



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

April 27, 2020

The Honorable Frank Murkowski
Governor
State of Alaska
Fairbanks, Alaska 99707

Dear Governor Murkowski:

Thank you for your letter of March 2, 2020, regarding the Citizen Advisory Committee's recommendations on the Alaska-specific roadless rule. I apologize for the delayed response.

The State of Alaska raised similar issues in their comments on the Draft Environmental Impact Statement and through their role as a cooperating agency in the rulemaking effort.

In my letter to you dated February 25, 2020, I offered my assurance that during the development of an Alaska-specific roadless rule, the U.S. Department of Agriculture's Forest Service would revisit and carefully evaluate the Citizen Advisory Committee's recommendations regarding new exceptions. The Forest Service engaged with the State of Alaska as a cooperating agency multiple times since January of this year and has modified the rule language under each alternative to address concerns raised by you and the State.

Aligned with the Citizen Advisory Committee recommendations, you also requested that the final rule mandate the authorization of certain roads. The proposed Alaska Roadless Rule is programmatic in nature and does not authorize any ground-disturbing activities, nor does it analyze environmental effects to a level sufficient to authorize site-specific road projects. That work must be done at the project scale with appropriate public outreach and required environmental review under the National Environmental Policy Act.

Thank you for your continued support and commitment to the people of Alaska.

Sincerely,

A handwritten signature in blue ink that reads "Sonny Perdue".

Sonny Perdue
Secretary



Frank H. Murkowski

United States Senator-Alaska (1981-2002)
Governor of the State of Alaska (2002-2006)

March 2, 2020

The Honorable Sonny Perdue
Secretary
US Department of Agriculture
1400 Independence Ave, SW
Washington, D.C. 20250

Dear Mister Secretary;

Thank you for the significant time you and United States Department of Agriculture (USDA) have devoted to moving forward the current Tongass-specific Rulemaking and to restoring responsible management of resources on national forest land in Alaska.

As you know, USDA will soon be releasing the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for the Alaska Specific Roadless Rule. Starting at the time the 2001 Roadless Rule was applied to the Tongass, six Governors (including me) and the Alaska Congressional Delegation (including me) have urged USDA that the Tongass be totally exempt from the Roadless Rule. In 2003 USDA issued a Rule that exempted the Tongass. USDA has never changed its policy, notwithstanding a 9th Circuit decision which blocked implementation of USDA's 2003 Exemption on procedural grounds.

In January 2018 Governor Walker petitioned USDA for an Alaska-specific Rule that would totally exempt the Tongass. USDA asked Governor Walker to appoint a Citizen's Advisory Committee (CAC) (representing diverse interests) to identify significant new exceptions to be added to the Roadless Rule to protect communities, renewable energy, and mining if Roadless Areas were to remain in place.

The CAC held several meetings throughout Southeast Alaska during which it identified needed exceptions to the 2001 Roadless Rule to be added to the existing exceptions if Roadless Areas were to remain in place. The CAC also proposed

language to implement these new exceptions which was designed to provide certainty to the way in which they would be applied.

Each of the 2001 exceptions to the Roadless Rule (36 C.F.R. §294.12 (b)(1-7) is preceded by the words “if the Responsible Official determines that ... a road is needed,” thereby leaving it up to the Forest Service’s “Responsible Official” to decide whether a road is needed. But there are no criteria for making that decision - the availability of an existing exception is at the total discretion of the Responsible Official.

The CAC implementing language therefore made granting a road mandatory if the applicant met the environmental and resource protection criteria for approval of 36 C.F.R. Part 228. The thinking was as follows: It is the Forest Service’s job is to protect the environment and other resources. As long as that obligation is satisfied, the Responsible Official should not have the discretion to disapprove an application because he/she doesn’t think a road “is needed” – particularly when there are no criteria for making that decision.

However, the CAC implementing language was not included in any of the alternatives (2 – 5) in Appendix G of the Draft Environmental Impact Statement. (DEIS). One can see that this is the case by simply comparing the CAC’s language proposals to implement its recommendations for new exceptions (found at pages 7 – 10 of the attached CAC Report) with the implementing language for DEIS alternatives 2 -5 set out in Appendix G and the language in 36 C.F.R. §294.12 (b)(1-7).

For example, the CAC proposed the following mandatory language to provide road access to mining (so long as it meets the criteria of 36 C.F.R. Part 228) be included in each alternative 2 – 5:

Road Exception 11 (page 7): A road to access mineral operations authorized by the United States mining laws (30 U.S.C. § 22 et seq.) shall be permitted in IRAs if it meets the criteria of 36 C.F.R. Part 228 in the same way as if the application for the road to access such mineral operations were being permitted on non-IRA National Forest lands.

However, the Appendix G language implementing Alternative 5 (the most developmentally oriented of the alternatives other than Total Exemption) provides no change:

§294.52 (c) Notwithstanding the prohibition in paragraph (a) of this section, a road may be constructed or reconstructed in an Alaska Roadless Area designated as a Roadless Priority if the Responsible Official determines that one or more of the following circumstances exist:

(1) A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty;

This is exactly the same as the exception language currently used in the 2001 Roadless Rule 36 C.F.R. §294.12 (b)(3) that the CAC was trying to change:

A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty;

This failure to change current requirements is replicated throughout each alternative. The CAC's mandatory exception language that the State provided to USDA was not included in any alternative. (See Appendix G, alternatives 2 - 5). Instead, as is seen in the example above, each road and timber harvest exception is preceded by the words "if the Responsible Official determines that ... a road is needed," thereby leaving it up to the Forest Service's "Responsible Official" to decide whether a road is needed without any criteria for doing so.

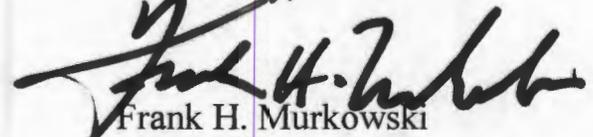
This is the existing situation already maintained by the "No Action" alternative. It is exactly what the CAC recommendations sought to change in order to provide regulatory certainty and predictability.

Accordingly, the relief from the Roadless Rule access prohibitions that the CAC exceptions listed below were intended to provide for communities, renewable energy, timber and mining can only be achieved by adopting the Total Exemption alternative as the Final Rule in the ROD.

For these reasons I urge USDA to adopt Total Exemption as the Final Rule.

Thank you for your consideration.

Yours truly,



Frank H. Murkowski
U.S. Senator Alaska
1980 - 2002

**Alaska Governor
2002 - 2006**

**Cc: Undersecretary Jim Hubbard
Forest Service Chief Victoria Christensen
Forest Service Deputy Chief Chris French
Governor Mike Dunleavy
Senator Lisa Murkowski
Senator Dan Sullivan
Congressman Don Young**

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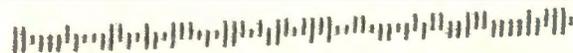
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