



Please Note: The Ninth Circuit Court of Appeals recently upheld the United States District Court for District of Alaska’s 2011 reinstatement of the Roadless Rule on the Tongass National Forest. Consequently, the Roadless Rule remains in effect in Alaska and the Forest Service continues to apply the Rule to the Tongass and Chugach National Forests. A second case involving the Roadless Rule is currently being adjudicated in the United States District Court for the District of Columbia. The Forest Service will comply with all court orders.

Purpose

This document answers commonly asked questions about how the Roadless Area Conservation Rule (Roadless Rule) applies to National Forest System (NFS) lands in Alaska. Since its adoption in 2001, the Roadless Rule has been the subject of litigation concerning how it is to be applied to the Tongass and Chugach National Forests. Stakeholders with an interest in these lands, such as utility companies, timber and mining interests, and local communities, have raised questions about how the Roadless Rule will affect permits, contracts and other special uses involving access, road construction and road maintenance in inventoried roadless areas within Alaska's National Forests. This document responds to these queries within the context of currently applicable law, which holds that the Roadless Rule applies to NFS lands in Alaska.

Background

The Roadless Rule was adopted in January 2001 to protect the social and ecological values and characteristics of inventoried roadless areas from road construction and reconstruction and certain timber harvest activities. Inventoried roadless areas provide large, relatively undisturbed blocks of important habitat for a variety of terrestrial and aquatic wildlife and plants; contribute to healthy watersheds and clean drinking water; and provide extensive opportunities for outdoor recreation and tourism. Protection of these roadless areas on both the Tongass and Chugach National Forests is of local and national importance.

The State of Alaska in 2001 filed a complaint in the United States District Court, District of Alaska, challenging the application of the Roadless Rule to the Chugach and Tongass National Forests. The Forest Service and the State of Alaska reached a settlement in 2003, and the Forest Service subsequently issued a rule temporarily exempting the Tongass National Forest from the Roadless Rule. In 2011, the District Court set aside the 2003 Tongass Exemption and reinstated the 2001 Roadless Rule with respect to the Tongass. A March 2014 ruling by the Ninth Circuit Court of Appeals reversed that decision. The Ninth Circuit subsequently granted a petition for rehearing en banc, held in December 2014 before an eleven judge panel. On July 29, 2015, a six judge majority of the en banc panel held that USDA's justification for the Tongass Exemption was inadequate under the Administrative Procedure Act, holding it did not provide a reasoned explanation for contradicting the findings in the 2001 Record of Decision for the Roadless Rule. The majority upheld the District Court's reinstatement of the Roadless Rule. Consequently, the Roadless Rule remains in effect in Alaska and the Forest Service continues to apply the Rule to the Tongass and Chugach National Forests.

In another court case, the State of Alaska has challenged the Roadless Rule in the U.S. District Court for the District of Columbia. Briefing in that case is ongoing, following a ruling by the Court of Appeals for the D.C. Circuit that the State of Alaska's claims were not barred by the statute of limitations in this instance.

Inventoried roadless areas in the Alaska Region include 9.5 million acres (57 percent) of the Tongass National Forest and 5.4 million acres (99 percent) of the Chugach National Forest. The majority of the Tongass inventoried roadless areas (7.4 million acres) are allocated to non-development land use designations in the current forest plan. Including all other non-development land use designations, a total of 13.3 million acres (80 percent of the Tongass) is generally off-limits to road construction and timber harvest activities.

Q1. Where can I find a copy of the Roadless Rule?

A copy of the Roadless Rule can be found online at http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5050459.pdf

Q2. Does the Roadless Rule apply to National Forests in Alaska?

Yes, the Roadless Rule applies to the Chugach National Forest as well as to the Tongass National Forest pursuant to the ruling of the U.S. District Court for the District of Alaska in *Organized Village of Kake v. USDA*, No. 1:09-cv-00023 (March 4, 2011) (upheld on appeal). The district court's final judgment, *Organized Village of Kake v. USDA*, No. 1:09-cv-00023 (May 24, 2011), makes special provision for certain projects and activities, including:

- road construction and timber cutting for listed projects;
- personal timber use, firewood, and certain roadside microsales; and
- hydroelectric development.

The Forest Service regards these projects and activities identified in the District Court's May 24, 2011 final judgment as exempt from the prohibitions of the 2001 Roadless Rule under the terms of the final judgment.

Q3. Does the most recent 9th Circuit Court of Appeals Decision mean that the Roadless Rule applies to the Tongass National Forest?

On July 29, 2015, a six judge majority of the en banc panel held that USDA's justification for the Tongass Exemption was inadequate under the Administrative Procedure Act, holding it did not provide a reasoned explanation for contradicting the findings in the 2001 Record of Decision for the Roadless Rule. The majority upheld the Alaska District Court's reinstatement of the Roadless Rule. Consequently, the Roadless Rule remains in effect in Alaska and the Forest Service continues to apply the Rule to the Tongass and Chugach National Forests.

Q4. How do I know if my proposed project is in an inventoried roadless area?

Inventoried roadless areas are shown on the Forest Service [Roadless Area Conservation website](http://www.fs.usda.gov/roadmain/roadless/home) at <http://www.fs.usda.gov/roadmain/roadless/home>. The maps for Alaska can be reached by following this link: http://www.fs.usda.gov/detail/roadless/2001roadlessrule/maps/statemaps/?cid=fsm8_037699

Always ask your local Forest Service Ranger District Office as they will have the most detailed and up-to-date maps.

Q5. Does the Roadless Rule prohibit all road construction in inventoried roadless areas?

The Roadless Rule generally prohibits construction or reconstruction of roads in inventoried roadless areas of the National Forest System, but with some exceptions. The Roadless Rule allows the Forest Service Line Officer to authorize construction or reconstruction of a road in an inventoried roadless area if he or she determines it is needed for one of the following reasons:

- To protect public health and safety;
- To conduct environmental response under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or to conduct a restoration action under CERCLA, the Clean Water Act, or the Oil Pollution Act;
- To allow for reserved or outstanding rights or as provided for by statute or treaty;
- To prevent irreparable resource damage under certain circumstances;
- To implement a road safety improvement project under certain circumstances;
- When the Secretary of Agriculture has determined that a Federal Aid Highway project is in the public interest or is consistent with the purposes for which the land was reserved or acquired and no other reasonable and prudent alternative exists; or
- When a road is needed in conjunction with mineral leases on lands that were under lease as of January 12, 2001 and were immediately extended upon the expiration of the leases.

For additional information concerning road construction and reconstruction in inventoried roadless areas in the National Forest System, see the Roadless Rule regulations at 36 CFR §294.12.

Q6: Does the Roadless Rule prohibit all timber cutting in inventoried roadless areas?

The Roadless Rule generally prohibits the cutting, selling, or removal of timber in inventoried roadless areas of the National Forest System, but with some exceptions. The Roadless Rule allows the Forest Service Line Officer to authorize these activities in the following circumstances:

- The cutting, sale, or removal of generally small diameter timber is needed for one of the following purposes and will maintain or improve roadless area characteristics;
 - To improve endangered, proposed, or sensitive species habitat; or
 - To maintain or restore the characteristics of the ecosystem.
- The cutting, sale, or removal of timber is incidental to another activity that is not otherwise prohibited;
- The cutting, sale or removal of timber is needed and appropriate for personal or administrative use; or

- The roadless characteristics of the area have already been substantially altered by road construction and timber cutting within certain parameters described in the Roadless Rule.

For additional information concerning timber harvesting in inventoried roadless areas in the National Forest System, see the Roadless Rule regulations at 36 CFR §294.13.

Q7. For activities that are permissible in inventoried roadless areas in Alaska, what process must be followed to authorize road construction or reconstruction or removal of timber?

Initially, applicants should contact the District Ranger to discuss a proposed project to determine what type of permit and review process is appropriate. The Chief of the Forest Service continues to review certain activities planned in inventoried roadless areas to ensure the Forest Service is applying a nationally consistent approach to implementation of the Roadless Rule and that the agency is complying with its mandate to protect roadless area characteristics. The Chief's May 31, 2012 letter outlining the types of projects requiring the Chief's review can be found at http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5373645.pdf.

Generally, the Chief's review will be completed within other, concurrent review processes, such as an environmental review process under the National Environmental Policy Act (NEPA). More detailed information can be found on the National Forest Service Roadless Area Conservation website at <http://www.fs.usda.gov/roadmain/roadless/home>.

The Chief also identified activities that may be reviewed by Regional Foresters. In general, line officers in the Alaska Region, with appropriate review by the Regional Forester, have the authority to approve timber cutting or removal in certain situations such as:

- emergencies;
- incidental to implementation of an existing special use authorization; or
- cutting, sale, or removal of generally small diameter timber for specified purposes, such as wildlife habitat improvement and administrative and personal use.

Line officers also have the authority to approve free use of timber to Alaskan settlers, miners, residents and prospectors. Such use should occur in inventoried roadless areas only when needs cannot be met in the roaded land base. When personal use timber is collected from inventoried roadless areas, it shall be done in a manner that maximizes the protection of the roadless character and wildlife habitat, recreation and other values associated with inventoried roadless areas.

Q8. What types of activities have been approved to take place in inventoried roadless areas in Alaska?

As of February 15, 2016, 46 projects within roadless areas in Alaska have been submitted for Secretarial or Chief's review and all have been approved. Projects that have been approved include:

- 29 mining projects;
- 9 hydropower or intertie projects;
- a road re-alignment;
- a timber sale;
- a U.S. Coast Guard Differential Global Positioning System Antenna;
- re-delegation of the authority to issue free use permits to include free use of timber to Alaskan settlers, miners, residents and prospectors;
- an aerial tram;
- a special use permit to the Alaska Army National Guard for training activities;
- a geothermal lease; and
- a road reconstruction project.

Under the current review process, most projects are approved by the Chief of the Forest Service within two months of submission.

Q9. How does the Roadless Rule apply to mining activities in Alaska?

The 1872 Mining Law gives a statutory right of reasonable and necessary access related to the exploration and development of mineral properties. This statutory right is subject to reasonable regulation for the protection of surface resources. If the inventoried roadless area is open to mineral entry, locatable mineral mining, including certain activities ancillary to the mining, may be approved. Exploration and development of leasable minerals, such as oil and gas or geothermal resources, are not prohibited under the Roadless Rule. A road needed in conjunction with the continuation, extension, or renewal of a mineral lease originally issued prior to January 12, 2001 may be permitted. The Roadless Rule anticipates a number of permissible activities, including certain special uses, that do not involve "road construction or reconstruction" (see response to Q10, below). The Forest Service will work with the project proponent to determine the permissible activities during NEPA analysis of a proposed project.

Q10. How does the Roadless Rule apply to the construction and maintenance of transmission lines in Alaska?

The Roadless Rule does not prohibit construction of power lines or oil and gas transmission lines in inventoried roadless areas. The Roadless Rule anticipates a multitude of permissible activities, including authorized special uses, that do not involve "road construction or reconstruction" as defined in 36 CFR §294.2 (66 Fed. Reg. 3272). The Roadless Rule defines the term "road" as "[a] motor vehicle travelway over 50 inches wide, unless designated and managed as a trail" (66 Fed. Reg. 3272). Under the Rule, temporary or permanent roads are not permitted in inventoried roadless areas, except as otherwise noted. In contrast, a necessary "linear construction zone" may be temporarily authorized where anticipated activities do not include road construction or

reconstruction. See *Wilderness Workshop v. US BLM*, 531 F.3d 1220 (10th Cir. 2008). The Forest Service will work with project applicants to determine responsibilities and obligations concerning such special use applications.

Q11. What process must be followed to approve hydroelectric development in an inventoried roadless area?

The Federal Power Act (FPA) grants the Federal Energy Regulatory Commission (FERC) the authority to issue and administer licenses for hydropower projects. For projects located on National Forest System lands, section 4(e) of the FPA requires FERC to determine whether the project is consistent with the purposes of the forest reservation. Section 4(e) also gives the Forest Service authority to impose mandatory conditions in the FERC license to ensure the adequate protection and utilization of a forest reservation.

To learn more about how to apply for a FERC hydropower license, go to: www.ferc.gov/industries/hydropower/gen-info/licensing.

When an applicant applies to FERC for a preliminary permit in an inventoried roadless area, they should meet with the Forest Service district to discuss the special use permit needed to conduct the work to be carried out under the preliminary permit. When an applicant applies to FERC for a license, the Forest Service will work with the applicant and FERC to coordinate terms and conditions necessary to ensure the adequate protection and utilization of the forest reservation. The Forest Service transmits the terms and conditions to be included in the license to FERC, in accordance with section 4(e) of the FPA.

The Alaska District Court's judgment in *Organized Village of Kake, et al., v. USDA, et al.* states:

Nothing in this judgment shall be construed to prohibit any person or entity from seeking, or the USDA from approving, otherwise lawful road construction, road reconstruction, or the cutting or removal of timber for hydroelectric development pursuant to the standards and procedures set forth in the Federal Power Act.

Q12: Will the Tongass Forest Plan amendment address hydropower development?

The Forest Service proposes to amend the Tongass Forest Plan. Among other things, the amendment will address whether changes are needed to provide for the development of hydropower.

For more information contact your local Forest Service Office:

Chugach National Forest:

Chugach National Forest Supervisor's Office

161 East 1st Avenue, Door 8
Anchorage, AK99501
(907) 743-9500

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P.O. Box 280
Cordova, AK 99574-0280
(907) 424-7661

Glacier Ranger District

P.O. Box 129
145 Forest Station Road
Girdwood, AK99587-0129
(907) 783-3242

Seward Ranger District

P.O. Box 390
334 Fourth Avenue
Seward, AK 99664-3374
(907) 224-3374

Tongass National Forest:

Tongass National Forest

648 Mission Street
Federal Building
Ketchikan, AK99901-6591
(907) 225-3101

Petersburg Supervisor's Office

123 Scow Bay Loop Road
P.O. Box 309
Petersburg, AK 99833-0309

Sitka Supervisor's Office

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Craig Ranger District

P.O. Box 705
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Hoonah Ranger District

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Juneau Ranger District

8510 Mendenhall Loop Road
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Ketchikan-Misty Fiords Ranger District

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Ketchikan, AK99901-5743
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Petersburg Ranger District

P.O. Box 1328, 12 North Nordic Drive
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(907) 772-3871

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