



United States Department of Agriculture



Frequently Asked Questions Regarding Inventoried Roadless Areas

U.S. Forest Service Alaska Region
September 2018

Please Note: The Ninth Circuit Court of Appeals 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. In September 2017, the D.C. District Court issued a favorable ruling in a second case involving the Roadless Rule, which the State of Alaska appealed in November 2017. The Forest Service will continue to 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 affects permits, contracts and other special uses involving timber removal and 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.

In 2001, the State of Alaska filed a complaint in the United States District Court, District of Alaska, alleging statutory and administrative-law violations related to the United States Department of Agriculture's (USDA's) promulgation of the 2001 Roadless Rule and its application in Alaska. USDA and the State of Alaska reached a settlement in 2003, and USDA subsequently issued a rule temporarily exempting the Tongass National Forest from the Roadless Rule. On March 4, 2011, the Alaska District Court set aside the Tongass Exemption and reinstated the Roadless Rule on the Tongass National Forest (*Organized Village of Kake, et al., v. USDA, et al.*, Case No. 1:09-cv-00023). A March 2014 ruling by the Ninth Circuit Court of Appeals reversed that decision (*Organized Village of Kake v. USDA* (No. 11-35517, 9th Cir.)). The Ninth Circuit subsequently granted the plaintiffs' 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 found 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 five dissenting judges maintained that USDA was not arbitrary and capricious when it exempted the Tongass National Forest from the Roadless Rule in 2003. The majority of the panel 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.

On June 16, 2011, the State of Alaska filed a complaint in the U.S. District Court for the District of Columbia, facially challenging the promulgation of the Roadless Rule (*State of Alaska v. USDA, et al.*, Case No. 1:11-cv-01122). On March 25, 2013, the U.S. District Court for the District of Columbia dismissed the State of Alaska's challenge to the Roadless Rule, determining



it to be beyond the general six-year statute of limitations for civil actions against the government. In November 2014, the D.C. Circuit reversed and remanded the case to the District Court to hear the merits of the State's challenge to the Roadless Rule. The District Court denied the cross-motions for summary judgment without prejudice, and instructed the parties to re-brief their motions to address the potential res judicata effects of *Organized Village of Kake, et al. v. USDA, et al.*, 795 F.3d 965 (9th Cir. 2015). On September 20, 2017, the D.C. District Court again rejected the State's challenge to the Roadless Rule, finding that the State had failed to show violation of any Federal statute in the USDA's promulgation of the Roadless Rule. The State of Alaska appealed the District Court's decision on November 28, 2017, and the case remains pending before the D.C. Circuit Court of Appeals.

Inventoried roadless areas in the Alaska Region include 9.2 million acres (55 percent) of the Tongass National Forest¹ and 5.4 million acres (99 percent) of the Chugach National Forest. In addition, congressionally-designated Wilderness makes up 5.8 million acres (34 percent) of the Tongass, resulting in 15 million acres (90 percent of the Tongass) being 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*, (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

¹ 2016 Tongass Plan Amendment FEIS, p. 3-445.



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

Inventoried roadless areas are shown on the [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 seen at: http://www.fs.usda.gov/detail/roadless/2001roadlessrule/maps/statemaps/?cid=fsm8_037699.

Local Forest Service Ranger District Offices can provide images of these 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 of 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 local 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 Forest Service [Roadless Area Conservation website](http://www.fs.usda.gov/roadmain/roadless/home) 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 January 2018, 57 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:

- 38 mining projects;
- 10 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;
- a road reconstruction project; and
- the issuance of a road easement to the State of Alaska.

Under the current review process, most projects are approved by the Chief of the Forest Service within a month 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 Ranger District to discuss the special use permit needed to conduct the work to be carried out under the preliminary permit issued by FERC. 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.



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, AK 99501
(907) 743-9500

Cordova Ranger District

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

Glacier Ranger District

P.O. Box 129, 145 Forest Station Road
Girdwood, AK 99587-0129
(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, AK 99901-6591
(907) 225-3101

Petersburg Supervisor's Office

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

Sitka Supervisor's Office

204 Siginaka Way
Sitka, AK 99835-7316
(907) 747-6671

Craig Ranger District

P.O. Box 705, 900 Main Street
Craig, AK 99921-9998
(907) 826-3271

Hoonah Ranger District

P.O. Box 135, 430 Airport Way
Hoonah, AK 99829-0135
(907) 945-3631

Juneau Ranger District

8510 Mendenhall Loop Road
Juneau, AK 99801
(907) 586-8800

Ketchikan-Misty Fiords Ranger District

3031 Tongass Avenue
Ketchikan, AK 99901-5743
(907) 225-2148

Petersburg Ranger District

P.O. Box 1328, 12 North Nordic Drive
Petersburg, AK 99833-1328
(907) 772-3871

Sitka Ranger District

204 Siginaka Way
Sitka, AK 99835
(907) 747-6671

Thorne Bay Ranger District

P.O. Box 19001, 1312 Federal Way
Thorne Bay, AK 99919-0001
(907) 828-3304

Wrangell Ranger District

P.O. Box 51, 525 Bennett Street
Wrangell, AK 99929-0051
(907) 874-2323
(907) 784-3359

Yakutat Ranger District

P.O. Box 327, 712 Ocean Cape Road
Yakutat, AK 99689-0327

