIKAN CHAMBER OF COMMERCE, RED DIAMOND MINING COMPANY, THE SOUTHEAST ALASKA POWER AGENCY, THE SOUTHEAST CONFERENCE, ALASKA ELECTRIC LIGHT & POWER, ALASKA MARINE LINES, ALASKA POWER & TELEPHONE, TYLER RENTAL, FIRST BANK, AND SOUTHEAST STEVEDORING INC.

December 16, 2019

USDA Forest Service, Alaska Region

Ecosystem Planning and Budget Staff

P.O. Box 21628

Juneau, Alaska 99802-1628.

Re: Comments on Draft Environmental Impact Statement (DEIS) for Alaska-specific Roadless Rule.

INTRODUCTION

The undersigned broad coalition of entities, with very diverse interests, is writing to comment on the Draft Environmental Impact Statement (DEIS) for Alaska-specific Roadless Rule noticed in the Federal Register on October 30, 2019.

These DEIS comments represent the views of the Alaska Chamber, the Alaska Forest Association, the Alaska Miners Association, the Associated General Contractors of Alaska, the Resource Development Council for Alaska, Inc., the Alaska Support Industry Alliance, First Things First Alaska Foundation, Hyak Mining Co., the Juneau Chamber of Commerce, Coastal Helicopters, Inc. the Ketchikan Chamber of Commerce, the City of Ketchikan, Red Diamond Mining

Company, the Southeast Alaska Power Agency, the Southeast Conference, Alaska Electric Light & Power, Alaska Marine Lines, Alaska Power & Telephone, Tyler Rental, First Bank, and Southeast Stevedoring Inc.

As a Coalition that includes urban and rural Alaskans, and businesses and associations having a membership composition representing tens of thousands of Alaskans, we join the State of Alaska and Alaska's Congressional Delegation in urging the U.S. Department of Agriculture (USDA) to exempt the entire Tongass National Forest from application of the 2001 Roadless Rule for the reasons given by former Governor Bill Walker in his January 19, 2018 Petition for Rulemaking (Petition). Every Alaska Governor and Congressional Delegation member since the Roadless Rule was promulgated in 2001 has supported Total Exemption of the Tongass from the 2001 Roadless Rule.

The Coalition appreciates the fact that the Secretary selected Alternative 6 - Total Exemption - as the preferred alternative because:

[T]he Department [gave] substantial weight to the State's policy preferences as expressed in the incoming Petition. The State's preference to emphasize rural economic development is consistent with the findings of the Interagency Task Force on Agricultural and Rural Prosperity established by Executive Order 13790 (issued April 25,2017). USDA recognizes that ensuring rural Americans can achieve a high quality of life is one of the foundations of prosperity. That State's views on how to balance economic development and environmental protection offer valuable insight when making management decisions concerning NFS land in Alaska.1

The Coalition also appreciates the fact that Total Exemption has also been USDA's policy preference for managing the Tongass since its 2003 Rulemaking because: "[T]he social and economic hardships to Southeast Alaska outweigh the potential long-term ecological benefits because the Tongass Forest plan adequately

provides for the ecological sustainability of the Tongass."2 This policy determination has never been changed by the Department.

Importantly, Total Exemption would exchange the 2001 Roadless Rule's inflexible prohibitions on access and development in the Tongass, for the more flexible Tongass National Forest Planning process. Since the goal of the 2016 Tongass

1 The right-side column on page 55523 USDA's Notice of Proposed Rule Making (NPRM).

2 68 Fed. Reg. December 30, 2003 75136 at 75141-75142.

Transition Plan is to foster change, it is only logical to use the more flexible land planning system to accommodate to achieve that goal. As USDA correctly states:

[T]he proposed rule would return decision-making authority to the Forest Service, allowing decisions concerning timber harvest, road construction and roadless area management on the Tongass National Forest to be made by local officials on a case by case basis.3

USDA made the same point in its 2003 Rule: "Accomplishment of social, economic, and biological goals can best be met through the management direction established through the Tongass Forest Plan."4

The Coalition appreciates the fact that the USDA intends to advance Roadless Priority for Alternatives 2, 3, 4, and 5 as part of the rulemaking:

The Roadless Priority ARA is similar to the 2001 Roadless Rule but is less restrictive and addresses Alaska-specific concerns. Specifically, it provides for infrastructure development to connect and support local communities, and road construction/reconstruction for access to renewable energy and leasable minerals. The leasable minerals exception provides for geothermal, oil, gas, and/or coal development. In addition, the Roadless Priority ARA includes specific exceptions that, while they are allowed under the 2001 Roadless Rule, are included to improve overall clarity.5

Unfortunately, there is a major disconnect between these goals and the language used in Appendix G to implement them. As discussed in detail below, Alternatives 2 -5 of Appendix G do not include the mandatory authorization language proposed by the Citizen's Advisory Committee (CAC) to implement the new Road Exceptions 8-16 that the CAC proposed be added to 36 C.F.R. [sect] 294.12 and to

3 84 Fed. Reg. October 17, 2019 55522 at 55523. USDA also correctly recognizes that the "proposed exemption would allow forest plan direction to guide other access needs that support isolated rural communities in the unique island archipelago environment of the Tongass National Forest. Id. at 55524.

4 68 Fed. Reg. December 30, 2003 75136 at 75141.

5 DEIS Executive Summary at 5.

implement the new Timber Cutting Exceptions 1-8 proposed by the CAC to be added to 36 C.F.R. [sect] 294.13. (The CAC proposed language is set out on pages 7 and 8 and pages 8-10, respectively, of the attached CAC Report). Instead of the CAC's mandatory authorization language (which was to be included in each of the Alternatives 2 - 5),6 USDA has retained exactly the same regulatory language that is in the current 2001 Roadless Rule. It thereby retains exactly the same the regulatory uncertainty and cumbersome process currently in place that inhibits access otherwise authorized by federal law (e.g. the Mining Act of 1872 and the Federal Power Act) within Inventoried Roadless Areas (IRAs).

It is 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. 7 The Coalition requests an explanation from USDA for rejecting the CAC's recommended changes in favor of retaining the current language in 36 C.F.R. [sect] 294.12 and 36 C.F.R. [sect] 294.13.

Because attaining the social and economic benefits of the CAC recommendations is the reason the State of Alaska, its Congressional Delegation and the Coalition sought this rulemaking, and because Total Exemption (alternative 6) is the only alternative that would result in implementation of these recommendations, the Coalition strongly urges USDA to adopt Alternative 6 - the Total Exemption Alternative - as the Final Rule.

Finally, as more fully explained in the State's Petition for Rulemaking and other Agency Action, even Total Exemption will provide very little relief from the 2001 Roadless Rule. In 2016, USDA revised the Tongass Land and Resource Management Plan (TLMP) and duplicated most of the most onerous restrictions of

6 See page 4 of CAC Report.

7 Consideration of alternatives is "the heart of the environmental impact statement." 40 C.F.R. [sect] 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." 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.

the Roadless Rule as independent provisions in the TLMP. Therefore, even with a Total Exemption, most of the roadless restrictions continue to live on as TLMP provisions. This is why the State's petition asked for rule making and for a plan revision consistent with the Tongass Exemption. Although the Secretary granted the rulemaking petition, he has not yet acted on the TLMP revision. Both are needed. The Coalition urges the Secretary to also commence a TLMP Plan revision consistent with Total Exemption.

BACKGROUND

Application of the 2001 Roadless Rule to the Tongass.

USDA's preferred approach was to exempt the Tongass when it promulgated its interim Roadless Rule in 1999. After continuing to propose exempting the Tongass in the draft and the final EIS, it was not until the final decision in the 2001 Record of Decision (ROD), that USDA unexpectedly fully and immediately applied the 2001 Roadless Rule to the Tongass.

The State of Alaska sued (and numerous communities and statewide and regional organizations and businesses intervened in support of the litigation) on grounds including that application of the Roadless Rule to the Tongass violated the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) and the Tongass Timber Reform Act of 1990 (TTRA).

Moreover, the Tongass did not fit the Purpose and Need for the 2001 Roadless Rule. The Clinton Administration justified the 2001 Roadless Rule on the ground that there was a Need for a national level "whole picture" review of National Forest roadless areas because: "Local management planning efforts may not always recognize the significance of inventoried roadless areas."

But, unlike all other National Forests subject to the Roadless Rule, the Tongass had undergone two Congressional reviews and a Washington Office, Secretarial review in 1999 that collectively set aside over 6.8 million acres of Tongass roadless areas as Wilderness and other restrictive land use categories prior to promulgation of the Roadless Rule. The Roadless Rule's Purpose and Need statement did not explain why a fourth review of the Tongass roadless areas was needed to achieve the objectives of the Roadless Rule.

The 2003 USDA Rulemaking Temporarily Exempting the Tongass from the Roadless Rule.

In 2003 the USDA settled the litigation with the State by agreeing to temporarily exempt the Tongass from the Roadless Rule. USDA recognized:

Of the 32 communities in the region, 29 are unconnected to the nation's highway system. Most are surrounded by marine waters and undeveloped National Forest System land. The potential for economic development of these communities is closely linked to the ability to build roads and rights of way for utilities to roadless areas of the National Forest System.8

USDA observed:

Roadless areas are common, not rare, on the Tongass National Forest, and most Southeast communities are significantly impacted by the roadless rule. The Department believes that exempting the Tongass from the prohibitions in the roadless rule is consistent with the congressional direction and intent in the ANILCA and TTRA legislation.9

USDA stated:

The Department now believes that, considered together, the abundance of roadless values on the Tongass, the protection of roadless values included in the Tongass Forest Plan, and the socioeconomic costs and hardships to local communities of applying the roadless rule's prohibitions to the Tongass, outweigh any additional potential

long-term ecological benefits; and therefore warrant treating the Tongass differently from the national forests outside of Alaska. 10

After reviewing ANILCA and the TTRA, USDA found:

The final rule reflects the Department's assessment of how to best implement the letter and spirit of congressional direction along with public values, in

8 68 Fed. Reg. December 30, 2003 75136 at 75139.

9 68 Fed. Reg. December 30, 2003 75136 at 75141.

10 68 Fed. Reg. December 30, 2003 75136 at 75144.

light of the abundance of roadless values on the Tongass, the protection of roadless values already included in the Tongass Forest Plan, and the socioeconomic costs to local communities of applying the roadless rule's prohibitions.11

Accordingly, USDA identified total exemption of the Tongass as the best alternative during its 2003 Rulemaking because:

The Department has concluded that the social and economic hardships to Southeast Alaska outweigh the potential long-term ecological benefits because the Tongass Forest plan adequately provides for the ecological sustainability of the Tongass. Every facet of Southeast Alaska's economy is important and the potential adverse impacts from application of the roadless rule are not warranted, given the abundance of roadless areas and protections already afforded in the Tongass Forest Plan. Approximately 90 percent of the 16.8 million acres in the Tongass National Forest is roadless and undeveloped. Over three-quarters (78 percent) of these 16.8 million acres are either Congressionally designated or managed under the forest plan as areas where timber harvest and road construction are not allowed. About four percent are designated suitable for commercial timber harvest, with about half of that area (300,000 acres) contained within inventoried roadless areas.12

In its 2003 Rulemaking USDA determined that the Tongass is, and will continue to be, roadless even without the Roadless Rule and that a far greater percentage of the Tongass would remain roadless even without the Roadless Rule than exists in nearly all other National Forests.13

11 68 Fed. Reg. December 30, 2003 75136 at 75142. USDA agrees in its current rulemaking that: "The existing Forest Plan and other conservation measures would continue to provide protections that allow roadless values to prevail on the Tongass National Forest. 84 Fed. Reg. October 17, 2019 55522 at 55524.

12 68 Fed. Reg. December 30, 2003 75136 at 75141-75142.

13 68 Fed. Reg. December 30, 2003 75136 at 139.

USDA and the Department of Justice (DOJ) vigorously defended the Tongass Exemption when environmental groups challenged it in 2009. USDA argued that "the Tongass Exemption was a well-reasoned decision, supported by the evidence" and that after reweighing the same economic, social and environmental factors considered in the 2001 ROD, USDA concluded that the roadless values on the Tongass could be protected and social and economic impacts minimized by exempting the Tongass. (USDA Brief at 1 - 4).

Accordingly, the above policy determination has not been changed by the Department of Agriculture or overturned by a Court. Total Exemption remains the best option today as it was in 2003.

Nevertheless, in March 2011 the Federal District Court for the District of Alaska invalidated the 2003 Tongass Exemption on an Administrative Procedure Act (APA) process point. The Court held that in its 2003 rulemaking exempting the Tongass from the Roadless Rule, USDA had failed to adequately justify its change in policy from applying the Roadless Rule to the Tongass in 2001. The State of Alaska appealed and prevailed on the process point before a three-judge panel of the Ninth Circuit, only to lose 6 - 5 on the process point before an en banc panel of the Ninth Circuit in 2015.

Alaska again filed suit against the Roadless Rule and its application to the Tongass in August 2011. That case is fully briefed and before the D.C. Circuit Court of Appeals. It has been held in abeyance pending the outcome of this rulemaking.

Alaska's 2018 Petition for Rulemaking to Again Exempt the Tongass from the Roadless Rule.

In January 2018 then Governor Bill Walker petitioned USDA Secretary Sonny Perdue to engage in rulemaking "to permanently exempt the Tongass National Forest from application of the Roadless Rule." On January 18, 2018 the State filed a Petition with the Secretary of Agriculture for "rulemaking to permanently exempt the Tongass from application of the Roadless Rule. The State's Petition correctly observes:

The rationale USDA provided for exempting the Tongass in the 2003 ROD and again in the 2010 USDA Brief remains valid today. The extensive damage

resulting from the application of the Roadless Rule to the economic and social fabric of Southeast Alaska remains as real today as it was 15 years ago, while the Tongass roadless values remain more than adequately protected without the Roadless Rule. Therefore, for the reasons more fully explained below, the State of Alaska respectfully requests that the Secretary of Agriculture grant this petition and direct the USDA and USFS to immediately undertake rulemaking to consider once again exempting the Tongass from the Roadless Rule.14

In June 2018 the Secretary of Agriculture "agreed to address the State's concerns on roadless area management and economic development opportunities in Southeast Alaska." (October 17, 2019 Notice of Proposed Rulemaking (NPRM) Fed Reg. Vol 84, No.201 55523).

As reported in the NPRM 15 Governor Walker appointed a Citizen' Advisory Committee (CAC) "to present a written report on the rulemaking process to the Governor and State Forester, which included options for a state-specific roadless rule." "[R]ecommendations from the Committee informed the State of Alaska's input, as a cooperating agency, to the Forest Service in the development of alternatives." Id.

It consisted of 13 members who were "intended to represent a diversity of perspectives, including Alaska Native Corporations and tribes, fishing, timber, conservation, tourism, utilities, mining, transportation, local government, and the Alaska Division of Forestry." Id.

TOTAL EXEMPTION WILL NOT SIGNIFICANTLY AFFECT TIMBER HARVEST OR CLEARCUTTING

Many commenters at public meetings have expressed concern about USDA adopting Total Exemption as the Alaska specific Rule in the belief that there are no other protections in place for salmon, clean water, wildlife and untouched landscapes. These commenters are concerned that Total Exemption will result in wide-spread clearcutting which will adversely affect these Alaska values.

14 State's January 18, 2018 Petition for Rulemaking at page 2.

15 84 Fed. Reg. October 17, 2019 55522 at 55523.

This is not the case. The 6.8 million acres of Congressional designations made in ANILCA and the TTRA remain in place. The 2016 Tongass Transition Plan remains in place along with regulations governing forest management and timber sales required by the National Forest Management Act. In addition, all significant projects, including timber sales, remain subject to NEPA review.

Actual experience with timber sales in the Tongass demonstrates that the concerns about increased clearcutting are ill-founded. The 2008 Amended TLMP was in effect when the Tongass Exemption was enjoined in March 2011. Because they were in Roadless Areas, approximately 185,000 acres of forest land available for timber sales in the 2008 Amended TLMP were designated as unsuitable for timber production by the elimination of the Exemption.

As explained in the middle column on page 55524 USDA's NPRM, total exemption will only restore those 185,000 acres to the suitable timber land base which will do nothing more than restore flexibility to the timber sale program by allowing more economic timber to be offered for sale:

The analysis set out in the DEIS indicates that removal of regulatory roadless designations and prohibitions on the Tongass National Forest would not cause a substantial loss of roadless protection. The proposed rule would effectively bring only 185,000 acres ([sim]2%) out of 9.2 million designated as inventoried roadless areas on the Tongass National Forest into the set of lands that may be considered for timber harvest. When examined in 2016, the Forest Service projected that only 17,000 acres of old-growth and 11,800 acres of young-growth might be harvested over the next 100 years. That modest addition of suitable timber lands would allow local managers greater flexibility in the selection and design of future timber sale areas. This improved flexibility could, in turn, improve the Forest Service's ability to offer economic timber sales that better meet the needs of the timber industry and contribute to rural economies. Despite the proposed regulatory exemption, the remaining 9 million acres would not be scheduled or expected to be subject to timber harvest activities.

Restoring 185,000 acres of forest land to the suitable timber base will allow the Forest Service to produce and offer more economic timber sales. Removing the Roadless Rule restrictions will also enable the normal timber sale planning process

to resume. However, because most of the infrastructure for large scale timber harvest has long ago left Alaska, there will likely be little more timber harvest after Total Exemption than there was before the Exemption was removed in 2011.

In short, a significant portion of the opposition to Total Exemption is based upon unfounded fears of the environmental effects of large-scale clearcutting which is based upon inaccurate information and not supported by USDA rules governing timber sales. We urge USDA to clarify this for the public.

BECAUSE THE CAC EXCEPTIONS WERE DISREGARDED BY USDA IN ALTERNATIVES 2 - 5 OF APPENDIX G OF THE DEIS, TOTAL EXEMPTION IS THE ONLY ALTERNATIVE THAT IMPLEMENTS THE EXCEPTIONS TO THE ROADLESS RULE PROPOSED BY THE CITIZENS' ADVISORY COMMITTEE.

The CAC developed comprehensive new exceptions (and mandatory language to implement them) that it recommended be included in each Alaska-specific Roadless Rule alternative (2 - 5) set out in the DEIS, other than the "No Action" alternative:

Roadless Area Exceptions Across the Forest

The Committee developed a list of exceptions that serve as an integral part of each of the four options.

While the land base options vary, the Committee members agreed to include the Roadless Area exceptions for analysis in all of the options put forward by the Committee. (Page 4). (Emphasis added).

For example, the CAC proposed the following mandatory language to provide road access to mining (so long as it meets the criteria of 36 C.F.R. Part 228) 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 statute16 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 was trying to change:

A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty;

This failure to change current requirements is replicated throughout each alternative. The CAC's mandatory exception language that the State provided to USDA along with the exceptions listed below 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 ... 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. Accordingly, the relief from the Roadless Rule access prohibitions that the CAC exceptions listed below were intended to provide for communities, renewable energy, and mining can only be achieved by adopting the Total Exemption alternative as the Final Rule in the ROD.

16 Reasonable access mineral operations authorized by the United States mining laws (30 U.S.C. [sect] 22 et seq.). Road access is authorized in non-IRA areas if the applicant meets the environmental and other criteria of 36 C.F.R. Part 228.

Because attaining the social and economic benefits of the CAC recommendations17 is the reason the State of Alaska, its Congressional Delegation and the Coalition sought this rulemaking, and because Total Exemption (alternative 6) is the only alternative that would result in implementation of these recommendations, the Coalition strongly urges USDA to adopt Alternative 6 - the Total Exemption Alternative.

IMPLEMENTATION OF THE CAC RECOMMENDATIONS IS NEEDED TO PROVIDE REASONABLE ACCESS IN THE TONGASS FOR COMMUNITIES, RENEWABLE ENERGY, AND MINING. TOTAL EXEMPTION (ALTERNATIVE 6) IS THE ONLY ALTERNATIVE THAT WOULD RESULT IN IMPLEMENTATION OF THESE RECOMMENDATIONS.

1. Road Exception 8 (page 7): Roads in Transportation Utility System (TUS) corridors identified in the Southeast Alaska Transportation Plan (SATP) for development and/or essential for reservation for the connection of communities and development of the regional transportation system shall be permitted. Adjustment of these TUS corridors shall be allowed outside of the corridor or easement if it provides a lower cost alternative or provides an alignment that is the Least Environmentally Damaging Practicable Alternative (LEDPA).

EXPLANATION:

The effort to construct a road from the existing Prince of Wales (POW) road system to the proposed mine prospects near Niblack and Bokan Mountain illustrates the need to implement this recommendation. With the decline of timber industry jobs, the City of Craig petitioned the Congressional Delegation to introduce HR 587 to authorize construction of a road through POW IRAs to the Niblack and Bokan Mountain sites to allow its residents and businesses to commute to the mines for work. The Forest Service cited the cost of a road and the impact on the Prince of Wales IRAs as reasons to have such workers be transported by boat instead.

17 USDA cited these social and economic benefits as the reason for Totally Exempting the Tongass in its 2003

Rulemaking.

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Because Southeast Alaska is an archipelago, marine access will always be an available non-road alternative; however, marine access is rarely an affordable or functional solution for the underdeveloped transportation and utility systems in the region. Where the Forest Service looks at costs of a road and impacts to the national forest, the communities and businesses that exist and operate in the Tongass look at the higher costs, lower dependability, and increased safety risks by connecting the communities through marine links. The Roadless Rule's effect of driving all constructed development towards the marine environment is not a wise or sustainable solution for the communities and businesses of Southeast Alaska.

Because the DEIS Appendix G did not include the CAC's recommended regulatory language in alternatives 2 - 5, Total Exemption is the only alternative that can implement CAC New Road Exception 8. The Coalition therefore recommends that Total Exemption be adopted as the Final Rule.

2. Road Exception 15 (page 8): A road for transportation, communication, and utility infrastructure and maintenance shall be permitted.

EXPLANATION:

The Swan-Tyee Intertie (STI) is an example of a transmission project that, because of no road access, resulted in very high construction costs.. With road access for construction prohibited by the Forest Service, it was necessary to use helicopters to construct the STI transmission line. This resulted in construction costs of about $2 million dollars/mile. The STI is 57 miles long and the total construction cost including permitting, design, etc. was about $110 million.

Of more significance are the recurring costs to maintain a line without road access. The rights-of way (ROW) for these lines must be maintained and brushed continually. The structures must be inspected on a rotating annual basis. Restoring service in the event of damage to conductor or poles can be incredibly challenging, resulting in delayed response times and more extensive use of diesel back-up generation. With roads, this work can be done by a crew in a truck. Without roads, this work must be helicopter supported, which not only is incredibly expensive, but may not be possible in the type of inclement weather likely to result in damage to outside plant.

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Southeast Alaska lacks a unified transmission system, and transmission interconnections to the North American grid system. Rural communities are forced to operate as microgrid utility systems. The isolated nature of these systems creates significant diseconomies of scale, and operational redundancies and inefficiencies. For example, each community must have its own diesel generation facilities for backup/supplemental generation.

Some communities have hydropower projects which experience seasonal overabundances of energy, and "spill" water while other communities burn diesel fuel as a primary source of generation. This arrangement is also incredibly inefficient from a resource planning and cost-optimization perspective; instead of using a system of capital rationing to select the most cost-effective renewable energy project to meet the needs of multiple

communities throughout the region, multiple planners in southeast Alaska's fragment utility landscape must locate multiple smaller projects, and seek-out grants, capital appropriations, and low-interest loans needed to make them feasible. Each community must have its own one-off solution.

In a large grid system, the incremental energy needs of rural communities can, in aggregate, support development of commercial-scale renewables offering better economies of scale, and more affordable wholesale prices. In a fragmented utility environment such as that which is effectuated by the Roadless Rule, each community must develop its own dedicated generation facilities. Finding technically and financially feasible renewable energy projects which are not inaccessible due to the Roadless Rule, and which provide a delivery profile coincident with incremental demand, is particularly challenging. As a result, many communities rely upon diesel-based generation to meet incremental energy needs; a costly alternative which undermines possibilities for new economic development, and community growth and sustainability.

Were more transmission interconnections throughout southeast Alaska possible, communities could dispatch existing renewable assets more economically, and commercial-scale projects could be developed in response to the aggregated demand of multiple rural communities. Businesses undertaking duly authorized resource development activities could plan proactively for interconnection to community utility systems, helping to improve economies of scale, and contributing to more affordable community energy rates. Redundant diesel generation facilities could be minimized. And, with interconnections to the north American grid system, southeast Alaska could benefit from buying and selling energy in spot markets, or through long-term contracts with utilities and independent power producers, creating additional revenue for rural communities. In addition, transmission lines that do not have road access also must have helicopter pads near the structures. These pads will

have to be maintained and brushed every few years. This work must be done by helicopter which, as stated, is very expensive.

All the operating and maintenance costs associated with conducting operations in the margins of the Roadless Rule are ultimately paid by Southeast Alaska's ratepayers. There is no Federal appropriation to underwrite the incremental cost of conducting extraordinary operational activities necessary to accommodate the Roadless Rule.

In a nutshell, the lack of roads dramatically increases the cost of construction for transmission projects and dramatically drives up the operation and maintenance costs. As a result, utility ratepayers pay for the Roadless Rule, and to provide a purported "roadless benefit" to others.

Because the DEIS Appendix G did not include the CAC's recommended regulatory language in alternatives 2 - 5, Total Exemption is the only alternative that can implement CAC New Road Exception 15. The Coalition therefore urges that Total Exemption be adopted as the Final Rule.

3. Road Exception 10 (page 7): A road to access Congressionally-authorized Southeastern Alaska Intertie System Plan Routes (PL 106-511, February 1, 2001) as identified in report #97-01 of the Southeast Conference shall be permitted.

EXPLANATION:

On November 13, 2000, two months prior to the January 12, 2001 ROD, Congress authorized a Southeast Alaska-wide intertie.18 Remarkably, neither Public Law 106[shy]511 nor Report #97-01 of the Southeast Conference [minus] which Public Law 106-511 implemented [minus] is referenced in the 2001 Roadless Rule. It does not mention the power cost savings and economic development benefits the Southeast Alaska Intertie program could bring to rural communities if not for the Roadless Rule.

Given the fact that there are 9.2 million acres of IRAs in the Tongass and 6.8 million acres of Wilderness and other Congressionally-designated land set asides on the Tongass National Forest, it is highly probable that the new hydropower and other renewable energy projects needed to provide lower cost power to remote mining operations and rural communities throughout Southeast Alaska and other markets are being prohibited, or made more difficult to access and develop, because they are located in IRAs and Wilderness and Congressionally set aside Areas and because

18 Pub. Law 106-511, 114 Stat. 2365 (Nov. 13, 2000).

the power lines needed to distribute that power will need to cross IRAs and Wilderness Congressionally set aside Areas.

This loses, without reason, the synergies that can exist among mining, renewable energy and community energy costs. For example, the Greens Creek Mine is an interruptible power customer of AEL&P that will take any power - up to the operating needs of the mine - not otherwise sold to others. Greens Creek consumes a huge base load that reduces the cost of electricity to Juneau consumers. The revenue produced through this arrangement is returned to AEL&P's customers in the form of cost-savings. If the mine goes away, electricity rates to the community of Juneau would increase by approximately 24%.

Currently in the Final Rule, there are seven exceptions19 in subsection (b) of 36 C.F.R. [sect] 294.12 pursuant to which a road may be constructed or reconstructed in an inventoried roadless area (notwithstanding the prohibition in paragraph (a) of [sect] 294.12) if the Responsible Official determines that one of those seven exceptions exists. In addition to CAC New Exception (8) suggested in Section 1 above, the Coalition urges that CAC new Road Exception 10 should be added to those seven exceptions in 36 C.F.R. [sect] 294.12(b) in the Final Rule.

Because the DEIS Appendix G did not include the CAC's recommended regulatory language in alternatives 2 - 5, Total Exemption is the only alternative that can implement CAC New Road Exception 10. The Coalition therefore urges that Total Exemption be adopted as the Final Rule.

4. Road Exception 13 (page 8): A road to access hydropower and renewable energy projects and their transmission infrastructure, including their maintenance, shall be permitted in the same way as if the application for the road to access such projects were being permitted on non-IRA National Forest lands. Renewable energy includes energy that is collected from renewable resources, which are naturally replenished on a human timescale, such as sunlight, wind, rain, tides, waves, geothermal heat, biomass, or other forms of energy.

EXPLANATION:
a. Background

Hydropower has been used in Southeast Alaska for over 120 years. Given the federal government's involvement in the construction of Southeast Alaska hydropower facilities, including the Forest Service's role in permitting

processes, USDA

19 66 Fed Reg. supra, at page 3272.

certainly was aware of the Tongass' hydropower potential when the 2001 Roadless Rule was applied to the Tongass.

As discussed to some extent in sections 2 and 3, above, local renewable energy is important to Southeast Alaska because it will often be more economic and environmentally preferred than imported diesel-based generation to power communities and mines in rural Southeast Alaska. The possibility of affordable renewable energy also supports business growth, recruitment, and retention, and helps render industrial-scale development more economic.20

However, the 2001 Roadless Rule is fatally flawed, because it did not include a commercially reasonable or realistic renewable energy resource plan and failed to recognize pre-existing power site classifications and other potential renewable energy resources on the Tongass such as hydropower, geothermal, wind or other renewable energy sites. Instead, the 2001 Roadless Rule actually impedes utilities' ability to provide responsible, reliable, and renewable energy at a low cost by limiting the options to construct and maintain transmission lines in Southeast Alaska.

For example, in 2008 and 2009, Juneau experienced a financial emergency after avalanches tore down the Snettisham Transmission Line (https://www.nytimes.com/2008/04/20/us/20Juneau.html). In the wake of these disasters, AEL&P evaluated mitigation options to prevent or reduce the impact of future events, and the utility submitted a response plan to the Forest Service which included a request to build two access routes for equipment to travel approximately 1,000' from tidewater to transmission towers subject to high avalanche or landslide risk. The Forest Service approved nearly all aspects of the response plan, including the construction of earthen dams to protect selected towers, but the agency excluded approval for the access routes, instead stating that AEL&P could submit a separate application for that request. After subsequent consultation with the agency, AEL&P declined to incur the cost of submitting a separate application for the proposed access points because the Forest Service indicated it would not approve their construction in an IRA.

20 The possibility of an interconnection to the North American grid should be examined to determine whether Southeast Alaska's hydropower potential could make a meaningful contribution to meeting clean energy requirements in the greater North American grid while providing high-quality jobs to residents of southeast Alaska.

This invalidated the approved parts of the plan at those locations because the alternative to access from tidewater required the use of a heavy-lift helicopter, which cannot deliver the equipment necessary to build an earthen dam.

Should future emergency repairs to the affected towers be required, the Forest Service's failure to approve

access from tidewater to transmission towers across an IRA may unnecessarily prolong the use of back-up diesel generation because heavy-lift helicopters are often not readily available to move the equipment and may not have the lift power to do so.

Another example is the Kake - Petersburg transmission line for which the Forest Service failed to authorize a pioneer road for construction adding to the project cost.

1. The Absence of a Workable TUS LUD on the Tongass.

The 1947 Waterpower of Southeast Alaska Report, conducted in part with the Forest Service, identified over 200 such potential hydropower sites in Southeast Alaska, many of which could have been accessed through the 2008 Forest Plan's Transportation and Utility System (TUS) Land Use Designation (LUD) corridors.

Under the former TUS LUD (that was in effect prior to adoption of the 2016 Tongass Transition Plan) the management proscriptions for developing utility lines and maintenance roads remained dormant in the Forest Plan's TUS LUD corridors (that connect the Tongass communities to each other and to the Canadian road and utility grid) until a utility or road project had all environmental permits for construction. This "springing" LUD was a sound method that allowed the Forest Service to manage its patchwork of interconnected LUDs, while also allowing for the development of linear construction projects to cross the patchwork of other LUDs without having to zigzag facility locations to avoid a particular area. The Forest Service's removal of the TUS LUD corridors during the 2016 TLMP Amendment process adds further to the permitting challenges for developing utilities and an energy export industry in Southeast Alaska. The current restrictions on development are compounded by the Remote Recreation LUD and the 2001 Roadless Rule.

1. Ambiguity Regarding Future Hydropower Projects

Future hydropower and support facilities, such as those envisioned by Report #97[shy]01, will be subject to the prohibition on road construction. See 66 Fed. Reg. at 3256 ("The final rule retains all of the provisions that recognize existing rights of access and use. Where access to these facilities is needed to ensure safe operation, a utility company may pursue necessary authorizations pursuant to the terms of the existing permit or contract.") (emphasis added). Future facilities do not fall within that exception.

Likewise, the summary of Roadless Rule costs and benefits displayed in Table 1indicates that for "[s]pecial-use authorizations (such as communications sites, electric transmission lines, pipelines)," existing facilities are not affected but "future developments requiring roads [are] excluded in inventoried roadless areas unless one of the exceptions applies."21

There is a short discussion in the Rule's Preamble regarding application of [sect] 294-14 (a) to continued access to existing facilities operated by utilities:

The final rule retains all of the provisions that recognize existing rights of access and use. Where access to these facilities is needed to ensure safe operation, a utility company may pursue necessary authorizations pursuant to the terms of the existing permit or contract.22

Because there is no mention of future utilities, or any mention of hydropower, the application of the inclusio unus,

exclusion alterus canon of construction, would mean that the 2001 Roadless Rule does not allow new roads for such development.

The response to comments discussion in the Preamble leads to the same conclusion that road construction in support of future hydropower projects is prohibited in IRAs:

Comment on Exiting Authorized Activities. Some respondents were concerned about the impact of the rule on special uses and requested clarification regarding the ability to construct or maintain roads in inventoried roadless areas to access electric power lines or telephone lines, pipelines, hydropower facilities, and reservoirs.

Response. Section 294.14(a) of the proposed rule stated that the rule would not suspend or modify any existing permit, contract, or other legal instrument authorizing the use and occupancy of the National Forest System lands. Existing authorized uses would be allowed to maintain and operate within the parameters of their current authorization, including any provisions regarding access.23

Finally, Table 1, attached to the Final Rule, summarizes the costs and benefits of the Final Rule, describes the impact of the Final Rule on "Special Use authorizations (such as communications sites, electric transmission lines, pipelines)" as follows: "Current use and occupancies not affected, future developments requiring

21 66 Fed. Reg. at 3269 (emphasis added).

22 66 Fed. Reg. supra., at page 3256. (Emphasis added).

23 66 Fed Reg. supra., at page 3259. (Emphasis added).

roads excluded in inventoried roadless areas unless one of the exceptions applies."24

It is thus clear that in promulgating the 2001 Roadless Rule the Forest Service simply failed to address the contradiction between Public Law 106-511, Title VI and the 2001 Roadless Rule. This ambiguity would be resolved by adoption of the Total Exemption alternative which in turn will assure road access to all potential hydropower sites.

Because the DEIS Appendix G did not include the CAC's recommended regulatory language in alternatives 2 - 5, Total Exemption is the only alternative that can implement CAC New Road Exception 13. The Coalition therefore recommends that Total Exemption be adopted as the Final Rule.

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.

EXPLANATION:

Road access is needed to access claims and for exploration and mine development whether those claims are located within Tongass IRAs or non-IRA Forest land. We cannot protect mining opportunities on the Tongass or miners' rights under the 1872 Mining Act with geographic Tongass-specific IRA selections because no one knows where economic mineralization is until an area is explored to determine size and grade.

The 2001 Roadless Rule (36 C.F.R. [sect] 294.12(b)(3)) provides an exception to the prohibition on road construction in IRAs: "A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty." But there are simply no criteria by which the Responsible Forest Service official determines when a road is needed to support mining exploration and development. Thus, what is "reasonable access" is completely up to the Forest Supervisor without criteria for deciding.

"Leaving it up" to the responsible Forest Service official to determine what is "reasonable access' or when a road is "needed" does not adequately protect access rights under the Mining Act of 1872. For example, the Quartz Hill Project was adjacent to the Misty Fjords Wilderness Study Area. In 1977 the Forest Service denied a Special Use Permit to U.S. Borax to construct a road for a bulk sample of

24 66 Fed Reg. supra., at page 3270.

5,000 tons of ore at the Quartz Hill Project, requiring access to be by helicopter. SEACC v. Watson, 697 F.2d 1305 (9th Cir. 1983).

As the opinion shows, six years later Borax still did not have a permit to build the road needed to move that volume of ore. Hyak Mining Co. sought to construct a 700-foot access road from a forest road at the old Puyallup Mine to the Cracker Jack group of patented mining claims it owns near Maybeso Creek on Prince of Wales Island near Hollis. Reapplication to construct the 700 feet of road was made February 12, 2010, but authorization was delayed by the Forest Service because the road is adjacent to an IRA

We are told that notwithstanding the Roadless Rule the Forest Service has issued 59 permits in IRAs - mostly for mineral exploration. However, 33 of these approved non-roaded helicopter supported drilling. Many of these approvals cover drilling the same area, but in a different year.

Non-roaded helicopter supported drilling limits the size of rig and volume of core that can be extracted. Thus, without roads, only INITIAL exploration data with limited usefulness can be obtained. In order to advance a project while protecting investors, the Security and Exchange Commission and other regulatory bodies require greater certainty of resource/reserve estimation.

However, larger core and underground drilling cannot occur without roads, let alone extraction of large tonnage metallurgical test mill 'bulk' samples. Thus, exploration requires an ever-increasing level of investigation to add certainty to resource/reserve information to support financing in public markets. This cannot be accomplished without roads. Exploration budgets would shoot up dramatically - by millions to tens of millions - to fly in large rigs, underground excavation equipment, camps, personnel, infrastructure, emergency response, environmental controls, etc. Yet, it is highly doubtful that the current 36 C.F.R. [sect] 294.12(b)(3) exception would allow roads for these purposes.

For that reason, the Coalition supports Total Exemption, - i.e., an Alaska-specific rule that authorizes roads for mining and other mining related activities in IRAs that meet the environmental criteria of 36 C.F.R. [sect] 228 (a). Thus, the requirements for authorizing mining exploration on non-IRA Tongass land and Tongass IRAs would be the same.

When mining is completed the road would be reclaimed, the culverts would be pulled, and water bars installed. These areas can then be managed for "roadless characteristics," as has been done with many former logging

roads which now provide meaningful habitat and conservation benefits.

Because the DEIS Appendix G did not include the CAC's recommended regulatory language in alternatives 2 - 5, Total Exemption is the only alternative that can

implement CAC New Road Exception 11. The Coalition therefore urges that Total Exemption be adopted as the Final Rule.

1. Timber Cutting Exception B.1 (pages 8 - 9): The cutting and removal of trees in connection with mineral exploration and mine development is authorized and shall be permitted as if the mineral exploration or mine development were being permitted on non-IRA National Forest land. Cutting and removal of trees may be sold and/or utilized on the project.

EXPLANATION:

Currently, 36 C.F.R. [sect] 294.13(b)(2) only authorizes the cutting or removal of trees in IRAs that is "incidental to implementation of a management activity not otherwise prohibited by this subpart." The level of exploration needed to develop a mine on the Tongass requires the cutting and removal of trees. Mine development requires even more cutting and removal of trees.

While "reasonable access" is technically permitted in IRAs, cutting and removal of trees associated with mining exploration and development does not appear to be allowed. 36 C.F.R. [sect] 294.13 (b) (2) authorizes the cutting or removal of timber "incidental to implementation of a management activity not otherwise prohibited by this subpart." The needed level of exploration to develop a safe, modern mine on the Tongass National Forest requires the substantial cutting and removal of trees. Mine development would typically require even significantly more cutting and removal of trees. How could the Forest Service permit construction of a portal and development rock stockpile if trees could not be cut?

However, there is no mention of mining in the examples provided in the 2001 Rule and ROD of what this section authorizes.25 Moreover, in describing this section the 2001 Rule and ROD states: "Such management activities are expected to be rare and to focus on small diameter trees."26

Because the DEIS Appendix G did not include the CAC's recommended regulatory language in alternatives 2 - 5, Total Exemption is the only alternative that can implement CAC New Timber Cutting Exception B.1. The Coalition therefore urges that Total Exemption be adopted as the Final Rule.

1. Road Exception 12 (page 8): A road to access leasable minerals in IRAs shall be permitted if it meets the criteria of 36 C.F.R. Part 228 in the same

25 Ibid., at page 3258.

26 Ibid., at page 3257.

way as if the application for the road to access such mineral operations were being permitted on non-IRA National Forest lands.

EXPLANATION:

Although the Roadless Rule allows access to locatable minerals, it denies access to new leases for minerals subject to the Mineral Leasing Act of 1920, including geothermal resources, "because of the potentially significant environmental impacts that road construction could cause to inventoried roadless areas."27 There also is no explanation as to why the access impacts associated with locatable minerals, which are allowed, are different from the access impacts associated with leasable minerals.

Adoption of this recommendation would allow access to geothermal resources as a source of renewable energy. Because the DEIS Appendix G did not include the CAC's recommended regulatory language in alternatives 2 - 5, Total Exemption is the only alternative that can implement CAC New Road Exception 12. The Coalition therefore recommends that Total Exemption be adopted as the Final Rule.

IN ADDITION TO THE FOREGOING THE COALITION SUPPORTS THE FOLLOWING CAC RECOMMENDATIONS FOR EXCEPTIONS TO THE ALASKA SPECIFIC ROADLESS RULE, THE IMPLEMENTATION OF WHICH REQUIRES ADOPTION OF THE TOTAL EXEMPTION ALTERNATIVE:

1. Forest Health. The Coalition supports the CAC's recommendation the following new exception for Forest Health be added to 36 C.F.R. [sect] 294.13:

The cutting and removal of trees incidental to fire prevention, removal of hazard trees that reduce risk to the public, blowdown/windfall management, and/or insect and disease management, is authorized. Such trees may be sold and/or utilized on the project.

1. Alaska Native Culture. The Coalition supports the CAC's recommendation that the following new exception for Alaska Native Culture be added to 36 C.F.R. [sect] 294.13:

The cutting and removal of trees in connection with Alaska Native custom and traditional uses is authorized.

27 66 Fed. Reg. at 3256.

1. Fish and Wildlife Habitat Improvement. The Coalition supports the CAC's recommendation that the following new exception for fish and wildlife habitat be added to 36 C.F.R. [sect] 294.13:

The cutting and removal of trees for fish and wildlife habitat improvement is authorized. Such trees may be sold and/or utilized on the project.

1. Road Building. The Coalition supports the CAC's recommendation that the following new exception for road building be added to 36 C.F.R. [sect] 294.13:

The cutting and removal of trees for permitted road building (as described in 36 C.F.R [sect] 294.12) is authorized. Such trees may be sold and/or utilized on the project.

1. Biofuels. The Coalition supports the CAC's recommendation that the following new exception for biofuels be

added to 36 C.F.R. [sect] 294.13(b):

The cutting and removal of trees for biofuel for Southeast Alaska residential and municipal needs is authorized and will comply with current standards and regulations for harvest.

1. Municipal Watersheds. The Coalition supports the CAC's recommendation that the following new exception for municipal watersheds be added to 36 C.F.R. [sect] 294.13:

The cutting and removal of trees for municipal watershed construction and management is authorized and such trees may be sold and/or utilized on the project.

1. Roads to Connect Communities. The Coalition supports the CAC's recommendation that a new exception for Roads in TUS corridors identified in the Southeast Alaska Transportation Plan (SATP) for development and/or essential for reservation for the connection of communities and development of the regional transportation system should be added to 36 C.F.R. [sect] 294.13. This includes roads set out in a community, municipal, or tribal government plan to provide access and development of water resources, renewable energy resources, sanitary landfills, connecting isolated road networks, and subsistence resources, including maintenance of such roads and facilities.
2. Roads for Fisheries. The Coalition supports the CAC's recommendation that a new exception be added to the Alaska-specific Roadless Rule to allow road access to an authorized facility or location for fishery research, management, enhancement and rehabilitation activities; fishways, fish weirs, fish ladders, fish

hatcheries, spawning channels, stream clearance, egg planting, and other permitted aquaculture facility or activity, including mariculture should be added to 36 C.F.R. [sect] 294.13.

Implementation of each of the foregoing recommendations can be assured only by selection of the Total Exemption Alternative - Alternative 6.

CONCLUSION

There are over 6.8 million acres of Congressionally-designated areas of the Tongass that already prohibit development. In addition, there are significant Tongass-specific stream protections built into the TTRA. The 2016 Tongass Transition Plan provides additional land and resource protection. Any development must meet the requirements of the Forest Plan and 36 C.F.R. Part 228 which development would be examined by decision makers and the public through the NEPA process. The blanket proscriptions of the 2001 Roadless Rule thus do not really provide environmental and resource protection - just barriers.

For these same reasons the USDA agreed in 2003 that the 2001 Roadless Rule is an unnecessary barrier to the social and economic welfare of the residents of Southeast Alaska:

The Department has concluded that the social and economic hardships to Southeast Alaska outweigh the potential long-term ecological benefits because the Tongass Forest plan adequately provides for the ecological sustainability of the Tongass. Every facet of Southeast Alaska's economy is important and the potential adverse impacts from application of the roadless rule are not warranted, given the abundance of roadless areas and protections already afforded in the Tongass Forest Plan.

Accordingly, for the foregoing reasons, and because the DEIS Appendix G did not include the CAC

recommendations (thereby causing Total Exemption to be the only alternative that can implement the CAC recommendations), the Coalition joins the State of Alaska and Alaska's Congressional Delegation in urging USDA to again select the Total Exemption Alternative 6 as the Alaska-specific Roadless Rule.

Thank you,

[signatures]

Robert Venables, Executive Director Marleanna Hall, Executive Director

Southeast Conference Resource Development Council for Alaska Inc.

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Robert Venables, Executive Director of the Southeast Conference and Marleanna Hall, Executive Director of the Resource Development Council for Alaska, Inc. have been authorized to sign this Comment letter by the following:

Deantha Crockett, Executive Director Owen Graham, Executive Director

Alaska Miners Association Alaska Forest Association

Joe Kahklen, President Craig Dahl, Executive Director

First Things First Alaska Foundation Juneau Chamber of Commerce

Carrie Starkey, Executive Director Trey Acteson, Chief Executive Officer Greater Ketchikan Chamber of Commerce Southeast Alaska Power Agency

Kati Cappozi, President and CEO Alicia Siira, Executive Director

Alaska Chamber of Commerce Associated General Contractors of

Alaska

Rebecca Logan, CEO Neil MacKinnon, President

Alaska Support Industry Alliance Hyak Mining Company

Connie Hulbert, President Randy Johnson, President

Alaska Electric Light &Power Company Tyler Rentals, Inc.

Lance Miller, President Paul Axelson

Red Diamond Mining Company Southeast Stevedoring, Inc.

Everett Billingslea Jason Custer, Vice President

Alaska Marine Lines, Inc. Alaska Power & Telephone Co., Inc

Bill Moran, President Mike Wilson, President

First Bank Coastal Helicopters, Inc.

Robert Sivertsen, Mayor
City of Ketchikan

cc: The Honorable Michael J. Dunleavy, Governor of Alaska

The Honorable, Senator Lisa Murkowski

The Honorable, Senator Dan Sullivan

The Honorable Congressman Don Young

[Position]

[See attachment containing the following technical resource: The State of Alaska request to consider a petition for rulemaking on the applicability of the 2001 Roadless Rule]

[See attachment containing the following technical resource: Alaska Roadless Rule Citizen Advisory Committee; Final Report to the Governor and State Forrester State of Alaska 2018]

[See attachment containing the following technical resource: Appendix D; Drafted Roadless Rule Regulatory Language by Alternative]

[See attachment containing the following technical resource: Federal Register; Department of Agriculture Special areas; Roadless Area Conservation; Final Rule]