

August 15, 2023

Director Tracy Stone-Manning
U.S. Department of the Interior, Director (630)
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240
Attention: 1004-AE78

Submitted electronically via regulations.gov

Re: Comments on the Bureau of Land Management's Proposed Rule on Rights-of-Way, Leasing, and Operations for Renewable Energy (88 Fed. Reg. 39726)

Dear Director Stone-Manning:

Please accept these comments on behalf of the undersigned organizations on the Bureau of Land Management's (BLM) Proposed Rule on Rights-of-Way, Leasing, and Operations for Renewable Energy (88 Fed. Reg. 39726; Docket No. BLM_HQ_FRN_MO#4500171739) (Proposed Rule). We support the agency's effort to update its regulations related to renewable energy development on public lands and urge the BLM to consider the following as it does so.

I. Introduction and Summary

We applaud the BLM's proposal to revisit its regulations related to solar and wind development on public lands. We hope these rules complement a smart-from-the-start approach to planning that critically and comprehensively evaluates where and how projects will be sited so that any new solar and wind development on public lands avoids impacts to lands and waters, fish and wildlife and habitat, cultural and Indigenous resources, and recreational opportunities. Proper identification and designation of priority areas is critical to the Proposed Rule's effectiveness in ensuring the responsible buildout of renewable energy on public lands. As discussed in detail below, we suggest the following for the proposed rulemaking:

- Incentivize development in priority areas as much as possible, including through the use of reduced rents and fees, extended term lengths, removal of the competitive leasing requirement, and prioritized application review for projects in priority areas.
- Reconsider the proposed rate reductions outside of priority areas, providing robust justification and analysis demonstrating the need, effectiveness, and potential consequences of any such proposal to reduce rents and fees outside of priority areas.
- Reconsider the proposed increased maximum term length for grants and leases outside priority areas to further incentivize development in priority areas.

- To reduce impacts of solar and wind energy development—not simply at the project site, but across the West—consider access to transmission capacity and infrastructure when identifying priority areas¹ and prioritizing ROW application review.
- Minimize proposed changes to the existing, well-structured application screening and prioritization process that would increase agency discretion to potentially prioritize applications outside priority areas where they are likely to encounter opposition and have greater adverse impacts.
- Increase transparency by making data sets publicly available for any Reasonably Foreseeable Development forecasts.

Separately, the BLM must continue its efforts to amend and revise resource management plans (RMPs) to address solar development across the West, and accelerate efforts to engage in similar processes for wind, geothermal, and transmission infrastructure. The effectiveness of the Proposed Rule's revisions to efficiently and responsibly permit wind and solar development on public lands depends on the deliberate and transparent designation of priority areas and robust identification of exclusion criteria. We address the importance of these changes in our comment letter on the BLM's Notice of Intent to Prepare a Programmatic Environmental Impact Statement to Evaluate Utility-Scale Solar Energy Planning and Amend Resource Management Plans for Renewable Energy Development (87 Fed. Reg. 75284). Please see Attachment 1.

As the BLM moves forward with this process, we urge the agency to engage in Tribal consultation on the Proposed Rule and its implementation. Contrary to the BLM's finding, we believe that the Proposed Rule may have substantial direct effects on federally recognized Tribes. Considering this, we urge the BLM to consult with Tribes on the rule in ways that honor the unique historic and current connections of Tribes and Indigenous Peoples to public lands. The agency should also prioritize consultation with State fish and wildlife agencies, as well as consistency with state wildlife action plans, species conservation agreements, and other cooperative management agreements.

These regulatory revisions must be informed by the best available science and lessons learned from permitting in recent decades. Existing renewable development has taught us a great deal about how renewable energy construction and infrastructure affects fish, wildlife, and people. The BLM should evaluate and learn from such development as it plans for future uses on public lands, relying on current science and mapping technology and partnering with other federal

¹ We use the term "priority areas" in this comment letter broadly to include any area BLM identifies as a priority area for wind or solar development, presently or in the future, including Designated Leasing Areas (DLAs), Solar Energy Zones (SEZs), Renewable Energy Development Areas (REDAs), and Development Focus Areas (DFAs).

agencies, especially the Department of Energy, where appropriate. Please refer to Attachment 1 for our recommendations on the proposed Solar PEIS that will complement this proposed rule.

While we understand it may be outside the scope of this rulemaking, the Department of the Interior should explore with federal, state, and Tribal partners, and stakeholders all means of achieving clean energy objectives to reduce overall impacts to and reliance on public lands and waters.² Such opportunities may include distributed generation, expansive rooftop solar, and co-locating solar development with existing roads, transmission corridors, or other energy development. As part of this effort, the BLM should consider reasonably foreseeable demand for renewable energy, incorporating other generation opportunities. This will help the BLM establish appropriately sized priority areas for renewable energy ROWs and enable the BLM to set aside only the amount of land necessary for utility-scale developments on public lands.

Renewable energy projects in low impact areas on public lands will play an essential role in achieving our clean energy goals, but we must also ensure that the impacts of such a build out do not compound the habitat loss and fragmentation that fish and wildlife are already experiencing as a result of climate change and other activities.³ We urge the agency to consider how best to balance a need for greater renewable energy development with other uses of public lands and waters, including outdoor recreation and its significant economic benefit.

II. The agency should amend plans to address wind and geothermal energy development and transmission.

The Proposed Rule focuses specifically on rights-of-way issued by BLM for solar and wind development used to generate electricity on public lands.⁴ The full implications of implementation of the Proposed Rule cannot be separated from BLM's ongoing effort to update, amend, and expand its Western Solar Plan for utility-scale solar development on public lands.⁵ For example, proper identification of appropriate exclusion criteria⁶ and solar energy zones⁷ (designated leasing areas) in the expanded Western Solar Plan is critical to avoiding and minimizing impacts to wildlife resources during implementation of the Proposed Rule.

² See, for example, The Nature Conservancy's Power of Place National Study: <https://www.nature.org/en-us/what-we-do/our-priorities/tackle-climate-change/climate-change-stories/power-of-place/>

³ Amanda Staudt et al. 2013. The added complications of climate change: understanding and managing biodiversity and ecosystems, *Frontiers in Ecology and the Environment*, 494.

⁴ <https://www.federalregister.gov/documents/2023/06/16/2023-12178/rights-of-way-leasing-and-operations-for-renewable-energy>

⁵ <https://eplanning.blm.gov/eplanning-ui/project/2022371/510>

⁶ <https://blmsolar.anl.gov/documents/docs/peis/Exclusions-ROD-Table-A-2.pdf>

⁷ <https://blmsolar.anl.gov/solar-peis/sez/>

The importance of thoughtful planning and “getting it right” in terms of identifying both exclusion criteria and designated leasing areas for *both* solar and wind cannot be overstated in light of the Proposed Rule’s focus on increasing the economic competitiveness of solar and wind development on public lands to accelerate its deployment. With this in mind, we encourage BLM to also expeditiously revisit and update its outdated Wind Energy Development Programmatic EIS (2005)⁸ and IM-2009-43, BLM Wind Energy Development Policy Instruction Memorandum⁹ with the best available science.^{10,11}

Similarly, the Proposed Rule mentions geothermal development only in the context of the 25 gigawatt public land electricity production goal and Renewable Energy Coordination Offices described in the Energy Act of 2020. Given changes in technology and the recent focus by western governor’s on rapidly increasing geothermal development on western lands,¹² we encourage BLM to update the Programmatic Resource Management Plan Amendments for Geothermal Leasing in the Western United States (2008) to incorporate the best available science with respect to geothermal lease stipulations and areas closed to leasing, and to evaluate the potential benefit of identifying designated leasing areas for geothermal development with streamlined permitting requirements. We also recommend that BLM clearly identify how the Proposed Rule applies (or not) to geothermal development on public lands and integrates with existing geothermal leasing and development policies and procedures.¹³

Finally, accelerated deployment of solar, wind, geothermal, and other sources of low carbon electricity is entirely dependent on the ability of new generating facilities to connect to the grid and the capacity of the grid to transport the energy to where it is consumed.¹⁴ Given the importance of increased transmission capacity to achieving our clean energy goals, we also strongly encourage the Bureau of Land Management, U.S. Department of Energy, U.S. Forest Service, U.S. Department of Defense, and the U.S. Fish and Wildlife Service to revisit and update the Programmatic Environmental Impact Statement, Designation of Energy Corridors on Federal Lands in the 11 Western States (2008).¹⁵ This document and its associated Records of

⁸ <https://windeis.anl.gov/>

⁹ https://windeis.anl.gov/documents/docs/IM_2009-043_BLMWindEnergyDevelopmentPolicy.pdf

¹⁰ https://www.esa.org/wp-content/uploads/2019/09/Issues-in-Ecology_Fall-2019.pdf

¹¹ <https://www.usgs.gov/publications/wind-energy-development-alters-pronghorn-migration-multiple-scales>

¹² <https://westgov.org/reports/article/the-heat-beneath-our-feet-initiative-report>

¹³ <https://www.blm.gov/programs/energy-and-minerals/renewable-energy/geothermal-energy>

¹⁴ <https://www.nytimes.com/2023/07/27/climate/electric-grid-ferc-bottleneck.html>

¹⁵ Bureau of Land Management, U.S. Department of Energy, U.S. Forest Service, U.S. Department of Defense, and the U.S. Fish and Wildlife Service. 2008. Final Programmatic Environmental Impact Statement (PEIS) for the Designation of Energy Corridors on Federal Land in 11 Western States (DOE/EIS-0386). <https://corridoreis.anl.gov/eis/>

Decision^{16,17} urgently need to be updated to incorporate changes in technology and incentives altering the projected energy generation build out on both public and private lands,¹⁸ the in-progress expansion and updates to the Western Solar Plan, and the best available science for mapping and planning expanded generation and transmission capacity to avoid unnecessary impacts.¹⁹ This work should be done in coordination with the U.S. Department of Energy's ongoing efforts to identify National Interest Electric Transmission Corridors (NIETC) per its authority under the Federal Power Act.²⁰

a. The BLM must modernize RMPs to use as a basis for effective planning-level decisions.

Modern RMPs are critical for the BLM to effectively manage public lands pursuant to the agency's multiple use and sustained yield mission under the Federal Land Policy and Management Act. One of the fundamental needs for modern RMPs is to guide renewable energy project siting and transmission infrastructure alignments. This need is immediate. The ongoing build out of renewable energy generation, battery storage, and transmission infrastructure is directly influencing the future condition of all other resources and resource uses for which the BLM manages. Modern RMPs provide the BLM with the necessary basis from which to understand the interactions and cumulative implications of energy and transmission build out on other resources and uses.

Currently, the BLM is reacting to project applications and reviewing them one-by-one. This is inefficient. For any solar energy application submitted for a project outside of a priority area, pursuant to Instruction Memorandum 2022-027, the BLM must first screen the project and determine its priority level. Then, for higher priority projects, the BLM conducts the variance process, which includes initial analysis and internal and external engagement. Following those steps, the project is then ready for the NEPA process. Modern RMPs are the most effective tool for the BLM to guide projects to low-conflict areas. Projects proposed in low conflict areas would by default be high priority and could proceed to the NEPA process, resulting in shorter permitting timelines and a smarter and faster transition to clean energy.

The planning process is also an opportunity to understand and address concerns regarding energy and transmission development in certain areas without the pressure of a specific project. This provides an opportunity for broader community-level and other stakeholder support around low-conflict areas. Subsequent projects in these areas would be less prone to

¹⁶ Bureau of Land Management. 2009. Approved Resource Management Plan Amendments/Record of Decision (ROD) for Designation of Energy Corridors on Bureau of Land Management Administered Lands in the 11 Western States. https://corridoreis.anl.gov/documents/docs/Energy_Corridors_final_signed_ROD_1_14_2009.pdf

¹⁷ USDA Forest Service. 2009. Record of Decision: Designation of Section 368 Energy Corridors on National Forest System Land in 10 Western States. https://corridoreis.anl.gov/documents/docs/WWEC_FS_ROD.pdf

¹⁸ <https://www.energy.gov/gdo/national-transmission-needs-study>

¹⁹ <https://www.nature.org/en-us/what-we-do/our-priorities/tackle-climate-change/climate-change-stories/power-of-place/>

²⁰ 16 U.S.C. §§ 791 et seq.

opposition that can delay project approval and implementation. The outcome is a more predictable permitting timeline for projects in low conflict areas.

III. The agency should provide evidence justifying the need for its proposed cost reductions and consider more targeted means of incentivizing development through reduced rates.

A primary element of the Proposed Rule is a fee reduction for new projects. We are concerned there is no evidence supporting the need for a broad change to fee rates. The BLM has not provided evidence demonstrating the proposed cost reductions are necessary to incentivize renewable energy development on public lands. In May 2022, the BLM reduced rents for solar ROWs by 50 percent on public lands. The agency should disclose the outcomes of this action and use the information to inform additional changes.

Across-the-board fee and rent reductions could miss an opportunity to incentivize ROWs in areas with the fewest resource conflicts. We recommend coupling this Proposed Rule with the ROD for the new Western Solar Plan PEIS so that solar and wind ROWs in priority areas would benefit the most from reduced fees and rents. Providing new cost incentives for projects outside of priority areas would undermine the agency's attempts to encourage development in least conflict areas.

IV. The agency should reconsider extending the maximum term length from thirty to fifty years.

We urge the agency to reconsider blanketly extending the maximum term length for leases and grants from thirty to fifty years. While we understand the desire to offer the renewable industry reliability, we caution against routinely permitting industry to occupy lands for renewable energy for generations. Doing so, especially in the case of solar development, will restrict how these areas and resources can be used and enjoyed by people and wildlife alike. This is especially true in light of climate change, and the altered weather patterns and habitat conditions accompanying it.²¹

In the alternative, the BLM should consider offering longer terms only in priority areas, where the agency has already identified where development and long-term occupation would have fewer impacts on resources and other uses. This would further incentivize development in these preferred areas.

V. Make competitive leasing for wind and solar development optional across public lands as a means of further incentivizing development in priority areas.

²¹ See B.C. McLaughlin et. al, Conservation strategies for the climate crisis: An update on three decades of biodiversity management recommendations from science, 268 *Biological Conservation* (April 2022); Nicole E. Heller & Erika S. Zavaleta, Biodiversity management in the face of climate change: A review of 22 years of recommendations, 142 *Biological Conservation* 1 (Jan. 2009).

The Proposed Rule's changes regarding the competitive leasing process address a significant barrier to advancing new wind and solar ROWs in high priority, low conflict areas. The 2016 Wind and Solar Rule requires a competitive leasing process for renewable energy ROWs in priority areas. This process disincentivizes projects in priority areas because prospective developers cannot obtain site control through an SF-299 Application unless they have the highest bid. The competitive bidding scenario gives developers little incentive to invest in baseline studies or other up-front design before the bid results. Combined with a lack of transmission in many priority areas, the competitive leasing process is a significant barrier to developing renewable energy projects in those areas. For many developers, it is more advantageous in terms of cost and permitting time to pursue projects in variance areas where they can get site control immediately without the uncertainties of the bidding process.

Allowing the BLM to accept ROW applications in priority areas without a competitive bidding process is essential for eliminating the *de facto* incentivization of projects in variance areas. For solar, this rule change would be most effective if coupled with a comprehensive Western Solar Plan Programmatic EIS that identifies low conflict priority areas. For example, implementing Alternative 5 in the preliminary Draft Western Solar Programmatic EIS along with the Proposed Rule change would be an effective 2-prong framework for the BLM to meet renewable energy goals through projects in the lowest conflict areas. The BLM needs to update the 2005 Wind Energy Development Programmatic EIS to provide the same plan-level guidance for wind energy ROWs.

VI. The BLM should consider the potential impacts of mining for or acquiring the critical mineral necessary for renewable buildout.

In the Proposed Rule, *Section 2806.52 Annual rents and fees for solar and wind energy development*, the BLM discusses the importance of domestic supply chains. We recognize supply chain issues exist and supplies from allied nations are part of a secure supply chain. Importantly, the U.S. must develop new, comprehensive and effective policy as it relates to mineral sourcing, extraction, processing and manufacturing. While recycling and recovery of critical minerals already in circulation should be prioritized, domestic mining is likely to dramatically increase in order to meet the need for the raw materials needed to manufacture solar panels, batteries, and other infrastructure.

Much like siting of renewable energy development projects and transmission corridors, the development of mining sites, where domestic mining is necessary, also requires forethought and utilization of best practices. Several of our sporting partners produced a report in 2019, *Critical Minerals: A Conservation Perspective*, that highlights the issues while providing

recommendations on policy to mitigate harmful mining practices and poorly sited mines.²² This report demonstrates that the shift to renewable energy, in the absence of sound policy, puts at risk vital hunting, fishing, and outdoor recreation assets.

Finally, to be able to promote the greatest use of solar and wind energy generation on public lands while strengthening the resiliency of domestic energy supply chains²³ we must realize the need to balance responsible domestic production with the highest of environmental and labor standards.²⁴ Taxpayers must receive a fair return on the development of our public lands with appropriate rentals, fair royalties, and maintenance fees to help fund administration and legacy mine cleanups.

With forethought, energy development sites and transmission corridors, similarly to mine sites, should be planned in strategic locations that limit or avoid high-value public lands vital to our angling and hunting traditions and the massive economic benefits these industries provide to the nation. Investments must be made in mapping and further understanding of what resources we have domestically, where they are located, and promoting research and development of new technologies, both in how we process new minerals and how we might recycle more efficiently.

VII. The BLM should include transmission proximity and degraded lands as factors for priority area consideration and designation.

Proper identification and designation of priority areas is critical to the responsible buildout of renewable energy on public lands. Doing so will help conserve and improve key fish and wildlife habitats and areas important for outdoor recreation, including hunting, fishing, camping, hiking, paddling, and other outdoor activities that contribute \$862 billion annually to the economy and supporting 4.5 million jobs.²⁵

a. The agency should include transmission proximity as a factor in designating priority areas.

We applaud the agency's proposal to include proximity to transmission as a factor it considers when identifying and designating priority areas. To achieve clean energy objectives while maintaining sustainable fish and wildlife populations, recreational opportunities and cultural

²² Trout Unlimited, National Wildlife Federation, Backcountry Hunters and Anglers. (2020). *Critical Minerals: A Conservation Perspective.*, https://www.tu.org/wp-content/uploads/2020/08/Critical-Minerals_Interactive.pdf.

²³ The White House. (June 2021). Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth. 100 - Day Reviews under Executive Order 14017., <https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:b116ebd5-832e-3966-93c0-edfe3e17d42f>.

²⁴ <https://www.nwf.org/Educational-Resources/Reports/2022/Critical-Minerals-for-Clean-Energy>

²⁵ US Department of Commerce. Bureau of Economic Analysis. (Accessed Jan 2023). <https://www.bea.gov/sites/default/files/2022-11/orsa1122.pdf>.

values—not simply at the project site, but across the U.S.—the BLM must consider the capacity and location of existing transmission infrastructure and use this information to inform where it will incentivize renewable energy development.

To create effective incentives for the development of low-impact areas, the economic viability of priority areas must be considered. This consideration should be based on proximity to electric infrastructure and grid capacity. To the extent possible, priority areas should be near existing transmission infrastructure, particularly substations, that can accommodate the anticipated new energy generation and transport it to the appropriate market for consumption.

Including access to transmission as a factor the BLM weighs will lead to a more informed planning process for wind and solar energy development.²⁶ Generation resources, like solar and wind, rely on transmission infrastructure to send their energy to the rest of the power grid. Ensuring priority areas have access to transmission makes developers more likely to site projects in these priority areas. As a result, the BLM’s designations will ensure solar and wind developers can more proactively design projects with limited impacts to wildlife, environmental, and cultural resources on public lands.

If the BLM does not adequately account for transmission capacity and potential in priority areas, developers will likely seek to site projects outside of priority areas, where resource impacts may be higher. Further, by incentivizing development where there is capacity on existing or permitted transmission infrastructure, the BLM will limit the potentially significant impacts associated with new transmission and interconnection lines.

b. Include whether lands are already disturbed as a factor in identifying priority areas.

We also urge the agency to add a factor regarding already-disturbed areas that may be suitable for solar and wind development, including degraded lands, brownfields, and former mine sites. Promoting development in areas of previous disturbance that have little remaining natural resource value could help limit new disturbance and associated impacts elsewhere.

c. Incentivize smaller-scale projects in low-impact areas near communities.

In the Proposed Rule, we also urge the agency to include specific incentives for smaller-scale (e.g., less than 20 MW) solar and wind generation projects on public lands that provide energy reliability and resiliency to local communities. The Proposed Rule should consider these incentives for smaller projects that generate energy near where it will be consumed, rather than focusing solely on utility-scale projects that often supply energy to consumers hundreds of miles away. Smaller-scale projects in low-conflict areas, such as brownfields, former mine lands, and other previously disturbed sites, should also receive incentives. Including smaller projects in

²⁶ 88 Fed. Reg. 39726 (Proposed Rulemaking) at 39730.

low-conflict areas near communities would allow the agency to authorize renewable energy ROWs that benefit local communities while maintaining intact landscapes.

VIII. The BLM should reconsider proposed changes to its application prioritization process in 43 C.F.R. § 2804.35, requiring priority review for activities in priority areas and expanding factors to include proximity to transmission, previously disturbed areas and certain important terrestrial and aquatic habitats.

We urge the agency to reconsider its proposed changes to its application prioritization process in 2084.35. While the existing approach may require refinement, increasing the BLM’s local discretion to determine what applications to prioritize based on a variety of factors risks the failure to prioritize applications in a way that incentivizes activity where the agency has already determined through a public process it will have the lowest impact—priority areas. As proposed, each factor carries equal weight and could be considered of equal importance by field staff. As drafted in the Proposed Rule, local staff could exercise discretion regarding how to apply certain prioritization factors, creating regulatory uncertainty from Field Office to Field Office for renewable energy developers operating in multiple states.

We ask the agency to consider maintaining the screening and prioritization structure of the current regulations with minimal modifications, giving clearly defined different weights to different factors. Most importantly, the BLM should give any application in a priority area priority review. We understand the desire to give BLM staff the ability to respond to varying on-the-ground conditions. That said, the agency has already identified priority areas through state and local processes for the purpose of renewable energy generation. These are the areas where the BLM should incentivize activity and review applications first.

Following that, we suggest that resource avoidance (proposed (b)(2)) and transmission proximity are given secondary and equal weight. The remaining proposed factors along with siting in already-disturbed areas, should follow.

a. Include proximity to transmission as a relevant factor for application prioritization.

We urge the agency to include proximity to transmission infrastructure as a criterion for application prioritization. The addition of this factor will ensure the expected and needed buildout of transmission infrastructure informs the BLM’s application review process. Projects that incorporate and rely on existing transmission capacity will have fewer overall adverse impacts and should be prioritized for review as a result.

Various studies estimate the power grid must double or triple the rate of transmission buildout to help states and the federal government meet climate goals and limit harmful pollution from

fossil fuels.²⁷ Such a large-scale footprint of transmission infrastructure can have tumultuous impacts to public lands, if not thoughtfully considered alongside the buildout of wind and solar generation resources.²⁸ Without fully analyzing all related activity and development, including transmission, the agency risks overlooking the direct, indirect, and cumulative impacts to fish and wildlife habitat, nearby communities, and cultural and Tribal resources.

The BLM should also clearly articulate what methods the BLM will apply to evaluate the access to transmission factor. To help the BLM in assessing what methods the BLM should apply in assessing access to transmission, we recommend the BLM coordinates with the Department of Energy (DOE) and relies on the DOE's Needs Study²⁹ and designation of National Interest Electric Transmission Corridors,³⁰ relevant interconnection queues, and existing, relevant analysis of interregional transmission projections, such as the National Renewable Energy Lab's Interregional Renewable Energy Zones in National Transmission Analysis.³¹ Such clearly defined evaluation methods will ensure applicants, affected stakeholders and Tribes can understand the BLM's determinations for priority applications.

Finally, adding transmission as a prioritization factor will harmonize the BLM's regulation with the BLM's proposal to add access to transmission as a factor for priority area identification. Prioritizing applications rights-of-way and ROW corridors and designated lease areas are complementary components of siting renewables on public lands. Adding access to transmission as a factor for consideration to both review processes will ensure consistency among the BLM's regulations and ensure in both instances the selected public lands maximize energy output of the proposed generation resources with minimal impacts to the natural environment and wildlife.

b. Include previous disturbance as a relevant factor for application prioritization.

We also recommend the BLM retain criteria from existing Section 2804.35 regarding previously disturbed sites or areas adjacent to previously disturbed or developed sites.³² Applications for

²⁷ E. Larson et. al., *Net-Zero America: Potential Pathways, Infrastructure, and Impacts Final Report*, Princeton University at 108 (Oct. 2021); See also Gerrard, M.B. (2022). *A Time for Triage*. 39(6) *Envtl. F.* 38. https://scholarship.law.columbia.edu/faculty_scholarship/3867.

²⁸ Bailey Brennan et. al., *A Guide to Responsible Development of Wind and Solar Resources on Public Lands and Waters*, Nat'l Wildlife Fed'n at 21 (Jun, 20, 2023), <https://www.nwf.org/-/media/Documents/PDFs/NWF-Reports/2023/Renewable-Energy-on-Public-Lands.ashx?la=en&hash=D2533DD6F1233BA5AC072A48C937BBC8E61ACDD1>.

²⁹ National Transmission Needs Study Draft for Public Comment, Dep't of Energy (Feb. 2023).

³⁰ 88 Fed. Reg. 30956 *Notice of Intent and Request for Information: Designation of National Interest Electric Transmission Corridors* at 30956-30963 (2023), <https://www.federalregister.gov/documents/2023/05/15/2023-10321/notice-of-intent-and-request-for-information-designation-of-national-interest-electric-transmission#open-comment>.

³¹ David Hurlbut et.al., *Interregional Renewable Energy Zones in National Transmission Analysis*, Nat'l Renewable Energy Lab. (NREL) (Sept. 2022), <https://www.nrel.gov/docs/fy22osti/83924.pdf>.

³² 43 C.F.R. § 2804.35(a)(2).

development in such areas, which could include brownfields, landfills, degraded lands, and former mining lands, should be prioritized to limit development on other, more pristine lands.

Further, while we urge the agency to capture previously disturbed areas within priority areas, we recognize there may be certain degraded lands not captured in formal priority areas. Prioritizing applications on previously disturbed lands would help incentivize development in these areas regardless of priority area designation.

- c. Expressly include important aquatic and terrestrial habitats, including native and anadromous fish habitats, connectivity areas, and migration habitats as screening criteria for identifying low-priority ROW applications for processing outside of priority areas.**

Intact terrestrial and aquatic habitats are crucial for sensitive species, economic opportunity for the outdoor and conservation industries, and clean water resources for local communities. Though buildout of renewable energy infrastructure is critical to addressing supply and demand of future sustainable energy systems, new developments have the potential to fragment habitat, displace species, block natural migration corridors, and provide pathways for invasive species.³³ Therefore, at every stage of the prioritization process, the BLM should ensure sensitive terrestrial and aquatic habitats are primary concerns among other considerations. For a more detailed discussion about the importance these habitats, please see Attachment 1.

- IX. The agency should consider preparing an analysis pursuant to the National Environmental Policy Act on the potential effects of the Proposed Rule.**

While we agree that the Proposed Rule qualifies for a categorical exclusion under 43 CFR Sections 46.205 and 46.210(i), we urge the agency to fully disclose the potential impacts of the action. We are especially concerned that the agency has not publicly disclosed the potential cumulative effects of the Proposed Rule's dramatic fee reduction and the anticipated increase in development as a result that may meet several criteria listed under 43 CFR § 46.215. We request the BLM provide justification for a categorical exclusion, especially given that the agency prepared an environmental assessment when evaluating the 2016 changes to these rules.³⁴

- X. Clarify that applicants may only request alternative requirements for non-substantive provisions in Subpart 2804.**

We appreciate the BLM's effort to clarify in the Proposed Rule that Section 2804.40 Alternative Requirements apply only to the requirements associated with right-of-way applications – not to substantive lease or grant provisions. We also appreciate the added clarity in the Proposed Rule

³³ U.S. Fish and Wildlife Service. "Energy." Accessed July 15, 2023. <https://fws.gov/node/266176>.

³⁴ Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections, 81 Fed. Reg. 92122, 92198 (Dec. 19, 2016)

that an applicant may request alternative application requirements only during the application process – not after an application has already been denied by BLM.

To ensure that alternative application requirements are consistently applied by individual Field Offices, we recommend clarifying that only non-substantive requirements in Subpart 2804 are subject to potential alternative requirements. For example, if an applicant cannot clearly demonstrate technical or financial capability to construct, operate, maintain, and terminate a project successfully,³⁵ it is not in the public interest to provide alternative application requirements. Alternatively, an applicant may have a legitimate logistical reason for requesting an alternative development schedule to that provided in the BLM’s plan of development template.³⁶

XI. Conclusion

We look forward to working closely with the BLM on effective ways to expand our nation’s capacity for renewable power generation in a way that protects public lands and waters. We appreciate the BLM reviewing its rules related to Rights-of-Way, Leasing, and Operations for Renewable Energy and maintaining its discretion to deny an application, or assign the application a low priority, if the BLM believes that the proposed use would be incompatible with existing and proposed land use designations. Land use planning processes are an important tool for communities, businesses, and local governments for informing and providing baseline socio-economic values needed for a smart-from-the-start approach to planning, critically and comprehensively evaluating where and how projects will be incentivized and sited in a way that limits impacts to lands and waters, fish and wildlife and habitat, cultural and Indigenous resources, and recreational opportunities.

Thank you again for the opportunity to provide comments on the agency’s Proposed Rule. If you have any questions, please do not hesitate to contact us.

Sincerely,

American Fly Fishing Trade Association
Angler Action Foundation
Archery Trade Association
Backcountry Hunters & Anglers
Colorado Trout Unlimited
Colorado Wildlife Federation
Conservation Northwest
Fly Fishers International
HECHO

³⁵ 43 CFR § 2804.26(a)(5).

³⁶ 43 CFR § 2804.26(a)(6).

Idaho Trout Unlimited
Idaho Wildlife Federation
Izaak Walton League of America
Land Trust Alliance
Montana Trout Unlimited
Mule Deer Foundation
National Wildlife Federation
Nevada Wildlife Federation
New Mexico Trout Unlimited
North American Falconers Association
North American Grouse Partnership
Orion: The Hunter's Institute
The American Fly Fishing Trade Association
The Wildlife Society
Theodore Roosevelt Conservation Partnership
Trout Unlimited
Trout Unlimited National Leadership Council Energy and Mining Workgroup
Trout Unlimited National Leadership Council Native Trout Workgroup
Utah Trout Unlimited
Western United States and Canada Division of The Nature Conservancy
Wildlife Management Institute
Wyoming Trout Unlimited
Wyoming Wildlife Federation