



October 15, 2018

Mr. Ken Tu, Interdisciplinary Team Leader  
Alaska Roadless Rule  
USDA Forest Service, Alaska Region  
Ecosystem Planning and Budget Staff  
P.O. Box 21628  
Juneau, AK 99802-1628

Re: Scoping comments on proposed rulemaking for Alaska-specific Roadless Rule

Dear Mr. Tu:

The undersigned broad coalition of entities, with very diverse interests, is writing in regard to the Alaska Roadless Rule noticed in the Federal Register on August 30, 2018. As a coalition that includes urban and rural Alaskans, and businesses and associations representing tens of thousands of Alaskans, we join the State of Alaska, for the reasons given by Governor Bill Walker in his January 18, 2018 Petition for Rulemaking, in urging the U.S. Department of Agriculture (USDA) to exempt the entire Tongass National Forest from application of the 2001 Roadless Rule.

These scoping comments represent the views of the Alaska Miners Association, the Alaska Forest Association, First Things First Alaska Foundation, the Juneau Chamber of Commerce, the Ketchikan Chamber of Commerce, the Resource Development Council for Alaska, Inc., the Southeast Alaska Power Agency, and the Southeast Conference.

## **BACKGROUND**

The 2001 Roadless Rule was the fourth time areas of the Tongass were set aside from resource development by the federal government. Prior to promulgation of the Roadless Rule the Tongass had undergone two Congressional reviews (ANILCA and TTRA) and a 1999 USDA Secretarial review that had set aside over 6.6 million acres of the Tongass in Wilderness and other restrictive land use categories. The USDA rulemaking included a separate Tongass decision, but the Roadless Rule's

general statement of Purpose and Need did not explain the need for a fourth “national level, whole picture” review of the Tongass.

Five Alaska Governors – Democratic, Republican, and Independent – have litigated application of the Roadless Rule to the Tongass.

In 2003 the USDA settled the litigation with the State by agreeing to temporarily exempt the Tongass from the Roadless Rule. USDA said “the roadless values on the Tongass are sufficiently protected under the Tongass Forest Plan and the additional restrictions associated with the roadless rule are not required.” The 2003 Record of Decision also stated:

The agency also recognized the unique situation on the Tongass during the development of the roadless rule and proposed treating the Tongass differently from other national forests until the final rule was adopted in January 2001. At that time, the Department decided that ensuring lasting protection of roadless values on the Tongass outweighed the attendant socioeconomic losses to local communities. 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 to local communities of applying the roadless rule’s prohibitions to the Tongass, all warrant treating the Tongass differently from the national forests outside of Alaska.<sup>1</sup>

Accordingly, the Department decided:

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.

As discussed in the roadless rule FEIS (Vol. 1, 3–202, 3–326 to 3–350, 3–371 to 3–392), substantial negative economic effects are anticipated if the roadless rule is applied to the Tongass, which include the potential loss of approximately 900 jobs in Southeast Alaska. With the adoption of this final rule, the potential negative economic effects should not occur in Southeast Alaska. Even if the maximum harvest permissible under the Tongass Forest Plan is actually harvested, at least 80 percent of the currently remaining roadless areas will remain essentially in their natural condition after 50 years of implementing the forest plan. If the Tongass is exempted from the prohibitions in the roadless rule, the nation will still realize long-

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<sup>1</sup> 68 Fed. Reg. December 30, 2003 75136 at 75139

term ecological benefits because of the large area that will remain undeveloped and unfragmented, with far less social and economic disruption to Southeast Alaska's communities.<sup>2</sup>

This USDA policy regarding application of the Roadless Rule to the Tongass has not been changed. It has not been implemented due to subsequent Roadless Rule litigation over USDA's process in promulgating the 2003 Exemption.<sup>3</sup> But USDA's substantive, policy determination has never been successfully challenged and is as true today as it was then. Given that 6.6 million acres of the Tongass are in Wilderness and other Congressionally designated restricted land categories, USDA should once again exempt the entire Tongass from the Roadless Rule. Denying access to an additional 9.6 million acres of the Tongass by Roadless Area designation creates a gross imbalance. We don't need 90% of the Tongass National Forest to be "protected" from the Alaskans who live in Southeast Alaska.

On January 18, 2018 the State filed a Petition with the Secretary of Agriculture for "rulemaking to exempt the Tongass from application of the Roadless Rule and other actions [meaning the 2016 Tongass Land Management Plan]. 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.<sup>4</sup>

The State's Petition also recognizes that the 2016 Land Management Plan must be rescinded by rulemaking because it is intertwined with the Roadless Rule.

## **SCOPE OF EIS: MATTERS TO BE ANALYZED IN DEPTH IN ALASKA-SPECIFIC RULEMAKING ALTERNATIVES**

The purpose of scoping is to identify "significant issues to be analyzed in depth in the environmental impact statement."<sup>5</sup> The following are the issues that the undersigners urge to be considered and analyzed in depth:

1. **Overall issue.** As stated above, the State's Petition request for total exemption of the Tongass from the Roadless Rule is completely consistent with the USDA's rationale for exempting the Tongass that was set out in the 2003 ROD and again in the 2010 USDA Brief. That is, the current, unchanged, USDA policy is complete exemption. Accordingly, the burden is on USDA to provide a reasoned explanation for any change in that policy. The Draft EIS should provide a full explanation of, and reasons for, what, if anything, has changed regarding USDA's policy

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<sup>2</sup> 68 Fed. Reg. December 30, 2003 75136 at 75141-75142.

<sup>3</sup> The en banc Ninth Circuit Court held that the 2003 Tongass Exemption was invalid because the Department failed to provide a reasoned explanation for contradicting the findings in the 2001 Record of Decision. As a remedy, the en banc court upheld the district court's reinstatement of the Roadless Rule which remained in effect and applied to the Tongass Forest.

<sup>4</sup> State's January 18, 2018 Petition for Rulemaking at page 2.

<sup>5</sup> CEQ Regulations 40 C.F.R. § 1508.7(a)(2). See also § 1508.25.

reasons for exempting the entire Tongass from application of the 2001 Roadless Rule in the 2003 ROD and the 2010 USDA Brief.

The *en banc* Ninth Circuit panel did not change the policy or find anything legally wrong with the 2003 policy change to total exemption. It found that USDA had provided an insufficient explanation for the change in the factual underpinnings of its 2001 decision to its 2003 decision.<sup>6</sup>

Again, it follows that the burden is on USDA to provide a rationale for any change in its substantive 2003 policy decision that the entire Tongass should be exempt. (See *FCC v. Fox Television Stations Inc.* 556 U.S. 502 (2009).

2. **Effect of changes caused by the Alaska-specific Roadless Rule on the 2016 Tongass Land Management Plan.** Because the restrictions of the 2016 Tongass Plan and 2001 Roadless Rule as applied to the Tongass are interlocked, their collective impacts on resource development activity overlap. Accordingly, changes to the 2001 Roadless Rule made in Alaska-specific rulemaking should automatically amend the 2016 Tongass Plan just as the reinstatement of the 2001 Roadless Rule automatically amended the 2008 Amended Tongass Land Management Plan.
3. **Assurance that new IRAs on the Tongass be added through rulemaking.** The decommissioning-new roadless area policy was described in a Roads Specialist's Report<sup>7</sup> which was part of the 2001 Roadless Rule FEIS. The Specialist's Report stated that by decommissioning roads, the Forest Service actually will *increase* unroaded areas in the National Forests over time:

The most common scenario associated with road decommissioning under the proposed Roads Policy would be to reduce road density, not create roadless areas. However, if a conservative estimate were realized, there would be an increase of 10%, or 8.4 million acres of roadless area created over the next 40 years due to road decommissioning. (Page 14 of Rpt.)

We are concerned with future management of any newly created Roadless Areas in Alaska. The below definition of Inventoried Roadless Area (IRAs), makes it uncertain whether the Forest Service Responsible Official is authorized to convert such areas around decommissioned roads to Roadless Areas by simply updating or revising the 2001 Roadless Area maps:

36 C.F.R. § 294.11 Definitions. The following terms and definitions apply to this subpart:

*Inventoried roadless areas.* Areas identified in a set of inventoried roadless area maps, contained in Forest Service Roadless Area Conservation, Final Environmental Impact

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<sup>6</sup> *Organized Village of Kake v. USDA*, 795 F.3d 956 (9<sup>th</sup> Cir. 2015)(en banc).

<sup>7</sup> Specialist Report for Wilderness and Special Designated Areas; David R. Harmer, Landscape Architect, November 2000.

Statement, Volume 2, dated November 2000, which are held at the National headquarters office of the Forest Service, **or any subsequent update or revision of those maps.**

*Responsible official.* The Forest Service line officer with the authority and responsibility to make decisions regarding protection and management of inventoried roadless areas pursuant to this subpart.

As decommissioned roads that supported significant commercial timber harvest in the 1960s, 1970s and 1980s grow over, the areas surrounding them would arguably meet the IRA definition set out above. A new Alaska-specific rule should explain whether new or draft updates or revisions of the 2000 IRA maps exist and how the Regional Forester plans to update or revise the IRA maps during the life of the Forest Plan.

An easy way to resolve this issue would be to add the words “through rulemaking” to the above definition of IRAs in the Alaska-specific Rule. Thus, the final phrase of the definition in the Alaska-specific Rule would read as follows:

**... or any subsequent update or revision of those maps *through rulemaking.***

4. **Road access for mining exploration and development in Alaska-specific IRAs.** Roads are 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 their rights under the 1872 Mining Act with geographic Tongass-specific IRA selections because no one knows where productive mineralization is until an area is explored to determine size and grade of load.

In making this request, we recognize the 2011 Roadless Rule (36 C.F.R. § 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, so “reasonable access” is completely up to the Forest Supervisor.

The experience of our associations with leaving it up to the responsible Forest Service official to determine what is “reasonable access” or when a road is “needed” is not encouraging. 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 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.

We are also told that notwithstanding the Roadless Rule the Forest Service has issued 57 permits in IRAs - mostly for mineral exploration. However, these are all for non-roaded helicopter supported drilling. This limits the size of rig and volume of core that can be extracted. While NQ (1.9 inch dia) core can be obtained with lighter drills, HQ (2.5 inch dia) or PQ (3.4 inch dia) core is necessary for higher certainty of assay and structure. Thus, without roads, only INITIAL

exploration data can be obtained. In order to advance a project, the Security and Exchange Commission requires 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 36 C.F.R. § 294.12(b)(3) exception would allow roads for these purposes.

For that reason, our coalition requests that the Alaska-specific rule authorize roads for mining and other mining related activities in IRAs that meet the environmental criteria of 36 C.F.R. § 228 (a). Thus, the requirements for authorizing mining exploration on non-IRA Tongass land and Tongass IRAs would be the same.

When mining is done the road would be reclaimed, the culverts would be pulled and water bars installed. And then the old roads grow over, just as old Tongass logging roads have done. The 2000 Specialist’s Report for Wilderness and Special Designated Areas says areas surrounding decommissioned roads could be considered for Wilderness designation by Congress. So areas containing decommissioned mining roads could certainly be included in Tongass-specific IRAs (which already includes 80,000 acres of “roaded” IRAs).

Accordingly, a new exception for Alaska-specific rulemaking should be added to 36 C.F.R. § 294.12(b) as follows:

- (8) a road to access mineral operations authorized by the United States mining laws (30 U.S.C. § 22 et seq.) would be permitted under 36 C.F.R. Part 228 as if the application for a road to access such mineral operations were on non-IRA National Forest land;
5. **Authorization to conduct drilling in IRAs.** Mining exploration requires the drilling of multiple holes to determine from the surface the subsurface characteristics and extent and grade of the mineral resource. Mine development requires site clearing for buildings, tailings piles, mills, and other facilities. The 2001 Roadless Rule does not appear to prohibit mineral exploration drilling so long as it is conducted pursuant to 36 C.F.R. § 228(a). Please confirm. A definitive exception for Alaska-specific rulemaking that would authorize such drilling should be added to the Alaska-specific Rule.
  6. **The cutting and removal of trees for mining exploration and development.** 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. § 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 mine on the Tongass National Forest should require 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 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.<sup>8</sup> 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.”<sup>9</sup>

Accordingly, a new exception for Alaska-specific rulemaking should be added to 36 C.F.R. § 294.13(b) as follows:

(3) The cutting or removal of timber is authorized and permitted under 36 C.F.R. Part 228. Such cutting and removal of timber shall be permitted under 36 C.F.R. Part 228 as if the Plan of Operations were permitted on non-IRA National Forest land.

**7. Authorization to increase access to an annual timber supply to sustain a fully-integrated manufacturing industry that can achieve full utilization of the timber resources.**

At the request of the Territory of Alaska in the late 1940s, the Forest Service sought to foster a permanent timber manufacturing industry in Southeast Alaska. The intent was to provide the stability of year around manufacturing jobs to supplement the limited mining activities at the time and to complement the seasonal fishing economy in the region. This effort was largely successful although the initial plan to have five long-term contracts to supply five pulp mills was never achieved. There were, however, three successful long-term contracts and a significant number of shorter-term timber sales that supported a half-dozen mid-size sawmills. These timber sale contracts sustained several thousand year-around jobs for about 40 years.

In 1980 and again in 1990, Congress established millions of acres of Wilderness, national monuments and congressionally-designated LUD-IIs in the Tongass National Forest. These land set-asides were chosen as the most worthy candidates for permanent preservation. Congress stated that the remaining national forest lands would be managed as multiple-use lands and promised a perpetual timber supply of timber to sustain the local manufacturing industry. The multiple-use mandate was to be implemented through the long established National Forest Management Act (NFMA) land management process, which provides for periodic updates and revisions to address changing needs and circumstances.

In 2001, the Forest Service effectively welshed on the Congressional timber supply promises by including Alaska in the nationwide Roadless Rule. Unlike most other states, the Roadless Rule in combination with the existing Congressional set-asides placed more than 91% of the Tongass and 99% of the Chugach off-limits to timber harvest and other development. In 2001 Alaska’s timber industry had over 500 million board feet of manufacturing capacity in Southeast Alaska, but now over 80% of that 2001

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<sup>8</sup> *Ibid.*, at page 3258.

<sup>9</sup> *Ibid.*, at page 3257.

manufacturing capacity has been starved out of business and the remaining manufacturers are barely surviving at a small fraction of their capacity.

It is wrong for the Forest Service to use its Administrative authority to frustrate the intent of Congress. It is also completely unnecessary. Timber and other responsible development can and has coexisted with tourism, recreation and other non-consumptive uses of the forest. The dramatic increase in fish populations over the last 50-plus years is undeniable evidence that stream habitat has not been harmed. Similarly the areas where logging has occurred has continuously supported higher wildlife populations than undeveloped areas and has added wildlife diversity with an increase in the numbers and variety of birds and small mammals. The logging roads attract many recreationists as well as providing safe, low-cost access to many small communities.

The Forest Service estimates that an annual timber supply of about 342 million board feet is the minimum necessary to sustain a fully-integrated manufacturing industry that can achieve full utilization of the timber resources in Southeast Alaska. This will require addressing the economics of timber harvesting and manufacturing as well as all the other multiple-uses of the forest through the normal NFMA land planning process.

We urge the Forest Service to exempt Alaska from the one-size-fits-all, nationwide roadless rule and allow professional land managers to follow congressional intent by restoring the multiple-use approach to land management to all the lands outside of the congressionally designated single-use areas.

#### **8. Authorization to access renewable energy should be part of the Alaska-specific roadless rulemaking.**

Renewable energy is important to our coalition because it will often be more economic and environmentally preferred than diesel to power mines in rural Southeast Alaska.

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, USDA certainly was aware of the Tongass hydropower potential.

The 1947 Water Powers of Southeast Alaska Report, conducted in part with the Forest Service, identified over 200 such potential hydropower sites in Southeast Alaska, many of which lay in the 2008 Forest Plan Transportation and Utility System (TUS) avoidance LUDs. Such access is severely restricted by Remote Recreation Land Use Designations (LUDs)<sup>10</sup> and the 2001 Roadless Rule.

The 2001 Roadless Rule and 2016 Forest Plan are fatally flawed, because neither included a commercially reasonable or realistic renewable energy resource plan and neither recognized pre-existing power site classifications and other potential renewable energy resources on the Tongass such as hydropower, geothermal, wind or other renewable energy sites.

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<sup>10</sup> The Forest Service has admitted that the criteria set out in the Forest Plan to apply the TUS LUD to hydropower projects within TUS Avoidance Areas are unworkable and need to be amended.



Moreover, the plans give the USFS broad discretion over how, when, and why renewable energy development applications might be processed and authorized, rather than providing standardized guidance and predictable timelines for agency responses to developer proposals. Lack of assured, predictable processes and timelines creates an uncertain and commercially unreasonable investment environment which does not meet the threshold criteria of most investors and developers. Accordingly, neither the 2001 Roadless Rule nor the 2016 Forest Plan is consistent with national energy policy and national energy security policy.

On November 13, 2000, two months prior to the January 12, 2001 ROD, Congress authorized a Southeast Alaska-wide intertie.<sup>11</sup> Remarkably, neither Public Law 106-511 nor Report #97-01 of the Southeast Conference – which Public Law 106-511 implemented – is referenced in the 2001 Roadless Rule. It does not mention the power cost savings the Southeast Alaska Intertie program could bring to rural communities if not for the Tongass Decision.

Given the fact that there are 9.6 million acres of IRAs in the Tongass and 5.6 million acres of Wilderness 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 will be prohibited, or made more difficult to access and develop, because they are located in IRAs and Wilderness Areas and because the power lines needed to distribute that power will need to cross IRAs and Wilderness 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. If the mine goes away, electricity rates to the community of Juneau would increase by approximately 24 percent.

For these reasons the coalition endorses and incorporate by reference the scoping comments of the Southeast Alaska Power Authority (SEAPA).

9. **Prohibition of road access to new hydropower sites.** Future hydropower and support facilities, such as those envisioned by Report #97- 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 1 indicates 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.”<sup>12</sup>

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<sup>11</sup> Pub. Law 106-511, 114 Stat. 2365 (Nov. 13, 2000).

<sup>12</sup> 66 Fed. Reg. at 3269 (emphasis added).

There is a short discussion in the Rule's Preamble regarding application of § 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.<sup>13</sup>

Because there is no mention of *future* utilities, or any mention of hydropower, the application of the *inclusio unus, exclusio 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 Existing 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.<sup>14</sup>

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 roads excluded in inventoried roadless areas unless one of the exceptions applies."<sup>15</sup>

It is thus clear that the Forest Service simply failed to address the contradiction between Public Law 106-511, Title VI, and the Roadless Rule. Passage of this authorization was a change in conditions since publication of the FEIS. This ambiguity should be addressed in the Alaska-specific Rule.

Currently in the Final Rule, there are seven exceptions<sup>16</sup> in subsection (b) of 36 C.F.R. § 294.12 which a road may be constructed or reconstructed in an inventoried roadless area (notwithstanding the prohibition in paragraph (a) of § 294.12) if the Responsible Official determines that one of those seven exceptions exists. A new exception (in addition to exception (8) suggested earlier herein) for Alaska-specific rulemaking should be added to those seven exceptions in 36 C.F.R. § 294.12(b) as follows:

9) A road is needed to access existing and/or future renewable energy projects and their transmission infrastructure. Renewable energy is defined as energy that is collected from

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<sup>13</sup> 66 Fed. Reg. *supra.*, at page 3256. (Emphasis added).

<sup>14</sup> 66 Fed. Reg. *supra.*, at page 3259. (Emphasis added).

<sup>15</sup> 66 Fed. Reg. *supra.*, at page 3270.

<sup>16</sup> 66 Fed. Reg. *supra.*, at page 3272

renewable resources, which are naturally replenished on a human timescale, such as sunlight, wind, rain, tides, waves, geothermal heat, or other forms of energy.

**10. Prohibition on access to Tongass geothermal resources.** 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.”<sup>17</sup> 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.

Accordingly, 36 C.F.R. § 294.12(b)(7) should be repealed and rewritten to provide the following Alaska-specific rule:

A road is needed to access mineral leases on lands under lease by the Secretary of Interior. Such road construction or reconstruction must comply with the terms of the lease and the requirements of 36 C.F.R. Part 228 as if conducted for locatable minerals on non-IRA National Forest land;

## CONCLUSION

The undersigned broad coalition of Alaska entities believe the economic health and longevity of Southeast Alaska would be strengthened if the Tongass were to be removed from the federal Roadless Rule and managed as originally envisioned. We believe that tourism, fishing, mining, energy development, and a renewed timber industry can coexist to the benefit of all in the region.

The Alaska Miners Association, the Alaska Forest Association, First Things First Alaska Foundation, the Juneau Chamber of Commerce, the Ketchikan Chamber of Commerce, the Southeast Alaska Power Agency, the Southeast Conference, and the Resource Development Council for Alaska, Inc. support Alaska’s January 18, 2018 Petition for a complete exemption of the Tongass from the 2001 Roadless Rule. We also support the State’s Petition that the 2016 Tongass Land Management Plan be rescinded by rulemaking because it is intertwined with the Roadless Rule.

These scoping comments and suggestions identify “significant issues to be analyzed in depth in the environmental impact statement.”<sup>18</sup>

Sincerely

Deantha Crockett, Executive Director  
Alaska Miners Association

Owen Graham, Executive Director  
Alaska Forest Association

Neal MacKinnon, President  
First Things First Alaska Foundation

Carrie Starkey, Executive Director  
Greater Ketchikan Chamber of Commerce

Craig Dahl, Executive Director

Trey Acteson, Chief Executive Officer

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<sup>17</sup> 66 Fed. Reg. at 3256.

<sup>18</sup> CEQ Regulations 40 C.F.R. § 1508.7(a)(2). See also § 1508.25.

Juneau Chamber of Commerce

Robert Venables, Executive Director  
Southeast Conference

Southeast Alaska Power Agency

Marleanna Hall, Executive Director  
Resource Development Council

cc: Senator Lisa Murkowski  
Senator Dan Sullivan  
Congressman Don Young  
Governor Bill Walker

## Appendix A

The Alaska Miners Association is a non-profit membership organization established in 1939 to represent the mining industry throughout Alaska. The AMA has a diverse membership composed of more than 1,800 individual and corporate members that come from eight statewide branches: Anchorage, Denali, Fairbanks, Juneau, Kenai, Ketchikan/Prince of Wales, Haines and Nome. Our members include individual prospectors, geologists, engineers, vendors, suction dredge miners, small family mines, junior mining companies, and major mining companies. AMA members look for and produce gold, silver, platinum, molybdenum, lead, zinc, copper, coal, limestone, sand and gravel, crushed stone, armor rock, and other materials.

The Alaska Forest Association is an industry trade association where its members hold in common general business interests in the timber industry of Alaska. AFA's activities are directly related to the viability of the forest products industry in Alaska. AFA is committed to advancing the restoration, promotion and maintenance of a healthy, viable forest products industry, contributing to economic and ecological health in Alaska's forests and communities.

First Things First Alaska Foundation is dedicated to preserving the economic viability and future of Alaska through education. There is a clear need to educate the public on the benefits of responsible economic development and natural resource management.

The Greater Juneau Chamber of Commerce is a member organization representing just under 400 businesses in Juneau. As is typical to all chambers, our overriding mission is to promote and protect the economic environment in which our business members operate; in fact every business in our market benefits from our efforts – members or not. We must be diligent to monitor, local, state and federal issues that directly or indirectly improve or impair the business climate. Our membership represents virtually every type of business organization that operates in this market, from the smallest retailer to two world-class silver and gold mines, the cruise ship industry, fish processors and a variety of marine related businesses. Long missing from our membership is anyone involved directly in timber, but we clearly need to ensure that the existing and under-exploration mines in this region have guaranteed access to mineral deposits, and the utilization of existing road systems needs to be preserved. We do not pretend to be experts in all aspects of this issue, but we believe that the economic health and longevity of this region would be strengthened if the Tongass were to be removed from the roadless rules, and managed as originally envisioned. We believe that tourism, fishing, mining, and a renewed timber industry can coexist to the benefit of all in the region.

The Greater Ketchikan Chamber of Commerce is a diverse community-based organization comprised of over 250 members, including private sector businesses, non-profit organizations, and local governments. Our member-businesses include some of the largest employers in Southeast Alaska, as well as the State of Alaska, which provide family-wage jobs to thousands of Alaskans. The Ketchikan Chamber brings businesses, investors, and customers together to work toward the common goal of encouraging a sustainable economy which can preserve the socioeconomic well-being of our community, and the families who call it home.

The Resource Development Council for Alaska, Inc. is an Alaskan business association comprised of individuals and companies from Alaska's oil and gas, mining, forest products, tourism and fisheries

industries. RDC's membership includes Alaska Native Corporations, local communities, organized labor, and industry support firms. RDC's purpose is to encourage a strong, diversified private sector in Alaska and expand the state's economic base through the responsible development of our natural resources.

SEAPA is a Joint Action Agency of the State of Alaska, formed as a public corporation existing under Alaska Statutes §§42.45.300-.320. SEAPA owns two hydroelectric projects in Southeast Alaska (Swan Lake and the Tyee Lake Hydroelectric Facilities) and associated transmission facilities that provide economical, renewable, non-carbon-based electric power to SEAPA's three member public utilities located in Wrangell, Petersburg, and Ketchikan. SEAPA has a vital interest in the management of the Tongass because application of the Roadless Rule to the Tongass adversely affects its ability to generate affordable renewable electric power in rural Southeast Alaska as an alternative to diesel and other fossil fuels. With rare exceptions, communities in Southeast Alaska are not connected by road or to the North American electrical grid and rely on either renewable hydroelectric power or non-renewable and polluting diesel generation for their electricity needs.

Southeast Conference is comprised of more than 200 members who are concerned about the future of Southeast Alaska and who share a collective desire to build and support strong economies and a quality environment in Southeast Alaska. Its history dates back to 1958 when an association of communities joined to advocate for the establishment of the Alaska Marine Highway System. Over the ensuing decades, the Southeast Conference's mission and membership broadened to the point that it now works to advance the collective interests of the people, communities, Native organizations and businesses throughout Southeast Alaska. Among other roles, the Southeast Conference is the state-designated Alaska Regional Development Organization and the federally-designated Economic Development District for southeast Alaska. Among its members are communities located in and around the Tongass National Forest, Alaska chambers of commerce, Native organizations, nonprofit and community organizations, independent power authorities, public utilities, and private individuals and companies, including companies having ties to regionally important industries like the Southeast Alaska tourism, fisheries, mariculture, timber, hydroelectric, mining and transportation industries.