



Forest Service
U.S. DEPARTMENT OF AGRICULTURE



Please Note: The Ninth Circuit Court of Appeals upheld the United States District Court for the District of Alaska’s 2011 reinstatement of the 2001 Roadless Rule on the Tongass National Forest. In October 2020, USDA published a final rule exempting the Tongass again from the 2001 Roadless Rule. That rule was challenged by five federally recognized tribes, two ecotourism companies, and other cultural and environmental organizations. The case was stayed while USDA undertook rulemaking to repeal the 2020 rule and was subsequently dismissed.

In November 2021, the D.C. Circuit Court D.C. Circuit issued its ruling on the State of Alaska’s case challenging application of the 2001 Roadless Rule to the Tongass and Chugach. The Court dismissed the case for mootness as to the Tongass as a result of the November 2020 rule and the fact that any future rule to reinstate the Roadless Rule would be reviewable when final. It dismissed the case for lack of standing as to the Chugach, because the State and intervenors did not allege an injury related to application of the Roadless Rule on the Chugach. The State of Alaska and other entities have challenged the January 2023 decision to reinstate the Roadless Rule on the Tongass National Forest. Those cases (3) are pending.

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 2001 Roadless Rule could 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.

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.

In another court case, the State of Alaska challenged the Roadless Rule in the U.S. District Court for the District of Columbia. On September 20, 2017, the D.C. District Court dismissed 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. On November 26, 2021, D.C. Circuit Court issued its ruling on the State of Alaska's case, dismissing it for mootness as to the Tongass due

to the 2020 rule discussed below and the fact that any future rule to reinstate the 2001 Roadless Rule will be reviewable when it is final. It dismissed the case for lack of standing as to the Chugach, because the State and intervenors did not allege an injury related to application of the Roadless Rule on the Chugach.

On November 23, 2021, USDA published a proposed rule to repeal the 2020 Alaska Roadless Rule that exempted the Tongass National Forest from the 2001 Roadless Area Conservation Rule. The proposal to repeal the 2020 Alaska Roadless Rule and restore 2001 Roadless Rule protections on the Tongass National Forest reflected input from Tribal consultation and was intended to conserve natural resources, enhance community resilience, and support a diverse economy. By repealing the 2020 Rule, USDA and the Forest Service conveyed their desire to build on the Alaska Region's economic drivers of tourism and fishing. The proposed rule recognized the importance of the Tongass as the world's largest remaining intact old-growth temperate rainforest and is consistent with USDA's Southeast Alaska Sustainability Strategy, announced on July 15, 2021. That strategy serves the broader economy of Southeast Alaska, supports community resiliency, and conserves the social, cultural, and ecologic values supported by the Tongass National Forest.

USDA invited the public to provide written comments on the proposed rule and associated documents during a 60-day comment period. Substantive comments received during the comment period were considered in developing the final rule, which was published on January 27, 2023 (*88 Fed. Reg. 5252*). The final rule returns management of the inventoried roadless areas on the Tongass National Forest to the management regime of the 2001 Roadless Rule.

Inventoried roadless areas in the Alaska Region include 9.37 million acres (56 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 2001 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 2001 Roadless Rule apply to National Forests in Alaska?

Yes, with the issuance of the January 27, 2023 final rule and Record of Decision, management of inventoried roadless areas on the Tongass National Forest will once again be in accordance with the 2001 Roadless Rule. That Rule also applies to management of inventoried roadless areas on the Chugach National Forest.

Q3. How do I know if my proposed project is in an inventoried roadless area?

Maps of the inventoried roadless areas on the Chugach and Tongass National Forests can be reached by following this link:

<http://www.fs.usda.gov/detail/roadless/2001roadlessrule/maps/statemaps/?cid=fsm8037699>

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 Alaska Regional Forester continues to review certain activities planned in inventoried roadless areas to ensure the forests in Alaska are applying a consistent approach to implementation of the Roadless Rule and that the agency is complying with its mandate to protect roadless area characteristics. Generally, the Regional Forester’s review, when needed, is completed within other, concurrent review processes, such as an environmental review process under the National Environmental Policy Act (NEPA).

The Regional Forester also identified activities that may be reviewed by local line officers. In general, line officers in the Alaska Region 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 2025, 72 projects within roadless areas in Alaska have been submitted for Secretarial, Chief, or Regional Forester review and all have been approved. Projects that have been approved at those levels include:

- mining projects;
- hydropower or intertie projects;
- a rockpit expansion project;
- 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 Regional Forester within a week of submission.

Note that this number of projects does not include projects that do not require Regional Forester or higher level approval, such as free use permits and habitat improvement/forest restoration projects. As noted above in response to Q7, local line officers have the authority to approve these types of projects.

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

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?

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, and trails and temporary access mats may also be authorized. 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:

<https://www.ferc.gov/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. While the Forest Service may impose mandatory conditions in the FERC license to ensure the adequate protection and use of forest land and resources, these 4(e) conditions cannot usurp FERC's role in deciding whether to license a hydropower facility, including their determination on the access necessary for facility development.

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
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Cordova Ranger District

P.O. Box 280
Cordova, AK 99574-0280
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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

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Sitka, AK 99835-7316
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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
(907) 945-3631

Glacier Ranger District

P.O. Box 129
145 Forest Station Road
Girdwood, AK 99587-0129
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Seward Ranger District

P.O. Box 390
334 Fourth Avenue
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Juneau Ranger District

8510 Mendenhall Loop Road
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Ketchikan-Misty Fiords Ranger District

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Petersburg Ranger District

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