ALASKA MINERS ASSOCIATION

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July 5, 2023

Ms. Tracy Stone-Manning, Director
Bureau of Land Management
1849 C St NW Room 5646
Washington DC 20240
Attention: 1004-AE92
Submitted via Federal eRulemaking Portal www.regulations.gov

Re: Proposed Rule on Conservation and Landscape Health (88 Fed. Reg. 19583, 04/03/2023)

Dear Director Stone-Manning:

The Alaska Miners Association (AMA) writes to comment on the Department of Interior, Bureau of Land Management (BLM) Conservation and Landscape Health Proposed Rule, 88 Fed. Reg. 19583 (April 3, 2023) (Proposed Rule).

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. Many AMA members operate on federal mining claims on BLM lands, actively explore for minerals on BLM lands, and require access across BLM lands to patented mining claims, mining claims on state land and mining activities on Native corporation lands.

To begin, AMA recommends that BLM withdraw the proposed rule as it is not needed, is not consistent with the Federal Land Policy and Management Act (FLPMA), would require Congressional action and thus exceeds BLM's authority to promulgate, and would be detrimental to the mineral industry in Alaska. If the rule is not withdrawn, BLM lands in Alaska should be exempt from the rule as the rule is inconsistent with, and potentially in violation of, the Alaska National Interest Lands Conservation Act (ANILCA), passed by Congress in 1980. If Alaska is included, it is undeniable that there would be significant impacts on our members and their ability to develop the critical and strategic mineral supplies our nation desperately needs and BLM must fulfill its legal obligations to do an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA).

It is also undeniable that the Proposed Rule fundamentally changes how the United States government manages millions of acres of BLM lands in Alaska without Congressional authorization. Indeed, Congress. The planning processes in these areas is well evolved and such changes would take years to implement by local staff that are already overwhelmed by their current commitments. Such on the ground implementation challenges and the realities of how they would affect minerals and other important uses of BLM lands are largely ignored in the Proposal Rule and must be considered before any rule is finalized.

The cost of this regulation would be staggering in terms of its economic impacts and its costs of implementation and thus requires Congressional action. Moreover, as the Supreme Court said in *Biden v. Nebraska* (Student Loan Case) on June 30, 2023:

> *The Secretary's assertion of administrative authority has "conveniently enabled [him] to enact a program" that Congress has chosen not to enact itself. West Virginia, 597 U. S., at ___ (slip op., at 27). (Slip Op. at 21-22).*

The Supreme Court also outlined the "major questions doctrine" to affirm that federal agencies must have clear Congressional authority when regulations issues of importance to the American public (*West Virginia vs EPA*) when it stated:

> *...the Supreme Court has rejected agency claims of regulatory authority when (1) the underlying claim of authority concerns an issue of "vast 'economic and political significance'" and (2) Congress has not clearly empowered the agency with authority over the issue.*

The Proposed Rule will absolutely have "vast economic and political significance" and would govern land use across millions of acres of public lands. That Congress has chosen not to enact the rule BLM seeks to promulgate here is seen from the fact that in 2016 Congress nullified the substantially similar "Planning 2.0 Rule" that was nullified pursuant to the Congressional Review Act and meets both the two requirements to be considered a major question.

Federal, Nationwide comments on the Proposed Rule

We agree with the discussion of nationwide policies outlined in comments submitted by our federal partners at the National Mining Association and American Exploration & Mining Association. We wholeheartedly endorse their comments and wish to incorporate by reference their comments, particularly on the federally-managed lands policies and implications from this Proposed Rule, including:

The Proposed Rule violates and is inconsistent with the Federal Land Policy and Management Act.

While the Proposed Rule references the Federal Land Policy and Management Act of 1976 (43 U.S.C. §§ 1701 et seq.) (FLPMA), it fundamentally violates FLPMA in multiple ways, including illegally adding "conservation" as a "use" when Congress did not include it in FLPMA's specific list of uses (FLPMA Section 103(l)); redefining key terms already defined by Congress in FLPMA, "multiple use" and "sustained yield" (FLPMA Section 103(c and h)); contorting the scope and definition of "areas of critical environmental concern" beyond FLPMA's scope and using current Administration "conservation," "restoration," and "ecosystem resilience" policies to impermissibly withdraw public lands from public use in violation of FLPMA § 204.

In the Proposed Rule, BLM asserts that FLPMA authorizes the agency to "put conservation on an equal footing with other uses." 88 Fed. Reg. at 19584. We disagree. Congress was clear in FLPMA's Declaration of Policy in Section 102(a)(12) that: *"The public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21(a) as it pertains to the public lands."* It is clear conservation is **NOT** a Multiple Use under FLPMA, and the approach in the proposed rule is unlawful.

In addition to illegally equating conservation with other land uses, the Proposed Rule also authorizes the use of conservation leases to dedicate BLM lands to conservation. Under Section 6102.4, conservation leases can be issued for either restoration and land management or to mitigate the impacts of other projects. The leases can be issued to individuals, businesses, nongovernmental organizations, or tribal governments, have no acreage limits, and have discretionary term limits "consistent with the time required to achieve their objective" (88 Fed. Reg. at 19586). But FLPMA does not authorize permits "intended exclusively for conservation use." A complete reading of FLPMA Section 302 reveals that leases are authorized to promote use and development – **not** to put lands off-limits to development:

> *(b) In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns.*

The FLPMA violations keep right on going. The Proposed Rule also revises the framework for establishing Areas of Critical Environmental Concern ("ACEC"); it would prioritize the creation and management of these areas and eliminate important processes in creation of new ACECs. ACECs are designed to be used to provide for "special management attention" in areas with "important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." BLM would impermissibly alter these criteria, substituting the criteria of "relevant and important" (88 Fed. Reg. at 19593) and broadly authorizing ACECs to "protect" those BLM-selected resources. The Proposed Rule fails to recognize that many special and important areas have already been protected by specific land use designations (e.g., wilderness areas, National Parks, refuges, etc.) and additional authorities are available to protect them in individual project reviews and decisions. Moreover, consistent with the definitions of "special" and "important," ACECs were never intended to be used, as landscape level conservation practices or a *de facto* withdrawal tool, as BLM would do in the Proposed Rule. BLM has already often misused ACECs as a tool to prohibit or severely restrict all kinds of development activities in such areas. Without careful direction, the implications of the Proposed Rule are that ACECs should address any areas where: (1) land health standards are not being met or (2) intact landscapes exist; in some places, these would encompass entire planning areas. Further, the Proposed Rule suggests that ACECs should be established to not only protect existing conditions but also what might happen in the future due to climate change. ACECs are inappropriate as mechanisms to maintain the ill-defined concept of ecological resilience. None of these proposed ACEC expansions are permitted under FLPMA. ACEC designations have historically been abused, particularly in Alaska. Please reference further below for our specific Alaska-based comments on ACECs.

Finally with regards to FLPMA, the Proposed Rule creates inconsistences with BLM's 43 CFR 3809 mining regulations per FLPMA's mandate that mining activities must prevent unnecessary or undue degradation (UUD). The UUD provisions in the 43 CFR 3809 regulations contain explicit directives that mineral activities must comply with all applicable state and federal regulations to protect the environment and cultural resources and satisfy a long list of environmental performance standards. Prior to commencing mineral activities on public lands, project proponents must provide BLM with financial assurance (reclamation bonds) to guarantee that lands affected by exploration and mining will be properly reclaimed. In Alaska, the reclamation requirements and financial assurance are taken a step further and carefully managed. Mines must obtain approval of their reclamation plan from the State Department of Natural

Resources Commissioner prior to operation, as well as approval of financial assurance in place in the event reclamation cannot be performed by the company. Over $800 million is held in financial assurances for Alaska's large mines; a bond pool agreement exists between the State of Alaska and BLM for early-stage mining exploration projects, placer mines, and other small scale mining activities.

The current UUD mandate in FLPMA is exceptionally effective at protecting the environment because it is a dynamic, activity-specific, and site-specific regulatory mechanism applicable wherever multiple use activities occur on public lands, and BLM has not identified any problems with this implementation. In implementing the UUD directive, BLM has the necessary authority to custom-tailor the interpretation and application of UUD for all types of multiple uses to fit the activities involved and the site-specific environmental and resource conditions at each particular multiple use project. In the context of UUD, the Proposed Rule is seeking to fix a problem where none exists.

BLM is proposing to re-define UUD as "harm to land resources or values that is not needed to accomplish a use's goal or is excessive or disproportionate." This proposed definition is essentially a broad restatement of how BLM has interpreted and implemented the UUD mandate for nearly five decades and administered multiple uses on public lands to ensure compliance with the UUD standard.

The Proposed Rule would substitute the UUD standard with a zero-impact standard that would be enforced at many newly designated ACECs, on conservation leases, and on intact landscapes. The Proposed Rule would expand the framework for making land health assessments to "allow for informed management decisions" on BLM lands, where the existing regulation limits land health assessments to grazing lands only. In contrast to a zero-impact standard, the UUD policy in FLPMA Section 302(b) **authorizes necessary degradation of the public lands resulting from multiple uses**. A plain language reading of UUD is that it authorizes degradation that is unavoidable in order for the multiple use to occur. In other words, the degradation is necessary or due.

In managing the public lands, BLM must respond to the entirety of Congress's intent and directives in FLPMA and carefully balance both the FLPMA Section 102(a) multiple uses directives and avoid UUD. These statutory directives, which must be read together, compel BLM to authorize multiple uses that comply with the UUD mandate to protect the environment. BLM cannot use the Proposed Rule to administratively insert a zero-impact conservation objective or a land preservation mechanism to prohibit development on ACECs, conservation leases, or on intact landscapes.

The Proposed Rule is inconsistent with the Mining Law.

The Proposed Rule substantively conflicts with the Mining Law. FLPMA expressly amends the Mining Law, in a very intentionally narrow and limited way as enumerated in Section 302(b), which clearly establishes Congress' intent that FLPMA would not change the Mining Law except in the following ways, the first three of which are quite limited in their scope:

- FLPMA Section 314 requires claim owners to record their claims;
- FLPMA Section 603 establishes the provisions for mining claims in Wilderness Study Areas;
- FLPMA Section 601(f) requires mining activities to comply with an "undue impairment" standard to protect scenic, scientific, and environmental values of the public lands in the California Desert Conservation Area; and
- All mineral activities must prevent unnecessary or undue degradation.

- According to the BLM's website as recently as July 1, 2023, *"Mineral development is an important land use within the BLM's multiple-use mandate. In communities across the country, mining provides jobs, economic activity and important commodities that are essential to maintain a high quality of life."*

The Proposed Rule disregards Congress' narrow amendment of the Mining Law in all the ways addressed in the preceding Section I. The open access and tenure mandates of the Mining Law would be undermined by the Proposed Rule:

The Mining Law authorizes and governs the exploration, discovery and development of valuable minerals, and allows citizens of the United States the opportunity to enter, use and occupy public lands open to location to explore for, discover, and develop certain valuable mineral deposits (30 U.S.C. §22). Section 22 ensures pre-discovery access, use, and occupancy rights to enter lands open to location for mineral exploration and development. Section 22 of the Mining Law says:

> *"Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States."*

Prohibiting or restricting locatable mineral exploration and development on conservation lease lands because mining is not compatible with a conservation lease is contrary to the rights granted by Section 22 of the Mining Law.

The Proposed Rule should acknowledge that the BLM's Multiple-Use mandate is three-dimensional and includes the subsurface estate; accordingly, conservation leases and ACECs should not interfere with mineral exploration on public lands or access to known mineral deposits or other non-renewable deposits.

Per NEPA, the BLM must prepare an Environmental Impact Statement for the Proposed Rule.

In the Federal Register notice for the Proposed Rule, BLM states that it intends to apply the Department's Categorical Exclusion (CATEX) provisions and that BLM is not required to prepare a NEPA document, either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), to assess the impacts of this proposed rule. Similarly, at a May 16 Congressional Hearing, Director Stone-Manning asserted that BLM is not obligated to prepare an EA or an EIS because the rule is "largely procedural." **These assertions strain credulity** for a proposed rule that will impact 245 million acres of public lands, which are "an economic driver across the West" according to BLM's press release unveiling the Proposed Rule. Yet, BLM provides no explanation, justification, or analysis to support its asserted application of a CATEX. Because of the radical changes the rule would make to land use planning on BLM lands and specifically the potentially significant effects on critical and strategic mineral supplies, an EIS is necessary and legally required.

Alaska-Specific comments on the Proposed Rule

AMA advocates for the multiple use management of BLM Public Lands, consistent with FLPMA. AMA has long advocated for making BLM lands in Alaska available for mining exploration and development. AMA has also stressed the importance of BLM lands in providing access both to resources on BLM lands, and even more significantly, the importance of BLM lands in providing access to state and private lands,

including Alaska Native Corporation lands, in Alaska. AMA has expressed these concerns in extensive comments on BLM Resource Management Plans (RMPs) in Alaska, a few samples of which are attached. RMPs for BLM's Alaska lands have demonstrated that the existing federal statutes, regulations and rules provide more than adequate protection for conservation of resources, additional restrictions on development in the proposed rule are not necessary. While the Proposed Rule makes general statements about the ongoing and future degradation of BLM lands, it cites no specific evidence that it is actually occurring due to existing and likely future uses. This is especially the case where such uses encompass only very small areas of otherwise undisturbed lands, like in Alaska. These realities again must be acknowledged and addressed before radically changing how Federal lands are managed.

The Proposed Rule disregards, and is in clear violation of ANILCA.

ANILCA designated 135 million acres, approximately 60% of ALL Federal lands in Alaska into National Parks and Preserves, National Wildlife Refuges, and National Wilderness areas, and National Wildlife and Scenic Rivers. In addition to six BLM-managed Wild and Scenic Rivers, ANILCA set aside over 2 million acres of BLM lands as the Steese National Conservation Area and White Mountains National Recreation Area. Remaining BLM lands were intentionally left as multiple use lands, part of the balance of "public lands necessary and appropriate for more intensive use and disposition."

Congress, in 1980, determined that ANILCA provided the proper balance between conservation and resource development in Alaska.

ANILCA Section 101(d):

> *"Purposes: This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people;* ***accordingly, the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby."***

ANILCA prohibits the study and withdrawal of federal lands without Congressional approval.

ANILCA Section 1326(b) restricts all single purpose studies to establish new conservation areas in Alaska.

> ANILCA Sec.1326(b) *"No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation areas or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress."*

In any rulemaking, BLM must clearly define how its proposal will interact and comply with other Federal laws. This is extremely important to Alaska Native entities, as well as State of Alaska and many other stakeholders including our members. For example, there are potential conflicts with outstanding land conveyances under ANILCA as well as its provisions for protecting subsistence uses. The failure to even

acknowledge ANILCA requirements in the Proposed Rule is a major deficiency and reason for the Proposed Rule to be withdrawn, if not in its entirety than as it applies specifically to Alaska.

The proposed rule proposes improper emphasis on designation of Areas of Critical Environmental Concern (ACECs) in the RMP process.

We strongly oppose the proposed changes to the ACEC guidelines and process in the proposed rule. BLM already over-emphasizes ACECs in its Alaska RMPs, both in terms of numbers and overly expansive scales of ACEC. This leads to unnecessary restrictions on non-conservation land uses in these areas. BLM's existing designations of ACECs already fail to consider existing state and federal authorities for resource protection, particularly in ACEC designations based on fisheries. In Alaska, the Alaska Department of Fish and Game (ADF&G) has the primary function of ensuring protection of fisheries throughout the State as well as their uses, including for subsistence activities. ADF&G works closely with the U.S. Departments of Commerce, Interior, and Agriculture, and perhaps most importantly with local stakeholder groups, in specific areas and for certain species protection. BLM has provided no justification why expanded ACEC protections are needed for Alaska, especially balanced with the fact they are likely to severely limit opportunities for important mineral and infrastructure development. Finally, in developing RMPs in Alaska, BLM conducts extensive consultation with the State to obtain their input on specific provisions. For the Proposed Rule, no such consultation occurred and this must be undertaken before a rule is finalized.

Specific examples of proposed changes that should be rejected include the following sections of the proposed rule:

1610.7-2 (c) – This section requires BLM to identify and seek nominations for ACEC designations early in the planning process, including in (c)(3) during scoping.

Identification of ACECs early in the process is not appropriate, since NO data exists at that point to determine the significance or uniqueness of any area or feature. Soliciting nominations for ACECs as a specific step in the BLM planning process adds additional time to the already over-long BLM planning process. Any planning effort should **not** begin by pre-determining that certain areas deserve a higher level of protection before any management objectives have been established.

Requesting nominations for new ACEC's early in any planning process skews any impartial evaluation of BLM lands statewide. It compromises BLM's **mandate** to provide for a full range of multiple use opportunities on public lands and biases the process towards further land use restrictions and closures.

ACECs should only be considered after all data collection has occurred and the scope and existence of significant resource values are determined.

The identification of new ACEC's should be a **final** product of BLM's integrated planning effort following detailed resource inventories, data review, public comment, and analysis. The plan should identify all resources (including non-biologic) in any area being considered for ACEC designation and determine if the addition of an ACEC designation is absolutely necessary to achieve the management objectives for the specific area.

During preparation of the Central Yukon RMP, BLM's decision to add a specific step for ACEC nominations resulted in numerous areas being nominated and analyzed that did not have any resource values that justified ACEC designation, but created expectations in a segment of the public that these areas would be

automatically designated ACECs. AMA offered detailed comments on this issue in our letter to Shelly Jacobson, Field Manager for BLM's Fairbanks District Office, in a letter dated August 29, 2014 *(copy attached).*

Rules governing the criteria for determining and applying ACEC designations need reform.

ACEC designations to date in Alaska are extremely inconsistent in size, purpose and documentation. NO statewide review has ever occurred to ensure that the interpretation of Relevance and Significance are applied consistently by different planning groups in different regions. This new proposed rule would only further this imbalance in application.

The *Relevance and Importance* criteria which must be met to qualify for any ACEC designation should be reviewed and stringently defined based on the resources present in the entire planning area and not as individual areas. This review can only be adequately performed after the completion of planning related inventories and data review, including bedrock and surficial geologic mapping and soil and mineral inventories and assessments.

1610.7-2(d)(1) Relevance – "The area contains resources with significant historic, cultural, or scenic value; *a fish or wildlife resource, a natural system or process*; .." (emphasis added).

As drafted, "significant" only qualifies historical, cultural or scenic values, so the rule determines that any area with ANY fish or wildlife resource and natural system or process" is relevant. This is inappropriate. Virtually all BLM land in Alaska has at least some value for fish or wildlife. Even within the existing ACEC framework, BLM has too often designated ACECs without justifying the **significance** of any fish or wildlife resource, and has failed to justify why any Special Management is required to meet management objectives, including actual current and potential threats to these resources.

1610.7-2 (i)(3) – Annual Reporting Requirements – Considering the significant number of ACECs being proposed in recent BLM RMPs for Alaska, these annual reporting requirements, as well as potential activity plans for individual ACECs, will add a significant, unfunded workload for BLM staff. For example, indications are the final Central Yukon RMP may include as many as 26 ACECs. This is just one of nine RMPs listed on BLM's Planning website for Alaska. Overall, BLM has willfully ignored the extraordinary implementation requirements of the Proposed Rule at a time when critical and strategic mineral projects are not moving forward. In no way does the Proposed Rule streamline processes and it will thoroughly overwhelm already overburdened field office staff. Congress has specifically directed that the Administration focus on ways to make permitting for critical mineral and infrastructure project on Federal lands more efficient; this will not be accomplished under the Proposal Rule. BLM must realistically evaluate these implementation requirements and challenges in all regions, including in Alaska.

Existing RMPs governing BLM lands in Alaska more than adequately provide for conservation, including any possible designation of ACECs. Additional authority is not necessary.

BLM manages 70 million acres of land and minerals in Alaska, plus millions of additional acres of mineral resources under other federal lands. This is by far more BLM land than in any other state. To put this in perspective, 70 million acres is nearly as large as the entire state of Arizona. Since the late 1960s, many of these lands have been off limits to mineral exploration and potential development due to withdrawals to enable the settlement of Native land claims that resulted in the 1971 Alaska Native Claims Settlement Act (ANCSA) and ANILCA. Many of these BLM lands remain withdrawn.

AMA has been an active participant in the development and implementation of the BLM Resource Management Plans in Alaska. BLM has adopted six RMPs for large areas of BLM land (plus two RMPs for military lands) and is in the process of finalizing another RMP that includes 13 million acres of BLM Public Lands.

The RMP and related EISs for every BLM Alaska RMP have included alternatives that significantly restrict mining and access inconsistent with FLPMAs multiple use mandate. We strongly believe that the Proposed Rule, if adopted, will bias the selection of the preferred alternatives to those most restrictive, further limiting, or potentially eliminating and mineral exploration and potential development on BLM lands in Alaska.

BLM has already over-used and inconsistently designated ACECs in the Alaska RMPs, and the agency often applies unnecessary restrictions on land uses within the ACECs. BLM's existing designation of ACECs fails to consider existing State and Federal authorities for resource protection, particularly in ACEC designations based on fisheries.

The proposed rule prioritizes ACEC designation and conservation and preservation over other **all other** uses, no matter the public need (e.g. critical materials) for other uses. If BLM land has ACEC values or conservation values, it would then be required to be managed for those uses to the exclusion of other multiple use.

The following is a summary of significant concerns that AMA has repeatedly raised in the process of commenting on all Alaska RMPs. NONE of these are resolved by the proposed rule:

- There has been inconsistent use of ACEC designations in BLM planning efforts statewide, reflecting a lack of clear criteria as to what justifies an ACEC designation;
- Many existing ACEC designations are not justified because existing State and Federal regulations provide protection for the resources that were used to justify the designations;
- When making existing designations, BLM often fails to adequately evaluate OR consider the mineral resources of the areas designated;
- ACEC's unnecessarily restrict access to, and exploration of and development of mineral resources;
- BLM has failed to follow through on provisions of past plans that called for revocation of land withdrawals within many existing ACECs.
- BLMs planning process allows public nomination of ACECs to be added but has NO process to periodically evaluate the continuing need for an ACEC, remove the designation, or allow for public request for evaluation and removal.

Existing RMPs in Alaska have taken years to develop. Adding the requirements of the proposed rule will further delay implementation of these plans.

Most BLM lands in Alaska have approved Resource Management Plans – each has taken years, in some cases, decades to develop. This proposed rule would only add additional time to the already-difficult process. The proposed rule requires additional analysis, and adds to the existing complexity and volume of BLM RMPs.

Recent Alaskan RMPs are already too long and complex for organizations such as AMA, much less the general public, to fully analyze and understand. For example, the Central Yukon Draft RMP, EIS and Appendices issued in 2020 was 1000 pages, including nearly 100 pages of maps. This planning effort

started in in 2013, and is not yet complete a decade later. Rather than add to the complexity of and time to prepare RMPs, as this rule would certainly do, BLM needs to **implement** existing plans – not add additional steps and issues to the process. See attached letter dated June 7, 2021, from AMA to Chel Ethun, BLM Central Yukon Field Office regarding AMA comments on Central Yukon RMP.

For example, AMA is waiting for BLM to complete amendments to five RMPs to address revocation of outdated ANCSA Section 17 (d)(1) withdrawals. Most of these withdrawals have been in place since the early 1970s. They were put in place to enable land selections by Alaska Native Corporations under ANCSA and for potential inclusion in conservation lands, the latter resolved by ANILCA in 1980. BLM's RMPs have recommended revocation of most of these withdrawals, but few have been revoked and decisions on revocation have resulted in on-and-off actions by BLM that change with every change of administration. BLM had committed to completing amendments to five RMPs by April 2023, but BLM has again delayed a decision on these amendments. Adding this new rule will further delay these amendments. See attached letter dated October 14, 2022, from AMA to BLM regarding "PLO EIS."

The proposed rule fails to consider that BLM lands in Alaska are crucial in providing access to state and private lands.

BLM lands in Alaska are crucial for providing access to state and private lands, and in many instances the only access to these lands is across BLM lands. Under the Statehood Act and other federal laws, the state was granted nearly 105 million acres. Under the Alaska Native Claims Settlement Act (ANCSA), Alaska Native Corporations were granted nearly 46 million acres. In addition, many Alaska communities are surrounded by federal lands with no developed overland access. The proposed rule would enable BLM to create barriers to building communication lines, roads, railroad, and pipeline access routes to these non-federal lands and communities.

Recognizing the need of future access to these lands and communities, Congress included Title XI of ANILCA to ensure future access could be developed across federal lands. Here is the beginning of the preamble to ANILCA Title XI:

> "SEC. 1101. Congress finds that -
> (a) Alaska's transportation and utility network is largely undeveloped and the future needs for transportation and utility systems in Alaska would best be identified and provided for through an orderly, continuous decision making process involving the State and Federal Governments and the public;"

Very few of the provisions of Title XI apply to BLM lands, for the simple reason that Congress considered FLPMA, passed 4 years prior to ANILCA, provided for an adequate process for future transportation and utility needs across BLM lands. In Alaska, recent BLM Management Plans have increasingly restricted access, and this proposed rule would enable further restriction on crucial access to state, private, and Native Corporation lands and Alaska communities.

Additional Specific Comments:

AMA offers the following additional and assorted comments on response to elements of the Proposed Rule:

<u>6101.4 Definitions</u>

Definition of Intact landscape: the last sentence should be deleted. It is a policy, not a definition. It reads: "Intact landscapes have high conservation value, provide critical ecosystem functions and support ecosystem resilience."

Definition of "Permittee" should be expanded to include federal mining claim holders.

Section 1610.7-2(a) should recite that conservation leases should be restricted to a single MSTR section, that they should be limited to the smallest area necessary to achieve the specified purpose, that they should be compact and that they should never exceed a section boundary.

Section 1610.7-2(i)(2) Conservation leases should not interfere with access to inholdings, including mining claims, to known mineral deposits or to remote areas not on existing highways.

Section 1610.7-2(j) ACEC's should have a sunset provision. They should be renewable for only one additional term, if at all.

Section 6102.2(a) requires that when revising a Resource Management Plan, BLM will "identify intact landscapes on public lands that *will* be protected from activities that would permanently or significantly disrupt, impair or degrade the structure or functionality of intact landscapes." This section prioritizes protection of intact landscapes over all other uses that may impact those landscapes, without consideration of the value of the other uses. If BLM determines an area is "an intact ecosystem," under the Proposed Rule BLM must manage that land to protect that ecosystem to the exclusion of other non-conservation uses, with no option to consider other potentially high public values. Much of BLM's lands in Alaska could be considered intact ecosystems as there has been very limited development. As such, the language implies that most if not all non-conservation uses should not be allowed in these "intact areas;" effectively all BLM-managed lands in the State. As a result, BLM's statement that energy development, mining, grazing, timber, and other uses will continue is false in Alaska and is in **direct violation** of BLM's Multiple Use mandate under FLPMA.

If BLM decides to finalize the Proposed Rule, it must acknowledge the unique nature of undeveloped areas of Alaska and that protection of all intact landscapes in places like Alaska is not practicable or necessary.

Section 6102.4(a)3)(ii) should clearly state that access across ACECs to inholdings of any nature, including mining claims, to known mineral deposits or to remote areas not on existing highways will not be interfered with.

The definition of high-quality information should be amended to include knowledgeable educational and private sector entities including trade associations.

Section 6102.5 Management actions for ecosystem resilience.
(2) "Develop and implement strategies, including mitigation strategies, and approaches that effectively manage public lands to protect resilient ecosystems". This statement improperly establishes protection of resilient ecosystems as the overriding management on BLM lands.

At a minimum, this will place extraordinary additional requirements on BLM field staff to determine what ecosystem resilience means, how it should be measured, and how to protect it, including the need to complete health and watershed assessment nationwide. This is in **direct violation** of BLM's multiple use mandate under FLPMA.

The Proposed Rule is direct conflict with the supply chains need to meet the Biden Administration's energy transition goals, as well as producing the minerals society needs.

Global mineral demand is skyrocketing, and recent events have proven that the United States has significant supply chain vulnerability, particularly for minerals. In addition, the Biden Administration has stated lofty goals for a transition to alternative energy grids. According to the International Energy Agency. this and the existing need for minerals will quadruple the demand by 2040 for the minerals needed to build wind turbines, solar panels, and electric vehicles. A faster energy transition — reaching net zero globally by 2050 as the Biden Administration has repeatedly called for— would require critical mineral inputs to increase **sixfold by 2040**.

Solar panels require silver, tin, copper, and lead; wind turbines use rare earths, copper, aluminum, and zinc; electric vehicles are built with copper, aluminum, iron, molybdenum; and rechargeable storage batteries use lithium, vanadium, nickel, cobalt, and manganese. Approximately 40 percent of the gold now produced is used in electronics and computer chips that are needed for clean energy technologies to meet carbon emission reduction objectives to address climate change. Copper, with its flexibility, conformity, conductivity, and resistance to corrosion, make it an ideal and essential clean energy metal. Forty-three percent of U.S. copper demand comes from the construction industry, as the average American home contains 439 pounds of copper. An electric vehicle ("EV") uses approximately four times as much copper as a conventional car. Steel is used to reinforce concrete and other construction materials and 6 billion tons of steel are used across the U.S. National Highway System. The steel needed to construct America's project requires coal in its final manufacturing. Other metals important to steel alloys, including manganese, chromium, nickel, aluminum, vanadium, tungsten, titanium, cobalt, and niobium, are also in high demand.

The value of secure domestic critical and strategic mineral supplies has been broadly recognized by this Administration, including to achieve its near- and long-term clean energy and conservation goals. The crisis that is upon us in terms of the volumes of minerals that will be required to achieve these goals is well acknowledged and staggering in scale and urgency. Unfortunately, like so many other actions that this Administration has put forward on individual mineral projects and through broader rulemakings and planning actions, none of this is recognized in the Proposed Rule. It does not in any way assess how the provisions could affect domestic mineral production on BLM lands. Without such detailed analysis and consideration in finalizing the Proposed Rule, its adoption could lead to more degradation of the environment than the benefits it purports to achieve. Here again, this is a strong rationale to prepare a thorough NEPA analysis, including evaluation of the No Action Alternative.

Alaska by its geologic character is extremely rich in minerals and has potential for many elements not found in the contiguous US. Because of the early withdrawal of numerous conservation lands, the majority of Alaska, including BLM lands have been poorly mapped and the mineral potential of the State overall is still poorly understood. Assuming that "conservation of intact ecosystems" is automatically the highest and best use of any land parcel is short-sighted and inappropriate considering the US other needs for materials and energy.

Permitting delays

Unfortunately, a lengthy, inefficient federal permitting system has resulted in the United States being increasingly dependent on foreign sources of strategic and critical minerals. We are failing to develop infrastructure or critical minerals projects in a timeframe that would allow the United States to

achieve its ambitious clean energy objectives, reduce our reliance on China and other adversaries for critical minerals, and strengthen our critical minerals supply chains. This is largely due to lengthy permitting delays and uncertainties which place the United States at a competitive disadvantage for purposes of attracting investments in mineral development. As noted previously, BLM should be looking to make project reviews more efficient rather than creating unjustified and burdensome new requirements such as this Proposed Rule. To further add to that, the volume of litigation that will result from this regulation is a further hindrance to getting mineral projects or anything else including solar, wind and transmission projects permitted on BLM land. Many of the terms in the proposed regulation are vague and will certainly be tested in court by those opposing development projects.

Conclusion

The Proposed Rule is inconsistent with law and unnecessary, especially in places like Alaska where the existing RMP process is working and there is no evidence of current or likely undue degradation of BLM lands. Therefore, AMA recommends that BLM withdraw it immediately. If the rule is not withdrawn, BLM lands in Alaska should be exempt from the rule.

Thank you for the opportunity to comment.

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