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January 24, 2022

Alaska Roadless Rule

USDA Forest Service

PO Box 21628

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Sent via email to: sm.fs.akrdlessrule@usda.gov

Re: Comments by the Alaska Miners Association on the United States Department of Agriculture's proposal to repeal a Final Rule promulgated September 24, 2020, that exempted the Tongass National Forest from the 2001 Roadless Area Conservation Rule

To Whom It May Concern:

The Alaska Miners Association (AMA) writes to comment in opposition to the United States Department of Agriculture's (USDA) November 23, 2021, Notice of Proposed Rulemaking (hereinafter "Notice") to repeal the October 29, 2020, Final Rule Exempting the Tongass from the 2001 Roadless Rule.

AMA is a professional membership trade organization established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,400 members that come from eight statewide branches: Anchorage, Denali, Fairbanks, Haines, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome. Our members include individual prospectors, geologists, engineers, suction dredge miners, small family mines, junior mining companies, and major mining companies, Alaska Native Corporations, and the contracting sector that supports Alaska's mining industry. Hundreds of AMA members live, work, recreate, and otherwise use the Tongass National Forest on a daily basis and are impacted by the Notice.

AMA urges the USDA to retain the 2020 Tongass Exemption and consider comments from Alaskans whom live and work within the Tongass. Six Alaskan governors and the Alaska Congressional Delegation, both Republican and Democrat, have requested a total exemption of the Tongass from the Roadless Rule.

In January 2018, the State petitioned the USDA to promulgate a state-specific Rule exempting the Tongass from the 2001 Rule and to revise the 2016 Forest Plan to be consistent with the Exemption. In June 2018, the Secretary of Agriculture agreed to review the State's petition through the rulemaking process. The USDA agreed to review the State's petition request because *"the USDA has sought a long-term durable approach to roadless area management that accommodates the unique biological, social, and economic situation found in and around the Tongass National Forest."*

A Citizen Advisory Committee was appointed by then-Governor Bill Walker in September 2018 to make recommendations that supported the Alaska-specific Roadless Rule that was being developed by USDA under the previous Administration. It provided excellent proposals for additions to the seven road exceptions to the "no roads" 2001 Roadless Rule that are already authorized by 36 C.F.R. § 294.12 (b) are listed at pages 22-23 of this Memorandum.

The Final Environmental Impact Statement (FEIS) for the Tongass specific Roadless Rule that was published in the Federal Register on September 24, 2020, states that: *“Inventoried Roadless Areas on the Tongass National Forest (Tongass) include 9.37 million acres (56% of the Tongass) across 110 IRAs. When these designated roadless areas are combined with the Wilderness and National Monument areas (another 34% of the Tongass), the Tongass is currently more than 90% undeveloped and unavailable for road building (with certain limited exceptions). Developed areas cover about 1.3 million acres or about 8% of the Tongass.*

Conversely, the November 2021 Notice of Repeal addresses the supposed wants of select and certain interest groups in Southeast Alaska, but does not address the long-held policy preferences of the State of Alaska or its Congressional Delegation.

Southeast Alaska is unique, and the Department of Agriculture acknowledged this in 2003 when it exempted Alaska from the 2001 Roadless Rule. In the contiguous 48 states, communities and lands are linked by roads outside the national forests or legacy roads and highways that are within the forests. In the Tongass, there is no such transportation network. Communities are isolated with only marine and air connections. A “Roadless Rule” designed to limit transportation footprints throughout densely populated and heavily infrastructured states does not fit a place like the Tongass, which is already virtually roadless.

The USDA had concluded that the social and economic hardships to Southeast Alaska from a Roadless Rule outweigh the potential long-term ecological benefits because the Tongass Forest plan adequately provides for the ecological sustainability of the Tongass. Every facet of Southeast Alaska’s economy is important and the potential adverse impacts from application of the roadless rule are not warranted, given the abundance of roadless areas and protections already afforded in the Tongass Forest Plan. The Forest is adequately protected through the normal national forest land management planning process as intended by Congress in 1976 when it enacted the National Forest Management Act. The nationwide Roadless Rule usurped much of the land planning process mandated by the National Forest Management Act (NFMA), particularly in Alaska. Exempting the Tongass from the Roadless Rule will not authorize any development activities, but it will enable the NFMA planning process to function as intended.

Without question, application of the 2001 rule has severely impacted the social and economic fabric of Southeast Alaska communities. It has devastated the timber industry where sustainable harvests have plummeted and employment is now a fraction of what it was prior to enactment of the Rule. The 2020 Rule Exempting the Tongass from the 2001 Roadless Rule would have made 188,000 acres available for timber harvest (168,000 old growth + 20,000 young growth). But that change would only occur if the Forest Service also changed the prohibition in the 2016 Forest Plan. Although the October 29, 2020, Final Rule Exempting the Tongass “direct[ed] the Tongass Forest Supervisor to issue a notice of an administrative change pursuant to 36 C.F.R 219.13(c),” it failed for whatever reason to make the change. As the October 29, 2020, Final Rule Exempting the Tongass said would occur “allowing the inconsistent portion of the 2016 [timber] suitability designation to stand would effectively nullify the Department’s regulatory choice to remove the 2001 timber harvest prohibitions.” Thus, the 188,000 acres were not made available for timber harvest by the 2020 Exemption; so, Repeal will have no effect whatsoever on timber harvest or associated road construction or the environment.

What Repeal would do is negatively impact the ability to pursue mineral development in the Tongass. Today, the Tongass has two large-scale mines occupying a footprint of only 320 acres. These mines, and any that may follow, cannot operate unless they 1) meet the strict environmental requirements of 36 C.F.R. Part

228 as analyzed under the National Environmental Policy Act (NEPA) process; and 2) survives the inevitable litigation testing whether the analysis complied with NEPA. Mines making it through this process will not be allowed to seriously impact hunting, fishing, and tourism on the Tongass, or interfere with ecological, subsistence, cultural or social values. To the contrary, field evidence from Alaska's mines show that environmental mitigation done as part of mining has improved natural local water quality such that fisheries now exist where none did prior to mine development. Designation of Tongass' mineral-rich lands will bring no additional benefit to the environment, but it will negatively impact the Southeast Alaska economy.

The current mining operations and development projects in Southeast Alaska provides over 1,600 direct and indirect jobs, with an estimated average annual wage of \$111,000 (*2018 Annual Economic Benefits of Alaska's Mining Industry in Southeast report, McDowell Group*). The potential for many more high-paying mining jobs on the Tongass is enormous. A 1991 United States Geologic Survey (USGS) study estimated a value for Discovered Minerals of \$37.1 billion and a value for Undiscovered Minerals of \$28.3 billion (*expressed as 1988 dollars*).

The potential benefits far exceed employment. First, what USDA should be most concerned with is President Biden's directives to "Build Back Better" as the Administration pursues infrastructure investment and its focus on alternative, green energies. It is abundantly clear that the goals toward renewable energy sources, electric vehicles, and more cannot be achieved without access to an increased supply of many minerals. The International Energy Agency has released extensive research outlining a drastic increase in mineral dependency as our society increases existing demand, let alone the compounded need brought by renewable energy source production. IEA has outlined that recycling alone cannot contribute to the need. Increased mineral production must occur to meet this Administration's directives - the minerals will have to come from the ground somewhere. Will the rare earths needed come from the Bokan Mountain Project in Southeast Alaska, where the environmental regulations are among the best in the world? Or will they come from China? Southeast Alaska's known mineral potential can help exponentially with the minerals needed to grow our modern technologies. Repealing the Roadless Rule will **not** help, and in fact, is directly inconsistent with the objectives stated by the Biden Administration.

Instead of forcing a Roadless Rule on the Tongass, the USDA should instead focus on obtaining current and thorough information as to the mineral potential on the Tongass. The Final Environmental Impact Statement (FEIS) for the 2008 Tongass Land and Resource Management Plan pointed out that the former U.S. Bureau of Mines had identified 148 locatable mineral deposits in the Tongass. Of these, 52 were ranked by these agencies as having the highest mineral potential. Seven were ranked as having the next highest potential and at least one "critical" and "strategic" mineral. In addition to the 148 Identified Mineral Deposits the 2008 FEIS described 930 "Undiscovered Mineral Resource" tracts estimated. Many of these minerals, like zinc, are on the current "Critical Minerals" list outlined by the U.S. Geological Survey (USGS). These USGS and Bureau of Mines reports were prepared in the 1970s, 1980s, and 1990s, and there has been no update of the Tongass Mineral resources since the 2008 FEIS. These reports must be updated to understand the mineral potential of the area. In fact, this should be done before making it harder to access the minerals by reimposing the 2001 Roadless Rule. Without such an update, the USDA is "flying blind."

AMA disagrees with statements made that with a Roadless Rule, access to mining areas is still accommodated. While "reasonable access to mining claims" under the General Mining Law is authorized by the 2001 Roadless Rule, the Preamble to the 2001 Roadless Rule is careful to point out that

“[r]easonable rights of access may include, but are not limited to, road construction, reconstruction, helicopters or other nonmotorized access. The fact is, the USDA has often found that road access is not “reasonable” and has insisted that helicopter transportation be used, knowing full well that is not a feasible option. What is “reasonable” is left to Forest Supervisor discretion, but there are no guidelines for its determination. For example, in 1977 the Forest Service denied a Special Use Permit to U.S. Borax to construct a road for a bulk sample of 5,000 tons of ore at the Quartz Hill Project, requiring access to be by helicopter. As the opinion *SEACC v. Watson*, 697 F.2d 1305 (9th Cir. 1983) shows, six years later Borax still did not have a permit to build the road needed to move that volume of ore. The same subjective, adverse result should be expected when USDA applies the strong anti-development policy of the current Administration to any mining project attempting to operate in an IRA. Is it ‘reasonable’ to expect millions of tons of earthen materials to be moved without the use of wheeled vehicles?

Of recent, the Forest Service claims that it has issued 57 permits in IRAs - mostly for mineral exploration. However, these are all for non-roaded helicopter supported drilling. Helicopter supported drilling limits the size of rig and volume of core that can be extracted. The larger core and underground drilling necessary cannot occur without roads, let alone extraction of large tonnage metallurgical test mill ‘bulk’ samples. Thus, without roads, only initial exploration data can be obtained. In order to advance a project, the Security and Exchange Commission requires greater certainty of resource/reserve estimation.

While “reasonable access” is technically permitted in IRAs, cutting trees associated with mining exploration and development does not appear to be allowed. 36 C.F.R. § 294.13 (b) (2) authorizes the cutting of timber “incidental to implementation of a management activity not otherwise prohibited by this subpart.” However, there is no mention of mining in the examples of what this section authorizes provided in the 2001 Rule and ROD.

The denial of access by repeal of the Roadless exemption affects far more than just mining activity. Access, roads, and transportation corridors are needed for all uses of the Tongass: economic development, renewable energy, subsistence, recreation, and other community economic, cultural, and social activities:

Repeal of the exemption fails to consider or analyze Congress’s decision in the 2005 SAFETYLU Transportation Legislation to implement the 2004 Southeast Alaska Transportation Plan by authorizing 19 easements allowing for road construction in the Tongass irrespective of IRA status.

The 2001 Roadless Rule makes uncertain the ability to access future hydroprojects and other renewable energy projects by road. Access to geothermal projects by road is not allowed.

Reimposition of the 2001 Roadless Rule will create uncertainty about road access to future hydroprojects and power distribution line corridors and prohibit road access to geothermal projects. Adding unnecessary costs could preclude their development at a time when the U.S. government is attempting to shift the power net to those same renewable energy sources. It presents a challenge to the Congressionally authorized Southeastern Alaska Intertie System Plan Routes (PL 106-511, February 1, 2001) as identified in report #97-01 of the Southeast Conference. It also hampers road access to an authorized facility or location for fishery research, management, enhancement, and rehabilitation activities; fishways, fish weirs, fish ladders, fish hatcheries, spawning channels, stream clearance, egg planting, and other permitted aquaculture facility or activity, including mariculture.



Finally, repeal of the Tongass exemption violates the promise made to Alaskans that no more of its lands would be removed from access and development opportunity. Congress has already enacted over 6.6 million acres of Wilderness and other restrictive land use categories prior to the promulgation of the Roadless Rule on the Tongass through the Alaska National Interest Lands Conservation Act (ANILCA) and the Tongass Timber Reform Act (TTRA). The remaining areas were passed over so they could support local employment and benefit their communities. Notwithstanding the substantial land set asides made by Congress in ANILCA and the TTRA and the fact that §1326 of ANILCA says that the executive branch may not withdraw more than 5,000 acres of land without the consent of Congress (the “no-more” clause), in 2001 the Forest Service set aside an additional 9.37 million acres of land as IRAs in the Tongass. The State and a substantial group of Statewide and Southeast intervenors supporting the State’s lawsuit have been litigating the matter since 2001. The USDA must retain the exemption of the Roadless Rule for the Tongass National Forest.

Thank you for your consideration of our comments.

A handwritten signature in blue ink, appearing to read "Deantha Skibinski".

Deantha Skibinski
Executive Director