THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources
OFFICE OF PROJECT MANAGEMENT AND PERMITTING
550 West 7th Avenue, Suite 1430
Anchorage, AK 99501-3561
Main: 907.269-8690

November 10, 2025

U.S. Department of the Interior
Director (630)
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240
Attention: 1004-AF03

Submitted online at regulations.gov

Re: Rescission of Conservation and Landscape Health Rule (Docket BLM-2025-0001)

Dear Director,

The State of Alaska (State) reviewed the proposed Rescission of the Conservation and Landscape Health Rule. The proposed rule to rescind the Conservation and Landscape Health Rule adopted on May 9, 2024 (2024 Rule)[1] aligns with the State's position in past letters and litigation.[2] The 2024 Rule was not compatible with Alaska's unique legal, cultural, and land management framework, as it attempted to elevate conservation to be on par with statutorily authorized multiple use activities, in contradiction to the Federal Land Policy and Management Act of 1976 (FLPMA). It also failed to consider the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) regarding implementation on its lands in Alaska. Rescinding the 2024 Rule would return the Bureau of Land Management (BLM) land use policies to those outlined under FLPMA, allowing for management under the principles of multiple use and sustained yield. The State thanks the BLM for the reconsideration of the 2024 Rule and this opportunity to support that rule's recission.

These comments incorporate input from the Departments of Natural Resources (DNR), Fish and Game (ADF&G), and Environmental Conservation (DEC).

This rescission addresses many of the points in the State comment letters submitted on June 30, 2023, and July 5, 2023 (attached hereto and incorporated herein). The State consistently opposed the establishment of the 2024 Rule and continues to assert that the BLM lacks the authority to modify Congress' framework in FLPMA. Conservation cannot be added as a principal or major use on par with the land uses under FLPMA by administrative fiat; only Congress may do so.

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[1] 89 FR 40308
[2] *State of Alaska v Deb Haaland, Secretary of the Interior*; Case 3-24-cv-00161, Filed 7/24/24

The State concurs with the points in the Federal Register notice (90 FR 43990) which recognize that conservation is a non-use and thus contradicts the FLPMA mandate to manage for multiple use and sustained yield; the mitigation leases might have precluded other uses of public lands. Additionally, the 2024 Rule conflicted with ANILCA Section 1326, which prohibits the administrative designation of new conservation lands in Alaska, by inappropriately expanding the scope of areas of critical environmental concern (ACECs) and in the creation of mitigation leases; the previous State comments strongly supported revoking the mitigation leases and the ACEC alterations outlined in the 2024 Rule.

The 2024 Rule is Prohibited by the CRA

The changes to FLPMA proposed by the 2024 Rule were substantially similar to the "Planning 2.0" Rule that was nullified by Congress pursuant to the Congressional Review Act[3]. Both sought to address landscape-scale issues such as degradation and fragmentation, and to respond to environmental changes.

The 2024 Rule is Incompatible with Alaska's Unique Legal and Land Management Framework

The 2024 Rule was not a good fit for Alaska, given its vast public lands, already managed under the unique framework of ANILCA. The 2024 Rule threatened to negatively impact the State's economic interests in forestry/timber management, infrastructure and access development, and resource uses including the sustainable harvest of fish and wildlife resources by imposing restrictive land management provisions impacting access to the resources on or beyond federal public lands.

Through ANILCA, Congress struck the balance between conservation and more intensive use and development for public lands in Alaska. ANILCA Section 1326 sought to prevent federal agencies from administratively setting aside additional public lands in Alaska for conservation purposes without going through Congress. The restoration and mitigation leases and potential ACEC procedures proposed in the 2024 Rule could have served as quasi-withdrawals done without Congressional approval and without the local input traditionally required for restricting access to conservation lands in Alaska.

The rescission will allow federal, state, and local managers to more flexibly manage resources and develop critical infrastructure. Millions of acres of statehood land entitlements are still pending in Alaska. The 2024 Rule may preclude or delay state selections by effectively removing selectable acreage through mitigation and restoration leases or allowing temporary ACEC designations to stand for years without public review.

The 2024 Rule failed to consider Alaska's unique subsistence systems. ANILCA Title VIII provides rural Alaskans the legal right for subsistence uses of fish and wildlife on federal public lands. The 2024 Rule disregarded the existing federal and state subsistence management programs and inserted "authorized officers" into an already complex management regime. The 2024 Rule provided no parameters requiring consultation or cooperation with either federal or state subsistence managers, especially problematic in the expanded ACEC regulations. Overall,

[3] 82 FR 60554

BLM demonstrated no consideration of the negative economic and social impacts of the 2024 Rule to the State of Alaska or other states.

Closing

The State appreciates this reconsideration of the inappropriate 2024 Rule. The 2024 Rule was a poor fit for Alaska, failed to consider ANILCA, and contradicted FLPMA. The State supports this proposal to rescind the 2024 Rule and looks forward to working with BLM to manage Alaska public lands in a responsible and sensible manner. Please contact me in the Office of Project Management and Permitting at (907) 269-0880 or by email at catherine.heroy@alaska.gov to arrange any follow-up discussions.

Sincerely,

Catherine Heroy
Federal Program Manager

Attachments: June 30, 2023, State of Alaska multi-Department letter
July 5, 2023, Alaska Department of Law letter

Cc: Doug Vincent-Lang, Commissioner, Department of Fish and Game
Randy Bates, Commissioner-designee, Department of Environmental Conservation
John Crowther, Acting Commissioner, Department of Natural Resources

THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Environmental Conservation
Department of Fish & Game, &
Department of Natural Resources

June 30, 2023

U.S. Department of the Interior, Director (630)
Attn: Stephanie Miller, Deputy Division Chief for Wildlife Conservation
Bureau of Land Management
1849 C Ste. NW, Room 5646
Washington, DC 20240
Attention: 1004-AE92

Submitted online at https://www.regulations.gov/commenton/BLM-2023-0001-0001

Re: Conservation and Landscape Health (FR Doc.2023-06310; RIN 1004-AE92)

To Whom It May Concern:

The State of Alaska (State) reviewed the Bureau of Land Management (BLM) proposed Conservation and Landscape Health Rule (proposed rule). This letter contains the State's consolidated comments in response to the Federal Register (FR) notice.

The State is responsible for managing our state's natural resource endowment per the Alaska Statehood Compact and the Alaska National Interest Lands Conservation Act (ANILCA). The Alaskan way of life is inherently dependent on healthy landscapes, resilient ecosystems, and environmental conservation. We provide these comments on behalf of agencies that have the same kinds of public obligations as BLM in these areas and acknowledge that land and resource management must be adaptable to changes. We cannot become fixated solely on preservation as the primary tool to adaptively respond to changing climatic and landscape changes; preservation, by definition, is not adaptive.

Moreover, the proposed rule exceeds BLM's statutory authority and is not a good fit for the unique management and uses of lands in Alaska. BLM lands in Alaska, with the exception of certain units specifically designated in ANILCA (*e.g.,* the Wild and Scenic Rivers Congress assigned to BLM for management), are among the minority of federal lands in Alaska that Congress intended for multiple use and disposition and should not be subject to the management frameworks prescribed in this proposed rule.

With the Federal Land Policy and Management Act (FLPMA), Congress ensured that its multiple use mandate would prevail "unless otherwise specified by *law*." 43 U.S.C. 1701(a)(7). FLPMA was not amended, yet, the proposed *rule* states, "[e]nsuring resilient ecosystems has become imperative, as public lands are increasingly degraded and fragmented due to adverse impacts from climate change and a significant increase in authorized use." 88 FR 19584. That "authorized uses" may be a case of BLM's perceived degraded lands problem suggests that BLM may not be implementing its *existing* management standards properly. This purported issue should not serve as an invitation for BLM to invent a new standard or install an extra-statutory management regime to correct for its own lack of appropriate oversight of uses that BLM, itself,

has authorized. Accordingly, instead of unnecessarily impacting Congressionally authorized multiple uses in Alaska, the proposed rule should be withdrawn in favor of BLM properly implementing the authorities that it already has.

This proposed rule also reaches a greater significance than is appropriate to consider with a categorical exclusion.[1] As we explain below, BLM should undertake at a minimum an environmental assessment (EA) or possibly a full environmental impact statement under National Environmental Policy Act (NEPA) rather than a categorical exclusion due to the scope and impact of this proposed rule.

Notwithstanding our objections, we are also providing additional comments based on our analysis of the proposed rule with requests for changes and responses to some of BLM's requests for public comment.

In sum, the proposed rule should be withdrawn

The State objects to the application of the proposed rule and requests the BLM withdraw the proposal.

Fundamentally, BLM lacks the authority to unilaterally modify the framework Congress has put in place through FLPMA to govern federal land management. While BLM does not adequately provide data and justification for how they can add conservation as a principal or major use, this rulemaking would not create such authority absent an act of Congress. By attempting to establish conservation as a "use" on par with other uses of the public lands under the FLPMA multiple-use framework, BLM appears to be arrogating the exclusively Congressional authority to designate conservation as a "principal or major use." Currently, the term "principal or major uses" in FLPMA is limited to domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.[2] To support efforts to protect public lands, Congress established BLM's ability to manage for conservation and established sideboards for BLM's implementation of FLPMA. FLPMA's Congressional Declaration of Policy Sec. 102(a)(8) states:

> The public lands be managed in a manner that will protect quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values that, **where appropriate**, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use [emphasis added]

FLPMA establishes the ability for BLM to use conservation as a land management action "where appropriate." The broad scope of this proposed rule ignores the "where appropriate" limitation Congress placed on BLM in FLPMA by allowing conservation to be equal to other uses allowed under the multiple use framework in FLPMA and as such trump other allowed uses. This is not what Congress intended.

[1] 88 FR 19596
[2] FLPMA 103(l)

Collectively, the Congressional Review Act & Public Law 115-12 prohibit the proposed rule.

The changes to FLPMA implementation proposed by BLM in the proposed rule are substantially similar to those proposed in the 2016 "Planning 2.0" Rule that was nullified by the Congressional Review Act.[3] The Congressional Review Act prohibits agencies from pursuing substantially similar rulemakings to actions vacated under the Act. Like Planning 2.0, BLM's proposed rule seeks to address landscape-scale issues such as degradation and fragmentation (identified as population growth and urbanization in 2016) and to respond more effectively to environmental changes (*e.g.,* climate change, wildfire, and invasive species). Like Planning 2.0, this proposed rule proposes a significant departure from how the federal agency is required, under federal law, to partner with state and local governments in land management planning for grazing, energy and mineral development, and recreational use of federal lands in western states.

Planning 2.0 also revised the Areas of Critical Environmental Concern (ACEC) importance criteria, removing the geographically based requirement that ACECs possess "qualities of more than local significance," replacing it with the more subjective and vague degree of "substantial" (*e.g.,* "substantial" significance). In this proposed regulation, "qualities of more than local significance" is replaced again with a more subjective and vague degree of "importance" (e.g., "substantial importance"[4]). Significance and importance are synonyms for each other, with importance generally understood to encompass an even broader range of values. Substituting synonyms in operative provisions of a rule is not sufficient to avoid Congressional Review Act limitations, and a preference for more expansive language is certainly not what Congress intended when it vacated Planning 2.0. This proposed change weakens the importance criteria to the point where a case could be made for creating an ACEC in almost any area, contrary to FLPMA description that an area be of *critical* concern.

Major Questions Doctrine

The Supreme Court's recent rulings outlining the "major questions doctrine" affirm that a federal agency must have clear Congressional authority when regulating issues of vast public importance. (See *West Virginia v EPA*).[5] As summarized by the Library of Congress's Congressional Research Service:

> …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.[6]

Recognizing conservation as an equal or superior use as described in the proposed rule will have "vast economic and political significance" by restricting the multiple use doctrine in FLPMA and, in Alaska, potentially restricting traditional activities allowed under ANILCA. Land use across millions of acres of public land is inherently a major question of economic and political

[3] 82 FR 60554
[4] Proposed 1610.7-2(d)(2)
[5] https://www.supremecourt.gov/opinions/21pdf/20-1530_n758.pdf
[6] Congressional Research Service. In Focus: The Major Questions Doctrine. Updates November 2, 2022. https://crsreports.congress.gov.

significance. BLM has published the proposed rule without defining the scope and meaning of the proposed conservation leases, has not determined the potential economic impact the proposed rule may have by limiting other uses such as commercial guiding (be it hunting, fishing, rafting/kayaking or otherwise) or other casual uses, and potentially limits outdoor recreational activities that are included in the definition of multiple use such as hunting, fishing, off road vehicle use, and other recreational uses. The broad scope of this proposed rule applies nationally so the economic and political impacts will be felt in every state – and especially in states with sizeable percentages of their land under BLM management.

Congress has reserved this major question for itself and has not empowered BLM to redefine the use definitions in FLPMA through any language in the statute. The exclusion of conservation as a use in the definitions of "multiple use" and "principal and major use" is evidence that Congress did not intend conservation to be considered a formal use. On May 11, 2023, 16 Senators wrote BLM Director Tracy Stone-Manning expressing their concern over the proposed rule, asserting this point:

> …the proposal enables "protection and restoration activities" to be considered as multiple use of public lands under a restrictively defined term of "conservation." …As clearly outlined under FLPMA, Congress intended 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…" This proposed use under a limited definition of conservation **is contrary to the congressional intent** to prioritize the productive multiple use of our taxpayer-owned resources [emphasis added].

The Senators continue by stating:

> Additionally, the proposal creates a framework for "conservation leases' without authorization from Congress. The proposal specifically notes that "BLM shall not authorize any other uses of the leased land" that it determines are "inconsistent" with this new framework, there by interrupting the successful balance of other responsible uses from hunting and grazing, to energy development and recreation.[7]

The Senators ask Director Stone-Manning to withdraw this proposed rule based on their determination that the proposed rule is contrary to congressional intent in FLPMA as described above.

This proposed rule violates the intent of Congress by proposing a substantially similar rule to a rule that has been revoked by Congress through P.L. 115-12 and meets both the two requirements to be considered a "major question." We request that this proposed rule be

[7] Letter from Sens. Risch, Crapo, Hoeven, Daines, Barrasso, Cramer Lankford, Lee, Lummis, Sullivan, Mullen, Fischer, Rounds, Romney, Murkowski, and Marshall to BLM Director Stone-Manning.

withdrawn; BLM must comply with the 2017 legislation revoking a substantially similar rule and the major questions doctrine.

The proposed rule is not a good fit for Alaska

If the BLM moves forward with a final rule, we request an exemption for the BLM-managed lands in the State of Alaska.

The State recognizes that the BLM is working to ensure their managers have tools to implement the conservation work that supports the BLM's multiple use and sustained yield mandate. However, we are concerned that portions of the proposed rule, particularly the proposed conservation leasing program and the changes to the designation of ACECs, are inappropriate for Alaska due to the Alaska Statehood Compact, our unique federal land management law, the status of our statehood land entitlement, and the unique subsistence systems in Alaska. These situations and federal legal regimes warrant different treatment of BLM-managed lands in Alaska and support an exemption to a final rule for the State. If applied in Alaska, the proposed rule will result in conflict, delays or prevention of critical infrastructure development, impediments to the fulfilment of Alaska's statehood land entitlement, and an upset to the balance Congress intended for all public lands in Alaska.

This proposed rule as currently written, giving BLM the unilateral authority to issue conservation leases and expanding the rules for establishment of ACECs, will upset Congress' carefully crafted and intended balance of federal land management in Alaska, as both tools restrict access and activity where Congress did not intend for restrictions. The proposed rule also has the potential to significantly impact the Department of Fish and Game's (ADF&G) ability to manage fish and wildlife within the state.

ANILCA – Alaska's Unique Land and Resource Management Framework

Congress passed the ANILCA in 1980 to balance the national conservation interests, fulfilled by the creation and expansion of conservation system units (CSUs), with special protections for the economic and social needs of Alaska and its citizens. Congress memorialized the binding compromise ANILCA represented in its opening section:

> ANILCA Section 101(d): **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 [emphasis added].

As part of that balance, Congress incorporated that federal lands not designated for conservation purposes in ANILCA would be managed by the BLM for multiple use under FLPMA. BLM will upset this intended balance if they apply the proposed conservation leasing program and expanded rules for ACECs on their lands in Alaska because both tools restrict access and activity where Congress did not intend for restrictions.

Congress confirmed its intent that no additional conservation lands were needed in Alaska by taking additional steps in ANILCA Section 1326 to limit the power of the executive branch to use its authority to upset that "proper" balance. Section 1326 provides clear and unambiguous restrictions on future executive branch actions, such as rulemakings, with respect to future withdrawals and further studies or reviews without Congressional approval. Inclusion of this language was not unintentional, nor was it done without considerable effort. These "no more clauses" in ANILCA were critical to striking the necessary balance for ANILCA's successful passage.

The proposed conservation leases would block both current and future access, traditional and casual use, and development if necessary to fulfil the terms of the lease. The proposed interim management allowances for ACECs would create areas of special management which, in practice, often come layered with restrictions to rights-of-way, additional requirements for mining, and other hurdles to rural infrastructure development. This would create a patchwork of new conservation areas that would make it difficult, if not impossible, to traverse the landscape. While BLM can lift both conservation leases and ACECs, in practice these designations are likely to remain for significant periods of time.[8]

Additionally, BLM's proposed rule does not contemplate how it will account for specific management provisions in ANILCA with respect to incorporating diverse knowledge types in land management decisions. The proposed rule section 6102.5(b)(6) only allows BLM to include Indigenous Knowledge in management actions; this section must clarify that the Indigenous Knowledge used in management actions must meet the standard of "high quality information" and should also allow BLM to include local knowledge in Alaska per ANILCA Section 801(5). This section requires "an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska." The rule must recognize ANILCA requirements in Title VIII are the controlling statute for federal agency management actions in Alaska.

BLM exempted Alaska from national rules in the past, such as: *Grazing Administration Exclusive of Alaska*,[9] and BLM's regulations *Management of Designated Wilderness Areas* at 43 CFR Part 6300. BLM must continue this tradition of recognizing that, because of ANILCA, Alaska public lands require different management practices and regulations than BLM lands in other areas of the country. If BLM does not exempt Alaska from these regulations, it is imperative that the ANILCA context be added to this proposed rule.

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[8] For example, Public Land Orders (PLOs) 5169, 5170, 5171, 5172, 5173, 5174, 5175, 5176, 5178, 5179, 5180, 5184, 5186, 5187, 5188, and 5353, as modified by additional PLOs, were originally intended only for 90 days, yet hundreds of thousands of acres remain encumbered more than 40 years later.

[9] 71 Federal Register (FR) 39402, 7/12/2006

Statehood Land Entitlement

The proposed rule will complicate the conveyance of Alaska's outstanding statehood land entitlement. If BLM designates ACECs or grants leases over areas with State selections or ANILCA 906(e) top filings, BLM will add additional challenges to the State's ability to receive its land selections and fulfill its entitlement in a manner most beneficial to Alaskans. Statehood selections are a condition of statehood and a Congressional mandate, not a discretionary program, and BLM management actions must not impede the conveyance process. Areas of conservation for national interest were already established under ANILCA. This rule should not add to those areas and make them off-limits for transference.

Existing Subsistence Systems in Alaska

The State supports BLM's recognition of the importance of subsistence to many residents of the country. This is especially true of Alaskan residents. The proposed rule indicates subsistence values will be evaluated in the context of creating ACECs. However, this disregards the coexistence of existing State and federal subsistence systems in Alaska and appears to insert the "authorized officers" into an already complex management regime. The proposed rule provides no recognition that, in Alaska, subsistence values are already taken into account by both the Federal Subsistence Board (FSB) and ADF&G under their respective management authorities. No parameters are established requiring consultation or cooperation with either of these entities on fish and wildlife resource issues, especially in the newly created situation where ACEC nominations are received outside the planning process and interim management is implemented (43 CFR 1610.7-2(c)(3)). This will impact customary and traditional subsistence use.

ANILCA provides for the continuation of subsistence uses by rural residents on public lands under Title VIII of the Act. The federal subsistence priority is overseen by the FSB (of which BLM is a voting member) which, in consultation with state managers, is responsible for evaluating all requests for additional consumptive subsistence opportunities for qualified rural residents through an open and active public process while maintaining healthy populations of fish and wildlife. The federal subsistence regulations are found at 36 CFR Part 242.

ANILCA Title VIII gives federal land managers the authority to restrict the take of fish and wildlife for two reasons – to assure the continued viability of a fish or wildlife population and to provide for the continuation of subsistence uses of such populations. Whenever restrictions are determined necessary for these specific reasons, rural subsistence users are afforded priority over other consumptive uses. That priority is implemented based on the following criteria – customary and direct dependence upon the populations as the mainstay of livelihood; local residency; and the availability of alternative resources (ANILCA Sections 802(2) and 804). To ensure all available information concerning affected lands and resources are considered in the decision to implement the priority, ANILCA also mandates that federal land management agencies "cooperate with adjacent landowners, and land managers, including Native Corporations, appropriate State and federal agencies, and other nations" (ANILCA Section 802(3)).

To further ensure that there would be local and regional participation in federal land manager's decisions, ANILCA Section 805(a)(3)(A) established subsistence resource regions, and in each region advisory councils comprised of residents from the region were given the authority to

"…review and evaluate proposals for regulations, policies, management plans and other matters relating to subsistence uses of fish and wildlife…"

The establishment of the FSB to implement the priority under ANILCA did not change or enhance the authority granted in Title VIII or the directive to cooperate with land and resource managers and others, as well as consider the views of the subsistence resource advisory councils (RACs). This proposed rule circumvents the existing process by allowing "authorized officer(s)" to determine subsistence values outside of the existing processes. This includes restricting access to land used by subsistence users.

We request the removal of subsistence values from the ACEC designation process (43 CFR 1610.7-2(d)(2) and the removal of the language allowing interim management of ACECs pending completion of a BLM planning process (43 CFR 1610.7-2(c)(3)).

The Proposed Rule has significant impacts and requires a robust rulemaking process

At a minimum, the BLM should undertake an environmental assessment (EA) and may be required to undertake a full environmental impact statement (EIS) under NEPA[10] rather than assert a categorical exclusion due to the scope and impact of this proposed rule. An EA process would also afford states a meaningful opportunity to work with the BLM to design a proposed rule that addresses the state agency's conservation concerns and better aligns with state rights and responsibilities. The BLM must at least analyze the action under NEPA to verify it qualifies as a categorical exclusion *prior* to undertaking the action, not *concurrently* with the action.

The proposed rule appears to be a major rule under the Congressional Review Act (5 U.S.C. 804(2)) because the annual effect on the economy would likely exceed $100 million or more when non-development of resources (*e.g.,* timber; minerals; wind, solar, and hydro energy; transmission lines; infrastructure such as roads, trails, communication lines, canals, etc.) and easements/rights-of-way within conservation leases and ACECs are considered on a nation-wide scale. Additionally, the State disagrees with representations that the proposed rule would not increase costs for consumers or state and local governments in the form of conflict and delays. As discussed above, facets of the proposed rule are likely to hinder the State's ability to fulfill its statehood entitlement and increase conflict about ANILCA's provisions for access. At a minimum, the State would be required to devote additional administrative resources to vindicating and exercising those rights. Additionally, if ACECs or conservation leasing hinders the responsible development of critical transportation and utility infrastructure in Alaska, the costs to Alaskans and the State will be significant. For one example, delays or obstruction could cause communities to miss opportunities to secure federal dollars recently allocated for improving broadband infrastructure. Continued delay of community infrastructure that is taken for granted in almost every other corner of the country is certainly a cost that would be borne by the State and people of Alaska.

Costs will also increase for states and communities due to the additional time required to review Resource Management Plans, conservation leases, or denials of non-compatible authorizations on ACEC or leased lands. The costs will likely be further increased if areas with strategic minerals or resources are undeveloped domestically which could lead to such resources being

[10] 88 FR 19596

developed in countries with less stringent resource development guidelines. The potential for increased environmental damage created by less stringent resource development is an environmental cost borne by everyone on the planet.

Defining additional conservation areas as a use is fundamentally a Congressional task

Defining conservation as it relates to BLM's administrative functions is a task that belongs with Congress. The proposed rule states that conservation "is a use" and the proposed rule would, "put conservation on an equal foot with other uses." We disagree with BLM's conclusion that it can designate conservation as a use through FLPMA regulations. Congress identified the principal and major uses BLM manages under FLPMA in 43 USC 1702(l) as domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production. It is beyond BLM's authority to designate a major or principal use subject to BLM's leasing authorities. Congress must choose to amend FLPMA's definitions to include conservation in order for the term to have corresponding legal standing with other purposes. Additionally, as other uses are subject to conservation standards in their decision tree, the proposed rule fails to explain how this equal status would be measured or how the relative comparison to other uses would be assessed.

Through ANILCA, Congress struck the balance between conservation and more intensive use and development for public lands in Alaska. It is therefore inappropriate for BLM to assign additional land units in Alaska to be managed for conservation, even on a 10-year basis, when Congress, in ANILCA Section 1326, stated no more such areas would be located in Alaska. Except for in some specific CSUs and areas, preservation of conservation lands is not an administrative function assigned to BLM. In Alaska, Congress has made it clear in 43 USC 1784, that "the Secretary may identify areas in Alaska which he determines are suitable as wilderness and may, from time to time, make recommendations to Congress for inclusion of any such areas in the National Wilderness Preservation System, pursuant to the provision of the Wilderness Act" (16 USC 1311 et seq.). However, Congress has not given BLM the authority to manage for preservation, stating that: "In the absence of congressional action relating to any such recommendation of the Secretary, the [BLM] shall manage all such areas which are in its jurisdiction in accordance with the applicable land use plans and applicable provision of law" (43 USC 1784).

Given this direction, it is inappropriate for BLM, especially in Alaska, to include "protecting" in the definition of conservation. It is also inappropriate to include the term restoration in the definition of conservation. Restoration is a separate, though related, concept. In order for restoration to be necessary, an impact to the resource must have occurred.

Lack of Consultation is Problematic

The State is concerned that BLM did not appropriately collaborate with Alaska or other state governments in the development of this proposed rule, particularly in the western states most impacted by proposed BLM management changes. Traditionally, a rule of this substance would involve substantial upfront work, prior to its release, including advance work with State governments (*e.g.,* the 2016 Resource Management Planning Rule (Planning 2.0) and the 1995 Grazing Regulation efforts both involved extensive, initial discussions with stakeholders). We understand that a limited amount of upfront work was carried out with Tribal governments,

however, BLM wholly failed to carry out existing directives under both its own regulations and policies as well as the goals the Secretary of the Interior set out in the Department of the Interior Fish and Wildlife Policy for State engagement: State-Federal Relationships at 43 CFR Part 24.

Likewise, Executive Order (EO) 12866, as well as EO 13563 and EO 14094, call on federal agencies to be informed by input from State, local, and tribal officials, as well as other parties[11] in developing regulatory actions, and require that, "Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking."[12] The EO-required "federalism summary impact statement" must include "a description of the extent of the agency's prior consultation with State and local officials; a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation; and a statement of the extent to which the concerns of State and local officials have been met" (Secs. 6(b)(2)(B) & 6(c)(2)). None of this occurred during the development of this proposed rule.

BLM's limited consultation and public outreach is also a concern. The public meetings were announced late and did not include an in-person meeting in Alaska, where a significant portion of BLM lands are located. Additionally, not directly consulting with the State of Alaska, where there is a unique federal legal framework, is a significant oversight.

Consultation with State Fish and Game Agencies as True Cooperating Agencies

We request BLM include a section in the proposed rule regarding consultation with the states in evaluating any proposed special management areas, such as conservation leases and ACECs. This request is in accordance with the collaboration and cooperation directives found in BLM Planning regulations at 43 CFR 1610.4, as well as in BLM's Cooperating Agency Desk Guide (2012).

According to the Cooperating Agency Desk Guide, under CEQ regulations at 40 CFR 1501.6(a)(2) "…BLM is expected to use the analyses and proposals of a cooperating agency," such as the State, "to the maximum extent possible consistent with its responsibility." BLM's Manual 6500, Wildlife and Fisheries Management, also indicates BLM is expected to work "closely with the states and others to maintain the fish and wildlife resources at such levels that provide an enjoyable experience for the people who use the Nation's fish and wildlife."[13] BLM Manual 6500 at 6500.07 also makes it clear that BLM is responsible for the balanced management of the public lands, with a broad responsibility to maintain or improve habitat, but that the States manage the wildlife.

ADF&G is the agency responsible for the management of all fish and wildlife species on all lands (private, state, *and* federal lands) in Alaska. This authority was conveyed as part of the Alaska Statehood Compact and further memorialized under ANILCA. ADF&G seeks to promote healthy landscapes and resilient ecosystems consistent with its Alaska Constitutional mandate. However, in this proposed rule, even though many potential ACEC designations are for

[11] EO 14094 (FR 2023-07760)
[12] EO 13563 (FR 2011-1385)
[13] BLM Manual 6500.07E

fisheries or wildlife values, ADF&G's proposed role appears to be limited to commenting in meetings and on planning documents. This is contrary to the direction in FLPMA Sec. 202(c)(9) which states:

> …officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such **other land use matters** as may be referred to them **by** [the Secretary] [emphasis added].

"Other land use matters" includes policy actions, such as this rulemaking, that create the framework within which actions are considered under NEPA. Over the years, ADF&G repeatedly finds that our subject matter expertise is often not incorporated by BLM into planning documents. This does not represent meaningful consultation.

Additionally, the BLM Land Use Planning Handbook (Handbook) states "Section 202(c)(9) of FLPMA, as paraphrased, **requires** the BLM to provide for involvement of other Federal agencies and **state and local government officials** in **developing** land use decisions for public lands…" [emphasis added]. The Handbook goes on to state that "**Coordination must start as early** in the land use planning process as is practical and must **continue throughout** the planning effort" [emphasis added]. Despite the clear direction provided BLM in FLPMA as well as the implementing guidance of the BLM Handbook, in a meeting between BLM and the Association of Fish and Wildlife Agencies (AFWA) on June 7th the BLM informed members of AFWA that the sovereign states have no elevated role for informing BLM policy making efforts—the role of states is merely the same as that of the general public. BLM declared states only have an elevated cooperator status in the NEPA process for individual actions. To the contrary, BLM noted it already engaged tribal entities through consultation meetings. The BLM did not consult the State of Alaska as directed by its Handbook nor did it coordinate with the state as early as practical through discussions or advanced notice of proposed rulemaking. This failure necessitates BLM withdraw the proposed rule until such consultation with the state occurs.

This is a major concern of the State of Alaska, and ADF&G especially, as it not only violates BLM's own policies but also the Master Memorandum of Understanding between BLM and ADF&G. For forty years now, our two agencies have mutually agreed to "*coordinate planning for management of fish and wildlife resources on Bureau lands… so that conflicts… do not arise or are minimized*."[14]

Proposed Rule has Real Impacts in Alaska

Areas of Critical Environmental Concern (ACECs)

The proposed changes to ACEC regulations will have significant management effects in Alaska. The current proposal expands the designation of ACECs, while limiting public participation in the process by removing a public notice and comment period. Since ACECs have the potential

[14] 1983 BLM ADF&G MMOU, page 3.

to substantially impact a wide range of stakeholders, these proposed designations should be noticed for review and consideration by the public.

We have commented in specific reviews that we are concerned that the generalized resource concerns identified in support of proposed ACECs neither justify their size nor the proposed special management. Alterations to ACEC eligibility will likely exacerbate this issue.

The goal of conservation via preservation can also have great impacts on our state's ability to build infrastructure, connect to underserved communities, and access resources needed to develop our economy. Alaska is a relatively young state with limited infrastructure and a resource-based economy, which Congress recognized when it passed ANILCA and established the Title XI transportation and utility system process for projects crossing CSUs. The same need exists for infrastructure to cross BLM managed multiple use lands, which in many areas are located between CSUs and other state and private lands. Depending on their implementation, conservation leases could unnecessarily preclude future access needs or interfere with the statutorily required ANILCA Title XI process.

We also provide section-specific feedback on ACECs below.

Hunting, fishing, and trapping

If BLM moves forward with conservation leases in the final rule, we request that BLM broaden the exemptions from land use authorizations to include commercial recreational activities in addition to casual use[15] (even designated wilderness management in Alaska allows commercial recreational activities.)[16]

Commercial recreational use is particularly important in Alaska where big game hunting for some species requires a guide and many out of state hunters and anglers require the services of commercial transporters to access remote BLM lands in Alaska. Limiting transporters and air taxi and boat charter services conflicts with Section 1110 of ANILCA. Section 1110 of ANILCA allows access to Alaska federal lands via airplanes, motorboats, and snow machines in conservation system units, including designated wilderness. This access for traditional activities such as hunting and angling is not limited to those individuals who own their own airplane, motorboat, or snow machine. Conservation leases in Alaska should not be managed more restrictively than a CSU or designated wilderness and must account for needed commercial outfitters and guides, we request that use not be limited to "casual use" and also include commercial recreational use.

The Proposed Rule upsets State fish and wildlife management activities

The current definition of conservation in the proposed rule could preclude a number of State fish and wildlife activities currently being carried out on BLM lands. The proposed rule severely restricts the definition of conservation to just two actions: "maintaining resilient, functioning ecosystems by protecting or restoring natural habitats and ecological functions."[17] This definition

[15] 88 FR 19591, April 3, 2023; "Section 6102.4(a)(5) clarifies that the rule itself should not be interpreted to exclude public access to leased lands for casual use of such lands""
[16] See wilderness allowances in ANILCA.
[17] FR 88 19598 § 6101.4 Definitions

describes land management actions, not uses. If State management activities were limited to the BLM proposed definition, this would have significant negative implications for fish and wildlife management in Alaska.

The proposed definition does not appear to include habitat management actions that would benefit wildlife, such as a proposed prescribed fire on State and BLM lands in the Alphabet Hills area of the East Alaska planning area, which could be expected to enhance moose habitat in their winter range. Currently, ADF&G is encountering instances such as this where preservation or "protective" conservation management is resulting in BLM failing to meet their Congressionally mandated responsibilities resulting in the loss of higher quality moose habitat and state and federal subsistence hunting opportunities.

BLM must clarify how they will retain multiple use management including allowing State fish and wildlife management activities on lands within conservation leases and avoid impacting the allocative authorities of the Alaska Board of Game, Board of Fish, and the FSB. The rule must reflect these authorities.

Economic development impacts

A core part of the State of Alaska's government function, as stated in the State Constitution is to:

> … encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.[18]

And that:

> The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.[19]

This mission guides the State's pursuit of economic development for our relatively young State, a need that was also acknowledged by Congress in Section 101(d) of ANILCA. Likewise, the State relies on actions by BLM consistent with FLPMA, which states 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…." (§ 102(a)(12)). Conservation leases have the potential to stymie needed economic development in Alaska. Below are some economic interests that could be impacted in Alaska if this rulemaking were passed as proposed.

As mentioned previously, if ACECs or conservation leasing hinders the responsible development of critical transportation and utility infrastructure in Alaska, the costs to Alaskans and the State will be significant. Costs will also increase for communities due to the additional time required to review plans, conservation leases, or denials of non-compatible authorizations on ACEC or leased lands. Community growth could be hindered by the inability to develop projects or obtain

[18] Alaska Constitution, Article VIII, Section 1
[19] Alaska Constitution, Article VIII, Section 2

resources locally. The economic loss will likely be further increased if areas with strategic minerals or resources are undeveloped.

Forestry

An example of a resource that could be undeveloped due to these limitations is timber. Forestry is an important part of Alaska's economy and land management strategies. The proposed rule should acknowledge more clearly that timber harvest has a role in the management and sustainable resource use of BLM lands. In addition to economic benefits through personal use or commercial sale, timber harvest can mimic natural disturbances such as wildfire and windthrow events, often benefiting wildlife who thrive in early-successional stages. Timber sales can also play a role in hazardous fuel removal, reducing the threat of forest fire in addition to mimicking its successional benefits.

We appreciate the sentiment in Section IV of the FR notice (page 19588), explaining Section 6101.1:

> the BLM is working on various aspects of ensuring that forests on Federal lands, including old and mature forests, are managed to: promote their continued health and resilience; retain and enhance carbon storage; conserve biodiversity; mitigate the risk of wildfires; enhance climate resilience; enable subsistence and cultural uses; provide outdoor recreational opportunities; and **promote sustainable local economic development** [emphasis added].

Section IV's summary notes that BLM lands are not managed just for conservation, but also to support economic opportunities for communities— which should include allowing some timber harvest. However, the actual text of the proposed rule in *6101.1 Purpose* does not include a reference to economic development.

> **§ 6101.1 Purpose.** The BLM's management of public lands on the basis of multiple use and sustained yield relies on healthy landscapes and resilient ecosystems. The purpose of this part is to promote the use of conservation to ensure ecosystem resilience. This part discusses the use of protection and restoration actions, as well as tools such as land health evaluations, inventory, assessment, and monitoring.

The inconsistency between the executive summary explanation and the proposed rule text should be corrected by affirmatively stating the role of economic development in the text of the purpose section. Conservation should also include a sustainable sale of timber within BLM lands. Timber is a renewable resource when managed sustainably, but "protection and restoration activities," the stated purpose of the proposed rule, implicitly limits the sale or use of the timber.

By contrast, "multiple use" – the FLPMA statutory language that must guide the proposed rule – does include timber in its definition:

> …a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and

> nonrenewable resources, including, but not limited to, recreation, range, **timber**, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values [emphasis added].[20]

We request that timber harvest be recognized as an allowable tool in the language of the proposed rule itself, perhaps as a "land enhancement" (Definitions, 6101.4) or in some other portion of the proposed rule. Sustainability should include supporting communities that rely on timber harvest (especially in rural areas) and providing timber resources in a sustainable manner.

Section-specific comments

Notwithstanding the State's objection to the proposed rule and request for its withdrawal or for an Alaska exemption to the final rule, we offer section-specific comments on the proposed rule.

Preamble to the proposed rule

Recognizing the importance of the preamble in the Federal Register notice of the proposed rule as a statement of intent that will be relevant into the future, the State requests several edits to ensure accuracy and consistency in the preamble discussion:

- We suggest an addition to the Background explanation (page 19585) to clarify that sustainability should include permitting timber harvest (see below underlined text):
    - "This proposed rule would pursue that goal through protection, restoration, or improvement of essential ecological structures and functions, while still allowing sustainable timber harvest."

Areas of Critical Environmental Concern (ACECs)

The State understands that FLPMA directs BLM to use ACECs as a management tool, but we object to their often unduly extensive use in Alaska. BLM asked for feedback regarding whether additional regulatory text should further specify how ACECs should be managed. We request the final rule include:

- an addition to Section 1610.7-2 exempting from ACEC designation areas of potential land conveyance: to the State of Alaska as part of its statehood entitlements (including ANILCA 906(e) top filings); to Alaska Native Corporations; for Dingell Act Native Veteran Allotments; for 1906 Native allotments; and for University of Alaska land transfers. Existing laws pertain to these land transfers and the designation of ACECs must not be used to block or otherwise complicate the fulfilment of these land entitlements.
- an addition to Section 1610.7-2(j) incorporating non-performance consequences. For example, if the BLM takes no action on an ACEC within 10 years of the area's nomination, the nomination should terminate.
- An acknowledgement that ACECs must be identified and managed consistent with ANILCA's general recognition that additional conservation areas are not appropriate in Alaska and its protections for Alaskans to use our lands and resources.

[20] FLPMA § 103(c)

- That ADF&G be consulted on the establishment of any ACEC.

Several components of the proposed rule will impede statehood entitlement conveyances to the State of Alaska. Notwithstanding our earlier objection and requests, if BLM elects not to exempt Alaska, we request the following edits to the language of the final rule:

- Section 1610.7-2(a) should be revised as follows (underlined text is an addition, strike-through text is a deletion). An Area of Critical Environmental Concern (ACEC) designation is the principal BLM designation for areas within public lands where special management is required to conserve ~~protect~~, and prevent irreparable damage to, important natural, cultural, and scenic resources, systems, or processes, or to conserve ~~protect~~ life and safety from natural hazards. To be designated as an ACEC, an area must require special management attention that is unique and targeted to the conservation of the area where the relevant and important resource(s) is located. The terms and conditions of the special management must be specifically designed to conserve ~~protect~~ the important and relevant resource(s) occurring in that area and should be the minimum area necessary for that purpose. ACECs are not appropriate in areas or for resources where the existing regulatory framework already provides sufficient conservation of the areas or resources identified. The BLM designates ACECs when issuing a decision to approve a Resource Management Plan, plan revision, or plan amendment. ~~ACECs shall be managed to protect the relevant and important resources for which they are designated.~~
- Section 1610.7-2(b): The proposed rule should maintain (*i.e.,* should not eliminate) the requirement to publish in the Federal Register a list of "each ACEC proposed and specifying the resource use limitations, if any, that would occur if it were formally designated" and the 60-day public comment period (currently in 43 CFR 1610.7-2(b)). Eliminating an important method of public notification and a comment period is contrary to the proposed rule's goal to encourage local engagement and will hinder meaningful public involvement. This is especially critical because BLM also proposes to allow interim ACEC designation between planning processes; the public must be involved in all ACEC designations at the time of the proposed designation, not long afterward in subsequent planning efforts. We request BLM maintain these existing requirements in the final rule.
- Section 1610.7-2(c)(1): strike "values" from the proposed list. "Values" is a vague and subjective term in this context.
- Section 1610.7-2(c)(2) should be revised as follows (underlined text is an addition, strike-through text is a deletion):

  > The Field Manager must evaluate existing ACECs when plans are revised or when designations of ACECs are within the scope of an amendment, including considering potential changes to boundaries and determining if the special management prescriptions were ever implemented and if they are still necessary ~~management~~.

- Section 1610.7-2(c)(3): The proposed rule should not allow BLM managers to establish interim management for nominated ACECs that are received outside of the planning

process. This provision should be eliminated from the final rule. Interim ACEC management would result in patchwork special management, potentially in conflict with existing planning documents, over long periods of time in direct conflict with BLM's goal of planning at the landscape scale. The proposed rule is problematic because it provides no structure for public involvement in the development of interim management and no timeline requirements for initiation of a new plan or plan amendment after nomination. Additionally, ANILCA protects special access including motorized access across the state; interim restrictions would create on-the-ground conflict and confusion for travelers and recreationists. Instead, any ACECs nominated outside of the planning cycle should be collected and considered during the next planning process. In instances where human health or safety is at risk, the BLM should employ existing management authorities for special management in these areas. Also, establishment of an ACEC should not extinguish any existing access corridors established under ANILCA or other federal statute or regulation.

- Section 1610.7-2(d)(2): The proposed rule should maintain (not eliminate) the requirement that an ACEC be of "more than local significance" under the *Importance* criteria. The BLM should continue to require ACECs demonstrate greater than local importance to better support their landscape-scale conservation focus. We request BLM maintain the requirement for "more than local significance…" in the final rule (currently in 43 CFR § 1610.7-2(a)(2)).
- Section 1610.7-2(d)(2): The proposed rule should delete the reference to subsistence values from this section, at least for Alaska. As discussed, subsistence in Alaska is governed by the provisions of ANILCA Title VIII and regulations derived from this law. If Alaska remains subject to this proposed rule, we request the removal of subsistence values from the importance criteria along with the proposed changes below.

  > (d)(2) *Importance.* The resources, ~~values,~~ systems, processes, or hazards have substantial <u>significance and</u> importance~~, which~~ <u>This</u> generally requires ~~that~~ they have qualities <u>of more than local significance</u> and special worth, consequence, meaning, distinctiveness, or cause for concern. ~~Authorized officers may consider the national or local importance, subsistence value, or regional contribution of a resource, value, system, or process. Resources, values, systems, or processes may have substantial importance if they contribute to ecosystem resilience, including by protecting intact landscapes and habitat connectivity.~~ A natural hazard can be important if it is a significant threat to human life and safety.

- Section 1610.7-2(d)(3): Please add the following two excerpts from *BLM Manual 1613 – Areas of Critical Environmental Concern*[21] to this section:

  > *"Special management attention" refers to management prescriptions developed during preparation of an RMP or amendment expressly to protect the important and relevant values of an area*;
  >
  > *Special management often provides for consultation and coordination with identified groups and/or experts having interest or expertise in the affected values*."

[21] https://www.ntc.blm.gov/krc/uploads/360/5_1613_ACEC_Manual%201988.pdf

The State is in favor of adding *Special Management Attention* to the requirements for ACEC designation and keeping the development of management prescriptions tied to planning processes.

- Section 1610.7-2(e): Please delete the following language from this section:

  > *Resources, values, systems, processes, or hazards that are found to have relevance and importance are likely to require special management attention.*

  This language is inappropriate because Section 1610.7-2(d) requires the BLM to determine whether a proposed ACEC requires special management attention as the third criteria for designation. By stating that it is likely an ACEC meeting the first two criteria will meet the third criterion, the proposed rule leaves little room to evaluate a proposed ACEC on the third criterion and leads managers to a forgone conclusion.
- Section 1610.7-2(i)(2): The proposed rule should not direct the BLM to "prioritize acquisitions of inholdings within ACECs and adjacent or connecting lands identified as holding related relevant and important resources, values, systems, processes, or hazards as the designated ACEC." This is problematic in Alaska because inholdings are common and often held by the State or Alaska Native Corporations as part of their respective land entitlements. Dedicating BLM resources to acquiring additional public land in Alaska is neither practical nor aligned with Congressional intent in ANILCA to protect the access and development needs of the State. Please eliminate this section in the final rule. Alternatively, this section could direct BLM to prioritize communication and coordination with inholders and adjacent landowners.
- Section 1610.7-2(i)(3): The proposed annual reporting requirement identifying ACECs, activity plans, and implementation actions is not practical for BLM in Alaska due to the large number and scale of ACECs in the State. The BLM should allow for regular but staggered reporting requirements in Alaska.
- Section 1610.7-2(j): The final rule should allow removal of an ACEC designation outside of the planning process. The proposed rule requires a planning process to remove an ACEC designation but allows the nomination and interim special management of a proposed ACEC outside of the land use planning process. As proposed, these two provisions are inconsistent with each other. As stated above, we disagree with and are requesting the deletion of the provision allowing off-cycle nominations and interim special management. However, if BLM moves forward with that provision, we request the final rule also allow removal of an ACEC designation outside of the land use planning cycle.

Conservation Leases

The State requests the BLM either withdraw the proposal to issue conservation leases or exempt Alaska from this program. Notwithstanding our objection, if the BLM continues with the conservation leasing program, we request several provisions.

First, the conservation lease portions of the proposed rule located in Part 6100 be relocated to Subchapter B of BLM's regulations. The proposed rule is primarily located in Title 43, Subtitle

B, Chapter II Subchapter F ("Preservation and Conservation") rather than under BLM's general planning regulations under Part 1600 (where ACEC regulations currently reside) or Subchapter B, Group 2000 (which includes regulations on land classifications, leases, permits, and easements). By placing the proposed changes under Subchapter F, which currently only houses regulations for the management of BLM's designated wilderness areas, the regulation appears to be aimed at creating an avenue to preserve additional public lands without additional Congressional approval, which is not allowed in Alaska under the "no more" clause in ANILCA Sec. 1326, rather than applying land health standards to all BLM-managed public lands and uses.

BLM stated in the preamble to this proposed rulemaking that conservation leases are "not intended to provide a mechanism for precluding other uses" and "should not disturb existing authorizations, valid existing rights, or state or Tribal land use management" (88 FR 19591). We appreciate and support this sentiment. BLM asks for comments regarding whether the proposed rule should clarify what actions conservation leases may allow. We recognize an exhaustive list of uses is impractical. Therefore, the State requests the BLM enumerate certain rights and laws that a conservation leasing program must not impede to protect against unintended disturbance of existing rights and authorizations. We request the following:

- An addition to Section 1610.7-2 exempting from ACEC designation areas of potential land conveyance to the State of Alaska as part of its statehood entitlements (including top filings); to Alaska Native Corporations; for Dingell Act Native Veteran Allotments; for 1906 Native allotments; and for University of Alaska land transfers. Existing laws pertain to these land transfers and the designation of ACECs must not be used to block or otherwise complicate the fulfilment of these land entitlements.
- Add a statement to Section 6102.4 making clear that, in Alaska, ANILCA prevails in CSUs managed by BLM. This includes but is not limited to Title XI special access provisions and review process requirements for applications for transportation and utility development. Any conservation lease issued on a BLM-managed CSU must be consistent with the provisions of ANILCA.
- Add a statement to Section 6102.4 making clear that conservation leases will not impede Alaska's management of water rights and uses, RS2477 trails, and the submerged lands of waters navigable for title purposes, among other authorities.
- Add a statement to Section 6102.4 making clear that conservation leases must not be made to out-of-state individuals or entities or for out-of-state impacts. Conservation and mitigation for impacts must take place locally. For example: entities must not be able to lease lands in Alaska to mitigate for a project in another state; entities from outside of Alaska must not be able to direct restoration projects within Alaska.
- Add a statement to Section 6102.4 making clear that conservation leases must be consistent with adjacent State land management plans.
- Add a statement to Section 6102.4 that establishment of a conservation lease does not extinguish any existing access corridors established under ANILCA or other federal statute or regulation.
- Add a statement to Section 6102.4 making clear that in BLM managed CSUs in Alaska, closures or restrictions to public access for traditional activities, travel to and from

homesites, and access to inholdings must follow the closure procedures in ANILCA 1110 and 43 C.F.R. Part 36.

BLM asks for comments regarding whether the proposed rule should constrain which lands are available for conservation leasing: Yes, if the program moves forward, the BLM should constrain which lands are available for conservation leasing through a planning process with robust State, Tribe, and local government and community involvement. This will increase the public's understanding of existing rights and authorizations in an area and decrease the likelihood of future conflict.

BLM asks for comments regarding whether the proposed rule should expressly authorize the use of conservation leases to generate carbon offset credits: No, if the program moves forward, the BLM should not expressly authorize the use of conservation leases to generate carbon offset credits because this use is not aligned with the intent of conservation leasing as a tool to support ecosystem resilience through mitigation and restoration.

BLM asks for comments regarding whether the proposed rule should allow state and local governments, including state agencies with management authority for fish and wildlife, to be eligible for holding conservation leases: Yes, if the program moves forward, state and local governments should be allowed to hold conservation leases.

BLM asks for comments regarding how the proposed rule should determine fair market value in the context of restoration or preservation: If the program moves forward, the State requests consultation on this issue to share our expertise and protect the best interests of the State.

Several components of the proposed rule may impede statehood entitlement conveyances to the State of Alaska. Notwithstanding our earlier objections and requests, if BLM elects not to exempt Alaska, we request the following edits to the language of the final rule:

- Section 6102.4(a)(2): Conservation leases to individuals should be limited to direct, small-scale project/use mitigation purposes only (*e.g.,* mitigation for a placer mine). Allowing individuals to hold conservation leases for general restoration or preservation activities is likely to unduly favor powerful individuals and their personal agendas. How will BLM ensure that powerful and influential entities and individuals do not dominate this program to the detriment of under-resourced or less-influential entities and individuals who might also have good work to contribute? How will BLM ensure the conservation leasing program will not unduly influence BLM's workload and priorities?
- Section 6102.4(a)(3)(ii): conservation leases should be limited to small-scale mitigation projects. Leases should be short-term tools; large-scale projects often require mitigation long-term or in perpetuity. Access to and across public lands is of great recreational and economic importance in Alaska. Potential access restrictions should be limited to the minimum footprint and duration necessary.
- Section 6102.4(a)(3)(ii): The proposed rule is unclear regarding whether an individual can lease their own parcel for mitigation or if they must work with a third-party mitigation bank that would hold the lease on their behalf. Please clarify.
- Section 6102.4(a)(3)(iii): The proposed lease extension provision is unclear when it states: "Such extension or further extension can be for a period no longer than the

original term of the lease." Does BLM intend to allow indefinite renewals if they are each for time periods no longer than the original term of the lease? Or does BLM intend to allow only one renewal for not more than the original term of the lease? This raises a concern that the lease could effectively permanently lock up public lands from other public uses. Though longer duration may be appropriate for a lease intended to mitigate a development project, it should be carefully balanced against other public needs, such as transportation and infrastructure corridors. The State requests BLM establish a limit to the number of allowed renewals.

- Section 6102.4(a)(4): BLM should make clear that future uses found to be inconsistent with an authorized conservation lease are only suspended during the life of the lease. We request the following addition: "…once the BLM has issued a conservation lease, the BLM shall not authorize during the life of the lease any other uses of the leased lands that are inconsistent with the authorized conservation use." Again, we note that on BLM-managed CSUs in Alaska, lands are open to access until restricted through ANILCA provisions in Section 1110 and 43 C.F.R. Part 36. Additionally, the determination of which future uses would be "incompatible" should be open to public comment for specific projects, to mitigate conflicts between interested user groups.
- Section 6102.4(a)(5): Include commercial transportation and guiding as exempt from land use authorizations on public lands covered by a conservation lease.
- Section 6102.4(b)(2): In development of the lease form, BLM should work with the State of Alaska to either develop an Alaska-specific form or ensure Alaska-specific provisions are made clear on the national form. National forms often lack critical information about the provisions of ANILCA, causing confusion for users in Alaska. For example, special access and specific transportation and utility development provisions apply to BLM-managed CSUs in Alaska.

Conservation as a Use

- Section 6101.5(a): Add a statement that ANILCA provisions apply to BLM-managed CSUs in Alaska and have precedence over any regulatory structure developed as part of this regulation development.
- Section 6102.2(a): Please explicitly state an exemption for Alaska to this provision. The proposed rule requires the land use planning process "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." Alaska has a significant portion of intact landscapes and simultaneously significant infrastructure needs for our rural communities. The proposed rule, as written, could be applied to block the responsible development of critical transportation and utility projects as well as recreation because so many of these projects would disturb intact landscapes by nature of their location and Alaska's topography and scale.
- Section 6102.2(a): Add a statement that states should be involved in any watershed assessments or classifications.
- Section 6102.2(b)(3): We appreciate the inclusion of this provision allowing the BLM to work with communities to identify areas of strategic growth and development. We request that this provision also encourage the BLM to work with states so that discussions can benefit from both a statewide and local perspective.

- Sections 6102.3-1(a) and 6102.3-2(b)(5)(i): The five-year review requirement is unrealistic for BLM in Alaska due to the large scale and acreage of managed lands. A more reasonable expectation would be for ACECs to be reconsidered on a 10-year and staggered schedule.

Definitions

The State requests the following adjustments to the definitions proposed in Section 6101.4**:**

- Conservation: We request the deletion of the term "conservation" from the final rule. Defining conservation as it relates to BLM's administrative functions is a task that belongs with Congress as outlined above. Conservation means much more than just protection and restoration; it encompasses the wise use of landscapes.
- High-quality information: The State requests that BLM specifically acknowledge as "high quality" the following information types: 1) information provided by state agencies with relevant knowledge and expertise; 2) the personal and local knowledge of residents of rural Alaska (as a knowledge type separate and distinct from Indigenous Knowledge) as contemplated in ANILCA Section 801(5). Please clarify BLM's intention and make edits to this definition accordingly.
- Important Resources: the proposed definition is vague and has the potential to become an arbitrary designation. How does BLM determine what resources are important? Are these resources listed in writing? This definition should relate importance to conservation or landscapes, or as designated through a planning process.
- Public lands: the proposed definition is inconsistent with the definition in ANILCA Section 102(3).[22] The proposed definition excludes relevant land exemptions that should be included for Alaska lands, if an Alaska exemption to the proposed rule is not issued. Please update the definition to match the ANILCA exemptions for Alaska lands.

Fundamentals of Landscape Health

The State requests the following adjustments:

- Section 6103.1(a)(1): Add a statement requiring consultation with relevant landowners. As watersheds often contain a mix of landowners including navigable waters and state shorelands, coordination with State and other landowners is key to the application of this principle.

[22] 16 USC 3102: (3) The term "public lands" means land situated in Alaska which, after the date of enactment of this Act, are Federal lands, except—
(A)land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;
(B) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and
(C)lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

- Section 6103.1-1(a)(3): The five-year review requirement is unrealistic for BLM in Alaska due to the large scale and acreage of managed lands. A more reasonable expectation would be for ACECs to be reconsidered on a 10-year or staggered schedule.
- Section 6103.1-1(d): BLM should use caution while developing any national indicators for monitoring. ANILCA provisions are unique to Alaska and national standards and indicators often do not make sense in Alaska.

In summary

The proposed Conservation and Landscape Health Rule exceeds BLM's statutory authority and is not a good fit for the unique management and uses of lands in Alaska already recognized under ANILCA. BLM lands in Alaska were intended by Congress for intensive use and disposition and should not be subject to the management frameworks prescribed in this proposed rule. If this proposed rule is not withdrawn, BLM should issue an Alaska exemption.

Additionally, the proposed rule reaches a greater significance than is appropriate to consider with a categorical exclusion and should be reviewed in a more thorough public review process due to the scope and impact of this proposed rule.

Notwithstanding our objections, we offer the above suggestions for refinements to the proposed rule language.

Please contact the Office of Project Management and Permitting within the Alaska Department of Natural Resources if you have questions or would like to discuss any of these comments in greater detail.

Sincerely,

Doug Vincent-Lang
Commissioner, Alaska Department of Fish and Game

Jason Brune
Commissioner, Alaska Department of Environmental Conservation

John C. Boyle III
Commissioner, Alaska Department of Natural Resources

Cc list: The Honorable Senator Murkowski
The Honorable Senator Sullivan
The Honorable Representative Peltola
Jerry Moses, DC Office Director
Ryan Anderson, Commissioner, Department of Transportation and Public Facilities

THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Law

OFFICE OF THE ATTORNEY GENERAL

1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501
Main: 907-269-5100
Fax: 907-276-3697

July 5, 2023

Secretary Deb Haaland
U.S. Department of the Interior
Bureau of Land Management
1849 C Street NW, Room 5646
Washington, D.C. 20240
Attention: 1004-AE92

Re: *Proposed Conservation and Landscape Health Rule*

Dear Secretary Haaland:

We, the Attorneys General of 17 states, write in opposition to the recently proposed "Conservation and Landscape Health" rule by the Bureau of Land Management ("BLM"). Published on April 3, 2023, the proposed rule carries much farther-reaching impacts than what may be discerned at first blush. BLM contends that this new rule is permissible under the Federal Land Policy and Management Act of 1976 ("FLMPA"); this is a misleading assertion. Ostensibly, the rule seeks to:

> [P]rovide[] a framework to protect intact landscapes, restore degraded habitat, and ensure wise decisionmaking [*sic*] in planning, permitting, and programs, by identifying best practices to manage lands and waters to achieve desired conditions. . . . the proposed rule applies the fundamentals of land health and related standards and guidelines to *all BLM-managed public lands and uses*. Fed.[1]

Through this language, BLM attempts to rewrite FLMPA to elevate conservation to be on par with statutorily authorized and historically important multiple uses. While the legal analysis here is subtle, FLMPA does not allow BLM to pursue this proposed course.

Many states, including Alaska, value the breadth and beauty of their public lands. As such, thoughtful conservation is a key principle in our land management policies. However, we recognize that responsible multi-use of these lands is essential to the economic and social health of society. Wise uses of public land provide energy to power our economies, food to feed our people, recreation for much-needed respite, scientific

[1] 88 Fed. Reg. 19584 (Apr. 3, 2023) (emphasis added).

advancement, and, often, serve numerous national security interests. These uses are just a few of many. Indeed, given the millions of acres of public land in our states, this issue goes to the core of our existence. In this newly proposed rule BLM not only rejects our commitment to wise multi-use land management, but the agency also misconstrues the law. Make no mistake, the proposed Conservation and Landscape Health rule twists the language FLPMA to undermine a variety of vital uses. This is an audacious assertion of power by BLM that it does not possess, and Congress did not authorize.

Conservation is naturally a non-use of land. Non-use is neither inherently good nor bad. However, lands set aside for conservation are often prohibited from industrial, recreational, habitable, and other practical uses. As such, some of the most hard-fought and heartfelt political disputes turn on the use versus non-use of land. Lands managed by BLM have historically, and by function of law, been managed to promote multiple uses and multiple goals. This approach has been immeasurably beneficial to the United States and its citizens.

Distinct from multi-use lands, our nation sets aside millions of acres of public land to remain undisturbed. When we think about this country's national parks, its wildlife refuges, designated Wilderness areas, and, in many cases, our national monuments, we imagine breathtaking environments that have been deliberately preserved from extensive, multiple use. Yet, it is important to remember that these landscapes were created in the name of conservation because they balance against lands where multiple use is permitted. Conversely, allowing multiple use on some public land is the counterbalance to our nation's strident conservation efforts elsewhere. Striking a balance between conserved landscapes, like Alaska's Denali National Park and Wyoming's and Montana's Yellowstone National Park, and utilized landscapes, like the National Petroleum Reserve, illustrates the deliberate marriage of aspirational conservation and practical resource use. BLM's proposed rule shatters this balance. The power BLM seeks in its proposed rule is the power to create national-park levels of conservation on land where multiple use is permitted and envisioned by law. For over a century, Congress has managed this balance, at times strictly preserving some lands while opening other lands to important uses, and yet BLM, through its proposed rule, attempts to demote Congress' authority so that it can expand its own power and put a thumb on the scale in favor of conservation. This proposed rule must be challenged for the overreach it represents.

In FLPMA, Congress declared, "[T]hat it is the policy of the United States that goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield *unless otherwise specified by law*."[2] In fact, Congress made its intentions clear in FLPMA when it authorized BLM to promote multiple uses:

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[2] 43 U.S.C. § 1701(a)(7) (emphasis added).

> '[M]ultiple use' means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; *a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values*; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment . . .[3]

In other words, Congress specified that land managed by BLM should be available for mining operations, motorized recreation, natural gas leases, guide concessions, hunting and fishing, tourism, scientific study, just to name a few of the many uses Congress envisioned and authorized. Notably, Congress did not add conservation to FLPMA's multiple-use framework because conservation is not a form of use. Congress, on the other hand, did foresee land management practices that do not permanently impair the productivity of public land. To this end, BLM is not prohibited from conserving lands. However, this point is very distinct from the notions put forth in BLM's proposed rule. Conserving lands in certain instances may be a tool to fulfill the multi-pronged purposes of the law, but conservation is not the purpose in and of itself. It is a means to ensure sustained yield and to support the multiple-uses envisioned by the statute.

Contrary to the proposed rule, Congress did not expressly elevate conservation to be commensurate with other uses. Moreover, Congress did not authorize BLM to act as a *de facto* conservation lessor, as the proposed rule would allow. Instead, Congress ensured that its multiple use mandate as written would prevail "unless otherwise specified by law."[4] Yet, the proposed rule states, "[e]nsuring resilient ecosystems has become imperative, as public lands are increasingly degraded and fragmented due to adverse impacts from climate change and a significant increase in authorized use."[5] This belief, and the proposed rule that encompasses it, is not the byproduct of a change in the law as would be required by Congress, rather it is the latest in a series of bureaucratic power grabs that exceed statutory authorization. The "authorized use" that BLM references so

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3 43 U.S.C. § 1702(c) (emphasis added).

4 43 U.S.C. § 1701(a)(7).

5 88 Fed. Reg. 19584 (Apr. 3, 2023).

derisively here is precisely the forms of multiple use that Congress specified in FLPMA as essential to "best meet the present and future needs of the American people." In sum, BLM's proposed rule is in direct conflict with legislation that passed both the U.S. House and U.S. Senate with bipartisan support and President Ford signed into law.

By shoehorning conservation into the multiple-use section of FLPMA through this proposed rule, BLM would grant itself the authority to crush statutorily-mandated multiple use by declaring conservation to be an equal footing management directive. In Alaska, this will create de facto conservation system units ("CSUs") on BLM-managed lands and attempt to close those Alaska lands to the kinds of uses that promote economic and cultural vitality.[6] Other states, as illustrated by the signatures below, will be as profoundly impacted as Alaska. If BLM has its way, then it will use this proposed rule to eliminate a wide range of activities. This conservation-or-nothing attitude will significantly reduce the wellbeing of millions of people who derive benefit from the multiple uses that Congress granted. In sum, this proposed action will upend the history and legal framework of BLM-managed lands.

Conservation is important to our states, which is why we exercise forethought in developing and using our states' resources carefully and wisely. We all want these remarkable lands to remain productive and inspiring for future generations, and we can achieve this goal without BLM's proposed rule. Speaking from my current role, I can say without fear of contradiction that Alaska is one of the best places in the world to observe

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[6] Beyond the fact that BLM is reaching beyond the plain language of FLPMA, the proposed rule is also inconsistent with the Alaska National Interest Lands Conservation Act ("ANILCA") "no more" clause and thereby poses a direct threat to approximately 77 million surface acres and approximately 220 million subsurface acres of Alaska land. Additionally, the proposed rule ignores that Alaska is an "intact landscape" and is afforded, under ANILCA, wider discretion to use our lands than BLM may otherwise deem permissible under the proposed rule. Numerous statutory exceptions in ANILCA, which apply to conservation system units—including designated wilderness—do not apply to BLM multiple-use lands being managed to protect wilderness character. In light of the proposed rule, this could result in BLM multiple-use lands being managed more restrictively than existing ANILCA conservation system units (for example, implementation of access restrictions otherwise allowable under ANILCA), or being managed inappropriately to the non-impairment standard in FLPMA Section 603 in the event BLM promotes wilderness recommendations in the future, pursuant to ANILCA Section 1320. More generally, FLMPA section 302(s) provides that "where a tract of … public land has been dedicated to specific uses according to any other provision of law it shall be managed in accordance with such law." In Alaska, statutes such as ANILCA, the Naval Petroleum Reserves Production Act of 1976 ("NPRPA"), and the Alaska Native Claims Settlement Act ("ANCSA"), *inter alia,* will conflict with and prevail over BLM's proposed rule.

harmony between utilizing and caring for land. As shown below, many of my fellow Attorney Generals echo this sentiment regarding their home states. The proposed Conservation and Landscape Health rule mocks our diligent stewardship by suggesting that multiple use is neither careful nor wise, and that the only appropriate use of public land is to lock it up and throw away the key. This attitude, made tangible by the proposed rule, carries a severe and costly impact to the American people. This is not the solution to the challenge of balancing competing interests in land management policy. BLM's proposed rule is harmful policy, it is unlawful, and it will be challenged for the brash overreach that it presents.

Sincerely,

Treg Taylor
Alaska Attorney General

Tim Griffin
Arkansas Attorney General

Raul R. Labrador
Idaho Attorney General

Todd Rokita
Indiana Attorney General

Brenna Bird
Iowa Attorney General

Daniel Cameron
Kentucky Attorney General

Jeff Landry
Louisiana Attorney General

Lynn Fitch
Mississippi Attorney General

Austin Knudsen
Montana Attorney General

Mike Hilgers
Nebraska Attorney General

Drew Wrigley
North Dakota Attorney General

Gentner Drummond
Oklahoma Attorney General

Alan Wilson
South Carolina Attorney General

Marty Jackley
South Dakota Attorney General

Sean Reyes
Utah Attorney General

Patrick Morrisey
West Virginia Attorney General

Bridget Hill
Wyoming Attorney General