



United States Department of Agriculture

Office of the Secretary  
Washington, D.C. 20250

JUN 21 2006

The Honorable Timothy Kaine  
Governor  
State of Virginia  
Patrick Henry Building  
1111 East Broad Street  
Richmond, Virginia 23219

Dear Governor Kaine:

The Secretary has considered your petition requesting the initiation of a state-specific rulemaking to address the management of inventoried roadless areas, per 36 CFR 294. This petition has been reviewed by the Roadless Area Conservation National Advisory Committee, and the Committee has provided the Secretary with their advice and recommendations.

Based upon our review of the petition and the report of the Advisory Committee, we have determined that regulatory direction is appropriate in this case and your petition is accepted. Together we should now proceed with the following actions.

- (a) Develop a federal/state memorandum of understanding documenting the state's participation as a cooperating agency in the conduct of the appropriate level of environmental analysis required by the National Environmental Policy Act, and documentation of other appropriate duties that both parties agree to.
- (b) Coordinate the development of the proposed rule, including how to address discrepancies between the acres identified by the Forest Service as roadless and those the commonwealth believes should be subject to management restriction, and any further discussions between the State and Federal government.
- (c) Determine and carry out the appropriate level of environmental analysis, consultation with tribal governments, and Endangered Species Act consultation required for this rulemaking.
- (d) Set the framework, if necessary, for this rulemaking to simultaneously amend the land management plans involved; and describe how future plan amendments will conserve and manage designated roadless areas.

The Honorable Timothy Kaine

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- (e) Ensure that the MOU provides for public involvement and active solicitation of the views of interested parties. Of particular concern are the views of those who use the national forests for recreation or resource production, and those responsible for managing adjacent public and private lands.

By copy of this letter, I am directing the Forest Service to begin the notice and comment rulemaking process. It is important to recognize that the disposition of this petition is only a starting point. The proposed rule will be subject to notice and comment requirements under federal law. The Forest Service will have the responsibility to work cooperatively with the State to develop a proposal to establish regulatory direction for the management of inventoried roadless areas in the state. However, the authority for final adoption of any federal rule is reserved to the Secretary or his designee after resolution of concerns raised during public comment and noted in the advice of the Roadless Advisory Committee.

We appreciate your cooperation and efforts to date in assisting the Department, the Forest Service, and the Advisory Committee to understand and continue to refine your proposal. I also want to add my personal appreciation for your interest in the conservation and management of inventoried roadless areas, and look forward to our continued mutual cooperation in this endeavor.

Sincerely,



MARK REY  
Under Secretary  
Natural Resources and Environment

Enclosure – Roadless Advisory Committee Advice to the Secretary on State Petition

cc: Dale Bosworth, Chief

# Roadless Area Conservation National Advisory Committee

May 26, 2006

## Committee Members

Darin Bird  
Utah Department of  
Natural Resources

Adena Cook  
BlueRibbon Coalition

Robert Cope  
Lemhi County  
Commissioner, Idaho

Jeff Eisenberg  
National Cattleman's Beef  
Association

Paul Hansen  
Isaac Walton League of  
America

Dale Harris  
Co-Chair  
Montana Wilderness  
Association

Geraldine Link  
National Ski Areas  
Association

Jim Riley  
Intermountain Forest  
Association

Greg Schaefer  
Co-Chair  
National Mining  
Association and Arch Coal

Todd Schulke  
Center for Biological  
Diversity

Denny Scott  
United Brotherhood of  
Carpenters

Ray Vaughn  
Wildlaw

Chris Wood  
Trout Unlimited

Susan Yonts-Shepard  
Designated Federal  
Officer

The Honorable Mike Johanns  
Secretary of Agriculture  
United States Department of Agriculture  
1400 Independence Avenue SW  
Mail Stop Code:0108, Room 217E  
Washington, DC 20250-0108

## Re: Advice of the RACNAC on Virginia Roadless Petition

Dear Mr. Secretary,

Pursuant to 36 C.F.R. Part 294, the Roadless Area Conservation National Advisory Committee (RACNAC) hereby presents its advice and recommendations to you on the petition received from the Commonwealth of Virginia on March 1, 2006 to promulgate a regulation establishing management requirements for roadless areas on National Forest System lands in the Commonwealth. We are required to provide you with our advice and recommendations by no later than May 30, 2006. Our recommendations and advice are organized according to the elements identified in 294.13 as required for inclusion in the petitions.

- 1. The location and description of the particular lands for which the petition is being made, including maps and other appropriate resources in sufficient detail to enable consideration of the petition.**

### Advice and recommendation:

The Commonwealth should resolve and clarify acreage discrepancies between the acreage it believes should be subject to management requirements and the acreage the Forest Services believes are currently part of inventoried roadless areas. The reconciliation of these numbers should take place through a Memorandum of Understanding between the Commonwealth and the Forest Service prior to initiation of the formal rule making process.

The RACNAC believes the reconciliation of the acreage numbers will not be a difficult task. We also believe it is important to arrive at a single figure so the public will understand clearly the scope of the roadless area being proposed for management requirements.

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406.240.2809

**2. The particular management requirements recommended for the lands and any exceptions.**

Advice and recommendation:

The proposed rule should specify the actual management requirements and exceptions that apply to specific lands, rather than relying on simple reference to the 2001 roadless rule as a basis for these requirements. The proposed rule should also identify the number of acres involved by each type of management requirement and depict the acres associated with each requirement on a map. Finally, the proposed rule should specify the effective dates of the various requirements. It would assist rulemaking if the Commonwealth were to supply this information in the Memorandum of Understanding.

**3. The identification of the circumstances and needs intended to be addressed by the petition, including conserving roadless area values and characteristics; protecting human health and safety; reducing hazardous fuels and restoring essential wildlife habitats; maintaining existing facilities such as dams, or providing reasonable access to public and private property or public and privately owned facilities; and technical corrections to existing maps such as boundary adjustments to remove existing roaded areas.**

Advice and recommendations:

This information is critical to establishing the basis for granting special protection to roadless areas in the Commonwealth of Virginia, and the scope of the specific areas to be protected. Available information should be submitted to, or developed in conjunction with, the USDA in support of the proposed rule on the following issues:

- The roadless values and characteristics to be protected. The information should identify the specific values and characteristics that might be found in the various areas for which protection is sought, should these values and characteristics differ between areas;
- Characterizations of wildlife habitats to be protected (both existing and in the future for species of concern);
- Hazardous fuels and forest health conditions;
- Existing assessments of the mineral potential of the land for which roadless protection is sought. Identification of each of the existing leases, permits, and valid and existing rights for the area in question; and,

- Available trend data on dispersed and developed recreational use for the area in question.
- Any technical corrections to existing maps resulting from negotiations with US Forest Service to resolve differences between petition language and forest plans.

The MOU should specify whether the Forest Service or the Commonwealth controls the information responsive to the issues identified above and require the responsible entity to compile the information for use in the proposed rule.

- 4. A description of how the management requirements recommended by the Commonwealth differ from existing applicable land management plan(s) or policies related to inventoried roadless area management, and how these management requirements would comply with applicable laws and regulations.**

Advice and recommendations:

At the oral presentation made by Commonwealth and Forest Service representatives, it was stated by both parties that efforts were underway to reconcile differences in management requirements in the Jefferson National Forest Plan and those sought by the Commonwealth. It was also stated that these differences pertained to 15% of the roadless areas under consideration, a relatively small percent of the whole. We believe this effort should be pursued. The agreed upon management requirements could then be reflected in the proposed rule as indicated in element # 2 above.

Should the Commonwealth and Forest Service not be able to agree upon the remaining management requirements, then the outstanding management requirement differences should be addressed within the public involvement and environmental analyses processes used for developing the proposed rule.

- 5. A description of how the management requirements recommended by the Commonwealth compare to existing State or local land conservation policies and direction set forth in any applicable State or local land and resource management plan(s).**

Advice and recommendations:

The Commonwealth should agree in the MOU to provide data on the identification of sprawl and loss of open space, and on forest and land

conservation. Additionally, the MOU should ask the Commonwealth to make the Virginia Outdoor Plan (VOP) available for use in developing the proposed rule. In particular, the Commonwealth should explain the extent to which the management requirements for roadless areas within their petition relate to the VOP.

**6. A description of how the management requirements recommended by the Commonwealth would affect the fish and wildlife that utilize the particular lands in question and their habitat.**

Advice and recommendations:

The Commonwealth should identify specific effects to fish and wildlife in roadless areas in Virginia that it wants analyzed, commented on, and reflected in the proposed rule. This requirement should be included in the MOU.

**7. A description of any public involvement efforts undertaken by the petitioner during development of the petition, including efforts to engage Tribal and local governments, and persons with expertise in fish and wildlife biology, fish and wildlife management, forest management, outdoor recreation, and other important disciplines.**

Advice and recommendations:

The 2005 Rule anticipates some level of public participation. The RACNAC has received information from some stakeholders, reflecting their view that their concerns (e.g., social, economic, recreational) were not received. We recommend that the Commonwealth's position would be strengthened if a dialogue with those stakeholders either be initiated or reinitiated and changes to the position be considered, as appropriate, prior to the initiation of the rulemaking.

**8. A commitment by the petitioner to participate as a cooperating agency in any environmental analysis for a rulemaking process.**

Advice and recommendations:

The Commonwealth has agreed to participate with the Forest Service as a cooperating agency in subsequent rulemaking, and an MOU will be prepared to affirm that agreement. We suggest that additions be made to the MOU, as indicated above, to clarify and supplement the petition. These

additions will illuminate and strengthen the petition as the process moves forward to rule making.

**We recommend the Virginia petition be accepted, and the Secretary proceeds with an MOU and rulemaking, incorporating our suggestions for the MOU.**

Thank you for your consideration of our advice and recommendations on Virginia's petition. Do not hesitate to contact us if we can be of further assistance to you with this petition.

On behalf of the RACNAC,



Dale Harris  
RACNAC Co-Chair

/S/ Greg Schaefer

Greg Schaefer  
RACNAC Co-Chair

Cc: Governor Tim Kaine  
Mark Rey, Under Secretary USDA  
Dale Bosworth, Chief USFS  
All RACNAC members