AREAS OF CRITICAL ENVIRONMENTAL CONCERN AND INDIAN TRIBES

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EXECUTIVE SUMMARY

The public lands of the United States comprise significant portions of the traditional homelands of Indian tribes. Despite a history of removal, displacement, and exclusion from their homelands, Indian tribes' connections to these lands have never been extinguished. Many Indian tribes continue to exercise treaty rights on public lands and tribal members continue to use public lands for traditional cultural practices. Public lands are interwoven into the history and culture of Indian tribes, and their unique relationship to these lands is of utmost importance to their ongoing persistence and resiliency. However, federal agencies, as managers and stewards of America's public lands, have not consistently protected the interests of Indian tribes with connections to these areas, sometimes resulting in the desecration of significant places. In the face of ongoing public land use practices, mismanagement, development, and the scarcity of resources and funding available to federal land managers, places of cultural importance to Indian tribes on public lands continue to be compromised.

The Bureau of Land Management (BLM) manages over 245 million acres of public lands, making it the largest land manager in the United States. The Federal Lands Policy Management Act (FLPMA) provides legal instruction to the BLM on the management of its public lands and creates strong land protection provisions, including Areas of Critical Environmental Concern (ACEC). ACECs were codified to protect values, resources, and natural systems and processes that require special management attention on BLM managed lands, which can include an array of places of cultural importance to Indian tribes. While FLPMA intended for the BLM to prioritize the identification and designation of ACECs so that important places on public lands could be protected, the BLM often does not adequately consider or manage ACECs. This has led to irreparable harm to places of cultural importance to Indian tribes.

This report highlights three examples of Indian tribes asserting their connections to BLM managed lands and advocating for the protection of places of cultural importance through ACEC identification, designation, and management. First, the Confederated Tribes of Grand Ronde in Oregon have consistently advocated for the protection of Table Rocks, a unique geological formation that holds great importance to the tribe. Portions of Table Rocks are designated as ACECs, and the tribe is a co-manager of the Table Rocks landscape with the BLM and the Nature Conservancy. However, the BLM has not adequately considered the Confederated Tribes of Grand Ronde's concerns about the impacts to Table Rocks from a proposed substation at the base of this culturally significant landform.

Second, during land use planning in Alaska between 2019 and 2021, the BLM systematically rejected ACECs nominated by Indian tribes and then stripped previously identified ACECs of their special management designation, leaving many significant places without adequate protection from potential development. Third, in the Greater Chaco Landscape in New Mexico, Arizona, Colorado, and Utah, the BLM has not adequately considered the impacts caused by ongoing oil and gas development on many culturally significant places, including ACECs, and this has led to the desecration and fragmentation of a cultural landscape that is important to many Indian tribes.

ACECs could be a powerful tool for the management and protection of places of cultural importance to Indian tribes on BLM managed lands. However these examples illustrate that the BLM has not been consistent in identifying, designating, and managing ACECs with cultural importance to Indian tribes. This inconsistency leaves many of these irreplaceable and invaluable places open to harm and without the special management consideration they deserve. This report documents that the BLM has:

- Failed to consistently prioritize the identification and designation of ACECs in their land use planning processes.
- Failed to adequately consider values, resources, and natural systems and processes of significance to Indian tribes in their identification and designation of ACECs.
- Failed to consistently take a broad perspective in the identification of ACECs and often excluded landscape and ecosystem scale ACECs, including those nominated with merit by Indian tribes.
- Failed to adequately manage or protect designated ACECs or acknowledge broader landscape-scale or cumulative effects on ACECs when considering ongoing management.
- Failed to consistently consider the knowledge, values, and expertise of Indian tribes regarding ACECs
- Failed to consistently conduct meaningful government-to-government consultation with Indian tribes on ACECs.

There is an opportunity to strengthen ACECs so they can be an important management tool in protecting places of cultural importance to Indian tribes. What is needed is the promulgation of federal regulations and guidance that provide clear and binding instructions to the BLM about the identification, designation, and management of ACECs. These regulations and guidance should strengthen the role of Indian tribes in ACEC identification, designation and management by:

- Promoting consistency in the identification, designation, and management of ACECs, including providing minimum standards for ACEC management.
- Highlighting the importance of BLM managed lands to Indian tribes by expanding the role of Indian tribes in the identification, designation, and management of ACECs.
- Stating that resources, values, systems, and processes significant to Indian tribes are potential ACECs and providing Indian tribes an opportunity to identify ACECs through tribally-led identification efforts using their own ontological and epistemological frameworks.
- Stating that Indian tribes are uniquely qualified to identify resources, values, and natural systems and processes of tribal cultural significance and are experts in their

culture, history, and worldview. ACECs identified by Indian tribes hold equal standing to those identified by other experts.

- Creating a process for establishing tribal co-stewardship of ACECs.

- Recognizing the necessity for redacting information in order to protect the resource, values, systems, and processes of Indian tribes.

- Highlighting the breadth of the ACEC definition in FLMPA to demonstrate that ACECs do not have to be narrowly defined in pre-existing resource management categories, such as "cultural resources" or "natural resources."

- Allowing for the nomination and consideration of ACECs outside of the RMP process to ensure that ACEC consideration and designation can take place frequently.

The federal government holds a trust responsibility that requires that tribes be directly involved in these processes. New regulations and guidance that reflect the importance of public lands for Indian tribes, and which create a significant role for Indian tribes in ACEC processes, would advance the intent of FLPMA for ACECs to be used as a means for protecting significant resources, values, and natural systems and processes on BLM managed lands.

In addition, a nationwide ACEC program within the BLM should be established to support FLPMA's directive to prioritize ACECs in BLM land planning and management practices. This nationwide program would serve multiple purposes, including promoting the use of ACECs within the BLM, supporting consistent practices associated with ACECs, and providing information to stakeholders regarding ACECs. This nationwide program would play a valuable role in the future of ACECs.

For newly created ACEC regulations and guidance to be effectively implemented, the BLM must meaningfully consult and collaborate with Indian tribes, and consider them as co-stewards of BLM-managed lands. This consultation and collaboration is called for by Executive Order 13175 and Joint Secretarial Order 3043. Further guidance is needed from the Executive Branch and the Department of the Interior to support the meaningful engagement between the BLM and Indian tribes, to protect places of cultural significance to Indian tribes, and to work towards shared stewardship of the public lands in the United States.

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INDIAN TRIBES, PUBLIC LANDS, AND THE FEDERAL GOVERNMENT

Since time immemorial, Indigenous peoples have lived on and nurtured the lands that comprise the United States of America. The expansive public lands throughout the country are thus within the traditional homelands of many Indian tribes.[i]

This historical relationship of Native Americans and land was acknowledged by Secretary of the Interior Deb Haaland and Secretary of Agriculture Thomas J. Vilsack, who wrote in 2021:

> The Departments [of the Interior and Agriculture] are responsible for the management of millions of acres of Federal lands and waters that were previously owned and managed by Indian tribes. Those lands and waters contain cultural and natural resources of significance and value to Indian Tribes and their citizens, including sacred religious sites, burial sites, wildlife, and sources of indigenous foods and medicines. In addition, many of those lands and waters lie within areas where Indian Tribes have reserved the right to hunt, fish, gather, and pray pursuant to ratified treaties and agreements with the United States.[1]

Many Indian tribes view these lands as living entities with which they hold a reciprocal relationship that is essential for the ongoing health and vitality of their communities. While Indian tribes have been removed, displaced, and excluded from much of their traditional homelands, they have not lost their connections to the land. The value of land to Indigenous peoples is expressed by Robin Kimmerer, ecologist and member of the Citizen Potawatomi Nation:

> Children, language, lands: almost everything was stripped away, stolen when you weren't looking because you were trying to stay alive. In the face of such loss, one thing our people could not surrender was the meaning of land. In the settler mind, land was property, real estate, capital, or natural resources. But to our people, it was everything: identity, the connection to our ancestors, the home of our nonhuman kinfolk, our pharmacy, our library, the source of all that sustained us. Our lands were where our responsibility to the world was enacted, sacred ground. It belonged to itself; it was a gift, not a commodity, so it could never be bought or sold. These are the meanings people took with them when they were forced from their ancient homelands to new places.[2]

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[i] This report uses the term "Indian tribe" as defined in 34 U.S.C. 12133, which states an Indian tribe is "a tribe, band, pueblo, nation, or other organized or community of Indians, including Alaska Native village … that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indian." There are currently 574 federally recognized Indian Tribes within the United States.

Indian tribes have a unique relationship with public lands, and as sovereign domestic dependent nations they have a unique government-to-government relationship with the United States. This unique relationship includes the federal government's trust responsibility to Indian tribes to "protect and enhance the people, the property and the self-government of Indian tribes."[3]

To support a meaningful government-to-government relationship between Indian tribes and the federal government, in 2000 President Clinton issued Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*.[4] This order was signed "in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, … [and] to strengthen the United States government-to-government relationships with Indian tribes."[5] Since then, President George W. Bush, President Barack Obama, and, most recently, President Joseph R. Biden Jr. issued tribal consultation orders and memoranda of guidance that reaffirm Executive Order 13175. In 2021, the Department of the Interior, in response to President Biden's Presidential Memorandum reaffirming Executive Order 13175, developed a report that outlined goals and objectives for the Department to improve government-to-government consultation practices.[6]

Recently, the federal government asserted that the trust responsibility the federal government has for Indian tribes includes the proper stewardship of public lands. In Joint Secretarial Order 3043, Secretary of the Interior Deb Haaland and Secretary of Agriculture Thomas J. Vilsack stated that:

> In managing Federal lands and waters, the Departments are charged with the highest trust responsibility to protect Tribal interests and further the nation-to-nation relationship with Tribes. The Departments recognize and affirm that the United States' trust and treaty obligations are an integral part of each Department's responsibilities in managing Federal lands. Tribal consultation and collaboration must be implemented as components of, or in addition to, Federal land management priorities and direction for recreation, range, timber, energy production, and other uses, and conservation of wilderness, refuges, watersheds, wildlife habitat, and other values. Further, in honoring these obligations, the Departments will benefit by incorporating Tribal expertise and Indigenous knowledge into Federal land and resources management.[7]

This Joint Secretarial Order called on the bureaus and agencies within the Departments of the Interior and Agriculture to ensure that decisions regarding the stewardship of federal lands consider how to safeguard interests of Indian tribes, develop agreements to collaborate with Indian tribes in the co-stewardship of federal lands, and empower Indian tribes to provide stewardship to federal lands. Bureau of Land Management (BLM) Director Tracy Stone-Manning issued Memorandum No. 2022-011 in provide direction to the BLM on Joint Secretarial Order 3043. This Memorandum stated that the BLM will adhere to the order and "engage Tribes in meaningful consultation at the earliest phases of planning and decision-making

in order to provide an opportunity for Tribes to shape the direction of the BLM's land management activities."[8]

The federal government is now beginning to emphasize that the participation of Indian tribes is integral to the management and stewardship of public lands. As Secretary of the Interior Deb Haaland said, "By acknowledging and empowering Tribes as partners in co-stewardship of our country's lands and waters, every American will benefit from strengthened management of our federal land and resources."[9]

This report examines one aspect of the management of public lands related to Indian tribes: the BLM's use of Areas of Critical Environmental Concern (ACEC). This report will illustrate that while Indian tribes hold unique ties to public lands, the federal government has failed to adequately consider places of cultural importance to Indian tribes on BLM managed lands. There continues to be many obstacles that the federal government faces in working to meaningfully involve Indian tribes in the co-stewardship of public lands, which are the traditional homelands of Indian tribes.

AREAS OF CRITICAL ENVIRONMENTAL CONCERN

The BLM manages over 245 million acres of the nation's public lands and about 700 million acres of its subsurface mineral estate, making it the largest land manager in the United States of America.[10] The BLM has a mission "to sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations."[11] The lands that the BLM manages include the traditional homelands of many Indian tribes.

The Federal Lands Policy Management Act (FLPMA) that provides a legal authority for the administration of public lands to the BLM, and instructs the agency to seek sustained yields from the multiple uses of the land it manages, including grazing, timber, mineral development, and recreation.[12] FLPMA sought to balance the interest in sustained yields from public lands by instructing the BLM to prioritize the protection of important resources, values, and natural systems and processes on their lands.

In this report, we focus on an important but often overlooked aspect of FLPMA: the creation of ACECs. ACECs are a unique management tool within the BLM that has great—but largely unrealized—potential to support the protection and stewardship of places of cultural importance to Indian tribes on BLM-managed lands. A review of existing laws, regulations, guidance, and pertinent literature, combined with interviews with tribal officials, are used to analyze the role of ACECs in the management and protection of important resources, values, and natural systems and processes on BLM managed lands, focusing on the engagement of Indian tribes and the protection of places of tribal cultural importance.

Purpose and Legislative History

FLPMA was enacted in 1976 to govern how the BLM administers federal lands.[13] The law created a unified managerial mission and provided a legislative directive for specific aspects of land management by the BLM, including the designation and management of ACECs.[14] The BLM was created in 1946 when the General Land Office and United States Grazing Service were merged.[15] The establishment of ACECs within FLPMA was integral in focusing the BLM on the preservation and protection of federal lands. FLPMA defines ACECs as:

> areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.[16]

FLPMA directs the Secretary of the Interior to continually maintain an inventory of resources, values, and natural systems and processes on all public lands that gives "priority to areas of critical environmental concern." The law goes on to say, "This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values."[17] FLPMA directs the Secretary of the Interior to "give priority to the designation and protection of areas of critical environmental concern" during land use planning.[18]

The ACEC provisions in FLPMA were intentionally written to provide flexibility and allow for changes in the management of public lands without Congress having to amend the law. However, regulations and guidance promulgated about ACECs since the passage of FLPMA have limited the use and impact of this potentially important management tool. In 1979, the Carter Administration finalized regulations for FLPMA, and published guidelines for ACECs the following year. The ACECs guidelines provided clear definitions for what it meant to protect and prioritize ACECs, as well as instructions to implement those definitions.[19]

However, the Reagan Administration proposed new FLMPA regulations in 1981 to "delete burdensome, outdated and unneeded regulations," and these were adopted in 1983.[20] The new rule removed or weakened nearly all of the regulations relating to ACECs, contradicting the language in FLPMA that states that ACECs are to be prioritized.[21] The revised regulations instructed BLM field offices to consider ACECs throughout the planning process but did not explain how the agency would prioritize ACECs designation, nor how the BLM would protect ACECs with special management.

In 1988, the BLM published the ACEC Handbook to provide guidance to BLM personnel about the identification, analysis, designation, and management protocols for ACECs.[22] The handbook instructs BLM personnel to only identify, evaluate, and designate ACECs during the "development, revision, and amendment of resource management plans" (RMPs) that guide BLM field offices' management practices for 10 to 15 year intervals. The guidelines call for

BLM personnel to conduct detailed evaluations of ACECs, including the determination of management prescriptions, during the resource management planning process, and to provide the public opportunities to participate in the ACEC designation process. The ACEC Handbook is vague and leaves the implementation of the identification, designation, and management ACECs to individual BLM field offices, district offices, and state offices without robust institutional guidance.

In 2005, FLPMA regulations were amended to clarify the responsibility that BLM personnel have to coordinate with other federal agencies, states, local governments, and Indian tribes in the land use planning process.[23] The 2005 regulations instruct "State Directors and Field Managers to invite eligible Federal agencies, state and local governments, and federally recognized Indian tribes to participate as cooperating agencies in the development, amendment, and revision of resource management plans."[24] These amendments formalize the role of cooperating agencies in BLM land use planning, including the role Indian tribes may play in the process.

In 2016, the Obama Administration amended FLPMA regulations governing the land use planning process. These regulations affirmed the importance of outside entities including Indian tribes participating in the land use planning process, and enhanced opportunities for public participation in the planning process. These regulations also included amended regulations regarding the process and criteria for the designation of ACECs.[25] Those rules were finalized in the last 90 days of the Obama Administration but the U.S. Congress exercised its veto power under the Congressional Review Act and rejected the regulations.[26] The amendments to the regulations have not since been reintroduced.

Currently, the 1983 FLPMA regulations, supplemented by the 2005 amendment and the 1988 ACEC Handbook, provide legal guidance to the BLM concerning ACECs. As this report will highlight, ACEC regulations and guidance have resulted in the inconsistent use of ACECs by the BLM, endangering areas on BLM managed lands, including places of cultural importance to Indian tribes. These regulatory failures have led to multiple tribal organizations to call for updated regulations regarding ACECs that provide a greater role in the process for Indian tribes.[27] This includes a call by the National Congress of American Indians to promulgate "improved ACEC Regulations that would provide updated guidance and improve how ACECs are established and managed by the agency for the benefit of future generations of Tribal Nations with historical connections to traditional land now managed by the Bureau."[28]

Designation of ACECs

ACECs are identified, evaluated, and designated by the BLM during the land use planning process.[29] Land use planning is an essential part of FLPMA, and the law directs the Secretary of Interior to "develop, maintain, and when appropriate, revise land use plans" for public lands.[30] An important consideration for the development and revision of land use plans is to "give priority to the designation and protection of areas of critical environmental concern."[31] The

ACEC Handbook calls for the identification, evaluation, and designation of ACECs as part of the development, revision, and amendment of RMPs, a process designed to couple with the National Environmental Protection Act (NEPA).[32] This results in the designation of ACECs being accomplished primarily by local BLM field offices.

The BLM's 1988 ACEC Handbook instructs BLM personnel on how to designate ACECs during the RMP process. The handbook states that during the RMP process "[a]ll areas which meet the relevance and importance criteria [of ACECs] must be identified as potential ACEC's [sic] and fully considered for designation and management in resource management planning."[33] In 2005 the BLM reiterated this process in the Land Use Planning Handbook without further clarifications.[34] BLM personnel are tasked with the following:

1) BLM personnel are to compile a list of areas to be considered as ACECs, including previously identified ACECs and areas recommended as ACECs by the BLM, the public, or other agencies.

2) BLM personnel are instructed to gather information on the relevance and importance of potential ACECs, including obtaining data from "specialists qualified by knowledge, training or experience to comment on the area or resource in question."[35]

3) BLM personnel are to determine if resources under consideration meet the relevance and importance criteria established for ACECs.[36]

4) The proposed ACECs determined to meet those criteria should then have management prescriptions developed. Management prescriptions for potential ACECs are then to be incorporated into appropriate alternatives of the RMP.

5) BLM personnel select the preferred alternative of the RMP and after the incorporation of public comments on proposed ACECs, BLM personnel are to approve ACECs designations associated with the selected alternative.[37]

A comprehensive analysis of the ACEC designation process is difficult because ACECs are designated within RMPs, and this results in information about ACECs being dispersed in more than 100 RMPs and Resource Management Plan Amendments (RMPAs). While the BLM provides an online inventory of ACECs, this inventory has not been updated since 2016 and provides little information on ACECs except for their name and size.[38]

While a comprehensive analysis of ACECs is difficult, an evaluation of over 100 ACECs by Sheldon and Baldwin in 2017 provides a robust review of ACECs. Sheldon and Baldwin found that many RMPs "gave little or no information about the resources and values that warranted ACEC designation. Indeed, it is fair to say that BLM Manual § 1613.33B requirement for a description of ACEC resources and values was almost entirely ignored."[39] This lack of clarity "makes it impossible to evaluate, or even ascertain, the applicable management

prescriptions."[40] Given this, it seems unlikely that BLM field offices are prioritizing the identification of ACECs in the land use planning process, as called for by FLPMA. Sheldon and Baldwin suggest that ACECs often:

> receive short shrift in the planning process … ACEC designation does not appear to be a priority for BLM field managers. Rather than being used as the starting point in the planning process, ACECs are regarded merely as one of a number of possible categories of designation available for multiple use/sustained yield management in the planning area.[41]

Another issue is the infrequent intervals that ACECs are considered for designation. Land use planning at the BLM is a long process, and the development of RMPs that cover 15-to-20 year management periods is often a multi-year project for individual field offices. Given the enormous expenditure to develop these required planning documents and their long duration, BLM field offices do not frequently initiate or amend RMPs. For example, a review of existing RMPs in Arizona found that of the 16 RMPs in the state the median year they were completed was 2008, with only one RMP completed since 2013, and only one RMPA currently in progress.[42] Given that ACEC designation only takes place during the planning process, this leads to many years or decades when no new ACECs are designated on lands managed under specific RMPs. This leads to long intervals where important resources or values requiring special management prescriptions are not adequately considered by the BLM.

While there is sparse synthesis of ACECs, the BLM's published ACEC spatial data indicate that ACEC designations often have limited geographic scope and are associated with only one significant resource or value.[43] In 2022, the BLM provided interim guidance on the consideration of ACEC designations, and instructed BLM personnel "to evaluate whether relevant values contribute to landscape intactness, climate resiliency, habitat connectivity, or opportunities for conservation or restoration, or have substantial significance to Tribes or Alaska Native Corporations … in a way that may support Tribal co-stewardship or traditional and customary uses."[44] This guidance emphasized the broad types of resources, values, and natural systems and processes that can be designated as ACECs, including those with significance to Indian tribes. Time is needed to see how this guidance is implemented within the BLM, and whether it results in an increased designation of ACECs that are significant to Indian tribes.

Management of ACECs

The laws, regulations, and guidance governing ACECs provide broad perspectives on ACEC management, and leave significant flexibility and interpretation to BLM field and state office personnel. FLPMA states that ACECs are "areas within the public lands where special management attention is required," but does not stipulate particular management instructions for ACECs.[45] Similarly, the 1983 FLPMA regulations state that approved RMPs, "shall include the general management practices and uses, including mitigating measures, identified to protect designated ACEC[s]."[46]

The ACEC Handbook provides the most comprehensive guidance to BLM personnel on ACEC management. While the handbook does not provide specific management prescriptions for ACECs, it notes that FLMPA requires BLM to give priority to the protection of ACECs, and instructs BLM personnel to do so through the implementation of management prescriptions outlined in RMPs for individual ACECs. BLM personnel are instructed by the ACEC Handbook to do the following in managing ACECs:

- Develop an implementation schedule for each ACEC that identifies "the priority, sequence, and costs of implementing activities associated with protection of the ACEC resources or values, including monitoring activities."[47]

- As needed, develop site-specific activity plans for individual ACECs. These activity plans should contain the "general management practices, allowable uses and constraints, including mitigation measures identified to protect the designated ACEC."[48]

- Develop ACEC monitoring provisions within RMPs to establish standards and intervals for monitoring, that are based on the sensitivity of the resources within an individual ACEC.[49]

- Consider all proposed actions that have potential effects to an ACEC as part of an environmental analysis.[50]

- The BLM State Director must provide an annual report to the Director of the Bureau of Land Management on the progress in the management of ACECs.[51]

Sheldon and Baldwin's analysis of RMPs indicate that there is little uniformity in ACEC management outlined by RMPs, and there is little or no administrative record to determine if a field office complies with the management prescriptions it designates for a given ACEC.[52]

In addition, for many ACECs, RMPs fail to identify and describe the special management prescriptions needed to protect the ACEC's resources, values, and natural systems and processes.[53] RMPs are often vague when describing how ACEC resources, values, and natural systems and processes are to be managed, and RMPs frequently use conditional and future-tense terms such as "should," "would," or "will," leaving it unclear whether the management prescriptions are or will actually be instituted.[54] When BLM field offices do not adequately define management prescriptions for ACECs with RMPs, it is difficult to determine how an ACEC is being protected through special management, or whether the BLM is protecting the resources or values associated with ACECs.

Sheldon and Baldwin's analysis identified contradictions within RMPs between the activities authorized to take place within ACECs and the protection of the values and resources of ACECs.[55] Many ACECs are open for mining, oil and gas development, recreation, grazing, and vehicular use, and the management prescriptions outlined for individual ACECs often seem

incompatible with one or more of these uses. In addition, many RMPs acknowledge the challenge of meeting certain outlined management prescriptions, such as restricting off-road vehicular use. These contradictions in management prescriptions suggest that current ACEC management may fail to protect the resources, values, and natural systems and processes that ACECs were designated to protect.

Current ACEC management practices poorly support the management of landscape-scale resources, values, and natural systems and processes.[56] The decentralized model of ACEC designation and management places individual BLM field offices in a central role in the process, and discourages coordination between land managers in the management of resources, values, and natural systems and processes associated with ACECs. Many resources, values, and natural systems and processes that ACECs seek to protect require landscape-scale planning and do not conform to administrative boundaries.

Role of Indian Tribes the Identification, Designation, and Management of ACECs

In recent years the federal government has provided important directives on the role of Indian tribes on policies that have tribal implications, including co-stewardship of public lands, but there is less information directly about the role Indian tribes in ACEC and land use planning processes. The most direct instruction provided in FLPMA states that the BLM should "coordinate the land use inventory, planning, and management activities … with the land use planning and management programs … of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs." FLPMA goes on to state that during land use planning the BLM should keep apprised of tribal land use plans, assure the consideration of tribal land use plans, and resolve to the extent possible inconsistencies between federal and tribal land use plans.[57]

FLPMA regulations allow for tribes "to participate as cooperating agencies in the development, amendment, and revision of resource management plans."[58] These regulations allow for tribes to enter into cooperating agreements with the BLM, and this provides a formalized, though minor, role in the BLM land use planning process.

The BLM Land Use Planning Handbook, published in 2005, instructs the BLM to engage in government-to-government consultation with federally-recognized Indian tribes as part of the land use planning process. This guidance states that the BLM should:

> provide government officials of federally-recognized Tribes with opportunities to comment on and to participate in the development of land use plans. The BLM will consider comments, notify consulted Tribes of final decisions, and inform them of how their comments were addressed in those decisions. At a minimum, officials of federally-recognized Tribal governments must be offered the same level of involvement as state and county officials. It is recommended that

coordination take place as early as possible and before official notifications are made.[59]

In 2022, BLM Director Stone-Manning wrote in a memorandum that FLPMA statutes and regulations regarding land use planning can "create structured opportunities for tribes to provide early and direct input into the BLM's land use planning process. Moreover, in addition to involving Tribes in the land use planning process itself, the BLM can also use land use plans to formalize its commitment to engage in co-stewardship arrangements for subsequent implementation decisions."[60] While Director Stone-Manning's memorandum highlights the importance for structured opportunities of Indian tribes during the land use planning process, these instructions have not been implemented and their issuance suggests that Indian tribes have previously been not fully integrated into BLM land use planning processes.

In 2022, the BLM issued Instruction Memorandum 2023-013 regarding the consideration of ACECs in the land use planning process. This memorandum instructed BLM personnel to consider whether values associated with potential ACECs have "substantial significance" to Indian tribes or Native Alaskan Corporations that are related to tribal co-stewardship or traditional and customary uses.[61] This guidance provides BLM personnel with explicit instruction to consider places that are significant to Indian tribes in designating ACECs. However, this guidance has not been implemented and it is unclear how the BLM plans to assess significance to Indian tribes, or whether that assessment will include structured engagement with Indian tribes.

Based on the laws, regulations, and guidelines regarding land use planning promulgated by U.S. Congress and the Department of the Interior, Indian tribes are provided an important but limited role in BLM land use planning and, by extension, in the identification, designation and management of ACECs. The current administrative process allows tribes to advocate as stakeholders in a manner similar to that of the general public, and this does not recognize the special relationship that exists between tribes and the United States. As the following examples illustrate, the small role that Indian tribes have been provided in the land use planning process has not resulted in adequate consideration of places of cultural importance to Indian tribes by the BLM. This has ultimately led to the degradation of these important and irreplaceable places.

CASE STUDIES OF TRIBAL ENGAGEMENT IN THE DESIGNATION AND MANAGEMENT OF ACECS

The lack of a comprehensive ACEC inventory and a detailed administrative record regarding the identification, designation, and management of ACECs makes it difficult to ascertain the level of tribal engagement. Here we provide three examples of ACEC identification, designation, and management that involve Indian tribes. These examples exemplify some of the challenges that Indian tribes encounter with the BLM, including the need to advocate for land, resources, and values through the designation and management of ACECs.

The Table Rocks ACECs and the Confederated Tribes of Grand Ronde in Oregon

Upper Table Rock and Lower Table Rock (Table Rocks) are prominent volcanic mesas that rise above the Rogue River in southwestern Oregon. In 1986, the BLM designated portions of Upper Table Rock and Lower Table Rock as ACECs to protect special status plant and animal species, recognize unique geologic and scenic values, and promote special educational opportunities fostered by the ecological value of land.

Table Rocks have been occupied by Native Americans in the Rogue River Valley since time immemorial. The descendants of Native peoples in the region maintain histories about the creation of Table Rocks and the Rogue River by spiritual deities.. These histories provide important lessons. Briece Edwards, Deputy Tribal Historic Preservation Officer (THPO) for the Confederated Tribes of Grand Ronde, explained that, "[T]hese are landforms that are imbued with understanding that comes with layers in time."[62] The Native peoples of the Rogue River Valley carefully "managed the area for subsistence, prosperity, and social interaction."[63]

Table Rocks encompass a unique ecological area that supports a diversity of plant and animal life. The landforms are capped with oak savannah, grassy mounds, stone flats, and seasonal ponds, and these provide rich microclimates for a diversity of rare plants and animals, some of which are only found in upon these landforms. The summits of the Table Rocks provide critical habitat for several endangered species that inhabit the vernal pools.[64] The lowlands surrounding the volcanic mesas and river bottom are important parts of the Table Rocks landscape that support diverse species. The environmental diversity at Table Rocks is an important aspect of the place for Grand Ronde tribal members. The Table Rocks are an important source of plants, including materials for basketry and other crafts, and Grand Ronde tribal members and their ancestors have proactively managed the diversity there since time immemorial.[65]

By the mid-1800s, Euro-American settlers in Oregon claimed land as their own. Incursions upon Native lands and the disruption of traditional land use patterns resulted in conflicts between Native groups and settlers. Volunteer Euro-American militias attacked Native settlements, and this resulted in retaliation by Native groups. On September 10, 1853, the Rogue River Tribe of Indians signed a peace treaty with the United States, ceding all their traditional lands except for the area of the Table Rocks, where a reserve was established. In 1855, settlers and miners sought to rid southwestern Oregon of Native groups, resulting in the Rogue River Indian Wars. The Native groups at the Table Rock Reservation were forcibly marched to the Yamhill Valley and Siletz area on the coast. Many of the people believed they would be allowed to return and some successfully did.[66]

The Rogue River groups marched to the Yamhill Valley and Siletz area where they joined the 27 tribes which were placed on the Coast Reservation when it was established in 1855. Two years later, the Grand Ronde Reservation was established by Executive Order. After this, the Coast Reservation was systematically reduced in size, some groups on the Coast Reservation

were moved to the Grand Ronde Reservation, and the Coast Reservation was renamed as the Siletz Reservation. The populations on these reservations formed the Confederated Tribes of Grand Ronde and the Confederated Tribes of Siletz Indians, respectively.[67] "Today, descendants of the original Table Rocks inhabitants are members of the Confederated Tribes of Grand Ronde Community of Oregon. Grand Ronde tribal members have strong ties to their ancestry, culture, and ceded lands. Table Rocks fall into each of these categories and hold a strong and continuing interest to Grand Ronde and its membership."[68] Members of the tribe have never stopped visiting Table Rocks for cultural purposes.[69]

In 1986, portions of Upper and Lower Table Rocks were separately designated as ACECs by the Medford District Office of the BLM to protect native plant and animal species, recognize geologic and scenic values, and promote educational opportunities related to the ecological value of land.[70] The ACEC designations for Upper and Lower Table Rocks did not include the significant cultural, historical, and spiritual values of these landmarks to the Confederated Tribes of Grand Ronde or to other associated tribes. The Confederated Tribes of Grand Ronde and other tribes in western Oregon had to regain federally recognition in the 1980s after they were terminated as tribes in 1954. Consequently, the tribes probably did not have the capacity to provide direct input to the BLM about the Table Rocks ACECs. However, the lack of input by the Confederated Tribes of Grand Ronde does not mean that the BLM did not need to consider the cultural values of Tables Rocks in designating the ACECs. The Upper Table Rock ACEC is composed of 1,003 acres and the Lower Table Rock ACEC is composed of 240 acres. The Nature Conservancy has owned land encompassing a portion of Lower Table Rock since 1986, and in 2009, the Nature Conservancy purchased 1,710 additional acres on Upper Table Rock, acquiring some of the last remaining private land holdings on the mesas. The Nature Conservancy's Table Rocks land holdings now encompass 2,789 acres, located adjacent to the ACECs.[71]

The Table Rocks ACECs and adjacent land holdings of the Nature Conservancy collectively make up the Table Rocks Management Area (TRMA). In 2011, the BLM, The Nature Conservancy, and the Confederated Tribes of Grand Ronde signed a Memorandum of Understanding (MOU) to cooperatively manage the TRMA. The memorandum states that the groups will collaboratively pursue the acquisition of lands to protect the values of Table Rocks and cooperatively manage the lands within the TRMA.[72] The MOU states the guiding principles of the TRMA:

> The partners envision the TRMA as a cooperatively managed area that (1) protects the natural and cultural landmarks, the ecological processes and integrity, and scenic values; (2) enhances the area for recreation and education; and (3) contributes to the local community and regional quality of life, sense of place, and participation in natural resource stewardship.[73]

The cooperation and collaboration between the groups outlined in the MOU include annual meetings in which long-term management and restoration goals are implemented, collaboration

on cultural interpretive materials, and exploring potential opportunities for Grand Ronde tribal members to perform ceremonial hunting and gathering traditions within the ACEC lands.[74] The MOU expresses that "This partnership will showcase the Table Rock and collaborative stewardship for present and future generations."[75]

Despite the clearly stated intentions of co-management and equal standing outlined in the MOU between the Confederated Tribes of Grand Ronde, the BLM, and The Nature Conservancy, the Confederated Tribes of Grand Ronde believes that its responses to management issues are considered secondary to the BLM's determinations. Cheryl Pouley, Cultural Protection Coordinator for the Confederated tribes of Grand Ronde, described how the cultural resources identified by the tribe often are considered more expendable than other resources, despite the fact that they are highly individual, non-replaceable entities. Adverse effects to cultural resources cannot be mitigated in the way adverse effects on plant and animal species can be. Ms. Pouley said, "There's not going to be another Table Rocks. You can't mitigate for destroying a place like that."[76] Impacts to Table Rocks will cause irreparable harm to the Grand Ronde community.

In their communication and consultations with the BLM regarding the management of the Table Rocks ACECs, the Confederated Tribes of Grand Ronde has not been asked to provide their own procedures and policies for review of undertakings. Instead, the BLM and most other federal agencies default to a 30-day review period that is not adequate for the Tribe. Briece Edwards, Deputy THPO for the Confederated Tribes of Grand Ronde, noted that "There's not been once an ask of, 'What is your review period as a sovereign government?'"[77] Mr. Edwards said, "An agency's job is to fulfill its obligations. We recognize that. But what may not be recognized is every time we're given a 30-day window to respond about a place that's been occupied for millennia or time immemorial with the responsibility to that, we're missing commensurate scale of understanding." The unequal standing of the Confederated Tribes of Grand Ronde in the management of the Table Rocks ACECs inflicts harm to the Grand Ronde community by continuing the historical trauma of being forced from their traditional lands.[78]

The unequal standing of the Confederated Tribes of Grand Ronde in the management of the Table Rocks ACECs is reflected in an ongoing issue in which the BLM is considering issuing a permit for an easement that would allow the Pacific Power Company to expand an existing transmission line along the eastern and northern base of Lower Table Rock, and to build a new substation on the northern toe slope of Lower Table Rock (Figure 1).[79] This would result in a 30 foot deep cut into the toe slope of Lower Table Rock. This would fundamentally alter the viewshed of this culturally significant place. While the parcel of land where the substation would be built is privately owned by Pacific Power, the company needs an easement from the BLM to expand and upgrade the transmission line that crosses BLM land.

The Confederated Tribes of Grand Ronde view this potential construction as clearly having an adverse effect on the Table Rocks landscape, including the ACEC on Lower Table Rock. Yet, the Environmental Assessment (EA) prepared by the BLM evaluating the options for the permit

did not mention the ACEC on Lower Table Rock or address the potential impacts to the environment there. While the construction would not directly affect the ACEC, the tribe says that the BLM is failing to consider the larger, landscape-scale effects of issuing this permit. As explained by Cheryl Pouley:

> what we've been told by [BLM] representatives before is that the easement does not adversely affect the Table Rocks. … [but] if [if the BLM does not] grant the easement, then they need to move their power line, and they will need to put their new substation someplace else. But if [the BLM] grants this easement for this larger, wider power corridor, then this is what they have determined to be the most appropriate place for their substation. I will say as well that we have made very strong statements about the inadequacy of their EA and how they did not adequately consider impacts to cultural resources, social justice, displaced communities, et cetera, et cetera.[80]

As a co-manager, the Confederated Tribes of Grand Ronde expressly disapproves of the project and the deleterious effects it would have on the Table Rocks landscape. The tribe has consistently advocated that the BLM should take a landscape perspective in the EA, and consider the effects that the substation and transmission line will have on the Table Rocks. While the BLM has not approved the permit to date, it has consistently rebuffed the tribe's input on moving the substation location to avoid significant effects to Table Rocks.

The equal standing of the Confederated Tribes of Grand Ronde in the co-management of the Table Rocks ACECs has not been achieved, and there are ongoing threats to the Table Rocks ACECs. Nonetheless, the tribe continues to have a pragmatic perspective on its future work with the BLM in the management and protection of this important part of the tribe's cultural landscape. Briece Edwards described what it could look like in the future:

> Consultation, communication, and ongoing commitment to seek mutual understanding of diverse perspectives relevant to place, action, and people, in separation and combined, as appropriate, with the intent to seek equal standing of all parties. This may require recognizing and accepting a recalibration of authority and knowledge and understanding for decision-making processes.[81]

True co-management at Table Rocks would allow for members of the Confederated Tribes of Grand Ronde to channel the teachings of their families, passed down through generations, to manage Table Rocks.[82] Investing in long-term relationships that span election cycles, and in mentoring tribal youth to build the skill sets needed for an active partnership in land management, are both needed. As expressed by Briece Edwards, "A solid intent statement that gives a future now begins to hold accountability. Once we've got some accountability, now we can start to look at cooperative [management], in collaboration, in communication. And that is really a missed moment up until now when it comes to ACECs at Table Rock."[83]

As the ACECs at Table Rocks at demonstrate, under the current ACEC regulations and guidance, the Confederated Tribes of the Grand Ronde is not provided a significant role in the management of the Table Rocks ACECs. Even though the Confederated Tribes of Grand Ronde are recognized as having important cultural connections to the Table Rocks ACECs, and are considered co-managers of the Table Rocks landscape, the BLM has failed to adequately incorporate the perspectives of the Confederated Tribes of the Grand Ronde in ongoing management.

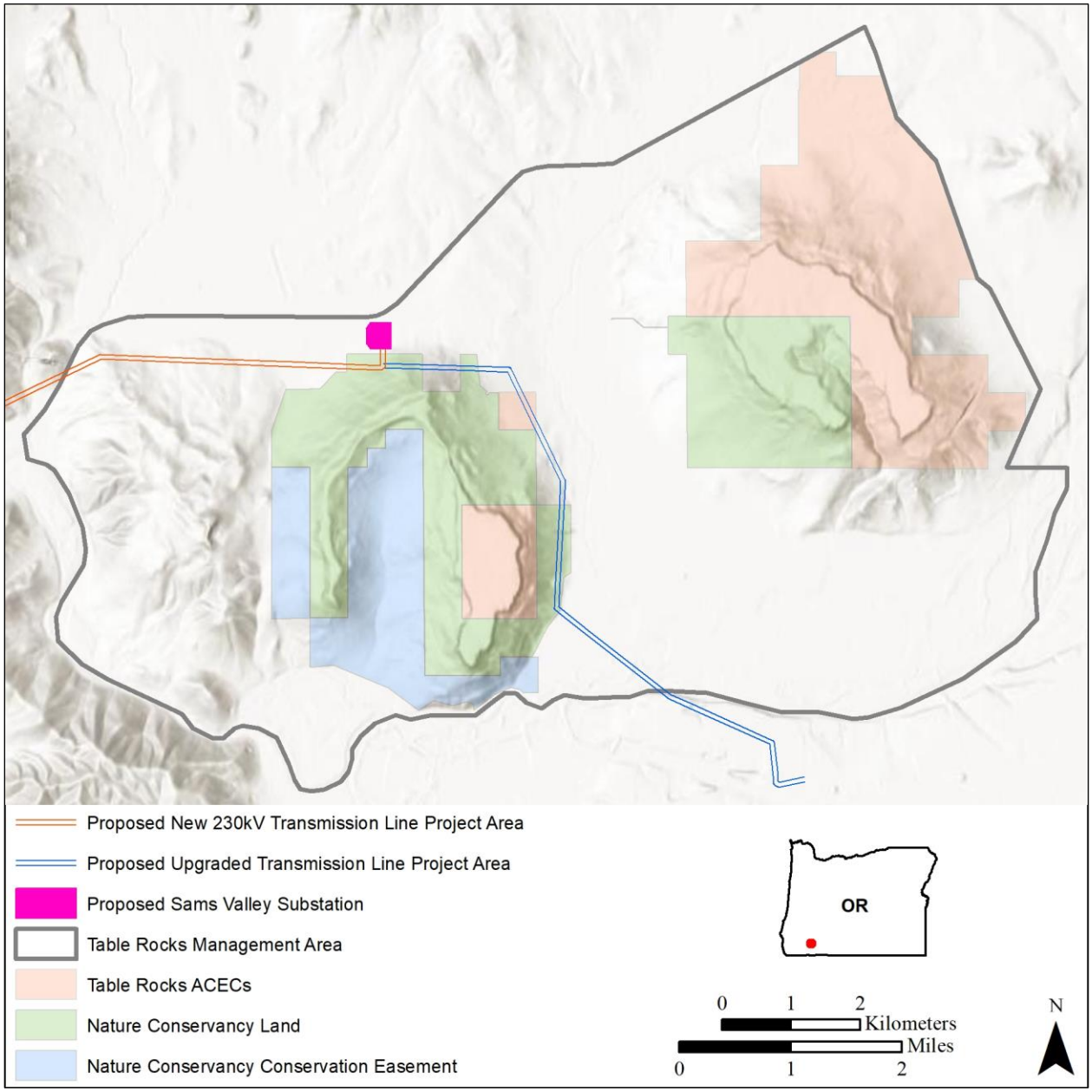

Figure 1. The Table Rocks Management Area showing BLM and The Nature Conservancy landholdings and easements in relation to the proposed new substation and upgraded transmission. Map by Anthropological Research, LLC.

ACECs and the Bering Sea-Western Interior Planning Area in Alaska

The BLM's Bering Sea-Western Interior planning area encompasses 13.5 million acres of BLM managed land within a nearly 63 million acre planning area that includes traditional and sustaining lands of more than 65 federally recognized tribes. In this section, we review previously designated ACECs in the Bering Sea-Western Interior planning area and the recent efforts of Indian tribes to protect places of cultural importance within the planning area through ACEC designation.

For Indian tribes, the lands encompassed by the Bering Sea-Western Interior and Central Yukon planning areas are vitally important to the continuation of their culture, traditions, and spirituality. As explained by the Bering Sea-Interior Tribal Commission:

> These lands—which hug the Yukon and Kuskokwim rivers, and include wildlife corridors, abundant salmon streams, Dall sheep and caribou habitat, from forest to coastal estuaries—have been protected from development for nearly half a century. This is our tribal ancestral land and our Alaska Native tribes have properly managed and stewarded these lands and resources using our traditional knowledge and traditional values for thousands of years. Our hunting, fishing and gathering traditional ways of life depends on their health, and these lands and waters are intrinsically connected to our tribal communities, food resources, economy, spirituality, and overall well-being.[84]

When work began on the Bering Sea-Western Interior RMP during the Obama Administration, the BLM supported Indian tribes in the nomination of important watersheds and other ancestral lands for protection as ACECs within the Bering Sea-Western Interior planning area. Individual Indian tribes nominated 16 new ACECs, encompassing more than 8,000,000 acres of land, that have cultural, historical, and subsistence values.[85] An additional five ACECs were nominated by non-Indian groups. Some of these nominated ACECs overlapped existing ACECs but were nominated to highlight the cultural connections that Indian tribes have to these places. Tribal associations were underrepresented in the designation of previous ACECs, which mostly focused on significant natural resources without cultural context. During the Trump Administration, the BLM took a different perspective on land use planning in the Bering Sea-Western Interior. In 2018 the BLM issued a report that rejected 10 of the tribally nominated ACECs and determined two more to be redundant with existing ACECs that overlapped with the nominated ACECs.[86] The BLM also rejected two ACECs nominated by non-Indian groups and three previously designated ACECs. This resulted in 15 potential and previously-designated ACECs to be considered for analysis in the draft RMP, only four of which were tribally nominated (Figure 2).

The rational that the BLM provided in rejecting many tribal ACEC nominations appears to have devalued the data and input from the nominating Indian Tribe in relation to other types of data. For example, the Koyukuk Tribal Council nominated the 93,492 acre Honhosa River

ACEC in 2014 for its cultural significance but this was rejected by the BLM. The Tribal Council provided the following justification for the ACEC nomination:

> Traditional use of animals, fish, plants and wood from accessible lands and waters has been practiced by the indigenous Koyukuk people for thousands of years. The historical and cultural significance of this use should not be lost considering the brief history of the U.S. government and the BLM. For us this lifeway is much more than utilitarian and practical, it is our history, culture and identity as a sovereign people, which we wish to continue into the future. The abundance, health and accessibility of fish and wildlife species that we have traditionally depended upon are a necessity that must be protected. It's relevance to our lives and culture cannot be overstated. Due to our ancient and religious ties to the traditional foods accessible to us, all ecological processes that support the life of the land and waters is sacred and necessary, now and into the future. Anything that harms or degrades the supporting natural processes for maintaining our traditional harvest practices on the land and waters is harmful to us and cannot be allowed.[87]

While the Koyukuk Tribal Council provided this cultural justification for the Honhosa River ACEC, the BLM determined the nominated ACEC did not have significant historic, cultural, or scenic value. The BLM's rationale for this determination was that a "regional sample survey conducted in 2009 by the BLM CYFO Archaeologist did not reveal the presence of a significant type or number of cultural resources on lands managed in the Honhosa River drainage. This indicates a low potential for the presence of cultural resources that may be eligible for the NRHP." [88] This rationale ignored the Koyukuk Tribal Council's robust cultural justification for the ACEC, and relied solely on cursory archaeological data. These actions privileged archaeology and archaeological data over the traditional knowledge of the Koyukuk people, even though cultural resources and values go far beyond the scope of archaeological resources. Since the BLM determined that the nominated Honhosa River ACEC did not have cultural value, it did not have to evaluate whether the ACEC contained important values including values that are "fragile, sensitive, rare, irreplaceable, exemplary, unique, endangered, threatened or vulnerable to adverse change."[89] However, based on the justification provided the Koyukuk Tribal Council, the Koyukuk people likely would consider the nominated ACEC to have important cultural values.

In response to the BLM's actions, 37 Indian tribes formed the Bering Sea-Interior Tribal Commission in 2019 to "work in unity to protect our contemporary and traditional way of life by advocating for land use planning and sustainable natural resource management decisions that reflect our voices and our values."[90] The Commission advocates for both the Bering Sea-Western Interior planning areas and Central Yukon planning area, another 13 million acre area that also had an RMP process begin under the Obama Administration.

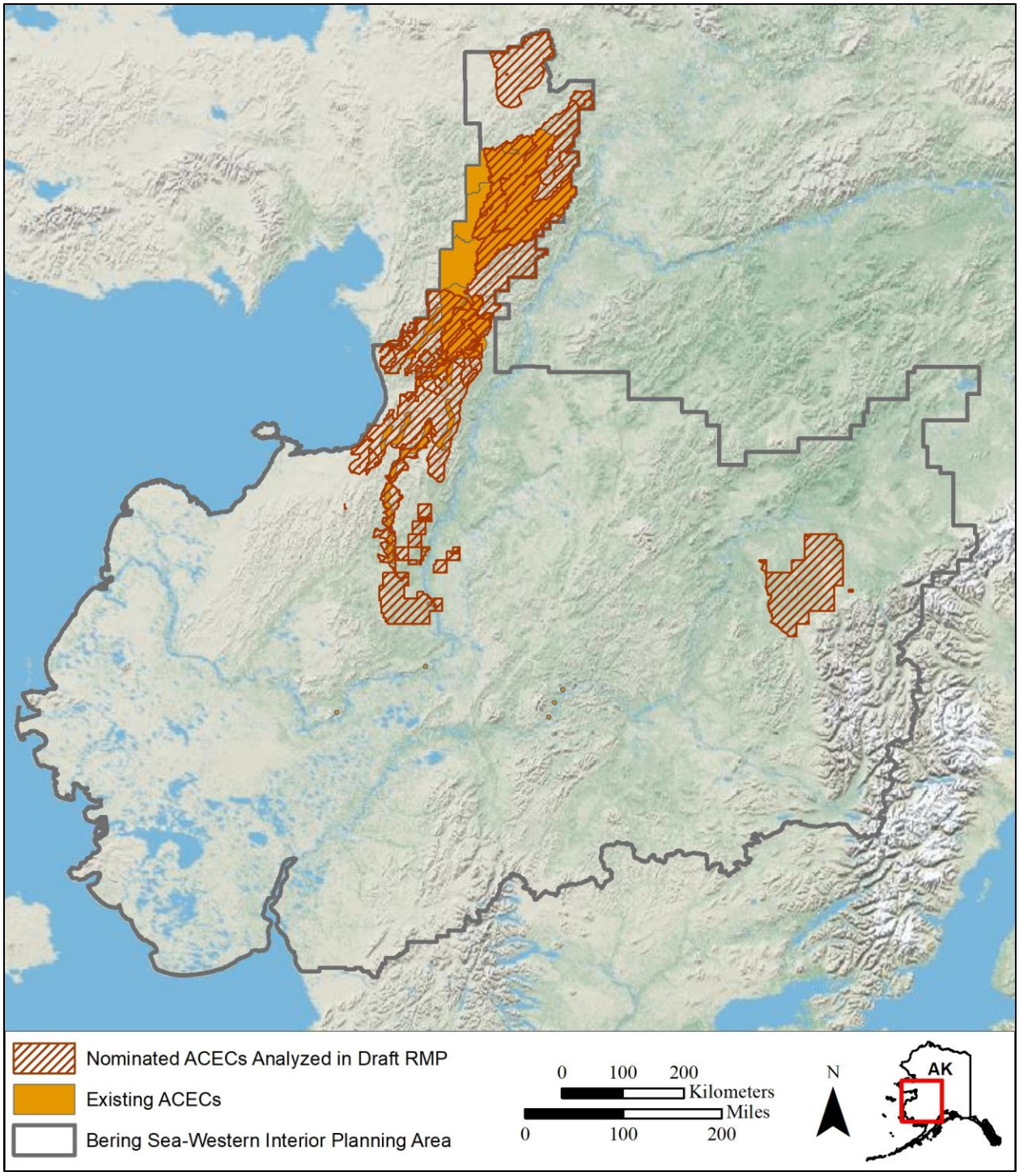

Figure 2. The nominated ACECs that the BLM analyzed in the draft RMP in relation to previously existing RMPs and the Bering Sea-Western Interior Planning Area. All of the nominated ACECs were rejected by the BLM in their final RMP published in 2021 and all of the existing ACECs were eliminated. Spatial data for the ACECs nominated by Indian tribes that were rejected by the BLM for consideration in their draft RMP analysis is not available. Map by Anthropological Research, LLC.

The Bering Sea-Western Interior RMP was signed by Secretary of the Interior Bernhardt on January 15, 2021, in the final days of the Trump Administration.[91] In the final RMP, the BLM rejected all 15 potential ACECs analyzed in the draft RMP, including the four nominated by Indian tribes that had been included in the BLM's final analysis. This included the elimination of all the previously existing ACECs in the planning area, which were about 2,000,000 acres in size. The plan additionally revoked the withdrawal of the planning area lands from protections provided by the Alaska Native Claims Settlement Act (ANSCA) and opened 99 percent of these lands to mining, and gas and oil extraction.

The BLM's lack of support for the Indian tribes' nominations of ACECs and the elimination of the existing ACECs within the planning area came with limited explanation. In a report published in 2018,[92] the BLM highlighted the cultural significance of the existing ACECs, as well as the special management necessary to maintain healthy populations of important subsistence resources, The Bering Sea-Western Interior RMP finalized by the BLM in the following year cited the remoteness of the proposed ACECs and the low potential for development as reasons that no special management was necessary to protect the lands already designated as ACECs and the new areas nominated as ACECs.[93] The BLM's assessment of low development potential contradicted the emphasis on opening the lands to extractive industries.

The RMP will direct the management and use of the planning area for the next 25 to 30 years, illustrating the long timeline for the repercussions of the BLM's rejection of tribal values. After the publishing of the RMP, the leaders of the Bering Sea-Interior Tribal Commission stated, "The BLMs mandate is to balance uses of the public lands it manages, and it has a special trust responsibility to the tribes that call this region home. Opening 99% of the land to exploitation not only fails to strike that balance—it openly mocks it."[94] The BLM's preferred alternative in the draft RMP and EIS for the 13.5 million acre Central Yukon planning area also "emphasizes extractive development at the expense of resources and uses important to planning area Tribes" and did not designate any of the 46 ACECs nominated during the initial planning process."[95]

In a letter to BLM Deputy Director, Tracy Stone-Manning, Eugene Paul, Chairman of the Bearing Sea-Interior Tribal Commission, wrote:

> In evaluating Tribe's ACEC Nominations, the Bureau disregarded Tribe's knowledge and expertise and made conclusory findings about the importance of the nominated areas. For example, the Huslia Tribal Council nominated the Huslia ACEC, detailing the cultural and historic significance of the nominated area, including its significance as a traditional harvest area, and emphasized that the Tribe's 'history, culture and identity' were inextricably linked to the area. Contrary to the information the Tribe provided, the Bureau summarily concluded that the nominated area contained no known cultural resources. As a result, the Bureau improperly excluded the nomination from consideration in its draft plan.[96]

The revocations of existing ACECs and the rejection of tribal nominations of new ACECs in the Bering Sea-Western Interior planning area illustrate a shortcoming in the use of ACECs for the protection of important lands and resources. Eugene Paul addressed the Bering Sea-Western Interior revocations and highlighted the deficiencies of the BLM's ACEC regulations, writing:

> While the Bureau has developed an ACEC manual and briefly addressed ACECs in its planning regulations, the agency has not yet promulgated the ACEC regulations intended in FLMPA. Adopting comprehensive ACEC Regulations would help increase consistency in the Bureau's practices in considering and designating ACECs, provide needed clarification regarding the ACEC Designation process, and increase the protection for, and durability of, ACECs.[97]

In 2021, the Bering Sea-Interior Tribal Commission submitted a formal protest of the Bering Sea-Western Interior RMP/EIS to the BLM. The document outlines the many shortcomings of the plan, including the failure of the BLM to provide meaningful opportunities for tribes to participate in the planning process, failure to adequately respond to tribes' comments, the flawed evaluation of relevance and importance of proposed ACECs, failure to adequately consider impacts to cultural and subsistence resources, and failure to comply with the agency's mandates.[98] In 2022, the Tribal Commission petitioned the Department of the Interior and BLM agency officials to begin an amendment process for the RMP "to return a more balanced plan that safeguard the indigenous peoples' values in the region."[99]

On August 18, 2022, the Biden Administration formally published a notice of intent in the Federal Register announcing a 60-day public scoping period of a new Environmental Impact Statement (EIS) analyzing potential legal deficiencies in public land orders signed in January of 2021 affecting five RMPs, including the revocation of the Bering Sea-Western Interior planning area from Section 17(d)(1) protections under ANSCA. At the time of writing, this EIS was still in its early stages of preparation. The register notification further noted that Department of the Interior identified "certain procedural and legal defects in the decision-making process." These deficiencies include:

> insufficient analysis under NEPA, failure to follow section 106 of the National Historic Preservation Act (NHPA), possible failure to adequately evaluate impacts under section 7 of the Endangered Species Act (ES) … failure to adequately analyze potential impacts on subsistence hunting and fishing, and reliance on potentially outdated data in EISs prepared in 2006 and 2007.[100]

While this EIS is an important step in examining deficiencies related to removing ANSCA protections by the Bering Sea-Western Interior RMP, it will not obviate the need to amend the Bering Sea-Western Interior RMP to address the deficiencies in the designation of tribally nominated ACECs. While changing political agendas have real and lasting effects on the management of ACECs, tribal advocacy that cites cross-cutting laws and regulations provide a

foundation for the consideration and protection of places of cultural significance. However, the onus remains with the tribes to ensure that existing laws and regulations are being followed, placing an undue burden on Indian tribes seeking to protect their traditional lands and resources.

As the Bering Sea-Western Interior planning area case study illustrates, the identification, evaluation, designation, and management of ACECs are subject to inconsistency in stewardship values between different administrations. Without clear regulations on the application and removal of the ACEC designation, Indian tribes may not feel confident in the protections offered by ACECs. This is compounded by the disregard of the expertise of Indian tribes in documenting the historical, cultural, and subsistence values of proposed and existing ACECs.

ACECs in the Greater Chaco Landscape of New Mexico, Arizona, Colorado, and Utah

The Greater Chaco Landscape in northwestern New Mexico, northeastern Arizona, southwestern Colorado, and southeastern Utah is an important place in the historical memory and ongoing cultural traditions of many Indian tribes in the Southwest United States. Much of the Greater Chaco Landscape is on BLM managed lands, and this section reviews previous ACEC identification, designation, and management in this landscape, as well as other efforts by Indian tribes to protect this important landscape.

Between AD 850 and 1250, there was a regional florescence of an Indigenous society in the Southwest that included the construction of monumental architecture within Chaco Canyon, and an emulation of that architectural style at hundreds of communities throughout the region. While many people left the region after AD 1250, the region continued to play an important part in the ongoing cultural traditions of many tribes, and it is considered a living landscape by these communities. As expressed by Pueblo of Acoma Governor Brian D. Vallo in 2019:

> Chaco Canyon and the Greater Chaco Region, plays an integral role in Acoma's living history, our culture, and identity. Our discussion of Chaco cannot be separated from our discussion of our present-day home and community of Haakú, Acoma. As Acoma people, Chaco Canyon and the Greater Chaco Region are deeply rooted in our collective memory, and the experiences of our ancestors. It is an extension of our ancestral homeland, where our Ancestors lived for generations to form the foundations of our cultural practices, traditions, and beliefs that help define our identity as Acoma people today. Chaco Canyon, and its vast landscape, are not abandoned - but contain the cultural resources that tie Acoma to Chaco, and from Chaco to the place of our emergence.
>
> The Greater Chaco Region, is therefore a living landscape, depended on by living indigenous communities, like Acoma. Within the Greater Chaco Region are archaeological and significant cultural resources, left by our Creator, utilized by our Ancestors, and accessible to us for the continuance of our cultural practices.

> As Acoma, we have a culturally embedded and inherent responsibility to protect these resources.[101]

The scale and grandeur of architecture within Chaco Canyon resulted in its federal protection through the creation of a National Park in 1907. However, there are over 100 large Chacoan communities and innumerable smaller places within the Greater Chaco Landscape that do not have commensurate federal protections but are equally important to the Indian tribes whose members are descendants of Chacoan people. As Acoma Pueblo Governor Randall Vincente explained in 2022, "Together, this area is one irreplaceable, sacred, interconnected landscape unlike any other … We remain tied to those resources, not only because they represent the footprints and fingerprints of our ancestors, (but also because) we rely on them on this day as Acoma people."[102] For decades, tribes and other stakeholders have advocated for the protection of these places of cultural significance from the impacts of oil and gas development in the region.

Since oil and gas production began in the New Mexico portion of the Greater Chaco Landscape in the 1910s, over 30,000 oil and gas wells have been drilled within area and over 20,000 wells remain active.[103] This development has been facilitated through lease sales and limited development restrictions by the BLM and other federal and state agencies. The development of the region has seen the fragmentation of the Greater Chaco Landscape, as well as damage or outright destruction to many places of cultural importance to tribes.[104] While Indian tribes in the Southwest have advocated for decades for the protection of the Greater Chaco Landscape from oil and gas development, their concerns have largely gone unheeded.

Since the 1980s, the BLM's management decisions regarding oil and gas development have been structured by a sequential set of RMPs. Within these RMPs, the BLM designated several places with significant resources and values in the Greater Chaco Landscape as ACECs. However, the BLM's approach to the designation ACECs has supported the fragmentation of the Greater Chaco Landscape by oil and gas development (Figure 3). The BLM Farmington Field Office began to designate ACECs in the Greater Chaco Landscape in a RMP published in 1988.[105] This RMP designated 21 ACECs with significant cultural, wildlife, and paleontological resources, including four areas designated to protect known large Chacoan communities. These ACECs were small in size, with all the ACECs designated to protect Chacoan communities being under 1,000 acres in size. In total, 44,361 acres were designated as ACECs in a planning area of over 1,500,000 acres.

The 2003 BLM Farmington Field Office RMP saw the addition of 65 newly designated ACECs, including 12 Chacoan communities and two Chacoan road corridors.[106] However, the newly designated ACECs were quite small, designed to protect small locales rather than landscape scale features, with the mean size of an ACEC being 120 acres and only 15 ACECs being over 1,000 acres in size. In total, 103,558 acres were designated as ACECs in a planning area of over 2,000,000 acres of surface ownership and an additional 1,000,000 acres of subsurface mineral rights.

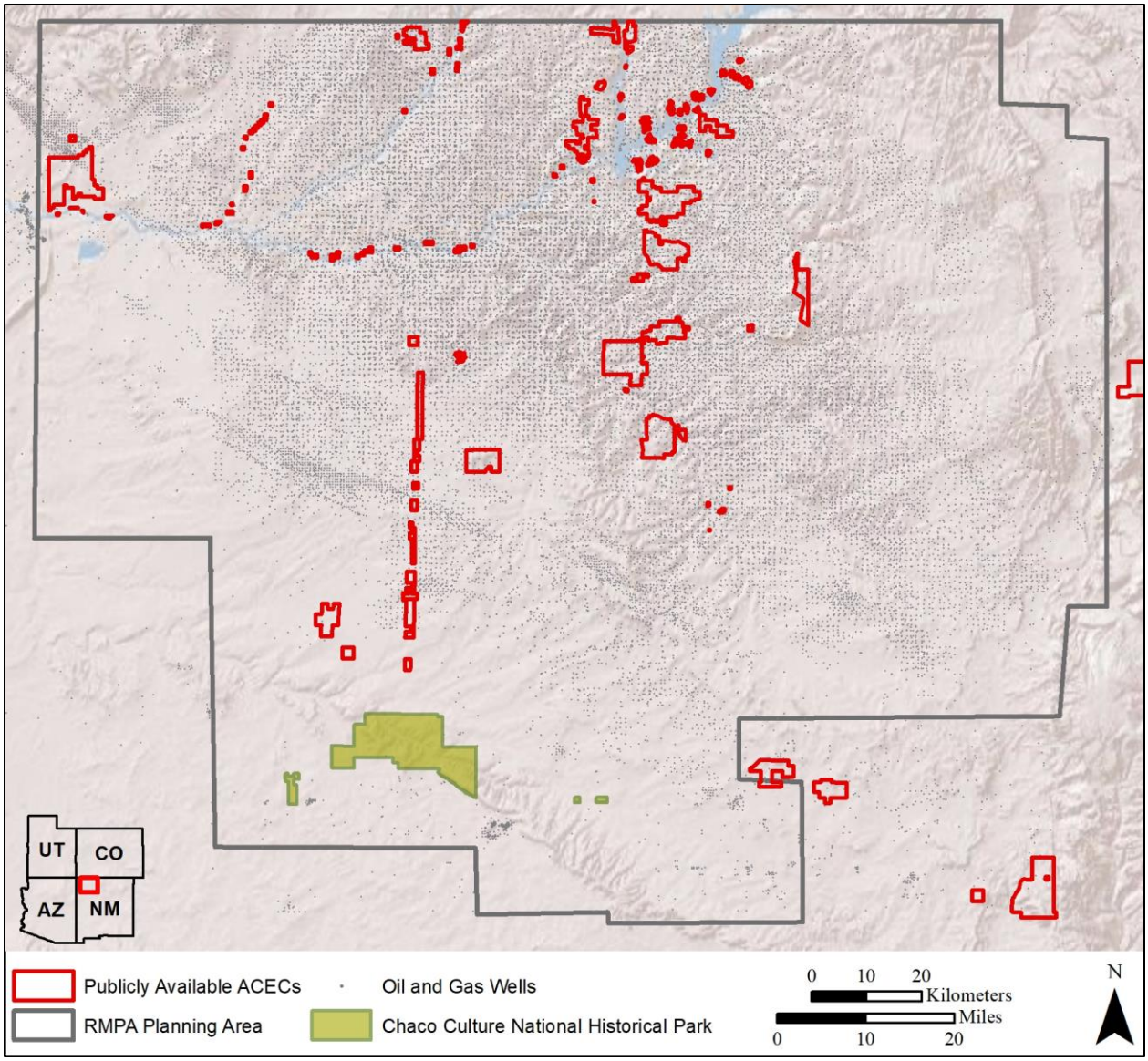

Figure 3. The publicly available ACECs near the RMPA planning area in relation to existing oil and gas wells, and Chaco Culture National Historical Park. There are 64 ACECs within the map area with locations that are restricted from public access; however, many of these restricted access ACECs are small in size, protecting an individual archaeological site considered significant. Map by Anthropological Research, LLC.

The process of identifying, evaluating, and designating ACECs for the 1988 and 2003 RMPs appears to have been done with minimal tribal involvement. The 1988 RMP makes no mention of government-to-government consultation regarding the planning document, suggesting tribal governments were not involved in the land use planning process.[107] The 2003 RMP describes only minimal input from tribes resulting from the Farmington Field Office's notification efforts. The 2003 RMP mentions that the Navajo Nation was involved in the designation of one ACEC and the expansion of the boundary of a previously identified ACEC, but no further information was given on tribal input on ACECs.[108]

In the early 2000s, the introduction of horizontal drilling and hydraulic fracturing created renewed interest in oil and gas development in the region. In 2012, these new technologies prompted the BLM Farmington Field Office to begin the process of a RMPA to assess oil and gas development within a 2,900,000 acre portion of the Greater Chaco Landscape.[109] During the RMPA process, Indian tribes and environmental groups increased their advocacy efforts to protect the Greater Chaco Landscape from impacts from further oil and gas development.[110] These advocacy efforts included the nomination of the Greater Chaco Landscape as an ACEC by advocacy groups in 2014. However, the BLM rejected this ACEC nomination stating "the nominated ACEC did not contain relevant and important values pursuant to BLM Manual 1613: Areas of Critical Concern" and specifying that "there are no known Chacoan outliers within the [proposed] ACEC boundary and ,,, it seems unlikely that any previously unknown Chaco outliers would be found in the [proposed] ACEC."[111] The BLM then chose to limit the scope of the land use planning to "four preliminary planning issues: oil and gas leasing and development, realty actions, vegetation management, and lands with wilderness characteristics." As a result of the revised and limited scope of the RMPA, no potential ACECs were considered as part of RMPA.

To the dismay of tribes, the BLM continued to issue lease sales for new oil and gas development in the Greater Chaco Landscape at the same time that the RMPA process was ongoing. As expressed by Pueblo of Acoma Governor Brian D. Vallo in 2019:

> Despite this important process to formulate appropriate land management policies, the BLM continues to move forward with oil and gas leasing and development, like those described above, as well as issuing permits to drill wells, and granting rights of way for related infrastructure. These backdoor processes mean new leases … and associated development will not be subject to the RMPA. Instead, these activities go forward without being subject to well-thought-out policies that Acoma, and other Pueblos and tribes, are attempting to address with the BLM and the Bureau of Indian Affairs in the RMPA.[112]

With the BLM unwilling to change their oil and gas leasing practices, tribes and environmental advocacy groups advocated directly to the Department of Interior, the Obama and Trump Administrations, and the U.S. Congress for the protection of the Greater Chaco Landscape from further oil and gas development.[113] In response to this advocacy, the Obama Administration did not allow new oil and gas leases within 10 miles of Chaco Culture National Historical Park during his administration.

With the arrival of the Trump administration, the BLM began to reissue lease sales for oil and gas parcels near Chaco Canyon. In each instance, the BLM or Department of Interior withdrew the lands from the lease sales. However, oil and gas leasing continued relatively unabated in the Greater Chaco Landscape during the Trump administration. To seek permanent protection for a portion of the Greater Chaco Landscape, some Indian tribes advocated to the U.S. Congress for withdrawal of an area around Chaco Culture National Historical Park from future oil and gas leases. This advocacy prompted the development of the proposal of the Chaco

Cultural Heritage Area Protection Act of 2019, which passed the U.S. House of Representatives in 2019 but failed to reach a vote in the U.S. Senate.[114]

As these actions were taking place, the BLM continued its RMPA process and published a draft RMPA and Environmental Impact Statement in March of 2020. The BLM's preferred alternative in these documents called for "a strategy that balances community needs and development, while enhancing land health."[115] This preferred alternative designated no new lands as ACECs or other special management designations, and went against the continued advocacy of tribes. As explained by Chairman J. Michael Chavarria of the All Pueblo Council of Governors, an organization of the governors of 20 Pueblos in New Mexico and Texas:

> APCG is disappointed in DOI's preferred alternative to allow more oil and gas leasing in an area of great cultural and sacred importance that is already over 90% leased, contrary to the consistent input provided by our Pueblo Nations. We will be providing strong comment on the RMPA reflecting APCG's long-standing efforts to permanently protect the withdrawal area designated as part of the Chaco Cultural Heritage Area Protection Act, and we will call upon supporters to participate in the public comment period.[116]

Following the release of the draft RMPA and the continued advocacy by tribes, in 2021 the Department of Interior proposed a "20-year withdrawal of federal lands within a 10-mile radius around Chaco Culture National Historical Park, which would bar new federal oil and gas leasing on those lands."[117] While this withdrawal is still undergoing review by the BLM, if enacted it will provide landscape-scale protections in a critical portion of the Greater Chaco Landscape. The BLM Farmington Field Office was unwilling to consider these protections as part of their land use planning process.

Tribes continue to advocate for even greater protection of the Greater Chaco Landscape. The Pueblo of Zuni published a report in 2022 that outlined its connection to and conception of the Greater Chaco Landscape, and advocated for an ecosystem approach to protect and manage the landscape.[118] This report included the recommendation to consider the entire BLM-managed portion of the Greater Chaco Landscape as a single ACEC. The Pueblo of Zuni articulates in their nomination that each aspect of the Zuni cultural landscape is living entity and Zuni people actively maintain relationships with all aspects of this landscape through their cultural practices. Thus, each of the resources, values, and natural systems and processes that constitute the Greater Chaco Landscape hold significance to the Zuni people, and these components of the landscape thus require special management consideration from the BLM through the designation of an ACEC.

The Pueblo of Zuni sought ACEC designation for the Greater Chaco Landscape because they view ACECs as a valuable tool for the protection of places significant to the tribe.[119] As Pueblo of Zuni Tribal Historic Preservation Officer, Kurt Dongoske explained that the value of ACECs is in the flexibility inherent within the definition of ACECs that provides for a breadth of

resources, values, and natural systems and processes to be considered under the ACEC designation process. Mr. Dongoske added that federal land managers, including the BLM, compartmentalize the management of individual resources. Mr. Dongoske believes that this perspective needs to change because it does not properly account for the Pueblo of Zuni's views on the environment, as Zuni people view all the aspects of the environment as intertwined and in existence together. The Pueblo of Zuni sees its ACEC nomination as a way to advocate to the BLM and the federal government for the management of entire ecosystems and the relational aspects of resources within those ecosystems. Mr. Dongoske said that normative resource management has caused irreparable harm to Zuni cultural landscape, and this threatens Zuni traditions and well-being. Mr. Dongoske thinks a shift in the philosophical understanding of stewardship is needed to better align it with the worldviews of Indigenous peoples. The Pueblo of Zuni believes ACECs can be a powerful tool for the protection of Zuni places of cultural significance within the Greater Chaco Landscape. However, since the in-progress RMPA process does not include the consideration of new ACECs, it is unclear when the BLM will consider the Pueblo of Zuni's nomination.

The Greater Chaco Landscape is an example where Indian tribes have consistently expressed their concerns to the BLM on the management of public lands and these concerns were not adequately considered. Some of these complex issues were summarized by Pueblo of Acoma Governor Brian D. Vallo in 2021:

> When we are confronted with unchecked oil and gas development in a region we know to be rich in cultural resources, we are forced to rely upon federal agencies, as our trustee, to safeguard these resources. However, these agencies are often unable or unwilling to take the necessary first step needed to engage with tribal experts to identify these significant cultural resources.[120]

ANALYSIS

Our review of current ACEC guidance and regulations, tribal engagement with ACEC administrative processes, and individual case studies highlights the difficulties faced by Indian tribes engaged in identification, designation, and management of ACECs. Based on this analysis, we offer eight points for discussion.

1. ACECs can be a powerful tool for the protection of places of cultural importance to Indian tribes.

ACECs are defined by FLPMA to protect significant resources, values, and natural systems and processes. ACECs can protect more than a single resource by implementing ecosystem-scale protections of landscapes. This makes ACECs a unique management tool if implemented as FLMPA intended and in consultation with tribes. ACECs could be an important asset in tribal efforts to protect culturally important places on BLM managed lands.

2. Existing ACEC regulations and guidelines fail to provide adequate opportunities for Indian tribes in ACEC processes.

Existing ACEC regulations from 1983 and the 1988 ACEC Handbook do not provide clear instructions for the role of Indian tribes in the identification, designation, and management of ACECs.[121] Recent attempts to issue new regulations regarding ACECs were stymied by the U.S. Congress in 2017, and the new regulations have not been reintroduced.[122] This leaves an ACEC regulatory framework that is out of touch with the a government-to-government relationship Indian tribes have with the United States as sovereign nations. Indian tribes should be involved in the identification, designation, and management of ACECs.

Indian tribes have a strong vested interest in the lands, resources, and values managed by the BLM. The existing regulations and guidelines for ACECs do not adequately highlight the unique political relationship of Indian tribes in relation to the United States, nor the tribal connections to the land. The regulations and guidelines do not recognize the authority Indian tribes have over their own history and culture, and the unique qualifications of Indian tribes in the identification, designation, and management of ACECs.

3. The BLM has failed to consistently prioritize the identification and designation of ACECs in the land use planning process.

The identification of ACECs has the potential to serve as an important starting point in the land use planning process. However, the BLM currently does not prioritize the identification and designation of ACECs during land use planning processes.[123] When ACECs are considered in the land use planning process, the BLM often provides few details in RMPs about the resources and values that merit special management attention for these areas.[124] The absence of a clear analysis that evaluates the relevance and importance criteria for ACECs in RMPs provides little transparency on the BLM's actions, and suggests ACECs are poorly considered and not prioritized, as instructed by FLPMA.

4. The BLM has failed to consistently consider values, resources, and natural systems and processes of significance to Indian tribes in the BLM's identification and designation of ACECs.

As the examples in this report illustrate, the BLM has been deficient in its consideration of the values, resources, and natural systems and processes significant to Indian tribes when identifying and designating ACECs. At Table Rocks in Oregon, two ACECs were designated because of their ecological significance, and neither has been modified to consider their significance to the Confederated Tribes of Grand Ronde or other associated Indian tribes. In the Greater Chaco Landscape in the Southwest, the administrative record identifies only two ACECs (out of a total of 97 ACECs) that were successfully designated or modified by an Indian tribe to accurately reflect tribal cultural significance. While many Indian tribes have advocated for more protection of the Greater Chaco Landscape, the significant tribal cultural values for the landscape have not been integrated into ACEC identification and designation efforts by the BLM. Finally,

in the case of the Bering Sea-Interior Western planning area in Alaska, the identification of 16 ACECs with clearly defined tribal cultural significance by Indian tribes was systematically rejected by the BLM without proper justification. These examples highlight that BLM decision-makers continue to marginalize Indian tribes in the ongoing management of BLM managed lands. BLM lands are within the traditional territories of Indian tribes, and the land continues to play an important role in the cultural integrity and identity of tribal communities.

5. The BLM has failed to take a broad perspective in the identification of ACECs, and has inadequately considered the input of Indian tribes on potential ACECs.

The BLM often takes a narrow focus in the designation of ACECs, and this results in missed opportunities to use ACECs as an important and unique tool in the management and protection of places of tribal cultural importance.[125] ACECs have the potential to protect resources, values, and natural systems and processes that are significant to Indian tribes, and which are often not adequately considered in conventional land management planning. Tribal cultural experts often describe the inseparable connection between tangible resources (historic properties, artifacts, plants, minerals, water and other physical resources) and intangible qualities on a landscape (viewsheds, soundscapes, oral histories, songs, feelings, cultural values). This interrelation transcends species, materials, and time.[126]

Given the interrelatedness of landscapes from an Indigenous perspective, traditional land management practices centered on individual resources inadequately protects and manages the landscape. This is highlighted by Briece Edward, Deputy THPO for the Confederate Tribes of Grand Ronde, who described the importance of removing the distinction between natural and cultural resources. Mr. Edward stated:

> The cultural resources are natural resources are cultural resources, right? Just because an agency chooses to put those into separate boxes, they're not ... That's a shortcoming. It's a very dramatic limitation to the consideration of how one might manage for an area. It makes it an "or" statement: "It is this, or that." It doesn't allow it to be an "and" statement: "Well, this white oak is an indicator species, and it is a habitat species, and it is a culturally significant tree, and it is managed for abundance and quality in systematic ways, and it is something that community will gravitate to as a particular tree." There is a richness that comes from a position of an "and statement." So, it's the one of the easiest shifts, but yet hardest. It could just be as easy as a search and replace for every time ACEC guidance makes it an "or" statement and make it an "and" statement, just a suggestion as an approach.[127]

While the FLPMA definition of ACECs is broad and could potentially encompass whole landscapes or ecosystems, the BLM has tended towards designations of small ACECs that are focused on the special management of one resource or value.[128] The BLM has been actively opposed to landscape-scale ACEC designations, such as the rejection of an ACEC for the

Greater Chaco Landscape or the rejection of tribally-defined ACECs in the Bering Sea-Western Interior planning area. However, ACECs as defined in FLMPA allow for the consideration of multiple types of values, resources, and natural systems and processes within a single management entity. ACECs can focus on broad areas, natural systems and processes, in addition to smaller, discreet units.[129] An ACEC has the potential to protect the tribal functions and values of a given area, and avoid creating "islands of preservation" that are considered inadequate by Indian tribes because they artificially divide culturally connected areas, resources, and practices.[130]

6. The BLM has failed to consistently plan for the management of designated ACECs, and acknowledge broader landscape-scale or cumulative effects on ACECs when considering ongoing management.

Many ACECs have incomplete descriptions of their management prescriptions in RMPs, and this makes it difficult to assess how ACECs are being protected. This is contrary to guidance in the ACEC Handbook that calls on BLM personnel to fully describe the management prescriptions. [131] In addition, contradictions in RMPs between management prescriptions designed to protect ACECs and allowed uses within ACECs, indicates that ACEC management may at times be poorly conceived.[132] New regulations and guidance on ACECs needs to provide structure for how designated ACECs are managed to ensure the protection of the values, resources, and natural systems and processes they are designated to protect.

Examples of BLM managing ACECs with identified negative landscape-scale or cumulative effects demonstrate that there is inadequate management and protection of these critical areas. For example, the BLM is currently considering issuing a permit for a transmission line and linked substation along the slope of Table Rocks in Oregon, yet their EA makes no mention of the Table Rocks ACECs, nor the broader effects the proposed project could have on the landscape. Similarly, in the Greater Chaco Landscape in the Southwest, the BLM has continued to lease land for oil and gas development around ACECs and other areas of importance without consideration of the cumulative impacts to the broader cultural landscape, including landscape degradation and fragmentation. In both cases, the BLM did not adequately consider the perspectives of Indian tribes in relation to important land management issues associated with ACECs that have tribal cultural significance.

7. The BLM has failed to consistently consider the knowledge, values, and expertise of Indian tribes regarding ACECs.

Indian tribes are the authorities on their culture and history, and, as such, are uniquely qualified to identify and assess their places of cultural importance, including places encompassed by ACECs. However, as the examples provided in this report demonstrate, the BLM has failed to adequately or consistently consider the knowledge, values, and expertise held by Indian tribes when identifying, designating, and managing ACECs. In the Bering Sea-Western Interior planning area in Alaska, the BLM systematically devalued tribal knowledge and values provided

by Indian tribes when the BLM rejected ACECs nominated by Indian tribes. While in the Greater Chaco Landscape in the Southwest, the BLM failed to incorporate the knowledge and values of Indian tribes in the designation of ACECs, or in the management of the landscape in the face of ongoing oil and gas development. Finally, at Table Rocks in Oregon, the BLM failed to adequately consider the values of the Confederated Tribes of Grand Ronde associated with Table Rocks when considering the potential impacts of issuing a permit for a transmission line and linked substation along the slope of Table Rocks. These examples highlight the devaluation by the BLM of knowledge, values, and expertise of Indian tribes regarding ACEC identification, designation, and management.

8. The BLM has failed to consistently engage in meaningful consultation and coordination with Indian tribes on the identification, designation, and management of ACECs.

The BLM has not consistently engaged in meaningful consultation with Indian tribes on the identification, designation, and management of ACECs, as called for by Executive Order 13175 and its recent reaffirmations. In the case of the Bering Sea-Western Interior planning area in Alaska, the BLM rejected the nomination of 16 ACECs identified by Indian tribes without adequately considering them or consulting with Indian tribes. The tribally-nominated ACECs in Alaska warranted greater consideration as ACECs based on guidance in the ACEC Handbook. In the case of the Greater Chaco Landscape in the Southwest, the BLM conducted little meaningful consultation with Indian tribes over decades of land use planning. This resulted in the designation or modification of only two ACECs with the involvement of an Indian tribe. Furthermore, the BLM has not meaningfully engaged with the concerns of Indian tribes that have consistently expressed the inadequate protections to the Greater Chaco Landscape during oil and gas development. This has led to Indian tribes in the Southwest pursuing alternative strategies for protection of the significant landscape. In the case of Table Rocks in Oregon, where the Confederated Tribes of Grand Ronde, the BLM, and the Nature Conservancy have a MOU to be co-managers of the Table Rocks area, the BLM has not consistently engaged with the tribe on the management of Table Rocks ACEC. The Confederated Tribes of the Grand Ronde think that the BLM has not been open to tribal concerns related to proposed proponent developments on or near the Table Rocks ACECs.

The BLM has been inconsistent in meaningfully coordinating with and consulting Indian tribes. Part of this is due to high turn-over rate in the employees of federal agencies. As explained by Cheryl Pouley, Cultural Protection Coordinator for the Confederated Tribes of Grand Ronde:

> You start a project and a relationship, and then the person you're building that project and relationship with is gone. You don't know, [the relationship or project] is going to continue? What about all the information shared about how important this place is? Did that [information and weight of significance] get passed on to the new person? Is anybody filling in behind? … I think, there is a little bit of not investing enough in these kinds of roles [cultural and environmental resources

> staff and their responsibilities]. I also think that it's a tendency of agencies to operate from, "Oh, that staff member is going to handle [tribal cultural concerns], therefore I don't have to be worried about connecting with the tribe because that's other person's job. I'm in charge of botany. I don't need to talk to the tribe," or "I'm in charge of fire. I don't need to talk to the tribe." And that's entirely wrong.[133]

The three examples highlighted in this report demonstrate that the BLM has inconsistently consulted with Indian tribes about ACECs. These examples are not isolated instances. They point to a systemic problem in the engagement of federal agencies with Indian tribes. Pueblo of Acoma Governor Brian D. Vallo testified in the U.S. Senate about the Department of Interior's prioritization of oil and gas development over the concerns of Indian tribes:

> The BLM's actions in regards to Chaco Canyon are not an isolated occurrence. They are both a product of and a perpetuation of the built-in policies, mindsets, and practices of the Department [of the Interior] that value economic development over tribal interests and cursorily checked-boxes over genuine tribal engagement.[134]

RECOMMENDATIONS

ACECs have unrealized potential in the BLM's land management practices. ACECs have the potential to become an important tool in protecting places of cultural significance as the BLM strives to fulfill its obligations to trust responsibilities for Indian tribes, and its mission to promote the health, diversity, and productivity of its lands for present and future generations. These recommendations are based on the evaluation of the designation and management of ACECs, with a specific focus on whether ACECs have contributed to the protection of places of cultural importance to Indian tribes. This review is not comprehensive but it illustrates some of the salient themes associated with ACECs and Indian tribes. The following recommendations can be implemented administratively. The recommendations support ACECs becoming an important means to protect places of cultural significance to Indian tribes on BLM lands.

1. Promulgate new regulations and guidance on ACECs and land use planning.

The current ACEC regulations and guidance have been ineffective at supporting the consistent prioritization of ACECs. New regulations and guidance are needed to promote consistent practices by the BLM, the prioritization of ACECs in land use planning, and the role of Indian tribes in the identification, designation, and management of ACECs. Tribal organizations including the National Congress of American Indians and the Affiliated Tribes of Northwest Indians have called for the creation of new ACEC regulations.[135] The new regulations should be developed in meaningful consultation with duly elected officials of Indian tribes to ensure their perspectives are adequately incorporated. These new regulations and guidance should:

- Develop a process to promote consistency in the identification, designation, and management of ACECs.
- Highlight the importance of BLM managed lands to Indian tribes.
- Expand the role of Indian tribes in the identification, designation, and management of ACECs, including a process for formal government-to-government consultation.
- Create a process for establishing tribal co-stewardship of ACECs.
- State that resources, values, systems, and processes significant to Indian tribes are potential ACECs.
- Provide Indian tribes an opportunity to identify ACECs through tribally-led identification efforts using their own ontological and epistemological frameworks.
- State that Indian tribes are uniquely qualified to identify resources, values, systems, and processes of tribal cultural significance.
- State that Indian tribes are experts in their culture, history, and worldview, and ACECs identified by Indian tribes hold equal standing to those identified by other experts.
- Highlight the breadth of the ACEC definition in FLMPA to demonstrate that ACECs do not have to be narrowly defined in pre-existing resource management categories, such as "cultural resources" or "natural resources."
- Clarify that a National Historic Preservation Act (NHPA) can be used to support ACEC designation, but the lack of NHPA designation should not preclude ACEC designation.
- Highlight that ACECs can be at any scale and can be designated to provide special management to systems and processes, not just individual resources or values.
- Develop minimum management standards for ACECs.
- Develop a mechanism to confirm that ACECs are being managed based on the management prescriptions assigned for their protection.
- Recognize the necessity for redacting information in order to protect the resource, values, systems, and processes of Indian tribes.

- Allow for the nomination and consideration of ACECs outside of the RMP and RMPA processes to ensure that ACEC consideration and designation can take place frequently.

2. Establish a nationwide ACEC program within the BLM.

The administration of ACECs by the BLM would be significantly improved by a nationwide ACEC program within the BLM. The BLM commonly uses programs to coordinate and facilitate activities that require uniform principles and practices.[136] The ACEC program could be integrated into the BLM's existing National Conservation Lands system. This program could provide support to BLM field offices who are tasked with the identification, designation, and management of ACECs while providing a nationwide perspective that could promote consistency in these practices. This program could:

- Develop guidance on ACECs for local BLM field offices and BLM state offices.
- Develop standard principles and procedures for the identification, designation, and management of ACECs.
- Provide technical support to BLM field offices and state offices to promote the consistency in the identification, designation, and management of ACECs.
- Act as a repository for a nationwide database of ACECs.
- Provide information to the public on ACECs that could increase the transparency of the decision making and management processes within the BLM.
- Support greater funding for ACEC identification, designation, and management throughout the BLM.
- Support the management of landscape-scale ACECs that require coordination between multiple BLM offices or other agencies.
- Promote ACECs as a fundamental way that the BLM can promote the health, diversity, and productivity of the lands it manages.

3. Reinforce the importance of meaningful and good faith consultation and the co-stewardship of public lands with Indian tribes to federal agencies.

To effectively implement the regulations and guidance on ACECs and land use planning, the BLM must meaningfully and consistently consult Indian tribes. As expressed by Secretary of Interior Deb Haaland, "Tribes are not interest groups. Tribes are sovereign entities with indigenous perspectives and knowledge that can improve the quality of Federal decisions and

result in better outcomes for all affected communities. Tribal consultation offers a means for weaving Tribal input into our decision-making processes."[137]

The BLM can improve its consultation with Indian tribes and reinforce its importance to personnel through proactive action. Recently, the Department of the Interior issued a report entitled *A Detailed Plan for Improving Interior's Implementation of E.O. 13175,* which was a response to the President Biden's *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships*.[138] This report summarizes suggestions for improving consultation that were provided to the Department of the Interior in government-to-government consultation with 160 Indian tribes, and it provides goals and action items based on those suggestions. The tribal representatives who participated in the consultation provided important input for the Department of Interior's report, and those suggestions should be consistently and meaningful implemented throughout the Department of Interior, including the BLM. This implementation would provide significant support to Indian tribes participating in ACEC processes with the BLM.

Beyond consultation, the federal government needs to reinforce the importance of Indian tribes serving as co-stewards of public lands with federal agencies. Recently, the federal government called for increased co-stewardship of public lands, and acknowledged that the stewardship of public lands as part of the trust responsibility it holds for Indian tribes.[139] However, the federal government's position on the co-stewardship of public lands with Indian tribes should not be confined to rhetoric in secretarial orders; it needs to be effectively implemented in all aspects of the federal government's decision-making processes. If done successfully, the implementation of a co-stewardship model will greatly benefit the ongoing management of America's public lands, the traditional homelands of Indian tribes.

CONCLUSIONS

The BLM manages 245 million acres with a mission to sustain the health, diversity, and productivity of the land for present and future generations. Many of the lands managed by the BLM are the traditional homelands of Indian tribes. For Indian tribes, these lands are not simply a collection of resources; they are lands that Indian tribes consider indivisible from their culture and history, and which have fundamental importance for the perpetuation of traditional cultural practices and lifeways in the modern world. Given this, the BLM should ensure proper stewardship of its managed lands to support the wellbeing of Indian tribes. The BLM and the federal government need to adequately consider the perspectives of Indian tribes in the management of public lands.

The flexibility built into the concept of ACECs within FLPMA allow for ACECs to be a powerful tool in the management and protection of BLM managed lands that have significant resources, values, systems, and processes to Indian tribes. Yet, the full potential of ACECs as an important mechanism for the protection of BLM lands has not been realized due to vague

regulations and guidance that results in inconsistent application, and a lack of coordination and cooperation with Indian tribes by the BLM.

The Department of the Interior has the opportunity to prioritize ACECs as mandated in FLPMA. The Department of the Interior can build a foundation for increased engagement between the federal government and Indian tribes by (1) issuing new regulations and guidelines for the designation and management of ACECs that provides a clear role for Indian tribes; (2) developing a nationwide ACEC Program within the BLM to support the identification, designation, and management of ACECs within the agency; and (3) reinforcing the importance of meaningful consultation and cooperation with Indian tribes to support the protection of places of cultural importance and work toward co-stewardship of public lands.

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