

Potential Tribal Implications of the Proposed Rescission of 2001 Roadless Rule, Part II:

Rapid Assessment of Proposed Rule and Draft Environmental Impact Statement

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This Memorandum provides a preliminary analysis of the potential implications for Native Nations of rescinding the 2001 Roadless Rule in light of the U.S. Forest Service’s (“USFS”) August 19, 2026, publication of a [proposed rule](#) (“2026 proposed rule”) and [draft environmental impact statement](#) (“2026 DEIS”). This Memorandum follows a previous Memorandum (“2025 Memorandum”) responding to the Department of Agriculture’s earlier notice of intent to prepare an environmental impact statement analyzing the proposed rescission of the 2001 Roadless Rule.¹ The [2025 Memorandum](#) provides background information on the 2001 Roadless Rule and subsequent developments and is available at the [Roadless Rule Tribal Hub](#).

We again offer this analysis in hopes it helps inform decision-makers working within and on behalf of Tribal governments in the context of the proposed Roadless Rule rescission process. We are non-Native scholars specializing in federal public lands and federal Indian law and policy and our analysis is focused within our areas of expertise. Importantly, we do not speak for, or on behalf of, any Native Nation or Tribal organization, nor do we recommend or suggest any specific course of action. Ultimately, Tribal governments, Tribal organizations, their advocates and partners will determine how and whether to engage in the process proposed for rescinding the 2001 Roadless Rule and whether to support or oppose that proposed rescission. We also note that the analysis provided herein covers only a portion of those issues having “tribal implications” and does not specifically focus on other critical areas, such as the proposed rule’s impact on fisheries, water quality and a range of treaty-reserved and trust resources.

This Memorandum was expedited to meet the [USFS’s short deadline for public comments, which are due September 21, 2026](#). Additional information and analysis will be added as necessary and made available at the [Roadless Rule Tribal Hub](#).

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¹ 90 Fed. Reg. 42,179 (Aug. 29, 2025).

Table of Contents

Tribal Consultation	3
The Roadless Rescission, Forest Planning and Project-Level Analysis: The Shell Game	4
Forest Planning	6
Other Planning/Plan-Related Issues:	7
Project-Level Analysis.....	10
2026 NEPA Regulations and Project-Level Decision Making:	10
The National Historic Preservation Act and Project-Level Decision Making: 11	
Project-Level Predecisional Administrative Review Process:.....	11
Alaska and the Tongass National Forest	12
Tribal Petitions for Rulemaking Using the Administrative Procedure Act	15
Implications for Management Actions and Protections Taken Pursuant to the Cultural and Heritage Cooperation Authority	16
Tribal Proposals to Manage Fire, Disease or other Threats in Inventoried Roadless Areas Using Tribal Forest Protection Act Authority	17

Tribal Consultation

The Department determined that the proposed rule has Tribal implications and, pursuant to Executive Order 13175, has conducted consultation. The Forest Service Office of Tribal Relations held a Tribal forum engagement session on August 5, 2025. In the information provided with the 2026 proposed rule and 2026 DEIS, the agency reported that it received 64 requests for consultation and held 29 consultations in addition to receiving numerous letters and comments from Native Nations.²

The 2026 proposed rule states that “[t]he majority sentiment among Tribal governments consulted is opposition to the proposed rescission of the 2001 Roadless Rule, viewing it as a threat to inherent rights, Tribal sovereignty, cultural survival, and the ecological health of ancestral homelands.”³ According to the proposed rule, “Tribes consistently argued that removing this layer of national protection shifts the unsustainable burden of project-level review onto their limited resources and exposes previously untouched areas to industry activity, mining interests, and destructive recreational access, all of which threaten sacred sites, traditional gathering areas, water quality, and subsistence resources.”⁴ The concurrently published Tribal Summary Impact Statement further details the overwhelming opposition as well as procedural and substantive concerns relayed by Native Nations across the country and a number of alternatives proposed by Native Nations for the agency’s consideration.

Notwithstanding this extensive Tribal input and the USFS’s claim that it “takes seriously its commitment to and responsibility for consultation,” the agency responded by emphasizing its rationale, which “is grounded in the goal of removing national regulatory burdens and facilitating localized, responsive management.”⁵ That goal stems from the agency’s perspective that, rather than retaining and addressing protections for roadless areas across the nation, those decisions would be better addressed within individual forest plans and the planning process as well as through the project-level decision making process.⁶ During those subsequent processes, the USFS suggests that Native Nations would have additional opportunities for consultation and that

² A [Tribal Summary Impact Statement](#) dated August 20, 2026, and published with the 2026 proposed rule indicates that the tribal input included in the rule was provided prior to December 5, 2025; however, that document also confusingly states that it “includes input received *to date* through the consultation process.” (Emphasis added). Nothing in the 2026 proposed rule or the 2026 DEIS documents or details any tribal consultations that may have occurred in the more than eight months between December 2025 and August 2026, nor is it clear how or whether

“[c]onsultations are ongoing, and feedback will continue to be considered and incorporated, as appropriate, until the final rule is published,” according to the Tribal Summary Impact Statement.

³ The only tribal letter referenced as supportive of the proposed rescission came from the Chugach Alaska Corporation, an Alaska Native Corporation. For context, inventoried roadless areas governed by the 2001 Roadless Rule comprise 99 percent of the Chugach National Forest. See USFS, Record of Decision: Chugach National Forest Land Management Plan (2020), at 3.

⁴ 91 Fed. Reg. 53831-32 (Aug. 20, 2026).

⁵ Tribal Summary Impact Statement, at 5.

⁶ See *id.*, at 5-6; 2026 DEIS at 201-03.

it “remains committed to upholding all existing legal and regulatory protections,” including additional environmental, cultural resource, and plan-level review processes.⁷

As discussed in additional detail below, given the current state of forest plans and concurrent deregulatory and policy initiatives, that commitment is not a meaningful response to the substantive concerns expressed by Native Nations. **Furthermore, neither the 2026 proposed rule nor the 2026 DEIS meaningfully respond to the additional burdens such plan and project-level processes impose on Native Nations.** In addition, the USFS’ commitment to additional consultation as an appropriate avenue for addressing Tribal concerns regarding the rescission of the national Roadless Rule should be considered within the context of the agency’s historical and continuing consultation shortcomings.⁸

Without additional information, it remains unclear whether and to what extent the agency is complying with its own consultation standards.⁹ And, as noted above, information provided by the agency about the timing, scope, and number of consultations regarding the 2026 proposed rule is confusing, at best.¹⁰ Ultimately, the 2026 proposed rule and the 2026 DEIS and associated documents demonstrate that the USFS’s efforts to engage in consultation thus far resulted in the agency receiving nearly unanimous Tribal opposition to its proposed action and produced a number of viable and preferable alternatives to that action. **Rather than adjust its initial course, which was announced prior to any consultation taking place, however, the USFS is documenting but ignoring that input and suggesting that Native Nations rely instead on the agency’s commitment to engage in future plan- or project-level consultations to address their concerns.**

The Roadless Rescission, Forest Planning and Project-Level Analysis: The Shell Game

The proposed rescission is premised on the repeated assertion that future proposals for timber harvesting, road construction, and other uses within inventoried roadless areas (IRAs) would require site-specific and project-level compliance with the National Environmental Policy Act

⁷ Tribal Summary Impact Statement, at 5-6.

⁸ See, e.g., 2025 Memorandum at 7:

Tribes regularly fault the USFS for failing to meaningfully consult. The USFS did not consult with Tribes regarding the 2005 state-specific roadless rule despite Tribes pointing out that the agency had engaged in consultation as part of the 2001 Roadless Rule process. Similarly, although the USFS “sent letters” and purported to engage in “twelve government-to-government consultations” as part of its process to repeal roadless protections for the Tongass National Forest in Alaska, numerous Tribes in the region objected to the sufficiency of those efforts. The apparent lack of any attempts by federal officials to consult with Tribal governments before Secretary Rollins announced the proposed rescission of the Roadless Rule prompted similar concerns. (Citations omitted).

⁹ See *id.* at 8-11. Relatedly, the USFS is also currently working to “modernize” its tribal relations directives. See <https://www.fs.usda.gov/sites/default/files/tribal-relations-directives-summary-analysis-20260401.pdf>. Neither the 2026 proposed rule nor 2026 DEIS mentions or appears to consider the potential for those changes to affect the agency’s rationale or proposed action.

¹⁰ See *supra*, n. 2.

(NEPA) and other statutes like the National Historic Preservation Act (NHPA) and would have to be consistent with applicable forest plans. **But concurrent with the proposed rescission of the roadless rule are several administrative rulemakings and agency policies that negate the relevance of forest planning and make the vast majority of project-level decisions subject to the use of categorical exclusions and severely restricted public participation procedures. These “top-down” executive actions contradict the proposed rule’s purpose of promoting “local control” done with more localized environmental analysis and public participation.**¹¹

The DEIS reviews only a few of these deregulatory actions (see Table 4. Ongoing and reasonably foreseeable actions) and concludes the following:

In the long term, there could be other changes or actions *outside of USDA or Forest Service control* (such as future Congressional action, regulatory or de-regulatory proposals in other Federal agencies, changes to State-level requirements) which could modify effects in the long term (for example through added or removed requirements or control on future projects). Beyond those listed in the table above [briefly describing five ongoing actions], *these potential changes are uncertain or too far removed in time to consider in the effects analysis.*¹²

As we show below, these changes are neither speculative, distant nor outside of USFS’ control—they are proposed or finalized regulations that will directly impact future management of inventoried roadless areas. The DEIS’ exclusion of these impacts from its analysis is a fundamental flaw.

In comparison to other resources and issues analyzed in the DEIS that are too far from certain to analyze meaningfully, the section on “Tribal Rights and Interests” makes clear the “types of impacts that may result from timber and road construction projects based on the agency’s experience and based on comments received from Tribes during the comment period for the notice of intent.”¹³ The consequences of the proposed action (including alternatives 2 and 3) as described in the DEIS are “ecological, cultural, and spiritual in nature” and “often have cumulative and intergenerational impacts” posing fundamental threats to Tribal lifeways and practices, the use of treaty and subsistence-based resources, and the “degradation,” “desecration,” “disruption,” and “fragmentation” of places and practices held sacred by Tribes.¹⁴ As noted above, the USFS’ response to these dire and cumulative threats is that they will be addressed via Tribal consultation at the plan and project level of decision-making.¹⁵

¹¹ See 91 Fed. Reg. 53828 (Aug. 20, 2026) (stating as the “purpose and need” for more localized decision-making) 2026 DEIS, at 35 (emphasis added).

¹³ *Id.*, at 201.

¹⁴ *Id.*, at 197-203.

¹⁵ *Id.*, at 201.

Forest Planning

The proposed rule “is intended to return primary authority for determining the appropriate management of inventoried roadless areas at the local level to the land management planning process mandated by the National Forest Management Act of 1976 (16 U.S.C. §1600 et seq.). The proposed Rule references the requirements of the 2012 Planning Rule in this context,¹⁶ stating that the conservation objectives of the 2012 Planning Rule are similar to that of the 2001 Roadless Rule (e.g., ecological integrity) and that “the Agency’s land management planning framework has become more adaptive, science-based, efficient, and effective.”¹⁷

The forest planning process is an important pathway for Tribes to proactively engage the USFS and to protect Tribal rights and interests on NFS lands and public lands more broadly. Most recently, using the Tribal provisions found in the 2012 Planning Rule, a few Tribes have secured plan provisions that meaningfully protect treaty rights, cultural resources, traditional uses and traditional cultural districts and properties.¹⁸ Important steps have been taken by the USFS in this regard. **But the vast majority of plans prepared using the 2012 Planning Rule provide no substantive and enforceable protections for Tribal rights and interests.** Instead of using mandatory and enforceable “standards” as plan components, these plans generally use vague and discretionary language that are used as desired conditions, guidelines, or objectives; and in many cases they are stated as unenforceable “*potential* management approaches” or strategies that might be used at some unspecified time at the discretion of the responsible official. Other common themes found in these forest plans include the USFS simply restating existing statutory and Tribal consultation obligations (such as those provided by the NHPA and E.O. 13175) and statements that the agency *may* consider establishing forthcoming agreements and protocols with Tribes.

Worse still are the forest plans that were prepared using the 1982 Planning Rule (108 out of 126 forest plans). As noted in the 2026 DEIS, these plans “are less likely to have incorporated IRAs into their management areas or provided specific direction for these areas.”¹⁹ **With few**

¹⁶ The agency’s support and use of the 2012 Planning Rule (see e.g., DEIS, at 22, 77, 131, 150) is an interesting development because of persistent rumors that the agency intends to soon rescind the Rule. This is speculation and we cannot substantiate this claim and so we do not analyze the potential implications here.

¹⁷ 2026 proposed rule, at 53,828. The proposed rule’s Tribal Summary Impact Statement similarly states that forest plans “already contain specific management prescriptions, standards, and guidelines for resource protection, especially in areas designated as Recommended Wilderness, Remote Backcountry, or containing special management areas.” USFS, Tribal Summary Impact Statement, at 5. Of course, plan components for these types of designations are often due to the roadless area characteristics that would be eliminated by the proposed rule.

¹⁸ See Monte Mills & Martin Nie, *Planning a New Paradigm: Tribal Co-Stewardship and Federal Public Lands Planning*, 36 COLORADO ENVIRONMENTAL LAW JOURNAL 277, 309-12 (2025) (reviewing the development of the Helena-Lewis and Clark and Nez Perce-Clearwater National Forest Plans).

¹⁹ 2026 DEIS, at 8. This was a central issue in the development of the 2001 Roadless Rule. That Rule states that “[o]f the 58.5 million acres of inventoried roadless areas considered in the FEIS, approximately 34.3 million acres have prescriptions that allow road construction and reconstruction. The remaining 24.2 million acres are currently allocated to management prescriptions that prohibit road construction; however, protections in these existing plans may change after future forest plan amendments or revisions.” 66 Fed. Reg. 3246 (Jan 12, 2001).

possible exceptions, these older plans fail to protect Tribal rights and interests on NFS lands and most of them fail to even acknowledge a Tribal presence in the first place.

The Forest Service’s *Forest Plan Database and Exchange of Current Knowledge (FP Deck)* provides a searchable database of Forest Service land and resource management plans and related “plan components.” This resource, along with the authors’ own comprehensive database of forest plans, shows that roughly 86 percent of forest plans (108 out of 126) provide no substantive recognition or meaningful protection of Tribal rights or interests, from treaty and cultural resources to the protection of sacred lands and traditional uses and access. When the word “Tribal” is used, it is most frequently found in the context of simply reiterating the agency’s preexisting legal obligations under authorities such as the NHPA, the American Indian Religious Freedom Act (AIRFA), and E.O. 13175. And, when the words “treaty,” and “trust,” and “sacred” do appear in a plan, they are most frequently stated as something that can be considered by the agency in the context of multiple use management. **It is thus deeply disingenuous for the USFS to offer forest planning as the most effective way to meet the agency’s treaty and trust obligations to Indian Tribes. Forest plans fail to do this and as discussed below, several recent actions taken by the agency are aimed at removing plan-level restrictions on timber harvest, motorized access, and other uses that will impact Tribal rights and interests.**

Other Planning/Plan-Related Issues:

- To meet the purposes of E.O. 14225 and the Secretary’s Memorandum 1078-006, Increasing Timber Production and Designating an Emergency Situation on National Forest System Lands (Apr. 3, 2025), **the USFS’s *National Active Forest Management Strategy* (May 2025) requires the agency to conduct a nation-wide analysis of land management plans to identify and remove obstacles to timber harvest.** For those few forest plans having Tribally-based plan components, this could include proposed changes impacting Treaty-reserved rights, associated habitats, sacred lands, designated areas of Tribal importance, and cultural resources, among others.
- No alternatives considered in the DEIS would compel the amendment or revision of any land management plan and the agency states that “any future administrative changes, amendments, or revisions to land management plans would comply with NFMA and planning regulations or the **planning directives** at FSM 1920 and FSH 1909.12.”²⁰ But the agency also recently proposed a rule that would significantly amend the regulations governing the Directives System that, if enacted, would undermine the applicability and scope of those planning directives.²¹ For example, under that proposed rule, USFS

²⁰ 2026 DEIS, at 20.

²¹ Organization, Functions, and Procedures; Public Notice and Comment for Standards, Criteria, and Guidance Applicable to Forest Service Programs, 91 Fed. Reg. 39948 (July 1, 2026).

officials could depart from mandatory direction in the Directives “when alternate actions are in the public interest, consistent with law, and justification for that departure is properly documented.”²² It does not appear that the 2026 proposed rule or 2026 DEIS considers the impacts of those potential changes on the intended course of action.

- The agency is also working to “modernize” its **planning directives**, though the relationship between those changes and the prior rulemaking regarding directives is unclear. It does not appear that the 2026 proposed rule or 2026 DEIS considers the impacts of this modernization effort on the intended course of action.
- E.O. 14408, Removing Unnecessary and Counterproductive Restrictions on Access to Federal Lands (May 29, 2026) directs USFS to initiate rulemaking to revise travel management regulations. On August 24, 2026, **the USFS proposed a new travel management rule** to promote increased access “while simplifying regulatory requirements and preserving local decision-making.”²³ The proposed action would upend the current travel management planning process and negate the relevance of forest plans and the direction they provide for travel management. The proposed rule states that “travel management and access decisions are not land management planning decisions and need not be made through the procedures governing development, amendment, or revision of land management plans...”²⁴ Instead, the proposed “access-oriented framework” would make “[d]ecisions concerning the designation, management, modification, or discontinuation of particular roads, trails, areas, and classes of motor vehicle use...implementation-level decisions that are appropriately made by responsible officials based on current site-specific conditions and management needs.”²⁵
- E.O. 14241, Immediate Measures to Increase American Mineral Production (Mar. 20, 2025) directs federal agencies to “take immediate action to facilitate domestic mineral production to the maximum extent possible.” **The Secretary of Agriculture’s Memorandum (1078-005) on Expanding Energy and Mineral Opportunities on Federal Forest Lands (March 19, 2025)** provides step down guidance to the USFS and emphasizes the need to reduce barriers to existing mineral and energy resource development. This includes “actions to ensure the potential for the occurrence of all mineral and energy resources, including critical minerals, are considered in Land Management revisions; [and to take] actions to review and, as appropriate, amend relevant Land Management Plans to ensure proper consideration of mineral and energy resources.”

²² *Id.* at 39949, 39951.

²³ U.S. Forest Service, Travel Management; National Forest System Lands, 91 Fed. Reg. 54686 (Aug. 24, 2026)

²⁴ *Id.*, at 54688.

²⁵ *Id.*

- **Alaska Native Tribes and the Tongass National Forest:** The USFS has never meaningfully acknowledged or incorporated subsistence uses and, more importantly, priority and protection for those uses, into forest plans that guide and direct management of the Tongass. In addition, despite various amendments to and revisions of forest plans covering the Tongass since the first plan was developed in 1979, the agency has never formally engaged in a review process pursuant to §810 of the Alaska National Interest Lands Conservation Act (ANILCA) when updating the plan. The result is a distinct lack of substantive direction regarding subsistence uses in the Forest Plan: what direction exists simply recites ANILCA’s statutory language. The USFS acknowledged this shortcoming in the recent *Subsistence and Other Non-Commercial Harvest Resource Assessment*, prepared in late 2025 as part of the most recent proposed Tongass Forest Plan Revision:

There is little direction in the existing plan on how best to ensure that the management of the Tongass National Forest prioritizes the subsistence uses of wild, renewable resources, as well as for other uses of fish, wildlife, and plant resources. Establishing locally informed plan components for subsistence resources, resource access, community engagement, and tribal consultation could improve the ability to gauge the efficacy of the Forest Plan for subsistence on the Tongass National Forest. More emphasis on local community use areas and using local knowledge in the revised Forest Plan increase sustainability of these resources and their use.²⁶

- **Areas of Tribal Importance:** The USFS’s 2012 Planning Rule includes several important tribal provisions, including those related to Tribal consultation, Indigenous knowledge, sacred lands, and the identification and protection of “areas of tribal importance.”²⁷ Roughly 18 forest plans have now been revised using the 2012 Planning Rule, with several others at various stages of revision, including the Northwest Forest Plan and the plan for the Tongass National Forest. Using the confidentiality authorities provided in the 2012 Planning Rule and the Cultural Heritage Cooperation Authority (CHCA), the designation of areas of Tribal importance are not always delineated or mapped in a forest plan. **The 2026 DEIS includes no analysis of how the proposed rule might impact these places, other than the general statement that such analysis would be conducted at the project-level and that timber harvest and road construction could significantly alter management of these places.**²⁸

²⁶ U.S. Forest Service, *Subsistence and Other Non-Commercial Harvest Resource Assessment: Tongass National Forest Plan Revision* (Aug. 2025), at 8 (emphasis added).

²⁷ 36 C.F.R. §219.10(b)(1)

²⁸ 2026 DEIS, at 201.

Project-Level Analysis

The proposed rule states that future proposals for timber harvesting, road construction, and other uses within IRAs “would require site-specific compliance with the National Environmental Policy Act (NEPA) and other applicable laws, and would have to be consistent with the governing land management plan.”²⁹ The 2026 DEIS states that “[f]uture project decisions must comply with applicable Federal and State laws, such as the National Environmental Policy Act, Clean Water Act, the Clean Air Act, Endangered Species Act, National Historic Preservation Act, and the Wilderness Act...”³⁰ Similarly, the Tribal Summary Impact Statement states that the NEPA framework “remains in place, meaning that any proposed action (such as road construction) following the rescission will be analyzed on a project-by-project basis.”³¹

Since January 20, 2025, the Department has fundamentally reconfigured what, if any, analysis is required by the USFS at the project-level. The USFS has taken, or is in the process of taking, several “deregulatory” actions to meet the purposes of Executive Orders 14154 (Jan. 20), 14156 (Jan. 20, 2026), 14192 (Jan. 31, 2025), 14225 (Mar. 1, 2025) and others. This includes Secretarial guidance such as [Secretary’s Memorandum 1078-006, Increasing Timber Production and Designating an Emergency Situation on National Forest System Lands](#), issued April 3, 2025, and the agency’s [National Active Forest Management Strategy](#), published in May 2025, which calls for streamlining all regulatory processes related to timber production and using **emergency authorizations** to expedite NEPA, NHPA, ESA, and CWA reviews and approvals.³² The effect of these departmental and agency actions is exacerbated by government-wide directives. **For example, the Office of Management and Budget (OMB) issued guidance on “Streamlining the Review of Deregulatory Actions” that directly implicates the agency’s approach to Tribal consultation.** The OMB’s guidance states that “[a]gencies should consider deregulatory actions as *presumptively not triggering*” Tribal consultation requirements and that agencies “should also presume that any consultations *should take place as part of the normal opportunity for stakeholder participation*...and the Administrative Procedure Act commenting process.”³³ Additional relevant considerations include:

- **2026 NEPA Regulations and Project-Level Decision Making:** Most importantly, the Forest Service’s new NEPA [regulations](#) make it certain that nearly all decisions made at

²⁹ 2026 proposed rule, at 53829.

³⁰ 2026 DEIS, at 20.

³¹ Tribal Summary Impact Statement, at 5.

³² The Secretary’s Memorandum (1078-006) details actions to be taken pursuant to E.O. 14225 (Immediate Expansion of American Timber Production). It makes an Emergency Situation Determination (ESD) under §40807 of the Infrastructure Investment Jobs Act and designates 112,646,000 acres of NFS lands as an emergency situation, which is 59 percent of NFS lands. It lays out several emergency authorities to comply with laws such as the ESA, NHPA and CWA and the NEPA procedures to be used, or used at all, are not subject to the project-level pre-decisional administrative review process. It also states that Tribal consultation time frames may need to be expedited in some scenarios.

³³ Office of Management and Budget, Office of Information and Regulatory Affairs, Streamlining the Review of Deregulatory Actions (M-25-36) (Oct. 21, 2025), at 3. (Emphasis added).

the project-level by the USFS will be done via an unprecedented expansion of categorical exclusions (CEs), several of which have clear Tribal implications.³⁴ These new rules also eliminate public scoping for CEs and Environmental Assessments (EAs) while making such scoping optional for Environmental Impact Statements (EISs) and eliminating the Schedule of Proposed Actions (SOPA), meaning that Tribal representatives, like the public-at-large, will have to visit the Forest Service’s website to even learn about proposals or what is already underway at the project level. The agency’s new NEPA rules also significantly reduce the timeframe to complete the analysis and public participation once provided at the project level, and while this does not directly implicate Tribal consultation, it makes it highly likely that consultation will happen after decisions are already made.

- **The National Historic Preservation Act and Project-Level Decision Making:** The 2026 DEIS states that under all alternatives, future timber and road projects would require review and Tribal consultation under §106 of the NHPA.³⁵ No analysis of potential impacts to historic or cultural properties is provided because “[t]he rulemaking does not authorize any activities that can affect historic properties” and that “future actions in [IRAs] require project-level, site-specific consideration of effects to historic properties.”³⁶ Thus, **the agency does not analyze how the proposed rescission would impact the management of NHPA-based traditional cultural districts and properties.** As we discuss in the 2025 Memo, some forest plans, such as the Helena-Lewis and Clark in Montana and Cibola in New Mexico, protect traditional cultural districts, properties and sacred sites by using plan components for inventoried roadless areas and by referencing the direction found in the 2001 Roadless Rule.³⁷ Furthermore, like the recent changes to NEPA review requirements for such project-level decisions, **the Advisory Council on Historic Properties (“ACHP”)—the federal body responsible for rulemaking regarding the NHPA—recently authorized a proposal that would severely curtail the Section 106 consultation process.** While those proposed revisions are yet to be published in the Federal Register, the publicly available pre-publication [draft](#) shows how such changes could significantly reduce opportunities for Tribal engagement and consultation in federal undertakings under Section 106. It does not appear that the agency identified or considered the potential impacts of these changes in either 2026 proposed rule or the 2026 DEIS.

- **Project-Level Predecisional Administrative Review Process:** Concurrent with the proposed rule to rescind roadless protections is the agency’s proposed rule to amend the

³⁴ National Environmental Policy Act: Final Rule, 91 Fed. Reg. 17062 (Apr. 3, 2026).

³⁵ 2026 DEIS, at 25.

³⁶ 2026 DEIS, at 194.

³⁷ USFS, *Cibola National Forest Land Management Plan* (2022), at 147, 249.

agency’s project-level predecisional administrative review process regulations in order to streamline processes and align with recent rescissions and revisions to NEPA regulations.³⁸ Among other proposed changes, the proposed rule removes some requirements related to notice and comment periods and reduces time to file comments for proposed actions. Public comment and the USFS’s objections process are frequently used by Tribes in addition to Tribal consultation. Tribes and Alaska Native Corporations must participate in the objections process for a project prior to filing any claims for judicial review under the Administrative Procedure Act.

Alaska and the Tongass National Forest

The Tongass National Forest is home to nearly ¼ of the nation’s roadless areas and, given its unique status, has often been considered for special treatment in relation to the national Roadless Rule.³⁹ Nonetheless, the 2026 proposed rule, citing to Executive Order 14153, includes the Tongass as part of its proposed action to rescind the roadless rule nationwide.⁴⁰ As justification for that scope, the agency suggests that the national roadless rule’s current “single, national blanket approach” to the management of roadless areas is too constraining and that, instead, the 2026 proposed rule’s “planning approach allows for place-based, collaborative decisionmaking that is responsive to specific on-the-ground resource conditions, rather than a ‘one-size-fits-all’ national mandate.”⁴¹ Even so, the 2026 DEIS recognizes the Tongass’ unique characteristics and history with the USFS’ roadless rule by dedicating a chapter and an appendix to specifically addressing the Tongass and the potential impacts of rescinding the roadless rule there.⁴² Furthermore, despite the USFS’s purported desire to engender “place-based, collaborative decisionmaking” for the management of roadless areas, the agency summarily ignored and rejected a number of “Alaska-Specific Tribal Homelands Alternatives” proposed by various Native Nations in Alaska, all of which focused on Tongass-specific approaches to the management of roadless areas.⁴³ **Thus, despite the long record of distinct consideration for the Tongass and a number of viable, Tribally-proposed alternatives, the agency is including the Tongass in its proposed “one-size-fits-all” (nearly) nationwide rescission of the roadless rule.**⁴⁴

³⁸ Project-Level Predecisional Administrative Review Process, Proposed Rule, 91 Fed. Reg. 5387 (Feb. 6, 2026).

³⁹ 2026 DEIS, at 230 (“The environmental impacts presented in the other sections of the DEIS are programmatic and nationwide in nature. However, the Tongass is a unique environment relative to other IRAs, includes a large proportion of IRAs (approximately 9.3 million acres, nearly 1/4 of the potentially affected inventoried roadless area acreage), and has a long history of special treatment in roadless rulemaking.”)

⁴⁰ 2026 proposed rule at 53828.

⁴¹ *Id.*

⁴² 2026 DEIS at 230-39, Appx. 4.

⁴³ Tribal Summary Impact Statement, at 4-5.

⁴⁴ The 2026 proposed rule exempts the Colorado- and Idaho-specific roadless rules, further undermining the agency’s rationale that a full, nationwide rescission is necessary and that the status quo is too “constrain[ing.]” See 2026 proposed rule, at 53829.

Rescinding roadless protections for the Tongass would present unique considerations, including the threat to subsistence uses and resources. Specific analysis and mitigation of that threat is required by Title VIII of ANILCA, including the subsistence-focused review and assessment mandate of §810.⁴⁵ **Despite that mandate, the USFS has yet to perform a detailed analysis of the subsistence implications of roadless area protections—or the removal thereof.**

The agency did not perform an ANILCA §810 subsistence analysis and determination for the initial 2001 roadless rule. Subsequent rulemakings applicable to Alaska state that ANILCA §810 does not require evaluation and a determination because management of roadless areas is a “programmatic-level decision” that is not a determination of NFS lands.⁴⁶ Still, when determining or otherwise permit the use, occupancy, or disposition of NFS lands.⁴⁶ Still, when determining to exclude the Tongass from the 2001 Roadless Rule in 2020, the USFS evaluated that decision “in a manner consistent with Section 810 of ANILCA.”⁴⁷ In doing so, the USFS acknowledged that such analysis was appropriate in order “to honor regional commitments and inform future project-level planning and decision-making subject to ANILCA Section 810.”⁴⁸ The evaluation concluded that the 2020 Tongass Rule “may eventually indirectly result in a significant restriction of subsistence use of deer” but that such restriction “is necessary, consistent with sound management principles for the utilization of the public lands.”⁴⁹

The 2023 repeal of this exemption also included an analysis consistent with §810 but, rather than conduct an entirely new analysis with additional hearings, the 2023 rulemaking relied on the record developed during the 2020 process.⁵⁰ Despite analyzing precisely the opposite outcome (i.e., restoring Roadless Rule protections rather than removing them), the 2023 review reached the same conclusion as the 2020 process, finding that any impacts to subsistence resources that would occur as a result of restoring the 2001 Roadless Rule would be “necessary, consistent with sound management principles for the utilization of NFS lands.”⁵¹ Though the 2023 rulemaking

⁴⁵ 16 U.S.C. § 3120(a) (“[i]n determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions,” federal agencies must “evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.”). In the first phase or tier of 810, “the head of the Federal agency having primary jurisdiction” over lands affected by a proposed federal activity must “evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.” 16 U.S.C. §3120(a).

⁴⁶ 85 Fed. Reg. 68688, 68692 (Oct. 29, 2020).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ 85 Fed. Reg. 68692 (Oct. 29, 2020). *See also* U.S. Forest Service, Final Environmental Impact Statement: Rulemaking for Alaska Roadless Areas (2020), at 3-329. This FEIS is incorporated by reference in 2026 proposed rule. The analysis provided in the 2020 FEIS states that it is “difficult to evaluate the effects of the alternatives on particular groups of subsistence users or resources” because of the programmatic nature of the FEIS. Several parts of the subsistence evaluation rely on data and analysis used in the 1997 Tongass Forest Plan EIS, including impacts to abundance and distribution of subsistence resources, subsistence use areas, and access to subsistence resources.

⁵⁰ 88 Fed. Reg. 5252, 5258 (Jan. 27, 2023).

⁵¹ *Id.* at 5259.

relied extensively on the record developed during the 2020 process, the USFS also engaged in additional consultation sessions with Tribal governments, conducted in 2021 and 2022.⁵²

The 2026 DEIS largely relies on these earlier analyses to consider the potential impacts on the Tongass of the rescission of roadless protections in the 2026 proposed rule, including incorporating by reference and largely restating the analysis from the 2020 Final EIS for Rulemaking for Alaska Roadless Areas.⁵³ With respect to analysis under §810, the 2026 DEIS reiterates the agency’s earlier position that an §810 evaluation and determination is not required for the proposed rescission of the Roadless Rule because it is a “programmatic level decision and not a determination whether to ‘withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition’ of National Forest land.”⁵⁴ The 2026 DEIS then goes on to note that, despite the agency’s position that such analysis is not required, the USFS “voluntarily considered a forest-wide evaluation in accordance with ANILCA Section 810,” in 2020 and that “ANILCA subsistence hearings were conducted for the DEIS and proposed rule, consistent with Section 810 in 2019.”⁵⁵

Importantly, however, the 2026 proposed rule contradicts the 2026 DEIS regarding whether and how the agency will conduct its § 810 analysis. According to the 2026 proposed rule, “[c]onsistent with the Alaska National Interest Lands Conversation Act (ANILCA) Section 810, the Forest Service *will hold* public subsistence hearings to evaluate potential impacts of the proposed rule on subsistence uses in Alaska” and that “[t]hese hearings provide an opportunity for affected communities and individuals to share input on how rescinding the 2001 Roadless Rule may influence subsistence activities, including access to resources and traditional practices.”⁵⁶ It also states that “[d]etails regarding the dates, times, and locations of these hearings will be announced in a subsequent notice and posted on the Forest Service’s website.”⁵⁷ On August 24, 2026, the USFS announced that it will hold two public subsistence hearings.

This inconsistency leaves it yet to be determined whether the USFS will finally engage in a meaningful effort to fulfill § 810’s mandate. Such analysis is critical because, as noted in the 2025 Memorandum, the USFS has systematically evaded its obligations under ANILCA’s § 810 at the programmatic, plan and project level of decision making on the Tongass. The agency never prepared an §810 evaluation and determination at the plan level

⁵² *Id.* at 5262, 5272.

⁵³ See 2026 DEIS, at 230 (“The effects associated with the potentially affected IRAs within the Tongass National Forest are fully disclosed in the 2020 FEIS for the Alaska Roadless Rule, analysis supporting the 2023 rulemaking, and associated record.”); *id.* at Appx. 4, at 29 (“This 2020 Final FEIS analysis, 2023 Determination of NEPA Adequacy [included with the project documents], and other supporting information and analyses provide information necessary for findings and conclusions required for this proposed national rulemaking EIS and has been relied upon and incorporated by reference for a portion of the effects analysis, specific to effects to resources within the Tongass National Forest.”)

⁵⁴ 2026 DEIS, at 238.

⁵⁵ *Id.* at 239.

⁵⁶ 2026 proposed rule, at 53830 (emphasis added).

⁵⁷ *Id.*

because of its assertion that it too is a “programmatic-level decision” that is not a decision to “withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of NFS lands.” Those decisions, promises the agency, are to be made at the project-level. **But our review of project-level decisions on the Tongass shows the agency routinely pointing to the forest plan as providing protection for subsistence resources or finding that projects and selected alternatives are “necessary, consistent with sound management of public lands.”** Therefore, like the challenges with programmatic, plan and project-level reviews described above, the 2026 proposed rule could result in a lack of any meaningful analysis of its potential impacts on subsistence resources as is required by ANILCA § 810.

We will provide additional information and analysis related to §810 in a follow-up memorandum in preparation for the scheduled subsistence hearings. It will include a table documenting the USFS’s systemic evasion of its duties under §810 of ANILCA, at the programmatic, plan and project-levels of decision-making and management.

Tribal Petitions for Rulemaking Using the Administrative Procedure Act

The proposed rule states that “[a]ny State, Tribe, or other interested entity seeking to establish roadless management provisions tailored to specific geographic or resource conditions may submit a petition for rulemaking under the Administrative Procedure Act (5 U.S.C. §553(e)) and USDA regulations at 7 C.F.R. §1.28,” and that “[t]he Department will consider such petitions consistent with applicable law and policy.”⁵⁸

Though this is framed as an offer unique to this rulemaking, Tribes (and States and the public more broadly) can submit a petition using the APA at any time and for reasons beyond rescinding the Roadless Rule. In fact, the APA petition process was used to develop state-specific roadless rules for Idaho, Colorado and Alaska.⁵⁹ This is not a new opportunity. Nonetheless, the 2026 DEIS contradicts this offer by stating that “[g]eneral or broad discretionary or non-discretionary aspects of national forest and grassland management, such as co-stewardship with Tribes, are better addressed through local land management planning or site specific project level planning than through National Rulemaking.”⁶⁰

Tribes may wish to pursue the petition process and could do so during this rulemaking process or thereafter. We are uncertain how the Department would respond if it received an influx of Tribal roadless petitions. Though petitioners do have legal recourse when their petition is ignored, this

⁵⁸ 2026 proposed rule at 53829.

⁵⁹ See 73 Fed. Reg. 61456, 61458 (Oct. 16, 2008) and 77 Fed. Reg. 39576, 39581 (July 3, 2012).

⁶⁰ 2026 DEIS, at 29.

pathway is notorious for the time it usually takes for Departments to respond and how frequently they decline a petition.⁶¹

As we discussed in our 2025 Memorandum, Tribal governments in Southeast Alaska used the APA process in 2020 by petitioning the USFS to create a “Traditional Homelands Conservation Rule for the Long-Term Management and Protection of Traditional and Customary Use Areas in the Tongass National Forest.”⁶² *Three years later*, the Secretary of Agriculture responded to the Tribes’ Petition by stating that the best course of action was to “pursue a meaningful and robust set of actions *outside of the rulemaking process* to achieve the petition goals,” while suggesting the opportunity provided in the revision of the Tongass Forest Plan.⁶³ The Tongass Forest Plan is currently under revision with a draft EIS anticipated in early 2027 but it is yet to be determined whether the USFS will include in that plan a set of meaningful and substantive plan components for subsistence and Tribal rights and interests—as the Tribal governments requested *seven years earlier* in their original petition to USDA.

Implications for Management Actions and Protections Taken Pursuant to the Cultural and Heritage Cooperation Authority

Our 2025 Memorandum asks how the rescission of the 2001 Roadless Rule will impact management decisions and protections made by the USFS pursuant to the Cultural and Heritage Cooperation Authority (CHCA). Enacted as part of the 2008 Farm Bill, the CHCA includes multiple provisions related to the reburial of human remains and cultural items,⁶⁴ the temporary closure of NFS lands for traditional and cultural purposes,⁶⁵ the use of forest products for non-commercial purposes,⁶⁶ and a prohibition on disclosure and an exemption under the Freedom of Information Act (FOIA).⁶⁷

The 2026 DEIS provides no direct reference to the CHCA. Related decisions are presumably to be made at the plan or project-level of decision making. There is one general reference in the 2026 DEIS to providing forest products to Indian Tribes free of charge for traditional and

⁶¹ See Daniel E. Walters, *Capturing the Regulatory Agenda: An Empirical Study of Agency Responsiveness to Rulemaking Petitions*, 43 HARVARD ENVIRONMENTAL LAW REVIEW 175 (2019).

⁶² Organized Village of Kasaan, Organized Village of Kake, Klawock Cooperative Association, Hoonah Indian Association, Ketchikan Indian Community, Skagway Traditional Council, Organized Village of Saxman, Yakutat Tlingit Tribe, Central Council Tlingit and Haida Indian Tribes of Alaska, *Petition for USDA Rulemaking to Create a Traditional Homelands Conservation Rule for the Long-Term Management and Protection of Traditional and Customary Use Areas in the Tongass National Forest* (July 16, 2020) (on file with authors).

⁶³ Letter to Alaska Native Tribes, from Secretary Thomas Vilsack (Aug. 9, 2023) (on file with authors).

⁶⁴ 25 U.S.C. §3053.

⁶⁵ 25 U.S.C. §3054.

⁶⁶ 25 U.S.C. §3055.

⁶⁷ 25 U.S.C. §3056.

cultural purposes and that this provision would remain in place with the Roadless Rule removed.⁶⁸

The agency does, however, address how rescinding the 2001 Roadless Rule would impact access to treaty resources, sacred sites and other areas of importance to Tribes.⁶⁹ This was one of the major concerns expressed by Tribes and the 2026 DEIS states that the reasonably foreseeable additional timber harvest and road construction permitted under Alternatives 2 and 3 “could significantly alter Tribal access to treaty-reserved resources, sacred sites, and other culturally significant areas”⁷⁰ It also describes the array of foreseeable harms from increased road construction and timber harvesting, including the fragmentation of ancestral trails, increased public access, vandalism, the desecration of sacred sites and traditional cultural properties, and the usability and protection of treaty resources, among others. These likely effects notwithstanding, the USFS states:

Under all alternatives, future projects that propose activities currently prohibited by the roadless rule would require early and regular consultation with Tribes to identify potential impacts to Tribally important areas and resources and to ensure the agency meets its Tribal trust responsibilities and that projects do not conflict with reserved rights in treaties and other laws.⁷¹

The USFS similarly states that rescinding the Roadless Rule does not “authorize site-specific actions” and that “future activities would be complaint with land management plans, which are developed in consultation with Tribes and *often contain* plan components addressing Tribal rights and uses.”⁷² **As we discuss above, the vast majority of forest plans fail to provide any substantive protections or even recognition of Tribal rights and interests on NFS lands. And, though the agency states that subsequent analysis pertaining to increased access will be conducted at the project level, the new USFS NEPA regulations make it likely that such projects will be done via a categorical exclusion with no site-specific analysis at all.**

Tribal Proposals to Manage Fire, Disease or other Threats in Inventoried Roadless Areas Using Tribal Forest Protection Act Authority

The proposed rule to rescind roadless protections is premised on the need for active management to respond to increasing wildfire risk, the spread of insect and disease infestations, and the need for community protection in the wildland-urban interface. These are real concerns for some Tribes, especially for those sharing jurisdictional boundaries with NFS lands. In this context, our

⁶⁸ 2026 DEIS, at 237.

⁶⁹ *Id.* at 198.

⁷⁰ *Id.* at 202.

⁷¹ 2026 DEIS, at 203.

⁷² 2026 DEIS, at 201 (emphasis added).

2025 Memorandum suggested that the USFS examine in the DEIS the number and types of management activities requested by Tribes using the Tribal Forest Protection Act (TFPA). The TFPA is the first law to focus specifically on the connection between federal public lands and the protection of tribal “forest assets.”⁷³ It is designed to protect these assets by authorizing Tribes to propose work and enter into agreements and contracts with the USFS and BLM to reduce threats posed by fire, disease and other threats on federal lands. Tribes share more than 2,675 miles of jurisdictional boundaries with NFS lands and the TFPA authorizes the use of agreements and contracts to carry out projects at this intersection; “to protect Indian forest land or rangeland (including a project to restore Federal land that borders on or is adjacent to Indian forest land or rangeland)” that meet certain criteria.

Neither the proposed rule or the DEIS addresses this issue or provides information as to how the TFPA has or could be used to safeguard Tribal “forest assets” while retaining the general direction and protections afforded by the 2001 Roadless Rule. Thus, it remains unclear whether any TFPA proposal includes treatment in an inventoried roadless area and whether that proposal was accepted or declined by the Secretary of Agriculture using the TFPA framework.

⁷³ 25 U.S.C. §3115a.