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Comments: Dawn Meidinger Directordmeidinger@fennemorelaw.com2394 E. Camelback Road, Suite 600Phoenix, Arizona 85016PH (602) 916-5470 | FX (602) 916-5670fennemorelaw.comSeptember 6, 2022Via CARA, U.S. Mail and Email to: SM.FS.TontoPlan@USDA.govUSDA-Forest Service Southwest Region ATTN: Objection Reviewing Officer 333 Broadway Blvd SEAlbuquerque, NM 87102Re: Objection to Tonto National Forest Revised Land Management Plan and Final Environmental Impact Statement (March, 2022)On behalf of the Pinto Valley Mining Corp. ("PVMC"), we are filing the following objections based on prior submitted formal substantive comments dated March 12, 2020 on the draft Tonto National Forest ("TNF") Land Management Plan Revision and draft environmental impact statement.1 Information required pursuant to 36 C.F.R. [sect] 219.54 (c) follows:I. Objector Contact Information:Pinto Valley Mining Corp.P.O. Box 100, 2911 N Forest Service Rd 287Miami, AZ, 85539Attn: Tim Ralston, Manager, External & Regulatory Affairs Telephone: 928-473-6302Email: tralston@capstonecopper.comII. Subject of Objection: TNF Revised Land Management Plan (March 2022) ("LMP") and related final environmental impact statement ("FEIS") and draft record of decision ("DROD").III. Name and Title of Responsible Official: Neil Bosworth, TNF Forest Supervisor.IV. Statement of the Issues and Applicable Parts of Revision to Which the Objection Applies: See relevant content set forth below.V. Statement Explaining Objection, Suggestion for Improvement, Inconsistencies with Law, Regulation or Policy and Links Between Prior Substantive Formal Comments2 and/or Issues Arising After Opportunities for Formal Comment: See relevant content set forth below.1. Objections to Forestwide Plan DirectionA. Mining, Minerals, and Abandoned Mines3i. Plan Content is Contrary to LawThe Multiple Use Sustained-Yield Act of 1960 ("MUSY") is one of the foundational pieces of federal legislation relative to the administration of National Forest System ("NFS") lands in that the statute added consideration of outdoor recreation, range, timber, watershed and wildlife and fish as supplemental management resources.4 Importantly, MUSY mandated that "[n]othing herein shall be construed so as to effect the use or administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests."5The principles of MUSY were again integrated into Section 6(e) of the National Forest Management Act of 1976 ("NFMA") which states, in relevant part, with respect to forest plan revision, that plans shall "provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the [MUSY]"6 These Congressional mandates manifestthemselves in the 2021 Planning Rules at 36 C.F.R. [sect] 219.1 and in other related provisions.7Boiled down, exploration and mining (pursuant to the 1872 Mining Law) and the economic benefits and ecosystem services that flow therefrom must be acknowledged and planned for on NFS land. The fundamental right to explore and develop mineral resources may not be eroded through: (i) the establishment of desired conditions that fail to recognize the inherent capability (and in some cases limitations) of mineralized areas; or (ii) standards and guidelines that restrict mining or subject mine exploration and development to continued plan amendments or impracticable and unreasonable design or mitigation criteria. Prime examples of this include content in the Mining, Minerals, and Abandoned Mines, Roads and Arizona National Scenic Trail8 directives sections that preclude or unduly restrict mining or adversely affect the administration and use of NFS lands for development of mineral resources.In addition to the foregoing, the LMP fails to undertake any meaningful assessment of the economic contributions from mining. Specifically, in Appendix B to the FEIS, there is discussion of the assumptions used for the economic benefits from mining but they are unclear and lacking in accuracy, substance and content. In relevant part, the explanation reads:"Copper mining is the driving factor behind the economic contribution of the minerals program to the regional economy. Two of the currently operating copper mines are in stages of closure and therefore production will decrease over time. For this analysis the Carlota Copper Mine production is not included as final closure is expected in 2020. The remaining production is assumed constant. While mineral production and associated revenues (and therefore actual economic impact) will fluctuate based on global market conditions and the lifecycle of a the mine, this is outside the control of forest management. No quantitative variation in mineral production across alternatives is modeled. Qualitative discussion of recommended areas removed from mineral entry is included in this analyses."9In fact, this explanation confirms

that no meaningful effort was undertaken relative to assessing any benefits of mining (notwithstanding the recognition that copper mining is the driving factor behind the regional economy) and the only effort purportedly undertaken was to qualitatively assess areas removed from mineral entry. As described above and herein, the LMP falls short of meeting the requirements of the MUSY, NFMA and the United States Forest Service ("USFS") planning regulations.<sup>ii</sup> Desired Conditions<sup>10</sup> Are Inconsistent with Applicable RegulationsIn its comments on the draft LMP, PVMC pointed out that MMAM-DC-01 and 02 were inconsistent with applicable locatable mineral regulations, but the TNF disregarded PVMC's concerns on the basis that the law did not "need to be repeated" and claimed that the applicable legal standards were being "emphasized" in MMAM DC-01<sup>11</sup> and that MMAM DC-02 was merely an "aspiration" or a "vision" of what the plan area should look like.<sup>12</sup> To the contrary, any adopted minerals within trail corridors, protect scenic values along trails, and enhance economic values to nearby communities.") desired conditions must be consistent with the capability of the planning area, existing law, regulation and policy and recognize the MUSY principles. Management of the land and resources per the LMP cannot be directed or "envisioned" in a manner to the contrary.<sup>iii</sup> Standards MMAM-S-02 and MMAM-S-04 are Inconsistent with Applicable RegulationStandards are mandatory constraints on project and activity decision-making and deviation requires a plan amendment.<sup>13</sup> As such, it is particularly important that standards reflect applicable regulatory requirements. PVMC advised the TNF that MMAM-S-02 was contrary to existing locatable minerals regulations, and the TNF rejected PVMC's comments on the basis that the "standard reflects that the management of this resource is already decided by existing, law, regulation, and policy [but] [b]ased on experience, it needs to be taken further."<sup>14</sup> Without more, the "need to be taken further" is not sufficient justification to require reclamation standards that do not comport with existing regulations.New MMAM-S-04: A new MMAM standard was included in the LMP which is highly objectionable (requiring a Notice of Intent ("NOI") be submitted for all proposed geophysical investigations). PVMC did not have an opportunity to comment on this standard previously, because it was not included in the draft LMP. Therefore, PVMC lodges its' objection now based on the fact that new MMAM-S-04 is totally contrary to existing Forest Service regulation and policy.Specifically, the Forest Service regulations provide a list of when NOIs are not required.<sup>15</sup> For example, NOIs are not needed for:[bull] "Operations which will be limited to the use of vehicles on existing public roads or roads used and maintained for National Forest System purposes";[bull] "prospecting and sampling which will not cause significant surface resource disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study . . ."; or[bull] "Operations which will not involve the use of mechanized earthmoving equipment, such as bulldozers or back-hoes, or the cutting of trees, unless those operations otherwise might cause a significant disturbance of surface resources."Clearly geophysical investigations can be conducted in accord with the regulations above, not causing SSRD, and not requiring NOI submittal. It is not legally permissible for the TNF to unilaterally deem all methods of geophysical investigation to require NOI submittal (particularly as a LMP standard without engaging in required rulemaking procedures). Determinations of significant surface resource disturbance ("SSRD") occur initially on an operator-by-operator, case- by-case basis which is spelled out in existing Forest Service regulation<sup>16</sup> and policy.<sup>17</sup> In fact, the trigger for a NOI is the operator's reasonable uncertainty as to the significance of the potential effects of the proposed operations. Where there is no question, an operator's reasonably certainty is the relevant threshold. Where an operator makes a reasoned conclusion that operations will not cause SSRD, no NOI is required. In fact, District Ranger determinations of SSRD only become relevant when there is some question as to whether or not SSRD may result from proposed operations thus requiring plan of operations submittal. The District Ranger authority is mis-cited in the LMP as a justification to require NOIs for all geophysical work and should likewise be removed.<sup>18</sup>Suggestions for improvement: (i) include PVMC's proposed language changes for MMAM DC-01 and DC-02 and MMAM-S-02 as shown in Attachment 1; and (ii) remove MMAM-S-04. With respect to MMAM-S-04, if the Forest Service desires to make all geophysical exploration subject to NOI submittal, it must adopt a rule pursuant to proper notice and comment proceedings and may not do so via the adoption of a forest plan standard that is wholly inconsistent with existing agency regulations and policy.B. Roads<sup>19</sup>The majority of PVMC's comments on the draft LMP plan components for roads sought inclusion of, or refence to, concepts or language inherent in provisions of the mining law and/or the locatable mining regulations. Unfortunately, many of PVMC's comments were rejected by the TNF on the following basis:The Tonto National Forest recognizes the rights under the Mining Law and applicable regulations for each project proposed with plans of operations (see Mining,

Minerals, and Abandoned Mines section in chapter 2 of the forest plan). Per revised plan (chapter 1, under Forest Plan Framework and Organization, Plan Components section), guidelines describe constraints on project and activity decision-making that allow for departure from its terms, so long as the intent of the guideline is met. In other words, guidelines are mandatory with some flexibility on how they are implemented in meeting the intent of the existing guideline. Most of the guidance for mining is governed by law, regulation, and policy, which does not need to be repeated within the forest plan. Future projects and activities, of any kind, must be consistent with the forest plan and various laws, agency policy, including direction related to access for exploration or mining operations.<sup>20</sup> Per 36 C.F.R. [sect] 219.7(e)(1)(iv), guidelines are a constraint on project and activity decisionmaking that allows for departure from its terms, only so long as the purpose of the guideline is met. In fact, that same regulation provides that guidelines are established to "meet applicable legal requirements." Moreover, the 2012 planning regulations require that plans "provide for ecosystem services and multiple uses" and require the inclusion of "standards and guidelines, for integrated resource management to provide for ecosystem services and multiple uses in the plan area."<sup>21</sup> Thus, the legal requirements applicable to exploration and mining cannot be ignored in the development of desired conditions, standards and guidelines for roads on the basis provided by the TNF above. Roads are critically necessary for use in mineral exploration and development and for economic exploration of minerals. PVMC's concern is not that exploration or mine development will be precluded, but that forest plan amendments will be required for even the smallest departure from the standards and guidelines on the basis that the "purpose of the guideline" cannot be met. Further, the purpose of all guidelines is to achieve or maintain a desired condition and, in this LMP, there are no desired conditions in the roads section that recognize multiple use or economic development related to minerals or renewable energy. Instead, all desired conditions are focused on sustainability and minimizing adverse environmental impacts without any recognition of the inherent capability of mineralized areas. The TNF should, as one of its primary objectives, seek to minimize the number of plan amendments that will be required by building in as much flexibility as possible to the language of adopted desired conditions, standards and guidelines in order to make positive determinations of plan consistency, particularly in areas where locatable minerals are known to exist and likely to be developed in the future (by virtue of technological advancements, fluxions in commodity prices or new discoveries). Suggestion for improvement: Reconsider the inclusion of PVMC's proposed language changes for RD-DC-04, RD-G-01, RD-G-02, RD-G-03, RD-G-05 and RD-MA-02 as shown in Attachment 1.C.

**Watersheds and Water Resources.** Failure to Coordinate Under the Watershed Condition Framework ("WCF") Requirements in Classification and Identification of Priority Watersheds<sup>22</sup> The WCF was established pursuant to the 2018 Farm Bill (16 U.S.C. [sect] 6543) and where utilized by the USFS, the agency must follow the mandates of Congress. The Forest planning regulations require plans to "identify watershed(s) that are a priority for maintenance or restoration."<sup>23</sup> Using the WCF to make this identification requires an evaluation and classification of the condition of the watershed;<sup>24</sup> then the identification for protection and restoration of up to 5 priority watersheds in each National Forest;<sup>25</sup> and then the development of a watershed protection and restoration action plan for each priority watershed.<sup>26</sup> In carrying out all of the foregoing, Congress mandated that the Forest Service "shall coordinate with interested non-Federal landowners and State, tribal, and local governments within the relevant watershed; and provide for an active and ongoing public engagement process" in carrying out all six of the WCF purposes.<sup>27</sup> The TNF has not adhered to these requirements. Instead, the TNF utilized classification and identification analysis undertaken pursuant to a patchwork of dated formal and informal watershed condition framework policies (developed around the timeframe of 2011)<sup>28</sup> to satisfy its obligation. This results in the LMP identifying 9 priority watersheds, and classify others as "impaired," "at risk," or "functioning properly" without any of the required coordination or engagement in the congressionally adopted WCF.<sup>29</sup> In the FEIS, the TNF responded to PVMC's concern over the failure to coordinate by stating that "Congress did not limit or prohibit the use of the WCF to evaluate long-term conditions of watersheds within our forests."<sup>30</sup> This response misses the point. If the WCF is utilized to identify priority watersheds, it must include the Congressionally mandated coordination at all stages of the process (e.g., evaluation, identification of priority watersheds, developing protection and restoration action plans for priority watersheds and implementation of action plans). In addition, the TNF states in the FEIS: The revised plan is a programmatic document that provides the framework to accomplish exactly what the commentor refers to by collaborating with our State, Tribal, other Federal agencies, and interest groups when identifying priority watersheds. The revised plan has been modified

to clarify Watershed and Water Resources Management Approach 01 to: "Work with forest leadership and partners to identify priority watersheds, develop watershed restoration action plans as well as other restoration activities to leverage resources, and to implement and monitor projects that improve vegetative composition, reduce erosion, and/or otherwise improve watershed function."<sup>31</sup> This aspirational "Management Approach" is a plain admission that the TNF has yet to meet the required Congressional obligations to coordinate in conjunction with classification and identification of priority watersheds. The TNF cannot use decades old data to classify watersheds, then identify priority watersheds and commit to coordinate "after the fact." Further, the inclusion of this commitment as a mere "Management Approach" which does not offer plan direction, but describes an approach or strategy to manage the unit to achieve a desired condition,<sup>32</sup> but may be used to identify partnership opportunities and coordination activities<sup>33</sup> is not sufficient to demonstrate compliance with a mandate from Congress. The classification of watersheds and the identification of priority watersheds in the LMP must include coordination with interested non-federal landowners and State, Tribal and local government within the relevant watershed, and provide for an active and ongoing public engagement process. Suggestions for improvement: (i) the TNF should engage in the required coordination efforts to re-evaluate the watershed conditions and identify priority watersheds and then prepare a supplemental EIS to allow for further public input; (ii) WAT-MA-01 should be moved to a standard (new WAT-S-05) as it is Congressionally required as a function of the Farm Bill legislation and Section 6 of NFMA; and (iii) reconsider the inclusion of PVMC's proposed language changes for WAT-DC-01, WAT-DC-02 and WAT-DC-03 as shown in Attachment 1.ii.

Implementation of a Region 3 Policy as WAT-S-02

With respect to WAT-S-02, PVMC expressed concerns regarding implementation of the Region 3 Forest Service Manual, Chapter 2540 Water Uses and Development ("Region 3 Policy") in the LMP. The Region 3 Policy pertains only to groundwater management and applies only to special use authorizations, but WAT-S-02 broadens the Region 3 Policy and makes it applicable to "all new authorizations for wells and pipelines and to impacts on surface flows." In the FEIS, the TNF rejected PVMC's concern on the basis that the Region 3 Policy requires the TNF to look at groundwater and surface water as hydrologically connected.<sup>34</sup> We see no corresponding requirement in the Region 3 Policy. In fact, the TNF acknowledged in its response to PVMC's comment that the policy is limited to special use authorizations as set forth below: Within the Region 3 Forest Service Manual, Chapter 2540, Section 2541.<sup>35</sup> It states "Upon completion of the analysis, special use authorizations for water developments on National Forest System lands should be approved using the appropriate decision document only when the long-term protection of National Forest System streams, springs, seeps, and associated riparian and aquatic ecosystems can be assured." Other water developments classified as range improvements are authorized and managed through the administration of term grazing permits.<sup>35</sup> PVMC's concern remains that the Region 3 Policy is legally unsupported and that there is no basis for an expansion of the Region 3 Policy (particularly as a standard) in the LMP. The TNF must acknowledge the foundational principle of Arizona water law in that groundwater and surface water are administered in a bifurcated manner. Further, groundwater withdrawal outside of Active Management Areas is regulated under the reasonable use doctrine and not arbitrary caveats in the Region 3 Policy. Reasonable use allows the extraction of groundwater for a beneficial use even if the withdrawals adversely affect nearby wells.<sup>36</sup>

Suggestion for improvement: Revise WAT-S-02 as follows so that it is consistent with the fundamental state water law principles and only to special use authorizations as covered by the Region 3 Policy: "New authorizations for special use authorizations for wells and pipelines on National Forest system lands shall only be considered consistent with applicable provisions of state water law and proponents should strive where to demonstrate that water removed and/or transported by these facilities will ensure the long-term protection of and would not adversely impact springs, wetlands, riparian areas, surface flows, and other groundwater dependent ecosystems on National Forest System Lands."<sup>iii</sup>

WAT Guidelines<sup>37</sup>

Several of PVMC's comments on the draft LMP pertained to guidelines imposing restrictions on activities (e.g., within source water protection areas, road construction near water resource features, etc.). TNF responded that guidelines describe constraints on project and decision-making but are flexible and allow for departure so long as the intent of the guideline is met.<sup>38</sup> While the TNF's response correctly reflects the definition of a "guideline", more is required.<sup>39</sup> In fact, the regulations related to the development of guidelines, require that they are established to "meet applicable legal requirements." Moreover, the 2012 planning regulations require that plans "provide for ecosystem services and multiple uses" and require the inclusion of "standards and guidelines, for integrated resource management to provide for ecosystem services and multiple

uses in the plan area."<sup>40</sup> Thus, the legal requirements applicable to state water law, exploration and mineral development cannot be ignored in the development of guidelines. For example, WAT-G-05 (requiring activities that could impact groundwater or surface water be located outside "Source Water Protection Areas") does not meet applicable legal requirements and should be removed from the LMP. In the FEIS, the TNF responded that this guideline will not necessarily preclude or prohibit an activity in a Source Water Protection Area because there is some flexibility in administration.<sup>41</sup> Notably, there is only flexibility if the "intent of the guideline is met" and where prohibitions on activities are established, it is very difficult to envision how flexibility in administration might prevail. Moreover, WAT-G-05 is totally inconsistent with existing regulations addressing management of watersheds that supply Municipal Watersheds and appears to be an end run around established regulation (i.e., 36 C.F.R. [sect] 251.19). Further WAT-G-05 fails to provide for any flexibility to consider integrated resource management and multiple use prescriptions (as required in developing guidelines). Suggestions for improvement: Reconsider the inclusion of PVMC's proposed language changes to WAT-G-01, WAT-G-03, WAT-G-04, WAT-G-06 and WAT-MA-07 as shown in Attachment 1. Remove WAT-G-05 and WAT-G-14.<sup>42</sup>

**Transcription Errors** TNF responded to several of PVMC's comments by stating TNF would incorporate the comment and provided new LMP plan component language. However, the final LMP fails to include the language from the responses to comments in two instances. For instance, TNF responded to PVMC's comment on WAT-G-13 by stating: The guideline will be revised as such; "Where Forest Service management contributes to designation of a water body as an impaired water body, recommendations in Total Maximum Daily Load (TMDL) assessments should be implemented to enable the Tonto to assist with meeting or exceeding water quality standards for the water body. Best management practices, watershed condition improvement treatments, or other identified water quality improvement practices should be utilized to improve water quality in impaired or non-attaining streams and water bodies without completed TMDL assessments where feasible."<sup>43</sup> However, WAT-G-13 in the LMP provides: Where Forest Service management contributes to designation of a water body as impaired, the Forest Service should implement recommendations in Total Maximum Daily Load (TMDL) assessments and, where feasible, complete watershed improvement projects in impaired or non-attaining water bodies without completed TMDL assessments.<sup>44</sup> The same issue arises regarding incorporating mining as an example of multiple uses into WAT-DC-01. TNF responded to PVMC's comment by agreeing to incorporate mining.<sup>45</sup> However, in the final LMP, WAT-DC-01 reads: Watersheds support multiple uses (e.g., timber, recreation, grazing, cultural) with no long-term decline in ecological conditions as measured by the Watershed Condition Framework or an equivalent method and provide high-quality water for downstream communities dependent on them.<sup>46</sup> Suggestions for improvement: Update the LMP to include the language from TNF's response to PVMC's comments regarding WAT-G-13 and WAT-DC-01 as committed by the TNF.

**D. Riparian Areas, Seeps, Springs, Wetlands and Riparian Management Zones**<sup>47</sup> The plan components addressing riparian areas, and riparian management zones do not meet the criteria set forth in the applicable 2012 planning regulations.<sup>48</sup> The LMP must include an identification of riparian areas and riparian management zones ("RMZs") with established width(s) and it does not. Further, RMZ management prescriptions must be limited to certain established widths around "lakes, perennial and intermittent streams, and open water wetlands."<sup>49</sup> In the LMP, the RMZ plan components have been expanded to include not only undefined RMZs with no established widths, but "all riparian areas, streams, springs, seeps and wetlands."<sup>50</sup> And, unbelievably, the LMP provides that RMZs can even be expanded to incorporate ephemeral channels.<sup>51</sup> In short, the LMP takes the following approach to the development of riparian and RMZ plan components: (i) First, the LMP repeats the regulatory definition of "riparian areas" (which is incredibly broad), describes healthy riparian systems and potential disturbances, discusses general characteristics of springs, seeps and wetlands and then repeats the regulatory definition of RMZs.<sup>52</sup> (ii) Then, with respect to RMZs, the LMP provides a purported framework for how one might determine an RMZ beginning with the existence of USFS Region 3 mapped riparian ecological response units ("Riparian ERUs")<sup>53</sup> of which there are seven types on the TNF. The LMP goes on to state that RMZs will be further modified through "site-specific delineations during project-level planning and implementation" and then declares that RMZs can be vastly expanded to "incorporate ephemeral channels with minimal or no riparian vegetation that support riparian vegetation downstream due to subsurface flow."<sup>54</sup> (iii) Next, the LMP states that the RMZ plan components apply not only to RMZs but to "all riparian areas, streams, springs, seeps and wetlands"<sup>55</sup> without ever having identified any specific riparian areas or established widths of RMZs. The plan components in the RMZ section are completely

contrary to the applicable planning regulations and will result in proposed activities in vast areas of watersheds having to establish their own RMZs, then demonstrate plan consistency and overcome the standard and guidelines which improperly preclude many types of activities (e.g., RMZ-S-02 and 03, RMZ-G- 05).<sup>56</sup> The TNF does not have the legal authority to expand the regulatory definitions of "riparian areas" or "RMZs" or to apply the same plan components applicable to RMZs to all riparian areas, streams, springs, seeps and wetlands and/or possibly ephemeral channels. Suggestion for improvement: The TNF should publish a supplemental EIS to: (i) identify proposed riparian areas on maps attached thereto; (ii) establish widths for proposed RMZs for lakes, perennial and intermittent streams, and open water wetlands only; and (iii) develop separate plan components for riparian areas and RMZs using the criteria in 36 C.F.R. [sect] 219.8(a)(3). It is contrary to the planning regulations for the TNF to attempt to defer this exercise to site-specific project-level decision making.<sup>57</sup> Further, so doing is a recipe for arbitrary application of the provided establishment criteria<sup>58</sup> and is certain to result in unwarranted determinations that projects are within riparian areas or RMZs thus resulting in rejection of a proposed action or determinations of plan inconsistency. In the alternative, and at a minimum, the TNF must remove the language that expands RMZ plan components to "all riparian areas, streams, springs, seeps and wetlands" and/or possibly "ephemeral channels with little or no riparian vegetation." In addition, TNF should remove RMZ-S-02, RMZ-S-03 and RMZ-G-05 as they are improper restrictions that do not meet the regulatory criteria set forth in 36 C.F.R. [sect] 219(a)(3)(ii)(B).2. Objection to Management Areas Plan DirectionA. National trails - Arizona National Scenic Trail<sup>59</sup>Because a comprehensive plan for the management of the Arizona National Scenic Trail ("ANST") has yet to be developed, the TNF LMP cannot define the ANST as "approximately .5 miles from the centerline of the trail" thereby establishing a trail corridor within which standards and guidelines prohibit certain activities.<sup>60</sup> In fact, all decisions relevant to the acquisition, management, development and use of the trail must be established in a comprehensive National Scenic Trail Plan, not via the LMP.<sup>61</sup> The LMP cannot supplant applicable federal law. In order to determine any trail right-of-way, the National Trails System Act requires a collaborative process which includes the creation and participation of a trail advisory council. In fact, 16 U.S.C. [sect] 1244(e) requires: "the responsible Secretary shall, after full consultation with affected Federal Land managing agencies, the Governors of the affected States, the relevant advisory council established pursuant to subsection (d) . . . submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for acquisition, management, development, and use of the trail. . . ." "A trail advisory council, according to statute, must include one or more members appointed to represent private organizations including corporate and individual landowners, and land users that have an established and recognized interest in the trail. Further, under 16 U.S.C. [sect] 1244(d), "the appropriate Secretary shall consult with [the Advisory] council . . . with respect to matters relating to the trail, including the selection of the rights-of-way. . ." (emphasis added). In addition to the coordination obligations set forth in the National Trails System Act, 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)). Further, insofar as it pertains to the requirement to coordinate Forest Service management with State and local governments, the 2012 Planning Rule requires: Coordination with other public planning efforts. (1) 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.<sup>62</sup> We note the absence of coordination efforts as to the objectionable ANST management prescriptions, particularly as to consideration of the impacts on future development of intervening state land administered by the Arizona State Land Department and as to the effect on Gila County economic and energy development objectives.<sup>63</sup> In addition, the LMP description of the ANST corridor should be changed and the desired conditions adopted as NTMA-DC-06 and NTMA-DC-07 should be removed until a comprehensive plan is adopted and impacts on existing and future mining districts can be properly considered. "Expansive views of natural-appearing landscapes" and conserving "significant scenic and natural resources" within trail segments traversing historic mining districts or areas of planned mine expansion is simply not ever going to be achievable. Further, the standard adopted as NTMA-S-03 and the guidelines adopted as NTMA-G-10 and NTMA-G-12 are inconsistent with federal law and could not be implemented to preclude (or otherwise require relocation of ancillary mine facilities. Finally, it is not sufficient to leave any objectionable guidelines in place simply because there is "some potential for flexibility" in the future as indicated by the TNF in

its response to comments.<sup>64</sup> Suggestions for improvement: (i) remove NTMA-DC-06, NTMA-DC-07, NTMA-S-03, NTMA-G-10 and NTMA-G-12; (ii) relocate NTMA-MA-07 (following the trail comprehensive plan once adopted) from a management approach to a standard; and (iii) remove NTMA-G-03 as it is contrary to the mining law and regulations to prevent road crossings over national trails if such is needed for mining.<sup>65</sup> Rejection of a Minerals Management Area. PVMC encouraged the TNF to develop a Minerals Management Area in the Globe-Miami mining district in plan workshops and in written correspondence.<sup>66</sup> Legal support for so doing exists in the applicable planning regulations and policies.<sup>67</sup> Unfortunately, the TNF summarily rejected that proposal on the basis that Alternative D already considered "fewer restrictions on land uses, including mining and minerals" and that "minerals might be discovered outside any defined area."<sup>68</sup> A review of the TNF's justification evidences the failure of the TNF to give proper consideration to this proposal. First, the TNF acknowledged in the FEIS that most of the direction that effects locatable mineral activities comes from existing law, regulation and policy and that fact "was unchanged across all alternatives considered."<sup>69</sup> In addition, with respect to locatable minerals, the TNF acknowledged that most of the potential for, and interest in, locatable mineral deposits exists in the Globe-Miami and Superior mining districts and that future development proposals are probable in that area.<sup>70</sup> Further, the TNF stated that the effects of the plan components to locatable and saleable minerals were essentially "common to all alternatives" and admitted that the only difference in Alternative D relative to other alternatives was to make saleable (common variety) minerals more available.<sup>71</sup> This is not sufficient justification to disregard the need for a Minerals Management Area (particularly needed for the Globe-Miami and Superior mining districts at a minimum). The planning regulations require the TNF to recognize the inherent capabilities of certain areas and the economic and social benefits of mining and a Minerals Management Area should have been developed to avoid constant plan amendments when otherwise uniform desired conditions, standards and guidelines cannot be met in areas where historic mining has occurred for decades or known mine development or expansion will otherwise take place.

Suggestion for improvement: Revise the LMP to adopt a Minerals Management Area in keeping with the planning regulations and policy that wholly authorize so doing and to ensure economic and social sustainability plan content is included as required by 36 C.F.R. [sect] 219.10. It is notable that there are 11 separate management areas in the LMP and not one of them is focused on economic sustainability or non-conservation oriented multiple uses.

#### 4. Objection to Plan Implementation and Project Consistency Determination

<sup>72</sup> The forest planning regulations at 36 C.F.R. [sect] 219.15(a) state as follows: "Every decision document approving a plan, plan amendment, or plan revision must state whether authorizations of occupancy and use made before the decision document may proceed unchanged. If a plan decision document does not expressly allow such occupancy and use, the permit, contract, and other authorizing instrument for the use and occupancy must be made consistent with the plan, plan amendment or plan revision as soon as practicable [hellip]" (emphasis added). The LMP and DROD fail to precisely recite this very important finding to allow prior authorizations to proceed unchanged.

Suggestion for improvement: Add the following sentence "Authorizations of occupancy and use made before this forest plan revision ROD may proceed unchanged." to the last sentence of the first paragraph under the DROD heading Plan Implementation and as the first sentence under the heading Project Consistency for clarity and consistency with regulatory requirements. Incorporate the same sentence into the LMP at pages 17 and 19.

In closing, PVMC appreciates the opportunity to have participated in the planning workshops and to have provided comment on the draft LMP. It is unfortunate that many of PVMC's comments were disregarded and we hope that focused re-consideration through the objection process will be undertaken. The objective of developing an LMP consistent with federal law and in a manner that provides inherent flexibility, withstanding the need for constant plan amendments, should be paramount along with the obligation for the TNF to administer NFS lands for exploration and mining purposes in a manner that does not result in unreasonable regulation.

<sup>Footnotes</sup>

1 References to prior submitted comments shall hereafter be referred to as PVMC Comments (2020) at the relevant page or attachment number. In addition to the PVMC Comments (2020), PVMC also filed detailed comments on January 12, 2018 to the Preliminary Proposed LMP (hereafter PVMC Comments (2018)).

2 Said links to prior PVMC comments will be identified in footnotes in the specific subject matter heading of the objection.

3 See prior PVMC Comments (2020) at Attachment 1-1 thru 1-4.

4 16 U.S.C. [sect] 528.

5 Id. 36 C.F.R. [sect] 219.1(b); see also 36 C.F.R. [sect] 219.6(b); 36 C.F.R. [sect] 219.8; 36 C.F.R. [sect] 219.10.

7 See also 36 C.F.R. [sect] 219.8(3)(b).

8 See FEIS, Ch. 3 at p. 241 (confirming that Alternative B will [ldquo]lead to greater protection of the trail[rsquo]s values . . . because the standards and

guidelines restrict non-confirming uses, prohibit the sale and extraction of common variety minerals within trail corridors, protect scenic values along trails, and enhance economic values to nearby communities.<sup>9</sup> FEIS, Appendix B, at pg. 18.<sup>10</sup> Desired conditions are descriptions of specific, social, economic, and/or other ecological characteristics of the plan area, or a portion of the plan area, toward which management of the land and resources should be directed (36C.F.R. [sect] 219.7 (e)(1)(i)).<sup>11</sup> FEIS Vol. 3, Appendix A, at pg. 124.<sup>12</sup> FEIS Vol. 3, Appendix A, at pg. 250.<sup>13</sup> 36 C.F.R. [sect] 219 (e)(1)(iii).<sup>14</sup> FEIS Vol. 3, Appendix A, at pgs. 125-26.<sup>15</sup> 36 C.F.R. [sect] 228.4 (a)(1).<sup>16</sup> See 70 Fed. Reg. 32713 (June 6, 2005).<sup>17</sup> See Forest Service, FSM 2800 (Minerals and Geology), Chapter 2810 (Mining Claims), Section 2817.1 (Notice of Intent to Operate) and Attachment 2 (USFS Flow Chart on SSRD Determinations).<sup>18</sup> TNF LMP, at pg. 58 (footnote 38).<sup>19</sup> See prior PVMC Comments (2020) at Attachment 1-9 thru 1-11.<sup>20</sup> FEIS Vol. 3, Appendix A, at pg. 257.<sup>21</sup> 36 C.F.R. [sect] 219.10 (a).<sup>22</sup> See prior PVMC Comments (2020) at pgs. 3-5 and Attachment 1-4 thru 1-7.<sup>23</sup> 36 C.F.R. [sect] 219.7 (f)(1) (the priority watersheds are supposedly found at a web link identified on TNF LMP, pg. 106, however the link is broken not available for review).<sup>24</sup> 16 U.S.C. [sect] 6543(a)(1) (taking into consideration certain baseline factors including water quality and quantity, the presence of roads and trails and soil type and conditions).<sup>25</sup> 16 U.S.C. [sect] 6543(a)(2).<sup>26</sup> 16 U.S.C. [sect] 6543(a)(3).<sup>27</sup> 16 U.S.C. [sect] 6543(b).<sup>28</sup> U.S. Dep[rsquo]t Agric., Forest Serv., A Framework for Assessing and Tracking Changes to Watershed Condition (May 2011) [https://www.fs.usda.gov/sites/default/files/Watershed\\_Condition\\_Framework.pdf](https://www.fs.usda.gov/sites/default/files/Watershed_Condition_Framework.pdf)<sup>29</sup> TNF LMP, at pg. 06.<sup>30</sup> FEIS Vol. 3, Appendix A, pgs. 308, 320, 321.<sup>31</sup> FEIS Vol. 3, Appendix A, at pg. 307.<sup>32</sup> TNF LMP, at pg. 14.<sup>33</sup> Id.<sup>34</sup> FEIS Vol. 3, Appendix A, at pgs. 318-20.<sup>35</sup> FEIS Vol. 3, Appendix A, at pg. 320.<sup>36</sup> See *Bristor v. Cheatham*, 255 P.2d 173 (Ariz. 1953).<sup>37</sup> See prior PVMC Comments (2020) at Attachment 1-5 thru 1-7.<sup>38</sup> FEIS Vol. 3, Appendix A, at pgs. 319, 322.<sup>39</sup> 36 C.F.R. [sect] 219.7(e)(1)(iv).<sup>40</sup> 36 C.F.R. [sect] 219.10 (a).<sup>41</sup> FEIS Vol. 3, Appendix A, at pg. 322.<sup>42</sup> WAT-G-14 (manage groundwater and surface water on NFS lands as one hydrologically connected system) is a prime example of how state water law provisions are being ignored. [ldquo]Guidelines[rdquo] must [ldquo]meet applicable regulatory requirements[rdquo] and this one fails to do so and should be removed.<sup>43</sup> FEIS Vol. 3, Appendix A, at pgs. 320-21.<sup>44</sup> TNF LMP, at pg. 109.<sup>45</sup> FEIS Vol. 3, Appendix A, at 321.<sup>46</sup> TNF LMP, at pg. 107.<sup>47</sup> See prior PVMC Comments (2020) at pg. 5 and Attachment 1-8 thru 1-9.<sup>48</sup> 36 C.F.R. 219.8 (a)(3) (requiring the identification of riparian areas and RMZs in the plan, along with separate plan components for riparian areas and RMZs).<sup>49</sup> 36 C.F.R. [sect] 219.8 (a)(3)(ii).<sup>50</sup> TNF LMP, at pg. 113.<sup>51</sup> Id. (the inclusion of ephemeral channels is wholly contrary to the definition of an RMZ at 36 C.F.R. [sect] 219.19 and the requirement for the plan to established defined width(s) for RMZs only around lakes, perennial and intermittent streams, and open water wetlands as set forth at 36 C.F.R. [sect] 219.8 (a)(3)(ii)).<sup>52</sup> TNF LMP, at pg. 112 (RMZs are defined at 36 C.F.R. [sect] 219.19).<sup>53</sup> TNF LMP, at pg. 99 (apparently developed from a USFS Region 3, Riparian Mapping Project (Triepe et al.)(2014), which report is not provided as part of any LMP appendix and was not referenced in the draft LMP).<sup>54</sup> TNF LMP, at pg. 113. Note that the inclusion of [ldquo]ephemeral channels with minimal or no riparian vegetation[rdquo] is in stark contrast to the definition of an RMZ at 36 C.F.R. [sect] 219.19 which is [ldquo]portions of a watershed where riparian- dependent resources receive primary emphasis.[rdquo]<sup>55</sup> Id.<sup>56</sup> In fact, restrictions are only warranted in RMZs for management actions when the specific criteria of 36 C.F.R. [sect] 219(a)(3)(ii)(B) are met.<sup>57</sup> See 36 C.F.R. [sect] 219.8 (a)(3)(ii)(A) (confirming that RMZs must be established in the plan, but allowing them to be refined by later site-specified delineation).<sup>58</sup> TNF LMP, at pg. 112-13.<sup>59</sup> See prior PVMC Comments (2020) at pg. 9 and Attachment 1-13 thru 1-15.<sup>60</sup> TNF LMP, at pg. 152.<sup>61</sup> 16 U.S.C. [sect] 1244(e).<sup>62</sup> 36 C.F.R. [sect] 219(4)(b).<sup>63</sup> We acknowledge the TNF[rsquo]s coordination efforts set forth in the FEIS, Vol. 4-Appendix C subject to the exceptions identified above.<sup>64</sup> See FEIS, Vol. 3, Appendix A, at pg. 150.<sup>65</sup> See 36 C.F.R. [sect] 219.7(e)(1)(iii) (a standard is a mandatory constraint on project and activity decisionmaking, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements).<sup>66</sup> PVMC Comments (2018) at pgs. 10-12.<sup>67</sup> See 36 C.F.R. [sect] 219.7 (c)(2)(vii), 36 C.F.R. [sect] 219.7 (d) and FSH 1909.12, ch. 10, sec. 14, pg. 66.<sup>68</sup> Vol. 3, App. A, at pg. 120.<sup>69</sup> FEIS at pg. 249.<sup>70</sup> FEIS at pg. 248.<sup>71</sup> FEIS at pg. 251.<sup>72</sup> DROD at pgs. 46-47.