

**In The
Supreme Court of the United States**

—◆—
STATE OF ALASKA,

Petitioner,

v.

ORGANIZED VILLAGE OF KAKE, ALASKA, et al.,

Respondents.

—◆—
**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

—◆—
**BRIEF OF THE CITY OF CRAIG, ALASKA; THE
KETCHIKAN GATEWAY BOROUGH, ALASKA; THE
CITY OF KETCHIKAN, ALASKA; THE CITY AND
BOROUGH OF WRANGELL, ALASKA; ALASKA
ELECTRIC LIGHT & POWER; ALASKA POWER &
TELEPHONE; THE ALASKA MINERS'
ASSOCIATION, INC.; HYAK MINING COMPANY;
SOUTHEAST ROADBUILDERS, INC.; ALASKA
MARINE LINES, INC.; TYLER RENTAL INC.; FIRST
BANK; FIRST THINGS FIRST FOUNDATION; AND
RESOURCE DEVELOPMENT COUNCIL OF ALASKA
AS AMICI CURIAE IN SUPPORT OF PETITIONER**

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**IDENTITY AND INTEREST
OF THE AMICI CURIAE¹**

Pursuant to Rule 29(a) of the Federal Rules of Civil Procedure, Amici Curiae, The City of Ketchikan, Alaska; The Ketchikan Gateway Borough, Alaska; The City of Craig, Alaska; The City and Borough of Wrangell, Alaska; Alaska Electric Light & Power; Alaska Power & Telephone; The Alaska Miners' Association, Inc.; Hyak Mining Company; Southeast Roadbuilders, Inc.; Alaska Marine Lines, Inc.; Tyler Rental Inc.; First Bank; First Things First Foundation; and Resource Development Council of Alaska, respectfully submit this brief in support of Petitioner.

The Amici are Southeast Alaska communities (not accessible by road) and utilities and businesses operating in Southeast Alaska, the economies and well-being of which are highly dependent on natural resource development.



¹ In accordance with Rule 37 of the United States Supreme Court Rules of Appellate Procedure undersigned counsel certify that they authored this brief in whole and that no one other than the Amicus Curiae, its members, or its counsel, made a monetary contribution to the preparation or submission of the brief. Counsel of record have been timely notified and consent to the filing of this Amicus Curiae brief.

SUMMARY OF ARGUMENT

When the 9.6 million acres of inventoried roadless areas (IRAs) in the Tongass National Forest are combined with the 5.6 million acres of designated Tongass Wilderness Areas, more than 90% of the 16.9 million acre Tongass National Forest is unavailable for timber harvest and roadbuilding (with 7 limited exceptions for roadbuilding under the 2001 Roadless Rule). Because Southeast Alaska communities and businesses are in, and surrounded by, the Tongass National Forest, the 2001 Roadless Rule's prohibition against roadbuilding in the 9.6 million acres of IRAs significantly limits their ability to develop roads, build utility connections, access new sources of renewable energy, and develop the natural resources critical to their economic and social well-being.

In justifying its January 12, 2001 policy decision to immediately apply the Roadless Rule to the Tongass National Forest, the outgoing Clinton Administration decided that: "the agency had sufficient information to analyze the environmental, social and economic effects of prohibiting road construction, reconstruction and limited timber harvesting on the Tongass National Forest and did not see the value in deferring the issue to further study prior to making a decision."² The Clinton Administration made this policy decision notwithstanding its factual conclusion that the decision would cause the loss of 996 direct

² *Special Areas; Roadless Area Conservation*, 66 Fed. Reg. 3244, *et seq.* (Jan. 12, 2001), at 3254-3255.

and indirect jobs³ – a huge number of jobs for a region having a population of less than 70,000 people.

Based upon the same facts and record, the incoming Bush Administration made a different policy decision – largely because of the weight it put upon the adverse social and economic impacts of the 2001 Roadless Rule to Southeast Alaska communities (catalogued below). The new Administration stated that:

- 1) it had “serious concerns about the previously disclosed economic and social hardships that application of the rule’s prohibition could cause in communities throughout Southeast Alaska;”⁴
- 2) “[e]very facet of Southeast Alaska’s economy is important, and the potential adverse impacts from application of the roadless rule are not warranted given the abundance of roadless areas and protections already afforded in the Tongass Forest Plan;”⁵
- 3) “[r]oadless areas are common, not rare, on the Tongass National Forest and most Southeast Alaska communities are significantly impacted by the roadless rule. The department believes that exempting the Tongass from the prohibitions in the roadless rule is

³ 66 Fed. Reg. at 3255.

⁴ *Special Areas; Roadless Area Conservation; Applicability to the Tongass National Forest, Alaska*, 68 Fed. Reg. 75,136, *et seq.* (Dec. 30, 2003) at 75,137.

⁵ 68 Fed. Reg. at 75,142.

consistent with congressional direction and intent of ANILCA in [the Alaska National Interest Land Conservation Act of 1980] and TTRA [the Tongass Timber Reform Act of 1990];”⁶ and

- 4) this decision reflects the facts, as displayed in the FEIS for the roadless rule and the FEIS for the 1997 Tongass Forest Plan that roadless values are plentiful on the Tongass and are well protected by the Tongass Forest Plan. The minor risk of loss of such values is outweighed by the more certain socioeconomic costs of applying the roadless rule’s prohibitions to the Tongass. Imposing those costs in the local communities of Southeast Alaska is unwarranted.⁷

In conclusion, the only change in the 2003 Rule from the 2001 Rule was that in 2003, as a matter of policy, USDA placed more weight on the adverse social and economic impacts upon communities and businesses in Southeast Alaska.

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ARGUMENT

Amici join the State of Alaska in requesting a Writ of Certiorari in the above-captioned case. Amici

⁶ *Ibid.*

⁷ 68 Fed. Reg. at 75,144.

support and hereby incorporate by reference all arguments put forth in Alaska's Petition explaining why this case raises legal questions of exceptional importance.

It is the purpose of this brief to catalogue the economic and social hardships on the communities, businesses, and people of Southeast Alaska that USDA acknowledged and sought to avoid with its 2003 Rule.

I. HARMS TO COMMUNITIES ARISING FROM APPLICATION OF THE ROADLESS RULE TO THE TONGASS

The Ketchikan Gateway Borough (KGB) is a local government and political subdivision of Alaska located in Southeast Alaska. KGB is one of the largest geographical (3,109,385 acres) and populated (13,825 people) governmental units located within the Tongass National Forest. KGB is inaccessible by road. Approximately 3,050,650 acres, or 97%, of the lands within the KGB are Tongass National Forest lands. Of this 677,313 acres or 22% of the KGB's entire land area is comprised of IRAs.

For over 60 years, the KGB served as a key headquarters and supply center for the timber industry. During that time many of the KGB's citizens were employees of the timber companies, associated road-builders, and their many suppliers.

A significant number of indirect jobs were generated within the KGB by such direct employment and

other economic activity arising out of timber industry operations. There has been a steady decline in timber industry employment and related economic activity in the KGB since Ketchikan Pulp Company closed in March 1997. This decline has been exacerbated by reinstatement of the 2001 Roadless Rule.

KGB is responsible for the maintenance of one of the largest school districts in the Tongass National Forest. KGB has traditionally depended upon school funding from receipts from the Forest Service's timber sale program. As those receipts diminish, the amount of money available for schools is reduced.

KGB is spending several hundreds of thousands of dollars to install a system to heat the Ketchikan International Airport with woody biomass. KGB is also spending a significant amount of money to design a woody biomass system to heat the KGB School District high school. Woody biomass heating will be more effective if the capacity to produce a sufficient quantity of wood pellets is achieved locally. That goal depends upon adequate wood waste from timber sales.

All of the KGB's and the City of Ketchikan's electric power is currently supplied by Southeast Alaska Power Authority (SEAPA) from hydroelectric power from the Swan Lake and Tyee dams. KGB's needs for power are increasing as residential users and businesses within the KGB switch from heating oil to electric heat. KGB's policy is to meet these needs

with hydroelectric power, because it avoids emitting air pollutants caused by generating electricity with diesel fuel. But the KGB is limited in its ability to do so because road access to hydro sites through IRAs is constrained by the reinstated 2001 Roadless Rule.

Residents of the KGB are anticipating additional hydroelectric power from the joint venture that Alaska Power & Telephone (AP&T) has entered with Cape Fox Village Corporation to construct the 9.5 MW Mahoney Lake Project. Although the project is on private land, the preferred route for the transmission lines to deliver the power to Ketchikan passes through an IRA. This means that longer, more expensive transmission line routing must be found, if any exists at all.

KGB will be the supply and service center for two potential mines on Prince of Wales Island – the Niblack copper-gold-zinc-silver project and the Ucore rare earth project. Even though the 2001 Roadless Rule specifies: “Reasonable rights of access may include, but are not limited to, road construction and reconstruction, helicopters, or non-motorized access” (FEIS Vol. 1, 3-329 to 3-350),⁸ the experience of the mining community is that Special Use Permits authorizing road access into or near Wilderness Areas are very difficult to obtain as a practical matter. The same difficulties are being experienced in IRAs.

⁸ 66 Fed. Reg. at 3244, 3264.

KGB is the endpoint for the Inter-Island ferry which transports passengers, automobiles, and cargo between Ketchikan and Prince of Wales Island. By causing a drop in the Prince of Wales population due to job loss at the Viking Lumber mill, which in turn is caused in large part by the prohibition on timber sales and associated roadbuilding, the 2001 Roadless Rule will potentially affect ferry traffic with a consequential adverse impact on the KGB.

The City of Ketchikan is a political subdivision of the State that is separate and apart from the KGB. 8,134 of the KGB's 13,825 residents live in the City. Ketchikan Public Utilities (KPU), a wholly owned subsidiary/department of the City of Ketchikan, provides electric power to all citizens and customers of the KGB.

KPU was created in 1932 when the City purchased the Citizen's Light and Power Company, which first started delivering power to Ketchikan in 1903. KPU is owned by the citizens of Ketchikan. KPU provides hydroelectric power to 5,832 residential, commercial, and industrial customers in the KGB.

KPU owns and operates Ketchikan Lakes Hydro Project, and Beaver Falls Hydroelectric Project (which includes Silvis Lakes). KPU operates Swan Lake Hydroelectric Project, which is managed by SEAPA. Ketchikan also receives energy via the SEAPA operated Swan-Tyee Intertie transmission

line, which now connects the community to Wrangell and Petersburg's electrical grids.

KPU is poised to construct and/or has identified future hydroelectric projects in the Tongass, including the Whitman Lake Hydroelectric Project (4.6 MW), the Metlakatla-Ketchikan Intertie (5 MW), and Cape Fox/Alaska Power & Telephone's Mahoney Lake (9 MW). KPU is also participating with other regional utilities to develop an "integrated resource plan" (IRP) to facilitate growth and development throughout the greater Southeast Alaska region. All of these projects would be located either wholly or partially within IRAs.

KPU and its residential, commercial, and industrial customers are being harmed significantly by their inability to develop new sources of hydroelectric, geothermal, and other types of renewable electric power due to the access constraints of the reinstated 2001 Roadless Rule. KPU will also be harmed by the inability to construct transmission lines from such sites to the KGB, and by the inability to construct roads to bring generators and other heavy equipment to such sites from tidewater.⁹

⁹ 66 Fed. Reg. at 3259: Comment: "Some respondents were concerned about the . . . ability to construct or maintain roads in inventoried roadless areas to access electric power or telephone lines, pipelines, hydropower facilities, and reservoirs." Response: "***Existing*** authorized uses would be allowed to maintain and operate within their ***current*** authorization, including any provisions regarding access." (Emphasis added). The use of the words

(Continued on following page)

One of the key economic components of the Ketchikan economy for the last 50 years has been the jobs, equipment sales, and other economic activity generated by timber harvest and associated road-building from the Tongass National Forest. The current Allowable Sale Quantity for timber harvest authorized by the 2008 Amended Tongass Land Management Plan (TLMP)¹⁰ is 267 million board feet per annum (MMBF). Under the reinstated 2001 Roadless Rule, the USDA estimates that no more than 50 MMBF can be sold annually. This is significantly less than market demand. This reduction in timber harvest has, in turn, reduced economic opportunity for Ketchikan businesses and residents. It affects the economy of Ketchikan and the tax base of the City, which depends on property tax and sales tax for 51% of its annual revenue.

The City of Craig is located on Prince of Wales Island, approximately 100 air miles from Ketchikan and a several hour ferry ride from Ketchikan. Access to Prince of Wales Island is limited to boat or small plane. Prince of Wales Island has a population of approximately 4,000, made up of identifiable

“existing” and “current” indicates that future (i.e., after January 12, 2001) construction of hydropower facilities or roads to access them would not be allowed.

¹⁰ 2008 Amended Tongass Land Management Plan (TLMP) Forest Service R10-MB-603b.

small communities ranging in population from 10 to 1,100.

The City of Craig is highly dependent for jobs and revenue on the Viking Lumber Company Mill (“Viking”) which is located 6 miles from Craig. Viking provides 92 direct and indirect jobs in Craig. Craig will lose a significant portion of its tax base if Viking is driven out of business, or if its business is diminished or employment reduced as a consequence of the Viking’s inability to obtain timber due to the 2001 Roadless Rule.

In addition to the loss of property taxes and the loss of revenue that Viking contributes to the Prince of Wales Island economy, most of Craig’s harms will be non-financial impacts. For example, the loss or reduction of the 92 direct and indirect jobs associated with the closure of Viking Lumber Company will inevitably mean the loss of population in Craig. Because there is no alternative work many people who lose their jobs will leave Craig with their families for work elsewhere. This will have a dramatic effect on the school population. The Craig School District could lose 22 students if Viking closes.

This enrollment loss would be in addition to the 100 students that have been lost since 1998. Enrollment today constitutes a 20 year low. Because in rural areas of Alaska, such as Craig, the school is the center of communal activity, this would be a significant social loss.

Because Alaska financially supports school districts using a formula based on the number of students enrolled in the district, funding for Craig's schools would be reduced by the loss of students. This would cause significant harm to Craig.

The people of Prince of Wales Island generate electricity with diesel and thus pay high energy costs. Viking supplies wood chips to the Craig wood heating project which are used to heat Craig's Elementary and Middle schools and Aquatic Center, thus providing "green" energy to public buildings. There is no other source of wood to supply the alternative energy wood-fired boilers.

The City and Borough of Wrangell, Alaska (CBW) is located on Wrangell Island which is approximately 82 miles northeast of Ketchikan and approximately 100 air miles southeast of Juneau. It is completely surrounded by the Tongass National Forest and accessible only by air and water. It has a population of 3,000 people.

For over 60 years, CBW served as a headquarters and supply center for the timber industry in Southeast Alaska. The Alaska Pulp Corporation (APC) sawmills were a major employer in Wrangell until they shut down due to a lack of timber supply and the termination of APC's long-term contract in March 1993. The loss of these jobs had a major impact on the economy of the CBW.

Because of its central location in Southeast Alaska, its existing deep-water port, its workforce,

and space for log storage, Wrangell is an ideal site for timber processing facilities in Southeast Alaska. Indeed, the USDA had previously considered a 10 year timber sale in the area centered on the CBW. Such a sale is now unattractive because of the 2001 Roadless Rule's prohibitions on timber development and associated roadbuilding within IRAs.

The CBW is responsible for a large school district which traditionally has depended upon school funding from receipts from the U.S. Forest Service timber sale program. As those receipts diminish, the amount of money available for schools is reduced.

Because of these adverse socio-economic impacts on communities, the USDA was justified in changing policy in 2003 to exempt the Tongass from the 2001 Roadless Rule.

II. INTERFERENCE OF THE ROADLESS RULE WITH RENEWABLE ENERGY DEVELOPMENT IN THE TONGASS

A. THE SOUTHEAST ALASKA UTILITIES HAVE THE ABILITY TO DEVELOP NEW HYDROPOWER FACILITIES IN THE TONGASS

Alaska Electric Light & Power (AEL&P) has provided hydroelectric power to Juneau for over 100 years. The company was founded in 1893 to provide power to the Treadwell Mine near Juneau. In 1914, AEL&P built a run-of-river facility in Gold Creek near Juneau after fire destroyed the original power

house that had been built in 1893. Construction of the Salmon Creek Dam was completed in 1913. It was the first constant-angle arch dam of its height and width ever built. The Annex Creek lake tap Hydroelectric Project was developed in 1916.

The Gold Creek, Salmon Creek, and Annex Creek hydroelectric facilities continue to provide power to the City and Borough of Juneau (CBJ). The Snettisham Hydroelectric Project was constructed between 1967 and 1973 by the Alaska Power Authority which transferred it to the State of Alaska in 1998. By contract the Snettisham project is managed, operated, and maintained by AEL&P. The Snettisham facility is the major source of electric power to the CBJ. Because of increasing power needs, AEL&P constructed the Lake Dorothy Project starting in 1998. That project went on line in 2009.

AP&T is a privately held, employee-owned utility formed in Skagway, Alaska in 1957. The company's oldest hydropower project, Dewey Lakes, has produced clean, hydroelectric energy continuously since 1902.

Starting in 1995, AP&T responded to rising fuel prices by converting from 90% diesel-based generation to 75% renewable energy, through construction of small hydropower facilities. For example, AP&T constructed the 4.5 MW Black Bear Lake Hydroelectric Project on Prince of Wales Island in 1995. It built the 4.0 MW Goat Lake Hydroelectric Project serving Haines and Skagway, Alaska in 1997, the 2.0 MW

South Fork Hydroelectric Project in 2006, and the 3.0 MW Kasidaya Creek Hydroelectric Project near Skagway in 2008. AP&T assisted Gustavus Electric Company in development of the 800 KW Falls Creek hydropower project in Gustavus, which it subsequently acquired in 2014. The 9.6 million acres of IRAs created by the 2001 Roadless Rule severely restrict access to new hydropower sites.

B. THE ROADLESS RULE HARMS DIESEL POWER-DEPENDENT RURAL SOUTHEAST ALASKA COMMUNITIES BY PROHIBITING HYDROPOWER DEVELOPMENT

Hydropower has been used to generate power in Southeast Alaska for over 120 years. In 1947, the first Federal study of the potential for a regional electrical intertie was prepared by the Federal Power Commission (precursor to the Federal Energy Regulatory Commission) and the Forest Service. Entitled “Water Powers of Southeast Alaska,” the joint study identified over 200 potential hydropower sites in Southeast Alaska and observed: “In developing a power system many of these projects would logically be connected with high voltage transmission.”

As evidenced by the numerous studies the USDA conducted since then and by the hydro projects the federal government has constructed in Southeast Alaska, such as the Snettisham Project, USDA was certainly aware of the hydropower potential of

Southeast Alaska when the 2001 Roadless Rule was promulgated.

Nevertheless the Response to Comments in the 2001 Roadless Rule's Preamble makes clear that road construction in support of new hydropower projects developed after January 12, 2001 is prohibited in IRAs, including IRAs in the Tongass:

Comment on Existing Authorized Activities. Some respondents were concerned about the impact of the rule on special uses and requested clarification regarding the ability to construct or maintain roads in inventoried roadless areas to access electric power lines or telephone lines, pipelines, hydropower facilities, and reservoirs.

...

Response. Section 294.14(a) of the proposed rule stated that the rule would not suspend or modify any *existing* permit, contract, or other legal instrument authorizing the use and occupancy of the National Forest System lands. *Existing authorized uses* would be allowed to maintain and operate within the parameters of their current authorization, including any provisions regarding access.¹¹

The conclusion that the 2001 Roadless Rule limits road construction to hydropower sites existing at

¹¹ 66 Fed. Reg. at 3259 (emphasis added).

the time the 2001 Roadless Rule was promulgated is specifically stated in the Rule's Preamble:

The final rule retains all of the provisions that recognize *existing* rights of access and use. Where access to these facilities is needed to ensure safe operation, a utility company may pursue necessary authorizations pursuant to the terms of the *existing* permit or contract.¹²

Finally, this conclusion is further supported by Table 1, which summarizes the costs and benefits of the Final Rule. It describes the impact of the Final Rule on "Special Use authorizations (such as communications sites, electric transmission lines, pipelines)" as follows: "Current use and occupancies not affected, future developments requiring roads excluded in inventoried roadless areas unless one of the exceptions applies."¹³

Because there is no mention of *future* utilities, or any mention of hydropower, the application of the *inclusio unus, exclusion alterus* canon of construction, means that the 2001 Roadless Rule does not allow new roads for future development.

This prohibition severely impacts the ability of all the residential, commercial, and industrial customers within Southeast Alaska to develop new

¹² 66 Fed. Reg. at 3256 (emphasis added).

¹³ 66 Fed. Reg. at 3270.

sources of clean hydropower. It particularly harms the small, rural areas of Southeast Alaska, which are currently paying 62 cents/kWH for power from diesel generators.

C. WHY LACK OF ROAD ACCESS THROUGH IRAS PRECLUDES RENEWABLE ENERGY AND HYDROPOWER DEVELOPMENT

A hydropower project cannot be constructed with helicopters alone. Renewable energy generation projects are major construction projects that require heavy machinery and equipment. The generators at Tyee, for example, weigh 30 tons each. To move them from tidewater to the hydro site required a road for access. Because the 2001 Roadless Rule prohibits road construction as well as tree cutting within IRAs, and because there are few existing roads in the Tongass, no new renewable energy or hydropower projects will be built in the 9.6 million acres of IRAs.

The Swan-Tyee Intertie (STI) is an example of a transmission project used to deliver renewable energy that, because of no road access, caused very high construction costs. Use of helicopters to construct the transmission lines resulted in a construction cost of about \$2 million/mile. The STI is 57 miles long and the total construction cost, including permitting, design, etc. was about \$110 million.

The cost to maintain a transmission line that is constructed without road access is also significant.

The rights-of-way (ROW) for such lines have to be maintained and brushed continually. The structures have to be inspected on a rotating annual basis. With road access, this work can be done by a crew in a truck. Without road access, this work has to be helicopter-supported, which is very expensive – approaching \$1,500/hour for a small (Airbus AS350 A Star) helicopter.

In addition, transmission lines that do not have road access also require helicopter pads near the structures. On the STI alone, there are over 100 helipads installed at an average price of \$35,000/pad, or \$3.5 million. These pads must be accessed by helicopter for maintenance and brushed every couple years.

III. IMPACT OF THE ROADLESS RULE ON MINING IN THE TONGASS

The Alaska Miners' Association (AMA) is a non-profit membership organization established in 1939 to represent the mining industry throughout Alaska. AMA has a diverse membership composed of more than 1,200 individual prospectors, geologists, engineers, vendors, suction dredge miners, small family mines, junior mining companies, and major mining companies. The AMA has a Juneau branch and a Prince of Wales branch that together represent much of the mining community in Southeast Alaska. AMA's membership includes many small businesses with ten or fewer employees. Most AMA members have made

substantial expenditures prospecting, exploring, and developing mines within the 9.6 million acres of Tongass IRAs that were previously open to road construction and timber cutting.

Hyak Mining Company, Inc., headquartered in Juneau, Alaska, is an AMA member that has been involved with mineral exploration and development on the Tongass National Forest since 1978. It is a three person company. As the underlying owner of the Jualin Mine in Berners Bay, Hyak was instrumental in the planning, design, construction, operation and maintenance of a 5.5 mile road from tidewater to the Jualin Mine. Development of satellite deposits to the Jualin and Kensington Mine will be adversely impacted by the IRAs created by the reinstated 2001 Roadless Rule.

While “reasonable access” to locatable minerals is technically authorized in Wilderness Areas under 36 C.F.R. Part 228, there are very few mines in Wilderness Areas. The experience of the mining community is that Special Use Permits permitting road access in or near Wilderness Areas are very difficult to obtain.

For example, in 1977 the Forest Service denied a Special Use Permit to U.S. Borax to construct a road for a bulk sample of 5,000 tons of ore at the Quartz Hill Project (near a Wilderness Study Area). It required access to be by helicopter. *SEACC v. Watson*, 697 F.2d 1305 (9th Cir. 1983). As the opinion shows, six years later Borax still did not have a permit to build the road needed to move that volume of ore.

Even though the 2001 Roadless Rule specifies: “Reasonable rights of access may include, but are not limited to, road construction and reconstruction, helicopters, or non-motorized access” (FEIS Vol. 1, 3-329 to 3-350),¹⁴ the same adverse impact on access for mining experienced in Wilderness Areas is expected in IRAs.

While the 2001 Roadless Rule technically allows access to locatable minerals, it denies access to new leases for minerals subject to the Mineral Leasing Act of 1920, including geothermal resources:¹⁵ “because of the potentially significant environmental impacts that road construction could cause to inventoried roadless areas.”¹⁶ There is no explanation in the 2001 Final Rule and ROD why the access impacts on IRAs associated with locatable minerals is different from the access impacts on IRAs associated with leasable minerals. This is further evidence that as a practical matter the 2001 Roadless Rule will prevent road access in connection with mining exploration and development in IRAs.

Mining exploration requires the drilling of multiple holes to determine from the surface the sub-surface characteristics and extent of the mineral resource. Mine development requires site clearing for buildings, tailings piles, mills, and other facilities.

¹⁴ 66 Fed. Reg. at 3264.

¹⁵ *Ibid.*, at 3255-3256.

¹⁶ *Ibid.*, at 3256.

The level of exploration needed to develop a mine on the Tongass National Forest would typically require the substantial cutting of trees. Development of a mine would require even significantly more cutting of trees.

Although “reasonable access” is technically permitted in IRAs, cutting trees associated with mining exploration and development does not appear to be allowed. 36 C.F.R. § 294.13(b)(2) authorizes the cutting of timber “incidental to implementation of a management activity not otherwise prohibited by this subpart.”

However, the 2001 Roadless Rule does not mention mining in the examples of what this section authorizes.¹⁷ Moreover, in describing this section, the 2001 Roadless Rule states: “Such management activities are expected to be rare and to focus on small diameter trees.”¹⁸ The Tongass is comprised of very large trees. Accordingly, 2001 Roadless Rule’s prohibition on tree cutting will be a substantial barrier to mine development.

¹⁷ *Ibid.*, at 3258.

¹⁸ *Id.*

IV. IMPACT OF THE 2001 ROADLESS RULE ON CONTRACTORS TO THE TIMBER, MINING AND RENEWABLE ENERGY INDUSTRIES

A. SOUTHEAST ROADBUILDERS, INC.

Southeast Roadbuilders, Inc. was incorporated in 1996 with the purpose of constructing forest roads to access Forest Service timber sales on the Tongass National Forest. Southeast Roadbuilders, Inc. has constructed roads on the Tongass to access timber harvest areas, mining areas for exploration and development, and to move machinery and equipment from tidewater delivery points to hydropower sources. Roadbuilding jobs from these industries have been greatly reduced as a consequence of the prohibitions in the reinstated 2001 Roadless Rule.

B. ALASKA MARINE LINES, INC.

Alaska Marine Lines (AML) is a marine transportation company that carries all types of freight to and from Southeast Alaska in support of the mining, timber, energy, and fishing industries, along with delivering community necessities and commodities. AML provides barge service to the communities of Juneau, Ketchikan, Wrangell, Sitka, Petersburg, Haines, Skagway, Kake and Prince of Wales Island, year around with twice a week departures from Seattle. With the high fixed costs of operating a barge line, freight volume is key to an efficient operation. Commercial activity, particularly hydropower development, mining, fishing, and timber harvest, is

essential to AML's ability to maintain affordable, frequent, and regular service to Southeast communities.

C. TYLER RENTAL INC.

Tyler Rental Inc. (TRI) rents industrial equipment in support of the mining, timber, energy, tourism, and fishing industries. TRI operates throughout Southeast Alaska with facilities in Ketchikan, Craig, Petersburg, Juneau, and Chehalis, Washington. With the high fixed costs of maintaining full service equipment rental facilities, commercial activity, particularly timber harvest, hydropower development, mining, fishing, and tourism in Southeast Alaska, is essential to TRI's ability to maintain affordable, frequent, and regular rental and equipment service to Southeast communities.

D. FIRST BANK

First Bank was founded in 1924 in Ketchikan and has nine branch offices in Southeast Alaska. It is the only commercial bank with headquarters in Southeast Alaska. While First Bank operates statewide, its financial well-being depends upon a healthy economy in Southeast Alaska and the economic health of the timber, renewable energy and mining industries – all of which are adversely impacted by the reinstated 2001 Roadless Rule.

E. HARMS TO SOUTHEAST ALASKA BUSINESSES

SRI, AML, TRI, and First Bank have business relationships with Southeast Alaska companies in the timber, mining, fishing, and renewable energy industry. Economic development associated with these industries is a mainstay of Southeast Alaska's economy. Timber harvesting, mining, renewable energy projects and related roadbuilding, stevedoring, marine supply to logging camps and mine and hydroelectric sites comprise a significant part of the economic activity of Southeast Alaska. SRI, AML, TRI, and First Bank are being harmed by the loss of business due to their customers' loss of business caused by the reduction in mining, timber harvest, and hydroelectric development, and by the reduction in road construction associated with all three activities resulting from the reinstated 2001 Roadless Rule.

In this context, SRI, AML, TRI, and First Bank's business interests are being harmed by the reinstatement of the 2001 Roadless Rule on the Tongass National Forest.

V. IMPACT ON STATEWIDE ORGANIZATIONS

A. FIRST THINGS FIRST FOUNDATION

First Things First Foundation (FTF) is a nonprofit Alaska corporation, the mission of which is to educate the public on the benefits of responsible economic development and natural resource management. FTF

is dedicated to preserving the economic viability and future of Alaska. FTF members engage in natural resource development activities and natural resource development jobs on the Tongass National Forest. Juneau is the headquarters office and bedroom community for the Greens Creek and Kensington hard-rock mines. Both of these mines are located within or are surrounded by IRAs which will adversely impact their ability to access satellite deposits.

FTF participated in the planning and permitting process for the Kensington Mine by helping to educate the public about the importance of development of that mine to the local and regional economies. The FTF has also helped educate the public about the Greens Creek Mine which provides a significant number of jobs in Juneau. Continued development of the Kensington and the Greens Creek mines and employment related to their expansion through IRAs to satellite deposits is vital to maintaining the current Juneau population in the face of declining revenues from reduced oil prices and declining Alaska oil production.

Juneau is served by hydroelectric power from the Snettisham Dam and Lake Dorothy. As Juneau's power needs increase, the community must be able to access the potential of additional renewable energy opportunities to fill that need, such as hydropower, geothermal power, and other renewable energy resources that exist in the IRAs that surround the CBJ. The FTF is harmed by the inability of the State to construct the roads and transmission lines necessary

to develop the potential renewable energy sites and to distribute such power as a consequence of the reinstatement of the 2001 Roadless Rule.

FTF members also participate directly and indirectly in developing hydropower for export to the greater North American electrical grid via the Northern B.C. hydropower line extension. If the many hydroelectric power sites in Southeast Alaska were linked to the North American Grid, this extensive generating potential could be developed far beyond the power requirements of Southeast Alaska to the betterment of all North American consumers and the economic viability of the region. The inability to construct hydroelectric projects, roads, and power lines within the IRAs caused by reinstatement of the 2001 Roadless Rule is resulting in the loss of this opportunity and thereby harms FTF.

The FTF supports construction of a road up Lynn Canal linking Juneau with the rest of the State. This road right-of-way traverses IRAs. FTF members are harmed by the significant new obstacles that the 2001 Roadless Rule presents to the approval the road has already obtained from the Federal Highway Administration. Specifically, the Secretary of Agriculture must now also determine that the road is “a Federal Aid Highway project, authorized pursuant to Title 23 of the United States Code, 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.” (36 C.F.R. § 294.12(b)(6)).

B. RESOURCE DEVELOPMENT COUNCIL

The Resource Development Council (RDC) is a nonprofit Alaska membership corporation organized for charitable and/or educational purposes. It is a statewide organization made up of all resource sectors, business associations, labor unions, native corporations, tourism providers, local governments and thousands of individuals. RDC's purpose is to expand Alaska's economic base through the responsible development of Alaska's natural resources. Reinstatement of the 2001 Roadless Rule is creating barriers to renewable energy development, especially hydro-power and geothermal, and is causing significant practical constraints for the mining industry. Businesses that support timber, renewable energy development, and mining are also adversely impacted as described above. Nearly all of the business entities discussed above are RDC members.

CONCLUSION

Both individually and in the aggregate, the above described harms to the State and Southeast Alaska communities, businesses, and people arising from reinstatement of the 2001 Roadless Rule are considerable, as both the 2001 and 2003 Roadless Rule-making documents acknowledge. These adverse impacts support the policy change made by USDA in the 2003 Rule:

The Tongass Not Exempt Alternative (identified as the environmentally preferable alternative in the previous section) is not selected because the Department now believes that, considered together, the abundance of roadless values on the Tongass, the protection of roadless values included in the Tongass Forest Plan, and the socioeconomic costs and hardships to local communities of applying the roadless rules prohibition to the Tongass, outweigh any additional potential long-term ecological benefits; and therefore warrant treating the Tongass differently from the national forests outside of Alaska.¹⁹

For the foregoing reasons, and those set forth in the State's Petition for Certiorari, this case presents issues of exceptional importance to the communities and economy of Southeast Alaska regarding the future management of millions of acres of Tongass National Forest land. Amici Curiae respectfully request that this Honorable Court grant Alaska's Petition.

¹⁹ 68 Fed. Reg. at 75,144.

Respectfully submitted this 12th day of November 2015,

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