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Organization: Arizona Mining Association and Arizona Rock Products Association

Title: Executive Director

Comments: To the Southwestern Regional Foresters office

On behalf of the Arizona Mining Association ("AMA") and Arizona Rock Products

Association ("ARPA"), we are filing the following objections based on prior submitted comments

on the draft environmental assessment ("EA") and comprehensive plan for the Arizona National

Scenic Trail ("ANST") dated March 22, 2024 (hereafter the "AMA/ARPA Comments").

Information required pursuant to 36 C.F.R. [sect] 219.54 (c) follows:

I. Objector Contact Information:

1 AMA and 2 ARPA

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Please accept the attached comments and exhibits to support the objections.

II. Subject of Objection: ANST Comprehensive Plan (November 2024) (the "CP") and related final environmental impact statement ("FEIS") and draft record of decision ("DROD").

III. Name and Title of Responsible Official:

Michiko Martin, Regional Forester, Southwestern Region.

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 Comments and/or Issues Arising After Opportunities for Formal Comment: See relevant

content set forth below.

1. National Environmental Policy Act ("NEPA") Deficiencies

A. Inadequate Scoping

Nearly seven years elapsed between the initial public scoping notice and the publication of the draft CP. During that time, adequate agency interface with likely affected parties (such as AMA and ARPA) was not undertaken and neither AMA, nor ARPA were invited to become cooperating parties. This is particularly problematic in light of the concerns AMA and ARPA raised in correspondence to Cal Joyner (then Region 3 Supervisor) dated September

14, 2017 and letter to Vicki Christiansen (then USDA Forest Service Chief) dated October 15, 2019 regarding the Forest Service's failure to constitute an ANST Advisory Council as required by 16 U.S.C. [sect] 1244 (d). The only remedy to address this legal issue is to conduct further scoping with properly identified cooperating parties (including AMA/ARPA) in conjunction with the publication of a supplemental EA analyzing reasonable alternatives to the CP.B. Failure to Analyze Reasonable Alternatives Contrary to the requirements of NEPA, in the final EA, the Forest Service only analyzed the proposed action (the CP) and the no-action alternative. The Forest Services' proffered justification is that "there were no unresolved conflicts concerning alternative uses of available resources" citing 36 C.F.R. 220.7 thus no alternative analysis is required. This justification is nonsensical when considering: 1) the ANST bisects the entire State of Arizona; and 2) all existing and conflicting planning designations (federal, state and local) and existing and future land uses within the 800-mile trail planning corridor. In 2009 when the ASNT was designated by Congress (Pub. L. 111-8), the requirement to produce a feasibility study to support national scenic trail designation was waived and no specific trail purpose was specified. Congress did, however, intend that when establishing National Scenic Trails the selection of routes should "avoid established highways, motor roads, mining areas, power transmission lines, existing commercial and industrial developments . . . and private operations" and declared in the NSTA that: (i) in selecting the rights of way for national scenic trails, "full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation;" and (ii) where possible, management and planning corridors should be designed and managed to "harmonize with and complement any established multiple-use plans for that specified area in order to insure continued maximum benefits from the land." AMA/ARPA specifically informed the Forest Service that the proposed one-mile corridor would contain within it, two aggregate crushed stone operations, two building stone operations, four cinder operations, one metal and one industrial mine and that it was proximal to many other known mining areas. In addition, nearly 1/3 of the entire ANST planning corridor is located on existing public roads or other established trails (evidencing conflicting alternative uses) and will need to be relocated. These facts alone are sufficient to warrant analysis of alternatives to the recommended uniform one-mile trail planning corridor. Without such analysis, the appropriate Secretary will be unable to fully consider competing uses (as directed by Congress) when selecting the right-of way. The remedy for this legal deficiency is to publish a supplemental EA, disclose the competing land uses within the proposed corridor and analyze alternative planning corridors that reflect consideration of conflicting land uses in keeping with the intent and directives of Congress. At a minimum, this will require the disclosure of the impact on existing mining claims, utility corridors, oil and gas pipelines, rail and road crossings and existing commercial and industrial developments within the entire 800-mile planning corridor.

2. National Scenic Trail Act ("NSTA") Violations

A. Failure to Constitute an Advisory Council (16 U.S.C. [sect] 1244 (d)) The NSTA requires that within one year of the date of addition to any national scenic trail to the trail system, an advisory council must be formed, unless there is a lack of public interest and the relevant Secretary involved informs the appropriate committees of Congress. AMA/ARPA specifically requested detail on the efforts undertaken by the Forest Service to constitute the advisory council (in 2017 and again in 2019) and asked for copies of the required notifications to "appropriate committees of Congress." In response to AMA/ARPA's comment request for more detail on the history of the Advisory Council establishment, the Forest Service indicated the following:

- * The Service published an intent to establish the Council in the Federal Register on February 24, 2014 and conducted outreach for council member candidates that did not produce enough applicants in several membership categories;
- * The Council's advisory charter expired twice, the last time being December 2018;
- * On June 14, 2019, President Donald J. Trump signed Executive Order (EO) 13875 requiring Federal agencies to evaluate and improve the utility of all Federal advisory committees and councils to evaluate and recommend termination of Federal advisory committees or councils that are no longer serving a required purpose.
- * In 2019, USDA Secretary Sonny Perdue "signed a decision memorandum recommending Congress terminate the Council for the Trail on the grounds that its purposes have either been fulfilled or can be fulfilled by ongoing coordination and collaboration among affected federal agencies, state and local governmental entities, and private interests;" and
- * The Department of Agriculture notified Congress pursuant to section 5(d) of the NSTA of USDA's inability to constitute the membership of the Council for the Trail due to lack of adequate public interest.

Upon review of the relevant federal register notice, it is clear that the Forest Service unduly complicated the proposed organization of the council in a manner contrary to the direction of Congress (and Federal Advisory Committee Act ("FACA") regulations applicable to nondiscretionary advisory committees) thereby causing the Council not to be constituted. Under the NSTA, Congress specified that such Councils would be constituted for a period of ten years from the date of establishment and required the appointment of members from three groups: (1) the head of each Federal department or agency administering lands through which the trail route passes; (2) a member appointed to represent each State through which the trail passes; and (3) one or more members appointed to represent private organizations, including corporate and individual landowners and land users, which in the opinion of the Secretary, have an established and recognized interest in the trail. In contrast, the Secretary of Agriculture required for the third class of representatives at least nine additional members including: at least one representative from Arizona State Parks; at least one representative from County or Municipal Parks and Recreation; at least one representative for Tribes; at least two representatives from the National Scenic Trail and non-motorized trail users organizations; at least one representative from Conservation organizations; at least one representative from Gateway Communities; at least one representative from the Ranching industry; and at least one representative from Private landholders along with accompanying resumes, cover letters, background information and to the extent possible, "individuals with demonstrated ability to represent women, men, racial and ethnic groups, and persons with disabilities." While AMA/ARPA appreciate the explanation offered by the Forest Service, the explanation proffered is insufficient justification for the failure to establish the ANST Advisory Council. Clearly, "form over substance" is what caused the ANST Council not to be established, not a lack of adequate public interest. The ANST Council is required by statute (i.e., a non-discretionary council). By definition in the applicable FACA regulations, a non-discretionary advisory committee means: "any advisory committee either required by statute or by Presidential directive. A non-discretionary advisory committee required by statute generally is identified specifically in a statute by name, purpose or function(s), and its establishment or termination is beyond the legal discretion of an agency head." Further, in Executive Order 13875, President Donald J. Trump asked federal agencies to conduct a review of discretionary advisory committees, not advisory councils required by statute. Thus, neither Sonny Perdue, nor the Department of Agriculture had authority to recommend termination or otherwise terminate the ANST Council. That authority belongs to Congress and the ANST Council should have been constituted and continued. Finally, the FACA Committee public database documents the fact that ANST Council was in fact established. This fact is contrary to the assertion that the Council was never formed due to lack of public interest. The remedy for this statutory violation is to establish the ANST Council as directed by Congress, and obtain their input on the development of alternatives to the proposed trail planning corridor and publish a new comprehensive plan.

B. Failure to Engage in Full Consultation (16 U.S.C. [sect] 1244 (e)) - 41 CFR 102-3.25 Prior to the submittal of the CP to the House of Representatives and Committee on Energy and Natural Resources of the Senate, the NSTA requires full consultation with "affected Federal land management agencies, the Governors of the affected States, [and] the relevant advisory council established pursuant to subsection (d)." The Forest Service has not provided sufficient evidence that it conducted full consultation with the Governor of the State of Arizona or the relevant advisory council. Instead, in response to AMA/ARPA comments, the Forest Service advised that the State of Arizona (Governor's Office) was granted cooperator status based on request of the Governor and that the Arizona State Parks and Trails Department commented on the draft EA. While that level of interface with Arizona officials may satisfy the requirements of public outreach under NEPA, it does not evidence full consultation with the Governor of Arizona or remedy the failure to constitute and consult with an advisory council. Arizona State Trust Lands comprise 11% of the trail planning corridor, and state, county, municipal and private lands comprise 16% of the corridor. The Governor of Arizona has an obligation to ensure the value of Arizona State Trust Lands are not impaired and there is no evidence of the required Governor (and/or Arizona State Land Commissioner) interface included in the CP. The remedy for this violation is either to evidence the full consultation with the Arizona Governor in the CP or, in the alternative, to form the ANST Advisory Council and fully consult with it and the Governor of the State of Arizona in the development of a revised plan that is consistent with the intent and directives of Congress.

C. Failure to Meet Comprehensive Plan Content Requirements (16 U.S.C. [sect] 1244 (e)(1) - (3)) The NSTA sets forth three relevant comprehensive plan content requirements: #1) specific objectives and practices to be observed in management of the trail, including the identification of all significant natural, historical, and culture resources to

be preserved . . . ;#2) an acquisition or protection plan, by fiscal year, for all lands to be acquired by fee title or lesser interest, along with the detailed explanation of anticipate necessary cooperative agreements for any lands not to be acquired; and#3) general and site-specific development plans including anticipated costs.As it relates to plan content requirement #1): the CP fails to identify all significant natural, historical and cultural resources to be preserved as a result of the trail planning corridor. Of the 100 pages of the final CP, five (5) pages of Chapter 3 (pgs. 27-31) are dedicated to the "resources to be preserved" (while nearly fifty (50) pages are dedicated to "specific objectives and practices" to be observed).As a result of AMA/ARPA's comments, three new categories of resource themes suitable for preservation were added (i.e., Exceptional Scenic Beauty and Variety; Wilderness and Backcountry Settings; Diverse Ecological Communities and Valued Plant Species). Except for the portion of the ANST traversing the Matatzal Wilderness, none of the new description provided establishes the existence of significant natural, historical or cultural resources within the trail planning corridor. The fact that "astonishing examples of exceptional scenic beauty and biodiversity unique to Arizona" can be seen from the ANST or that there is "astonishing diversity of wildlife species in every region" of the ANST is not sufficient to meet the requirements of Congress or warrant the recommendation of a one-mile travel planning corridor. 27 And, as previously raised in AMA/ARPA comments, only 18% of the 800-mile trail corridor has even been inventoried for cultural resources. A passage-by-passage analysis of the ANST should have been included in the CP along with a disclosure of nationally significant resources within the trail planning corridor to justify the recommended uniform width.As it relates to plan content requirement #2): Appendix F of the CP is a mere recitation of land ownership traversed by the ANST and discussion of generalized methods of federal acquisition or control. It does not contain any specific plan, by fiscal year, for lands to be acquired either by fee title or lesser interest or identify necessary cooperative agreements for specified lands not to be acquired. In light of the fact that over 1/3 of the ANST needs to be relocated, this is a major deficiency.As it relates to plan content requirement #3): there are no site-specific development plans or anticipated costs included in the CP. The Forest Service controls approximately 72% of the trail miles. At a minimum, Forest Service site-specific development plans should have been included along with a disclosure of anticipated costs. The Forest Service's listing of a few priority actions in Appendix E does not satisfy this obligation (none are site specific). Moreover, there is a complete absence of any site-specific development plans or costs from any other federal land management agencies controlling other trail segments (e.g., BLM, NPS, BOR). In fact, the only costs included in the final EA (Table 6 at pg. 98) are Forest Service costs for administering Forest Service segments of the ANST regardless of CP implementation. This does not meet the statutory requirement.The remedy for the failure to include the required plan content information is to obtain it and include the required information in a revised CP. Otherwise, how will the relevant Secretaries be able to make their ultimate right of way determinations in the absence of such critical information needed to weigh the pros and cons of their decision?D. Impermissible Conditions, Objectives and PracticesThe proposed management conditions, objectives and practices in the CP are not supported by an identification of nationally significant, natural, historical and cultural resources in areas through which the ANST passes. The management objectives and practices must directly relate to those identified resources within the recommended trail planning corridor. Further, there is no correlation of many of the CP "recommended" prohibitions to the preservation of said unidentified "nationally significant" resources. As such, there is no justification for the recommended uniform one-mile corridor and the establishment of a recommended "planning corridor" is not required CP content.Further, the inclusion of "desired conditions" is wholly outside the authority of the Forest Service and is not a statutory comprehensive plan content component. The NSTA requires the inclusion of "objectives and practices to be observed in the management of the trail," it does not include a list of "desired conditions" that lead to land management prohibitions under the guise of water resource protection and or plant and wildlife protection. AMA/ARPA contend that the justification for the inclusion of "desired conditions" likely originates from Region 3 Designated Areas, Wilderness, and Wild and Scenic Rivers Forest Plan Revision Process Guidance under the 2012 Planning Rule (Nov. 2015). However, neither this Forest Plan Revision guidance, or the Forest Service planning regulations, are applicable here and should not be utilized in the development of the CP.As stated in AMA/ARPA's comments on the draft CP, many of the CP management "recommendations" will form the basis for land use policy and land use plan revisions and will have undue influence on federal land managers when being considered in conjunction with project level decision-making. None of the management "recommendations" recognize valid existing rights under the mining law or existing land

use authorizations (exploration or mine plans of operation; existing rights of way requiring reauthorization, etc.) or the provisions of the NSTA requiring that full consideration 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." For example, in the Multiple Use section of the CP (pgs. 94-95), the Forest Service recognizes that "[m]ore of the AZNST exists on lands with multiple uses than on protected lands managed primarily for preservation or low impact recreation" but then the CP fails to include related management practices to give effect to that reality. At a minimum, provisions recognizing exceptions for circumstances needed to meet statutory requirements, such as mining laws, statutory multiple use mandates, or laws to protect public health and safety, should be included in several of the management practices in various resource sections. In addition, there is no statutory authority for the Forest Service to "recommend" mitigation requirements be imposed. The remedy for this violation is, at a minimum: a) remove the Water Resource Protection and Plant and Wildlife Protection sections; b) remove all Desired Conditions from all resources in Chapter 3; c) incorporate provisions recognizing the need "harmonize and compliment established multiple-use plans" for all resource sections; d) modify the following Multiple Use Management Practices as shown below in track changes (referencing the relevant CP numbering):

1. When evaluating proposed projects or permitted uses, consider federal land multiple use mandates including MUSY and the Federal Land Policy and Management Act of 1976; the requirements of the General Mining Act of 1872, as amended; the Mining and Minerals Policy Act of 1970; the National Materials and Minerals Policy, Research and Development Act of 1980, as amended; the Energy Act of 2020; and The Infrastructure Investment and Jobs Act of 2021.
4. To the extent not otherwise inconsistent with valid existing rights, land use plans should include protections for the national trail planning corridor and AZNST resources, qualities, values, and associated setting and uses, while providing direction for managing the AZNST for compatibility with other land uses.
5. Analysis of activities that have the potential to impact the scenic, natural, historic, or cultural resources associated with the AZNST should be informed by an agency conducted inventory of national trail resources, qualities, values, and associated settings. The analysis should determine whether projects would substantially interfere with the nature and purposes of the AZNST, subject to valid existing rights and statutory multiple use mandates.
6. Remove in whole [there is no authority to recommend or impose mitigation].

E. Inconsistent Non-Substantial Trail Relocation Standard (16 U.S.C. [sect] 1246 (b)) The CP imposes an unwarranted "equal to or better location" standard for non-substantial relocations of the ANST and requires proponents of relocation to conduct an "optimal location review" prior to submitting a relocation proposal. This unwarranted standard and requirement are inconsistent with the requirements of NSTA and should be removed. Not only are these standards contrary to the NSTA, they are also impracticable and burdensome on proponents who may have a statutory right to conduct activities within and outside of the trail planning corridor and need to relocate the ANST. Further, over 1/3 of the ANST exists on motorized roads (thus requiring trail relocation). It is highly likely that the burden of the "equal or better standard" and/or the optimal

location review process will unnecessarily complicate the relocation and prevent a substantial portion of the ANST from ever meeting the intended purpose of the NSTA. The remedy for this legal issue is to remove reference to the "equal or better location" standard and the "optimal location review" process. In the alternative, exceptions for meeting the standard and having to undertake the optimal location review should be provided for those having valid existing rights within or adjacent to the trail corridor if relocation occurs thereon. AMA/ARPA requests a meeting with the reviewing officer to discuss the issues raised in this objection and a potential resolution of the issues prior to a written response to the objections. Thank you in advance for your consideration of the meeting request, the objections and the proposed remedies offered herein. Sincerely, Steve Trussell