Organized Village of Kake
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(Federally Recognized Tribal Government serving the Kake, Alaska area)

September 7, 2018

Forest Supervisor Earl Stewart
U.S. Forest Service
Tongass National Forest
648 Mission Street
Federal Building
Ketchikan, AK 99901-6591

RE: Scoping Period for the Roadless Rule

Dear Mr. Stewart,

The Organized Village of Kake (OVK) is the federally recognized Indian Tribe organized under the authority of the Indian Reogranization Acts of 1934 and 1936. OVK is empowered under its Constitution and By-Laws "to aid needy citizens and protect the general welfare and security of the village." One of OVK's highest priorities is to protect the Village's customary and traditional hunting, fishing and gathering areas and uses within the Keex' Kwaan's (Children of Kake) traditional territory.[1] These lands include national forest lands on Kuiu and Kupreanof Islands, as well as portions of the mainland.

On August 2, 2018, in response to the State of Alaska's petition for a full exemption from the 2001 Roadless Area Conservation Rule (Roadless Rule), the Forest Service signed a Memorandum of Understanding with the State of Alaska to develop an Alaska state-specific roadless rule to address the management of inventoried roadless areas on the Tongass National Forest in Southeast Alaska. The U.S. Department of Agriculure announced on August 30, 2018 its intent to prepare an environmental impact statement (EIS) and public rulemaking process to According to the Notice of Intent, the State of Alaska will participate as a cooperating agency in the preparation of the EIS and "Federally recognized Tribes within the Tongass National Forest have been invited to particpate as a cooperating agency." The notice further gave notice of eleven public meetings planned in Southeast Alaska, incuding Kake on September 26, 2018.

Pursuant to Executive Order 13175, Departmental Regulation No. 1350-002, and Forest Service Manual (FSM), the United States Forest Service has adopted official policy regarding American Indian and Alaska Native relations. Pursuant to FSM 1563.02, paragraph 4, agency officials are to "[s]upport the aspirations of the UN Declaration on the Rights of Indigenous Peoples." Specifically, this means "that agency officials should consult with indigenous people – the duly elected officials of federally recognized tribes and the traditional holders of Indian religions, knowledge, and practices – early in their decision-making processes." To further this

[1] Goldschmidt & Haas (1946). A map of the traditional territory of the Kake Tlingit prepared by Goldschmidt and Haas is attached, for your information.

objective, it is the policy of the Forest Service that "Indian tribes will be provided the opportunity for timely and meaningful government-to-government consultation regarding actions which may have tribal implications." *See* FSM 1563.03. Such consultation requires the agency to "[c]ollaboratively involve Indian tribes, as early as possible, in the development of regulatory and management policies, resource and land management plans, study plans and actions, and Federal undertakings that may have tribal implications." *Id.* at 3.b.

The U.S.D.A. and Forest Service entered into the MOU with the State of Alaska and issued the NOI for preparation of an EIS for an Alaska-specific roadless rule without any consulting or collaboration with OVK, in violation of policies under Executive Order 13175, Departmental Regulation No. 1350-002, and the Forest Service Manual. OVK strongly object to the agency's utter failure to consult with OVK prior to responding to the State of Alaska's petition and initiating preparation of an EIS to support the rulemaking process. The belated invitation to the Tribe to participate as a cooperating agency, and holding a scoping hearing in Kake, cannot compensate for the agency's abject failure to consult and collaborate with the Tribe before proceeding with this Alaska-specific rulemaking – particularly when the proposed rulemaking has such grave and drastic tribal implications for the many tribal citizens who rely on these lands. Likewise, the State of Alaska's establishment the Alaska Roadless Rule Citizen Advisory Committee, which will include at least one member representing a federally recognized Tribe, will not address our concerns. First, it appears that this committee by design will not assure fair and balanced representation of both development and non-development interests. Secondly, the proposed schedule for the committee providing recommendations to the Governor and State Forester elevates satisfying the State's hurried and arbitrary timeline above the interests of any other stakeholders in this process.

In a recent fact sheet put on the agency's Alaska Roadless Rule web site, the agency clarifies what this rulemaking process will affect the 2016 Tongass Plan Amendment by stating:

> The Alaska Roadless Rule will not make any changes to the 2016 Tongass Land Management Plan or projects currently being implemented or proposed to implement the transition to a primarily young-growth timber program. Following a final decision on a state-specific roadless rule, the Tongass National Forest Land Management Plan could be amended or revised to reflect any management designations established by the state-specific rule.

We disagree. Since the Plan incorporated the recommendation from the Tongass Advisory Committee to exclude roadless areas from the timber base, clearly adoption of a rule that weakens or eliminates Roadless Area protections on the Tongass will have a substantial effect on the existing plan. We are particularly concerned that the Forest Service will delay revising the Plan and amend it to authorize logging in roadless areas on a project-by-project basis. In such circumstances, it is likely the agency will tier to the analysis contained in any EIS prepared for this rulemaking. Given the agency must consult and coordinate forest planning on the Tongass with Alaska Native Tribes (36 C.F.R. 291.4), we are gravely concerned that the agency's failure to consult and collaborate adequately with the Tribe on this Alaska-specific rule will impair the agency's performance of its responsibility to consult and coordinate with the Tribe regarding forest planning. Both outcomes impair the Tribe's responsibility to "protect the general welfare and security of the village."

Given where we are at this process, we recommend the Forest Service withdraw the August 30th notice and immediately comply with its responsibilities to consult and collaborate with the Tribes. Another, less preferable option, would be to extend the deadline for submitting scoping comments from October 15th until at least December 3rd. Such an extension would help ensure that OVK has at least 90 days to engage with its citizens and the Forest Service on this issue of such enormous controversy.

Gunalcheesh,

Joel Jackson pres.

Joel Jackson
President

Cc: Petersburg District Ranger David Zimmerman, dlzimmerman@fs.fed.us
Acting Alaska Regional Forester David E. Schmid, dschmid@fs.fed.us
USDA Forest Service Interim Chief Vicki Christiansen, vcchristiansen@fs.fed.us

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