

9. PLANNING

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Definitions and Criteria

1. The Forest Service should define the word “protect.”

Response: In an October 13, 1999 Memorandum to the Secretary of Agriculture, President Clinton directed the Forest Service to “provide appropriate long-term protection for most or all of the currently inventoried “roadless” areas, and to determine whether such protection is warranted for any smaller “roadless” areas not yet inventoried.”

The public scoping process that followed the Notice of Intent to prepare this EIS helped to define the scope of the analysis and scope of the proposal to protect roadless areas (DEIS pp. 1-4 through 1-9). “The Forest Service has developed a proposed action that meets the need to protect the values prevalent in roadless areas...” (DEIS p. 1-10). Protection of roadless areas is the purpose of this analysis as stated in the DEIS. Page 1-10 defines that purpose: “1) to

immediately stop activities that have the greatest likelihood of degrading desirable characteristics of inventoried roadless areas, and 2) to ensure that ecological and social characteristics of inventoried roadless and unroaded areas are identified and evaluated through local forest planning efforts.” In the FEIS, protection is provided in the form of prohibitions on certain activities within inventoried roadless areas: road construction, reconstruction, and timber harvest. The final planning regulations recently issued at 36 CFR 219 have determined the procedures for providing further protection for roadless and unroaded areas.

2. The Forest Service should evaluate the use of the word “natural” in describing roadless areas.

Response: A number of respondents requested that definitions be provided for a variety of words, or commented that the use of a particular word in the DEIS may not be appropriate. For words of common daily usage we did not define or include them in the glossary. We are using standard industry definitions defined by the Society of American Foresters for forestry terms. The Glossary for the FEIS includes only words not commonly used or otherwise defined.

3. The Forest Service should remove the word “whether to protect” from all the alternatives in the DEIS and replace with “how to protect”; and

4. The Forest Service should replace the phrase “ensure consideration” with “ensure compliance with the rule” in item #2 of the proposed rule.

Response: The prohibitions in the action alternatives in the FEIS provide protection to roadless characteristics in inventoried roadless areas. The procedural alternatives in the DEIS have not carried forwarded into the FEIS, because the new Planning Regulations at 36 CFR 219 made decisions on how to consider future management of inventoried roadless areas and unroaded areas. The Planning Regulations contain flexibility for local line officers to adjust to local needs as part of an emphasis on collaborative planning. Compliance with the intent of the Roadless Area Conservation Rule would occur during public involvement under NEPA for proposed projects and agency reviews.

5. The Forest Service should write the DEIS in such a way as to rule out loopholes.

Response: The agency's intent in the FEIS is to clearly define to the public and local agency managers the options for the conservation of inventoried roadless areas and the effects of those options. We have identified exceptions and mitigations to provide for situations that warrant special consideration.

6. The Forest Service should modify Section 294.11 of the Rule and change the definition of "Inventoried Roadless Areas" to include the statement "Roadless areas shall typically be at least 1,000 acres in size, though smaller areas may be classified as "roadless" under this Rule where the Forest Service determines such areas have important values that warrant such classification."

Response: In the past the definition of Inventoried Roadless Areas was used to refer to those areas inventoried under RARE or RARE II. It now also includes areas inventoried more recently. The new definition of Inventoried Roadless Areas is: "Undeveloped areas typically exceeding 5,000 acres that met the minimum criteria for Wilderness consideration under the Wilderness Act and that were inventoried during the Forest Service's Roadless area Review and Evaluation (RARE II) process, subsequent assessments, or forest planning. These areas are identified in a set of inventoried roadless area maps, contained in *Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume 2*, dated November 2000, which are held at the Nation headquarters office of the Forest Service.

Direction for classification of unroaded areas (not currently inventoried) is established in the Planning Regulations (36 CFR 219) and so the procedural alternatives were not carried forward into the FEIS.

7. The Forest Service should define "unroaded characteristics"; and

8. The Forest Service should revise the list of characteristics and values of roadless areas identified in the DEIS. We have listed seven additional characteristics that should be considered as well: roadlessness; natural quiet; opportunity for solitude; natural fire regime; natural watershed function; shape and size of area; roadless area integrity; wildland values; and associated characteristics.

Response: The DEIS defined the nine roadless characteristics as part of the procedural alternatives description on p. 2-8. The FEIS defines the same list in the introduction section of Chapter 3. The new Planning Regulations have made the decisions regarding the process for planning for management of roadless and unroaded areas (36 CFR 219).

9. The Forest Service should consider "lack of roads" as a "roadless characteristic."

Response: The characteristics found in the DEIS include those which the agency found are the most essential for conservation of roadless areas (DEIS Chapter 2). The new Planning Regulations have made decisions regarding the process for planning for management of roadless areas (36 CFR 219). Locally identified unique characteristics can play a role as well when Forests and Grasslands undertake Plan amendments or revisions.

10. In Chapter 3 p. 11, the Forest Service needs to define "irreversible loss of roadless character."

Response: The DEIS described this effects incorrectly as "irreversible." The effect of road construction would be "irretrievable" on roadless character. We have corrected this error in the FEIS.

An "irreversible" loss is a permanent loss. An "irretrievable" loss is one that is a loss of an opportunity. The section referenced in this comment relates to the estimate that up to 368 miles of road could be constructed in inventoried roadless areas due to the exceptions described in Chapter 2 of the DEIS on p. 2-9. Such construction is considered an irretrievable, rather than irreversible, commitment of roadless character. Also see Response 136.

11. Before a final decision is made on the FEIS, specific criteria should be established for making decisions about protecting further unroaded areas. The Forest Service should conduct multi-agency collaboration on local levels to establish criteria for those local decisions. Commodity resource potential should be one of the criteria. These criteria should clearly balance the impact on a regional scale, taking into account local concerns.

12. The Forest Service should identify roadless area characteristics, which are clear and not open to competing interpretations.

Response: The new Planning Regulations have made the decisions regarding the process for planning for management of unroaded areas (36 CFR 219). Therefore, procedures for protection of unroaded areas are not addressed in this FEIS. The Planning Regulations call for multi-agency collaboration and local involvement. Roadless area characteristics are appropriate considerations during local forest and grassland planning.

13. The Forest Service should explain how the roaded portions of inventoried roadless areas will be determined.

Response: The agency received extensive public comment asking for a better definition of the term “unroaded portions of inventoried roadless areas” than the definition on p. 2-2 of the DEIS. The main concern was that these areas had never been identified or mapped before and needed to be. After careful review of many possible criteria to clarify the definition, the agency determined that it would discontinue use of the term and, and that the prohibitions, if selected, would apply to all National Forest System lands within the boundaries of the inventoried roadless areas. The FEIS, Chapter 2, includes this clarified direction. Also see Response 15.

14. The Forest Service should mandate follow-up planning that identifies and protects uninventoried roadless areas and permanently ends damage to both inventoried and uninventoried areas.

Response: The purpose of the rulemaking is to conserve roadless lands for their unique values (DEIS p. 1-3 and 1-10). This rule would achieve this through prohibitions on activities that have a high likelihood of adversely affecting those values in inventoried roadless areas (DEIS p. 2-3). The new Planning Regulations contain procedures that local forest and grassland managers will follow as they revise forest and grassland plans and determine whether or not to extend additional protection to inventoried roadless areas and unroaded areas (36 CFR 219).

15. The Forest Service should give the same protection to uninventoried roadless areas as it does to inventoried areas.

Response: An alternative was considered in the DEIS and FEIS that would have applied the

prohibitions to all unroaded areas. As explained in the DEIS and FEIS, the necessary data were not available on the extent or location of unroaded areas other than those roadless areas already inventoried. National prohibitions were not considered to be appropriate at this time. These unroaded areas are best identified, characterized, and addressed through local forest and grassland planning processes (DEIS p. 1-11 and DEIS, p. 2-19).

The DEIS recognized that such unroaded areas have the potential to possess characteristics and values equivalent to those in the inventoried roadless areas (DEIS p. 1-4). Because of their undefined nature, and in order to conserve their roadless character, the unroaded areas were included in the procedural alternatives (DEIS p. 1-11). These procedural alternatives were not carried forward into the FEIS. The new Planning Regulations (36 CFR 219) contain explicit guidance for considering and managing unroaded areas.

16. The Forest Service should ensure that under the procedural alternatives local participation is not dominated by economics.

Response: The National Forest Management Act and Forest Service policies and procedures guide the forest and grassland planning process. The new Planning Regulations consider ecological stewardship as a key policy. See also Response 56 in the Involvement section.

17. The Forest Service should clarify who holds the authority and how much “local latitude” will be allowed to consider access and recreation.

Response: The DEIS described the nature of the latitude provided by the procedural alternatives (DEIS pp. 2-6 through 2-10, Appendix A, pp. A-27 and A-28) as well as who will be authorized to make those decisions (DEIS p. A-26). See also Responses 31 and 65. The new Planning Regulations have made the decisions regarding the process for planning for management of roadless areas (36 CFR 219), which includes an emphasis on collaboration and local involvement.

18. The Forest Service should explain “essential management” in terms of exceptions to the roadless areas.

Response: The exception to the road construction prohibition in the DEIS was on pp. 2-4, A-9, and A-27. It was referring to realignment of an existing road that is “deemed essential for access, management, or public health and safety....” The phrase has been rewritten in the FEIS to clarify that the phrase “essential for management” refers to essential for “natural resource management.”

19. *Alternative 3 should be modified to include safeguards to limit the diameter size of the trees allowed for removal, and if there are limits on the amount of time this stewardship will be practiced.*

Response: Due to the diverse nature of the national forests and grasslands, a national limitation on the size of trees allowed for removal would prove impractical. There are, however, numerous regional efforts taking place that will help define limits if needed. These regional efforts include the Sierra Nevada Framework for Collaboration and Conservation that is currently underway in California and the Interior Columbia Basin Ecosystem Management Project. Finally, stewardship is an ongoing and adaptive process that must be tailored to local situations and needs.

20. *The Forest Service should consider that sections 294.13(c) and (d) allow for added protections in addition to no roads, thus opening a Pandora’s box for additional regulations without review by the public or Congress.*

Response: As stated in section 294.13 of the proposed rule, all national forests and grasslands are required by NFMA to “develop, maintain, and as appropriate, revise land and resource management plans for units of the National Forest System” (16 U.S.C. 1604(a)). Determining protections under Sections 294.13 (c) and (d) of the proposed rule would take place at the local level during forest and grassland plan revisions on the individual units. This process includes full public involvement of the concerned public. The new Planning Regulations have made the decisions regarding the process for planning for management of roadless areas (36 CFR 219). Therefore the procedural alternatives were not carried forward into the FEIS.

21. *The Forest Service should define “unroaded areas” in terms of size and attributes as the loose definition will only impair the ability of local*

managers to make decisions and increase litigation cost.

Response: Unroaded areas were defined in the DEIS, and Glossary. The definition is refined in the FEIS. The new Planning Regulations have made the decisions regarding the process for planning for management of roadless areas (36 CFR 219). Therefore the procedural alternatives were not carried forward into the FEIS. See also Response 21 in this section, and Response 20 in the Roads section.

22. *The Draft EIS should list the actual procedures to be implemented.*

Response: The procedures are now part of the Planning Regulations rather than this rule. Analysis of public comments on the DEIS showed confusion over how the procedural alternatives (A through D) would be implemented. Comments on the proposed Planning Regulations (36 CFR 219) and Forest Service comments on the roadless DEIS suggested that the procedures were best suited for the Planning Regulations. Upon review, the agency recognized that most of the roadless area characteristics identified in the DEIS and proposed rule were similarly required by the Planning Regulations. Therefore, the procedures are an explicit part of the plan revision process as addressed in 36 CFR 219.9(b)(8) of the final Planning Regulations. Therefore, the procedures and procedural alternatives analyzed in the DEIS do not appear in this FEIS. See FEIS Chapter 1, Background; and Chapter 2, Alternatives Considered in Detail.

23. *The Forest Service definitions of “unroaded” and “classified roads” eliminate too many areas deserving of protection.*

Response: The combination of this Roadless Area Conservation Rule and the new Planning Regulations, together with the proposed Roads Policy, will provide latitude for local line officers to protect roaded and roadless areas to the extent such protection is warranted.

New Alternatives

24. *The Forest Service should adopt a new alternative that would be called the preservation alternative. This alternative would add to the prohibitions and include all unroaded areas in with the prohibitions.*

Response: This alternative was considered but not analyzed in detail in the DEIS (pp. 2-17 through 2-19), or FEIS (Chapter 2). See also Response 15.

25. *The Forest Service should develop one or more “access for all” alternatives.*

Response: The agency considered an option that would have encouraged road construction and other development activities in roadless areas, but did not develop it in detail for reasons explained in DEIS and FEIS Chapter 2 (Alternatives Considered But Eliminated From Detailed Study, Alternative Land Use Designations). Also see Response 62 in the Roads section.

26. *The “No Action” Alternative should be modified to initiate a viable program of land use education, partnering with public interest individuals and groups, and revamping the funding and resources available to the Forest Service.*

Response: The No Action Alternative forms a baseline for comparison and represents current management. Nothing in the proposed rule precludes educational and budgeting activities. However, at best these activities would provide roadless area conservation results over a longer time period without an immediate beneficial effect. Therefore, such actions do not meet the purpose for the rule, which is to conserve inventoried roadless areas now.

27. *The Forest Service should develop a range of alternatives that vary the amount of roadless acres for which environmentally sensitive multiple use road construction is allowed in conformance with laws and other initiatives (such as the Transportation Management Initiative).*

Response: The DEIS and FEIS display the relationship between this rulemaking and other rulemaking also occurring (DEIS Chapter 3, Cumulative Effects of the Roadless Rule with Other Rules and Initiatives; FEIS Chapter 3, Summary of Cumulative Effects, Other Federal Policies). The

range of alternatives includes options that allow road construction and reconstruction. In addition, exceptions have been included to provide conformance with existing laws. See FEIS, Chapter 2 Alternatives Considered in Detail.

28. *The Forest Service should combine Alternatives 2 and 3 in order to protect areas from timber harvesting.*

Response: Both Alternatives 2 and 3 would prohibit road construction and reconstruction. Alternative 3 also prohibits timber harvest in inventoried roadless areas except when expressly designed for stewardship purposes. These alternatives are different and therefore warrant consideration in the FEIS. They represent two of the many alternatives considered during this rulemaking.

Less Local Planning Authority

29. *The Forest Service should ensure that roadless areas are protected and not leave the decision up to the local forest planning process to decide;*

30. *Management decisions regarding roadless areas are appropriately made at the national level; and*

31. *Under procedural Alternative B, the Forest Service should limit the authority of local managers to protect roadless areas from local user group pressures. Before any authority is given to local managers to approve unroaded classifications for any areas, specific, clear, and concrete criteria should be listed by which the general public may understand what is being decided and why. The Forest Service should not allow final decisions to be made during the forest planning process.*

Response: The Roadless Area Conservation Rule provides a national level prohibition in part as a response to sentiment among some of the public that roadless areas and their characteristics need to be protected. The local-level procedures contained in the new Planning Regulations (36 CFR 219) encourage public involvement, and do not preclude the involvement of local and national interests in decision-making. The two-tiered approach was described in Chapter 2 of the DEIS on pp. 2-1 through 2-10, and FEIS Chapter 2.

This two-tiered approach is still possible by the combination of the Roadless Rule and the new Planning Regulations (36 CFR 219).

Alternatives 2 through 4 establish prohibitions that provide for immediate protection of the inventoried roadless areas from activities with the most potential to directly alter their roadless character: road construction and reconstruction. The DEIS also considered alternatives that provide two different levels of restrictions on timber harvest within the inventoried roadless areas (DEIS pp. 2-4 through 2-6; and FEIS Chapter 2). The rationale for limiting the scope of the proposed action was described in the DEIS (pp. 1-10 and 1-11; and FEIS Chapter 1). In addition to the prohibitions, Alternatives B through D would have established procedures to enable local agency managers to identify, evaluate, and conserve or enhance the characteristics of inventoried roadless areas and unroaded areas through local planning (DEIS p. 1-12 and 1-13). The new Planning Regulations (36 CFR 219) have made the decisions regarding the process for planning for management of roadless areas. Therefore, the DEIS procedural alternatives were not carried forward into the FEIS. See also Responses 8 and 11.

32. The Forest Service should ensure that forest plans currently being developed in the Southern Appalachians set aside all roadless areas (inventoried roadless and unroaded areas) in the most protective prescriptions.

Response: Alternatives 2 through 4 prohibit those activities that may have the greatest potential to adversely affect the roadless characteristics of inventoried roadless areas. Decisions on land use designation will be made during local forest planning.

An alternative that would set aside all roadless areas with protected designations (such as primitive recreation, research natural areas, monuments) was considered but not analyzed in detail in the DEIS and FEIS. The reasons were: a lack of data that can be aggregated and analyzed meaningfully at the national level, the local nature of the affected uses and impacts, and the relationship of these alternatives to the rulemaking's purpose and need (DEIS p. 2-16 and FEIS Chapter 2). See also Response 15.

33. The type of activities to be allowed in roadless areas should be clearly spelled out in the

Environmental Impact Statement. Discretion to allow destructive activities should not be left open for the local forest manager to decide. Local interest groups will apply pressure and roadless areas will suffer. Consider an alternative that keeps decision-making out of the local managers' hands.

Response: The rationale for developing the range of alternatives was described in the DEIS (pp. 1-10, 1-11, 2-4). An alternative that would have established prohibitions from a national level on many other activities was considered and eliminated from detailed review because either the activities were not considered to have some significant national impacts on roadless areas or the data were not available that would allow for a national level analysis (DEIS p. 2-18). Local decision-making authority was an area of concern during scoping of the proposed action (DEIS pp. 1-8 and 1-9). The new Forest Planning Regulations (36 CFR 219) reflect the agency position that local planning is the appropriate method for decisions on most activities that occur on national forests and grasslands. See also Response 38.

34. The Forest Service should not adopt Alternative B because it allows local managers to make decisions about the roadless areas outside inventoried roadless areas. This will result in loss of many high value areas, which need to be identified before a decision is made.

Response: Prohibitions were not applied to uninventoried unroaded areas for a number of reasons described in Chapters 1 and 2 of the DEIS and FEIS. One is that the data are not available on the extent and location of unroaded areas across the national forests and grasslands. The rationale for providing procedures for unroaded areas outside inventoried roadless areas focused on the need to consider unroaded lands, not simply those already inventoried or those that have a larger area than a certain size (DEIS p. 2-19). However, decisions on how to proceed with planning of inventoried roadless areas and unroaded areas were made in the new Planning Regulations (36 CFR 219), and so the procedural alternatives were not carried forward into the FEIS.

More Local Planning Authority

35. Local managers should be allowed to recognize on the ground where environmentally sound roads can be built when they are needed. The Forest

Service should not tie the hands of local managers with additional restrictions; and

36. Management decisions regarding roadless areas should be made at the local level.

Response: The Forest Service has addressed roadless area management for more than 25 years. However, local decisions about inventoried roadless areas and unroaded areas were often contested through administrative appeals and litigation, especially when the decisions dealt with road building, timber harvest, or other activities that alter an area's intrinsic roadless characteristics. Additionally, there was debate about the Forest Service's deteriorating 380,000-mile road system and the wisdom of building additional roads. In 1996, the House of Representatives came within a single vote of cutting 42 million dollars from the agency's road budget because of these issues.

As the DEIS and FEIS Chapter 1 states, national-level direction is appropriate to address the national debate and controversy over roadless areas while leaving decision space for local managers working with public involvement. The proposed rule attempts to balance national direction to conserve roadless areas with the need to maintain local decision-making. The prohibition alternatives examine prohibiting different levels of activities in inventoried roadless areas. However, the procedures in the new Planning Regulations (36 CFR 219) allow local managers to make decisions about how to conserve roadless area values in the specific inventoried and unroaded areas under their authority. The new Planning Regulations emphasize conducting this process in collaboration and with substantial involvement of the public. See also Response 30.

37. The proposed rule should be limited to the development and management of a transportation system needed to achieve forest plan goals and objectives. Land allocation decisions should be left to forest planning.

Response: The proposed rule would make no land allocation decisions. The proposed rule would only prohibit road construction and reconstruction and possibly timber harvest in inventoried roadless areas, depending on the alternative selected. Making or changing land allocations would still take place

during the local forest and grassland planning process.

The new Planning Regulations (36 CFR 219) recognize "roadless areas" and "unroaded areas" as possible special designations. Forest and grassland plans make land allocations, and nothing in the proposed rule would make land allocation changes.

38. The Forest Service should allow individual forests to develop their own management plans over a longer time frame.

Response: The procedural alternatives in the DEIS (Alternatives B through D) have been eliminated because the new Planning Regulations (36 CFR 219) make the decisions on how to plan for these areas. They recognize the role of local planning by establishing procedures to evaluate each roadless area in its own context and social setting. However, the limitations of local planning were recognized as an important reason for establishing national policy on inventoried roadless areas. Therefore, the DEIS and FEIS analyze a range of alternatives that prohibit road construction, road reconstruction, and timber harvest in all inventoried roadless areas depending on the alternative. These activities pose the greatest risk to the roadless character of these areas, are common to nearly all national forests and grasslands, and can be analyzed at the national level.

The amount of time individual forests and grasslands take to develop their land management plans depends on local conditions and national budgets and cannot meaningfully be determined through this rulemaking and environmental analysis.

39. The Forest Service should modify its preferred alternative to allow the local managers the opportunity to make decisions in cases of justifiable need.

Response: The agency developed alternatives that included exceptions to the road construction and reconstruction prohibition (DEIS p. 2-4, pp. A-9 and A-27) in certain limited circumstances. Some new exceptions for additional circumstances have been added to the alternatives in the FEIS (Chapter 2) as a result of public comment, for consideration by the local decision-maker.

Under the new Planning Regulations (36 CFR 219), decisions in roadless and unroaded areas are now

made as part of the forest and grassland planning processes, which provide for public participation and discretion to local decision-makers.

Less Restrictive Oversight

40. The Forest Service should provide better monitoring and enforcement of multiple use rules to accommodate all users without excluding anyone, while protecting forests and lands. Develop an “access for all” alternative.

Response: The agency developed the alternatives within the authority of multiple-use mandated by current laws and policies, specifically the Organic Administration Act, the Multiple-Use Sustained Yield Act, and the National Forest Management Act (NFMA). Alternatives 1, 2, and 3 provide for inventoried roadless areas to continue to contribute different levels of timber and other renewable resources, goods, and services from national forests and grasslands at a sustained rate. Also, an alternative to fully develop roadless areas was considered but eliminated from detailed consideration because it did not meet the President’s direction for the rulemaking nor did it satisfy the purpose and need (FEIS Chapter 2, Alternatives Considered But Eliminated From Detailed Study). See also Response 62 in the Roads section.

41. Given its intent to eliminate timber harvesting on National Forest lands, the Forest Service should propose that these lands be reconstituted as National Parks.

Response: The intent of the rulemaking is to conserve roadless lands for their unique ecological, social, and economic values (DEIS p. 1-3), not to eliminate timber harvest from all NFS lands.

Changing National Forest System lands to National Parks is a Congressional action outside the scope of this analysis.

42. Current plans for logging, road and trail building should continue until new forest plans are adopted.

Response: The DEIS and FEIS analyzed a range of alternatives including Alternative 1 which allows such activities to continue, and Alternative 2 which allows all activities but road construction and

reconstruction to continue. There are no proposed prohibitions on trail building.

43. The Forest Service should prepare an alternative that allows road construction in specific roadless areas threatened by insects, disease and fire.

Response: The DEIS and FEIS displayed an alternative considered but eliminated from detailed study that would have activity exemptions (Chapter 2). In all prohibition alternatives, road construction and reconstruction would not be permitted except as needed for protection of public health and safety, for meeting CERCLA mandates, for redeeming reserved or outstanding rights, and to allow for road realignment to prevent irreparable resource damage. In most cases, road construction would detract from attainment of the need for roadless area protection even though other multiple-use goals may be attained. The FEIS (Chapter 2) describes additional exceptions that have been provided as possible mitigation measures.

44. The Forest Service should consider an alternative that prevents road construction in all inventoried roadless areas in a manner that does not harm the timber production objectives stated in each forest plan.

Response: Because harvest schedules for many forest plans were predicated primarily on new road construction, these are two conflicting objectives, and such an alternative would not be feasible. See also Response 9 in the Timber section.

45. The Forest Service should recognize that in Montana access to many roadless areas is limited. Private lands contain the main routes leading to many of these areas and these roads are not open to the public. By eliminating road building in public lands, the Forest Service will eliminate public access because of the lack of roads to the perimeter of these areas. This would set aside many of these areas for the privileged and for outfitters/guides’ personal use.

Response: The prohibition alternatives do not eliminate access on existing classified roads, unclassified roads, or trails. As described in the DEIS and FEIS, the prohibition alternatives (Alternatives 2-4) limit future expansion of the road

system only within inventoried roadless areas (DEIS pp. 3-197 through 3-199; FEIS Chapter 3).

Actual road access policy decisions will be addressed under the proposed Roads Management Policy for the National Forest Transportation System (Roads Policy). The Road Policy is intended to make the existing forest road system safe, responsive to public needs, environmentally sound, affordable, and efficient to manage. Under this policy, the responsible Forest Service official would conduct a science-based road analysis to determine the minimum road system needed to achieve National Forest resource goals. These goals include identifying needed and unneeded roads. This analysis and the resulting decisions will be part of forest and grassland planning and project planning. The FEIS describes the Roads Policy and its relationship to the Roadless Area Conservation proposal (Chapter 3).

More Protection Than Alternatives Offer

46. *The scope of the study should be returned to the original 60 million, no roads, no logging.*

Response: The original figure of 60 million acres was an estimate. The acreage figure listed in the DEIS was 54 million (DEIS p.1-1). This figure has been updated in the FEIS to 58.5 million (FEIS p. 1-1). The updated acreage in the FEIS is based on updates of the data provided by the individual national forests and grasslands.

47. *The Forest Service should keep roadless areas roadless in perpetuity.*

48. *The Forest Service should prohibit changing roadless designations for 200 years; and*

49. *The Forest Service should not make any choices permanent.*

Response: There are no provisions of law that would allow the agency to restrict the President or Congress from making future decisions to change this rule after adoption. For the purposes of the Forest Service, this rule would remain in effect until changed through formal public notice and rulemaking. The purpose of this rulemaking is described in the DEIS and FEIS, Chapter 1. Creating temporary prohibitions would not have met the intent and purpose of the rulemaking.

The alternatives that prohibit road construction and reconstruction and timber harvest include exceptions for specifically defined circumstances. See also Response 51.

50. *The Forest Service should modify its preferred alternative so that the Forest Service imposes more strict protections.*

Response: A range of alternatives to conserve roadless areas was developed in response to public comment (DEIS p. 1-5 through 1-9 and 2-2 through 2-13). Another set of alternatives also suggested through public comment was considered but not analyzed in detail for a variety of reasons as described in the DEIS and FEIS (Chapter 2). These alternatives included protections that are more restrictive, as well as opportunities for more development (DEIS p. 2-17). The preferred alternative is identified in Chapter 2 of the DEIS and FEIS.

51. *The restrictions found in Alternative 4 should be expanded to include all unroaded areas (not just inventoried roadless) and expanded to include more prohibited activities, such as motorized use, gas/oil leasing, and mining. The increased impacts of such activities as horse use and mountain bikes should also be considered if road development is prohibited.*

Response: The scope of the rulemaking process was described in the DEIS (pp. 1-10 through 1-11). Prohibitions were not extended to activities beyond those included in Alternatives 2 through 4 because of the variable impacts of many of these activities, the lack of national data from which to conduct meaningful analysis, and the limitations that this rulemaking process has due to rights guaranteed by laws, such as the 1872 Mining Law (DEIS p. 1-11 and 1-13). Also see Response 15 in this section.

The appropriate context to consider effects of recreational livestock and mountain bike use would be the local national forest and grassland planning process including the travel management planning process.

52. *The proposed rule should provide permanent protection from dams and other harmful activities. Such activities include road construction,*

reconstruction, all logging, mining, grazing, oil and gas development, and off-road vehicle use.

Response: The agency considered additional prohibitions on uses and activities beyond the road construction, reconstruction, and timber harvesting in the prohibition alternatives. However, for a number of reasons it determined that it would not be appropriate to develop or apply those options (DEIS and FEIS Chapter 1, Purpose and Need; Chapter 2, Alternatives Considered But Eliminated From Detailed Study, Alternative Sets of Prohibitions). These activities included off-highway vehicle use, grazing, and mining. See Responses 15 and 51.

Construction and operation of dams on National Forest System lands are forms of special use permit authorization. The prohibition alternatives would not suspend or modify any existing permit, contract, or other legal instrument authorizing the use and occupancy of NFS lands. Therefore, existing authorized uses such as dams would continue to be maintained and operated within the parameters of their special use authorization.

However, proposed new uses or expansion of authorized uses and occupancies into or within inventoried roadless areas would be allowed only if it does not require a prohibited activity under this rule, or if it excepted, or if the special use authorization already exists and the proposed activities take place within the boundaries already established by the special use authorization.

An alternative to prohibit other activities such as grazing and off-highway vehicles (OHVs) was considered but dismissed from detailed consideration (DEIS and FEIS Chapter 2) because the activities do not pose the same risk to roadless areas posed by road construction and road reconstruction.

53. *The proposed rule should be secured against being overturned by future administrations, along with endangered species protection, the Clean Water Act, and the Clean Air Act.*

Response: The Forest Service anticipates that the rule that will be adopted as the agency's final decision is intended to remain in effect until such time as future public notice and rulemaking leads to change. See Response 49.

The rulemaking would be fully consistent with environmental laws including the Endangered Species Act, the Clean Water Act, and the Clean Air Act. However, it would be beyond the scope and intent of this Roadless Area Conservation Rulemaking to address the longevity of such laws. See also Response 49.

54. *Preserve more roadless areas for the non-commodity values that they provide; and*

55. *Non-commodity values of forest ecosystems should not be sacrificed for logging, mining, etc.*

Response: Concern for the non-commodity values of roadless areas is directly addressed by the Purpose and Need for this action. The prohibition alternatives are designed to conserve roadless area characteristics, which include non-commodity values such as clean air and water, wildlife habitat, species diversity, scenic beauty, and opportunities for dispersed recreation. This was discussed in detail in Chapter 1 of the DEIS and FEIS. The positive effects of the action alternatives on non-commodity values is documented throughout Chapter 3 of the DEIS and FEIS; see especially the sections on Ecological Factors, Recreation, Scenic Quality, Heritage Resources, Wilderness, and Wildland Values.

56. *The Forest Service should provide interim protection through project-by-project analysis for all roadless areas, including those in the Tongass National Forest.*

Response: The new Planning Regulations (36 CFR 219) provide the direction on the protection and management of roadless areas on all national forests including the Tongass.

57. *The Forest Service should expand the alternatives by considering one that would build no new roads in roadless lands and abandon the roads it currently has open, conduct restoration, purchase lands for restoration, and disallow extractive uses, development, off road vehicles, investment, and commercial use. It should prohibit roads in uninventoried roadless areas. It should adopt an Alternative 5 more protective than the others.*

Response: The DEIS and FEIS considered but eliminated from detailed study most of these alternatives and features as described in the DEIS

and FEIS (Chapter 2, Alternatives Considered But Eliminated From Detailed Study).

The Notice of Intent published in October 1999, and the purpose and need in Chapter 1 of the DEIS, stated that the objective of this effort is the protection of current inventoried roadless areas and unroaded areas that have not yet been inventoried, rather than creation of roadless areas.

The DEIS and FEIS considered an alternative to prohibit more activities than road construction and reconstruction and timber harvest. The agency elected to focus on those activities that significantly alter landscapes and cause fragmentation at a national scale.

The agency elected not to consider closure and decommissioning of any roads within inventoried roadless areas as part of this national proposal. A decision to close all roads would preclude activities that have already been approved and activities that the agency has determined are more appropriately addressed at the local level.

The DEIS and FEIS explain the rationale for not extending the prohibitions to uninventoried unroaded areas (Chapter 2).

The likelihood that unroaded areas may be created as a result of implementing this rule in conjunction with other Forest Service initiatives and rules was addressed in the DEIS on pp. 3-240 through 3-241. This section has been expanded in the FEIS.

Purchasing additional lands for the purpose of restoration or for other reasons is outside the scope of the roadless area conservation proposal for protecting the agency's current inventoried roadless areas.

58. *The Forest Service should include a prohibition of grazing in Alternative 4.*

Response: The rationale for what activities were considered to be prohibited is described in the DEIS. Grazing is an activity that does not occur at a similar, nationwide scale as road construction and timber harvest, and it does not pose a similar high likelihood of altering landscapes (DEIS p. 1-10). The new Planning Regulations (36 CFR 219) provide a means to analyze on a local scale in an appropriate context the impacts of a particular activity, such as grazing,

on roadless values (DEIS p. 2-6). Also see Response 6 in Livestock Grazing section.

59. *The Forest Service should protect all individual unroaded areas, without considering size. Many areas have not been considered in the past, especially in the East, because of their relatively small size. Expand the protection policy to all roadless areas without exceptions, and include all national forests.*

Response: The DEIS and FEIS describe the rationale for how consideration of inventoried and uninventoried areas was determined. It is not the intent nor is it appropriate that the management of areas currently uninventoried be subject to a national prohibition until such areas can be inventoried, characterized, and addressed through local forest and grassland planning processes. There is no need to either undertake an inventory at the national level or make decisions on delineation of such areas until they have first been subjected to local consideration. Provision for evaluating these areas is now contained in the new Planning Regulations (36 CFR 219).

60. *The Forest Service should select Prohibition Alternative 3 and include provisions in Alternative 3 for the prohibition of high-impact activities such as the establishment of new routes for off-road recreational vehicles; and*

61. *The Forest Service should select Alternative 4 with the addition that all-terrain vehicles be banned from all unroaded areas of public land.*

Response: The alternatives of limiting or prohibiting other activities in roadless areas such as OHV use were considered but not analyzed in detail (DEIS and FEIS, Chapter 2). Data on OHV use in roadless areas are too limited, and local managers already have the authority to regulate OHV use. See also Response 25 in the Recreation section.

62. *The Forest Service should delete "...with unroaded areas of 5000 acres or more..." from Section 294.13 of the Draft EIS.*

Response: It is the intent of this section of the rule to provide guidance to the local decision-maker to consider roadless areas other than those addressed in proposed section 294.12 at the forest and grassland plan level. This includes all unroaded areas. Consideration of roadless areas that are adjacent to

roadless areas managed by other Federal agencies is one example of areas that now may be considered under the new Planning Regulations (36 CFR 219).

63. *The Forest Service should continue the road moratorium in the White River National Forest until its LRMP is incorporated with section 294.13.*

Response: The 18-month moratorium has expired. If the decision-maker selects prohibition Alternative 2, 3, or 4, upon adoption of the final rule, there would be no need for a moratorium on road construction in inventoried roadless areas on the White River or any other forest.

64. *The Final EIS should recommend to the President that all roadless areas be designated National Monuments.*

Response: The DEIS and FEIS (Chapter 2) considered an alternative that would have designated all inventoried roadless areas as National Monuments. Although the President has the authority under the Antiquities Act to designate National Monuments, he did not elect to designate roadless areas as National Monuments in this situation. The President issued on October 13, 1999 a Memorandum to the Secretary of Agriculture. It directed the Forest Service to develop “appropriate long-term protection” for roadless area conservation through rulemaking within authorities available to the Secretary of Agriculture. Therefore, designating roadless areas as National Monuments was considered but not analyzed in detail.

Alternative Preferences

65. *The proposed rule is unnecessary because existing regulations, policies, and processes provide adequate protection for roadless areas.*

Response: We acknowledge the preference of many commentors for the agency to take no action or for making limited changes to current rules. Nevertheless, the purpose of the proposed Roadless Area Conservation Rule is to conserve and maintain roadless lands for their unique ecological, social, and economic values (DEIS p. 1-3). The DEIS and FEIS describe in detail how the current processes and regulations fail to adequately protect roadless areas. For instance, although forest and grassland planning processes call for considering roadless character, local planning efforts might not adequately recognize

the national significance of roadless areas and their values (DEIS pp. 1-4 through 1-5). The DEIS and FEIS describe the values of roadless areas (DEIS pp. 1-1 through 1-4, 2-8 through 2-14) and discuss the controversy over how roadless lands are handled in the forest and grassland planning process (DEIS pp. 1-4, 1-5). The new Planning Regulations (36 CFR 219) provide direction for considering roadless values.

Of the 58.5 million acres of inventoried roadless area in the US (including Alaska), roughly two-thirds are available for some sort of road construction and timber harvest activities (DEIS pp. 3-12, 3-71). Under current policy, roadless acreage is expected to decline by about 0.5% over the next 20 years. The impacts of this trend on affected resource values are described in the DEIS and FEIS.

66. *The Forest Service should adopt an alternative that provides more protection and oversight than the preferred alternative.*

Response: A number of respondents supported prohibition alternatives other than Alternative 2, the preferred alternative in the DEIS. Some specifically supported Alternative 3, which would prohibit all but stewardship timber harvest in inventoried roadless areas. Some specifically supported Alternative 4, which would prohibit timber harvest in inventoried roadless areas with few exceptions. Some endorsed a new alternative not in the DEIS, sometimes referred to as Alternative 5, which would provide additional protections for roadless areas that could include removal of existing roads.

Chapter 2 of the FEIS identifies the current preferred alternative. Chapter 3 of the DEIS and FEIS identify the environmental effects of the alternatives in terms of the protection each affords to roadless characteristics.

67. *The Forest Service should adopt a balanced approach to the proposed rule. The preferred alternative is supported; and*

68. *The Forest Service should adopt the Roadless Area Conservation Proposed Rule.*

Response: We acknowledge the preference for the proposed rule and the preferred alternative in the DEIS. The FEIS Chapter 2 identifies the current preferred alternative.

69. Assessment on a project-by-project basis, rather than assessment of all roadless areas at once, makes public input increasingly difficult.

Response: The new Planning Regulations (36 CFR 219) provide the direction on the protection and management of roadless areas. See also Responses 30 and 36 in the Involvement section.

70. The Forest Service should implement Alternative 3 west of the 100th Meridian and Alternative 4 east of the 100th Meridian.

Response: Your preference for Alternative 3 west of the 100th meridian and Alternative 4 east of the 100th meridian is acknowledged.

Clarifying Alternatives

71. The Forest Service should adopt the prohibitions Alternative 3, but clarify what low impact activities such as hiking and cross-country skiing, will be allowed. Include the Tongass in Alternative 3.

Response: The prohibitions described in the alternatives apply to road construction, road reconstruction, and timber harvest within inventoried roadless areas. The alternatives would not directly affect other activities including hiking and cross-country skiing.

The new Planning Regulations (36 CFR 219) provide a means to evaluate management in inventoried roadless areas and unroaded areas. Furthermore, based on public comments and further review after release of the DEIS, the Tongass Not Exempt Alternative has been clarified in the FEIS. This alternative would provide no exemption for the Tongass National Forest, and the prohibitions in Alternative 3 could apply. See Responses 15 and 16 in the Tongass section.

72. Alternative sets of prohibitions applicable to inventoried roadless areas (which includes prohibitions on grazing, OHV use, and others) found on p. S-16, should be removed from the DEIS because they contradict the preferred alternative.

Response: The set of prohibitions described in the DEIS Summary (p. S-16) referred to alternatives

considered but eliminated from detailed study for various reasons (DEIS pp. 2-15 through 2-20). These alternatives were therefore not among those available for the responsible official to select. However, Federal agencies are required by NEPA to include a discussion of alternatives considered but eliminated from detailed study such as these.

73. The Forest Service should address contradictions between Alternatives 2 and B.

Response: In the DEIS, the alternatives are different but not contradictory. The notice of intent for the proposed rule identified two possible methods to conserve and protect the remaining inventoried roadless areas and unroaded areas (DEIS p. 2-1). Prohibition alternatives (Alternatives 2, 3, 4) offer one method, and procedural alternatives (Alternative B, C, D) offer another. As described in the NOI, the prohibition and procedural alternatives complement one another. The prohibitions refer to the activities that would not be allowed in inventoried roadless areas (DEIS p. 2-3).

Alternative B and the other procedural alternatives have been eliminated in the FEIS because the new Planning Regulations (36 CFR 219) made the decisions on how to plan for inventoried roadless areas and unroaded areas.

74. It should be clarified whether the rule applies only to the Forest Service.

Response: The rule applies only to National Forest System lands as described in the DEIS and FEIS (Chapter 1) and proposed rule (Appendix A pp. A-7 and A-25).

75. The Forest Service should clarify phrasing of the alternatives on the web site to make sure that the No Action alternative means “no change.” It does not mean “no logging.”

Response: The alternatives in the DEIS were displayed on the Roadless web site. The site described Alternative 1, No Action as, “No prohibition of activities in inventoried roadless areas.”

76. The proposed rule should not supercede projects which have already met all legal requirements.

Response: Section 294.14 of the propose rule, Scope and applicability, subsection (c) states: “This subpart does not suspend or modify any decision made prior to [Effective date of final rule].”

77. The Forest Service should clarify the term “can” with regard to “road building can degrade IRA characteristics.” Road building can enhance as well and should be noted.

Response: Impacts of road construction were described in the DEIS and FEIS, Chapter 3. Because of the nature of roadless areas, road building consistently has an adverse impact to many roadless characteristics.

78. Sometimes the DEIS says that Alternative 4 is “most restrictive.” This is accurate but casts this alternative in a negative light. It would be better to say “most protective.”

Response: The term “most restrictive” is characterizing the types and degrees of prohibitions applied. Alternative 4 is the “most restrictive” of the four prohibitions alternatives because it places restrictions on the most activities: road construction, reconstruction, and timber harvest.

Wider Range of Alternatives

79. The range of alternatives is too narrow. More information about what lands are involved would help define this range. Also, the range of alternatives should be consistent with the scope of the rule and other rulemaking, such as the Road Management Strategy.

Response: The DEIS described the process for developing the alternatives considered in detail (DEIS pp. 1-10, 1-11, 2-1, 2-2), and the scope of the rulemaking (p. 1-10). Also, alternatives considered and then eliminated from detailed analysis were described (DEIS pp. 2-15 through 2-20). The interrelationship between this initiative and other rulemakings was described in Chapter 3 of the DEIS and FEIS. The discussion includes the cumulative effects section in the FEIS, Section, (“Cumulative Effects of the Rule with Other Rules and Initiatives”).

80. The lack of a full range of alternatives can be attributed in large part to the flawed public scoping process implemented by the Forest Service under

the NOI. The scoping period was of inadequate length and the paucity of information provided to the public during that process was totally insufficient to make objective decisions regarding formulation of alternatives.

Response: The Forest Service considered a full range of alternatives. The alternatives considered in detail were described in the DEIS on pp. 2-2 through 2-13. Alternatives considered but eliminated from detailed study were described in the DEIS on pp. 2-15 through 2-20. The FEIS also describes these alternatives (Chapter 2).

The scoping period was 60 days. The process was described in the DEIS on pp. 1-5 and A-6. As described, the Forest Service went to extraordinary efforts to outreach to the public for input during the scoping period.

The Notice of Intent provided several options for protection of inventoried roadless areas for the public to consider during the scoping period. A web site was provided, an audio-visual presentation was given at the public meetings to provide additional information, and other information materials were available from multiple sources. The agency received over 517,000 responses from the public; they assisted us in developing the appropriate range of alternatives. See also Response 29 in the Involvement section.

81. The proposed rule should call for Wilderness designations in Idaho because extractive companies are only interested in immediate profits and cannot legislate themselves for an outcome that would benefit all society.

Response: The DEIS considered an alternative that would have recommended all inventoried roadless areas for Wilderness designation (DEIS p. 2-17), but eliminated it from detailed study. There were two primary reasons for not further considering this alternative. (1) Most of the inventoried roadless areas in question have already been evaluated for Wilderness character in the land and resource management planning process, and it was determined for various reasons that they should not be designated as Wilderness, and (2) the agency uses the NFMA planning process as the mechanism for making recommendations to Congress for future Wilderness consideration.

Exemptions and Exceptions

82. The proposed rule should allow exemptions and waivers, including less restrictive waivers to benefit public health and safety; and

83. The Forest Service should include language that minimizes “other exemptions” in the alternatives.

Response: The portion of the rule that establishes prohibitions on road construction and reconstruction allows for exceptions (DEIS p. 2-4). The agency also identified and considered other possible exceptions but did not include them in an alternative (DEIS p. 2-20).

As a result of public comment and further discussions after release of the DEIS, several additional exceptions have been included in addition to the four listed in the DEIS. One of these additional exceptions in the FEIS is for the purpose of further benefiting public health and safety.

84. In the road construction prohibition exceptions, the Forest Service should insert “A road is needed to carry out the multiple uses provided for in the authorities cited for these regulations” following Section 294.12(b)(4) of the Draft EIS.

Response: Section 294.12(b) of the proposed rule (DEIS p. A-27) listed the exceptions to the roadless prohibitions. The addition of the exception such as described would essentially make the proposed rule the same as Alternative 1, No Action.

85. The Forest Service should revise the EIS to include an exemption to allow road construction for the purpose of mining and exploration, since studies indicate that mining affects less than 0.1% of the National Forest System, and since mining and exploration are held to strict restoration requirements.

Response: Prohibition Alternatives 2 through 4 in the FEIS provide a possible exception for mining exploration and certain other activities. The FEIS identifies an exception for cases where a road is needed pursuant to reserved or outstanding rights or as provided for by statute or treaty. This exception is also stated in the proposed rule at 294.12(b)(3) (DEIS p. A-27), which states in part “and rights granted under the General Mining Law of 1872, as

amended.” This exception is available to the responsible official to adopt. The FEIS in Chapter 3 describes the effects of including this exception as well as not including it.

86. The proposed rule should not apply to national forests that have recently completed their forest plans.

Response: This alternative was considered but not afforded detailed study, because revised plans do not provide the duration of protection that would be established by a roadless area conservation rule (FEIS Chapter 2, Alternatives Considered But Eliminated From Detailed Study, Geographic Area Exemptions).

87. The Forest Service should remove all inventoried roadless areas in the various regions of the nation from the proposed rule; and

88. The Forest Service should consider an alternative that would not ban road construction in inventoried roadless areas that were considered in post-1995 revisions to forest plans.

Response: The DEIS and FEIS addressed this concern in the section of Chapter 2 titled Alternative Exemptions and Exceptions.

The number of potential exemptions or inclusions is inexhaustible and could include consideration of many specific roadless areas. Examples include exempting the Tongass National Forest, and other national forests and grasslands where land management plan revisions are complete, and national forests and grasslands exempted under the Interim Roads Rule. In addition certain activities could be exempted.

Geographical area exemptions were considered. Forest and grassland planning, including the Pacific Northwest Forest Plan, the Tongass Forest Plan, and other recently revised forest and grassland plans have not specifically addressed the need to protect roadless areas nor responded to the purpose and need described in Chapter 1.

Tongass is the only national forest or grassland for which specific alternatives were developed and analyzed in the DEIS. The unique economic and social reasons for developing and analyzing Tongass

alternatives were described in the DEIS (DEIS pp. 1-11 and 1-12).

89. In the prohibition on road construction, the Forest Service should modify the phrase “unless they (roads) are needed for public health and safety, for reserved or outstanding right, or for other specified reason” to be less broad and arbitrary.

Response: The proposed rule (DEIS p. A-27) in section 294.12 (b) lists very specifically the exceptions under which road construction and reconstruction will be allowed. In addition, all proposed projects using an exception will go through the Forest Service’s normal NEPA environmental analysis and administrative review process (appeals) prior to any action being taken.

Timelines For Decision-Making

90. The proposed rule is moving too fast because experience has shown the USFS can’t even put up timber salvage in less than three years; and

91. The proposed rule should be enacted now to protect the forests from future abuses.

Response: The agency is following the required timelines and processes during this rulemaking.

92. The proposed rule is inconsistent with the proposed Planning Regulations and should be postponed until those Planning Regulations have been adopted.

Response: The revised Planning Regulations (36 CFR 219) rewrote the existing Forest Service planning regulations that implement NFMA to address ecological, economic, and social sustainability. It builds on the recommendations of a select committee of scientists and more than 20 years of experience with forest planning and provides the overarching framework for the proposed Roads Policy and the proposed Roadless Rule (DEIS pp. 1-4 through 1-6).

93. The Forest Service should delay the decision of the proposed rule until after promulgation of other pending rules at this time; and

94. Both the roadless initiative and the Roads Policy proposal will impact the regional proposals,

like ICBEMP and SNFCC. Yet the development of these regional land management proposals continues as if these two road proposals did not exist. Therefore, the Forest Service should propose rules one-at-a-time in a logical sequence, not concurrently.

Response: Because of the time involved in completing any single one of these planning efforts, it would not be appropriate to set up a sequence that would complete them one-at-a-time. However, the agency is working at all levels to assure that all of these initiatives are consistent with each other. For example, this FEIS has an updated analysis of the cumulative effects of all the ongoing initiatives and how they affect and interrelate with each other. The Sierra Nevada Framework for Conservation and Collaboration (SNFCC) FEIS addresses how this effort and others may potentially overlay with the alternatives being considered.

Clarifying How To Implement

95. The Forest Service should address the enforcement and interpretation of its policies.

Response: Some respondents expressed concern that the Forest Service would be unable to ensure consistency in the implementation of the rule or to make sure that local Forest Service officials comply fully with the final rule. The agency has a variety of methods for determining whether regulations are being put into practice. First, the public involvement process allows for direct input into the planning process and management decisions on the ground. This local collaboration serves as an important check on any tendency to minimize or ignore requirements. Second, the agency has an administrative appeals process, through which the public can raise concerns about program implementation and agency practices. Last, the Forest Service conducts regular management reviews, designed to assess to what degree the agency is complying with rules and policies.

96. The Forest Service should address how it will inspect or enforce compliance with the proposed rule.

Response: The prohibitions, and exceptions of the final rule would become effective with adoption of the rule. Implementation would be overseen in the

same manner as other rules governing Forest Service activities, including regional and national reviews.

97. *The Forest Service should make a stronger statement to make clear that the prohibitions against road building in inventoried roadless areas apply until superseded by another rule. Make clear that the prohibitions cannot be overruled at the forest level in forest plan revision.*

Response: The DEIS and FEIS discussed the duration and precedence of the prohibitions. See Response 1 in the Roads section and 47 in this section.

98. *The Forest Service should modify the language of 36 CFR 294.13, to allow for citizens to petition for classification of lands as roadless or unroaded.*

Response: The opportunity already exists for citizens to identify areas that they feel are important including for reasons of roadless character. This may take place during forest or grassland planning or site-specific project level analysis efforts at the time of scoping.

Considering More Information

99. *The Forest Service should recognize that areas with a few roads that could be blocked or obliterated should be considered roadless.*

Response: The purpose of the rule is to stop activities that have the greatest likelihood of degrading desirable characteristics of inventoried roadless areas. It is not to create additional roadless areas or add acreages to existing roadless areas. Closing roads would be outside the scope of the prohibitions under the proposed rule but would be addressed under the proposed Roads Policy.

If implemented, Alternatives 2 through 4 would require the responsible officials to apply the prohibitions on road construction and reconstruction to inventoried roadless areas.

Unroaded areas or areas that contain only a few roads but still have a mostly unroaded character can be considered under the new NFMA Planning Regulations (36 CFR 219).

The DEIS and FEIS (Chapter 2) considered an alternative that would have gone beyond prohibitions

and required removal of any existing roads from inventoried roadless areas through road closure or decommissioning. Existing roads would be scheduled for closure and removal in a timely manner. This alternative was not analyzed in detail because specific road closures cannot be directed from a national level because of previously approved activities, existing rights, and the need to conduct specific environmental analysis for ground disturbing activities such as road decommissioning.

100. *The Forest Service should address the effect this Proposed Rule will have on Forest plans throughout the nation.*

Response: The DEIS and FEIS describe the interrelationship of the roadless area rulemaking with the new Planning Regulations (36 CFR 219), as explained in Chapter 1. These new Planning Regulations determine the process for revising forest and grassland plans.

101. *The Forest Service should clarify the effect of this proposed rule on the local process.*

Response: This concern refers to the sentences on p. 3-209 of the DEIS: “National prohibitions will not have an effect on the local involvement process itself. They would narrow the scope of what is to be decided upon locally with regard to the management of inventoried roadless areas.” This means that local forests and grasslands and their involvement processes will not be changed by this rulemaking. The public will continue to be involved in the decision-making process as always, but the scope of those discussions may be narrowed because the decision on certain aspects of management of inventoried roadless areas will have already been made at the national level if a prohibition alternative (Alternative 2 through 4) is selected.

102. *The Forest Service should carry out a comprehensive review of all factors, both local and national in scope, before instituting a unilateral protection policy protecting all areas of more than 1000 acres.*

Response: The DEIS and FEIS document the Forest Service’s interdisciplinary review, which took into account national factors and local factors as appropriate for the scope of the analysis (DEIS p. 1-10). In addition, the FEIS examines additional prohibitions on inventoried roadless areas only.

Unroaded areas—including those 1,000 acres or larger—will be addressed locally through the provisions of the new Planning Regulations (36 CFR 219).

103. All proposed action alternatives should be compared with the No Action Alternative, which should be calibrated to use the time period before the “new roads” moratorium went into effect;

104. The Forest Service should use the forest plans as the no action alternative (in particular ASQ objectives) and not use estimates from programs and budget projections; and

105. The Forest Service should use a proper baseline for comparing alternatives, such as using Forest Plan ASQ for the baseline.

Response: The purpose of Alternative 1, the No Action alternative, is to provide a baseline in which no prohibitions would be issued and road construction and reconstruction would not be prohibited unless forest or grassland plan prescriptions so direct (DEIS p. 2-4).

The forest and grassland plans represent the no action alternative in the DEIS. In the description of Alternative 1 – No Action; No Prohibitions (DEIS p. 2-4) says, “No rule prohibiting activities in inventoried roadless areas would be issued. Road construction and reconstruction would continue to be prohibited only where land management prescriptions prohibit such action.”

The data displayed in the DEIS and FEIS were based on current timber sale and other program projections. The five year projection of projects was to give a reference point for the purpose of the analysis of the effects. Although forest and grassland plans provide goals for the life of the plan, projections give a more accurate viewpoint of the short-term expectations. For example, few of the national forests and grasslands in the U.S. are managing at the timber harvest levels (ASQ) of the existing plans.

Trend lines were used for qualitative projections farther in time. Also see Response 12 in the Economics section.

106. The Forest Service should address the size of non-inventoried roadless areas and the potential

impacts of this rule on use of these lands for the future.

Response: The new Planning Regulations (36 CFR 219) made the decision on how to plan for management of unroaded areas.

107. The Forest Service should explain Alternatives 2-4 and explain if the intent is to remove economic bases (i.e. mining, grazing, recreation, etc.) from forest-dependent economies and to destroy these communities.

Response: Social and economic effects were described in detail in the DEIS on pp. 3-160 through 3-178. Additional social and economic effects identified during the public comment period are addressed in the FEIS.

108. The Forest Service should modify language in the Draft EIS to acknowledge that RARE II and Forest Plan inventories do not reflect new knowledge and public awareness of the important values of roadless areas.

Response: The DEIS acknowledged that the Forest Service has previously evaluated the character of the roadless areas inventoried in RARE II: once during RARE II and again during the first round of forest and grassland planning, as well as during the current round of plan revisions. In most cases, areas that the agency determined were suitable for Wilderness designation have been recommended to Congress for inclusion in the Wilderness Preservation System. The new knowledge and public awareness of the importance of roadless areas has led to this roadless rulemaking effort.

109. The proposed rule will centralize power.

Response: The prohibition alternatives would not change the levels of delegated decision-making in the agency. It may limit the ability of forests and grassland managers to construct or reconstruct roads or harvest timber in inventoried roadless areas, depending on which alternative is selected. Management decisions for unroaded areas and other activities in inventoried roadless areas will be made at the local level following the new Planning Regulations (36 CFR 219).

110. The Forest Service will jeopardize national defense by limiting public access.

Response: Exceptions provided in the DEIS and FEIS will ensure that public health and safety as well as other exceptional needs (such as mineral extraction) may be allowed if a justification exists. Most uses that may have national defense ramifications are provided for on national forest system lands that are not included as part of the Roadless Area Conservation Proposal.

If access were necessary for national defense purposes it would likely fall under exception (1) in the proposed rule (DEIS p. A-27, section 294.12(b)(1)): “A road is needed to protect public health and safety in cases of imminent threat of flood, fire, or other catastrophic event that, without intervention, cause the loss of life or property.”

111. The Final EIS should include all roadless areas that were included in the Draft EIS.

Response: The DEIS addressed 54 million acres (DEIS p. 1-1), the FEIS has updated the acreage addressed based on updated mapping to 58.5 million acres (FEIS p. 1-1).

The prohibition alternatives provide protection for roadless areas inventoried during RARE II and other planning processes.

The new Planning Regulations will provide a means of planning for management of unroaded areas. See also Response 2 in the Data section.

Cumulative Effects Analysis

112. The Forest Service should provide information on how the many proposed rulemakings and policies are related and what their cumulative impact will be. These initiatives include national and regional efforts such as Roadless Conservation, Road Management, Unified Federal Watershed Policy, Sierra Nevada Forest Plan Amendment, Strategic 2000 and others;

113. The Forest Service should address the adequacy of the cumulative effects analyses for the alternatives; and

114. The Forest Service should address contradictions in the cumulative effects analysis.

Response: The DEIS described the context of the rulemaking (pp. 1-14 through 1-16), as well as the cumulative effects of the various policies (pp. 3-11, 3-240 through 3-242). The FEIS contains additional analysis of the cumulative impacts of this rule when added to other initiatives being proposed. See the section in the FEIS, (Chapter 3) called Cumulative Effects of the Rule with Other Rules and Initiatives. Cumulative effects discussions have been expanded throughout Chapter 3.

115. The Forest Service should avoid incorporating cumulative actions effects into baseline data.

Response: The affected environment describes the current situation or the baseline data. It is used as the baseline for impacts to add to and further evaluate the alternatives against to determine cumulative effects. By the very nature of baseline data, past and present actions are included. Reasonably foreseeable future actions, which must also be considered during cumulative effects analysis, are not included in the baseline, and neither is the current proposed action.

116. The Forest Service should evaluate the use of indirect effects as the cumulative effects in the DEIS.

Response: The DEIS described many cumulative effects throughout Chapter 3. The cumulative effects section from the DEIS has undergone extensive rewriting in the FEIS to provide additional analysis and further clarification. Due to the nature of effects analysis, it can sometimes be difficult to discern between the different types of effects: direct, indirect and cumulative. The agency attempted to separate out the different types of effects for reader clarity.

117. The Forest Service should analyze the cumulative effects of road decommissioning in the proposed rule.

Response: There would be no road decommissioning authorized under the proposed rule. The information provided in the DEIS on road construction and decommissioning (DEIS pp. 3-15 through 3-19 and 3-240 through 3-242) is provided for informational purposes and to provide a background to the reader. Since no decommissioning is proposed under the rule, there would be no addition of effects to consider in a cumulative effects analysis on decommissioned roads. The FEIS contains a rewritten cumulative effects section that identifies

the effects of potential road decommissioning as a result of the proposed Roads Policy.

118. *The cumulative effects analysis fails to analyze the effects of the proposed rule on air, water and the Endangered Species Act.*

Response: The effects on water quality were displayed in the DEIS on pp. 3-28 through 3-32. The effects on air resources were displayed in the DEIS on pp. 3-44 through 3-46. The effects on endangered species were displayed in the DEIS on pp. 3-93 through 3-97. Additional clarification is provided in the FEIS in each respective resource section as well as the cumulative effects sections in Chapter 3.

More Analysis

119. *An EIS should be required for any proposed commercial activity in the national forests, which discusses the negative impacts versus the jobs provided.*

Response: Any proposed commercial activity on National Forest System lands requires analysis in accordance with the National Environmental Policy Act (NEPA), following Forest Service procedures (Forest Service Handbook 1909.15). Such analyses include an analysis of environmental effects, as well as social and economic effects, if these effects are relevant to making a decision. Depending on degree of impact, the analysis may be documented in an environmental impact statement (EIS), or an environmental assessment (EA), or another type of document.

120. *The programmatic EIS is not site-specific. The analysis is too general and assumes that all roadless lands are pristine, when in fact, many are in deplorable conditions. The analysis ignores this fact.*

Response: The DEIS and FEIS described the current state of the inventoried roadless areas in Chapter 3, and showed current maps of all inventoried roadless areas in Volume 2. The analysis regarding the prohibition alternatives provides adequate information to support a reasoned choice among the alternatives. This analysis was displayed in the DEIS and FEIS.

121. *To ensure that conclusions are not suspect, the impact statement in the DEIS should rely on*

balanced and impartial contributions. The DEIS lacks thorough insight into all of the ramifications and the language of the proposed rule will include areas greater than the inventoried roadless areas; and

122. *The Forest Service should comply with Council on Environmental Quality regulations by providing accurate scientific analysis.*

Response: The DEIS and FEIS describe this effects analysis conducted for the alternatives using the pertinent physical, biological, and social sciences. In compliance with section 102(A) of NEPA and section 40 CFR 1502.6 of the NEPA regulations, the agency convened an interdisciplinary team to analyze the scope, issues, and effects of the proposal. The FEIS has refined the effects analysis to provide additional analysis and further clarification partly in response to public comment (FEIS Chapter 3).

123. *The Forest Service should not attempt to generalize an alternative. Alternative 4 would work for an old-growth forest, but Alternative 3 would work better for returning a previously logged area to a healthy environment.*

Response: Federal agencies develop reasonable alternatives in sufficient detail to display for the responsible official the trade-offs of different courses of action (40 CFR 1502.1, 1502.14, 1505.1(e)). The DEIS described the rationale for developing alternatives (DEIS pp. 2-1 through 2-4) and provided detailed descriptions of those alternatives analyzed at length (DEIS pp. 2-4 through 2-12). The relative benefits of the alternatives to old-growth and managed areas were displayed in Chapter 3 in terms of fragmentation (DEIS pp. 3-56 through 3-58), and in terms of forest health and fuel management (pp. 3-97 through 3-109). These discussions have been updated in the FEIS.

124. *The effects analysis (p. 3-223 of the DEIS) should fully outline the prohibitions that will result from the preferred procedural alternative; and*

125. *The Forest Service should fully outline the prohibited uses in uninventoried roadless areas and unroaded areas on page 3-223 of the DEIS.*

Response: The new Planning Regulations (36 CFR 219) made the decisions on planning for

management for inventoried roadless areas and unroaded areas.

126. *The Forest Service should more thoroughly analyze the Procedural Alternatives.*

Response: The new Planning Regulations (36 CFR 219) made the decisions on the procedures for planning for management within inventoried roadless areas and unroaded areas. Therefore, the procedural alternatives have not been carried forward into the FEIS.

Process Points

127. *The proposed rule does not effectively estimate how many of the 53 million acres will be declared “protected,” so it is misleading.*

Response: In the DEIS, Table 2-5 Summary of the Combined Effects of the Proposed Action on p. 2-32 displayed the acres of inventoried roadless areas that would fall under the prohibitions. These figures have been updated in the FEIS. See Response 1 in the Data section.

128. *The proposed rule should be examined in accordance with democratic law and principles, which means both the Senate and House of Representatives and the President should be involved.*

Response: The DEIS described an alternative that was considered but eliminated from detailed study that considered enactment of legislation (DEIS p.2-16). On June 18, 1999, 166 Members of Congress requested that the President “take decisive action to protect the remaining roadless areas in our national forests.” The agency has adequate statutory authority to undertake this initiative without additional legislation.

129. *The Forest Service should issue a supplement to the Draft EIS pursuant to 40 CFR 1502.9, “to address the significant new circumstances and information that is relevant to our environmental concerns and bearing on the proposed action and its impacts” and 40 CFR 1502.9(a) “to address the inadequacies that preclude meaningful analysis.”*

Response: The agency has determined that the threshold that would trigger a need to prepare either a supplement or revised draft EIS has not been met.

130. *The Forest Service should analyze and identify the environmental/social impacts of the no action alternative in the DEIS.*

Response: Chapter 3 of the DEIS displayed the consequences of the no action alternative for every resource identified including social and economic factors (pp. 3-160 through 3-222). We have used additional information obtained during and after the public comment period to improve the analysis and documentation in the FEIS.

Technical Points

131. *The Forest Service should make its Environmental Impact Statements shorter and less complicated;*

132. *The proposed rule should be simplified and made less complicated and cumbersome; and*

133. *The Forest Service should address the clarity of the DEIS.*

Response: The Council on Environmental Quality (CEQ) has issued procedural guidance on the preparation of environmental impact statements, which the Forest Service follows during decision-making (40 CFR 1500 - 1508). Forest Service policy also guides the preparation of environmental impact statements, and emphasizes conciseness where possible (FSH 1909.15 Section 10 and 20). In general, the complexity of the action being studied dictates the complexity of the EIS. Although the proposed rule for conservation of roadless areas is a relatively brief and simple rule, it has many benefits and impacts that need to be disclosed to the public. The DEIS and FEIS represent the interdisciplinary team’s best efforts to provide a detailed, accurate, and clear description of the necessary analysis so the responsible official can make an informed decision about the physical, biological, and social consequences of the proposed rule.

134. *The DEIS includes grammatical and typographical errors, and there is a lack of consistency within the body of the DEIS. There is also inconsistency between the DEIS and the Summary. Some statements and passages are difficult to understand, while others lack supporting reference documentation.*

Response: A number of comments pointed out specific examples of editorial and technical flaws and inconsistencies in the DEIS and Summary. The Forest Service has revised and edited the FEIS for the Roadless Area Conservation Proposed Rule to correct these and other errors in grammar, spelling, consistency, style, and format. Sections have been reviewed for accuracy and logic, and revised as needed. We have examined and updated the Summary and the body of the FEIS for consistency and clarity of information. Throughout the FEIS, the interdisciplinary team has removed subjective characterizations and terminology that could imply bias. The Forest Service has also further quantified statements of effects and added references whenever appropriate.

135. *The Forest Service should only send an EIS to someone who requests it.*

Response: In general, we attempt to limit distribution to those who request the documents in order to conserve resources and minimize costs. The agency met distribution requirements of law, regulation, and policy. CEQ regulations (40 CFR 1502.19, 1503.1) include some mandatory distributions, and agency policy is to provide copies to those who submit substantive comments during scoping or on the DEIS (40 CFR 1502.19 and Forest Service handbook 1909.15 section 22.4). In addition, the Forest Service provided copies to over 10,500 public libraries to facilitate wide distribution and ease of availability to reviewers.

136. *The Forest Service should address contradictions in the DEIS regarding whether road construction causes irreversible and irretrievable commitments of dispersed recreation activities in roadless areas.*

Response: The DEIS indicated that road construction and use can create irretrievable and sometimes irreversible commitments of resources. “If implemented, the proposed prohibition on road construction would reduce road-caused irreversible and irretrievable commitments to watersheds, soils, critical habitat, and dispersed recreation activities in inventoried roadless areas on NFS lands compared to potential roading effects under the No Action Alternative” (DEIS p. 3-245). Elsewhere it described road effects on inventoried roadless areas as “irreversible” (pp. 1-10 and 3-11).

An irreversible commitment would occur when a resource is committed permanently, such as ore removed from a mine. An irretrievable commitment of the roadless resource would occur when a new road is constructed within it, because the area would no longer be roadless, at least for the life of the road. If the roadbed were later restored to natural conditions, the effect would end. Although the DEIS portrayed road construction as an irreversible commitment, it would actually be irretrievable. The FEIS expresses this effect correctly. See also Response 10.

137. *The Forest Service should address all roadless issues in a single EIS.*

Response: The Forest Service has had two ongoing rulemaking efforts related to the Roadless Area Conservation Rule: the proposed National Forest System Land and Resource Management Planning Regulations, and the proposed National Forest System Road Management and Transportation System Rule (the Roads Policy). The Planning Regulations have been completed. As stated in the DEIS, as rulemakings proceed, the agency may choose to integrate and clarify certain provisions within each rule to ensure consistency, clarity, and effectiveness (DEIS p. 3-240). This is one of the reasons that the new Planning Regulations (36 CFR 219) made decisions on planning for inventoried roadless areas and unroaded areas. The description of the interrelationships between these rulemakings has been expanded in the FEIS (Chapter 3, Cumulative Effects of the Rule with other Rules and Initiatives).

Clarifying Analysis

138. *The Forest Service should justify its choice of 5000 acres as the minimum size.*

Response: The 5000 acre figure is a standard minimum size originating in the Wilderness Act. It was also used in the RARE II inventory of 1977-1979 as the standard minimum size for inventoried roadless areas. However, the RARE II inventory procedures allowed exceptions such as areas adjacent to Wilderness, islands, or other areas manageable as potential Wilderness. The prohibitions in Alternatives 2 through 4 would apply to all the inventoried roadless areas from RARE II, forest and grassland plans, or as updated officially with public involvement.

The new Planning Regulations (36 CFR 219) have made the decisions regarding the process for planning for management of roadless areas.

139. The Forest Service should modify tables 2-2 and 2-3 to include all information disclosed in chapter 3 of the Draft EIS.

Response: As explained on p. 2-21 of the DEIS, this section focuses on areas or resources where effects are actually expected to occur and where different levels of effects or outputs can be distinguished among alternatives. It is not intended to be an all-inclusive statement of the environmental consequences described in Chapter 3.

140. The Forest Service should re-evaluate the description of the No Action Alternatives.

Response: It was not the intent in the description of the no action alternative to restate all Forest Service management direction. Detail on the no action alternative can be found in the DEIS and FEIS, and Chapter 3 under the Affected Environment sections in each resource area.

141. The Forest Service should address false assumptions in the Alternatives on p. 3-122 with regard to dispersed recreation opportunities in the context of the current situation, where road construction is already disallowed on 20 million acres of national forest lands.

Response: The lands outside the inventoried roadless areas that prohibit road development (such as Wilderness) have been factored into the baseline Alternative 1.

The DEIS (p. 3-122) recognized that of the 54 million acres of inventoried roadless areas in the national forest system, 38% (or 20.5 million acres) are currently covered by forest plan prescriptions that restrict road construction and reconstruction. The other 62% are not. These figures have been updated in the FEIS.

The assumption described on p. 3-122 of the DEIS states:

Road construction, timber harvesting, and other resource management activities in inventoried roadless areas (where forest and grassland plan prescriptions allow it) and unroaded areas would

reduce the supply of areas available for dispersed recreation opportunities in the SPM, SPNM, and P classes.

142. In light of the many recent initiatives, the Forest Service should evaluate its ability to receive adequate input from the public, from its staff, and from technical experts.

Response: Over 517,000 comments were received during scoping for the Roadless Area Conservation Initiative, with over 1.1 million comments received during the comment period on the DEIS. The agency was able to analyze, assimilate, and utilize all of the comments. The public concerns raised during the DEIS comment period, as well as additional technical and scientific information, were evaluated, addressed, and described in the FEIS. See also Response 29 in the Involvement section.

State, Local Authorities

143. The Forest Service should consider that the final plan would override existing forest plans involving water management.

Response: The DEIS presented a range of alternatives that limit road construction and reconstruction, and in some cases timber harvest, in inventoried roadless areas. The alternatives would not interfere with water rights. They would not require forest plan amendments, although forest decision-makers may choose to amend their plans if they believe it best serves the interest of the forest and public. Where planned water management activities require construction or reconstruction of roads, proponents may be required to find alternate methods of access to accomplish their goals. These situations would be infrequent because most existing water management structures, whether in roaded areas or within inventoried roadless areas, are located along existing roads or trails. The new Planning Regulations (36 CFR 219) provide for integrating water rights issues into forest and grassland planning.

Constitution, Federal Laws

144. The Forest Service should comply with laws in proposing these rules.

Response: The public comments mentioned several laws without providing specific suggestions for how

the agency should comply with them. Some comments provided unclear legal citations, making a direct response by the agency impossible.

All or portions of more than 160 laws apply directly to national forest and grassland management. The rule is consistent with applicable statutory direction as contained in laws passed by Congress.

145. The government may legally own only 5% of the land; and

146. The government may only exercise exclusive legislation over ten square miles of Washington D.C.

Response: Congress has passed statutes such as the Organic Act and the Multiple-Use Sustained Yield Act authorizing the Forest Service to manage National Forest System lands as it does. See Response 154.

147. The Proposed Rule infringes on civil liberties and Constitutional property rights.

Response: The proposed rule addresses management of Federal lands subject to Congressional direction. The proposed rule complies with statutory requirements and recognizes the exception for existing rights.

148. The Forest Service is violating the “Takings Clause” of the Fifth Amendment of the Constitution.

Response: As the DEIS and FEIS described, and as the preamble to the proposed rule stated, the rule was reviewed for private property rights, and it was determined that it does not pose a risk of taking Constitutionally-protected private property (DEIS p. A-24). See Responses 147 and 154.

149. The Proposed Rule violates the Tenth Amendment of the Constitution.

Response: Congress has the authority to make laws governing the use and management of Federal lands. This proposal will not infringe on States’ rights. See Response 154.

150. The Forest Service is not justified in basing its action on the Reservation Act of 1907;

151. The Proposed Rule violates the Treaty of Guadalupe Hidalgo and Article IV of the New Mexico State Constitution;

152. The proposed rule should comply with the intent of the Weeks Act;

153. Congress should be the only authority over Federal lands pursuant to the property clause of the Constitution; and

154. The Forest Service should manage national forests under the concept of multiple use as stated in the Organic Act of 1897, the Weeks Act of 1911, Clark-McNary Act of 1924, the Multiple-Use Sustained Yield Act, and the National Forest Management Act.

Response: The purpose of the rule is to provide lasting protection in the context of multiple-use management for inventoried roadless areas and unroaded areas within the National Forest System (DEIS, Appendix A, p. A-26).

The constitution provides the fundamental basis for control, acquisition, disposition, use and management of all Federally owned lands, including National Forest System lands. Article IV, Section 3, paragraph 2 of the Constitution states:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States.

Federal Courts have repeatedly interpreted this clause to mean that Congress has exclusive jurisdiction over Federal lands. Congress has authorized the Secretary of Agriculture to manage NFS lands under conditions described in various acts, including the Organic Administration Act of 1897 and the Multiple-Use Sustained Yield Act of 1960.

Congress has the sole authority to designate areas as part of the National Wilderness Preservation System. However, the Organic Administration Act of 1897 provides the Secretary of Agriculture with the authority to make “rules and regulations” that will provide protection from fire and depredation, regulate occupancy and use, and preserve the forest from destruction.

The preamble to the proposed rule (DEIS, Appendix A, p. A-7) includes this statement:

The proposed rulemaking is within the scope of the Secretary of Agriculture’s authority, as granted by the Organic Administration Act of 1897 (16 U.S.C.551), “to regulate the occupancy and use and to preserve the forests thereon from destruction.

The USDA Forest Service has proposed this rule under the scope of the Secretary’s authority.

155. *The Forest Service should comply with the Administrative Procedures Act and the Federal Advisory Council Act in order to assure no special interests have been granted undue influence.*

Response: The rule was prepared under the procedures governing rulemaking, including the Administrative Procedures Act and Federal Advisory Committee Act. Also see Response 56 in the Involvement section.

156. *The Forest Service should address the influences of the Access to Justice Act on Forest Service actions.*

Response: The Equal Access to Justice Act deals primarily with questions of attorney’s fees. Effects of such legislation on operations of the Forest Service is beyond the intent of this analysis of roadless area conservation.

157. *The Forest Service should meet the Americans with Disabilities Act by providing adequate access to public lands. As much land as possible should be left to development for people who would not be able to see it. Building roads opens the land to everyone.*

Response: The Americans with Disabilities Act of 1990 (ADA) aims to remove barriers for people with disabilities. Federal executive agencies are required to make their programs and activities accessible under Section 504 of the Rehabilitation Act of 1973, not the Americans with Disabilities Act. ADA applies to State and local government services, public accommodations, public transportation, and commercial establishments.

Neither act requires Federal agencies to fundamentally alter their programs in order to

provide access into roadless areas for the disabled over other considerations. Constructing or reconstructing roads in roadless areas could fundamentally alter Forest Service programs to protect soil, water, wildlife, and fish habitat. See also Responses 31 in the Social section and 99 in this section.

158. *The proposed rule should comply with the Alaska Native Claims Settlement Act (ANCSA).*

Response: The rulemaking process for the Roadless Area Conservation proposal has followed all appropriate laws, including the Alaska Native Claims Settlement Act (ANCSA). None of the alternatives would result in a decision that would abrogate or supercede the rights of Alaska Natives under ANCSA.

159. *The proposed rule violates ANILCA by ignoring the subsistence lifestyle.*

Response: Alaska’s unique social and physical setting was recognized through development of a set of alternatives specific to the Tongass National Forest (DEIS pp. 1-11, 1-12, 2-10 through 2-13). The alternatives were analyzed with regard to their impact to specific Alaskan issues, such as subsistence fishing (DEIS p. 3-174) and effects of the Tongass National Forest alternatives (DEIS pp. 3-226 through 239). See also Response 8 in the Tongass section. The discussion on subsistence has been expanded in Chapter 3 of the FEIS.

160. *By complying with the Civil Justice Reform Act (see Appendix A, p. A-24), the Forest Service is usurping individual rights.*

Response: The proposed rule includes provisions to ensure it respects existing reserved or outstanding rights (propose section 294.12 (b), DEIS p. A-27). The rulemaking process for the Roadless Area Conservation initiative has followed all appropriate laws, including the Civil Justice Reform Act, while recognizing private rights.

161. *The Proposed Rule should comply with the Paperwork Reduction Act and the Unfunded Mandates Act;*

162. *The Forest Service needs to adhere to the principles of the 1995 Unfunded Mandates Act; and*

163. The agency should comply with the Paperwork Reduction Act in its rulemaking.

Response: The proposed rule complies with these Acts. The Unfunded Mandates Act requires Federal agencies to assess the effects of their regulations on other levels of government and the private sector. The DEIS described on p. A-23 how it has addressed the Unfunded Mandate Reform Act of 1995 (2 USC 1531 through 1538). The Department assessed the effects of the proposed rule on State, local, and Tribal governments, and on the private sector. It concluded that the proposed rule would not compel the expenditure of \$100 million or more by any State, local, or Tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the Unfunded Mandates Act is not required (DEIS p. A-23).

The agency reviewed the requirements of the Paperwork Reduction Act of 1995 (44 USC 3501, et seq.) and its implementing regulations at 5 CFR 1320. It determined that the Act and its regulations do not apply because the proposed rule does not contain any record keeping, reporting, or other information collection requirements, and therefore imposes no paperwork burden on the public (DEIS p. A-24).

164. The Forest Service should comply with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA).

Response: As the DEIS described, CERCLA actions would have an exception from the prohibitions of the proposed rule (section 294.12 (2), DEIS p. A-27). Road construction or reconstruction could occur in an inventoried roadless area if needed for a CERCLA response action or a natural resource restoration under CERCLA, subject to compliance with all CERCLA as well as NEPA requirements.

165. The Forest Service should comply with the Endangered Species Act.

Response: The DEIS and FEIS describe the benefits to species listed pursuant to the Endangered Species Act. In addition, the agency is consulting with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service. Consultation will be completed prior to the issuance of the final rule.

166. The proposed rule should comply with Government Performance and Results Act.

Response: The DEIS on p. 1-15 described how the proposed rule is consistent with the GPRA. Additional analysis has been added to Chapter 3 in the FEIS in the section on Cumulative Effects of the Rule with Other Rules and Initiatives. The agency has been briefing Congress on the proposed rule regularly.

Executive Orders

167. The proposed rule should be withdrawn until it has been subjected to analysis pursuant to Executive Order 12630 (Private Property Rights) and reviewed by Congress.

Response: The proposed rule has a specific exemption for existing property rights (DEIS p. A-27). Subsection 294.12(b)(3) states in part “a road may be constructed or reconstructed in an inventoried roadless area if the responsible official determines that one of the following circumstances exists: ... (3) A road is needed pursuant to reserved or outstanding rights or as provided for by statute or treaty. . . .”

168. The proposed rule should comply with Executive Order 12988. Specifically objected to is the statement on p. A-24 of the DEIS that “The proposed revision: (1) preempts all State and local laws and regulations that are found to be in conflict with or that would impede its full implementation...”

Response: Executive Order 12988 implements the Civil Justice Reform Act. The E.O. requires that during rulemaking, Federal agencies must identify if it is their intent to allow a rule to be overridden or preempted by local laws or regulations. The statement the comment objects to is in response to that requirement. The statement in the preamble to the proposed rule (DEIS p. A-24) is merely stating that it is the agency’s intent that this rule pre-empt State and local laws that are found to be in conflict, and that no State or local law may be passed to override this rule.

FLPMA, Mining Laws

169. The Secretary of the Department of Agriculture violated the Federal Land Policy and

Management Act by withdrawing lands from use, by not adequately consulting with other agencies, and by not designating utility corridors;

170. The proposed rule should comply with the Federal Land Policy and Management Act of 1976;

171. The Federal Land Policy and Management Act of 1976 Sec. 202(c)(9) requires the Secretary to coordinate the land use inventory, planning, and management of such lands with other agencies, States, and local governments. These laws are being ignored; and

172. The Forest Service is violating Section 503 of the Federal Land Policy and Management Act of 1976 by not establishing utility planning corridors.

Response: Nothing in the alternatives would withdraw land from public use. The alternatives only address construction and reconstruction of roads and harvesting of timber in roadless areas. Extensive consultation occurred during the rulemaking and several comments have led to additional exceptions to the prohibition alternatives that serve as mitigation measures.

U.S.C. 43, Section 103(g) in FLPMA contains the phrase “...unless specifically designated otherwise means the Secretary of the Interior.” Section 202(c)(9) of FLPMA does not specifically designate the Secretary of Agriculture and therefore is not intended to apply to the Department of Agriculture.

Section 503 of FLPMA references “the Secretary concerned” and therefore does include the Secretary of Agriculture. However, this section does not require the Secretary to designate utility corridors. It requires that when they are being designated, that “in order to reduce proliferation of separate rights-of-way, the utilization of rights-of-way in common shall be required to the extent practical.”

173. The proposed rule ignores the USFS regulations on locatable minerals.

Response: The alternatives do not prohibit exploration or development of locatable mineral resources. There are provisions in 36 CFR 228, subpart A regulations for administering mining activities on National Forest System lands. Nothing in the proposal would affect these regulations.

Organic Act, MUSY Act, Related Acts

174. The Forest Service should continue multiple use as providing more developed uses, including some level of commodity extraction and motorized use, and generally, more emphasis on management. This multiple use approach provides a better, healthier environment and provides better forest access for everyone, not just the young and healthy;

175. The Forest Service should consider multiple use as an emphasis on environmental and non-motorized recreational uses of the forest, with less emphasis on timber and other commodity extraction activities, and less motorized recreation. To meet the MUSY Act’s non-impairment standard, timber harvest should be avoided in these roadless areas;

176. The Forest Service should abandon multiple use and set aside some areas for timber and some areas for habitat restoration because shared use does not work; and

177. The proposed rule should comply with the Multiple Use Sustained Yield Act and the Forest and Rangeland Renewable Resources Act.

Response: The proposed rule is also in compliance with the Forest and Rangeland Renewable Resources Act (RPA) of 1974, and the Multiple-Use Sustained Yield Act (MUSYA) of 1960.

The Multiple-Use Sustained Yield Act (MUSYA) defines the meaning of multiple-use for the agency. MUSYA recognizes that “that some land will be used for less than all of the resources” (MUSY Section 4).

The comments received in these categories reflect the ongoing debate over management of the inventoried roadless areas (DEIS pp. 1-1, 1-4). The continued controversy caused by this issue illustrates one of the reasons to establish national direction. The DEIS analysis examined the tradeoffs involved in selecting different management policies. The roadless conservation proposal focuses on the conservation, protection, and maintenance of roadless lands for their unique ecological, social, and economic values (DEIS pp. 1-3, 2-1). The rationale for this focus was explained in the DEIS on p. 1-10. See Response 19.

The proposed rule also identifies the importance of compliance with 16 U.S.C. 532 as follows:

Furthermore, National Forest System management must be accomplished in compliance with a host of administrative and environmental laws. Of particular relevance to this proposal is the Secretary of Agriculture's responsibility for the administration of an adequate system of roads and trails on the National Forest System authorized by the National Forest Roads and Trails Act (16 U.S.C. 532-538).

178. The Multiple Use and Sustained Yield Act states the purposes for the national forests and these cannot be changed without Congressional action. At a national scale MUSYA requires that the Forest Service give equal value to all uses. An area-by-area analysis must be conducted to weigh relative values of resources for a given area.

Response: The proposed rule does not conflict with the provisions of the Multiple-Use Sustained Yield Act. The preamble to the rule describes the legal authorities for this rulemaking and explains how this rule fits within the MUSYA mandate.

The action alternatives alter neither the statutory multiple-use mandate nor the agency's compliance with that mandate. Lands administered by the Forest Service will continue to be managed for a balance of resource uses according to forest and grassland plans, which are prepared in compliance with the Multiple-Use Sustained Yield Act of 1960 (16 U.S.C. 528) and the National Forest Management Act of 1976 (16 U.S.C. 1600 et seq.). The action alternatives address road construction, reconstruction, and timber harvest within inventoried roadless areas, although some projects and activities dependent on road construction or reconstruction could be affected to various degrees.

179. The Organic Act states that no national forest shall be established except to secure favorable water flows and to furnish continuous supply of timber. These are still the primary purposes of the national forests with aesthetic, environmental, recreation and wildlife preservation being secondary. The Forest Service cannot change this mandate without Congressional action.

Response: The purposes identified in the Organic Act were reaffirmed and expanded by the Multiple-

Use Sustained Yield Act of 1960. MUSYA defines multiple-use for the agency. It means:

the management of all the various renewable surface resources of the National Forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the lands, with consideration given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.”
(MUSYA Section 4).

NEPA

180. The proposed rule may follow NEPA law but by completing the document in under a year it is not following original intent of NEPA.

Response: The timelines for this analysis are consistent with laws, regulations, and agency policies for implementing NEPA. The intent of the National Environmental Policy Act of 1969 (NEPA) is expressed in Section 101 of the Act:

... fulfill the responsibilities of each generation as trustee of the environment for succeeding generations... assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings... attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences... achieve a balance between population and resource use which will permit a high standard of living and a wide sharing of life's amenities...

NEPA has other requirements as well. The purpose of the proposed rule meets this intent of NEPA.

181. This proposed roads policy does not follow NEPA mandates by increasing the demand of

depleteable resources by allowing renewable resources to fall over and rot.

Response: NEPA mandates that Federal agencies consider the impacts to the human environment during decision-making with the overall goal of providing a healthier environment (National Environmental Policy Act, Section 101). The purpose and need in Chapter 1 of the DEIS and FEIS state how the Roadless Area Conservation Rule will promote NEPA’s Section 101 goals. Information and analysis displayed in Chapter 3 also describes how the impacts of the policy promote and accomplish Section 101 goals.

In addition, the analysis displayed in the DEIS, the FEIS, and the project record complies with the procedural laws and regulations for implementing NEPA at 40 CFR 1500-1508, as well as the Forest Service policies and procedures for implementing NEPA (FSH 1909.15).

182. The DEIS fails to meet NEPA requirement to provide an accurate summary.

Response: The Forest Service printed and distributed a DEIS summary as required. The summary has been updated and accompanies the FEIS.

183. The proposed rule fails to meet the basic Council on Environmental Quality (CEQ) regulations because the document is long.

Response: The length of the DEIS does not conflict with any provision of the CEQ Regulations.

184. The Forest Service failed to act in the spirit of 16 U.S.C 1601, 1602 and 1606 by not informing Congress of the Roadless Initiative; and

185. The Forest Service should comply with the Contract with America Act and consult with Congress.

Response: Congressional briefings by the Forest Service have occurred periodically since the beginning of the rulemaking process. The agency has participated in seven Congressional hearings on the subject. See Response 51 in the Involvement section of this volume.

186. All decisions made at the project and forest planning level regarding the status of inventoried

roadless areas and unroaded areas and their suitability as Wilderness, should comply with the National Environmental Policy Act.

Response: Nothing in the proposed rule was intended to exempt plan and project decision-making from NEPA.

187. Section 40 CFR 1502.8 of the NEPA regulations directs that an EIS: “Be written in plain language and may use appropriate graphics so that decision-makers can readily understand them.” The vague maps that apply to our area, which were just recently obtained, do not meet this standard.

Response: The maps provided in the DEIS have been verified and where necessary changes were made. See Volume 2 of the FEIS for the current maps. See also Response 1 in the Data section.

188. The proposal may violate NEPA because the DEIS was issued before consultation with the US Fish and Wildlife Service and National Marine Fisheries Service was completed.

Response: The CEQ NEPA regulations allow for integration with other planning and environmental review procedures (40 CFR 1500.2). Completion of consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service is not required until the final decision is made by the agency. The Forest Service has an ongoing consultation process with these agencies on this proposed rulemaking. No final decision will be made until consultation has been completed.

189. Any excepted activities made in the proposed rule should be subjected to the proper NEPA analysis process and independent scientific review.

Response: Any exceptions made to the rule at the local level are still subject to NEPA analysis and administrative review (appeals) just like any other Forest Service proposal. Other agency reviews can be conducted as necessary.

190. The Forest Service is in violation of Federal regulations because you haven’t contacted local governments (such as the Josephine County Board of Commissioners). The Forest Service has not adequately consulted conservation districts and other local agencies.

Response: Public involvement for the rulemaking process was extensive. It involved local governments during early scoping and during the DEIS review (DEIS pp. 4-9 through 4-11). The NEPA process afforded Counties, including Josephine County, an opportunity to comment on the Notice of Intent, and on the DEIS. See also Responses 53 and 56 in the Involvement section.

NFMA, RPA

191. *The National Forest Management Act calls for local planning decisions. This effort at national planning is inappropriate and illegal.*

Response: As described in the DEIS, the prohibition alternatives aimed to establish prohibitions at a national scale for those activities that have been shown to affect roadless character on a national scale and for which a meaningful analysis can be accomplished (DEIS p. 1-10).

The procedural alternatives in the DEIS offered a second level of direction for local planners to use in forest and grassland plan revisions. The new NFMA Planning Regulations (36 CFR 219) now provide direction for that planning context. See also Responses 30, 35, 36 and 193.

192. *The proposed rule should comply with the planning regulations, specifically at 36 C.F.R. sections 219.7(a), (c), (c)(4), (d), and (f);*

193. *The Forest Service should complete an environmental analysis for each roadless area, taking into account current forest plan direction; and*

194. *The agency must complete site-specific analysis for this proposal consistent with the proposed Planning Regulations for plan amendments.*

Response: As described in the preamble to the proposed rule in the DEIS (pp. A-7 to A-8), this rule is being promulgated under the authority of the Secretary of Agriculture. This rulemaking will not amend or revise forest plans. Through prohibitions to road construction, road reconstruction (and various levels of timber harvest depending on the alternative), the rule provides national direction for

the protection of inventoried roadless areas on national forests and grasslands.

The new NFMA Planning Regulations (36 CFR 219) have made the decisions regarding the process for planning for management of roadless areas on a local level.

Wilderness Acts

195. *The Forest Service should address the relationship between the proposed rule and State Wilderness Acts. Specifically, most of these acts included language for areas not included as Wilderness that allowed for multiple-use management of these areas (sometimes referred to as “release language”). Prohibiting road construction and reconstruction in these areas contravenes that Congressional intent. Also, some of these Acts provided that areas near Wilderness should not be managed as buffer zones to protect Wilderness values, but the DEIS indicates this is the case; and*

196. *The Forest Service must comply with State Wilderness act direction that appropriate use for roadless areas be decided during the Forest Planning process. Making a national decision that these areas should remain unroaded overrides that Congressional intent.*

(States specifically mentioned included California, Colorado, Michigan, Nevada, New Hampshire, Oregon, Washington, Wyoming, Utah, as well as the Montana Wilderness Study Act.)

Response: There is no conflict between the proposed rulemaking and State-level Wilderness Acts enacted since the 1964 Wilderness Act. Wilderness recommendations are part of the process directed by the new Planning Regulations (36 CFR 219). See also Response 19 in the Recreation section.

197. *The Wilderness Act provides no limitation on rights-of-ways or other multiple-use activities in areas not designated as Wilderness areas, unless stated in legislation regarding individual States, for example, the Montana Wilderness Study Act.*

Response: The Wilderness Act and State wilderness acts do not generally impose limitations for non-Wilderness lands. The Forest Service manages the

National Forest System lands under the multiple-use sustained yield concept. The proposed rule and the alternatives are consistent with the Wilderness Act and the Multiple-Use Sustained Yield Act.

198. The proposal will have impacts on existing oil and gas leases, in violation of the Colorado Wilderness Act.

Response: Several new exceptions were developed as a result of public comment on the DEIS. While similar in nature to the original exceptions, these additional exceptions act as mitigation measures that could be selected by the responsible official as part of the final rule. One of these mitigation measures would allow the responsible official to authorize road construction or reconstruction in any inventoried roadless area when a road is needed for permitted mineral leasing activities, which cannot occur without the use of a road, and where no other feasible alternative exists. See Response 51 in the Minerals section and Response 195 in this section.

General Planning Concerns

199. National forest land management should be turned over to more local control. Management decisions should be handled by the respective State legislatures or by respective County governments. This would result in better management of these lands.

Response: Legislation such as the Organic Administration Act (1897), the Multiple-Use Sustained Yield Act (1960), and the National Forest Management Act (1976) has established and reaffirmed the national purposes of the National Forest System. The action alternatives aim to continue to achieve those purposes already established (DEIS pp. 1-1 and 1-2), and they do not establish new ones.

The specific purpose of the Roadless Area Conservation Rule is to resolve an issue that has been active for more than 25 years. This history indicates that local decisions about inventoried roadless areas and unroaded areas were often contested through administrative appeals and litigation, especially when the decisions dealt with road building, timber harvest, or other local activities that alter an area's intrinsic roadless characteristics. Turning national forests and grasslands over to local control would be beyond the scope of a decision that

can be made by this rule. It would not achieve the purpose and need of the rulemaking.

200. Public land management decisions should not be politically motivated or influenced by election campaigns.

Response: Laws such as the Civil Service Reform Act (5 USC 1101) and the Hatch Act (5 U.S.C. 7323) serve to limit the influence of the political process on civil servants, as well as to limit their involvement in the political process.

The Roadless Area Conservation rulemaking is a decision process by a Federal agency. It is an informal rulemaking process being conducted in accordance with Administrative Procedures Act.

201. The Forest Service should not let State political delegations dictate public land management. Nor should the agency be dictated to by the Alaska Congressional delegation that wants to separate Alaska's national forests from the rest of the system.

Response: The Forest Service is addressing the management of inventoried roadless areas nationwide through a rulemaking process. The inventoried roadless areas of the Chugach National Forest in Alaska would be treated the same as other inventoried roadless areas in the nation for reasons disclosed in the DEIS (Chapter 2, Alternatives Considered But Eliminated from Detailed Study). The Tongass National Forest has been identified as deserving special attention in formulating alternatives due to its unique social and economic situation as discussed in the DEIS and FEIS, Chapter 1, Purpose and Need.

This rulemaking is an administrative process within the scope of the Secretary of Agriculture's statutory authority, not the political agenda of any State delegation. The rulemaking process included public comments and did not exclude comments from any source. See also Response 200.

202. The Administration in Washington should not dictate public land management by Executive Order.

Response: On October 13, 1999, President Clinton directed the Forest Service to begin an open and public dialogue to develop regulations designed to

conserve roadless areas located on National Forest System lands. The President's announcement was not an Executive Order and did not proclaim a decision to be enacted by the Federal Government. It was direction to the Secretary of Agriculture to develop a proposal to conserve roadless areas and their important values. The President directed the Secretary to use an open public process culminating in a rulemaking accompanied by an environmental impact statement consistent with the National Environmental Policy Act and the Administrative Procedures Act. This rulemaking complies with the President's direction and is within the scope of the Secretary of Agriculture's statutory authority.

203. *The decision has already been made. The tone of the DEIS and statements by the Administration suggest the proposal is biased toward the preferred alternative, and the outcome is preordained.*

Response: A final rule has not been adopted. The DEIS includes a range of alternative for conserving inventoried roadless areas on National Forest System lands. One set of these alternatives, which was displayed in the DEIS, would prohibit road construction and reconstruction in inventoried roadless areas. This DEIS identified and described the Forest Service's then-current preferred alternative, as does the FEIS. However, a final alternative and final decision will not be adopted until a final rule is signed and published by the Secretary of Agriculture or his designee.

204. *The Forest Service should continue with the Natural Resource Agenda.*

Response: The Roadless Area Conservation rulemaking is consistent with the Natural Resource Agenda and is a step forward in its implementation.

205. *This proposal is within the Forest Service's Authority.*

Response: The rulemaking is consistent with statutory authority provided to the department and agency by Congress.

206. *We firmly disagree with the listed purposes for the proposed action; and*

207. *The Forest Service should stop wasting taxpayers' money on the proposed plan process and*

put the money into facility maintenance and forest management.

Response: The purpose and need for the Roadless Area Conservation proposal were described in the DEIS (p. 1-10 through 1-12; FEIS Chapter 1), which was used to determine the scope of the analysis and the appropriate range of alternatives.

208. *The Forest Service should not close another 6% of the Ottawa National Forest as proposed in the 1986 Forest Plan; and*

209. *The Forest Service should maintain the present percentage of land open to multiple use management on the Panhandle National Forest.*

Response: None of the alternatives propose closing public lands. The prohibition alternatives would restrict road construction and reconstruction, and timber harvest to some extent (DEIS pp. 2-4 through 2-9). The new Planning Regulations govern the planning for inventoried roadless areas and unroaded areas, which will be evaluated at the local level to determine the roadless characteristics to be protected and appropriate methods to accomplish that protection.

210. *The Forest Service and BLM should be commended for research, work, and presenting the options clearly to the public.*

Response: We acknowledge your statement.

211. *The proposed rule will not cut down on litigation.*

Response: The purpose and need for this proposal was described in the DEIS (pp. 1-10 through 1-12). The DEIS and FEIS anticipate some reduction in agency appeals and litigation regarding roadless areas and therefore associated costs (Chapter 3, Environmental Consequences, Agency Costs). The analysis indicates that implementing the prohibition on road construction in roadless areas would reduce appeals and litigation costs to the government.

212. *The proposed rule should be made through a public rulemaking process that incorporates an EIS.*

Response: This rulemaking process complies fully with NEPA and rulemaking requirements. It included

extensive public involvement, publication of a Notice of Intent, scoping, release of a DEIS and proposed rule for public comment, release of a FEIS and Response to Comments, to be followed by a Record of Decision and a final rule.

213. *The proposed rule should establish a watchdog advocacy group that will be unaffected by political pressure.*

Response: The agency did not find that establishing a separate oversight group would be necessary in this rulemaking. See Response 95.

214. *Management direction of the Forest Service should not evolve from a series of regulations but from Congress.*

Response: Congress makes laws relating to Forest Service management. The Department of Agriculture is responsible for developing regulations that interpret and implement the laws. These regulations evolved through an extensive public review process prior to implementation. The Secretary of Agriculture has authority granted by Congress in the Organic Act and the Multiple-Use Sustained Yield Act to create rules pertaining to the management of the national forests.

215. *Citizens should be allowed to appeal this Forest Service rulemaking.*

Response: Authority for rulemaking is held with the Secretary of Agriculture level unless specifically delegated to the Chief of the Forest Service. In either case, rulemaking is not an appealable decision under 36 CFR 215, 217, or 251.

216. *The Forest Service is not exceeding its authority or sidestepping Congress by trying to enact this policy.*

Response: The rulemaking is consistent with statutory authority of the agency.

217. *The Forest Service should divide national forests in half with one side open to off-road vehicle use and the other closed to off-road vehicles.*

Response: None of the alternatives described in the DEIS limits the use of off-highway vehicles on existing roads or trails. Rather, the alternatives analyze prohibitions on new road construction and

reconstruction as well as limits or prohibitions on timber harvest in inventoried roadless areas. A limitation on OHV use in inventoried roadless areas was an option the agency considered but did not develop in detail for reasons explained in DEIS and FEIS Chapter 2, Alternatives Considered But Eliminated From Detailed Study, Alternative Sets of Prohibitions.

218. *The Forest Service has lost its vision and is no longer a world leader in resource management, as is obvious in the DEIS; and*

219. *The Forest Service should clarify its mission.*

Response: The Congress has defined the Forest Service mission in a number of laws, including the Organic Act of 1897, the Multiple-Use Sustained Yield Act of 1960, and the Renewable Resources Planning Act (RPA) of 1974, as amended by the National Forest Management Act (NFMA) of 1976. The agency has developed forest and grassland plans, and has recently drafted a Strategic Plan and a Natural Resource Agenda that emphasizes watershed health and restoration, ecologically sustainable management, roads and roadless areas, and recreation. The Roadless Area Conservation Proposed Rule is a step in implementing the Agenda.

The Forest Service is recognized internationally as a leader in multiple-use and sustainable ecosystem management. The agency's mission seeks balance between the capacity of the land and what people want from that land. Discussion continues between the general public, elected officials, scientists, and professional managers on how best to manage these lands. The Forest Service works to respond to changing public needs and demands while incorporating new scientific information.

220. *The Forest Service should consider recreationists separate from resource harvesters when making public policy.*

Response: The prohibition alternatives focus on actions (road construction and timber harvest) that have an impact on roadless characteristics. The new Planning Regulations (36 CFR 219) made the decision on how to plan for management of inventoried roadless areas and unroaded areas. Therefore, forest and grassland planning will provide a means of distinguishing and evaluating the relative impacts of recreation use and other uses in roadless

areas. See also Response 54 in the Involvement section.

221. *The Forest Service should develop more alternatives that would replace wood as building material; and*

222. *The Forest Service should promote solar energy.*

Response: The purpose of this proposed rule is to conserve roadless lands for their unique values (DEIS p. 1-3). Alternatives considered are described in Chapter 2 (DEIS pp. 2-2 through 2-20). An alternative that reduces the demand for wood or promotes solar energy was not considered because it would be outside the scope of the project's purpose which is : (1) to immediately stop activities that have the greatest likelihood of degrading desirable characteristics of inventoried roadless areas, and (2) to ensure that ecological and social characteristics of inventoried roadless and unroaded areas are identified and evaluated through local forest planning efforts (DEIS p.1-10). The new Planning Regulations (36 CFR 219) have addressed the second part.

223. *The rulemaking process must include the current planning regulation criteria at 36 CFR 219.17 because that criterion is not included in the new (proposed) Planning Regulations and should continue to be used.*

Response: The new Planning Regulations (36 CFR 219) have made the decisions regarding the process for planning for management of unroaded areas.

224. *The Forest Service should invoke rules of procedure upon those groups that file local appeals and litigation about management activities. These groups should be accountable in case of damage that results from their stopping projects from occurring.*

Response: Congress mandated the agency's project-level administrative appeal process in section 322 of Public Law 102-381, which is codified in the Forest Service appeal rules (36 CFR 215). Changing the appeal rules or other legal remedies is beyond the scope of this rulemaking process.

Other Concerns

Three categories of concern were found to lie outside the scope of the Roadless Area Conservation rulemaking process for the following reasons. 1) They expressed general concerns about land and resource management that did not pertain to the rule, or they made suggestions for the rule that are beyond the agency's authority to implement. 2) They made observations and suggestions regarding the legislative process and changes to various laws, which were not directly pertinent to the rule. 3) They made general observations and suggestions regarding the Forest Service's administration and organization that were not within the intent or ability of the rule to address.

General Management

225. *The proposed rule should call for advisors from all user groups in future rulemaking;*

226. *The U.S. Government should establish review panels to settle disagreements over legitimate disputes between land management and regulatory agencies;*

227. *The Forest Service should develop a modified Public Land Law Review Commission;*

228. *The proposed rule should work to bring urban and rural America together by having all governing bodies—national and local—work together to develop responsible management policies;*

229. *The proposed rule is, in fact, the Wildlands Project, which was never approved by Congress;*

230. *The proposed rule and Transportation Plan, and the Forest Planning Regulations are part of plan to deny the American people legitimate access to public lands;*

231. *The proposed rule should recognize that the forests belong to the people of the U.S and the world and no corporation or bureaucracy should subvert that;*

232. *Too many decisions about the Western United States are made by people in the Eastern United States;*

233. Over the years Forest Service policies have not reflected good sense but just the idiosyncrasies of the current administrator and Washington bureaucrats;

234. The Forest Service should address its mismanagement of the forests. We need better management, not more Wilderness; and

235. The Forest Service should implement the Northwest Forest Plan.

Response: These concerns, suggestions and observations regard general management of public lands and decision-making matters that the Roadless Area Conservation Rule cannot resolve. Because of such laws as the Administrative Procedures Act, it is beyond the agency's authority to set rules for rulemaking. Convening advisors, oversight panels, or commissions as suggested is also beyond the scope of this agency's rulemaking.

Legislative Process

236. The proposed rule should comply with the First Amendment and not favor a religion;

237. The NEPA process is unconstitutional;

238. Congress should amend the National Environmental Policy Act to allow the Forest Service to use Categorical Exclusions for small timber sales;

239. The Forest Service should not proceed with the proposed rule until the Committee on Resources – Subcommittee on Forest and Forest Health completes its investigation of improprieties in developing the rule; and

240. Senator Gregg's bill would reduce needed roadless areas in the Northeast.

Response: The Forest Service does not have authority to change laws or comment on them unless as requested. Congressional action takes place independently from agency rulemaking. In the event that the Congress changes that authority, the agency would then modify or suspend its rulemaking in compliance with the direction. The observations regarding legislative and constitutional matters are issues that are beyond the scope of the Roadless Area Conservation Rule.

Agency Administration Observations and Suggestions

241. The Chief of the Forest Service should speak independently of the administration when presenting budget requests to Congress;

242. The appointed Chief of the Forest Service should continue to hold office through changes in the administration;

243. The Chief of the Forest Service should be solely responsible for carrying out policy and directing the Forest Service;

244. The Chief of the Forest Service should be considered the primary expert on national resource management policy within the administration;

245. Top decision-makers should be those who were promoted up through the ranks, not just appointed to their positions;

246. The Chief of the Forest Service should be consulted on any policy or activity that he/she is expected to execute; and

247. The Forest Service should disclose its involvement in the International Union for the Conservation of Nature and Natural Resources.

Response: These observations and suggestions regard Forest Service administrative organization, which is a larger subject that the Roadless Area Conservation Rule is not intended to evaluate or influence. They are therefore beyond the scope of this proposal.

End of Planning Section