State of Alaska's Role in the Alaska Roadless Rule Rulemaking Process

Public Scoping Meetings Presentation

Kyle Moselle, Associate Director
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September 2018

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Tim Dabney, Deputy State Forester
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Heidi Hansen
Deputy Commissioner
Alaska Department of Natural Resources

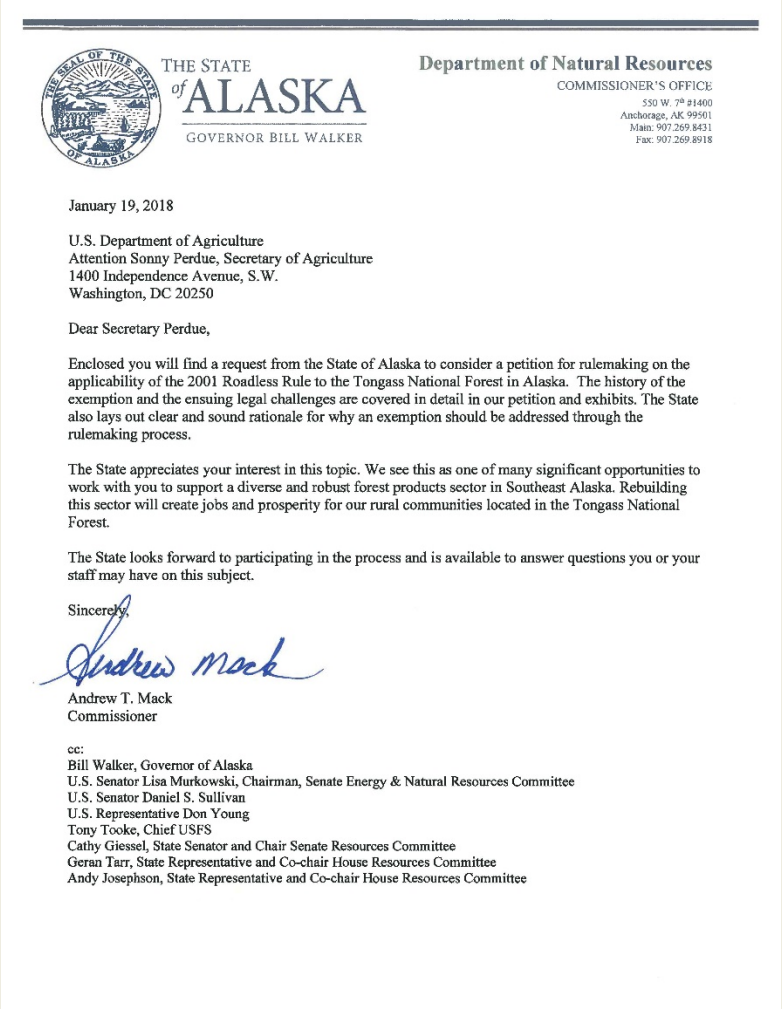
September 2018

OUTLINE

- State of Alaska Petition
- State and Forest Service Agreement
- Cooperating Agency
- Citizen Advisory Committee

STATE OF ALASKA PETITION

- Dated January 19, 2018
- From DNR Commissioner Andy Mack, on behalf of State of Alaska
- To USDA, Sec. Sonny Perdue
- Requests that the Forest Service undertake 1) rulemaking to consider exempting the Tongass National Forest from the National Roadless Rule, and 2) revisions to the 2016 Tongass Land & Resource Management Plan



THE STATE of ALASKA
GOVERNOR BILL WALKER

Department of Natural Resources
COMMISSIONER'S OFFICE
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January 19, 2018

U.S. Department of Agriculture
Attention Sonny Perdue, Secretary of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

Dear Secretary Perdue,

Enclosed you will find a request from the State of Alaska to consider a petition for rulemaking on the applicability of the 2001 Roadless Rule to the Tongass National Forest in Alaska. The history of the exemption and the ensuing legal challenges are covered in detail in our petition and exhibits. The State also lays out clear and sound rationale for why an exemption should be addressed through the rulemaking process.

The State appreciates your interest in this topic. We see this as one of many significant opportunities to work with you to support a diverse and robust forest products sector in Southeast Alaska. Rebuilding this sector will create jobs and prosperity for our rural communities located in the Tongass National Forest.

The State looks forward to participating in the process and is available to answer questions you or your staff may have on this subject.

Sincerely,

Andrew Mack

Andrew T. Mack
Commissioner

cc:
Bill Walker, Governor of Alaska
U.S. Senator Lisa Murkowski, Chairman, Senate Energy & Natural Resources Committee
U.S. Senator Daniel S. Sullivan
U.S. Representative Don Young
Tony Tooke, Chief USFS
Cathy Giessel, State Senator and Chair Senate Resources Committee
Geran Tarr, State Representative and Co-chair House Resources Committee
Andy Josephson, State Representative and Co-chair House Resources Committee

STATE AND FOREST SERVICE AGREEMENT

- Signed August 2, 2018
- Defines cooperation between State and USDA, Forest Service
- The Forest Service will lead the rulemaking and prepare an EIS
- The State will serve as a Cooperating Agency for the EIS process
- The State will lead a collaborative public process to inform the State's input as a cooperating agency

MEMORANDUM OF UNDERSTANDING BETWEEN
THE STATE OF ALASKA
AND
UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE

THIS MEMORANDUM OF UNDERSTANDING is hereby made and entered into by and between the State of Alaska by and through the Office of the Governor (hereinafter the "State"), and the United States Department of Agriculture, Forest Service, (hereinafter the "Forest Service") on behalf of the United States Department of Agriculture (hereinafter the "Department").

A. PURPOSE:

This Memorandum of Understanding ("MOU") is established by the undersigned parties to document the cooperation between the parties on the establishment of rules governing the management of inventoried roadless areas located within the National Forests in Alaska. The Governor of the State of Alaska submitted a petition (per the requirements of § 553 of the Administrative Procedure Act) to the Secretary of Agriculture, seeking exemption from the nationwide rules governing management of inventoried roadless areas on the Tongass National Forest in Alaska. On June 1, 2018, the Secretary of Agriculture directed the Chief of the Forest Service to initiate a state-specific rulemaking for roadless management direction for the Tongass National Forest in Alaska on behalf of the Department.

In accordance with the Council on Environmental Quality regulations (40 C.F.R. §§ 1501.6, 1508.5), the State of Alaska is hereby established as a cooperating agency in the preparation of analysis and documentation under the National Environmental Policy Act ("NEPA") associated with this rulemaking. The state-specific rulemaking process will include publishing a proposed rule for public review and comment and preparing an Environmental Impact Statement.

For the purpose of this MOU, the applicable "inventoried roadless areas" are those in Alaska that are described and defined in the 2001 Roadless Area Conservation Rule (66 FR 3243, 3272, Jan. 12, 2001), and "Alaska roadless areas" are those in Alaska that an Alaska-specific roadless rule would apply. It is anticipated that the parties will reach a mutual agreement regarding an Alaska roadless area database for those roadless areas in Alaska prior to the development of specific regulatory language.

B. AUTHORITY:

This agreement is authorized pursuant to the Organic Administration Act of 1897, 16 U.S.C. §551; Multiple Use, Sustained Yield Act, 16 U.S.C. §§528-531; Forest and Renewable Resource Planning Act of 1974, as amended by the National Forest Management Act of 1976, 16 U.S.C. §§ 1601-1614; see also 23 U.S.C. 201, 205, Administrative Procedure Act 5 U.S.C. §553, 7 C.F.R. §1.28; 40 C.F.R. Parts 1500-1508.

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CITIZEN ADVISORY COMMITTEE

- Administrative Order No. 299, signed September 6, 2018, established the Alaska Roadless Rule Citizen Advisory Committee
- The Committee will consist of up to 13 voting members, representing federally recognized tribes in Alaska and Alaska Native regional corporations; environmental organizations; the timber, mining, tourism, energy, and commercial fishing industries; and state and local governments.
- The Committee will produce a report with recommendations to Governor Walker and State Forester by November 30, 2018

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Governor Bill Walker
STATE OF ALASKA

ADMINISTRATIVE ORDER NO. 299

I, Bill Walker, Governor of the State of Alaska, under the authority of Article III, Sections 1 and 24 of the Constitution of the State of Alaska, and in accordance with AS 44.19.145(c), establish the Alaska Roadless Rule Citizen Advisory Committee.

FINDINGS

In 2001, the State of Alaska filed a complaint in the United States District Court, District of Alaska, challenging the United States Department of Agriculture (USDA), Forest Service's adoption of the 2001 Roadless Area Conservation Rule (Roadless Rule) and its application in Alaska. 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. The exemption was challenged, and on July 29, 2015, a bare majority of the Ninth Circuit Court of Appeals held that the 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. Consequently, the Roadless Rule remains in effect in the Tongass and Chugach National Forests in Alaska.

The USDA is initiating an Environmental Impact Statement (EIS) and public rulemaking process to address the management of inventoried roadless areas, on the Tongass National Forest System lands, within the State of Alaska. This rulemaking is the result of a petition submitted by the State of Alaska in January 2018 under the federal Administrative Procedure Act. The petition was accepted by the United States Secretary of Agriculture in April 2018.

The purpose of the USDA's rulemaking process is to develop a state specific roadless rule that establishes a land classification system designed to conserve roadless area characteristics in the Tongass National Forest, while accommodating timber harvesting and road construction and reconstruction activities that are determined by the state to be necessary for forest management, economic development opportunities, and the exercise of valid existing rights or other nondiscretionary legal authorities. The United States Forest Service will prepare an EIS to analyze and disclose potential environmental consequences associated with this rulemaking.

As part of the rulemaking process, the State entered into a Memorandum of Understanding (MOU) with the USDA on August 2, 2018. Under the MOU, both parties agree to establish a State-Forest Service Executive Steering Committee to coordinate implementation of the MOU and the rulemaking process. The MOU also requires that the state convene an advisory committee consisting of a diverse mix of stakeholders to provide input to the State during the rulemaking process.

CITIZEN ADVISORY COMMITTEE

Citizen Advisory Committee

- Review & discuss relevant information
- Provide the State up to three options for a state-specific roadless rule
- Provide additional input, if requested

Cooperating Agency Team

- Consider input from Citizen Advisory Committee
- Develop State input to the Forest Service
- Assist the Forest Service in developing the EIS

Forest Service

- Prepare required analyses and documentation for the rulemaking
- Consider State and public input
- Dept. of Agriculture issues Record of Decision

State of Alaska Representatives

Heidi Hansen
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Role: Cooperating Agency lead

Questions?

Haw'aa/Gunalchéesh/Tsin'aen/Taikuu/Thank You