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Resolution to Amend 2008 Tongass Land Management Plan

The 2008 Amended Tongass Land Management Plan (TLMP) must be amended due to major policy changes that have occurred since it was promulgated in January 2008 that have materially affected the Plan. These major changes include:

- a. The 2001 Roadless Rule, covering 9.6 million acres was applied to the previously exempt TNF by Court Order in March 2011. By restricting road access and prohibiting timber harvest within Inventoried Roadless Areas (IRAs), the 2001 Roadless Rule has made the 2008 Amended TLMP Timber Sale Program Adaptive Management Strategy (TAMS) impossible to implement; and
- b. Application of the 2001 Roadless Rule to the TNF has restricted access to other resources as well. For example, as a consequence of the District Court's Opinion and Order reinstating the 2001 Roadless Rule¹ Southeast Alaskans' ability to prospect, explore for, and develop new mines or develop energy to support these endeavors on the 9.6 million acres of inventoried roadless areas (IRAs) on the TNF will be severely constrained, if not prevented as a practical matter; and
- c. The May 2009 Decision by Secretary of Agriculture, Tom Vilsack, to arrogate to himself all decisions regarding resource development in IRAs in the TNF (now delegated to the Chief of the Forest Service), added national politics to decision making on such issues as issuance of a Special Use Permit that had previously been made by the TNF Forest Supervisor and District Rangers. The Secretary's control of what had been local decision making on the TNF has drastically altered the assumptions upon which the 2008 Amended TLMP was promulgated in January 2008. For example, even were the TNF still exempt from the 2001

¹ 66 Fed. Reg. 3244 January 12, 2001.

Roadless Rule, the Washington Office of the Forest Service could arbitrarily and capriciously refuse to allow a project that is in an IRA to go forward; and

- d. While “reasonable access” to locatable minerals is technically authorized in Wilderness and IRAs under 36 C.F.R. Part 228, there are very few mines in Wilderness Areas. Even though the 2001 Roadless Rule specifies: “Reasonable rights of access may include, but are not limited to, road construction and reconstruction, helicopters, or other non-motorized access” (FEIS Vol. 1, 3-329 to 3-350),² the experience of the mining community is that Special Use Permits authorizing road access in or near Wilderness Areas are very difficult to obtain; and
- e. Experience teaches that the same practical adverse result can be expected in IRAs. For example, in 1977 the Forest Service denied a Special Use Permit to U.S. Borax to construct a road for a bulk sample of 5,000 tons of ore at the Quartz Hill Project, requiring access to be by helicopter. *SEACC v. Watson*, 697 F.2d 1305 (9th Cir. 1983). As the opinion shows, six years later Borax still did not have a permit to build the road needed to move that volume of ore:.. and
- f. While the 2001 Roadless Rule allows “reasonable access” to locatable minerals, it denies access to new leases for minerals subject to the Mineral Leasing Act of 1920, including geothermal resources:³ “because of the potentially significant environmental impacts that road construction could cause to inventoried roadless areas.”⁴ There is no explanation in the 2001 Final Roadless Rule and ROD why the access impacts to IRAs associated with locatable minerals is different from the access impacts to IRAs associated with leasable minerals. This is further evidence that as a practical matter the 2001 Roadless Rule will prevent road access in connection with mining exploration and development; and
- g. Mining exploration requires the drilling of multiple holes to determine from the surface the subsurface characteristics and extent of the mineral resource. Mine development requires site clearing for buildings, tailings piles, mills, and other facilities. The needed level of exploration to develop a mine on the

² 66 Fed. Reg. 3244, 3264 January 12, 2001.

³ *Ibid.*, at page 3255-3256.

⁴ *Ibid.*, at page 3256.

Tongass National Forest would typically require the substantial cutting of trees. Mine development would typically require even significantly more cutting of trees; and

- h. While “reasonable access” is technically permitted in IRAs, cutting trees associated with mining exploration and development does not appear to be allowed. 36 C.F.R. § 294.13 (b) (2) authorizes the cutting of timber “incidental to implementation of a management activity not otherwise prohibited by this subpart.” However, there is no mention of mining in the examples provided in the 2001 Rule and ROD of what this section authorizes.⁵ Moreover, in describing this section the 2001 Rule and ROD states: “Such management activities are expected to be rare and to focus on small diameter trees.”⁶ and
- i. Because of concern about greenhouse gas (GHG) emissions, the current Administration is seeking to replace fossil fuel use with cleaner, renewable energy resources. The current Administration has thus required that federal facilities be 20% reliant on renewable energy by 2020. Because of these policies and rules and regulations encouraging the use of renewable energy resources and lowering carbon emissions from the use of fossil fuels, the 2008 Amended TLMP should be amended to consider significant renewable energy development planning on the TNF; and
- j. Such a renewable energy plan and development would allow not only mines, but entire communities in Southeast Alaska to significantly decrease the GHG and other emissions in the TNF, reduce the need for shipment and potential spills of diesel and operate these communities’ economies and mines at a lower cost than diesel. Moreover, it would avoid the need for some, expensive air control devices; and
- k. Further, such use of renewable energy projects, developed at a lower cost than the rising cost of diesel, would help improve the economic competitiveness of these communities and thereby create jobs in high unemployment communities that suffer the brunt of the social and economic injustices created by the TLMP land use designations, policies and guidelines; and

⁵ *Ibid.*, at page 3258.

⁶ *Ibid.*, at page 3257.

- l. The Draft Southeast Integrated Resources Plan (SEIRP) requires access to hydropower sites to promote hydropower development. The Draft SEIRP identified some, potential hydropower sites in Southeast Alaska. Further, the 1947 Water Powers of Southeast Alaska Report, conducted in part with the Forest Service, identified over 200 such potential sites, many of which lay in the 2008 Amended TLMP Transportation and Utility System (TUS) avoidance LUDs. Such access is severely restricted by Remote Recreation Land Use Designations (LUDs) and the 2001 Roadless Rule; and
- m. The 2008 Amended TLMP was fatally flawed as prepared, because it did not include a renewable energy plan, did not recognize pre-existing power site classifications and other potential renewable energy resources on the TNF such as hydropower, geothermal, wind or other renewable energy sites and, thus, is not consistent with national energy policy and national energy security policy; and
- n. Public Law 106-511 enacted on November 13, 2000 establishing the Southeast Alaska Intertie System is not referenced, explained or identified in the 2008 Amended TLMP, although every other Public Law affecting the TNF, such as Alaska Statehood Act, ANILCA, ANSCA, Wild and Scenic Rivers Act is referenced; and
- o. Given the fact that there are 9.6 million acres of IRAs in the Tongass and 5.6 million acres of Wilderness on the Tongass National Forest, it is highly probable that the new hydropower and other renewable energy projects needed to provide lower cost power to remote mining operations and rural communities throughout Southeast Alaska will be prohibited, or made more difficult to access and develop, because they are located in IRAs and Wilderness Areas and because the power lines needed to distribute that power will need to cross IRAs and Wilderness Areas; and
- p. Moreover, neither the 2001 Roadless Rule nor the 2008 Amended TLMP considered or analyzed the adverse economic costs, or the opportunity for jobs related to the development of renewable energy resources, to rural Southeast Alaska

communities, or the direct economic impact on Southeast Alaska residents caused by their inability to access and develop mines and renewable energy resources in rural Southeast Alaska; and

- q. The 2001 Roadless Rule prohibits communities such as Craig and Klawock from accessing mines with a road on Prince of Wales Island, thereby denying access to jobs to the residents of those communities and a local workforce to Prince of Wales' mines, such as Niblack and Bokan Mountain; and
- r. Southeast Alaskans' will be harmed by their inability to obtain the access necessary to prospect, explore for and develop new mines in IRAs, by their inability to cut the trees within IRAs necessary to allow the substantial exploration needed to develop a mine and the construction associated with mine development; and by their inability to access renewable energy resources to provide non-carbon power to mines.

NOW THEREFORE, BE IT RESOLVED BY THE FIRST THINGS FIRST ALASKA FOUNDATION THAT a Mineral and Strategic Mineral LUD be added to the 2008 Amended TLMP to promote and support mineral and strategic mineral development and related access roads consistent with National Security and National Strategic Mineral Policies. The Mineral and Strategic Mineral LUD would take precedence over any underlying LUD (subject to applicable laws) regardless of whether the underlying LUD is an "Avoidance LUD" or not. As such, it would represent a "window" through the underlying LUD through which minerals and strategic minerals could be accessed and developed; and be it

FURTHER RESOLVED THAT the term "reasonable access" should be defined for purposes of the 2008 Amended TLMP to provide timely (30 day turnaround) issuance of Forest Service Special Use Permits for those that hold a mining claim or Federal Energy Regulatory Commission (FERC) preliminary permit to authorize these operations to investigate and develop lawfully permitted federal resources; and be it

FURTHER RESOLVED THAT a Renewable Energy Development LUD be added to the 2008 Amended TLMP to promote and support renewable energy development and related transmission lines within the TNF consistent with Public Laws and National Security and National Energy Policies. The Renewable Energy Development LUD would take precedence over any

underlying LUD (subject to applicable laws) regardless of whether the underlying LUD is an “Avoidance LUD” or not. As such, it would represent a “window” through the underlying LUD through which renewable resources could be accessed and developed; and be it

FURTHER RESOLVED THAT the TUS LUD should allow for public and private hydropower development in all LUDs; and be it

FURTHER RESOLVED THAT the Forest Service should engage in rulemaking to amend the 2001 Roadless Rule as applied to the TNF to reduce the number of IRAs in the TNF sufficiently to allow the activities proposed in this Resolution to occur and to authorize geothermal leasing on the TNF; and be it

FURTHER RESOLVED THAT the Chief of the Forest Service re-delegate to the Forest Supervisor and District Rangers on the TNF the authority to make permitting decisions within IRAs; and be it

FURTHER RESOLVED THAT the 2008 Amended TLMP should create a new LUD called the “Tongass Community Economic Development Zone LUD” to promote and support economic development and activities on the TNF for any community that has lower than average State per capita income or pays higher than the national average for electricity to assure that TLMP’s administration and practices promote economic well-being and social justice in all Tongass communities.

COPIES of this resolution shall be sent to the Honorable Barack Obama, President of the United States; the Honorable Joseph R. Biden, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Sally Jewell, United States Secretary of the Interior; and the Honorable Lisa Murkowski and the Honorable Mark Begich, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress; and the Honorable Sean Parnell, Governor of Alaska.