



**March 7, 2022**

Comments regarding:

**January 4, 2022 Request for Information to Inform Development of the American Conservation and Stewardship Atlas**

Submitted by:

**Energy and Wildlife Action Coalition**

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Docket No. DOI-2021-0016

The Energy and Wildlife Action Coalition (“EWAC”)<sup>1</sup> submits these comments in response to the U.S. Department of the Interior’s (“Interior”) January 4, 2022 Request for Information (“Request”) to Inform Interagency Efforts to Develop the American Conservation and Stewardship Atlas (“Atlas”).<sup>2</sup> EWAC provides these comments on the Request based on the knowledge and experience of its membership.

Interior requests information to develop the Atlas in coordination with other agencies as part of Interior’s America the Beautiful (“30x30”) initiative, an effort to “conserve, connect, and restore 30 percent of our lands and waters by 2030 for the sake of our economy, our health, and our well-being.”<sup>3</sup> In developing the Atlas, the agencies indicate their intent to have a useful tool in measuring the progress of conservation and restoration efforts across the country.<sup>4</sup>

EWAC supports the Administration in its efforts to promote conservation in general and to promote conservation of sensitive species of wildlife in particular. In addition, EWAC agrees with Interior’s recognition in the Request that “many uses of lands and waters can be consistent with the long-term health of natural systems and contribute to addressing climate change and environmental injustices”<sup>5</sup> and believes that increasing renewable energy generation, transmission, and distribution in an efficient manner to achieve the Administration’s climate and grid modernization goals is compatible with the 30x30 initiative.

The purpose of this letter is to encourage Interior to consider certain nuances relative to conservation and to take care that in developing the Atlas, the Administration does not inhibit other important goals and initiatives. Below, EWAC points Interior to existing goals and initiatives already in place that can both inform Interior in this effort and complement its renewed conservation endeavor, while cautioning Interior against hindering other policy goals.

## **I. Interior Should Think Creatively About How It May Achieve the 30x30 Goal.**

EWAC encourages Interior to think creatively about how it will meet its goal of conserving 30 percent of lands and waters by 2030 by using regulatory frameworks already in place and measuring land and water conserved through existing policy, regulation, and other conservation initiatives. EWAC urges Interior not to take an overly prescriptive approach to assessing eligibility of conserved areas. Specifically, EWAC encourages Interior to be careful not to impose additional requirements or expectations on existing conservation programs. Onerous criteria, such as reporting or monitoring

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<sup>1</sup> EWAC is a national coalition formed in 2014 whose members consist of electric utilities, electric transmission providers, and renewable energy entities operating throughout the United States, and related trade associations. The fundamental goals of EWAC are to evaluate, develop, and promote sound environmental policies for federally protected wildlife and closely related natural resources while ensuring the continued generation and transmission of reliable and affordable electricity. EWAC supports public policies, based on sound science, that protect wildlife and natural resources in a reasonable, consistent, and cost-effective manner. EWAC is a majority-rules organization and therefore specific decisions made by the EWAC Policy Committee may not always reflect the positions of every member.

<sup>2</sup> 87 Fed. Reg. 235 (Jan. 4, 2022).

<sup>3</sup> The United States Department of the Interior, *America the Beautiful: Our Work to Conserve at Least 30% of Lands and Waters by 2030* (2022).

<sup>4</sup> 87 Fed. Reg. at 235.

<sup>5</sup> *Id.*

requirements that could disqualify lands will have the effect of discouraging voluntary conservation or minimizing the important work of existing conservation initiatives.

*A. Through Existing Federal Policies, Interior Has a Framework on How to View and Credit Conservation Efforts.*

In the Request, Interior asks how the Atlas can reflect meaningful conservation work and what types of stewardship actions should be considered to capture a more complete picture of conservation and restoration.<sup>6</sup> EWAC encourages Interior to consider the principles set forth in the agency's existing policies when considering the types of conservation actions that will be credited toward the 30x30 goal.

For example, the U.S. Fish and Wildlife Service and National Marine Fisheries Service's (collectively, "Services") Policy for Evaluation of Conservation Efforts When Making Listing Decisions ("PECE Policy")<sup>7</sup> was developed to "ensure consistent and adequate evaluation" of conservation efforts when determining whether to list a species under the Endangered Species Act ("ESA"). The PECE Policy takes an expansive view of what constitutes a conservation effort and instructs that conservation efforts undertaken by federal agencies, tribes, states, local governments, businesses, organizations, and individuals warrant evaluation.<sup>8</sup> The PECE Policy then identifies criteria the agencies should use in determining whether the existence of formalized conservation efforts that have yet to be implemented or show effectiveness support the agencies' decision that listing a species as threatened or endangered is unnecessary, or that a species should be listed as threatened rather than endangered.<sup>9</sup>

The PECE Policy similarly takes an expansive view on what constitutes "formalized conservation efforts." "Formalized conservation efforts" as defined in the PECE policy are those "conservation efforts identified in a conservation agreement, conservation plan, management plan, or similar document."<sup>10</sup> In short, the PECE Policy concludes that the ESA requires the Services to consider myriad conservation efforts regardless of whether such efforts are private, local, state, tribal, or federal. EWAC recognizes that the factors and guidance set forth in the PECE Policy apply in the context of the Services' determination of whether and to what extent species should be listed under the ESA; however, the PECE Policy could also serve as a useful starting point as Interior considers the scope of efforts to be considered and the degree of progress that has been or will be made toward meeting the goals of the 30x30 initiative. For example, the U.S. Fish and Wildlife Service could consider for inclusion in the Atlas conserved lands established by private or corporate interests under a formalized conservation effort such as a programmatic candidate conservation agreement with assurances or safe harbor agreement under ESA section 10. In these circumstances, the agency has access to information on conserved lands based on information provided by conservation plan administrators as part of that administrator's required record-keeping, and should not need additional information that could raise privacy concerns or create new restrictions or requirements that could discourage a landowner's desire for inclusion.

In addition to existing policies within Interior, other agencies and departments have programs that could serve as a beneficial guide to development of the Atlas. Within the U.S. Department of Agriculture,

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<sup>6</sup> 87 Fed. Reg. at 236.

<sup>7</sup> Policy for Evaluation of Conservation Efforts When Making Listing Decisions, 68 Fed. Reg. 15,100 (Mar. 28, 2003) ("PECE Policy").

<sup>8</sup> PECE Policy at 15,113.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

for example, the Farm Service Agency's ("FSA") Conservation Reserve Enhancement Program ("CRP") is a voluntary program intended to incentivize agricultural producers to remove environmentally sensitive agricultural land from production in order to improve water quality, prevent soil erosion, and reduce habitat loss.<sup>11</sup> The FSA provides these incentives in a number of ways, including by paying farmers and ranchers an annual rental rate. The FSA evaluates land submitted for a CRP contract by applying an environmental benefits index ("EBI"), and scoring the proposed lands based on the degree of conservation that would occur in connection with taking those lands out of productive rotation. Examples of conservation benefits considered under the EBI include benefits to water quality as a result of reduced erosion, runoff, and leaching, air quality benefits from reduced wind erosion, and wildlife habitat benefits resulting from native vegetative cover on contracted acreage. Like the PECE Policy, the CRP could provide a useful model as Interior contemplates how to implement its 30x30 initiative. Participation in programs such as the CRP should also be considered conservation for the purposes of meeting the 30x30 goal.

*B. Beneficial Actions Taken on Renewable Energy Project Lands and Electric Transmission and Distribution Rights-of-Way Should be Counted as Conservation Lands in Some Circumstances.*

As Interior considers what types of lands and conservation actions will be counted toward meeting the Administration's 30x30 goals, EWAC suggests Interior consider including all or a portion of renewable energy project sites and electric transmission and distribution rights-of-way where the project owner or operator implements beneficial vegetative management and other practices and where any underlying landowner consents to inclusion. Many renewable energy operators voluntarily implement beneficial vegetative management practices, while operators of electric transmission and distribution facilities frequently manage rights-of-way under an Integrated Vegetation Management ("IVM") system, which promotes healthy ecosystems and biodiversity.<sup>12</sup> Where a given entity does not own the land on which it operates, however, the underlying landowner agrees to be counted in the Atlas.

**II. Interior Should Utilize All Resources at its Disposal to Determine the Degree of Progress Toward 30x30.**

In its Request, Interior asks what data sources, standards, and technical sources should be applied to data included in the Atlas to ensure that it is both authoritative and a useful tool for the public. EWAC suggests that one of the most useful tools would be an up-to-date and comprehensive assessment of the degree of progress or achievement that has already been made toward the 30x30 goal.

Once the Administration has established its criteria for deeming certain areas as adequately conserved, the Administration should reach out to various stakeholders, including state and local governmental entities, non-profit organizations, and land trusts, who can inform Interior of various conservation actions undertaken or known by those entities and aid in assessing the total acreages of existing federal, state, and local parks, wildlife refuges, forests, wilderness areas, monuments, and other public land under conservation. Similarly, universities and other research institutions can serve as a repository of valuable information relative to conservation.

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<sup>11</sup> 16 U.S.C. § 3831; USDA, FSA, *Conservation Reserve Program*, About the Conservation Reserve Program (CRP).

<sup>12</sup> IVM practices around utility rights-of-way reduce the need for pesticides, promote healthy ecosystems, and provide measurable results, such as greater natural species diversity along rights-of-way and better control of invasive species. See: <https://www.epa.gov/peps/integrated-vegetation-management-ivm-practices-around-utility-rights-way>.

While EWAC suggests Interior make a concerted effort to consult all resources it has at its disposal to measure progress towards achieving the 30x30 goal, it is important that Interior also considers data and privacy concerns. EWAC encourages Interior to work with stakeholders to ensure sensitive information is protected. For example, an entity or landowner may be unwilling to submit their conservation efforts for inclusion in the Atlas if it requires making public information that may implicate privacy or safety concerns. Many landowners may not want to be included in the Atlas at all. In sum, EWAC recommends Interior remain sensitive to the issue of privacy as it develops the Atlas.

### **III. In Developing the Atlas, Interior Should Be Careful Not to Hinder Other Administration Objectives.**

Given the Administration's emphasis on addressing threats to natural resources and biodiversity caused by climate change, EWAC suggests that the deployment of renewable energy and grid modernization efforts should work side-by-side with the 30x30 initiative to meet the shared goal of a more sustainable future.<sup>13</sup> With the foregoing in mind, Interior should be flexible as to what constitutes conservation, and credit appropriate dual use scenarios such as revegetating agricultural lands in connection with operations and maintenance of solar energy facilities or using IVM or pollinator plantings within electric transmission rights-of-way, to further incentivize participation.

EWAC cautions Interior to balance its 30x30 goals with other high value priorities of the Biden Administration and the expectation the public may have in the future management of land designated for conservation. While EWAC supports conservation of lands and wildlife, EWAC has some concerns that development of the Atlas and other actions dedicated to meeting the 30x30 goal could unintentionally inhibit the development of renewable energy generation and transmission and distribution infrastructure necessary to get that electricity to the market that will be needed to meet the Administration's ambitious climate goals. Specifically, EWAC is concerned with the potential that policies adopted in connection with meeting the 30x30 goal could result in large areas of public and private lands being excluded from the development of renewable energy and transmission and distribution infrastructure. It is important that any policies adopted in connection with achieving the goals of 30x30 explicitly recognize the compatibility of renewable energy and transmission and distribution of the same. Designating certain geographic areas for conservation purposes, without clearly articulating the compatibility of clean energy infrastructure would be at cross purposes with the energy and climate goals of this Administration and could burden the renewable energy industry, and electric power sector broadly, by making it more difficult to obtain federal, state, and/or local approvals, even absent a regulatory basis for doing so. For example, achieving 30x30 as a policy goal should not result in regulatory burdens without adequate public review and comment, nor should an area's inclusion in the Atlas result in the requirement to offset impacts to that area without a clear statutory or regulatory basis for doing so. EWAC encourages the Administration to make clear that inclusion in the Atlas does not create a legal obligation for agencies or the public to evaluate project impacts on such lands in the future.

Finally, while EWAC applauds the Biden Administration's leadership and systematic approach to addressing climate change and the environment,<sup>14</sup> the 30x30 initiative should not come at the expense of

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<sup>13</sup> See Exec. Order No. 14008 86 F.R. 7619 (2021); Exec. Order No. 14057, 86 F.R. 70935 (2021).

<sup>14</sup> The Biden Administration's efforts to fight climate change include but are not limited to: a goal of net zero emissions by 2050, the decarbonization of the grid by 2035, and renewable industry outreach on promoting renewables and transmission on public lands. Exec. Order No. 14057, 86 F.R. 70935 (2021); The White House, April 2021. "FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying

private investment in renewable energy and electric infrastructure. If public and private lands become unavailable for production, transmission, and distribution of electricity, or if the cost and time associated with development on such lands substantially increases, those activities may be viewed by financiers as a risky investment, which could in turn result in fewer opportunities to provide renewable energy generation and transmission and distribution of the same. In competitive power markets in particular, significant increases in development costs can result in renewable energy projects becoming uneconomical, given their inability to secure power purchase agreements.

#### **IV. Conclusion**

EWAC reiterates its support for conservation and the importance of taking a thoughtful approach to any conservation initiative. Doing so will avoid inadvertently making it more difficult to achieve other Administration priorities, including reducing greenhouse gases, fighting climate change, and upgrading the nation's electric infrastructure.<sup>15</sup> EWAC is grateful for the opportunity to comment on this initiative and welcomes the opportunity to discuss them with Interior in greater detail.

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Please feel free to contact the following EWAC representatives:

Jennifer A. McIvor, EWAC Policy Chair, [jennifer.mcivor@brkenergy.com](mailto:jennifer.mcivor@brkenergy.com), 712-352-5434

John M. Anderson, EWAC Executive Director, [janderson@energyandwildlife.org](mailto:janderson@energyandwildlife.org), 202-508-5093

Brooke Marcus, Nossaman LLP, [bmarcus@nossaman.com](mailto:bmarcus@nossaman.com), 512-813-7941

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Union Jobs and Securing U.S. Leadership on Clean Energy Technologies;" Exec. Order No. 14008 86 F.R. 7619 (2021).

<sup>15</sup> *Id.*