

Potential Tribal Implications of the Proposed Rescission of 2001 Roadless Rule

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On June 23, 2025, Secretary Brooke Rollins of the Department of Agriculture announced the Department's intent to rescind the 2001 Roadless Rule. As discussed in greater detail below, the 2001 Roadless Rule generally prohibits road construction and timber harvest across approximately 45 million acres of National Forest System lands. This Memorandum provides a preliminary analysis of the potential implications for Native Nations of rescinding the 2001 Roadless Rule.

We offer this analysis in hopes it helps inform decision-makers within and supporting Tribal governments in the context of the 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.

This memorandum begins with a background summary of the 2001 Roadless Rule, including the Rule's Tribal provisions and exceptions. The next section discusses relevant standards for Tribal consultation in the context of the proposed rescission. Finally, the memorandum identifies five subject matter areas and relevant questions in each area that Native Nations and their advocates may wish to consider during the forthcoming rulemaking process and during government-to-government consultations.

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Background and History of the Roadless Rule

The 2001 Roadless Rule prohibits road construction and reconstruction in inventoried roadless areas within the National Forest System, subject to seven exceptions.¹ When promulgated in 2001, the Rule noted that inventoried roadless areas (IRAs) often encompass traditional cultural properties and sacred sites.² But, the environmental impact statement prepared for the 2001 Rule provided relatively little discussion or analysis of “American Indian and Alaska Native Issues” and mostly recited background information about legal status and consultation requirements.³ Reflective of this general approach, the language of the Rule itself did not expressly address access to sacred lands, cultural resources, traditional uses or other Tribal interests found on National Forest System lands aside from one exception. That exception allows road construction when a “road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty.”⁴

The 2001 Rule states that Tribal officials “provided mixed comments and concerns” about the Rule, with some “generally supportive” and others concerned about how it may affect economic opportunities or restrict activities that may affect adjacent tribal lands.⁵ The Kootenai Tribe of Idaho was a lead plaintiff challenging the Rule in 2001, based in part on the USFS’s failure to engage in substantive tribal consultation.⁶ At the same time, Tribes in states with the most IRAs, such as Alaska (~14.8 million in the State and ~9.2 on Tongass) and Idaho (~9.3 million acres) expressed support for the Rule. This diversity of viewpoints on the Rule is indicative of the diversity of interests across the 574 federally recognized Tribes within the United States. Still, a central concern consistently expressed by Tribes was that “traditional uses of the land and access to cultural and sacred sites be allowed to continue.”⁷ The USFS responded to this concern by pointing to the flexibility of the 2001 Rule, including the exception quoted above.⁸

Tribes also commented and provided feedback on the 2001 Roadless Rule in response to the Advance Notice of Proposed Rulemaking (ANPR) issued later that year by the incoming Administration of President George W. Bush after the Rule’s January (pre-inauguration) promulgation. The USFS’s 2002 public comment report summarizing those comments shows similar themes as those expressed during the 2001 rulemaking, though the 2002 report includes a section discussing tribal support of the 2001 Rule based on the need to protect treaty-based

¹ 66 Fed. Reg. 3244, 3272 (Jan. 12, 2001). As the USFS described in its analysis of the proposed rescission of the 2001 Roadless Rule, the current Subpart B of 36 C.F.R. part 294 only “describes the State Petitions Rule for inventoried roadless area management. However, the State Petitions Rule is not in effect due to a court ruling in 2006, which reverted subpart B to the original 2001 rule. The regulation was not amended to reflect that ruling. The 2001 Roadless Rule can be found at: <https://www.federalregister.gov/d/01-726>.”) See *National Policy Summary Analysis*, National Forest System Ecosystem Management Coordination, July 2025, available at <https://www.fs.usda.gov/sites/default/files/2001-roadless-rule-rescission-summary-analysis.pdf>.

² *Id.* at 3245, 3272 (36 C.F.R. § 294.11 of the 2001 Rule).

³ USFS, *Forest Service Roadless Area Conservation: Final Environmental Impact Statement, Vol 1* (2000), at 3-352.

⁴ 66 Fed. Reg. 3244, 3272 (36 C.F.R. 294.12(3)).

⁵ 66 Fed. Reg. 3244, 3249 (Jan. 12, 2001).

⁶ *Kootenai Tribe of Idaho v. Veneman*, 142 F. Supp. 1231, 1245 (2001).

⁷ *Id.*

⁸ 66 Fed. Reg. 3244, 3253.

resources and to promote salmon recovery efforts.⁹ The report references the decline in abundance of treaty resources, most notably anadromous fisheries, and the role played by roadless areas in their conservation. The Report states that the Nez Perce Tribe continues to support 2001 Rule, viewing it as “consistent with both the federal government’s treaty and trust obligations and the Tribe’s own salmon recovery efforts.”¹⁰ It also references support of roadless area protections by the Columbia River Inter-Tribal Fish Commission, as expressed in its 1995 Salmon Restoration Plan.¹¹

In addition to the 2001 Roadless Rule, state-specific roadless rules were developed for the States of Idaho and Colorado.¹² These state rules stemmed from the promulgation of a 2005 Rule that established a petitioning process whereby state governors—*but not Tribes*—could seek to establish or adjust management requirements for IRAs within their state boundaries.¹³

Both the Colorado and Idaho roadless rules were formed with relatively more substantive and place-focused tribal engagement than the 2001 Rule. The state-specific Rule establishing management direction for Idaho (the Idaho Roadless Rule), which was finalized in 2008, underwent significant changes between its draft and final versions based on requests made by Tribes and their engagement in the process.¹⁴ For example, one of the five management themes used in the Rule includes “Special Areas of Historic or Tribal Significance,” which marked an important step in USFS-Tribal relations.

The “Colorado Roadless Rule,” issued in 2012, was also informed by and developed with recommendations from Tribes. In seeking that Rule, the Governor’s Office made clear it was “keenly aware of the spiritual and cultural significance some of these areas hold for the Tribes” in the State.¹⁵ That Rule states that “traditional cultural properties and sacred sites” are common roadless area characteristics,¹⁶ and it similarly includes exceptions for “reserved and outstanding rights; provided by statute or treaty.”¹⁷

Other state-specific rules issued in 2003 and 2020 sought to exempt the Tongass National Forest in Southeast Alaska from the 2001 Rule.¹⁸ The 2003 Rule was successfully challenged by the Organized Village of Kake, a federally recognized Tribe in Southeast Alaska, and others,

⁹ USFS, Content Analysis Team, *Advance Notice of Proposed Rulemaking: Summary of Public Comment* (May 31, 2002) (on file with authors), at 3-116.

¹⁰ *Id.*

¹¹ *Id.*

¹² These state-specific rules are not included in the most recent rescission proposal. See *National Policy Summary Analysis*, National Forest System Ecosystem Management Coordination, July 2025, available at <https://www.fs.usda.gov/sites/default/files/2001-roadless-rule-rescission-summary-analysis.pdf> (“The rulemaking focuses on rescinding subpart B (2001 Roadless Rule), leaving the state-specific roadless rules in place for Idaho and Colorado at subparts C and D, respectively.”)

¹³ 70 Fed. Reg. 25654 (May 13, 2005).

¹⁴ 73 Fed. Reg. 61456, 61458 (Oct. 16, 2008).

¹⁵ 77 Fed. Reg. 39576, 39581 (July 3, 2012).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 85 Fed. Reg. 68688 (Oct. 29, 2020).

resulting in that rule being judicially invalidated.¹⁹ In 2020, Southeast Alaska Tribes participated throughout the agency’s consultation process, with some of these meetings taking place online because of the Administration’s efforts to finalize the Rule during a national pandemic.²⁰ Six Tribes also contributed as “cooperating agencies” during the rulemaking process,²¹ with all of them opposed to the USFS’s proposed rule exempting the Tongass.²² Tribes also participated in the Rule’s subsistence determination process but were unable to get the USFS to incorporate updated information and descriptions of their traditional use areas, among other deficiencies in what was widely viewed as a superficial and pro-forma subsistence review.²³

Tribal governments in Southeast Alaska then petitioned 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.”²⁴ This Tribal Petition detailed their participation throughout the process and how their voices were ultimately “disregarded, disrespected, undervalued, and ignored.”²⁵ The Tribal Petition also critiqued “a one-way system of communication in which the federal government engage[d] in ‘consultation’ as a way to issue orders and give updates to the Tribes about what *will* happen in decision-making processes, while ignoring the recommendations that the Tribes provide.”²⁶

The Biden Administration ultimately repealed the 2020 Tongass exemption and reinstated the 2001 Rule.²⁷ Shortly thereafter, Secretary of Agriculture Thomas Vilsack officially responded to the Tribal Petition. With roadless area protections restored on the Tongass, the Secretary promised 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.²⁸

As noted above, in late June 2025, Secretary Rollins announced the Department’s intent to rescind the 2001 Roadless Rule. In response to Secretary Rollins’ announcement, the Central Council of the Tlingit and Haida Indian Tribes of Alaska wrote to express their “unequivocal

¹⁹ *Organized Village of Kake v. USDA*, 776 F. Supp.2d 960 (D. Alaska 2011), *aff’d en banc*, 795 F.3d 956 (9th Cir. 2015).

²⁰ See letter from Hoonah Indian Association, Organized Village of Kasaan, Organized Village of Kake, Organized Village of Saxman, Ketchikan Indian Community, Central Council of Tlingit and Haida Indian Tribes of Alaska, to Secretary of Agriculture, Sonny Perdue (Apr. 23, 2020) (on file with authors).

²¹ NEPA regulations permit a State, Tribe or local agency to become a “cooperating agency” by agreement with the lead agency. 40 C.F.R. §1501.8.

²² 85 Fed. Reg. 68688, 68696 (Oct. 29, 2020).

²³ *Id.*, at 68,692, 68696.

²⁴ 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).

²⁵ *Id.* at 2.

²⁶ *Id.* at 5.

²⁷ 88 Fed. Reg. 5252 (Jan. 27, 2023).

²⁸ Letter to Alaska Native Tribes, from Secretary Thomas Vilsack (Aug. 9, 2023) (on file with authors)

opposition” to the proposed rescission and to make clear the Tribes’ position that any such action was illegitimate unless and until meaningful government-to-government consultation occurred.²⁹

On August 29, 2025, the Department of Agriculture and the USFS published in the Federal Register its notice of intent to prepare an environmental impact statement (NOI) analyzing the proposed rescission of the Roadless Rule.³⁰ That NOI indicated that, for a variety of reasons explained in the NOI, “the Department has determined that the 2001 Roadless Rule is no longer the best approach to managing inventoried roadless areas within the National Forest System.”³¹ Instead, from the Department’s perspective, “Eliminating a cumbersome national level oversight process and returning authority to the local decisionmakers provides for efficiency as well as effectiveness for resource conservation.”³² The forthcoming environmental impact statement (EIS) will analyze the proposed rescission of the Rule and a “no action” alternative that would leave the rule in place and “will evaluate” those alternatives in light of anticipated impacts and benefits related to: “Public access to National Forest System lands, including for recreation, to facilitate subsistence or other uses, and to exercise legal rights[;] Forest health and management, including timber management, fuels management, and fire suppression[;] Soil, water and air; plant and animal communities, including threatened, endangered, sensitive species; scenic integrity; recreation settings and opportunities; and cultural resources, traditional cultural properties, and sacred sites[; and,] Local and regional economies.”³³ The NOI also indicated that “Tribal governments and Alaska Native Corporations will have an opportunity to be engaged during rulemaking and EIS development through various coordination and consultation events.”³⁴ **Comments on the NOI are being accepted for 21 days, until September 19, 2025.**³⁵

²⁹ Letter to Secretary Brooke Rollins, from Central Council of the Tlingit and Haida Indian Tribes of Alaska (June 30, 2025), available at <https://tlingitandhaida.gov/wp-content/uploads/TlingitHaidaLettertoUSDA-Roadless-Rule.pdf>.

³⁰ 90 Fed. Reg. 42,179 (Aug. 29, 2025), available at <https://www.govinfo.gov/content/pkg/FR-2025-08-29/pdf/2025-16581.pdf>.

³¹ *Id.* at 42,181.

³² *Id.*

³³ *Id.* at 42,182.

³⁴ *Id.*

³⁵ *Id.* at 42,180. According to the NOI, “Comments must be submitted via one of the following methods: Electronically (preferred): Through the Federal eRulemaking Portal, <https://www.regulations.gov>, identified by docket number FS–2025–0001. Follow the instructions for submitting comments[; or] Mail: Hardcopy letters must be submitted to the Director, Ecosystem Management Coordination, 201 14th Street SW, Mailstop 1108, Washington, DC 20250–1124.”

Relevant Tribal Consultation Standards

As the chronology and whipsaw status of the Roadless Rule demonstrate, Tribes have often faced significant challenges in seeking to ensure meaningful opportunities for engagement with the USFS and the Department of Agriculture. The consultation process for the adoption of the 2001 Roadless Rule, for example, consisted of the USFS “[asking] line officers in the field ... to make contact with Tribes to ensure awareness of the initiative and of the rulemaking process.”³⁶ This ad hoc, forest-by-forest approach was “how Forest Service government-to-government dialog with Tribes [was] typically conducted.”³⁷

Only a few months before the publication of the final Roadless Rule, however, President Clinton had issued Executive Order 13175, calling on each agency to “have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”³⁸ That Executive Order precipitated the development of consultation policies and practices by the USFS and Department of Agriculture as well as a number of subsequent orders, memoranda, and actions building on and refining the Executive Branch’s commitment to ensure timely, meaningful, and effective government-to-government consultation with Tribes.³⁹

Despite those additional directives, 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.⁴⁰ 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.⁴¹ 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.⁴² It remains to be seen whether, as the rescission process moves forward, the Department and the USFS will ensure meaningful and appropriate opportunities for consultation consistent with a recently adopted Departmental Regulation and relevant agency policies.

³⁶ 66 Fed. Reg. 3244, 3271 (Jan. 12, 2001).

³⁷ *Id.*

³⁸ § 5(a), Exec. Order 13,175, 65 Fed. Reg. 67,249, 67,250 (Nov. 9, 2000).

³⁹ *See, e.g.*, U.S. Dept. of Agriculture, Departmental Regulation No. DR 1350-002, *Tribal Consultation* (issued Apr. 30, 2024) [hereinafter DR 1350-002]; Forest Service Manual (FSM) 1563.01 – *Tribal Relations* (detailing various authorities supporting the agency’s consultation requirements). These departmental and agency-level regulations and policies supplement and are in addition to any statutorily-mandated consultation or public input requirements, such as those mandated by the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA).

⁴⁰ 70 Fed. Reg. 25, 654, 25,656 (May 13, 2005).

⁴¹ *See, e.g., supra*, n. 20.

⁴² *See, e.g., supra* n. 29.

In April 2024, the Department of Agriculture issued Departmental Regulation 1350-002 regarding Tribal Consultation, which is attached hereto as Appendix 1.⁴³ That regulation defines consultation as “the timely, meaningful, and substantive dialogue between USDA officials who have delegated authority to consult, and the elected leadership of federally recognized Tribes or their designated representative(s), *pertaining to USDA policies that may have Tribal implications.*”⁴⁴ The regulation continues by defining “Policies with Tribal Implications” as “*Regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, treaty rights, Tribal jurisdiction, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.*”⁴⁵

Consistent with these definitions, the regulation requires that:

[w]hen formulating and implementing policies that have Tribal implications, the Department will, to the extent practicable and permitted by law:

- 1 Encourage Tribes to develop their own policies to achieve program objectives;
- 2 Where possible, defer to Tribes to establish standards;
- 3 Honor Tribal treaty rights, respect Tribal sovereignty and Tribal jurisdiction; and
- 4 In determining whether to establish Federal standards, consult with Tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Tribes.⁴⁶

At the sub-Department level, agencies, including the USFS, are directed to collaborate with Tribes at the state and regional level to “establish regular, meaningful consultation and collaboration relationships.”⁴⁷ In addition, where issues arise that implicate important tribal interests, such as “Tribal treaty and other rights,” agencies are to “explore where appropriate and in consultation with the Office of the General Counsel, *using consensual mechanisms for developing regulations, including negotiated rulemaking.*”⁴⁸

The regulation also prohibits agencies from:

promulgat[ing] any regulation or policy that has Tribal implications ... unless

...

(b) The ... agenc[y] ..., prior to the formal promulgation of the regulation or policy, has:

⁴³ U.S. Department of Agriculture, *Departmental Regulation: Tribal Consultation*, DR 1350-002 (April 30, 2024), available at <https://www.usda.gov/directives/dr-1350-002> (last visited August 26, 2025).

⁴⁴ *Id.* at Appx. B, Definitions. (Emphasis added).

⁴⁵ *Id.* (Emphasis added).

⁴⁶ DR 1350-002, at 3-4.

⁴⁷ *Id.* at 4.

⁴⁸ *Id.* at 5. (Emphasis added).

- 1 Consulted with Tribal officials early in the process of developing the proposed regulation or policy;
- 2 Provided a Tribal summary impact statement in a separately identified portion of the of the preamble to the regulation as it is to be issued in the Federal Register, which consists of a description of the ... agency's ... prior consultation with Tribal officials, a summary of their concerns, the ... agency's... position supporting the need to issue the regulation or policy, and a statement of the extent to which the concerns of Tribal officials have been met; and
- 3 Made available to the Secretary and the Director of OMB any written communications submitted to the ... agency ... by Tribal officials.

Finally, the regulation prescribes specific standards for how consultation is to occur, who is authorized to consult on the part of the Department and agencies, how conflicts are to be resolved, and, for regulations, what must be published with regard to the consultation when the rule is published.⁴⁹ These standards include additional specifics, such as requiring that Tribes be given one month after consultation occurs to submit additional information for the record and that, pursuant to certain statutory authorities, “USDA leadership must also meet with Alaska Native Corporations.”⁵⁰

This regulation is the most recent and comprehensive statement of the Department of Agriculture’s policy and directives regarding consultation, but complementary and agency-level guidance, such as the Department’s Departmental Manual (DM) 1350-002, *Tribal Consultation, Coordination, and Collaboration*, the USFS’ Forest Service Manual (FSM) 1563, *Tribal Relations*, and the USFS’ Forest Service Handbook (FSH) 1509.13, Chap. 10, provide additional guidance as well.⁵¹ Similar direction is found in the USFS’s 2023 “Action Plan” for “Strengthening Tribal Consultations and Nation-to-Nation Relationships.”⁵² The purpose of the Plan is to foster a “deeper level of engagement” by “creating space for Indigenous Nations to share the knowledge and expertise they possess through their longstanding relationship with the land.”⁵³ The protocol for “national-level consultation” includes a minimum 120-day Tribal consultation period” and reporting on “all agency consultation, which will incorporate evaluation of agreements, actions, and results of consultation sessions, and [to] share it with the affected Tribal government(s).”⁵⁴

The Department of Agriculture, as a signatory to the 2021 Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites,⁵⁵ also participated in the development of the *Best Practices Guide For Federal Agencies*

⁴⁹ *Id.* at 6-8.

⁵⁰ *Id.* at 9.

⁵¹ The relevant sections of the USFS Handbook and Manual are attached hereto as Appendices B and C. Despite being described in DR 1350-002, DM 1350-002 does not appear to be publicly available.

⁵² U.S. Forest Service, *Strengthening Tribal Consultations and Nation-to-Nation Relationships: A USDA Forest Service Action Plan* (FS-1211, Feb. 2023).

⁵³ *Id.*, at ii-iii.

⁵⁴ *Id.* at 5.

⁵⁵ Available at <https://www.doi.gov/sites/doi.gov/files/mou-interagency-coordination-and-collaboration-for-the-protection-of-indigenous-sacred-sites-11-16-2021.pdf> (last visited Aug. 25, 2025).

Regarding Tribal and Native Hawaiian Sacred Sites, which was published following tribal input through review and consultations that took place in 2023.⁵⁶ First among the best practices included in that document is the need to “Practice early and Sustained Consultation and Engagement,” which stresses the importance for all agencies to “involve Tribes ... as early as practicable and appropriate in the planning stages of a project, rulemaking, policy, or land use plan to properly identify potential impacts to sacred sites and to assess whether mitigation measures will be sufficient to allay Tribal ... concerns.”⁵⁷

As of the drafting of this memorandum, neither the Department nor the USFS has made publicly available details regarding consultations that have already occurred or their plans for engaging in future consultations. The agency’s Tribal Relations page includes three documents (two summary analyses and one “Notification of Opportunity to Consult”) regarding the Roadless Rule.⁵⁸ For the national Roadless Rule, a Summary Policy Analysis from July 2025 indicates that “[w]ork to rescind the 2001 Roadless Rule will include routine notice-and-comment rulemaking with a notice of intent, a proposed rule and a final rule,” which “will include preparation of an Environmental Impact Statement under the National Environmental Policy Act, compliance with the Endangered Species Act, *and tribal consultation*.”⁵⁹ That Analysis also notes that “Tribal governments and Alaska Native Corporations may request consultation with national, regional and local Forest Service consulting officials,” which will be coordinated through the National Office of Tribal Relations.⁶⁰ Those requests will be coordinated by email at SM.FS.otrtribalcon@usda.gov.

A separate Summary Policy Analysis focuses on an Alaska-specific proposal to rescind the Roadless Rule’s application to the Tongass National Forest.⁶¹ Unlike the Summary Analysis of the national Roadless Rule, the Alaska-specific Analysis includes draft language proposed to amend 36 CFR § 294.⁶² That analysis does not indicate whether any consultation took place before that language was drafted and published nor does it suggest that the agency will follow routine notice-and-comment rulemaking for the Alaska-specific rule. The Analysis does include the same language notifying interested Tribal governments and Alaska Native Corporations of the opportunity to request consultation.⁶³

Finally, the USFS also published a notice of an opportunity to consult on the Alaska-specific Roadless Rule proposal and scheduled that consultation for July 15, 2025.⁶⁴ That consultation was subsequently rescheduled to August 5, 2025, though no notice of the rescheduled date or consultation session appears on the USFS National Consultation website nor is there any report or additional information about the consultation session that may have taken place on that date.

⁵⁶ Available at https://www.bia.gov/sites/default/files/media_document/sacred_sites_guide_508_2023-1205.pdf (last visited August 25, 2025).

⁵⁷ *Id.* at 14.

⁵⁸ See <https://www.fs.usda.gov/working-with-us/tribal-relations/national-consultation>.

⁵⁹ <https://www.fs.usda.gov/sites/default/files/2001-roadless-rule-rescission-summary-analysis.pdf>.

⁶⁰ *Id.*

⁶¹ <https://www.fs.usda.gov/sites/default/files/roadless-rule-alaska-summary-analysis.pdf>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ <https://www.fs.usda.gov/sites/default/files/notification-of-opportunity-to-consult.pdf>. The correspondence is not dated.

At this stage of the process, it is unclear how and whether the process for the proposed revision of the Roadless Rule will include or comply with the relevant consultation standards described above. As noted above, with regard to tribal consultation, the NOI that was published on August 29, 2025, states only the following: “Tribal governments and Alaska Native Corporations will have an opportunity to be engaged during rulemaking and EIS development through various coordination and consultation events.”⁶⁵

Additional Information to Support Substantive Tribal Consultation

Provided below are five areas of information that could facilitate Tribal engagement regarding the proposed rescission. Each area includes a brief background section followed by questions for further consideration. We do not intend these areas or the proposed questions to be exclusive of additional considerations or comprehensive. Rather, they are intended to support engagement and further analysis.

In addition to further consideration of these areas and the questions posed below, it may also be worth considering how they will be received and responded to by the USFS. We anticipate that the agency will counter by asserting that such questions, while important, are more appropriately addressed at the project-level or some other decision-making point, such as the process used to amend forest plans. With significant recent changes to USFS NEPA regulations, deferring these questions would delay, if not sidestep, further and more detailed consideration of the impacts of rescinding protections mandated by the Roadless Rule.⁶⁶

Tribal Protections, Designations and Related Plan Components in Forest Plans

Background: 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.”⁶⁷ 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 Tongass National Forest. We have tracked these revisions closely and catalogued tribal “plan components” for each. Unlike older forest plans that generally fail to acknowledge or protect tribal rights and interests on the National Forests, newer plans are taking important, though often tentative, steps to do so, including the protection of tribal treaty rights, sacred lands, and newly established areas of tribal importance. Using the confidentiality authorities provided in the 2012 Planning Rule and the Cultural Heritage Cooperation Authority (CHCA) (discussed below), these designations are not always delineated or mapped in a forest plan. This can make it difficult to discern the boundaries of these areas and their locations within roaded areas and IRAs.

⁶⁵ 90 Fed. Reg. 42,179 (Aug. 29, 2025), available at <https://www.govinfo.gov/content/pkg/FR-2025-08-29/pdf/2025-16581.pdf>.

⁶⁶ 90 Fed. Reg. 29632 (July 3, 2025) (interim final rule modifying USDA regulations implementing NEPA).

⁶⁷ 36 C.F.R. §219.10(b)(1)

There appears to be significant overlap between management of inventoried roadless areas covered and Tribal provisions provided in revised forest plans. For example, some revised plans like that on the Carson National Forest make clear that there was a “need to change” a forest plan “to recognize Tribal cultural properties and sacred sites and places to ensure privacy in cultural and ceremonial activities.”⁶⁸ The recently revised Nez Perce-Clearwater Plan includes “over 300 plan components to sustain and restore the resources reserved in the treaties” with the Nez Perce Tribe.⁶⁹ Other plans, such as the revised Helena Lewis and Clark Forest Plan, develop components for Tribally-focused designations or Traditional Cultural Districts (discussed below) and cross-reference the protections afforded under the 2001 Roadless Rule.⁷⁰ Similarly, the Sequoia NF Plan develops plan components for IRAs that include the protection of traditional cultural properties and sacred sites.⁷¹

Questions: To what extent are Tribally-focused designations, such as areas of tribal importance, found within IRAs covered by the 2001 Roadless Rule? Second, how would the rescission of the 2001 Rule impact Tribal treaty-based resources, areas of tribal importance, or other areas of tribal interest—and the related plan components in revised forest plans—especially where those plans and the relevant components cross-reference or rely upon the protections provided by the 2001 Rule?

Implications for Traditional Cultural Properties and Districts Designated Pursuant to the National Historic Preservation Act

Background: The National Historic Preservation Act’s (NHPA) Section 106 process requires federal consultation with Tribes to identify the potential effects of any federal undertaking on culturally significant properties and mitigation of those effects where feasible.⁷² The 1992 Amendments to the NHPA clarified that “traditional cultural properties” (TCP) could be eligible for listing in the National Register of Historic Places.⁷³ The National Register is an official list administered by the National Park Service and intended to serve as a planning tool “to be used by [f]ederal, [s]tate, and local governments, private groups and citizens to identify the Nation’s cultural resources and to indicate what properties should be considered for protection from destruction or impairment.”⁷⁴ Another type of TCP covered by the NHPA is a traditional cultural district (TCD), which constitutes a “concentration, linkage or continuity” of properties.⁷⁵ These

⁶⁸ USFS, *Final Record of Decision, Carson National Forest Land Management Plan* (July 2022), at 6.

⁶⁹ USFS, *Nez Perce-Clearwater National Forests: Land Management Plan* (2025), at 70.

⁷⁰ The 2020 Plan states that “inventoried roadless areas protect sources of public drinking water, traditional cultural properties and sacred sites, and locally identified unique characteristics, where they exist.” USFS, *Helena-Lewis and Clark National Forest: Land Management Plan* (2020), at 82. The plan components for the Badger Two Medicine area, a TCD that is also inventoried roadless, also draws from the plan components for inventoried roadless areas.

⁷¹ USFS, *Land Management Plan for the Sequoia National Forest* (2023), at 129.

⁷² 54 U.S.C. §306108 (2018).

⁷³ National Historic Preservation Act Amendments of 1992, Pub. L. No. 102-575, 106 Stat. 4753, 4757 (codified at 54 U.S.C. §302706) (b) (2020)).

⁷⁴ 36 C.F.R. §60.2 (2020).

⁷⁵ National Park Service, *Guidelines for Evaluating and Documenting Traditional Cultural Properties* 1 (1990, revised 1992, 1998), at 11.

terms are often used interchangeably but they provide an avenue for expanding protection beyond discrete sites, such as a National Historic Landmark, and towards the protection of “Native American Traditional Cultural Landscapes” which are “large scale properties...often comprised of multiple, linked features that form a cohesive ‘landscape.’”⁷⁶

As discussed above, some designated TCDs/TCPs are managed pursuant to the 2001 Roadless Rule and additional direction provided by plan components in forest plans. The “Badger-Two Medicine Area” on the Helena Lewis and Clark National Forest, for example, is covered by a set of plan components for IRAs and this Tribally-focused designation for the TCD. The Cibola National Forest Plan states that TCPs and sacred sites are one of nine central characteristics found in IRAs and that some of these roadless landscapes, such as Mount Taylor, are “among the most sacred of mountains to numerous Native American Tribes.”⁷⁷

Questions: How will the rescission of the 2001 Roadless Rule impact the identification, inventory, management, and protection of traditional cultural districts and properties designated pursuant to the NHPA? Are there NHPA Programmatic Agreements that cover or include management of IRAs?

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

Background: It is also unclear 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,⁷⁸ the temporary closure of NFS lands for traditional and cultural purposes,⁷⁹ the use of forest products for non-commercial purposes,⁸⁰ and a prohibition on disclosure and an exemption under the Freedom of Information Act (FOIA).⁸¹ The Act authorizes the reburial on NFS lands of human remains and cultural items, including human remains and cultural items repatriated under the Native American Graves Protection and Repatriation Act (NAGPRA), provided they were removed from NFS lands or sites adjacent to them. CHCA also requires the Secretary of Agriculture to “ensure access to National Forest System land by Indians for traditional and cultural purposes,”⁸² while providing the authority (subject to limitations) to “temporarily close from public access” such lands “to protect the privacy of tribal activities for traditional and cultural purposes.”⁸³ The CHCA changed the problematic practice of the USFS unilaterally determining what are

⁷⁶ *Native American Traditional Cultural Landscapes Action Plan*, Advisory Council on Historic Preservation (Nov. 23, 2011), available at <https://www.achp.gov/sites/default/files/guidance/2018-06/NativeAmericanTCLActionPlanNovember232011.pdf>.

⁷⁷ USFS, *Cibola National Forest Land Management Plan* (2022), at 249.

⁷⁸ 25 U.S.C. §3053.

⁷⁹ 25 U.S.C. §3054.

⁸⁰ 25 U.S.C. §3055.

⁸¹ 25 U.S.C. §3056.

⁸² 25 U.S.C. §3054(a).

⁸³ 25 U.S.C. §3054(b)(1).

legitimate traditional and cultural purposes. Instead, the Act defines “traditional and cultural purpose” as “the use, area, or practice [that] is *identified by an Indian tribe* as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.”⁸⁴ The USFS and Tribes have specifically tailored one or more of these authorities to site and case-specific situations using “bi-lateral” agreements and other instruments such as MOUs.

Questions: How will the rescission of the 2001 Roadless Rule impact management decisions made pursuant to the CHCA, including the reburial of human remains and cultural items, temporary closures of NFS lands, and privacy protections, including FOIA exemptions, for tribal activities for traditional and cultural purposes?

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

Background: The NOI to rescind the 2001 Roadless Rule states that the proposed rule “responds to the need for national forests to take swift and immediate action to reduce wildfire risk and help protect surrounding communities and infrastructure.”⁸⁵ Tribal lands are not referenced in this context nor is the Tribal Forest Protection Act (TFPA) of 2004. The TFPA is the first law to focus specifically on the connection between federal public lands and the protection of tribal “forest assets.”⁸⁶ 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.⁸⁷ The Secretary of Agriculture may deny a tribal request and the law provides a framework for Tribes to respond and overcome specific issues that led to the denial. There is no reference to inventoried roadless areas in the statute.

Questions: How many TFPA requests from Tribes include management activities in IRAs? How many of these requests were approved by the Secretary of Agriculture? How many of these requests were denied by the Secretary of Agriculture?

⁸⁴ 25 U.S.C. §3052.

⁸⁵ 90 Fed. Reg. 42179, 42181 (Aug. 29, 2025)

⁸⁶ 25 U.S.C. §3115a.

⁸⁷ 25 U.S.C. §3115a(b)(1)-(3). “Adjacent to” is not defined in the statute or regulations but tribes and the USFS have liberally construed the language to encompass the type of threat coming from NFS lands, such as the distances involved in the spread of fire or insects. See training and background materials by Intertribal Timber Council, available at https://www.itcnet.org/issues_projects/issues_2/tfpa/tfporeports.html. The TFPA is considered inapplicable to National Forests in Alaska because of the adjacency requirement and the lack of tribal trust lands in the State, but the USFS lists the Keex ‘Kwaan Community Forest Partnership as an example of a TFPA project from 2024.

Alaska: Impacts to Subsistence Resources and Management on the Tongass National Forest

Background: Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) expressly recognized that continued subsistence uses across public lands are “essential to Native physical, economic, traditional, and cultural existence.”⁸⁸ In service of that recognition, ANILCA also established a priority for subsistence uses by rural Alaskans, including Native Alaskans, which is now managed and overseen by the federal government across federal public lands, including those managed by the USFS. Thus, Alaska Native Tribes have significant interests in whether and how the USFS manages forest lands to sustain and protect these time-honored lifeways.

In furtherance of these interests, Section 810 of ANILCA requires that federal land use decisions regarding public lands in Alaska be evaluated in terms of their impacts to subsistence uses and needs. That Section states that, “[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.”⁸⁹ If the proposed activity may significantly restrict or affect subsistence uses, the agency must provide notice, hold hearings, and make a series of findings and determinations.⁹⁰ Significant restrictions on subsistence uses are not permitted unless the head of the federal agency “determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.”⁹¹

An ANILCA 810 subsistence analysis and determination was not prepared for the 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 whether to “withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of NFS lands.”⁹²

⁸⁸ *Id.* at §§801(1), (4).

⁸⁹ 16 U.S.C. § 3120(a). 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).

⁹⁰ 16 U.S.C. 3120(a)(3).

⁹¹ *Id.*

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

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.”⁹³ 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.”⁹⁴ In that rulemaking, the agency determined that threats to subsistence resources were consistent across all of the agency’s alternatives and that those resources could be impacted.⁹⁵ Therefore, the USFS proceeded to the second stage of analysis by conducting hearings and gathering additional information to consider the relevant aspects of Section 810’s mandate.⁹⁶ Ultimately, the agency concluded that any potential for restrictions on subsistence uses that would result from removing the protections offered by the 2001 Roadless Rule for the Tongass National Forest would be “necessary, consistent with the sound management of NFS lands.”⁹⁷

As noted above, many Tribal governments in the region expressed significant concerns regarding their opportunities for consultation and input in this process. In addition, the USFS noted that the Organized Village of Kake specifically requested additional mitigation measures for and a greater management role over subsistence uses in their area of the Tongass.⁹⁸ In response to those concerns, the USFS pointed to the programmatic nature of the roadless rulemaking as a basis for not analyzing more detailed mitigation measures and noted that, though it considered “[c]o-management of the Tongass National Forest with tribal partners,” that alternative was eliminated from “detailed analysis as it does not comport with existing legal authorities.”⁹⁹

The 2023 repeal of this exemption also included an analysis consistent with Section 810 but, rather than conduct an entirely new analysis with additional hearings, the 2023 rulemaking relied on the record developed during the 2020 process.¹⁰⁰ 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.”¹⁰¹

Though the 2023 rulemaking 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 2022.¹⁰² The agency confirmed that the 2023 rule reflected input received in those

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at 68892-93.

⁹⁷ *Id.* at 68692.

⁹⁸ *Id.* at 68698.

⁹⁹ *Id.* Compare Order No. 3403, Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters, Nov. 15, 2021, available at <https://www.doi.gov/media/document/joint-secretarial-order-3403> (identifying a range of authorities supporting collaborative management of federal lands and waters).

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

¹⁰¹ *Id.* at 5259.

¹⁰² *Id.* at 5262, 5272.

consultations, noting that “[r]oadless areas on the Tongass have immense cultural significance for Alaska Native peoples.”¹⁰³

Each of these prior rulemaking processes considered the 2001 Roadless Rule in the context of Alaska and, specifically, its application to the Tongass National Forest. Both processes also followed ANILCA’s 810 standards for considering whether and to what extent subsistence resources would be impacted by rescinding (2020 proposal) or restoring (2023 proposal) roadless protections for that landscape. As yet, neither the Department nor the USFS has provided details regarding how the current (2025) process will proceed; however, the National Policy Summary Analysis describes the proposal as a “reinstate[ment of] the 2020 Alaska Roadless Rule, which excepts the Tongass National Forest from the 2001 Roadless Area Conservation Rule ..., and provides for an administrative change (pursuant to 36 CFR 219.13(c)) to the 2016 Tongass Land and Resources Management Plan (Forest Plan) to conform to the proposed rule.”¹⁰⁴

Questions: Consistent with its position and approach to both the 2020 and 2023 rulemakings, how does the USFS intend to analyze the potential impacts of restoring the 2020 Alaska Roadless Rule on subsistence uses? How does USFS intend to fulfill the commitments made by the Secretary of Agriculture to address, respond to, and achieve the goals expressed in the petition submitted by numerous Tribes within Southeast Alaska regarding the USFS management of the Tongass National Forest?¹⁰⁵ How will this proposed process account for the agency’s acknowledgment that roadless areas are of “immense cultural significance for Alaska Native peoples”?

¹⁰³ *Id.* at 5272.

¹⁰⁴ <https://www.fs.usda.gov/sites/default/files/roadless-rule-alaska-summary-analysis.pdf>.

¹⁰⁵ *See supra* n. 24 and accompanying text.