



March 22, 2024

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I. Introduction

The Arizona Mining Association (“AMA”) and the Arizona Rock Products Association (“ARPA”) appreciates the opportunity to submit comments on the proposed Arizona National Scenic Trail (“ANST”) Comprehensive Plan (hereafter referred to as the “Draft Plan”), the related draft environmental assessment (“Draft EA”) and supporting resource reports.

The AMA is a non-profit corporation comprised of entities engaged in mining and mineral processing in Arizona. The AMA is a unified voice for responsible, sustainable, and safe mining. Through our advocacy, we help Arizona continue to be a premier location for mining investment in the U.S. In 2017, the Arizona mining industry produced direct output valued at \$5.9 billion and generated over 9,800 jobs. If indirect output is considered, the Arizona mining industry’s total impact in 2017 was \$10.2 billion, and it supported nearly 40,000 jobs. Our companies produce approximately 65% of the nation's newly-mined copper, along with significant amounts of associated valuable co-products (e.g., gold, silver, selenium, tellurium and molybdenum), as well as a variety of other valuable minerals and mineral products essential to modern society.

ARPA is a trade organization, that for over 65 years has represented companies producing nearly all the aggregate materials in the State of Arizona. ARPA is the oldest Mining Association in Arizona and our membership includes producers or suppliers of aggregate, asphaltic concrete, ready mix concrete, asphalt and portland cement, as well as trucking firms, paving contractors and other aggregate end users, material testing labs and ancillary companies. Stone, sand and gravel (aggregates) are natural resources that form the foundation of modern society and the way of life for everyday citizens. From roads and bridges to schools, medical facilities, utilities and homes, aggregates, along with cement, concrete, and asphalt play a vital role in our daily lives and the ability to develop such resources should not be limited through land use planning.

Given the issues identified herein, AMA and ARPA urge the Forest Service to conduct further consultation with affected stakeholders; remove all content from the Draft Plan that impermissibly includes land use management prescriptions; and conduct supplemental analysis under the National Environmental Policy Act (“NEPA”) to further examine reasonable alternatives to the recommended one-mile trail management/planning corridor. The supporting justification for this request is provided herein.

II. National Trails System Act Requirements (16 U.S.C. § 1241 et seq.)

The National Trails System Act (“NTSA”) created four categories of trails and provides various requirements for administration following establishment. National scenic trails¹ require congressional establishment. The Arizona National Scenic Trail (“ANST”) was designated pursuant to the Omnibus Appropriations Act of 2009 (Pub. L. 111-8).

National scenic trails are established to:

provide for maximum outdoor recreation potential and for the conservation and enjoyment of the *nationally significant* scenic, historic, natural, or cultural qualities of the areas through which such trails may pass. National scenic trails may be located so as to represent desert, marsh, grassland, mountain, canyon, river, forest, and other areas, as well as landforms which exhibit significant characteristics of the physiographic regions of the Nation (emphasis added).

A. A One-Mile Trail Management Corridor is not Warranted in the Absence of Nationally Significant Scenic, Historic, Natural or Cultural Qualities in Areas Through which the ANST Passes

Unfortunately, the Draft Plan fails to establish the necessity of a uniform one (1) mile wide management corridor (.5 miles on either side of the trail centerline) over the distance of the entire state of Arizona (over 800 miles) for such purposes. Notwithstanding, the Draft Plan recommends adoption of a uniform management corridor which means that the entire distance of the ANST traverses *nationally significant* vistas, historic, cultural or natural areas. Clearly, that cannot be the case, and the excessive nature of a mile wide corridor is even more apparent when compared to the right of way (“ROW”) acquired by three Arizona counties (Coconino, Pima and Pinal) over 100 miles of the ANST, which is a mere fifteen (15) feet in width.²

The Draft Plan states that the “national scenic trail designation placed a higher level of responsibility upon the land management agencies to protect the *nationally significant* resources, qualities, values, and associated settings and managed uses associated with the ANST.”³ Assuming, for the sake of argument, that is a legally correct assertion, the Draft EA and Draft Plan should identify those *nationally significant* resources requiring protection and then justify why a

¹ Approximately 84% of the ANST is located on federal lands: Forest Service (72%), the National Park Service (7%); Bureau of Land Management (“BLM”) (3%); and the Bureau of Reclamation (2%). State, county, municipal and private lands make up the remaining 16% of the trail length: Arizona State Trust Lands (11%); State Parks (.61%); private lands (3%) and County and municipal lands (1%). See Draft Plan at pgs. 156-157.

² *Id.* at 73.

³ Draft Plan at pg. 4.

one-mile wide planning corridor is necessary to protect them to provide maximum outdoor recreation potential. In fact, one of the primary justifications for a one-mile corridor seems to be the fact that a one-mile distance includes the critical distance at which most views are enjoyed.⁴ That is, not however, the test, and the analysis should have been specific to what *nationally significant* resources are present requiring optimal viewing and how those *nationally significant* scenic resources are associated with the ANST segments that pass through them.

The Draft Plan includes only two pages of content purportedly demonstrating the significant natural, cultural and historic resources to be preserved.⁵ The identified resources do not provide suitable justification of any national significance. Instead, a trail passage by passage analysis should have been undertaken in the Draft EA and a disclosure of nationally significant resources in each passage should have been made.⁶ For example, over one-third (1/3) of the entire ANST trail is located on routes (i.e., upon existing roads and trails) that are traversed by motorized traffic on a daily basis.⁷ Unless those existing routes are designated as National Scenic Byways or are state designated scenic roads, it seems inconceivable that those road segments (also serving as trail segments) could be deemed *nationally significant*, such that a one mile corridor would be necessary to protect the associated values and setting. As for the remainder of the trail, no other justification is made for protection of *nationally significant* scenic vistas except for the asserted need to protect star-gazing without light trespass and the value of certain International Dark-Sky Association areas (i.e., Flagstaff).

The same circumstance exists as to cultural resources, the Draft EA indicates that only 18 percent of the 800-mile trail corridor has been inventoried for cultural resources.⁸ Of that 18 percent, 978 known archaeological sites were identified and recorded and 796 of those are unevaluated sites. Utilizing those statistics, *nationally significant* cultural qualities do not exist in the planning/management corridor and the assertion that they may exist, but have not yet been inventoried, is insufficient justification to establish a one-mile planning/management corridor.

⁴ Draft Plan, Scenery Report at pg. 4.

⁵ *Id.* at 26-28.

⁶ The ANST has been divided into a system of 42 passages in the 1995 Arizona Trail Management Guide (USDA Forest Service et al. 1995) and those passages serve as established units of management pursuant to which analysis could have been undertaken. *See* Draft Plan at pg. 37.

⁷ Draft Plan at pg. 187 (acknowledging this diverges from NTSA direction for national scenic trails as non-motorize trails and the proximity of pedestrians to motor vehicle traffic is a potential public safety concern”).

⁸ Draft EA, Cultural Resources Report at pg. 6 (AMA/ARPA do acknowledge the attempt the Forest Service made at a passage by passage analysis, but it did not, in this instance go far enough to conclude that on the basis of that limited available information that nationally significant resources were not present).

AMA and ARPA understand that the establishment of the trail management corridor is not co-equal to the actual right of way (“ROW”) for the trail.⁹ The actual ROW for the trail can only be established by:

the appropriate Secretary who shall publish notice of the availability of appropriate maps or description in the Federal Register; *Provided*, That in selecting the rights-of-way full consideration shall be given to *minimizing the adverse effects upon the adjacent landowner or user and his operation*. Development and management of each segment of the National Trails System shall be designated to *harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land*. The location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate Secretary. In selecting rights-of-way for trail purposes, the *Secretary shall obtain the advice and assistance of the States, local governments, private organizations, and landowners and land users concerned*.¹⁰

Notwithstanding, the Forest Service intends the one-mile trail management corridor to serve as the ROW until it is established. It may take years, if not decades, to establish the ROW and it is entirely possible the ROW will never be fully established due to the inability to resolve conflicts with valid existing rights and uses. As such, there is no justification to establish a management corridor and framework that may limit multiple uses in the corridor traversing the entire state of Arizona without considering the limitations of the actual ROW selection criteria.¹¹ For this reason alone, the Draft Plan must be reconsidered. It must acknowledge that flexibility is warranted relative to the adoption of a management corridor and consider existing and future multiple-use projects that may be impacted to insure continued maximum benefits from the land on the ROW is finally selected.

B. The Forest Service Should Have Constituted an Advisory Council (16 U.S.C. § 1244 (d))

The NTSA requires that within one year of the date of addition to any national scenic trail to the trails system, an advisory council for each such trail must be formed, unless there is a lack of public interest and the relevant Secretary involved informs the appropriate committees of Congress. The advisory council serves an important function and participates in the selection of trail ROWs and administration of the trail.

⁹ To add further confusion, the Draft Plan adopts the term “national trail planning corridor” as the area referred to as the “right of way in Section 7 of the NTSA (see Draft Plan at pg. 38).

¹⁰ 16 U.S.C. § 1246 (a)(2).

¹¹ See Draft Plan at pg. 7, footnote 5.

Following inquiry by AMA, the Forest Service advised the AMA on June 22, 2020 that due to a lack of public interest, the advisory council for the ANST was never formed and that the appropriate committees of Congress were properly notified. No further detail was provided. AMA and ARPA hereby submit a request for specific detail on the efforts undertaken by the Forest Service to constitute the advisory council for the ANST and for copies of the required notifications by the then Secretary of Agriculture to the “appropriate committees of Congress.”

C. The Forest Service Has Not Demonstrated Evidence of Full Consultation (16 U.S.C. § 1244 (e))

The designation of the ANST was unique in that it occurred without any prior feasibility or desirability study in consultation with the heads of other Federal agencies administering lands through which the trail would pass or in cooperation with state and local governmental agencies, public and private landowners and land users (see 16 U.S.C. § 1244(b)). Further, the ANST enabling legislation did not provide an adequate sense of what the ANST represents in terms of significance or uniqueness. This reality makes compliance with all of the NTSA requirements all the more important relative to comprehensive plan development and implementation.

Specifically, the NTSA requires *full consultation* with affected federal land managing agencies, the governors of affected states, and relevant advisory councils with respect to the development of a national scenic trail management plan. In this case, approximately 16% (roughly 133 miles) of the ANST is under state and local government management making consultation with Arizona’s governor, and heads of state agencies critical. The Draft Plan provides no evidence that the Forest Service has undertaken the requisite *full consultation* with the Governor of Arizona, or other affected federal land management agencies regarding the development of the Draft Plan. In fact, the Draft Plan refers only to cooperating agency interface (as per NEPA requirements) and largely defers to the need for future coordination with state and local entities relative to plan implementation.¹²

Public workshops, stakeholder interviews, public scoping and cooperating agency interface are no substitute for the *full consultation* obligation, expressly imposed by federal law. Moreover, this required *full consultation* should have occurred before the plan was developed (and not be shuttled to plan implementation). In that same vein, the existence of a 2017 memorandum of understanding (“MOU”)¹³ with various federal departments and agencies regarding implementation of the NTSA will not suffice for the needed *full consultation* unless a demonstration can be made that it was specifically adhered to relative to the ANST Draft Plan and the Governor of Arizona was a signatory.¹⁴ The Forest Service must ensure this important

¹² Draft Plan at pgs. 13-15 and 18.

¹³ https://www.nps.gov/subjects/nationaltrailssystem/upload/National_Trails_System_MOU_2017-2027.pdf

¹⁴ Draft Plan at pg. 17.

requirement of Congress has been met, and that its efforts to complete *full consultation* are documented in the final plan.

D. The Comprehensive Plan Content Fails to Adequately Address Congressional Committee Submittal Requirements (16 U.S.C. § 1244 (e) (1) – (3))

The Draft Plan does not contain the requisite elements for submittal to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Draft Plan must include the following content:

1. Specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved . . . ; details of anticipated cooperative agreements to be consummated with other entities, identified carrying capacity of the trail and a plan for its implementation;
2. An acquisition or protection plan, by fiscal year, for all lands to be acquired by fee title or lesser interest, along with detailed explanation of anticipated necessary cooperative agreements for any lands not to be acquired; and
3. General and site-specific development plans including anticipated costs.¹⁵

Further detail will be provided in Section III with respect to the failure of the Draft Plan to meet each of these three requirements. In certain instances, the required plan content impermissibly treads into forest land use planning, and in other cases, the required plan content is wholly absent and/or jettisoned to plan implementation.¹⁶

III. ANST Draft Plan Issues

A. Impermissible Plan Content Overreach into Land Management

The Draft Plan should only establish broad policy and procedures and its content must be specific to the three requirements set forth at 16 U.S.C. § 1244 (e)(1)-(3) which are listed in Section II (D) herein. Unfortunately, the Forest Service has impermissibly expanded on the first plan content requirement (objectives and practices to be observed in management including identification of all significant natural, historical and cultural resources to be preserved). All Draft

¹⁵ See 16 U.S.C. § 1244 (e)(1)-(3).

¹⁶ See e.g., Draft Plan at vii.

Plan content that includes land and resource management prescriptions (purporting to be mere recommendations) should be removed for two reasons. First, the management objectives and practices are not supported by the need to protect/preserve identified nationally significant resources. Second, this plan content (relative to segments traversing National Forest System land) violates provisions in the National Forest Management Act (“NFMA”) and Forest Service land use planning regulations.¹⁷ NFMA invokes specific requirements for “coordination” with state and local governmental stakeholders, consideration of state and local plan consistency and the Forest’s planning regulations provide an opportunity for pre-decisional objections. None of that process has been followed here.¹⁸

Similarly, if the BLM is expected to adopt the Draft Plan upon finalization for segments of the trail traversing public lands, so doing would be in violation the Federal Land Planning and Management Act (“FLPMA”). FLPMA requires that the Interior Secretary “manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available . . .”.¹⁹ The requirements for the development of such land use plans are set forth in FLPMA Section 202 and 43 C.F.R. § 1712. Subsection (c)(9) of this Section 202 imposes similar coordination and consistency requirements on the Interior Secretary. Specifically, this provision states:

[T]o the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, . . . and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, [1] to the extent he finds practical, keep apprised of State, local, and tribal land use plans; [2] assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; [3] assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and [4] shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on

¹⁷ Section 6 of NFMA requires land management planning to be “coordinated with the land and resource management planning processes of State and local governments and other Federal agencies” (16 U.S.C. § 1604 (a)).

¹⁸ “The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments.” 36 C.F.R. § 219.4(b)(1).

¹⁹ 43 U.S.C. § 1732(a).

non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

43 U.S.C. § 1712 (c)(9) (reference to “statewide outdoor recreation plans” removed; numbering added for reference purposes).

The Draft Plan provides no evidence that BLM has undertaken or met any of these statutory requirements.

1. Chapter 5 – Objectives for Trail Management

Chapter 5 of the Draft Plan contains “objectives,” “desired conditions” and “management practices.” Each of these terms are expressly defined in the Forest Service’s planning regulations and none of this content can be included in this comprehensive plan without complying with NFMA and the Forest’s planning regulations.²⁰ Specific examples of Draft Plan content that colors outside the lines of this critical distinction are quoted below.

1. Conserving and showcasing the diverse scenic, natural, historic, and cultural resources along the trail corridor in a setting the supports quiet recreation, whether the sights and sounds of nature are prevalent.²¹
2. Placement of new utility corridors and communications facilities should be avoided by choosing alternative locations or co-locating them with existing utility corridors and facilities.²²
3. Utility lines should be buried when feasible to mitigate visual impacts.
4. Seek reliable crossings by means of bridges or underpasses, except at low volume roads or railroads that can be safely crossed on grade.

²⁰ See 36 C.F.R. § 219.7 (e) and (f) for the definitions of objectives and desired conditions which are expressly required elements of Forest Service land use management plans and for management approaches which are optional plan content.

²¹ See Draft Plan at pg. 21. Neither the conservation and showcasing of diverse, scenic, natural, historic, or cultural resources nor quiet recreation were the stated purposes for trail establishment and the Forest Service does not have the authority to expand on the congressional purpose for trail establishment as set forth in the NTSA.

²² *Id.* at 51; *see also id.* at 90.

5. Avoid new roads or motorized trail construction across or adjacent to the ANST unless needed for resource protection or to meet statutory requirements, such as mining law or laws to protect public health and safety.
6. The purpose of the AZNST is the same as existing policies and objectives outlined for National Parks, State Parks, and units of the Wilderness Preservation System, but special management measure may be needed to protect the resources in other designated special areas.²³
7. Public lands adjacent to AZNST corridor, management area or other geographic land planning designation for the AZNST are managed with consideration for the AZNST's values.
8. The soundscape is dominated by natural sounds and noise from human-made sources are in the background or absent.
9. When, possible, activities that affect AZNST visitors should be scheduled outside of major seasons of use.
10. Management activities should not result in desired recreation setting changes from less to more developed, particularly within the foreground (1/2 mile) of the AZNST.²⁴
11. Activities that have the potential to impact the scenic, natural, historic, or cultural resources associated with the AZNST should be minimized through avoidance or the use of appropriate project design criteria, mitigation measures and best management²⁵

Notwithstanding the Forest Service's assertion to the contrary, these management "recommendations" set land use policy and have undue influence on federal land managers when being considered during land use planning and project level decision-making.²⁶ The Forest Service must reconsider all of its recommendations listed above and those in the Chapter 5 - Multiple Use section of the Draft Plan. While AMA/ARPA can appreciate the intent of the plan may be to "provide federal managers with information aimed at facilitating compliance" that information must be complete to also recognize valid existing rights under the mining law and through existing land use authorizations (exploration plans of operation, mining plans of operation, ROWs, etc.). None of the Desired Conditions or Management Practices in the Multiple Use section recognize

²³ *Id.* at pg. 53. Absent contrary language in the establishment of a national scenic trail, the purpose of a NST is defined by Congress. The purpose of the ANST does not equate the policies and objectives for National Parks, State Park or a unit of the Wilderness Preservation System.

²⁴ Draft Plan at pg. 81.

²⁵ Notably, the Forest Service conducted a viewshed analysis and indicates that areas up to 80 miles on either side of the ANST are visible from the trail and that these "important views contribute to the ANST's scenic quality." Draft EA, Scenery Report at pg. 2.

²⁶ Draft Plan at pgs. 88-90.

the need to minimize effects on landowners and uses, all the protections are afforded only to the trail (which is not a supervening multiple use). Congress has clearly spoken relative to the trail ROW²⁷ and the management plan should be consistent therewith:

Provided, That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the National Trails System shall be designated to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land.

B. Chapter 6 – Inadequate Comprehensive and Site-Specific Dev. Plan

General and site specific development plans and costs are required to be included in the Draft Plan. The Draft Plan includes two pages of content on this subject matter (pgs. 91-92) and no general or site specific development plans are included. Instead, the Forest Service defers to the land managing agencies to develop such site-specific plans using the wrongful planning objectives and desired conditions criteria it has included in the Draft Plan in Chapter 5. The only effort made by the Forest Service to comply with this requirement appears to be at Appendix E (Recommended Priority Actions). However, even this section is comprised only of two pages of content that does not include cost data or any sort of a time bound comprehensive or site specific action plan.

C. Appendix F – Inadequate Acquisition and Protection Plan

Congress requires that the plan include: “by fiscal year, [] all lands to be acquired by fee title or lesser interest, along with detailed explanation of anticipated necessary cooperative agreements for any lands not to be acquired.” Instead of this required content, Appendix F provides a lengthy tutorial on federal land acquisition authorities and various types of cooperative agreements that “could be used” in the future. The analysis is replete with the pros and cons of each acquisition approach and agreement type. It does not, however, identify any targeted lands, any fiscal year plan, or provide any specificity regarding the agreements needed to address targeted parcels.

In fact, there are only five pages of Draft Plan content (pgs. 183-187) that provide any information regarding future acquisition and, even then, the content is generic in nature and only identifies priority strategies (i.e., either fee title acquisition or cooperative agreements utilization). This content does not meet the requirements of Congress and the Forest Service must publish a supplemental Draft Plan that includes these required elements.

²⁷ 16 U.S.C. § 1246 (a)(2).

When the Forest Service goes back to the drawing board to address this deficiency, AMA and ARPA remind the Forest that it must utilize the structure provided by the NTSA relative to land acquisition. As it stands, the Draft Plan prioritizes fee title acquisition of private inholdings, state land and private land.²⁸ This prioritization is in stark contrast to the structure of the NTSA which directs the Secretary charged with administration of the trail to encourage state and local governments to enter into cooperative agreements, or make the acquisition, and then if they are not able to, the Secretary may enter into such cooperative agreement or acquire land by donation, purchase or exchange with certain buy-back rights. Put simply, 16 U.S.C. § 1246 (e) is controlling and no contrary preference for federal fee title acquisition should be established in the Draft Plan or final plan:

Where the lands included in a national scenic or national historic trail right-of-way are outside of the exterior boundaries of federally administered areas, the Secretary charged with the administration of such trail shall encourage the States or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations, and individuals to provide the necessary trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of the national scenic or national historic trail: *Provided*, That if the State or local governments fail to enter into such written cooperative agreements or to acquire such lands or interests therein after notice of the selection of the right-of-way is published, the appropriate Secretary may (i) enter into such agreements with landowners, States, local governments, private organizations, and individuals for the use of lands for trail purposes, or (ii) acquire private lands or interests therein by donation, purchase with donated or appropriated funds or exchange in accordance with the provisions of subsection (f) of this section: *Provided further*, That the appropriate Secretary may acquire lands or interests therein from local governments or governmental corporations with the consent of such entities. The lands involved in such rights-of-way should be acquired in fee, if other methods of public control are not sufficient to assure their use for the purpose for which they are acquired: *Provided*, That if the Secretary charged with the administration of such trail permanently relocates the right-of-way and disposes of all title or interest in the land, the original owner, or his heirs or assigns, shall be offered, by notice given at the former owner's last known address, the right of first refusal at the fair market price.

D. Chapter 4 – Non-Substantial Trail Relocations

²⁸ Draft Plan at pgs. 183-187.

The requirements for non-substantial trail relocations are set forth at 16 U.S.C. § 1246 (b). Importantly, relocation considerations require a determination that the relocation will “promote a sound land management program in accordance with multiple-use principles.”²⁹ Unfortunately, the Forest Service has identified additional standards for relocation that are inconsistent therewith. First, the Forest Service notes the “goal of any relocation should be to select a location that is equal to or superior to the former location in terms of its ability to provide the nature and purpose of the AZNST.”³⁰ The authorized requirements of relocation are set forth in statute and those requirements require consideration of multiple use principles, not an “equal or better” standard, thus this superfluous language should be removed.

Next, the Forest Service adopts a novel concept of “optimal location review” that gives the Forest Service and relevant “partner organizations” authority they do not otherwise have to require proponents to substantiate any relocation proposal by conducting “optimal location review” and to undergo a preliminary determination process. The Forest Service must recognize (particularly with this trail having 1/3 of the entire route needing to be relocated) that accommodations will need to be made and should not impose additional process burdens on proponents for what will already be a difficult, time consuming and likely expensive task.

IV. NEPA Issues

A. Scoping Deficiencies

The Council on Environmental Quality’s (“CEQ”) scoping regulation provide that as part of the scoping process, the Forest Service, as the lead agency, “shall invite the participation of likely affected Federal, State, Tribal, and local agencies and governments, the proponent of the action, and other likely affected or interested persons (including those who might not be in accord with the action)” as cooperating agencies. 50 C.F.R. § 1501.9(b). Neither AMA, nor ARPA members are aware of efforts by the Forest Service to invite the participation of any State and local governments, or AMA or ARPA as cooperating agencies in the development of the draft plan.³¹

The Forest Service initiated informal public scoping of the proposed comprehensive plan was initiated under NEPA in 2017. Since that time, additional interface with certain federal cooperating agencies was undertaken, but no further substantive outreach to likely affected parties by the Forest Service has been undertaken. This is particularly disconcerting in light of AMA and ARPA making their concerns about the development of the Draft Plan well known.³² Now, seven

²⁹ *Id.*

³⁰ Draft Plan at pg. 42.

³¹ See Forest Service scoping letter dated July 27, 2017 accessible at: <https://usfs-public.app.box.com/v/PinyonPublic/file/933720290607>. No such invitation was made.

³² See AMA correspondence to Cal Joyner dated Sept. 14, 2017 and separate letter to Vicki Christiansen (then USDA Forest Service Chief) dated Oct. 15, 2019.

years after scoping, the Forest Service has published a 58-page draft EA, a 187-page Draft Plan, and nine (9) separate supporting reports (each over 100 pages) and has provided only a thirty (30) day public comment period. In no instance, should this be deemed adequate public engagement. AMA/ARPA request a further comment period of at least thirty (30) days but only after the required NTSA full consultation, and a supplemental/revised Draft Plan and EA are published that address the issues and concerns included herein.

B. The Forest Service Must Consider a Reasonable Range of Alternatives

NEPA requires that the Forest Service include in its EA a discussion of alternatives to the proposed action.³³ In addition, the statute requires Forest Service to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal.”³⁴

In this case, the Forest Service has proposed only the Draft Plan and the no action alternative. In order to properly analyze the effects of the proposed action, the Forest Service must consider a range of: (i) specific objectives and practices to be observed in the management of the trail; (ii) acquisition and protection plans; and (iii) comprehensive and site specific development plans. Notwithstanding, in the Draft EA, the Forest Service summarily dismissed the consideration of any other alternatives (except for the no action alternative) and dismissed a lesser width management corridor on the apparent basis that it would not be wide enough to encompass many instances of the (yet-to-be identified) significant natural, historical and cultural resources that support the trail’s nature purposes.³⁵

At a minimum, the Forest Service’s consideration of alternatives should have included evaluation of at least one alternative that includes a narrower management corridor (at least in areas void of any identifiable *nationally significant* resources) and recognize there is a need to resolve conflicting vested land rights and uses (i.e., 1/3 of ANST is located on existing public roads or other established trails). Further, under all alternatives, the Forest Service must respect the intent of Congress (House Report No. 90-1631 accompanying P.L. 90-543) when establishing the NTSA, requiring the selection of routes to:

avoid, insofar as practicable established highways, motor roads, mining areas, power transmission lines, existing commercial and industrial developments, range fences and improvements, private operations, and any other activities that would be incompatible with the protection of the trail in its natural condition and its use for outdoor recreation. . . (emphasis added).

³³ See 42 U.S.C. § 4332(2)(C).

³⁴ *Id.* § 4332(2)(E).

³⁵ Draft EA at pg. 6.

In this instance, the ANST one-mile planning corridor will contain within it, two aggregate crushed stone operations, two building stone operations, four cinder operations, one metal and one industrial mine and it is proximal to many other known mining areas.³⁶ These known mining areas must be avoided in the establishment of the planning/management corridor and at least one alternative that excludes these operations and recognizes the numerous incompatible multiple uses should have been included.³⁷

The failure to evaluate a range of alternatives including, but not limited to, a less wider management corridor or explore route relocations for segments known to be incompatible with valid existing rights (i.e., 1/3 of the trail located in existing road rights of way, segments conflicting with established mining claims and or operations and other established utility ROWs) is evidence that the Forest Service has failed to meet the requirements of Congress for the elements of the comprehensive plan and failed to meet its obligations under NEPA. This lack of analysis and/or discussion of potential resolutions through alternatives may also impact the final trail ROW designation. Each Secretary concerned will have no documented evaluation of potential incompatible land uses and no analysis will have been conducted on route relocations to aid in their process of consideration.

C. Failure to Evaluate the Effects of ANST Management on BLM Public Lands due to Inclusion in BLM's National Landscape Conservation System (NLCS)

The NLCS was permanently established in 2009 in the same legislation establishing the ANST. National scenic trail segments on BLM public lands are included in the NLCS. The BLM released a 15-year strategy for the management guidance of NLCS lands in 2010, which is expiring in 2025.³⁸ BLM has recently announced its desire to update its strategy via external partner engagement and has hosted listening sessions ahead of promulgating a new strategy.

The public is entitled to understand how the Draft Plan implementation will interface with the existing and contemplated NLCS strategy themes (which are overwhelmingly conservation oriented) and other recent BLM initiated rulemakings that are conservation oriented and impact public lands and multiple use management. The most impactful of these initiatives is BLM's proposed rule on conservation and landscape health (88 Fed. Reg. 19583 (April 3, 2023)) authorizing the leasing of public lands. How will this proposed rulemaking impact future uses in the ANST corridor (which is also an NLCS feature) and what impact will it have on the establishment and acquisition of future ROW segments? This, and other critical questions, must be examined and disclosed in the final EA.

³⁶ See map at **Attachment A**.

³⁷ Arizona Geological Survey data provided to AMA/ARPA as of March 19, 2024.

³⁸ <https://www.blm.gov/programs/national-conservation-lands/about/15-year-strategy>

More importantly, however, clarification must be provided that neither the NLCS or the ANST corridor should inhibit the rights of operators under the federal mining law or the implementation of other federal statutes designed to promote the development of minerals in the United States, whether designated critical minerals or not.³⁹

V. Conclusion

The Draft Plan must be substantially revised before it is made final and a supplemental Draft EA should be prepared in conjunction with the revision. The supplemental Draft EA must include reasonable alternatives to the proposed one-mile management corridor and disclose those *nationally significant* scenic, historic, natural, or cultural qualities of the areas through which the ANST passes, that justify the establishment of a one-mile management/planning corridor. Moreover, the Forest Service must include all statutorily required content in the comprehensive management plan and must comply with the requisite process for plan development, including full consultation. Elements that constitute impermissible land use planning should be removed (absent compliance with NFMA, FLMPA and agency planning regulations) and the comprehensive plan should be made consistent with the intent of the NSTA. Where possible, established multiple uses should be excluded from the trail management and planning corridor so as to “*harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land*” as required for the ultimate trail ROW.⁴⁰

Sincerely,



Steve Trussell, Executive Director, AMA and ARPA

³⁹ See e.g., Mining and Minerals Policy Act of 1970, codified at 30 U.S.C. § 21a.

⁴⁰ 16 U.S.C. § 1246 (a)(2).

ATTACHMENT A

See attachment