Introduction

The letters in this volume were submitted by Federal, State and local agencies, and elected officials.[1] Letters from Federal agencies and federally recognized Tribes are listed first. Letters from State and local agencies and officials are organized by State as shown in the table of contents. Government agencies or elected officials in 33 States submitted comments. If we did not receive any letters from agencies or elected officials in a particular State, that State is not listed in the table of contents. Letters from members of Congress are included in their respective States. All attachments submitted with these letters are included, unless limited by format or excessive length.

[1] Section 102(C) of the National Environmental Policy Act of 1969, as amended, requires that *"…comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality, and to the public…"* The Forest Service Environmental Policy and Procedures Handbook (FSH 1909.15, 24.1 (3)) states that *"As a minimum, include in an appendix of a final EIS copies of all comments received on the draft EIS from Federal, State, and local agencies and elected officials."*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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CAET Received
Jul 17 2000

JUL 14 2000

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

USDA Forest Service
Attention: CAET. Roadless Areas Proposed DEIS/Rule
Scott Conroy, Project Director
P.O. Box 221090
Salt Lake City, UT 84122

Dear Mr. Conroy:

Pursuant to our responsibilities under the National Policy Act (NEPA) and section 309 of the Clean Air Act, the U.S. Environmental Protection Agency (EPA) has reviewed the U.S. Department of Agriculture, Forest Service (USFS) Draft Environmental Impact Statement (DEIS) on Roadless Area Conservation and the accompanying proposed Rule at 36 CFR Part 294, Special Areas; Roadless Area Conservation. Our comments are organized to provide an overview of the issues, highlighting areas where EPA has concerns, as well as detailed information for your consideration as the USFS prepares the Final Roadless Area Conservation EIS (FEIS) and Rule.

The DEIS and proposed rulemaking are in response to the strong public sentiment voiced on protecting roadless areas and the associated benefits associated with these areas found in our National Forests. This effort was initiated by the President's October 13, 1999, memorandum to the Secretary of Agriculture directing the USFS to "...develop, and propose for public comment, regulations to provide appropriate long-term protection for most or all of these currently inventoried *roadless* areas and to determine whether such protection is warranted for smaller *roadless* areas not yet inventoried."

EPA commends the USFS for its monumental efforts to solicit input from the public and explain the impacts of this undertaking. Its efforts with outreach and supplying access to the DEIS and proposed rule, supporting documents, public meetings and outreach to the relevant federal agencies are unprecedented.

The DEIS presents four alternatives, including an agency preferred alternative, and is accompanied by a proposed rule. Alternative 1, the No Action alternative, supports current practices concerning activities in inventoried roadless areas. Alternative 2, the preferred

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alternative, prohibits road construction and reconstruction in the unroaded portions of inventoried roadless areas. Alternative 3 prohibits road construction, reconstruction, and timber harvest (except for stewardship purposes) in the unroaded portions of inventoried roadless areas and Alternative 4, the maximum protection alternative, is the same as Alternative 3, but with no exceptions for any timber harvest. In addition, four separate alternatives are presented to address the Tongass National Forest (Tongass), which may warrant other approaches. These four alternatives range from the no action alternative which supports current practices to prohibiting road construction and reconstruction in specified inventoried roadless areas in the Tongass.

The proposed rule offers a two pronged approach to conserve roadless areas. The proposed rule would prohibit new road construction and reconstruction in the unroaded portions of inventoried roadless areas and use local planning procedures to ensure consideration of roadless values and characteristics in other roadless areas not covered by the prohibitions.

EPA is especially interested in this DEIS and proposed rule because 80 percent of the nation's rivers originate in the national forests and, consequently, this rulemaking may have significant impact on water quality. This rule could greatly increase the protection to ground and surface water resources which are directly related to the status of riparian and aquatic habitats, wildlife habitat, biological diversity, forest health and other benefits derived from roadless areas found on the national forests and grasslands. EPA supports this rulemaking, one of several recent efforts the USFS has undertaken to address road management on its lands. The proposed rule intends to identify and stop activities with the greatest likelihood of degrading the desirable qualities of inventoried roadless areas at the national level and ensure that "roadless character" qualities of inventoried and other unroaded areas are identified and considered during local forest planning efforts.

Although EPA supports the proposed rulemaking effort, based on our review of it and the supporting DEIS, we wish to raise several environmental concerns. While it is important to recognize that the rule's purpose has been developed in the context of overall multiple-use objectives, the multiple use mandate does not fully justify a prohibition limited only to road building. EPA suggests that the FEIS more fully discuss the rationale for why other uses that can be expected to degrade the desirable environmental qualities of inventoried roadless areas were not included in the proposed prohibitions. For example, other uses such as recreation, timber production and mining have clearly led to significant environmental degradation in the past and should be further addressed in the FEIS.

The FEIS should also disclose to the public the uncertainty in using procedures implemented at the local level versus prohibitions issued at the national level to provide environmental protection to these areas. While the "one size does not fit all" concept has merit and local decision making is necessary to address the unique needs of local areas, EPA has concerns that some areas may not receive the environmental protection they need.

Because the determination to revise or amend a forest plan is based on a variety of factors and time lines, EPA suggests that the application of procedures as provided for in section 294.14 be revised to include a project-by-project review when the project meets a "significance criterion". EPA recognizes that a project-by-project review of all actions would be unduly burdensome;

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however, those proposed actions with the potential to have significant impacts should be reviewed.

Finally, EPA does not believe the DEIS gives adequate support for excluding coverage of the proposed rule to the Tongass and our detailed comments provide additional information on this issue.

Based on our review EPA has assigned a rating of EC-2 (Environmental Concerns, Insufficient Information) to the preferred alternative. EPA appreciates the opportunity to submit comments on the DEIS and proposed rule and commends the USFS for orchestrating extensive sessions fo early interagency cooperation in the scoping and development stages of the process. EPA welcomes the chance to continue working with the USFS as it completes the FEIS and final rule If I can provide additional explanation of our comments please contact me at (202) 564-2400 or Elaine Suriano of my staff at (202) 564-7162.

Sincerely,

Anne Norton Miller
Acting Director
Office of Federal Activities

Enclosure

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DETAILED COMMENTS ON THE DEIS AND PROPOSED RULE

DEIS

Purpose and Need

EPA strongly agrees with the underlying purpose and need for national direction on roadless area conservation, and we offer the following comments for your consideration. The purpose presented on page S-4 is three-fold, whereas the purpose stated on page 1-10 is only two-fold; the FEIS should reconcile this inconsistency. Second, the purpose stated on page A-26 of the proposed rule is further condensed and less specific than the purpose stated on pages1-10 or S-4. EPA recommends that the FEIS and final rule use the same language to describe the purpose of this action, preferably the language used on page S-4.

Alternatives

EPA highlighted several issues related to the alternatives in our December 21, 1999, comment letter on the Notice of Intent for this DEIS and proposed rule. These included the range of alternatives and their analysis, and adequate explanation on implementing the selected alternative. While the DEIS offers a range of alternatives, EPA believes that this range should have been broader and more inclusive of other uses in an attempt to more fully comply with the direction provided in the President's October 19, 1999, memorandum.

EPA believes that Alternative 3-Procedure D (3-D) provides additional environmental advantages over the preferred alternative including: 1) providing significant protection for inventoried roadless areas while still accommodating harvest of small diameter trees where necessary to address fire and fuels issues; 2) reducing the likelihood that smaller roadless areas will be impacted pending the completion of transportation and access plans as described in the proposed USFS Transportation Policy; and 3) ensuring that appropriate protections are applied to the Tongass. In addition, we suggest that the FEIS consider confining Off Highway Vehicles (OHVs) only to roads and trails that have been specifically designated for that purpose following analysis pursuant to NEPA.

EPA has environmental concerns with the range of Tongass alternatives presented and offers the following modification based on alternatives considered in the DEIS. We view this as a "win-win" alternative, achieved by adding several mitigation measures.

EPA recommends that the FEIS consider in detail an alternative that: 1) applies the national prohibitions (Alternative 2, 3 or 4) and national procedures (Alternative B, C or D) to the Tongass; and 2) mitigates the social and economic impacts on the communities in Southeast Alaska pursuant to 40 CFR 1502.14(f). We believe that this latter objective can be accomplished through a combination of adjustments to the Tongass Land Management Plan (TLMP) and a financial and technical assistance package for the affected communities (e.g., under the auspices of the Southeast Alaska Community Economic Revitalization Team).

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For example, the Record of Decision (ROD) could include the Tongass in the roadless area conservation rule and direct the Alaska Regional Forester or the Tongass Forest Supervisor to amend or revise the TLMP to offset some of the effects of the final rule on the Tongass timber program. Specifically, the ROD could direct the responsible official to consider the following adjustments to the TLMP:

1. Seek to maintain the total land suitable for timber production at 576,000 acres as set forth in the April 1999 TLMP ROD. To the extent practical and appropriate, reallocate those suitable acres by changing Land Use Designations (LUDs) in inventoried roadless areas from timber to non-timber LUDs, and in roaded areas from non-timber to timber LUDs.
2. Where necessary to meet the objective of #1 above, and where appropriate and consistent with other management objectives, recapture some of the young growth that was removed from the suitable timber base in the revised forest plan. The Tongass harvested roughly 400,000 acres of timber from 1954 to 1999. Approximately 140,000 acres of young growth remain in the suitable timber base; the other roughly 260,000 acres of young growth were removed from the timber base due to riparian buffers, beach and estuary buffers, old growth reserves, etc. It would certainly be inappropriate to place all of these acres back in the timber base (e.g., riparian buffers). However, if the Tongass is included in the Roadless Area Conservation Rule, it may be appropriate to recapture some of those acres (e.g., young growth within beach buffers and old growth reserves) in order to maintain the current suitable timber base. While this would have no effect on the timber volume harvested in the short term, in the long term it would expedite the transition from harvesting old growth to harvesting young growth. It would also enable the Tongass to use "timber dollars" to thin these young growth stands, which in the absence of an alternative funding source will continue to suffer from neglect.
3. Where necessary to meet the market demand for timber from the Tongass, consistent with the Tongass Timber Reform Act, adjust certain standards and guidelines that restrict timber harvest. For example, consider adjusting the 200-year rotation that was adopted in the 1999 TLMP ROD. The intent of the 200-year rotation is to reduce impacts to deer winter range and deer habitat capability by reducing the rate of timber harvest in developed areas (1999 TLMP ROD, page 29). Unfortunately, one of the unintended consequences of the 200-year rotation is that, in order to meet market demand and the ASQ, it increases the rate of entry into undeveloped areas (i.e., inventoried roadless areas and other unroaded areas). This explains, in part, why under the no action alternative (T1), roughly 90% of the total timber-related road construction on the Tongass National Forest, and roughly two thirds of the total 5-year timber volume offered by the Tongass National Forest is projected to come from inventoried roadless areas (DEIS, Tables S-3, and page 3-232). However, if the Tongass is included in the roadless rule, then the prohibitions and procedures may substantially reduce, if not eliminate, the need for the 200-year rotation.
4. Adjust the Allowable Sale Quantity (ASQ), including the Non-Interchangeable Components (NIC I and NIC II), in response to #1 through #3 above and to better reflect projected market demand over the planning cycle.

EPA believes an alternative based on the above proposal is more environmentally protective,

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more socially desirable and more economically efficient than the proposed action and preferred alternative presented in the DEIS. In the absence of developing or selecting such an alternative, EPA recommends selecting alternative 3D, without exempting the Tongass.

Should the USFS select the preferred alternative as presented, EPA believes the FEIS should address the following issues. The proposed rule would establish protection of "unroaded areas in inventoried roadless areas" on all National Forests except the Tongass. The protections sought by the President for roadless areas on the Tongass would rely on the Forest Service's planning process exclusively. It should be noted the USFS proposed rules to revise the existing planning process are currently under review and it is uncertain when and what the Forest Service planning process will be once finalized. Because the rulemaking process and the USFS planning process are distinctively different, particularly in their final products, EPA suggests that the FEIS include a discussion of protecting roadless areas on the Tongass by rule versus by the revisions to the forest plans via the planning process. It should be disclosed to the public that the rule has a certain degree of "permanence" that is not the same as a forest plan. Forest plans are currently required to be reviewed and revised every 10 years, and the proposed revisions to the Forest Service planning regulations indicate that forest planning will be less structured in the future. Because of the present and proposed nature of forest planning, issues regarding protecting roadless areas can be revisited as part of a forest plan amendment or revision. Although rules can be revised, there is no requirement to do so periodically; therefore, the protection they offer is more predictable over a long time period. Consequently, areas protected by the prohibitions have a more certain likelihood of receiving the long-term protection that the President expressed, while there is no mechanism to ensure long-term protection of roadless areas on the Tongass. EPA suggests that the FEIS address the potentially different levels of long-term protection that would be applied to the Tongass and the rest of the National Forest System under the preferred alternative.

Page S-7 lists four exceptions from prohibitions. As they are stated in very broad terms EPA suggests that the FEIS cite a few examples, especially for exemptions three and four. These are intended to provide specific examples of actual situations and disclose the potential scope of such actions.

Proposed Rule

294.10 Purpose

EPA suggests that the final rule include language clarifying the intent and purpose statement to help guide the implementation of the rule. As currently worded, the proposed purpose statement is less specific than the purpose stated on page S-4 of the DEIS. EPA recommends that the FEIS and final rule include the same language to describe the purpose of this action, preferably the language used on page S-4.

294.11 Definitions

Inventoried roadless areas

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The proposed definition of inventoried roadless areas is confusing. The first sentence implies that inventoried roadless areas may include designated areas such as Wilderness. However, the second sentence refers to the maps contained in Volume 2 of the DEIS, which display inventoried roadless areas and designated areas (such as Wilderness, Wilderness Study Areas, Wild and Scenic Rivers, National Recreation Areas, National Monuments, and other special designations) as mutually exclusive categories of National Forest System lands. Adding to this confusion, Volume 2 shows recommended Wilderness as inventoried roadless areas but places Wilderness Study Areas in with designated areas. This approach is counterintuitive and may result in situations where administratively designated inventoried roadless areas are subject to a higher level of protection than some Congressionally designated areas.

For example, Wilderness Study Areas that are not recommended in the future for Wilderness designation but are instead allocated to a prescription that allows roads would not benefit from the prohibitions under the roadless area conservation rule. Yet these areas that may otherwise "fall through the cracks" represent some of the best opportunities to respond to the underlying purpose and need of this action.

Therefore, EPA recommends: 1) clarifying the definition of inventoried roadless areas to explicitly include designated areas (or at a minimum, roadless designated areas of 5,000 acres or more); and 2) adding "inventoried roadless areas" in front of "Designated Areas" in each legend of every map in Volume 2. Alternatively, we recommend the following:

1. define *designated areas* in Section 294.11;
2. add *designated areas* to the title of Section 294.12 and add a new paragraph to this section to clarify that the prohibitions also apply to *designated areas*; and
3. add new paragraph to Section 294.13 to clarify that the procedures also apply to *designated areas*.

A third option, in the interest of plain English and practicality, would be to replace *inventoried roadless areas* and *unroaded area* with *large roadless area* and *small roadless area*, respectively (with the threshold between the two set at 5,000 acres or 1,000 acres, as appropriate). Subsequent decisions would be based on actual on-the-ground conditions instead of on whether an area is inventoried or designated as roadless.

Road maintenance.

Consider adding "...or to prevent or correct environmental problems" to the end of the proposed definition.

Road reconstruction.

Consider adding "...or to prevent or correct environmental problems" to the proposed definitions of *realignment*, *improvement* and *rebuilding*.

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Unroaded area.

Insert "(other than an inventoried roadless area)" between "Any area" and "... without...

The final rule should include definitions for *trails, primitive and semi-primitive non-motorized, and semi-primitive motorized* classes of dispersed recreation.

294.12 - Exemptions

It is not explicitly stated in the rule that once an emergency that created the need for building a road is over the road should be closed and the area restored to the previous condition. EPA suggests including an additional provision - "(e) - roads constructed for an emergency purpose under b(1), (2), and (3) are to be removed once they are no longer needed for the initial emergency purpose and the area will be restored to the natural condition."

EPA appreciates the change made from scoping comments in paragraph (a) that the prohibition applies to both classified and unclassified roads, including temporary roads.

Delete paragraph (c), application to the Tongass.

294.13 - Consideration of Roadless Area Conservation During Plan Revision

EPA has environmental concerns with leaving the choice of method of selection or delineation of unroaded areas for evaluation under 294.13(b)(2) entirely to the responsible official. The final rule should provide a list of methods that are accepted nationally to promote consistency.

Delete paragraph (e), related to the Tongass.

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U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
ROCKY MOUNTAIN, DENVER
633 17TH ST.
DENVER, COLORADO 80202-3690

May 15, 2000

USDA Forest Service-CAET
Post Office Box 221090
Attention: Roadless Areas Proposed Rule
Salt Lake City, UT 84122

Dear Sirs:

The Department of Housing and Urban Development (HUD) has reviewed the Draft Environmental Impact Statement (DEIS) for the Roadless Area Conservation Proposed Rule with consideration of the areas of responsibility assigned to HUD.

This review considered the impact of the proposed rule on housing and community development within the states of Montana, Utah and Wyoming that are part of our office's area of responsibility. We find your transmittal adequate for our purposes since there is no significant adverse impact on HUD assisted housing and community development activities in proximity to the areas covered by the proposed rule.

If I may be of further assistance to you, please contact me at (303) 672-5285, extension 1305.

Sincerely,

Howard S. Kutzer

Howard S. Kutzer
Regional Environmental Officer
Office of the Secretary's Representative

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UNITED STATES MARINE CORPS
MARINE CORPS MOUNTAIN WARFARE TRAINING CENTER
BRIDGEPORT CA 93517-5001

IN REPLY REFER TO:
5090
ENV/04
14 Jul 00

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USDA Forest Service - CAET
Attention: Roadless Area Conservation Proposed Rule
P.O. Box 221090
Salt Lake City, UT 84122

Gentlemen:

Thank you for the opportunity to provide written comments on the Forest Service's proposed Roadless Area Conservation rule. As a long-time user of the Humboldt-Toiyabe National Forest, the Marine Corps Mountain Warfare Training Center (MWTC) has several concerns with the proposed rule.

First, the web based maps of inventoried roadless areas you provided lack sufficient detail to conclusively compare them to roads and trails MWTC uses. We request a more detailed map be provided as well as sufficient time to review it. From the available map, we have determined that some roads are missing from your inventory. Please add the following former roads as shown on the attached map:

1. From Summit Meadows to Lost Cannon Creek.
2. From Grouse Meadows to Mill Canyon Road.
3. From Grouse Meadows to Chris Flat.
4. From the Grouse Meadow Road to the gaging station on HWY 395.

The MWTC requires continued access to this area of forest to conduct training per public law 100-693 of November 18, 1988. We recommend that District Rangers retain the authority to authorize or prohibit specific roads for the proper management and use of National Forest System lands. These decisions are based on appropriate environmental documentation and public participation. Local control is needed to fairly address existing uses of existing roads, whether classified or unclassified.

My point of contact for this matter is Mr. Kendall Yargus at 760-932-7761 ext. 332.

Sincerely,

J. H. NEAL
Lieutenant, CEC, USN
By direction

Encl: Annotated Forest Visitor/Travel Map, Toiyabe National Forest, Bridgeport Ranger District, California, 1994

Copy to:
MCB Camp Pendleton AC/S ES
Bridgeport Ranger District

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USDA United States Department of Agriculture
Natural Resources Conservation Service
Caribbean Area
PO Box 364868
San Juan, PR
00936-4868

14635

F 1 1 3

June 28, 2000

USDA Forest Service-CAET
P. O. Box 221090
Salt Lake City, Utah 84122

Dear Sir or Madam:

SUBJECT: Roadless Areas Proposed Rules

After an extensive review of the Draft Environmental Impact Statement (DEIS) for the proposed rules to conserve roadless areas within the national forests, we do not have any comments to make, since the proposed rules are for the benefit of the ecosystems of such areas.

Should you have any questions, please contact Felix A. Latorre, Water Resources Planning Specialist at (787) 766-5206, Ext. 234.

Sincerely,

JUAN A. MARTINEZ
Director

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The Natural Resources Conservation Service works hand-in-hand with the American people to conserve natural resources on private lands. AN EQUAL OPPORTUNITY EMPLOYER

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

JUL 17 2000

VIA ELECTRONIC &
REGULAR MAIL

Hilda Diaz-Soltero
Associate Chief
United States Department of Agriculture
Forest Service
Washington, DC
Email: roadlessdeis@fs.fed.us

Dear Ms. Diaz-Soltero:

As stated in previous correspondence on this issue, the Office of Advocacy of the U.S. Small Business Administration (SBA) was established by Congress under Pub. L. No. 94-305 to represent the views of small business before federal agencies and Congress. Advocacy is also required by §612(a) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) to monitor agency compliance with the RFA. In that Advocacy is an independent office within SBA, the comments provided are solely those of the Office of Advocacy and do not necessarily reflect the views of SBA.

A Brief Review of RFA Compliance Requirements

Initial Regulatory Flexibility Analysis

The RFA requires agencies to consider the impact that a proposed rulemaking will have on small entities. If the proposal is expected to have a significant impact on a substantial number of small entities, the agency is required to prepare an initial regulatory flexibility analysis (IRFA) describing the reasons the action is being considered; a succinct statement of the objectives of, and legal basis for the proposal; the estimated number and types of small entities to which the proposed rule will apply; the projected reporting, recordkeeping, and other compliance requirements, including an estimate of the small

FEDERAL RECYCLING PROGRAM PRINTED ON RECYCLED PAPER

entities subject to the requirements and the professional skills necessary to comply; all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and the significant alternatives that accomplish the stated objectives of the of the statues and that minimize any significant economic impact of the proposed rule on small entities. 5 U.S.C § 603. The analysis or a summary of the analysis must be published with the proposal for public comment.

Final Regulatory Flexibility Analysis

When an agency issues any final rule, it must prepare a final regulatory flexibility analysis (FRFA) when a rule will have a significant economic impact on a substantial number of small entities. The FRFA must discuss the comments received, the alternatives considered and the rationale for the final rule. Specifically, each FRFA must contain a succinct statement of the need for and objectives of the rule; a summary of the significant issues raised by public comments in response to the IRFA; a summary of the agency's assessment of such issues and a statement of any changes made in the proposed rule as a result of such comments; a description and an estimate of the number of small businesses to which the rule will apply or an explanation of why no such estimate is available; a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record; and a description of the steps the agency has taken to minimize the significant economic impacts on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy and legal reasons for selecting the alternative adopted in the final rule, and the reasons for rejecting each of the other significant alternatives. In complying with the provisions of section 603 and 604 of the RFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable. 5 U.S.C. § 607.

Certification in Lieu of a Regulatory Flexibility Analysis

If the proposed or final rulemaking is not expected to have a significant economic impact on a substantial number of small entities, 5 USC §605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA or FRFA. If the head of the agency makes such a certification, the agency shall publish such a certification in the Federal Register at the time of the publication of the general notice of proposed or final rulemaking for the rule along with a statement providing the factual basis for the certification. See 5 U.S.C. §605(b).

The Proposed Rulemaking

Because of the nature of this rule, the Office of Advocacy consistently maintained in its pre-proposal comments to the Forest Service (FS) that certification was inappropriate from a public policy standpoint. On May 10, 2000, FS published a proposed rule in the *Federal Register*, Vol. 65, No. 91, p.30276 on *Special Areas; Roadless Area Conservation*. The purpose of the proposal is to protect the environmental resources in

national forests by prohibiting road construction and reconstruction in most inventoried roadless areas of the National Forest System and require the evaluation of roadless area characteristics in the context of overall multiple-use objectives during land and resource management plan revisions. The intent of the rulemaking is to provide lasting protection in the context of multiple use management for inventoried roadless areas and other unroaded areas within the National Forest System. Id.

Prior to the proposal, the Office of Advocacy worked with FS in an effort to assist FS with RFA compliance. Throughout the process, FS has maintained that it believed that the proposed rulemaking would not have a significant economic impact on a substantial number of small businesses. FS has also contended that the proposed rule does not directly regulate small entities and, therefore, an IRFA was not necessary. Nevertheless, FS prepared an Initial Regulatory Flexibility Analysis (IRFA) at Advocacy's request. Because FS did not have sufficient economic information to prepare a complete IRFA, Advocacy advised FS to include a list of questions in the IRFA to solicit from the public information on the economic impacts of the proposal. FS complied with this request also.[1] *See*, Fed. Reg. at 30285-30286.

FS Should Abandon Its Assertion that the Rule Does Have a Direct Impact on Small Entities

As stated above, FS has consistently asserted that a regulatory flexibility analysis is not required since the proposal does not have a direct impact on small entities. It is Advocacy's understanding that the basis of the assertion is that the proposal establishes procedures, and nothing more, to be followed in local forest planning processes. Local FS offices will maintain the authority to determine the actual forest plan; hence national FS is not directly regulating small entities. Consequently, a regulatory flexibility analysis is not required.

Advocacy acknowledges that there is case law that states that the RFA only requires an agency to perform a regulatory flexibility analysis of small entity impacts when a rule directly regulates them. However, Advocacy asserts that the cases are inapplicable to FS' proposal. If anything, the case law and the facts support a finding that the impact of the proposal is indeed direct, not indirect.

The primary case on the consideration of direct versus indirect impacts for RFA purposes in promulgating regulations is Mid-Tex Electric Co-op Inc. v. F.E.R.C., 249 U.S. App. D.C. 64, 773 F.2d 327 (1985). In Mid-Tex Electric Co-op Inc. v. F.E.R.C., FERC ruled that electric utility companies could include in their rate bases amounts equal to 50% of their investments in construction work in progress (CWIP). In promulgating the rule, FERC certified that the rule would not have a significant economic impact on a substantial number of small entities. The basis of the certification was that virtually all of the utilities did not

[1] Usually, the Office of Advocacy does not publicize its interaction with an agency during the prior to the proposal of a rule. However, since Forest Service has agreed to release communications that it had with the Office of Advocacy to House Committee on Small Business, Subcommittee on Rural Enterprises, Business Opportunities, and Special Programs, the communications are now part of the public record.

fall within the meaning of the term small entities as defined by the RFA. Plaintiffs argued that FERC's certification was insufficient because it should have considered the impact on wholesale customers of the utilities as well as the regulated utilities. The court dismissed the plaintiffs' argument and concluded that an agency may certify that no RFA analysis is necessary when it determines that the rule will not have a significant economic impact on a substantial number of small entities that are not subject to the requirements of the rule. Id. at 64.

The US Court of Appeals for the District of Columbia applied the holding of the Mid-Tex case in American Trucking Associations, Inc. v. U.S. E.P.A., 175 F.3d 1027, 336 U.S.App.D.C. 16 (D.C.Cir., May 14, 1999) (hereinafter ATA). In the ATA case, EPA established a primary national ambient air quality standards (NAAQS) for ozone and particulate matter. At the time of the rulemaking, EPA certified the rule pursuant to 5 USC § 605(b). The basis of the certification was that EPA had concluded that small entities were not subject to the rule because the NAAQS regulated small entities indirectly through the state implementation plans (SIPs). Id. Although the Court remanded the rule to the agency, the Court found that EPA had complied with the requirements of the RFA. Specifically, the Court found that since the States, not EPA, had the direct authority to impose the burden on small entities, EPA's regulation did not directly impact small entities. The Court also found that since the states would have broad discretion in obtaining compliance with the NAAQS, small entities were only indirectly affected by the standards. Id.

In Mid-Tex, compliance with FERC's regulation by the utilities would have a ripple effect on customers of the small utilities. There were several unknown factors in the decisionmaking process that were beyond FERC's control like whether utility companies had investments, the number of investments, costs of the investments, the decision of what would be recouped, who would the utilities pass the investment costs onto, etc. In this instance, FS is the ultimate decision-maker and its decisions will have a direct effect on known small entities that have profited from multiple use of FS' lands in the past or which planned to profit from the resources in the future.

Likewise, this matter is distinguishable from the ATA case. Unlike the ATA case, where EPA was setting standards for the States to implement under state regulatory authority, FS is developing a framework for the local/regional FS offices to use in adopting multiple use plans for national forests. The fact that it is a local office of FS versus the national office of FS is inconsequential. In either event, FS will implement the rule, not a third party entity. Regardless of where the office is located, FS is making the ultimate decision of whether a road will or will not be constructed. The proposed rule clearly states that roads may not be constructed or reconstructed in the unroaded portions of inventoried areas of the National Forest System unless the road is needed for public safety, for environmental response or restoration, for outstanding rights or interests protected by statute or treaty, or to prevent irreparable resource damage. See, Section 294.12 , Fed. Reg., p. 30288.

Direct Impacts on Small Entities

Moreover, small entities will be directly affected as a result of FS' decisions. The word "direct" is defined as "to regulate the activities or course of action thereof; stemming immediately from a source, cause, or reason; operating without agency or step,..."[2] Small entities that already operate in national forests will have their operations seriously curtailed. (FS recognizes that the majority of these entities are small.) These and others, like the construction companies that build the roads, may have developed their business plans based on expectations of continued access and as a result of previously published FS plans. These impacts need to be evaluated. FS has some data already that would allow it to do so. For example, according to Tables 4 and 6 of the IRFA, the proposal estimates that there will be a 45% reduction in forest harvest in the Manti-Lasal National Forest alone in Utah. Other forests, such as Dixie (Utah) and Shoshone (Wyoming) will experience reductions in harvest that exceed 20%. In Montana, the Helena Forest will experience a reduction in total harvest volume of 12%. In those same areas of the country, FS controls more than 50% of the forested land base.[3] For example, FS controls 52.3% of forested land in Montana; 66.6% of the land in Wyoming; and 68.5% of the forested land in Utah.[4] Considering the vast amount of area owned by the FS, moving to or procuring from another location to harvest or process natural resources may be unrealistic or a short term solution. The end result of this proposal may be the ultimate demise of small businesses and small governmental jurisdictions that rely on the resources.

Advocacy recognizes that there is a substantial public policy interest in maintaining the natural beauty of the national forests and protecting the environmental resources found in the national forests. However, just these few examples indicate that the overall impact of this initiative could be economically devastating to many small businesses. The high percentage of reduction, combined with the fact that FS owns such a high percentage of the land in some areas, indicates that this rule may have a direct economic effect that cannot be recouped at other locations by the small entities that rely on them. Since the FS has some data, and will receive additional data from the comment period, it is not plausible for FS to continue to maintain that the proposal will not have a direct effect on small entities.[5]

[2] The Merriam Webster Dictionary.
[3] Testimony of Mr. Frank Glatics, President of Independent Forest Product Association, before The House of Representatives Subcommittee n Rural Enterprises, Business Opportunities, and Special Business Programs, Tuesday, July 11, 2000. pp. 9-10.
[4] Id.
[5] Advocacy notes that FS may be arguing that the RFA does not apply because the use of FS property for harvesting natural resources is a future activity that may or may not occur, depending on the decision of the forest planners. While this argument may have some validity, it is not necessarily convincing. Some of the land that is being placed off limits by the initiative was originally targeted for resource harvesting. As a result of this rule, forest planners will not be able to allow the original tentative multiple use plans to be implemented. Small entities may have relied on the original plans in making business decisions. This issue should be addressed.

Information Provided By the Public Must Be Addressed in the FRFA

At the time of the proposal, FS asserted that they could not perform a complete IRFA because it lacked sufficient economic information about the economic impacts on the industry. Because its information was insufficient, FS provided a list of questions in an attempt to obtain the necessary information from the public. In reviewing the comments from the public, Advocacy hopes that FS will give full consideration to the information provided by the industry in response to FS' solicitation for additional information and perform an analysis that reflects 1) the impact on small entities that had access to resources that will have limited or no access after the rulemaking; 2) the impact of the regulation on small entities that were relying on future activities that will not occur as a result of the regulation; and 3) the impact of the regulation on activities outside of the FS lands (i.e. small communities).

Since our comments are being submitted prior to the close of the comment period, we cannot comment on the full scope of the information that FS may receive from the public regarding the economic impacts of this rule. However, we have received some information from the industry about potential impacts. The early information received indicates that the impact may in fact be significant. For example, representatives of the timber industry, which FS acknowledges is primarily dominated by small businesses, assert that FS controls 73.3% of the saw timber in Montana; 80.8% of the saw timber in Wyoming; and 85.4% of the timber volume in Utah.[6] In the IRFA, FS asserts that the reduction in harvest as a result of this rule could range from 1 to 8% depending on the location[7]. Fed. Reg. at 30286. Considering the high dependence on FS timber in certain areas, a 1 to 8% reduction could be economically significant. If not, FS needs to provide data showing why it is not economically significant to support its conclusion in the FRFA.

Moreover, the mining industry has indicated that the proposal disallows mining on 43 million acres of federal land. It asserts that more than $7 trillion dollars of coal and metal resources will be placed off limits by the proposed rule.[8] If this is not correct, then FS must explain why these resources will still be available and the approximate costs of obtaining access to the resources in areas where road construction and reconstruction is prohibited.

Economic effects such as these cannot be ignored. These early numbers indicate that the impact may indeed be significant. FS needs to explain why they are not significant and provide this information to the public. On the other hand, if the analysis indicates that the impact is indeed significant, Advocacy asserts that FS must fully address this in the FRFA and possibly repropose the rule.

[6] Id.
[7] On the surface, the percentages in the IRFA summary appear to be inconsistent with the tables found in the IRFA. FS needs to explain the inconsistencies found in the documents.
[8] Testimony of Laura Skauer, Northwest Mining Association

Alternatives Provided By Public Must be Given Full Consideration

The RFA requires an agency to consider alternatives to the proposal and provide a statement of the factual, policy and legal reasons for selecting the alternative adopted. 5 USC §605. If a reasonable alternative is provided from a member of the public, the agency must give it its full consideration. In its testimony before the House Subcommittee on Rural Enterprises, Business Opportunities, and Special Small Business Problems, the Northwest Mining Association suggested the alternative of allowing temporary roads, on an as needed basis, with either natural or affirmative reclamation. While Advocacy acknowledges that it is not an expert in forest planning, this seems like an alternative in allows harvesting of natural resources while assuring that the forests are not permanently damaged or irreparably harmed. At least the mitigating impacts of this alternative should be carefully analyzed.

Northwest Mining's suggestion is only one of what may be several strong alternatives offered by the public as a less burdensome solution to the problem. Failure to fully address alternatives that may provide a workable solution to the problem may violate the RFA and raise questions as to whether the agency actions were arbitrary and capricious. If challenged, a court may find that FS' treatment of alternatives was insufficient.

In addition, Advocacy believes that FS should require local FS planners to require local FS planners to perform an RFA analysis in drafting future forest plans that implement this rulemaking to assure that the implementation minimizes the economic impact while achieving the goal of preserving the environment. RFA compliance will provide the public with information necessary to participate fully in the rulemaking process and possibly provide suggestions as to ways that may make implementation less costly.

Conclusion

The Office of Advocacy recognizes the importance of protecting the environment, conserving our national forests, and preserving the natural beauty of the area. However, there is also a significant public interest in allowing access to natural resources in order to preserve our economic base. The potential economic impact of this proposal on small businesses and small communities could be devastating. Prior to implementing such a rule, FS should make every attempt to understand fully the economic impact of its actions and to find less burdensome or mitigating alternatives. In the alternative, it should explain fully why these alternatives will not help FS achieve its environmental objectives. As Advocacy has stated on several occasions, the requirements of the RFA are not intended to prevent an agency from fulfilling its statutory mandate. Rather, it is intended to assure that the economic impacts are fairly weighed and considered in the regulatory decision making process.

The public has an interest in knowing the potential economic impact of a particular proposed regulation. As the court stated when remanding a rule to the agency in Northwest Mining v. Babbitt, "While recognizing the public interest in preserving the environment, the Court also recognizes the public interest in preserving the rights of parties which are

affected by government regulation to be adequately informed when their interests are at stake and to participate in the regulatory process as directed by Congress." *Supra.* at 13. Providing the public with a complete economic analysis that fully discloses the potential impact of the action and considers less burdensome alternatives not only complies with the requirements of the RFA, it also complies with the basic tenets of sound public policy that balance conflicting interests.

Thank you for the opportunity to comment on this proposal. If you have any questions, please feel free to contact us. Please place a copy of these comments in the record.

Sincerely,

Jere W. Glover
Chief Counsel
Office of Advocacy

Sincerely,

Jennifer A. Smith
Assistant Chief Counsel
for Economic Regulation &
International Trade

Sincerely,

Brian Headd
Economist

Cc: Charles Rawls

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BISHOP TRIBAL COUNCIL

44072

March 15, 2000

CAET RECEIVED
JUL 13 2000

Jeff Bailey, Supervisor
Inyo National Forest
Bishop, CA 93514

Dear Jeff:

The Bishop Tribal Council appreciates the opportunity to respond to **the Notice of Intent to prepare an EIS protecting roadless areas**.

The Bishop Tribal Council appreciates the efforts of the US Forest Service to protect and manage and the natural resources and cultural sites now under their management. These resources and sites remain intrinsic to our people's cultural and religious beliefs and customs. We believe that the unique trust responsibility the Forest Service has to the Indian people unquestionably includes providing access at any time to areas and sites that are of cultural and religious significance to us. As you know, the remains of our ancestors and the evidence of their existence are sacred to us, as are the natural resources that to this day provide for our sustenance and cultural and spiritual needs. So, while we offer our comments on protecting roadless areas, we do so with the understanding that the Forest Service will continue to work with our Tribe to ensure our unrestricted access to and use of the natural resources and sites throughout our ancestral homelands.

The Bishop Tribal Council believes that it is extremely important that the US Forest Service live up to its trust responsibility to protect tribes' rights regarding freedom of religion. This trust responsibility cannot be separated from issues of access.

We support a plan throughout the forest (not just in roadless areas) that includes no new road construction anywhere in the Inyo National forest. Most importantly, we believe there should be no new roads within a perimeter of three to five miles of known cultural sites. If road construction must occur, it should occur only in areas that are already highly impacted by unregulated human encroachment. In addition, existing roads should be closed where there is evidence of environmental and / or cultural site degradation has occurred or is occurring.

Our **specific concerns regarding the EIS protecting roadless areas** relate primarily to the large number of acres involved and our desire to maintain access for our Elders so that we may preserve our cultural and spiritual traditions.

In California, a vast acreage is considered roadless. Any of these areas may include important cultural and spiritual areas. The Bishop Paiute Tribal Council is concerned that access to these cultural and spiritual areas be maintained for our people. Our Elders are the keepers of our traditions. Many are unable to walk long distances. The only way we can continue our traditions and teach our young people about them is by having our Elders take us to these important places. Our most knowledgeable Elders are frail and are not able to travel long distances by foot. Any plan governing the management of roadless areas must maintain access to spiritual and cultural sites for traditional purposes.

Thank you for your consideration of these issues. We hope to discuss them with you at our next regularly scheduled meeting.

Sincerely,

M Bengochia

Monty Bengochia, Chair
Bishop Tribal Council

PAIUTE PROFESSIONAL BUILDING • 50 TU SU LANE • BISHOP, CA 93514
PHONE (760) 873-3584 • FAX (760) 873-4143
E-Mail mervin@telis.org

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Confederated Tribes of Grand Ronde
Natural Resources Department
P.O. Box 10
Grand Ronde, Oregon 97347
Contact: Cliff Adams (503) 879-2375

USDA Forest Service - CAET

The Fish and Wildlife Committee and the Timber Committee of the Confederated Tribes of Grand Ronde are offering comments regarding the "Roadless Area Conservation Proposed Rule".
The Tribal Committees are requesting that the following items be considered when adopting the Rule:

1. Recreation within the Roadless areas continue to be allowed
2. The existing roads be maintained and not closed to allow public access
1. Rules and policies regarding management and any restrictions in the Roadless Area be decided at the local level
2. Continue to acknowledge the rights and historical uses of The Native American Tribes in the proposed Roadless Areas
1. Continue to consult with The Native American Tribes regarding any future proposals or decisions other than what has been proposed as the preferred alternative for the "Roadless Area Conservation Proposed Rule".

K I C

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Ketchikan Indian Corporation
2960 Tongass Avenue
Ketchikan, Alaska 99901
(907) 225-5158
Fax (907) 247-0429

T 1 1 5

July 14, 2000

USDA Forest Service - CAET
Attn: Roadless Area Conservation Proposed Rule
P.O. Box 221090
Salt Lake City, UT 84122

CAET RECEIVED
JUL 17 2000

Dear Sirs:

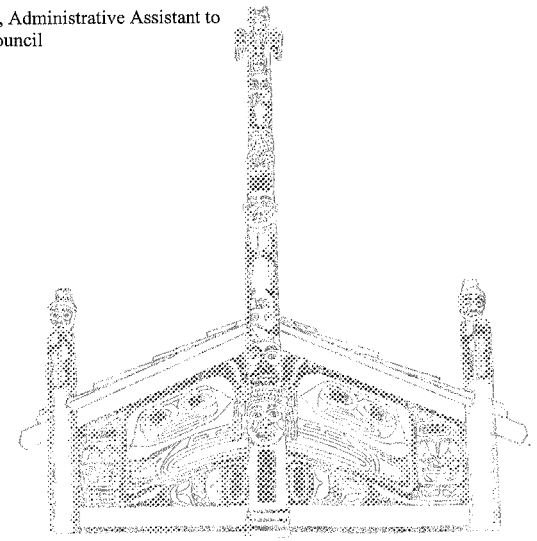
At a duly convened meeting on July 10, 2000, Ketchikan Indian Corporation Tribal Council authorized the submission of the attached Position Statement regarding the roadless.

If you have any questions, please feel free to contact me at: (907) 225-5158.

Sincerely,

Cheryl Haven, Administrative Assistant to
KIC Tribal Council

Enclosure



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Ketchikan Indian Corporation

2960 Tongass Avenue
Ketchikan, Alaska 99901
(907) 225-5158
Fax (907) 247-0429

Testimony for the Roadless issue
Discovery Center
6:00 p.m.

Position Statement
submitted by Merle Hawkins, Tribal Council and Subsistence Committee Chair

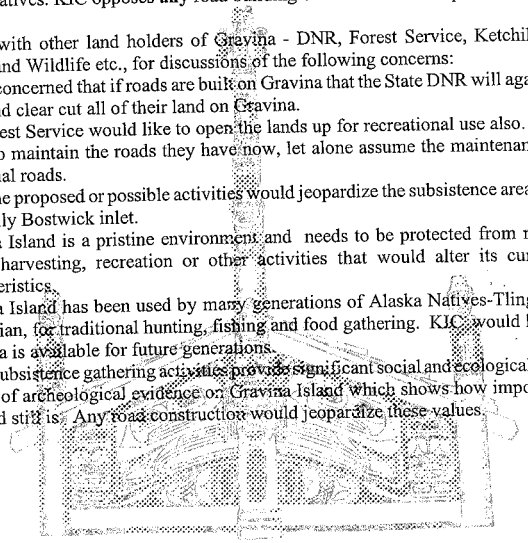
KIC Tribal Council would like to see Gravina Island remain a roadless area for the following reasons:

- Historically, and currently it is still is used by Alaska Native people from the Ketchikan area for subsistence fishing, gathering and hunting.
- The Saxman people use it and they have Rural status.
- This is traditional land of the Tongass Tribe, and although they are not federally recognized IRA Tribe, I represent them as an IRA Tribal Council. A respected Tongass Tribal leader, Esther Shea, said during the March 2000 Traditional Ecological Knowledge Conference, Co-hosted by Ketchikan Indian Corporation and the U.S. Forest Service: "We may not own the land anymore, but in our hearts it's ours." Her words are etched in our hearts.

The Forest Service is proposing a timber sale on Gravina Island with a proposal for road building in several alternatives. KIC opposes **any** road building on Gravina Islands public lands.

I recently met with other land holders of Gravina - DNR, Forest Service, Ketchikan Gateway Borough, Fish and Wildlife etc., for discussions of the following concerns:

- We are concerned that if roads are built on Gravina that the State DNR will again reopen the roads and clear cut all of their land on Gravina.
- The Forest Service would like to open the lands up for recreational use also. They cannot afford to maintain the roads they have now, let alone assume the maintenance burden on additional roads.
- All of the proposed or possible activities would jeopardize the subsistence areas on Gravina, especially Bostwick inlet.
- Gravina Island is a pristine environment and needs to be protected from road building, timber harvesting, recreation or other activities that would alter its current roadless characteristics.
- Gravina Island has been used by many generations of Alaska Natives-Tlingit, Haida and Tsimshian, for traditional hunting, fishing and food gathering. KIC would like to see that this area is available for future generations.
- These subsistence gathering activities provide significant social and ecological values. There is a lot of archeological evidence on Gravina Island which shows how important this area was and still is. Any road construction would jeopardize these values.



The Forest Service proposed action, under the roadless alternatives, would be to evaluate the quality and importance of roadless characteristics. KIC does not feel that the Forest Service is qualified to do this. A conflict of inherent extent as they have the responsibility to provide a certain amount of timber for market demand within the Tongass National Forest. The same circumstance exists with recreational areas; the pressure for people in Ketchikan to provide more recreational areas, but Alaska is special because of its historical access by canoe or boat, and unique due to all the islands.

- The Forest Service protects public lands on Gravina with multiple use objectives.
- If Gravina is opened up for recreation, you cannot protect the island's public land.
- Multiple use objectives would not work.
- Leaving that decision up to a local Tongass Ranger does not make sense as we get a new one about every three to five years and they do not know the local people.
- By the time they (new Rangers) acquire some of this knowledge they get transferred and the people suffer from their decision. Building roads on Gravina to Boswick would be mismanagement, timber harvest, road building and recreational use are not compatible with subsistence.
- KIC's position is that any timber harvest, road access, or recreational use on Gravina would have a detrimental environmental impact on the subsistence resources of the Island and waters.
- KIC opposes any timber harvest and/or any recreational use or development on Gravina Island.
- KIC supports Alternative # 4, 4D with full Tongass inclusion, **no road building on the Tongass**.

Merle Hawkins

Signed: Merle Hawkins, KIC Tribal Council and Subsistence Committee Chair

July 13, 2000

Date

10116

The Klamath Tribes
P.O. Box 436
Chiloquin, Oregon 97624
Telephone (541) 783-2219
Fax (541) 783-2029
800-524-9787

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CAFT RECEIVED
JUN 29 2000

June 19, 2000

The Honorable Dan Glickman
Secretary of Agriculture
United State Department of Agriculture, Room 213-A
14th Street and Independence Avenue, SW
Washington, D.C. 20250

Dear Secretary Glickman:

As Chairman of the Klamath Tribes, an organization within Klamath County that has a major concern with establishing and maintaining a diversified and viable economic base within the Klamath Basin, I have been asked to comment upon the impact of the President's Roadless Plan (64 Federal Register 56306, October 19, 1999), particularly as it may impact the Pelican Butte Ski project under consideration in the Winema National Forest and, ultimately, the Klamath Tribes Economic self Sufficiency Plan, currently in the final stages of preparation for the Secretary of the Interior and the Congress. Without the benefit of having all the data needed yet, it does appear that this project, if successfully implemented, will have a significant positive financial impact on the Tribes' Economic Self Sufficiency Plan.

Without being able at this time, due in large part to the unavailability of the final EIS and other economic data, to address whether the Tribes will ultimately support or not support the project based upon its environmental, Tribal cultural and economic impacts, we strongly feel that, given the potential impacts to the entire community, this project should be provided a "grandfather" clause exemption to complete its EIS process and presentation to the Basin community for their consideration.

Several factors argue strongly for this exemption. First, this project has been under review and development by the Forest Service, the City of Klamath Falls, and private developers for over thirty years. It has always been a part of the regional economic development industrial diversification plan of a devastated timber dependent community. It needs resolution.

Second, the developer undertook the project at the invitation of the Forest Service under its Winema National Forest Plan, agreeing to prepare and write an Environmental Impact Statement under NEPA requirements. Given the years and $3.75 million spent in good faith on a project under the previous rules, we feel that the research, feasibility and environmental impact analysis should be completed and placed before the public for their information. We also feel that the public is entitled to, after thirty years to render their position on the project.

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Finally, the Tribes and I, personally, have spent a great amount of time and energy participating in six different community committees evaluating this project. We feel that there is a responsibility to the great number of hours and effort that many of our community leaders have put into this project over the years.

No organization or peoples in the Klamath Basin is more concerned with the environment and the protection of the forest that the Klamath Tribes and we are committed to the restoration and preservation of all lands and resources that are currently or will ever be under our jurisdiction. This position does include the recognition of the need for the Tribes and the general community to have a protected, multi-use forest for the benefit of all. In order to be able to determine which projects are beneficial and needed or not, we do need to have these project processes completed.

Sincerely,

Allen Foreman
Tribal Chairman
The Klamath Tribes

06-21-2000 07:43 541 273 6496 JELD-WEN

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D. Glickman, U.S. Sec.of Ag., June 16, 2000
Page 2

Finally, the Tribes and I, personally, have spent a great amount of time and energy participating in six different community committees evaluating this project. We feel that there is a responsibility to the great number of hours and effort that many of our community leaders have put into this project over the years.

No organization or peoples in the Klamath Basin is more concerned with the environment and the protection of the forest that the Klamath Tribes and we are committed to the restoration and preservation of all lands and resources that are currently or will ever be under our jurisdiction. This position does include the recognition of the need for the Tribes and the general community to have a protected, multi-use forest for the benefit of all. In order to be able to determine which projects are beneficial and needed or not, we do need to have these project processes completed.

Sincerely,

Allen Foreman
Tribal Chairman
The Klamath Tribes

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Jun-21-00 02:58p

7/17/2000 15:04 FAX 002

19309

Nez Perce

TRIBAL EXECUTIVE COMMITTEE
P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

July 14, 2000

USDA Forest Service - CAET
P.O. Box 221090
Attention: Roadless Areas Proposed Rule
Salt Lake City, Utah 84122

RE: Roadless Areas Proposed Rules

Dear Madam or Sir:

The Nez Perce Tribe appreciates the opportunity to comment on the Roadless Area Conservation Proposed Rule and Draft Environmental Impact Statement (DEIS). The Tribe recognizes and appreciates the enormous effort put forth by the Forest Service in developing these important protection measures for the Nation's valuable roadless areas.

The Nez Perce Tribe strongly supports the Roadless Area Conservation Proposed Rule. We believe that this rule represents a positive step forward to protect the lands the Forest Service has been assigned to protect and manage.

By virtue of the Treaty of 1855, the Nez Perce Tribe maintains treaty-reserved rights to hunt, fish, gather, and pasture cattle and horses within "open and unclaimed lands." These treaty lands include vast areas encompassed in the National Forests of northeastern Oregon, southwestern Washington, and Idaho. The Tribe believes that the protections provided for by this rule would be consistent with the treaty and trust responsibilities of the United States to preserve, protect, and enhance tribal treaty rights and treaty-reserved resources.

Further, this rule appears to be consistent with the salmon recovery plan adopted by four of the Columbia River treaty Tribes, including the Nez Perce Tribe. *Wy-Kan-Ush-Mi Wa-Kish-Wit: Spirit of the Salmon* calls for, amongst other actions, a decrease in roaded miles in managed watersheds, as well as improved drainage and decreased sediment delivery from roads that will not be obliterated or relocated.

It is critical that the Forest Service recognize and consider how this proposed rule would integrate with the federal government's salmon and steelhead recovery efforts for the Columbia River basin. The Conservation of Columbia Basin Fish or "All-H Paper" produced by a number

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of federal agencies, including the Forest Service, calls for a number of habitat measures to restore imperiled fisheries. The Forest Service and other federal agencies must recognize the importance of the measures called for in the proposed rule to these efforts, especially if the federal government fails to take decisive action to restore salmon and steelhead such as Snake River dam drawdown.

In addition to these general comments, the Tribe has the following specific comments:

1. The proposed rule provides that roads may be constructed or reconstructed if "[a] road is necessary pursuant to reserved or outstanding rights as provided for by statute or treaty." This exception should be revised to explicitly state that road construction and reconstruction may occur to ensure exercise of tribal treaty-reserved rights.

2. The proposed rule provides that roads may be constructed or reconstructed if "[a] road is needed to conduct a response action under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or to conduct a natural resource restoration action under CERCLA, section 311 of the Clean Water Act, or the Oil Pollution Act." In addition, roads may be constructed or reconstructed if "needed to protect public health and safety ... that, without intervention, would cause the loss of life or property." These sections should be revised, expanded, or clarified to allow road construction and reconstruction to protect the habitat of endangered or threatened species from an imminent threat of flood, fire, or other catastrophic event that would cause the destruction of the species or of critical habitat.

3. Pages 4-2 and 4-3 of the Draft Environmental Impact Statement (Volume 1) describes tribal consultation. This section describes how "Forest Service field line officers were directed to personally initiate contact with all potentially impacted tribal leaders." While such contacts were made and detailed presentations were made about the proposed rule, the local Forest Service staff had no authority to conduct a meaningful consultation on the rule or its impacts to the Tribe. Executive Order 13084 provides that each "agency shall have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." According to the President's April 29, 1994 memorandum regarding Government-to-Government Relations with Native American Tribal Governments, federal agencies "shall assess the impacts of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that Tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities." Consultation is the formal process of negotiation, cooperation, and mutual decision-making that ultimately leads to the development of a decision, not just a process or a means to an end. Consultation does not mean notifying the Tribe that an action will occur, requesting comments on that prospective action, and then proceeding with the action. In this scenario the decision is not affected. As such, the Tribe requests that appropriate staff be directed to conduct meaningful consultation with the Tribe on the further development of the proposed rule.

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The Tribe appreciates the opportunity to comment on the proposed rule. We look forward to conducting formal consultation on the rule as the process goes forward to address the concerns discussed above. If you have any questions regarding these comments, please feel free to contact Rick Eichstaedt in the Office of Legal Counsel (208-843-7355). Thank you.

Sincerely,

Samuel N. Penney
Chairman

43977

I I 3 5

DATE: July 17, 2000

TO: USDA Forest Service

FROM: Sally Nickelson
Wildlife Program Coordinator
Point No Point Treaty Tribes

RE: DEIS Roadless Areas Proposal

I am the Wildlife Program Coordinator for the four Point No Point Treaty Tribes (which include the Skokomish, Port Gamble S'Klallam, Jamestown S'Klallam and Lower Elwha Klallam Tribes) located on the Olympic Peninsula in Washington State. These four tribes strongly support the proposal in the DEIS to maintain current roadless areas in perpetuity. We support protecting all roadless areas, regardless of size and/or whether they have been inventoried. Even small patches of the late-successional habitat found in roadless areas can provide essential habitat and refugia for many species.

Our four tribes retained off-reservation fishing, hunting and gathering rights when they signed their treaty in 1855. Tribal members use Forest Service land for hunting, gathering and spiritual purposes. In addition, upstream land use practices on Forest Service ownership greatly influence fish habitat downstream. High road density, and concomitant road failure, has been a primary cause of fish habitat destruction and decline in salmon populations on the Olympic Peninsula.

Elk is a species of great cultural importance to these four tribes. Unfortunately, during the past 10 years, elk populations on the Olympic Peninsula have declined rapidly, in part due to overharvest because of easy access on the extremely dense road network on both Forest Service and private industrial timberland. In many areas on the Peninsula, road density is 6 miles of road for every square mile of habitat. This high road density increases the vulnerability of wildlife species to both legal and illegal hunting to a point where many local populations can no longer maintain themselves. The Point No Point Tribes closed two Game Management Units to tribal elk hunting in the past decade because of population declines. One of these, the Skokomish Game Management Unit, contains a culturally important herd that ranges along the South Fork Skokomish River. The upper reaches of this river contains one of the proposed roadless areas, which can serve as a refuge for the elk during hunting season, when seasons are reopened.

In addition, roadless areas generally contain older trees, and can provide old growth habitat for species dependent on late successional forest, including the federally listed Northern Spotted Owl and Marbled Murrelet. The Tribes support completely protecting all remaining late successional habitat (not only from road building, but also from other destructive uses such as helicopter logging, grazing, mining, and ATV use). Some culturally important plant species are found primarily in old growth stands, and many of these stands have spiritual significance.

Our tribes disagree with previous federal policy of subsidizing private timber companies by building and maintaining roads so that the private companies could log public land. This was usually done at a fiscal loss

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to the public (the cost of building and maintaining the road was greater than the amount received for the timber). We believe that the greater value of the land lies in its ability to provide fish and wildlife habitat.

Our tribes urge the Forest Service to completely protect the few remaining roadless areas on their ownership in perpetuity. Unfortunately, most of these roadless areas occur at high elevation in very steep terrain, which is marginal habitat for most wildlife species. In addition to protecting already roadless areas, we suggest that the Forest Service reduce road density in the more productive low elevation stands to protect both wildlife species and fish habitat. Maintaining tribal access to Forest Service land for treaty hunting and gathering is critical. However, a balance must be achieved between reasonable and dispersed access and reducing road density to decrease vulnerability of game species to hunting and poaching. We believe that scarce dollars should be spent in decommissioning many roads and upgrading the remaining ones to current standards, not in building new roads.

Thank you for the opportunity to comment on this important proposal.

Sincerely,

Sally Nickelson
Wildlife Program Coordinator
Point No Point Treaty Tribes
7999 NE Salish Lane
Kingston, WA 98346
360-297-6540

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44005

Sealaska
CORPORATION

T I I 5

13 July, 2000

USDA Forest Service
Attention: Roadless Area NOI
Box 221090
Salt Lake City, UT 84122

Subject: Roadless Initiative --- Proposed Rule and DEIS

To Whom It May Concern:

Sealaska Corporation appreciates the opportunity to respond to the Forest Service Roadless Area Conservation Draft Environmental Impact Statement, dated May 2000. This EIS results from the proposal by the Forest Service to review the National Forest System Roadless Areas Initiative as published in Federal Register/Vol. 64, No. 201/ Tuesday, October 19, 1999 (p56306-56307).

Sealaska Corporation, the Regional Native Corporation for Southeast Alaska, was created under the Alaska Native Claims Settlement Act (ANCSA) of 1971. Sealaska represents 16,000 shareholders whose heritage derives from Tlingit, Haida and Tsimshian Native tribes of Southeast Alaska. The economy of Southeast Alaska is dominated by the Tongass National Forest, largely because it surrounds all of our towns and villages.

Sealaska has determined that the Proposed Rule is inappropriate as a National policy; and specifically, should not be applied to the Tongass and Chugach National Forests. The basis for our determination is set forth in the following sections.

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JUL 17 2000

One Sealaska Plaza, Suite 400 · Juneau, AK 99801-1276 · Phone (907) 586-1512 · Fax (907) 586-1826

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On behalf of Sealaska Corporation, thank you for the opportunity to provide our comments regarding the proposed National Forest System Roadless Areas review. Sealaska reserves the right to provide additional comments should the deadline be extended.

Sincerely yours,

SEALASKA CORPORATION

Robert W. Loescher

Robert W. Loescher
President and Chief Executive Officer

CC: The Honorable President Bill Clinton
Lynn Cutler, Deputy Assistant to the President
George Frampton, Council on Environmental Quality
The Honorable Governor Tony Knowles
The HonorableSenator Stevens
The Honorable Senator Murkowski
The Honorable Congressman Young
S.E. State Senators and Representatives
Alaska Speaker of the House
Alaska President of the Senate
SE Alaska Communities
SE Alaska ANCSA Village and Urban Corporations
ANCSA Regional Corporations
Alaska Municipal League
S.E. Conference
Jack Phelps, Alaska Forest Association
Resource Development Council
Alaska Miners Association
Rick Cables, Regional Forester
TNF District Rangers
Ed Thomas, Tlingit & Haida Central Council
Jacqueline Martin, ANS Grand President
Sam Jackson, ANB Grand President
Rick Harris
Chris McNeil
Ross Soboleff
Budd Simpson
Alan Mintz
Gregg Renkes

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GENERAL COMMENTS

By delaying a decision on the exclusion or inclusion of the Tongass until 2004, the Forest Service will stop all investment in new manufacturing caused by uncertainty in the future timber supply. Delaying a review of the Tongass National Forest for inclusion effective 2004 is self-fulfilling in terms of assuring that demand for Forest Service timber will continue to diminish. The forest products industry is actively reconfiguring itself to utilize Forest Service timber from the Tongass National Forest at current supply levels. Active projects include veneer mills, ethanol manufacturing from wood wastes, and sawmill reconfiguration to fully utilize timber expected to be offered in stumpage sales. By placing the Tongass NF into a review category in 2004, the government is effectively closing the door on any opportunities to create a viable industry for the benefit of many communities. No company can be expected to pursue opportunities if there is a real risk that stumpage volume will not be available in as little as a few years.

If the Tongass National Forest (TNF) is included in the Proposed Rule no roadless areas should be designated without first conducting a detailed analysis of alternatives. This analysis must be very broad to identify all impacts such designations may have on the people that reside within the TNF. This analysis must go beyond the biological analysis and include analysis on subsistence, cultural, social, economic, job and family sustainability that will be affected by such designations. Further, the analysis must evaluate the result of any site specific designation on the ability of the TNF to meet other Federal obligations made to the State of Alaska and Alaska Natives through prior laws and land agreements regarding land and resource allocations from the TNF. Specific agreements, geographic areas and communities that should be included in the analysis are described in further detail in the following sections.

DETAILED COMMENTS

1. The Proposed Rule recommends a categorical elimination of road construction in roadless areas. This proposal is contrary to Federal law and recommendations of the "Committee of Scientists" (COS). The scope of analysis and alternatives must rectify these obvious conflicts with National forest policy and laws and recommendations of the COS.

- The Proposed Rule eliminates all road construction and designates roadless areas on the National Forests which is against the law. The National Forest Management Act (NFMA) establishes a process for forest planning, including new roadless management policy, when the agency proposes significant changes to a forest plan. Development and implementation of a new roadless management policy will constitute a significant and major plan amendment because it will affect the classification and use of resources on millions of acres of forestland.

  Under NFMA, a plan amendment which results in a significant change in a plan must undergo the same land management planning process that is used for original and revised plans including, but not limited to, the preparation of an environmental impact statement (EIS) in accordance with NEPA. The proposed Roadless Initiative NEPA-EIS is not consistent with the NFMA because the changes being proposed are not being done in the same manner as the plan itself was developed. In this case, a plan is developed by the Forest Supervisors using the NEPA process as the decision making process for meeting NFMA planning requirements (36 CFR 219.1 et seq). Hence a proposed amendment must follow the same process as the original plan including plan amendment occurring at the forest level.

- The Proposed Plan does not respond to the Report of the Committee of Scientists (COS) 1999. The COS recommends that the planning process consider a broad range of values, uses, products, and services. The process should be democratic, open and accessible with a large degree of public participation representing all stakeholders. It should be oriented to local areas with the highest level of approval being the Regional Forester. It should fit the organization, communication, and decision-making styles of the community; and should work to reduce the negative economic and social impacts of land-use changes.

  The procedure by which the Administration is identifying areas for roadless designation accomplishes none of these recommendations. Alternatives must be included that meet the COS recommendations as described above.

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2. The Proposed Rule proposes to establish the criteria that must be used "through the forest planning process" to protect roadless areas. The scope of analysis overtly emphasizes biological protections and fails to consider the impacts of roadless designations on sustainability of affected communities, school funding and families that are dependent on National Forests for their livelihoods. The EIS alternatives analysis should include the following:

- Require that forest planning, including roadless designations, be done at the forest and local (community) level.
- Include authorities such that the roadless area designations can be vacated to manage for desired habitat characteristics, and provide reasonable road access if insect, disease, and fire outbreaks pose a risk to National forest and adjoining private and non-Federal public lands.
- The report of the Committee of Scientists (COS) finds the less populated areas of the west will suffer substantial economic and social dislocations due to their low economic and social resiliency. Practically all of the communities in Southeast Alaska have such low resiliency. The further designation of roadless areas on national forests would be devastating to those living in that region. For the reasons described by the COS, the criteria for designating roadless areas must be expanded to include specific requirements that ensure school funding and jobs are protected and that the resources on the national forests will be available to maintain sustainable communities and families. Consequently, the alternatives analysis must include options that preclude roadless designation (both inventoried and un-inventoried) if the areas being considered have resources that would contribute to the economic and social welfare of nearby communities. Alternatives must include preclusion of roadless designations if the affected communities meet one or more of the following criteria:

    1. Have a seasonally adjusted unemployment rate that is 5% above the average for the State.
    2. Have an average per student expenditure that is less than the average per student expenditure for the State.
    3. Have more than a 30% minority population.

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    4. Have a per-capita income that is less than 10% of the average per-capita income for the State.
    5. Requires road access across roadless areas for community infrastructure including municipal drinking water supply, development of hydroelectric power sources and access to regional road and transportation systems.
    6. If roadless areas are designated and, subsequently, the community fails to meet the above benchmarks, the roadless areas can be rescinded as a plan amendment.

3 Federal laws preclude the inclusion of the Tongass National Forest and Chugach National Forest in the "Roadless Initiative". Before either forest can be included under the Proposed Rule, conclusive legal authority to include these forests must be proven. The basis of excluding these forests follows:

- The temporary roadless suspension correctly exempts the Tongass and Chugach National Forest from the Roadless Initiative. That suspension should be made permanent due to the applicable Federal laws governing land designations in both forests. The legal basis for exclusion includes:

    1. Designation of additional roadless areas would violate the Alaska National Interest Land Conservation Act (ANILCA). ANILCA prohibits: (1) Forest Service studies that contemplate the establishment of additional conservation, recreation, or similar units; (2) the withdrawal of more than 5,000 acres of land, in aggregate, without Congress's approval, and (3) the review of roadless areas of national forest lands in Alaska for the purpose of evaluating their suitability as wilderness.
    2. Under ANILCA § 1326, the Forest Service is prohibited from (1) using the plan amendment process, the moratorium, or any other process to conduct additional studies of public lands in Alaska, the single purpose of which is to set aside roadless areas from further development; and (2) withdrawing lands in excess of 5,000 acres in aggregate, without Congressional approval.
    3. ANILCA § 1326(b) prohibits the executive branch from studying federal lands in Alaska for the single purpose of considering

whether to establish "a conservation system unit, national recreation area, national conservation area, or for related similar purposes." Unless authorized under ANILCA (16 USC § 3213(b)) or by Congress, the Forest Service is prohibited from studying any roadless areas during a plan amendment process, much less the administrative appeal process, if the purpose is to establish a conservation unit, recreation area, conservation area or any other unit serving related or similar purposes.

4. Congress expressly stated that the conservation areas established under ANILCA were sufficient protection "for the national interest in the scenic, natural, cultural, and environmental values on the public lands in Alaska." (15 USC § 3101(d)).

- In addition to the authorities that exclude both the Tongass and Chugach National Forest from any roadless initiatives, including this Proposed Rule. The following legal authorities further exclude the Tongass National Forest from further consideration:

1. No regulatory or statutory process exists for the Forest Service to unilaterally change the revised TLMP during the appeal process or otherwise. Any determinations that the Forest Service attempts to make during the TLMP appeal process must be limited to correcting what the Forest Service agrees were legal errors in the TLMP planning process. Any other changes (including changes to the Tongass roadless area policy) must be pursued as a plan amendment through the appropriate forest planning regulations.

2. In the Tongass Timber Reform Act (Public Law 101-626; (TTRA)), Congress addressed wilderness issues (16 USC 539(d)). The wilderness clauses dealt with designating wilderness areas, additions to areas, and certain roadless managed areas. There are no clauses stating that there shall be no more wilderness or roadless areas, because Congress foreclosed the creation of more such areas since it has reserved for itself the determination of wilderness and roadless areas per ANILCA and TTRA.

3. The TTRA Title I-Forest Management Provisions; Sec. 101 amends Sec. 705(a) of ANILCA to read: "(a) Subject to appropriations, other applicable law, and the requirements of the

National Forest Management Act of 1976 (Public Law 94-588), except as provided in subsection (d) of this section, the Secretary shall, to the extent consistent with providing for multiple use and sustained yield of all renewable forest resources, seek to provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber from such forest and (2) meets the market demand from such forest for each planning cycle."

- Under the Tongass Land Management Plan Record of Decision (1999) the Forest Service has established an allowable sale quantity (ASQ) of 187 mmbf. However, the application of the roadless initiative would substantively reduce the ASQ to about 50 million board feet. This volume will not meet the needs of local industry, and will have extensive negative effects on the Southeast Alaska regional economy. If the Tongass is included, the alternatives analysis must ensure that the roadless action will not preclude the Secretary from meeting the provisions of Title I, Section 101 of TTRA and preclude the Forest Service performing under its own forest management plan.

4. If the Tongass National Forest is included in the Proposed Rule, no areas should be designated until the scope of the analysis and alternatives are prepared that consider all impacts such designations may have on the people that reside within the TNF. The scope of analysis and alternatives should include the following:

- The Tongass contains over 15 million acres of land. Over 6 million acres are placed in national monuments and wilderness areas. An additional 728, 000 acres are legislated Land Use Designation II (un-roaded) areas. Another 7.14 million acres prohibit road construction/reconstruction. About 1.5 million acres (10%) are left for development activities. Given the extensive ecological protections that already exist, the alternatives analysis, before concluding that additional roadless areas should be designated, must first conclusively prove that the current land allocations and management practices fail to provide clean-water, biological diversity, wildlife habitat, forest health, dispersed recreation and other public benefits.

- The Roadless Initiative must not supersede or abrogate the rights of Alaska Natives to achieve their entitlements granted under the 1971

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Alaska Native Claims Settlement Act (ANCSA). The final rules must include unimpeded exercise of land selection rights and authority to use Native land and land selection entitlements to exchange for other for public land that may include roadless areas.

- The Forest Service must analyze the social and economic effects for each community in Southeast Alaska before designating roadless areas. Further, the alternatives analysis must be done on a local and a regional basis to quantify the cumulative effects, and to demonstrate that economy of scale industries can be sustained. There are numerous Southeast Alaska rural communities, whose residents are predominately Alaska Natives, who rely on the timber industry for a substantial portion of the economic activity necessary to assure community viability. Reductions in Forest Service timber sales as a result of the Proposed Rule will negatively effect the economic well being of these communities. The alternatives analysis must identify "realistic economic alternatives" that assure that these communities retain current or improved levels of economic and social viability.

  Communities in Southeast Alaska, that must be included in individual social-economic studies include but are not limited to: Annette, Ketchikan, Hydaburg, Craig, Klawock, Hollis, Kasaan, Thorne Bay, Naukati, Coffman Cove, Whale Pass, Calder mine, Point Baker, Port Protection, Laboucher Bay, Meyers Chuck, Edna Bay, Cape Pole, Rowan Bay, Kake, Petersburg, Kupreanof, Wrangell, Sitka, Baranof Warm Springs, Tenakee Springs, Hoonah, Excursion Inlet, Gustavus, Juneau, Elfin Cove, Pelican, Skagway, Haines, and Klukwan. Most of these communities have been identified as having low resiliency.

- Southeast Alaska is developing an integrated regional transportation and energy system. Each community is improving their essential community infrastructure (e.g. municipal water supplies, and transportation infrastructure). Before any roadless designations occur, the analysis of effects and alternatives must be prepared that affect these major initiatives. Specific areas for analysis and alternatives development include:

- The State of Alaska is revising its regional ferry/road system to allow more efficient and economical travel throughout Southeast Alaska.

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Access must be preserved for the State's regional ferry/road transportation system.

1. On Prince of Wales Island, communities that are connected, or may be connected in the future by roads and powerlines include: Hydaburg, Klawock, Craig, Hollis, Kasaan, Thorne Bay, Naukati, Coffman Cove, Whale Pass, Calder mine, Laboucher Bay, Point Baker, and Port Protection. In addition, hydroelectric sites in the higher elevations of Prince of Wales Island need to be identified in order to eventually replace or supplement electric demands in these communities.

2. The current road access between Cape Pole and Edna Bay must be preserved. In addition, a hydroelectric facility servicing those communities may be feasible in the Mount Holbrook area on Koskiusko Island.

3. There must be a road corridor and power line corridor between Kake, Kupreanof and Petersburg to be developed when future economics make the project feasible.

4. Sitka must be allowed to have a road corridor to Rodman Bay on Peril Straits for potentially more efficient ferry access.

5. Although not warranted at the present time, there must be provisions for a future road and electrical intertie between Hoonah and Tenakee Springs.

6. Allowances must be made for a power line easement between Juneau, Greens Creek mine, and Hoonah.

7. Road access from Skagway and Haines to Juneau needs to be preserved along both shorelines of Lynn Canal so that the best access to Juneau can be preserved. In case the Taku River road becomes more viable, a road corridor must be included in any transportation plan.

8. In the future, Rowan Bay may find a source for hydroelectric power to replace diesel generation. The best sources probably are in the watersheds along the ridge that fronts onto Chatham Straits.

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- The DEIS does not present a balanced picture of characteristics attributed to roadless areas compared to roaded areas.

    1. By utilizing current road building standards little or no foreign material is introduced into the riverine environment. Water is not degraded. In the Tongass National Forest and the rest of Southeast Alaska, best management practices (BMPs) dictate that roads be located and constructed so that pollutants do not reach streams. Roads systems are designed to avoid oversteep slopes. Full bench and-hauling are required on lesser slopes over a definedsteepness. In many instances bridges are designed and constructed with abuttments that are above stream banks. These and similarBMPs result in maining a high quality riverine environment.A reasonable amount of timber harvest is appropriate for every national forest in the United States. In the case of the Tongass NF, the Forest Service administratively has vastly exceeded reserving areas in a roadless category for the alleged protection of scenery, biodiversity, sustaining populations of indicator species, protection of salmon habitat, etc. This has resulted in much more land being reserved to a roadless category than is necessary to protect these non-commodity characteristics in every part of the national forest.

    2. Development is not necessarily antagonistic to other values. In the Pacific Northwest, including Alaska, the modification of stream riparian areas, using methods such as partial timber harvest, has resulted in providing more food for invertebrates, which are the animals that initiate the food cycle that results in more food for fish. In addition, different species of anadromous fish prefer different kinds of in-stream habitat. Stream access allows fishery biologists to manage the habitat for the most desirable species. Forest Service and other scientists are discovering that secondary benefits can have a neutral effect or even positively accrue to stream productivity (Gregory etal[1], Martin[2], Murphy and Koski[3],, Murphy and Hall[4], Murphy and Meehan[5], Wipfli[6]).

[1] Gregory, S.V. et al. 1987. Influence of forest practices on aquatic production. Pp 233-255, In Salo and Cundy editors, Streamside Management, Forestry and Fishery Interactions Univ. Washington, Seattle.

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3. The DEIS has failed to adequately explain the many benefits that users enjoy due to the availability of Forest Service roads. The Forest Service has published reports that show thatroads are being used with increased frequency by many citizens. Should road building be substantially restrained in the future, the impact on roaded areas will be very substantial. A great majority of the public demands easier access to enjoy the great out of doors compared to the very few who can afford to recreate in roadless areas. More, not less, area is needed to provide for multiple uses including recreation for people who prefer to drive, access for hunters, fishermen and subsistence gatherers, mineral exploration and development, and timber harvest. The final EIS must recognize the need for a different balance providing more favor for those who want the easier access.

In an October 12, 1999 letter, from Governor Tony Knowles to Mr. George Frampton, Chair, Council on Environmental Quality, Governor Knowles enumerated reasons why the Tongass National Forest should not be included. In that letter he stated that the TLMP process must be allowed to proceed, that "It would be an outrage because we were assured previously that the Tongass would not be included in this review...". "A change now in that course and direction would constitute a doublecross of the citizens of the State of Alaska." Sealaska fully supports the Governor's position that ANILCA and TTRA defined those areas in the Tongass National Forest that should be roadless. Those areas that shall be maintained for economic development including timber harvest, road construction, and mineral development.

[2] Martin, D.J., M.E. Robinson and R.A. Grotefendt 1998. The effectiveness of riparian buffer zones for protection of salmonid habitat in Alaska coastal streams. A Report for Sealaska Corporation, Juneau, Alaska.85 pp.

[3] Murphy, M.L. and K.V. Koski 1989. Input and depletion of woody debris in Alaska streams and implications for streamside management. North American Jour. Fish. Mgt. 9(4): 427-436.

[4] Murphy, M.L. and J.D. Hall 1981. Varied effects of clear-cut logging on predators and their habitat in small streams of the Cascade Mountains, Oregon. Can. Jour. Fish. Aquat. Sci. 38: 137-145.

[5] Murphy, M.L. and W.R. Meehan 1991. Stream ecosystems. American Fish. Soc. Spec. Publ. 19: 17-46.

[6] Wipfli, M.S. 1997. Terrestrial invertebrates as salmonid prey and nitrogen sources in streams: contrasting old-growth and young-growth riparian forests in southeastern Alaska. Can J. Fish. Aquat. Sci. 54: 1259-1269.

JUL.14.2000 2:18PM 1 2 7 5 NO.443 P.2/3

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Sitka Tribe of Alaska

Tribal Government for Sitka, Alaska

Tribal Resolution 00-25

A Resolution of the Sitka Tribe of Alaska opposing inclusion of the Tongass National Forest in the U.S. Forest Service National Roadless Initiative Policy Review & Supporting Alternative T-1

WHEREAS, the Sitka Tribe of Alaska is a federally recognized tribal government responsible for the health, safety, welfare, and cultural preservation of over 3,000 tribal citizens residing in Sitka, Alaska; and

WHEREAS, Section 708 of the Alaska National Interest Lands Conservation Act of 1980 resolved roadless issues in a compromise bill establishing over 5,000,000 acres in 14 acres as Wilderness on the Tongass National Forest and the Tongass Timber Reform Act of 1990 added over 1,000,000 in additional Wilderness designations to maintain their wildland characteristics; and

WHEREAS, the Record of Decision signed by Undersecretary on the Revised Tongass Land Use Management Plan notes that the Tongass National Forest would be exempt from the roadless moratorium as the newly revised plan had the benefit of considerable science and public involvement in the 12 year revision process for the Forest Plan; and

WHEREAS, the Tongass National Forest is comprised of approximately 17,000,000 acres, of which 90% is currently un-roaded and approximately 50% of the current Tongass National Forest timber base would become included in the acres proposed for the Roadless Initiative; and

WHEREAS, the Tongass National Forest is essential in bringing in stability and certainty to the economy of SE Alaska, providing jobs for many families dependent on such stability and inclusion in the Roadless Initiative would cause economic harm to the region; and

WHEREAS, the implementation of the Roadless Initiative to the Tongass National Forest would greatly diminish access to all natural resources and may eliminate opportunities for the construction of future - transportation and utility corridors throughout SE Alaska.

456 Katlian Street • Sitka, Alaska 99835 • (907) 747-3207 • Fax (907) 747-4915

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NOW THEREFORE BE IT RESOLVED, by the Sitka Tribe of Alaska strongly opposes the inclusion of the Tongass National Forest in the "Roadless Initiative" that the Sitka Tribe of Alaska supports Alternative T-1, further that the Sitka Tribe of Alaska supports the current Land Management Plan.

BE IT FURTHER RESOLVED, that the Sitka Tribe of Alaska opposes any unilateral actions to modify the Record of Decision as such actions are contrary to proper resource planning and circumvents the public planning process as mandated by the National Forest Management Act.

CERTIFICATION

The foregoing Resolution was adopted at a duly called and convened meeting of the council of the Sitka Tribe of Alaska held on July 13, 2000, at which a quorum was present, by a vote of **___4___IN FAVOR, ___1___ AGAINST, AND ___3___ABSENT.**

Sitka Tribe of Alaska - Tribal Chairman

Attest:

Sitka Tribe of Alaska - Tribal Secretary

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THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

NATURAL RESOURCES DEPARTMENT
P.O. Box C, Warm Springs, Oregon 97761

July 17, 2000

USDA Forest Service
Box 221090
Salt Lake City, Utah 97701

RE: Roadless DEIS/Proposed Rule

Dear Sirs:

The Confederated Tribes of the Warm Springs Reservation of Oregon ("CTWSRO") are pleased that the proposed roadless area rule protects unroaded portions of inventoried roadless areas from further road construction. As the DEIS recognizes, protection of these areas is critical to the health of our ecosystems, including fish, wildlife, and native plant populations. Although the proposed rule takes some solid first steps toward protecting remaining areas, it doesn't go far enough. We ask that you address the following concerns when making your final decision on roadless area protection:

1. We are disappointed that the proposed rule fails to go further and prohibit logging, mining, ORV use, and other detrimental uses in the unroaded portions of inventoried roadless areas. There are sufficient opportunities for these uses in roaded areas. Conversely, there are few areas that have not been degraded by these activities. The latter is particularly true for areas that support anadromous fish within CTWSRO ceded lands (see ICBEMP designation of A1 watersheds in Oregon).

2. Given the poor forest health conditions in the Columbia Basin (and presumably elsewhere), we are disappointed that uninventoried roadless areas receive no protection under the rule. The DEIS recognizes that unroaded and unlogged areas comprise our best remaining ecosystems. These areas generally offer little commercial harvest potential (hence their unroaded condition) are in no need of "stewardship" or other types of treatment. You should reconsider extending automatic protection to roadless areas larger than 1000 acres. (See *Wy-Kan-Ush-Mi Wa-Kish-Wit (Spirit of the Salmon)*, The Columbia River Anadromous Fish Restoration Plan of the Nez Perce, Umatilla, Warm

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Springs and Yakama Tribes (CRITFC, 1995), calling for cessation of logging, mining, and road construction in all roadless areas ≥1000 acres).

At a minimum, the rule should direct local units to immediately determine the suitability of uninventoried roadless areas for the protections given inventoried roadless areas. Putting off this analysis until forest plan revision is a mistake. Forest planning is a long process, and given current administrative burdens (ICBEMP implementation, ESA consultations, etc.) it is highly unlikely that forest plans will be revised in the foreseeable future. If analysis of these areas is put off until the next forest planning cycle, it is imperative that these areas receive interim protection through project-by-project analysis of roadless characteristics (procedural alternative D).

3. The proposed rule should offer some protection to inventoried and uninventoried roadless areas in the Tongass National Forest. While we understand the arguments in favor of a transition period, we strongly recommend providing interim protection for these areas. The DEIS states that "the Forest's] high degree of overall ecosystem health is largely due to the quantity and quality of its inventoried roadless areas" and 98% of southeast Alaska's fish runs originate on the Tongass. If so, and if many Tongass timber sales go unsold because of lack of demand, why not give some interim protection to the Forest's inventoried roadless areas? The DEIS statement that project-by-project analysis doesn't provide the appropriate scale for roadless analysis is puzzling; in reality, the lack of a project-by-project analysis ensures the forest will be unable to analyze roadless values at the appropriate scale because ad-hoc interim decisions will have compromised many roadless areas.

In summary, we commend the Forest Service for recognizing the value of roadless areas and undertaking this effort to protect the few remaining roadless areas in our national forests. Given the unquestioned importance of these areas, we urge you to reconsider providing stronger substantive and procedural protections for both inventoried and uninventoried areas, and for the Tongass National Forest.

Sincerely,

Brad Nye
Off-Reservation Habitat Policy Advisor

cc: Tribal Council
Robert A. Brunoe, General Manager, Department of Natural Resources

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Kootznoowoo, Incorporated
U.S. Forest Service Roadless Area Testimony
Angoon, Alaska
June 29, 2000

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JUL 13 2000

Comments of Carlton Smith, CEO Kootznoowoo, Incorporated.

Kootznoowoo, Incorporated is the for profit Village Corporation for Angoon created pursuant to the terms of the Alaska Native Claims Settlement Act (ANCSA) for the benefit of the Alaska Native People of Angoon. Kootznoowoo represents over 900 shareholders plus an estimated 1000 additional family members.

Kootznoowoo owns approximately 32,000 acres of land conveyed as a result of the terms of ANCSA, the Alaska National Interest Lands Conservation Act (ANILCA) and through private acquisitions. Kootznoowoo also has access, development and traditional use rights to lands located within the Kootznoowoo Wilderness in the Admiralty Island National Monument, as well as the right to select additional land on Prince of Wales and Chichagof Island.

The lands Kootznoowoo owns are located throughout Southeast Alaska. These include approximately 21,000 acres on Southern Prince of Wales Island, 8000 acres in the Mitchell Bay, Kanalku Bay and Favorite Bay areas of the Kootznoowoo Wilderness; and, 3500 acres of land on the Angoon Peninsula and Killisnoo Island, along with a couple of hundred acres of private acquisitions, within the boundaries of the Admiralty Island National Monument and Kootznoowoo Wilderness.

In addition, Kootznoowoo has hydro power development rights, which it intends to exercise, to 14,500 acres of land in the Kootznoowoo Wilderness. And, Kootznoowoo has co-management rights to thousands of acres in Mitchell, Kanalku and Favorite Bays and their environs, pursuant to section 506 of ANILCA.

All of these lands and rights were conveyed to Kootznoowoo in recognition of the historical aboriginal ownership, rights, and uses by the Tlingit People of Angoon. And, to help provide for their current and future subsistence, cultural, employment, economic and social needs.

After consideration of these rights, and the needs of its Shareholders and their families; and, after careful consideration of the Roadless Areas Proposal; and, after consultation with Sealaska Corporation, Kootznoowoo, Incorporated encourages the Forest Service to abandon the idea of imposing the Roadless Areas in the Tongass and Chugach National Forests.

The reasons for our objections to this proposal are many, but we will speak to a few key points.

1. The Administration's Roadless Area Proposal will violate the terms and conditions of ANCSA, ANILCA and the Alaska Statehood Act. All of these acts provide for access to ANCSA lands and Alaska's isolated communities. They were enacted by Congress after long and careful deliberations and they cannot be overturned or have their purpose defeated by unilateral administrative fiat.

In summary, Kootznoowoo encourages the Forest Service to discard the Roadless Area Proposal for Alaska and return to professional multiple use forest land planning. There are many existing laws, regulations and plans that protect and manage the environment. The Roadless Area Proposal is not the way to achieve ecosystem protection.

On behalf of Kootznoowoo and its family of Shareholders, thank you for this opportunity to address this important issue and thank you for considering these comments.

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Minnesota Department of Natural Resources

500 Lafayette Road
St. Paul, Minnesota 55155-40__

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July 17, 2000

USDA Forest Service-CAET
Post Office Box 221090
Attention: Roadless Areas Proposed Rule
Salt Lake City, Utah 84122

Re: Comments on Forest Service Roadless Area Conservation Proposed Rule and Draft Environmental Impact Statement

Dear Sir or Madam:

The Minnesota Department of Natural Resources (MDNR) has reviewed the proposed rule and Draft Environmental Impact Statement (DEIS) for Roadless Area Conservation and provides the following comments for your consideration.

We appreciate that the Forest Service (USFS) is addressing the complex issues of roadless area protection and access in the National Forests. We realize there are many difficult choices to make in selecting the appropriate alternatives for implementation.

In general, we support the Preferred Prohibition Alternative 2 (Prohibit Road Construction and Reconstruction Within Unroaded Portions of Inventoried Roadless Areas) and the Preferred Procedural Alternative B (Forest Planning Process Implemented at Next Forest Plan Revision). However, we are concerned that with the selection of any of the prohibition alternatives, access to non-federal (state) land not be impeded, as discussed below.

General Comments

Access to non-federal lands in the "unroaded areas" of the "inventoried roadless areas" is a major concern. Within the thirteen sites totalling 60,802 acres of inventoried roadless areas in the Superior National Forest, there are an estimated 7,000 acres of state land and another 3,000 acres of other non-federal land. Within some of the inventoried roadless areas, there are large blocks of Forest Service land with little or no non-federal inclusions, while some portions that do have significant non-federal inholdings are on the periphery of the inventoried roadless areas. Some state inholdings, however, are located within inventoried roadless areas surrounded by Forest Service lands. (The Chippewa National Forest has only 77 acres of inventoried roadless areas on islands surrounded by water.)

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Unroaded areas are poorly defined in the proposed Roadless Area Rule, especially in terms of how they will be designated on a local basis (e.g., at what distance beyond the right-of-way of a classified road is a tract of land considered as "unroaded"?). If the Forest Service's Recreational Outdoor Spectrum classification of "semi-primitive, non-motorized" is used as a surrogate, as applied by the Superior National Forest, perhaps as much as 40% of the inventoried roadless areas might be considered as unroaded areas.

Once designated as an unroaded area, it will be more challenging than at present for non-federal landowners to obtain access from the Forest Service even though the proposed Roadless Rule provides an exception for "outstanding rights" (e.g., Alaska National Interest Lands Conservation Act, ANILCA, requires the USFS to provide reasonable access to non-federal lands). The Forest Service will still be required to prepare an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA); because of the proposed Roadless Area Rule prohibition on reconstruction of "unclassified roads" including existing travelways such as winter roads, the EAs will receive even greater scrutiny and will be more costly and time consuming to prepare.

Currently, the Superior National Forest is underfunded to provide timely EAs that are required by NEPA for the needed access permits. Recent USFS changes in the scope of NEPA review requirements for special use permits have substantially increased the costs for processing special use permits. Inadequate funding to prepare the EAs can cause significant delays in the issuance of special use permits for access to non-federal lands. To resolve this funding dilemma, a recent USFS proposed rule revision related to cost recovery for special use permits would shift the higher costs of processing special use permits, including preparation of NEPA documents, to permit applicants (see March 8, 2000 MDNR comment letter on the proposed cost recovery rule). Already, the increased costs of processing special use permits, underfunding by the USFS, and the directive to collect the costs of special use permits from applicants has made cooperative transportation system management and use more difficult in Minnesota, and prevented renewal of a long-standing reciprocal road access agreement between the MDNR and the USFS.

The MDNR is also concerned regarding the use of anticipated funding levels needed for road maintenance as a means to identify transportation needs, which can become a means to control transportation policy (i.e., the less funding assumed or actually available, the fewer roads will be justified as being needed or supportable). Transportation system needs should be determined by management objectives. While the designation of unroaded areas will reduce future Forest Service road construction and maintenance costs, existing needed access roads should not be eliminated on the basis of funding limitations alone.

We are concerned that the proposed Road Management Rule does not recognize the existence of roads that are used or needed only periodically for management purposes. "Unroaded Areas" in the proposed Roadless Area Rule are defined as "any area, without the presence of a classified road,. . . ". There are numerous classified and unclassified roads that are not recognized on an existing National Forest road inventory that provide access to non-federal and National Forest Lands alike. Many unclassified roads, or travelways, require little or no maintenance since they are often restricted to winter use and may be only used every 20 to 40 years or so.

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The proposed Roadless Area Rule should recognize some of these travelways as "classified roads" through collaborative planning with other landowners, so that these access roads to-non-federal lands are not treated as new construction or re-construction when they are periodically needed, so as to minimize NEPA involvement. We do not believe it is a prudent use of staff resources to prepare EAs for these existing travelways (the environmental effects have already occurred), and that, in addition to providing access for forest management purposes, also provide access for existing recreational uses. Likewise, the MDNR and other landowners will likely incur increased costs to regain access on formerly inventoried ("classified") roads if they are dropped from the national forest road system (i.e., decommissioned) as a result of the proposed Road Management Rule, because of the environmental review that would be needed before these travelways could be reopened. Since the status of National Forest lands as unroaded areas has implications for the extent of NEPA review and monitoring needs, the accuracy of National Forest road inventories is extremely important. As such, there needs to be ample opportunity for state, county and other adjacent land owners to have input as to what roads are included in the National Forest road inventories.

Specific Comments on the Proposed Rule - Appendix A:

A-3, Background-National Forest System Land Designations. The proposed rule uses primarily the Roadless Area Review and Evaluation (RARE) II inventories to identify the inventoried roadless areas that are the subject of this rulemaking. In Minnesota, many of the RARE II areas were included in the expansion of the Boundary Waters Canoe Area Wilderness (BWCAW) in 1979. Since that time, much of the remaining RARE II areas have been roaded or logged. There should be some process to "delist" the RARE II areas that are determined to be "roaded".

A-4, Proposed Roadless Area Conservation Rule. The purpose in the rule seems clear enough as stated (to stop activities that have the greatest likelihood of degrading desirable characteristics of inventoried roadless areas), but the Draft EIS (page 1-3) points out that mechanized and motorized uses such as off-highway vehicles (OHVs) are often allowed in roadless areas. OHV use can cause degradation of desirable characteristics of inventoried roadless areas as well as the other activities discussed in the document.

A-7, Other regulatory initiatives. The Draft EIS (Summary, page 46) estimates that the proposed Land and Resource Management Planning Rule and Proposed Road Management Rule and Policy would provide a comprehensive and consistent strategy for managing National Forest Lands. However, this set of proposed rules, in addition to the proposed Roadless Area Conservation Rule, can also be perceived to create additional layers of bureaucracy. The Draft EIS (page 1-14) states that the Forest Service may choose to integrate and clarify certain provisions within each rule to ensure consistency, clarity, and effectiveness. While this seems prudent, these principles could also be addressed through one proposed rule, such as the proposed Land and Resource Management Planning Rule, which already addresses requirements to consider some of the same issues which the USFS is attempting to address in the other proposed rules.

A-8, Proposed §294.11 - Definitions. Fundamental to understanding the impact of the proposed Roadless Area Rule is a clear definition of what "unroaded" really means. The proposed rule

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describes eight broad characteristics of roadless areas, but no definition has been proposed that really defines "unroaded" for use by USFS personnel or for the understanding of interested stakeholders. Must an unroaded portion of an inventoried roadless area be, for example, at least 1/4 mile from a classified road right-of-way or beyond the view from a classified road? What would be really considered as unroaded in "other unroaded areas"?

Without an adequate definition for "unroaded", the MDNR is particularly concerned with the provision of the proposed rule that "other unroaded areas" be considered in the revision of national forest plans. Depending on the determination of the "responsible official" as to which areas warrant protection as "roadless areas", a substantial acreage might be designated as "unroaded areas" that do not recognize existing travelways as temporary roads that can provide access for resource management on non-federal lands.

A-9, Proposed §294.12, Prohibition on road construction and reconstruction in inventoried roadless areas. Nothing in this section is intended to prohibit the construction or maintenance of motorized trails, which seems inconsistent given the observations of many resource managers and citizens that OHV use can be more damaging than using existing travelways by loggers in the winter.

A-9, Proposed §294.13 - Consideration of roadless area conservation during forest plan revision. Having the responsible official evaluate additional roadless areas during the plan revision makes sense, providing there is adequate collaboration in planning transportation needs with other landowners within the National Forests, and if a better definition is provided as to what constitutes a "roadless area". We note that as part of the Superior National Forest plan revision process, areas have been identified for potential designation as Research Natural Areas (RNAs); and the Forest Service and the MDNR have agreed to protect these areas until the current plan revision is completed. The MDNR may then consider cooperative management of state lands adjacent to the potential RNAs.

A-12, Proposed Roadless Characteristics. The characteristics are quite broad and seem to imply that only through designating the area as "unroaded" can these characteristics be protected (e.g., cultural resources, soil productivity, riparian areas, visual quality, water quality, wetlands, and wildlife habitat). Many of these characteristics can be protected through active forest management activities. Minnesota has invested significant resources in developing and training natural resource managers and loggers in the use of Voluntary Site-Level Forest Management Guidelines that have been adopted as a matter of policy for operations on MDNR, USFS, county and industrial forest lands by their respective organizations.

A-19, Potential costs of the prohibition on road construction. The discussion on timber sales and lost jobs is too narrowly focused on National Forest lands. The reduction in USFS timber sales only increases the harvesting level on non-federal lands. Since 1993, the proportion of timber harvest on private lands has exceeded that from public lands and it continues to increase. The Draft EIS recognizes that point (page S-40) by stating that "the environmental impacts associated with timber harvesting and associated road construction and reconstruction would be transferred from NFS lands to other ownerships."

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It is difficult to see the purpose of designating areas as unroaded where there is intermingled ownership of state and other non-federal lands within the Superior National Forest, given that the USFS has to provide reasonable access to these lands (ANILCA). Use of temporary roads will still have to be provided to access other ownerships, and timber harvesting will continue in the "roadless areas"on other ownerships. We urge the Forest Service to limit its designation of unroaded areas within inventoried roadless areas to those portions not having intermingled ownerships.

The Final EIS should address the effects of a decreased level of forest management on National Forest lands that may increase forest insect outbreaks. For example, the areas being considered for roadless management in the Superior National Forest are susceptible to infestation by the spruce budworm. Failure of any landowner to manage problem sites may put at risk forest stands on other ownerships as well as on other national forest lands. Salvage of damage from catastrophic windstorms is also an obvious concern of the MDNR, following the July 4, 1999 windstorms in the general area that if left attended, increases the difficulty of controlling wildfire and increases the chance that pine stands would be attacked by bark beetles.

This section of the Final EIS should also recognize that some resources could be negatively impacted by these rules. For example, the previous section on the benefits of the rules states that some game species are likely to benefit from the added protection provided; however, some game species might be negatively affected.

Thank you for the opportunity to review the proposed rule and Draft EIS. We look forward to seeing the Final EIS the Forest Service's decision on the alternative rule proposals. If you have any questions regarding these comments, please call Ken Wald of my staff at (651) 296-4790.

Sincerely,

Thomas W. Balcom

Thomas W. Balcom, Supervisor
Environmental Review and Planning Section
Office of Management and Budget Services

c:
Brad Moore
Jerry Rose
Lee Pfannmuller
JohnGuenther
Chuck Spoden
Jeff Lightfoot
Bruce ZumBahlen
Jon Nelson
Kurt Rusterholz
Dave Holmbeck
Jim Sanders, SNF

13970

ELLEN R. ANDERSON
Senate District 66
Room G-24
State Capitol Building
75 Constitution Avenue
St. Paul, MN 55155-1606
Phone: (612) 296-5537
E-Mail:
sen.ellen.anderson@senate.leg.state.mn.us

Senate
State of Minnesota

July 14, 2000

V I I 5

USDA Forest Service-CAET
Attention: Roadless
PO Box 221090
Salt Lake City, Utah 84122

CAET RECEIVED
JUL 17 2000

Dear U.S. Forest Service:

I understand more than 380,000 miles of roads criss-cross our national forests. I support keeping our remaining wild areas unroaded. This will provide more natural habitat for wildlife as well as quiet recreation opportunities for people.

Specifically, I support:

- Prohibition Alternative 4, which prohibits road building and logging in roadless areas;
- Procedural Alternative D, which enables the forest service to begin developing guidelines for managing roadless areas until they can be incorporated into the forest management planning process; and
- Tongass Alternative T4, which affords protection for the important Tongass National Forest in Alaska now, instead of waiting until 2004.

Further, I support prohibiting off-highway vehicle use in unroaded areas. They have plenty of roads to drive on already.

Sincerely,

Ellen Anderson
State Senator

COMMITTEES • Vice Chair, Environment and Natural Resources • Crime Prevention • Jobs, Energy, and Community Development • Taxes • Crime Prevention and Judiciary Budget Division • Economic Development Budget Division
SUBCOMMITTEES • Chair, Housing and Economic Development • Income and Sales Tax

V-1-1- -(5) 8(2

DOUGLAS J. (DOUG) JOHNSON
Senator 6th District
1136 Lagoon Road
Tower, MN 55790
and
205 State Capitol Building
75 Constitution Avenue
St. Paul, MN 55155-1606
Phone: (651) 296-8881
Fax: (651) 296-5557

Senate
State of Minnesota

May 17, 2000

USDA Forest Service-CAET
Attention: Roadless Area Proposed Rule
PO Box 221090
Salt Lake City, UT 84122

To Whom It May Concern:

This letter is written to object strenuously to the Forest Service proposal for designating additional roadless areas.

Without going into detail, I particularly object to designating roadless areas in the Chippewa and Superior National Forests. My constituents are dependent on these national forests for recreation and timber management. I see no harm from temporary roads and the forest service is way out of line on this issue. Upon the passage of the 1978 BWCA bill, my constituents were promised that timber cutting would not be restricted outside the BWCA. These promises are now being broken.

I would hope you would reconsider based on these earlier federal commitments.

Yours truly,

Doug Johnson

Douglas J. Johnson
State Senator

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MAY 24 2000

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COMMITTEES: Chairman, Senate Committee on Taxes • Rules and Administration • Jobs, Energy and Community Development • Election Law • Iron Range Resources & Rehabilitation Board • Duluth Legislative Delegation • Legislative Advisory Commission

BY: 7-17- 0 ; 3:50 ;HOUSE OF REPS 5TH FL→ VIA XPEDITE;# 2/ 2

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Sharon Marko
State Representative
District 57B
Washington County

Minnesota House of Representatives

COMMITTEES: CAPITAL INVESTMENT; TRANSPORTATION AND TRANSIT; LOCAL AND METROPOLITAN AFFAIRS

July 17, 2000

Dear U.S. Forest Service:

I understand more than 380,000 miles of roads criss-cross our national forests. I support keeping our remaining wild areas unroaded. This will provide more natural habitat for wildlife as well as quiet recreation opportunities for people.

Specifically, I support:

Prohibition Alternative 4, which prohibits road building and logging in roadless areas;

Procedural Alternative D, which enables the forest service to begin developing guidelines for managing roadless areas now until they can be incorporated into the forest management planning process; and

Tongass Alternative T4, which affords protection for the important Tongass National Forest in Alaska now, instead of waiting until 2004.

Further, I support prohibiting off-highway vehicle use in unroaded areas. They have plenty of roads to drive on already.

Thank you very much for your consideration.

Sincerely,

Sharon Marko

Sharon Marko
State Representative, District 57B

11247 Kingsborough Trail, Cottage Grove, Minnesota 55016 (651) 459-7757
State Office Building, 100 Constitution Ave., St. Paul, Minnesota 55155-1298 (651) 296-3135
House Fax (651) 296-1563 TTY (651) 296-9896

13965

Cook County Board of Commissioners

COURT HOUSE • P.O. BOX 1150 • GRAND MARAIS, MINNESOTA 55604-1150 • (218) 387-3000 • FAX (218) 387-3043

District 1 Janice Hall
District 2 Walter Mianowski
District 3 Robert Fenwick
District 4 Wesley Hedstrom
District 5 James Hall

July 12, 2000

USDA, Forest Service - CAET
PO Box 221090
ATTN: Roadless Areas Proposed Mail
Salt Lake City, UT 84122

PART RECEIVED
JUL 17 2000

Additional Comment:

TO WHOM IT CONCERNS:

The Forest Service Roadless Area Conservation draft Environmental Impact Statement, Volume I, II, and Summary and Proposed rule are documents that are a liability to local jurisdictions. Local jurisdictions have unique economics based on the wood industry. These economies are based on diminishing wood resources either due to location or increasing conservation policy.

Now, there is the "Roadless Area Conservation" proposal that adds further restrictions on federal lands limiting wood resources. Further, there is no commentary on how this proposal would reduce access to state, county, township, or private land holdings. So, the proposal initially constrains use on additional federal lands and secondly imposes access restrictions to local jurisdiction lands.

Again, the Cook County Board of Commissioners wishes to voice their opposition to the "Proposed Rule." The incorporation of a rule that is directed at particular areas of the United States but becomes a liability in its conception is wrong. Address the issues in the particular states that can be identified as "problem areas" and do not restrain other states with unnecessary federal government policy.

Sincerely,

Walter Mianowski

Walter Mianowski, Chair
Cook County Board of Commissioners

– An Equal Opportunity Employer –

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Cook County Board of Commissioners

COURT HOUSE • P.O. BOX 1150 • GRAND MARAIS, MINNESOTA 55604-1150 • (218) 387-3000 • FAX (218) 387-3043

District 1 Janice Hall
District 2 Walter Mianowski
District 3 Robert Fenwick
District 4 Wesley Hedstrom
District 5 James Hall

July 6, 2000

USDA, Forest Service – CAET
PO Box 221090
ATTN: Roadless Areas Proposed Mail
Salt Lake City, UT 84122

To Whom It Concerns:

The Forest Service Roadless Area Conservation draft Environmental Impact Statement, Volume I, II, and Summary and Proposed rule are bias documents that support a Forest Service position promoted by a White House initiative. For one to realize the amount of time and money spent to produce these documents and have a hopeful feeling to write a comment that would change the outcome is foolish.

This letter of opposition is being written to be of record but the specific goal to change the posture of the proposed rule already appears to be out of reach. The language throughout the draft environmental impact statement (Volumes I and II) clearly accents all the negative "ifs" that might happen with road construction/reconstruction and timber management. The point of this EIS was not to provide equitable discussion on the issue but provide enough "ifs" so an individual would conclude that these roadless areas are necessary. Common language throughout the document indicates possibility – can, may, might and could, has the possibility. Example – Pages 3-26.

Affected Environment
1. Road construction and timber harvest can
2. Roading and timber harvest may indirectly
   Page 3-29
3. Roading and timber harvest are activities that can

This language is unfortunate for such a document but appropriate if one wishes to cloud the issues. If a thorough review is conducted on this proposed rule relative to individual states, one would find this proposal obsolete compared to present management practices.

The State of Minnesota has already spent thousands of dollars on the development and application of the "Best Management practices" associated with timber management. These

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BMP do protect and support the ecological diversity of the Minnesota forests. For the federal government to have a unilateral decision that is directed at western states practices but becomes universal to other states that have established progressive ecosystem management is typical government administrative deficiencies at its best.

There is strong inference in this EIS that roads and timber management practices are the leading factors that have a negative impact on the nation's drinking waters. This statement is over inclusive and should strongly advocate federal action where there is a problem. In northeastern Minnesota the issue is not roads and timber management practices but acid rain. The acidity of the rain and snow is not a by-product of road construction and timber harvesting but is the by-product of industrial pollution from outside of the area. The BMP for water quality in Minnesota has provided guidelines for road construction and timber harvesting that preserve water quality. If the federal government is really concerned about water quality of the nation, then their energy should not be put into a smoke screen directed at road construction/reconstruction and timber management in or near inventoried roadless conservation areas. The federal energy should be put into agricultural/industrial pollution.

Under the question, "How did the Forest Service determine what activities to include under the prohibition and procedural alternatives, the statement is made that the Forest Service proposes to prohibit those activities that pose the most significant national threat to inventoried roadless areas.

This statement is ambiguous and misleading. If the purpose of this initiative is to eliminate man's influence on a forest, then make that statement. If the initiative is to sustain a healthy forest that can support dispersed recreation, clean water sources for public drinking water, landscapes that provide privacy and seclusion and habitat for rare plant and animal species, then forest management will be required.

In the text, the statement refers to undisturbed landscape but there is no definition of "undisturbed." Undisturbed by man or nature? Mechanical harvest or natural disaster (fire/flood?) A forest that is not harvested in northeastern Minnesota will become a mature forest that has a high susceptibility to deterioration from natural causes. Is this the healthy forest that will support recreation, water quality, seclusion, rare plants, and rare animals? A healthy forest supports greater diversity.

"The Procedural Alternatives outline how local forest and grassland managers should address roadless characteristics in the future as they pursue projects or revise their land and resource management plans." This statement provides for local managers to make management decisions inclusive to the health of the local roadless areas. Unfortunately, there is no discussion of public participation in this process.

This EIS document is a display of political agenda superseding common sense, healthy timber management, and road construction/reconstruction for the people of the United States. The pendulum continues to swing to the conservative commentary on environmental issues. The reality is when one is done in protecting all of nature how will

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one find the optimum balance of man/nature. The EIS on "Roadless Area Conservation" is a biased document that perpetuates the imbalance of man/nature.

Sincerely,

Walter Mianowski

WALTER J. MIANOWSKI, Chair
Cook County Board of Commissioners

WJM/js

KOOCHICHING COUNTY

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KOOCHICHING COUNTY BOARD OF COMMISSIONERS
COURTHOUSE
715 4th Street
INTERNATIONAL FALLS, MN 56649

May 26, 2000

CAET RECEIVED
JUN 0 1 2000

USDA Forest Service CAET
P.O. Box 221090
Salt Lake City, UT 84112

Attention: Roadless Area Proposed Rule

Attached please find a memo from Bruce Barker to the Minnesota Timber Producers Association quoting statements from Chapter 3 of the Forest Service's draft Environmental Impact Statement for Roadless Area Conservation of which the Koochiching County Board finds publicly distasteful and disrespectful.

The Koochiching County Board is outraged that such statements about rural communities and their citizens would be placed in a document where they are the subject of degrading remarks and question why these statements have any bearing in your policy decision for Roadless Area Conservation or timber harvesting. We find these statements a slap in the face to proud and hardworking rural citizens who chose to live in a rural setting because of the high quality of life.

The Koochiching County Board, on behalf of rural communities and their citizens, immediately requests that this and similar statements be retracted from the planning document and that the Forest Service be held accountable for these distasteful remarks of the rural public.

Respectfully,

Larry Chezick
Board Chair
Koochiching County Board

Cc: MN Representative Irv Anderson
MN Senator Robert Lessard
U.S. Representative James Oberstar
U.S. Senator Rod Grams
U.S. Senator Paul Wellstone
Northern Counties Land Use Board
Associated Contract Loggers

District 1
Wade Pavleck
P.O. Box 1253
Intl Falls, Mn 56649
218-286-5273

District 2
Tim McBride
514 7th Avenue
Intl Falls, Mn 56649
218-285-7771

District 3
Larry Chezick
2318 4th Avenue E
Intl Falls, Mn 56649
218-283-4325

District 4
Charles Lepper
1113 13th Avenue
Intl Falls, Mn 56649
218-283-2394

District 5
Michael Hanson
1740 Co. Rd. 86 N.
Birchdale, MN 56629
218-634-1340

Administration Office: Phone: 218-283-6252 Fax: 218-283-6221 Email: Teresa.Jaksa@State.MN.US

WILMA H. CLARK, CLERK OF THE BOARD

AN EQUAL OPPORTUNITY EMPLOYER

COUNTY OF LAKE

COMMISSIONERS' OFFICE
County of Lake
Courthouse
601 Third Avenue
Two Harbors, MN 55616
(218) 834-8320 FAX (218) 834-8360

10119

FIRST DISTRICT
CLAIR A. NELSON, FINLAND
SECOND DISTRICT
DERRICK L. GOUTERMONT, SILVER BAY
THIRD DISTRICT
SHARON HAHN, TWO HARBORS
FOURTH DISTRICT
WILLARD M. CLARK, TWO HARBORS
FIFTH DISTRICT
STANLEY A. NELSON, TWO HARBORS

June 22, 2000

USDA Forest Service - CAET
Post Office Box 221090
Attention: Roadless Areas Proposed Rule
Salt Lake City, Utah 84122

To Whom It May Concern:

The purpose of this letter is to provide comments and state my opposition to the new Roadless Area Conservation Draft Environmental Impact Statement, Volume 1.11. The summary and proposed rules are good examples of people making rules and regulations when they really don't know what is happening on the ground and out in the real world.

In Lake County, we have good examples of roadless areas. They have had or did have roads in them when they were designated as roadless areas by the Forest Service. We have almost 1.4 million acres of land in our county of which about two percent have improvements on them which do not include roads. In most areas, more than 90 percent of our road use is recreational. We really enjoy and care about the public lands in our county. If we didn't, we would live somewhere else.

I thought the draft environmental impact statement was really going to address the issues. I was really disappointed in the fact that after all the time and money spent on this document, it just repeats itself with "ifs and maybes".

The B.W.C.A is in our area and about 25 percent of Lake County is included in this wilderness area. There are more people using a small percentage of the land in this area on a daily basis than any other part of our county. You have to remember, the reason the B.W.C.A. and many other areas of Northeast Minnesota are as pretty as there are, is because of proper land management. A healthy forest has to be managed and a healthy forest includes animals, trees, plants, birds and other living things.

Approximately 85 percent of our county is publicly owned, which includes the 58 percent owned by the federal government. If you look at our area, we have numerous RNAs, PRNAs, SMCs, Rare IIs and SNAs, state parks, and other reserve areas. I am sure this is true of other areas as well.

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JUN 2 8 2000

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It seems as though all the rules and management plans the Forest Service or White House comes up with lately conflict with each other. The Draft EIS on Roadless Areas is one-sided and does not look at what really is happening. Most statements made in the draft have no real basis to them, i.e., if this happens, this may happen, etc. Other statements are made throughout the document that have no real bearing on the subject of roadless areas. For example, in Chapter Three, page 190, third paragraph, if you change a couple of words, it describes Washington, D.C.

If we really want to be honest and care about the issues and the future of our country, we need to talk and work together on what is really happening. As an example, a very high percentage of the air pollution affecting Northeastern Minnesota comes from out of our area, as well as other countries. This is an issue that should be considered when looking at all these proposed rules and management plans.

Sincerely,

Clair A. Nelson

Clair A. Nelson, Chairman
Lake County Board of Commissioners

CAN/whc

cc: President Bill Clinton
Mike Dombeck, Chief, U.S. Forest Service
James Oberstar, Congressman
Rod Grams, Senator
Paul Wellstone, Senator
Jim Sanders, Forest Supervisor, Superior National Forest

17287

Saint Louis County

Land Department • 320 West 2nd Street, Room 607, Gov't. Serv. Cntr. • Duluth, MN 55802
Phone: (218) 726-2606 • Fax: (218) 726-2600

David J. Epperly
Land Commissioner

Mark E. Reed
Deputy Land Commissioner

July 17, 2000

USDA Forest Service-CAET
Post Office Box 221090
Attention: Roadless Area Proposed Rule
Salt Lake City, Utah 84122

RE: COMMENTS IN OPPOSITION TO THE ROADLESS AREA CONSERVATION PROPOSED RULE AND DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Chief Dombeck:

The recent flurry of federally proposed rules within the last 9 months which are changing the direction of the United States Forest Service is of great concern to St. Louis County. St. Louis County Minnesota is the largest county east of the Mississippi River and is 7,000 square miles in area. St. Louis County is home for the largest county managed forest in the United States, nearly one million acres in size. It is comparable to an average sized National Forest in scope. St. Louis County and 14 other northern Minnesota Counties are responsible for the State of Minnesota's 2.8 million acres of Tax Forfeited Trust Lands. These lands are managed for the benefit of the local taxing districts.

The Tax Forfeited Trust Lands managed by St. Louis County are affected by the management of federal lands, state lands, other public and private lands as well. The ownership pattern in northern Minnesota is a "checkerboard" mix of these ownerships (see attached map). Cooperation is essential. Significant change in policy of any of these owners has an effect on the other. Within Minnesota, the cooperative spirit between these ownerships and public agencies has helped produce a quality forest today that we enjoy and have come to expect.

The quality forests we have today will be threatened if the proposed rules are adopted. St. Louis County is of the opinion that the changes being proposed will cause our national forests to become non-productive and unhealthy. Therefore, without more intensive management these forests will be lost to the ravages of fire, wind, insects and disease by default. Over time, unhealthy federal forests

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will negatively affect the health and productivity of neighboring forests. These proposed federal rule changes will significantly increase the cost for fire protection to local governments, reduce income potential from 25% payments and in lieu payments and unfairly focus the demand for federal forest resources to state, county and private forest resources.

One of the reasons St. Louis County is firmly and summarily opposed to any rule changes being proposed and in particular, the Roadless Area Initiative Conservation Proposal, is the potential limitation on access to lands under its management. The right to access is a fundamental right of land ownership. Congress has created legislation evidencing its intent to ensure an inholder's right to access their property, most notably through the Alaska National Interest Lands Conservation Act. 16 U.S.C. §3210(a). The common law doctrine of easement by necessity further provides that inholders must have access to their land through National Forests. See, generally, Galen B. Schuler, Easements by Necessity: A Threshold for In holder Access Rights Under the Alaska National Interest Lands Conservation Act, 70 Wash. L. Rev. 307 (1995). The Forest Service's Roadless Area Proposed Rules would frustrate Congressional intent, as inholder's would be denied reasonable access to their property. Furthermore, Congress has directed the Secretary of Agriculture to provide for the "multiple use and sustained yield" of the National Forests. 16 U.S.C. §529. The Roadless Area Proposed Rules would conceivably limit the uses in and around the National Forests as well as limiting the yields of renewable resources. The Forest Service's attempt to prevent road construction and reconstruction is contrary to Congress' intent as stated in the following statutes.

Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. §§3101-3233)
"Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of Agriculture may prescribe, the Secretary shall provide such access to non-federally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System". 16 U.S.C. § 3210(a). ANILCA provides a statutory right of access to inholders of property within all National Forests lands and not exclusively to those in Alaska. See Montana Wilderness Ass'n v. United States, 655 F.2d 951, 957 (9th Cir. 1981) cert. denied, 455 U.S. 989 (1982).

RS 2477 (43 U.S.C. 932)
Section 8 of the Act of July 26, 1866 Act provided that, "The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted". RS 2477 was repealed by the Federal Land Policy and Management Act of October 21, 1976. However, previous grants of right of ways continue to exist. See United States Department of the Interior, Bureau of Land Management, Instruction Memorandum No. 90-589.

Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701-1785)
" The Congress declares that it is the policy of the United States that- . . .
(12) the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands". Section 1701(a). Further, "The Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for - . . .
(6) roads, trails, highways . . .
(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under or through such lands." Section 1761.

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In addition, "The Secretary, with respect to the public lands, is authorized to provide for the acquisition, construction, and maintenance of roads within and near the public lands in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management of such lands for utilization of the other resources thereof". Section 1762(a).

The Forest Service states that its authority to create the Roadless Area is derived from the Organic Administration Act of 1897 and the Multiple-Use Sustained-Yield Act of 1960. The Forest Service also cites to other statutes with which it must also comply, specifically, the National Forest Roads and Trails Act, the Forest and Rangeland Renewable Resources Planning Act, and the Surface Transportation Assistance Act of 1978 in conjunction with 36 CFR part 212. See DEIS Vol.1, A-7,8.

Organic Administration Act of 1897 (16 U.S.C §551)
This statute gives the Secretary of Agriculture the power to make rules and regulations for the protection of public and national forests from fire and other destructive causes. It also allows limiting the use and occupancy of the forests.

Multiple-Use Sustained-Yield Act of 1960 (MUSYA) (16 U.S.C. §§528-531) "It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes". 16 U.S.C. §528. MUSYA is supplemental to 16 U.S.C.§475, which states the purpose of establishing national forests is to, "improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flow, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States".

Creation of a Roadless Area would contradict the Congressional intent of ensuring a "continuous supply of timber" as stated in Section 475 of MUSYA. Under Alternative 2, there would be a 73% reduction in timber volume offered as compared to Alternative 1. DEIS 3-115. Alternative 3 would lead to 91% reduction, and Alternative 4 would obviously be a 100% reduction in timber sales. DEIS 3-116. Alternatives 2, 3 or 4 would arguably not furnish the country with a "continuous supply of timber".

The MUSYA further states that, "The Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom". See 16 U.S.C. §529. Also, consideration should be given to the "relative values of the various resources in particular areas". The Secretary is also "authorized" to cooperate with local and State governments to manage the national forests. 16 U.S.C. §530.

The MUSYA defines multiple use as:

> "The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the

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other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.". Section 531(a) (emphasis added).

Also, "Sustained yield of the several products and services" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land". Section 531(b).

The DEIS cites to the MUSYA, and states that the Secretary is supposed to administer the land "without impairment of the productivity of the land". A-7. This statement is arguably contradictory with the roadless initiative, as the purpose of the MUSYA is to ensure that the land remains productive. It would make little sense for land to be productive when it is unaccessible. The statute specifically calls for management of the resources, it would appear that management would be more difficult without roads. Multiple use and sustained yield would be almost impossibly without roadways.

The National Forest Roads and Trails Act (NFRTA) (16 U.S.C. §§532-538) clearly evidences Congress' intent in providing for roads to satisfy the nation's demand for timber. The statute also recognizes the need for protection, however, this is in the context of providing for the best way to harvest timber. Congress gives the Secretary the power to create roads through this statute, however, it does not give him or the Forest Service the power to prohibit roads.

This Act provides that,

> "The Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met; that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services." 16 U.S.C. §532. The Secretary is given the power to grant easements over national forest land which can then be terminated or canceled by the Secretary.

The Act further provides that,

> "The Secretary is authorized to provide for the acquisition, construction, and maintenance of forest development roads within and near the national forests and other lands administered by the Forest Service in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management thereof, and for utilization of the other resources thereof." It further discusses the financing of such roads by the timber purchaser, the Secretary, or public agencies. The Secretary may also require users of Forest Service roads to maintain or reconstruct roads.

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The FLPMA does not affect or modify the NFRTA (16 U.S.C. 532-538); the NFRTA shall prevail over the FLPMA if there is an inconsistency. (43 U.S.C. § 1770).

In addition, the DEIS and proposed rules are inconsistent with the Forest and Rangeland Renewable Resources Planning Act (FRRRPA) (16 U.S.C. §§1600-1613) which states:

> "The Congress declares that the installation of a proper system of transportation to service the National Forest System, as is provided for in sections 532 to 538 of this title (National Forest Roads and Trails Act), shall be carried forward in time to meet anticipated needs on an economical and environmentally sound basis, and the method chosen for financing the construction and maintenance of the transportation system should be such as to enhance local, regional, and national benefits: Provided, That limitations on the level of obligations for construction of forest roads by timber purchasers shall be established in annual appropriation Acts." Section 1608(a).

The DEIS states that this Act requires the Secretary "to install a proper system of transportation that is both economically and environmentally sound". A-7. However, this statement ignores part of the Act's purpose, that the system of transportation "be carried forward in time ".

The DEIS also cites to Section 1608(c), stating that, "Roads constructed on National Forest System lands shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources." A-7, 8. Section 1608(a) directly cites to the National Forest Roads and Trails Act, which clearly states timber as one of the intended uses of the National Forest.

Federal Regulations at 36 CFR part 212 regulate how the Chief of the Forest Service is to grant easements and access to National Forests. The Regulations specifically provide that,

> "To assure effective protection, management, and utilization of lands administered by the Forest Service and intermingled and adjacent private and public lands, and for the use and development of the resources upon which communities within or adjacent to the National Forests are dependent, the Chief shall as promptly as is feasible obtain needed access thereto and shall grant appropriate access across National Forest and other lands and easements administered by the Forest Service to intermingled or adjacent landowners. Construction, reconstruction or maintenance of a road or highway requires written authorization".

This Federal Regulation (36 CFR part 212) does more than merely authorize the Chief to grant access to National Forest lands, it states that he "shall" grant access to inholders. The Roadless Area Proposal would directly contradict the Surface Transportation Assistance Act of 1978 (23 U.S.C. 210, 205), which governs federal funds to be used for forest highway, forest development roads and trails, as inholders could be denied reasonable access to their land.

The Forest Service has stated in its National Forest System Road Management and Transportation System: Proposed Rule and Notices, which seeks to revise 36 CFR part 212, that one of its primary actions is to, "Aggressively decommission nonbeneficial roads that are determined through forest planning and NEPA and other analysis to be damaging to the environment or to be no longer necessary for achieving resource managing objectives". 65 FR 11676. The decision to decommission a road will be made through, "science-based analysis at

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appropriate scales which includes opportunities for public involvement and consultation with state, local, and tribal governments". 65 FR 11683 (revision of part 212.5(b)(1). The Forest Service admits that it does not provide a standard for "science-based analysis" because it intends to allow itself "flexibility". 65 FR 11681. However, if this is the same "flexibility" it allowed itself in developing the Roadless Area Initiative, this would mean "bypassing scientific analysis". See National Federation of Federal Employees, Forest Service Council, The Roadless Area Initiative: Politics Make Poor Policy. This proposed revision allows for "opportunities for public involvement", yet does not require the involvement of the people that decommissioned roads will directly effect. Further, there is the potential for creating more roadless areas through the decommissioning of roads by default. This is unacceptable and has the potential for decisions which are arbitrary and capricious.

The DEIS and proposed Rules conveniently ignore statutory law, case law, common law, and existing federal regulations. ANILCA explicitly states that inholders have a right to access their lands through National Forest lands. The basic idea of easement by necessity requires that inholders must have access to their land. The existing Federal Regulation, 36 CFR part 212.5, states that the Chief must grant access to inholders. The Forest Service is ignoring the needs of lawful landowners, who merely wish to have reasonable access and use of their properties.

The proposed Roadless Area Conservation Plan is ill-conceived and is further ignoring the needs of the American people and what people really desire from their forests. The professional land managers involved in the care and protection of these forests have proven accountability to the people they serve and understand how to keep our forests productive and healthy. They have done so for the past ninety years using the very laws and policies proposed to be changed. The forests of today have resulted from these long term and visionary policies, eliminating the short term thinking and political whims which are a detriment to quality forests and long term protection of renewable resources. The FLPMA, MUSYA, NFRTA, and the FRRRPA and other similar laws all recognize the importance and benefits provided by our forests and the need to manage them to provide all things people have come to expect from our forests.

The Forest Service Roadless Area Conservation Environmental Impact Statement (EIS) is fundamentally biased, unscientific and flawed. Therefore, any proposed rules based on this document are flawed and should be rejected.

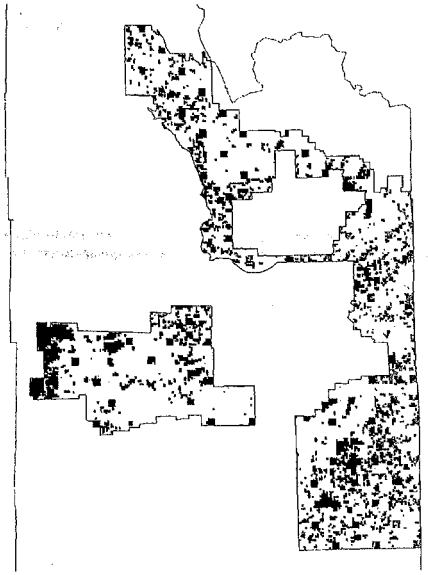
Sincerely,

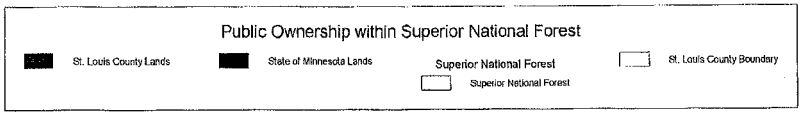
David J. Epperly
Land Commissioner

C: Senator Oberstar
Senator Wellstone
Senator Grams
County Administrator David Twa
County Commissioner Fay
County Commissioner Fink
County Commissioner Kron
County Commissioner Sweeney
County Commissioner Forsman
County Commissioner Raukar
County Commissioner Prebich

DE/trl

St. Louis County and State of Minnesota Ownership Within Superior National Forest





JIM NILAND
Council Member, Sixth Ward
350 South 5th Street - Room 307
Minneapolis MN 55415-1383

Office (612) 673-2206
TTY 673-2157

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JUN 16 REC'D

1 1 5 yes

minneapolis
city of lakes

RECD FOREST SERVICE
JUN 15 2000
CHIEFS OFFICE

April 28, 2000

Michael Dombeck
Chief
U.S. Forest Service
P. O. Box 96090
Washington, DC 20090

CAET RECEIVED
JUN 19 2000

Dear Mr. Dombeck:

I am writing to urge you to adopt a policy to protect roadless areas in our national forests. As a publicly elected official of Minnesota, I well understand the critical importance of intact and undamaged pristine wild areas. The citizens I represent place a high premium on these wild areas as places of recreation and spiritual renewal. Even if they are not so fortunate as to live next to a national forest roadless area, millions of Americans from every part of the country seek them out each year for just these purposes. The public is legitimately concerned about continued road building, logging, mining, and other destructive practices in our last remaining forest wilderness.

Minnesota is fortunate to have some of this nation's most impressive national forests. From Superior to Chippewa National Forest, they are filled with many of the remaining roadless areas. The vast pine forests of Superior National Forest stand out as national and local treasures, home to moose, wolves, black bears, loons and migratory birds. These forests could continue to provide beauty and wilderness recreation areas for the benefit of generations to come. Roadless areas provide unique habitat for many fish species of great recreational, commercial, and cultural value. Protecting them protects our history and ensures a vibrant future. In addition, roadless areas help recharge aquifers and are often in the headwaters of municipal watersheds, providing the cleanest water and resulting in lower water treatment costs for local residents. In fact, 80% of the nation's water supply comes from national forests, with roadless areas producing the purest of that water. These unlogged and unroaded areas also protect private property from landslides and flood damage. Protecting these scenic wilderness areas also makes sound economic sense. Roadless areas provide scenic vistas, hunting, camping, hiking and touring opportunities that can retain current residents and businesses, while also attracting non-resource extraction businesses.

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In 2000, the projected economic impact of recreation in the national forest system will be $1110 billion in contrast to $3.5 billion from logging. Protecting these areas will lead to more public wealth than using them for extractive purposes. I urge you to adopt a roadless areas protection policy which protects all roadless areas, 1000 acres and larger, in all national forests. Protect these areas from logging, road-building, mining, commodity development, and other destructive practices. The public's best interest will be best served if you succeed in establishing such a strong forest protection policy.

Sincerely,

Jim Niland
Minneapolis City Council
Sixth Ward

/lk
cc: U.S. Senator Paul Wellstone
Antha Williams

11235

11235

June 28, 2000

USDA Forest Service, CAET
Attention: Roadless Area Proposed Rule
PO Box 221090
Salt Lake City UT 84122

CAET RECEIVED
JUN 03 2000

Comments on Roadless Area Proposed Rule

Gentlemen:

I support Alternative 1 for the following reasons:

In this area, and I'm sure in other parts of the country, wood-using industries have been upgrading their plants and increasing their production capacity based on expected available timber supplies. Under your preferred alternative you say timber harvest would not be prohibited as long as no new roads are built. We all know that roads are needed to haul products from the forest, therefore the timber volumes available for harvest from these roadless areas would be negligible. The net effect of this is to further reduce timber harvest on the NFS from its already reduced level. This causes a shift of timber demand to other sources, in turn causing higher stumpage prices and a lower overall timber availability. This has already happened here because of reduced harvest levels on the two National Forests in Minnesota. The USFS should be increasing its cut, not reducing it. You have to provide your fair share of the resource and you're not doing it.

I believe that many of your concerns regarding environmental damage resulting from road construction are overstated. Current road engineering and construction techniques can greatly reduce these fears if roads are properly designed in the first place.

As a local government official, I take issue with your general characterization in the DEIS of forestry workers being uneducated, unstable, and unmotivated. I know many of these people personally that live and work in my township and your statements are not true.

It's rather obvious that the bottom line of all this is that 22% more of the NFS is to become de facto wilderness. We have enough wilderness now with the NPS, designated Wilderness Areas, SNAs, etc., etc. Designating wilderness is Congress' job, not the President's through executive order.

Its also obvious to me that the DEIS was produced with the preferred alternative set as the goal, then written to support that goal. The Forest Service Roadless Area Conservation plan should be scrapped.

John C. Hanson, Supervisor, Torrey Township, Cass County, Minnesota

John C. Hanson

11296 90th Ave NE
Deer River MN 56633