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Director, Ecosystem Management Coordination Planning Team
United States Forest Service
201 14th St SW, Mailstop 1108
Washington, DC 20250
Submitted electronically

Re: Notice of Intent (NOI) comments of the Alaska Miners Association

Dear Planning Team:

The Alaska Miners Association (AMA) writes to comment on the NOI to prepare an Environmental Impact Statement for a land management plan direction for old growth forest conditions across the National Forest System, as proposed by the United States Department of Agriculture (USDA). AMA is a professional membership trade organization established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,400 members that come from eight statewide branches: Anchorage, Denali, Fairbanks, Haines, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome. Our members include individual prospectors, geologists, engineers, suction dredge miners, small family mines, junior mining companies, and major mining companies, Alaska Native Corporations, and the contracting sector that supports Alaska's mining industry.

AMA members conduct business across Alaska, including in the nation's two largest National Forests, the Tongass and Chugach. Activities including access to lands and the ability to explore for, mine, and transport minerals stands to be impacted by the proposed management direction.

From a practical standpoint, the proposed management direction violates several existing federal laws, such as the Organic Act (1897), the Multiple Use – Sustained Yield Act (1960), the National Forest Management Act (1976) and the 2012 National Planning Rule that govern how the USFS manages the national forest system. In Region 10, this proposed action as proposed will also violate the Alaska National Interests Lands Conservation Act (ANILCA) and the Tongass Timber Reform Act (TTRA). And on, it violates the Organic Administration Act (OAA) 16 U.S.C. § 475 and the Multiple Use Sustained Yield Act (MUSYA). 16 U.S.C. §§ 528, 529, and 53 authorize the Secretary *to exercise limited and defined discretion to establish rules regulating access to, and use of, national forests consistent with Congressional policy described in the National Forest Management Act of 1976 (NFMA) as narrowed by legislation specific to the Tongass from ANILCA and the TTRA.*

None of the laws above authorizes or delegate authority to USDA to manage Old Growth on 128 National Forests with a one-size-fits-all top-down Forest Plan Amendment. Neither the OAA, nor the MUSYA nor NFMA provide an intelligible principle for USDA to do so. If construed as conferring authority to make such designations OAA, MUSYA, and the NFMA unconstitutionally conflicts with

Congress's sole authority to "dispose of land" under Article IV, § 3, Clause 2 of the United States Constitution.

All of the laws cited above provide direction and requirements that must be adhered in managing our national forest system. These laws reinforce the concept that our national forests are to be sustainably managed as "working forests" that provide for multiple resource uses, including provided for access across both old growth and young growth swaths for forest system lands. The national forest system is not a defined Park system and should not be managed as a park.

For the purpose proposed the concept of "consistent direction" across all national forest violates the Constitutional Nondelegation Doctrine. Congress has not authorized the USDA or the USFS to manage the national forest system in a manner that contradicts the reason national forests are established which is in part to furnish a "continuous supply of timber" for the use of the citizens of the United States. With respect to the national forests in Region 10, Congress has passed legislation, ANILCA and TTRA, which prevents the USFS from managing those national forests solely as preserves.

The recent US Supreme Court decision in *West Virginia vs. EPA* highlighted a fundamental rule of statutory interpretation called the "major questions doctrine." This prudential doctrine requires that an agency point to a "clear congressional authorization" when claiming authority from a statute. Again, the USFS does not have "clear congressional authorization" to preserve the national forest system and put it off limits to the multiple use of timber harvest. And as stated before, Congress has told the USFS that the forests in Region 10 cannot be managed solely as preserves. The opinion authored by Chief Justice Roberts stated that, "A decision of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body." The major questions doctrine squarely applies to the proposed management scheme being developed under the "consistent direction" approach.

USDA's proposal to manage old growth timber on 128 national forests is exactly the kind of one-size-fits-all approach that always harms Alaska. The Forest Service must stop this illegal activity and once again begin to manage the national forest system for the purposes intended by Congress, not for purposes created out of whole cloth by the USFS.

Thank you for the opportunity to comment.

Sincerely,



Deantha Skibinski
Executive Director