



April 17, 2024

Bureau of Land Management  
Attn: Draft Solar EIS  
1849 C Street NW  
Washington, DC 20240

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

**Re: Comments on Draft PEIS for Utility-Scale Solar Energy Development;  
NEPA Document #DOI-BLM0HQ-3000-2023-0001-RMP-EIS**

Dear Bureau of Land Management:

New Mexico Wilderness Alliance (New Mexico Wild) is a nonprofit organization dedicated to the protection, restoration, and continued enjoyment of New Mexico's wildlands and wilderness areas, with thousands of members across the state. We appreciate this opportunity to provide input on the Bureau of Land Management (BLM) draft programmatic environmental impact statement (Draft PEIS) for utility-scale solar and associated resource management plan (RMP) amendments.<sup>1</sup> These comments are timely submitted by April 18, 2024.

The development of public lands for renewable energy is important to meeting our nation's goals, but the BLM must balance this development with the conservation of wildlands, wildlife, and cultural resources. We commend the BLM for undertaking landscape level

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<sup>1</sup> U.S. Dep't of Interior, Bureau of Land Management, Draft Programmatic Environmental Impact Statement for Utility-Scale Solar Energy Development, Doc. #DOI-BLM-HQ-3000-2023-0001-RMP-EIS (Jan. 2024), available at <https://eplanning.blm.gov/eplanning-ui/project/2022371/570> [hereinafter Draft PEIS].

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planning to ensure that solar energy development on public lands is responsibly sited and managed. We support the proposed expansion of the 2012 Western Solar Plan to include five additional states, the use of resource-based exclusion criteria to avoid conflicts with other resources, the proposed elimination of the existing variance process to simplify the application and permitting process, and the development of robust programmatic design features to avoid, minimize, or compensate for adverse impacts.

We are concerned, however, that the BLM is proposing to allow large solar facilities across too many acres of federal public lands and has failed to choose a preferred alternative that will direct development to previously disturbed sites, as needed to protect remaining intact landscapes and important wildlife habitat.

The BLM's reasonably foreseeable development scenario projects that approximately 700,000 acres of BLM-managed lands will be needed for utility scale solar development over the next 20 years. In the draft PEIS, the BLM presents five action alternatives to guide solar development on public lands, which would designate between 55 million acres and 8.4 million acres as open to applications for utility-scale solar development. The BLM's preferred alternative, Alternative 3, would open 22 million acres. We urge the BLM to instead choose Alternative 5, which would open 8.4 million acres to application; to clarify and strengthen the exclusion criteria; and to incorporate a process for prioritizing site-specific designated leasing areas, either through the PEIS or subsequent resource management planning amendments or revisions.

#### **I. The BLM Should Adopt a Modified Version of Alternative 5.**

Of the options presented in the Draft PEIS, we recommend that the BLM adopt Alternative 5. This alternative would open 8.4 million acres of BLM-managed lands to applications for large solar facilities, which is twelve times the acreage needed to support the BLM's projected need for 700,000 acres for future solar development. Alternative 5 appropriately

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includes resource-based exclusions to mitigate impacts to sensitive areas. Alternative 5 would also limit development to areas within ten miles of existing or planned transmission lines, which would encourage and facilitate the colocation of rights of way and development corridors.

Additionally, unlike the BLM's preferred Alternative 3, Alternative 5 would utilize previously disturbed lands, thereby avoiding new development on intact landscapes that are critical for climate stability and biodiversity, in furtherance of the proposed Conservation and Landscape Health Rule<sup>2</sup> and policies such as the America the Beautiful initiative.<sup>3</sup> To the extent possible, we strongly encourage the BLM to encourage or incentivize the siting of utility-scale solar on lands with previous or existing development or disturbance, including brownfields, mine lands, and lands fragmented by oil and gas development.

Finally, as reflected in draft PEIS, as compared with other alternatives, Alternative 5 may be more economically feasible for development because the available lands are near the transmission grid and other infrastructure and will therefore require less new land disturbance. Moreover, the environmental review reflects that Alternative 5 would result in the least amount of adverse impact to cultural resources, high-quality aquatic habitat, big game migration corridors and winter habitat, endangered and special-status species, environmental justice communities, soil resources, and paleontological resources. As a result, it stands to reason that by selecting Alternative 5, the project level analysis for future proposed solar developments should be simpler and more streamlined as compared to project-level planning under the other alternatives, thereby appropriately

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<sup>2</sup> U.S. Dep't of Interior, BLM, Conservation and Landscape Health Proposed Rule, 88 Fed. Reg. 19583 (Apr. 3, 2023), available at <https://www.federalregister.gov/documents/2023/04/03/2023-06310/conservation-and-landscape-health> [hereinafter Public Lands Rule].

<sup>3</sup> See, e.g., Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (Jan. 27, 2021); U.S. Dep't of Interior et al., Conserving and Restoring America the Beautiful (2021) [hereinafter America the Beautiful]; State of N.M. Executive Order 2021-052, Protecting New Mexico's Lands, Watersheds, Wildlife, and Natural Heritage (Aug. 25, 2021).

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expediting responsible solar development on public lands. The final PEIS should proceed with a modified version of Alternative 5, which prioritizes sufficient land area for development of utility-scale solar projects while minimizing impacts on intact landscapes, wildlife habitat, and sensitive resources.

## **II. The BLM Should Strengthen the Resource Exclusion Criteria.**

We support the BLM’s proposal to continue using resource-based exclusion criteria to prohibit solar energy development in sensitive areas. The BLM appropriately proposes to update and retain most of the existing resource-based criteria from the 2012 Western Solar Plan, with several additions. Within New Mexico, we especially thank the BLM for proposing to exclude the area surrounding Chaco Culture National Historical Park from utility-scale solar applications. This action is consistent with Public Land Order No. 7923, and the BLM should retain this exclusion in the final plan.

While we generally support the proposed resource-based exclusion criteria, we recommend that the BLM expand and strengthen the criteria to fulfill the goal of avoiding conflicts between utility-scale solar development and sensitive natural and cultural resources, as well as with the Biden Administration’s key conservation goals. Namely, acknowledging the ongoing and deepening climate and mass extinction crises, President Biden’s Executive Order on Tackling the Climate Crisis at Home and Abroad<sup>4</sup> directs the Secretary of the Interior, in consultation with other leaders in the federal government, to recommend steps to conserve at least 30 percent of our lands and waters by 2030. The Department of Interior’s America the Beautiful Initiative similarly implores that “we work together to conserve, connect, and restore 30 percent of our lands and waters by 2030 for the sake of our economy, our health, and our well-being.”<sup>5</sup>

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<sup>4</sup> Executive Order 14008, *supra* note 3.

<sup>5</sup> America the Beautiful, *supra* note 3.



Currently, there are approximately 1.7 million acres of designated Wilderness in New Mexico. The total acreage of National Parks, National Monuments, National Preserves, National Historical Parks, National Conservation Areas, and National Recreation Areas that are managed by the federal government in New Mexico is approximately 1.6 million acres, which includes approximately 420,000 acres designated as Wilderness. In sum, without double counting overlapping Wilderness acreages, there are approximately 2.88 million acres of federal lands protected as Wilderness, National Parks, National Monuments, National Preserves, National Historical Parks, National Conservation Areas, and National Recreation Areas in New Mexico, equating to approximately 3.7% of the State.

New Mexico Wild has identified approximately 6 million acres of additional federal public lands through on-the-ground inventory and agency data that we believe would qualify for wilderness designation, equating to approximately 7.7% of the State (however, these lands are not formally recognized by the federal land management agencies as having wilderness characteristics and have no special status or protections). Together, existing and potential protections on federal land in New Mexico total approximately 11.4% of the State – a far cry from the 30% of lands and waters specified in the President’s Executive Order on Tackling the Climate Crisis at Home and Abroad.

In furtherance of the public interest and the policies of the Biden administration related to the climate crisis, the BLM should avoid authorizing renewable energy development on our remaining intact landscapes of conservation value. All of these intact lands must be protected to meet our climate and biodiversity goals; we cannot afford to continue degrading existing designated and protected areas, or undeveloped lands and habitats meriting additional protection. By expanding and strengthening the proposed resource-based exclusion criteria, the BLM would help to achieve this goal.

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#### A. Lands with Wilderness Characteristics

We strongly support the BLM’s proposal to exclude areas for which an applicable land use plan establishes protection for lands with wilderness characteristics (LWCs), consistent with the 2012 Western Solar Plan. In the final plan, we recommend that the BLM expand and strengthen the proposed exclusion criterion for LWCs to include (1) all LWCs that have been inventoried and identified by BLM, regardless of whether they are being managed to maintain wilderness qualities in an RMP; and (2) community-identified LWCs that have not been evaluated by the BLM through a recent planning process.

Under federal law, the BLM planning process, including the Western Solar Plan, must be informed by updated resource inventories. Specifically, the Federal Land Policy and Management Act of 1876 (FLPMA), imposes an affirmative legal duty for BLM to “prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern.”<sup>6</sup> The BLM must keep this inventory “current so as to reflect changes in conditions and to identify new and emerging resource and other values.” The resource inventory must include the identification of lands that have wilderness characteristics, as described in the Wilderness Act.<sup>7</sup>

Many of the RMPs in New Mexico (and across the west) are out of date and do not reflect current resource inventories, including inventories of lands with wilderness characteristics. The Carlsbad RMP (1988), Farmington RMP (2003), Mimbres RMP (1993), Rio Puerco RMP (1986), Roswell RMP (1997), and White Sands RMP (1986) are all over 20 years old. New Mexico Wild has identified 2.9 million acres of BLM-managed lands with

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<sup>6</sup> FLPMA, 43 U.S.C. § 1711(a).

<sup>7</sup> See *Ore. Natural Desert Ass’n v. BLM*, 625 F.3d 1092, 1122 (9th Cir. 2010) (explaining that the BLM must identify lands that have wilderness characteristics as part of FLPMA’s general resource inventory process and that RMPs should rely on this inventory).



wilderness characteristics across the state, and many of these planning areas do not have current inventories by the BLM. These LWCs are critical to implementing federal and state initiatives to conserve 30% of lands and waters by 2030 to mitigate the catastrophic effects of climate change and biodiversity loss.<sup>8</sup>

Given that most RMPs are outdated and many are undergoing revision, we recommend that the BLM expand the proposed exclusion criterion to include all LWCs that have been identified by the BLM in a recent resource inventory but have not yet been incorporated into a plan revision.

In New Mexico, the Nutt Grasslands provide an example where the BLM has inventoried and identified LWCs that would remain partially open to solar applications under the Draft PEIS due to delays in the local RMP planning process. The Nutt Grasslands consist of 10,691 acres currently managed by the Las Cruces District Office under the Mimbres RMP (1993).<sup>9</sup> In the near future, the BLM intends to incorporate the Nutt Grasslands into a new planning area that the BLM will manage under the forthcoming TriCounty RMP. The BLM initiated the TriCounty RMP process in 2005 and issued a draft TriCounty EIS/RMP in 2013.<sup>10</sup> Under Alternative B of the draft TriCounty RMP/EIS, Nutt Grasslands would be

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<sup>8</sup> Executive Order 14008, *supra* note 3 (setting “the goal of conserving at least 30 percent of our lands and waters by 2030”); America the Beautiful, *supra* note 3 (“The goal of conserving 30 percent of lands and waters by 2030 echoes the recommendations of scientists who encourage world leaders to work together to conserve or restore a substantial portion of our planet to stem the extinction crisis, safeguard water and food supplies, absorb carbon pollution, and reduce the risks of future pandemics and other global health emergencies.”); N.M. Executive Order 2021-052 (“New Mexico sets the goal of having at least 20 percent (30%) of all lands in New Mexico conserved by 2030, with an additional twenty percent (20%) designated as climate stabilization areas.”).

<sup>9</sup> U.S. Dep’t of Interior, BLM Las Cruces District Office, Mimbres Resource Management Plan, #BLM-NM-PT-93-009-4410 (Dec. 1993), available at <https://eplanning.blm.gov/eplanning-ui/project/72801/510>.

<sup>10</sup> <https://eplanning.blm.gov/eplanning-ui/project/83982/510>.

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managed as LWCs.<sup>11</sup> In 2018, the BLM updated its LWC inventory for the TriCounty Planning area.<sup>12</sup> Although the planning website lists the status of the TriCounty RMP as “in progress,” the RMP revision has not been completed.

The Nutt Grasslands provide one of many examples across the west of wilderness-quality lands that the BLM should exclude from utility-scale solar projects yet would be open to solar applications under the proposed plan. A large solar project could degrade the Nutt Grasslands before the BLM completes the pending RMP planning process. As shown in the maps attached as Exhibit A, the BLM’s preferred Alternative 3 would open more of the Nutt Grasslands to solar applications than Alternative 5.<sup>13</sup> The BLM’s final plan should adopt a modified version of Alternative 5 that excludes all BLM-inventoried LWCs from utility-scale solar.

Similarly, the exclusion criterion should include stakeholder (non-agency) identified LWCs in areas where the BLM has commenced a revision of the applicable RMP or where the applicable RMP is over 20 years old. In our experience, BLM inventories sometimes miss eligible LWCs, and additional LWCs beyond those identified or proposed by the BLM are sometimes added into RMP planning processes as a result of comment periods or other public engagement. The BLM should ensure that citizen-inventoried LWCs are not degraded by utility-solar development due to delays in the RMP planning process.

And finally, to meet conservation goals, we recommend that the BLM exclude all BLM-inventoried LWCs from utility-scale solar, regardless of whether a land use plan specifically protects them as such. Many LWCs identified in RMPs do not benefit from

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<sup>11</sup> U.S. Dep’t of Interior, BLM, TriCounty Draft Resource Management Plan/Environmental Impact Statement, Vol. I, pp. 2-25 to 2-26 (Apr. 2013), available at <https://eplanning.blm.gov/eplanning-ui/project/83982/570>.

<sup>12</sup> <https://eplanning.blm.gov/eplanning-ui/project/83982/570>

<sup>13</sup> Exhibit A (showing overlap of LWCs and areas proposed to be open to solar applications under Alternatives 3 and 5).

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management prescriptions to protect their wilderness qualities. These LWCs nonetheless support valuable wildlife habitat, biodiversity, watershed protection, and healthy ecosystems. Protecting these intact landscapes is consistent with other policy initiatives, including America the Beautiful<sup>14</sup> and the proposed Public Lands Rule.<sup>15</sup> If the BLM does not expressly include this category of LWCs within the exclusion criteria, at a minimum, the BLM should provide these LWCs with heightened screening as Areas of Special Concern under Appendix H.

We urge the BLM to strengthen the LWC criterion to address these issues and conserve all remaining intact wilderness-quality landscapes. To the maximum extent possible, the BLM should exclude all identified and inventoried LWCs from utility-scale solar.

#### B. Areas of Critical Environmental Concern

We strongly support the BLM’s proposal to exclude areas for which an applicable land use plan establishes protection for Areas of Critical Environmental Concern (ACECs), consistent with the 2012 Western Solar Plan. ACECs are lands “where special management 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.”<sup>16</sup> BLM regulations and guidance documents provide criteria and procedures for the BLM to designate ACECs through the RMP planning process.<sup>17</sup>

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<sup>14</sup> America the Beautiful, *supra* note 3.

<sup>15</sup> Public Lands Rule, *supra* note 2.

<sup>16</sup> 43 U.S.C. § 1702(a).

<sup>17</sup> 43 C.F.R. § 1610.7-2; BLM ACEC Manual 1613 (Sept. 29, 1988, release 1-1541) (“Manual 1613”), available at [https://www.ntc.blm.gov/krc/uploads/360/5\\_1613\\_ACEC\\_Manual%201988.pdf](https://www.ntc.blm.gov/krc/uploads/360/5_1613_ACEC_Manual%201988.pdf); Clarification and Interim Guidance for Consideration of Areas of Critical Environmental Concern Designations in Resource Management Plans and Amendments, Instruction Memorandum (IM) 2023-013 (Nov. 30, 2022), available at <https://www.blm.gov/policy/im-2023-013> (clarifying Manual 1613 and stating that Manual 1613 is currently under revision).

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FLPMA obligates the BLM to “give priority to the designation and protection of areas of critical environmental concern” when adopting or amending RMPs.<sup>18</sup> FLPMA also directs BLM to prioritize ACECs when preparing and maintaining the inventory of public land resources values.<sup>19</sup> To comply with FLPMA, the BLM should be maintaining current inventories with information and data on areas that may qualify for designation as ACECs.<sup>20</sup> During the inventory process, BLM staff “are encouraged to recommend areas for consideration as a potential ACEC.”<sup>21</sup> Additionally, members of the public may submit nominations for potential ACECs at any time.<sup>22</sup> Once identified or nominated, the BLM conducts an initial evaluation to determine whether the potential ACEC meets the relevance and importance criteria for designation.<sup>23</sup> An area that meets these threshold criteria requires further evaluation through the RMP process.<sup>24</sup>

As noted above, most RMPs in New Mexico and across the west are in the middle of a revision process or are long overdue for revision. Delays in the planning process prevent the timely evaluation and designation of ACECs. The objective of an ACEC designation is to provide special management attention to protect and prevent irreparable damage to important historic, cultural, and scenic values; to protect fish or wildlife resources; or to maintain landscape intactness, climate resiliency, habitat connectivity, or other natural systems or processes.

Given the widespread delays in the planning process, the BLM should expand the ACEC exclusion criterion in the final plan to include all proposed ACECs that have been nominated and are still in the process of being evaluated by the BLM.

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<sup>18</sup> 43 U.S.C. § 1712(c)(3).

<sup>19</sup> 43 U.S.C. § 1711(a).

<sup>20</sup> IM 2023-013, *supra* note 22.

<sup>21</sup> Manual 1613, *supra* note 22, § .21(A)(2)(b)-(c).

<sup>22</sup> *Id.* §§ .21(A)(2)(a); .41.

<sup>23</sup> *Id.* § .21(C).

<sup>24</sup> *Id.*

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### C. Wildlife Habitat and Corridors

We support the BLM’s proposal in the draft PEIS to include an exclusion criterion for big game migratory corridors and big game winter ranges identified in an applicable land use plan, to the extent the land use plan prohibits utility-scale solar energy development. This criterion is an appropriate step toward protecting wildlife habitat and connectivity, but it does not adequately address the need to provide crucial connections between habitat areas to enable migration, dispersal, and breeding opportunities for plants and wildlife. The BLM must ensure that a buildout of utility-scale solar does not compound the habitat loss and fragmentation that wildlife is already experiencing because of climate change and other human activities. Existing federal and state policies have been adopted to promote greater connectivity,<sup>25</sup> and the BLM should do more to implement those policies through the Solar PEIS.

We recommend that the BLM broaden this exclusion criterion to encompass wildlife corridors and wildlife crossings identified by the U.S. Fish and Wildlife Service or state wildlife agencies. In 2019, the New Mexico Legislature enacted the Wildlife Corridors Act,<sup>26</sup> which directed the New Mexico Department of Transportation and the New Mexico Department of Game and Fish to develop a statewide action plan. New Mexico finalized its

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<sup>25</sup> See, e.g., Instruction Memorandum (IM) 2023-005, Change 1, Habitat Connectivity on Public Lands (Nov. 18, 2022), *available at* <https://www.blm.gov/policy/im-2023-005-change-1> (directing BLM state offices to consult with state fish and wildlife agencies and Tribes to assess habitat connectivity to manage as best as possible for intact, connected habitat); CEQ, Guidance for Federal Departments and Agencies on Ecological Connectivity and Wildlife Corridors (Mar. 21, 2023), *available at* <https://www.whitehouse.gov/wp-content/uploads/2023/03/230318-Corridors-connectivity-guidance-memo-final-draft-formatted.pdf> (directing federal agencies to develop policies to “conserve, enhance, protect, and restore” corridors and connectivity, including in public lands planning and management).

<sup>26</sup> N.M. Wildlife Corridors Act, NMSA 1978, §§ 17-9-1 to -5 (2019).

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Wildlife Corridors Action Plan in 2022.<sup>27</sup> The plan identifies wildlife-vehicle collision hotspots that pose an elevated risk to the public and provides a list of priority projects for safe wildlife crossings. It will take years for New Mexico to implement these priority projects, and it is critical that development such as utility-scale solar does not impact these corridors and crossing areas. Alternatively, at a minimum, the BLM should incorporate these state-identified wildlife corridors into Appendix H of the Draft PEIS as areas of special concern warranting additional screening.

Additionally, the BLM should exclude aquatic and riparian areas from utility-scale solar applications by providing an appropriate setback buffer around surface waters and drainages, including rivers; perennial, intermittent, and ephemeral streams; lakes and reservoirs; floodplains; playas; and springs and seeps. Alternatively, at a minimum, the BLM should incorporate these setback buffers into the Design Feature set forth in Appendix B of the Draft PEIS, for example by revising and strengthening Design Feature ER-C-2g.

#### D. Old Growth Forests

We support the BLM's proposal in the draft PEIS to include an exclusion criterion for old growth forests identified in applicable land use plans. Like many of the other exclusion criteria, the old-growth exclusion focuses on existing RMPs, yet most of the RMPs in New Mexico and across the west are outdated.

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<sup>27</sup> N.M. Dep't of Transp. & N.M. Dep't of Game and Fish, New Mexico Wildlife Corridors Action Plan (June 2022), available at [https://wildlifeactionplan.nmdotprojects.org/wp-content/uploads/sites/39/2022/07/Wildlife-Corridors-Action-Plan\\_June-2022\\_FINAL-reduced.pdf](https://wildlifeactionplan.nmdotprojects.org/wp-content/uploads/sites/39/2022/07/Wildlife-Corridors-Action-Plan_June-2022_FINAL-reduced.pdf).

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In Executive Order No. 14072, the Biden Administration directed federal agencies to inventory, conserve, and restore old growth and mature forests on federal lands.<sup>28</sup> The order recognizes the importance of mature and old growth forests for providing clean air and water, sustaining and increasing biodiversity, enhancing climate resilience, enabling cultural and subsistence uses, and offering outdoor recreation opportunities.<sup>29</sup> As part of implementing this order, the BLM and Forest Service recently completed an inventory of old growth and mature forests on federal public lands.<sup>30</sup> The inventory found that pinyon and juniper woodlands represent the most abundant type of mature and old growth forests remaining on federal lands.<sup>31</sup> The BLM manages 19 million acres of pinyon-juniper woodlands, many of which are in New Mexico. The BLM should use the recent inventory and subsequent guidance to identify and exclude old growth and mature forests, including pinyon-juniper woodlands, from utility-scale solar development.

### **III. The Western Solar Plan Should Include a Process for Identifying and Prioritizing Low Conflict Areas for Leasing.**

All the action alternatives in the Draft PEIS would open vast acreages of BLM land to solar applications and would require significant site-specific review at the project level. In this way, the proposed new process replicates the existing variance process under the 2012 Western Solar Plan, which has not furthered the goal of streamlining the efficient review of applications or the expeditious buildout of solar infrastructure on public lands.

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<sup>28</sup> Exec. Order No. 14,072, Strengthening the Nation’s Forests, Communities, and Local Economies, § 2 (Apr. 22, 2022), 87 Fed. Reg. 24,851, 24,852 (Apr. 27, 2022).

<sup>29</sup> *Id.*

<sup>30</sup> USFS & BLM, Mature and Old-Growth Forests: Definition, Identification, and Initial Inventory on Lands Managed by the Forest Service and Bureau of Land Management (Apr. 2023) (“USFS/BLM Old Growth Inventory”), <https://www.fs.usda.gov/sites/default/files/mature-and-old-growth-forests-tech.pdf>.

<sup>31</sup> Dep’t of Interior & Dep’t of Agriculture, Pinyon-Juniper Woodlands Factsheet (Dec. 2023), *available at* <https://www.fs.usda.gov/sites/default/files/pinyon-juniper-fact-sheet.pdf>.

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We strongly recommend that the BLM retain and strengthen a process for identifying specific, designated leasing locations of adequate size with the highest potential for solar energy development and the lowest level of resource conflicts. If the BLM cannot conduct this level of site-specific review as part of developing the final PEIS and Western Solar Plan, then the final plan should include a requirement and procedure for the BLM to identify priority leasing areas through subsequent resource management plan amendments or revisions. This approach would further BLM’s purpose and need for updating the Western Solar Plan, which is to facilitate improved siting of utility-scale solar energy development on BLM-administered lands and to provide a framework for efficient application processing. Identifying priority areas would also be consistent with the new Renewable Energy Rule,<sup>32</sup> which includes a prioritization process for right-of-way projects within designated leasing areas (DLAs), including solar energy zones.<sup>33</sup>

If the BLM does not adopt a process for prioritizing site-specific designated leasing areas, either through the final PEIS or subsequent resource management plan amendments, the BLM will miss a critical opportunity. To best meet the purpose and need of the Western Solar Plan, the BLM must do more to guide utility-scale solar projects to the most suitable locations with the least resource conflicts. This approach would allow the BLM to expedite the review and approval of applications in these priority areas and to accelerate our nation’s transition to cleaner energy.

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<sup>32</sup> Dep’t of Interior, BLM, Rights-of-Way, Leasing, and Operations for Renewable Energy, Final Rule (Apr. 2024) (to be codified at 43 C.F.R. § 2802.11).

<sup>33</sup> 43 C.F.R. § 2801.5(b) (defining “designated leasing area” as a parcel of land with specific boundaries identified by the BLM land use planning process as being a preferred location for solar or wind energy development that may be offered competitively”).

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#### **IV. The BLM Should Identify Areas of Special Concern as Proposed in Appendix H and Should Use the Screening Process to Colocate Utility-Scale Solar in Areas with Oil and Gas Leases.**

We generally support the BLM’s proposal in Appendix H to require a screening analysis to identify areas of special concern. As further described below, we recommend that the BLM use this additional screening analysis as a tool for incorporating utility-scale solar development into lands that have already been disturbed and fragmented by oil and gas leasing and into BLM restoration landscapes, as appropriate.

##### **A. BLM Restoration Landscapes**

In Appendix H of the Draft PEIS, the BLM proposes to require additional project-level screening for utility-scale solar applications in locations identified as BLM Restoration Landscapes. In New Mexico, the only BLM Restoration Landscape is located within the Permian Basin in the southeastern part of the state. As further described in Part III.B below, southeastern New Mexico contains many acres that have been significantly degraded and fragmented by oil and gas development yet have extremely high solar energy resource potential. These characteristics make the area potentially suitable for utility-scale solar. We appreciate that Appendix H contemplates opportunities for solar project developers to work with the BLM to site utility-scale solar within restoration landscapes while incorporating mitigation and restoration actions into solar projects. We encourage the BLM to find solutions that will permit the needed restoration of degraded landscapes to proceed while simultaneously siting solar projects in previously disturbed areas.

##### **B. Oil and Gas Leases**

It is imperative that the BLM use smart siting criteria to ensure that utility-scale solar projects are developed in a manner consistent with the conservation of intact landscapes

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and sensitive ecological and cultural resources. The colocation of utility-scale solar within existing oil and gas development areas could help achieve this balance. In New Mexico, the oil producing regions found in the Permian Basin and San Juan Basin conveniently overlap with areas with high solar resource potential. The BLM should work to ensure that fossil fuel and renewable energy resources can be developed in a coordinated way, through a competitive leasing process or other mechanism that includes incentives for solar development in areas with oil and gas development.

In Appendix H, the BLM proposes to provide additional review of solar applications in locations currently leased for oil and gas. The BLM asserts that oil and gas lessees have a valid existing “right to use so much of the leased lands as is necessary”<sup>34</sup> for exploration and production. But an oil or gas lessee’s right to use the surface is subject to limitations. Relevant here, the BLM has express authority to impose “reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed.”<sup>35</sup> These reasonable measures may include modifications to siting, including the relocation of proposed operations by up to 200 meters, or a temporary moratorium on new surface disturbance for up to 60 days in a year.<sup>36</sup>

The BLM should use this authority to incorporate new utility-scale solar projects into areas with existing oil and gas development. Developing solar in these areas would not necessarily prevent oil and gas operators from exercising their valid existing rights. Modern technologies, such as advancements in horizontal drilling, allow operators to traverse larger areas and to drill multiple wells from the same surface location, facilitating the development of more oil and gas resources using less surface land area.

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<sup>34</sup> 43 C.F.R. 3101.1-2.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*





Moreover, responsible management dictates that the BLM should seek to site new solar development in existing oil and gas fields to prepare for the necessary and imminent transition to cleaner energy sources. Recent analyses reflect that the rate of oil and gas development will peak and decline in the near future. For example, in 2023, a new Reasonably Foreseeable Development Scenario (RFDS) report for the Carlsbad Field Office in the Permian Basin projected future oil and gas development activity for the next 20 years.<sup>37</sup> The report concluded that oil and gas production will continue to increase only in the short term, until 2025.<sup>38</sup> Following a peak next year, production is anticipated to decline due to the draining of the resource.<sup>39</sup> Further reductions in oil and gas production should result from renewable energy policies, including the policies that the BLM seeks to implement through the Western Solar Plan.<sup>40</sup>

As the United States shifts to renewable energy and oil and gas resources dry up, places like the Permian Basin in southeastern New Mexico will bear the scars of intensive fossil fuel development, including vast areas of surface disturbance from oil and gas roads and drilling pads. These disturbed, degraded, and fragmented landscapes have low value for wildlife and natural resources. Rather than allowing utility scale solar projects to intrude into remaining intact landscapes, the BLM should seek to maximize the future use of these previously disturbed areas for renewable energy production.

### C. Big Game Data

We support the BLM's proposal to exclude from utility-scale solar development all big game migratory corridors and winter ranges identified in applicable land use plans to the

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<sup>37</sup> U.S. Dep't of Interior & N.M. Institute of Mining & Technology, Reasonably Foreseeable Development Scenario for Oil and Gas Activities, Carlsbad Field Office (July 10, 2023), *available at* <https://eplanning.blm.gov/eplanning-ui/project/64444/570>.

<sup>38</sup> *Id.* p. 16.

<sup>39</sup> *Id.*

<sup>40</sup> See Executive Order 14008, *supra* note 3; Clean Energy Innovation and Deployment Act of 2020.

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extent the land use plan decision prohibits such development. In Appendix H, the BLM proposes to require additional project-level screening to consider additional big game winter ranges and migration corridors that have been mapped by state or federal agencies but have not been included in a land use plan. We agree that it is appropriate to require additional screening to ensure that utility-scale solar projects do not disrupt intact landscapes that wildlife rely upon for survival.

As noted above, we recommend that the BLM either add to the resource-based exclusion criteria or strengthen the “Big Game Data” proposal in Appendix H to ensure that the BLM screens all projects for wildlife migration routes and corridors that state and federal agencies have identified. In New Mexico, for example, the BLM should ensure that utility-scale solar is not developed in priority migration and crossing areas identified in the New Mexico Wildlife Corridors Action Plan.<sup>41</sup>

#### D. National Park Service Areas of Special Concern

We strongly support the BLM’s inclusion of National Park Service (NPS) areas of special concern within Appendix H of the Draft PEIS. Resource areas within twenty-five miles of National Parks, National Monuments, and other NPS-managed lands warrant additional review of the potential impacts that a utility-scale solar project may have on NPS resources.

## **CONCLUSION**

We recommend that the BLM adopt Alternative 5 in the final PEIS, strengthen the exclusion criteria as described above, ensure there is a process for designating pre-screened priority

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<sup>41</sup> N.M. Dep’t of Transp. & NMDGF, N.M. Wildlife Corridors Action Plan (June 2022), available at [https://wildlifeactionplan.nmdotprojects.org/wp-content/uploads/sites/39/2022/07/Wildlife-Corridors-Action-Plan\\_June-2022\\_FINAL-reduced.pdf](https://wildlifeactionplan.nmdotprojects.org/wp-content/uploads/sites/39/2022/07/Wildlife-Corridors-Action-Plan_June-2022_FINAL-reduced.pdf).



leasing areas, and facilitate the siting of new solar development in degraded areas, including areas impacted by oil and gas development. Thank you for your consideration of our comments. Please include them in the official project record, and please continue to include New Mexico Wild in notices and correspondence pertaining to this project.

Sincerely,

Sally Paez  
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Albuquerque, NM 87125  
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Encl: Exhibit A, Maps showing overlap of the Nutt Grasslands, which are BLM-inventoried LWCs, with areas open for solar applications under Alternative 3 (preferred) and Alternative 5 (recommended).

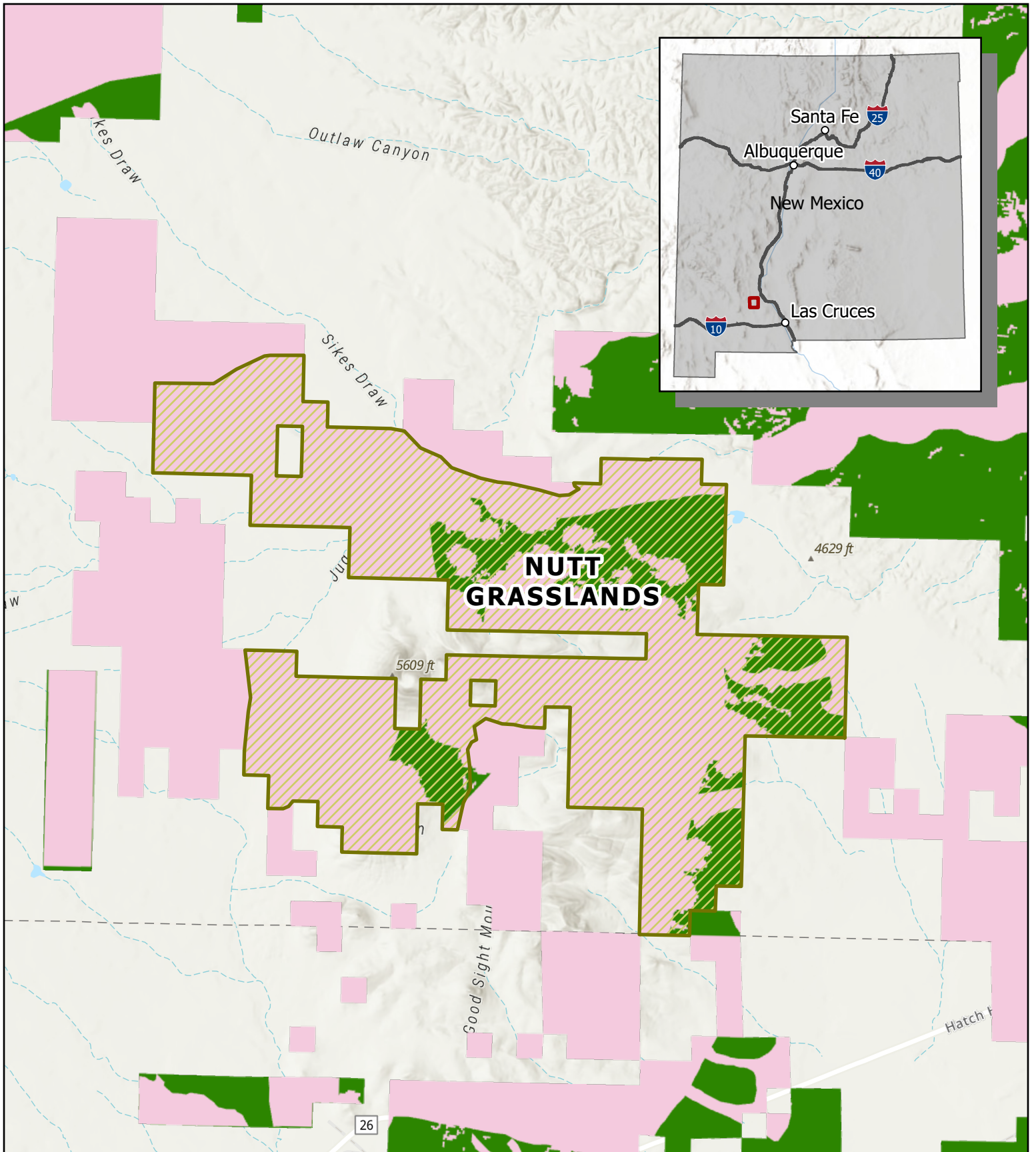
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# **New Mexico Wild**

## **Exhibit A:**

Maps showing overlap of the Nutt Grasslands, BLM-inventoried LWCs, with areas open for solar applications under Alternative 3 (preferred) and Alternative 5 (recommended)



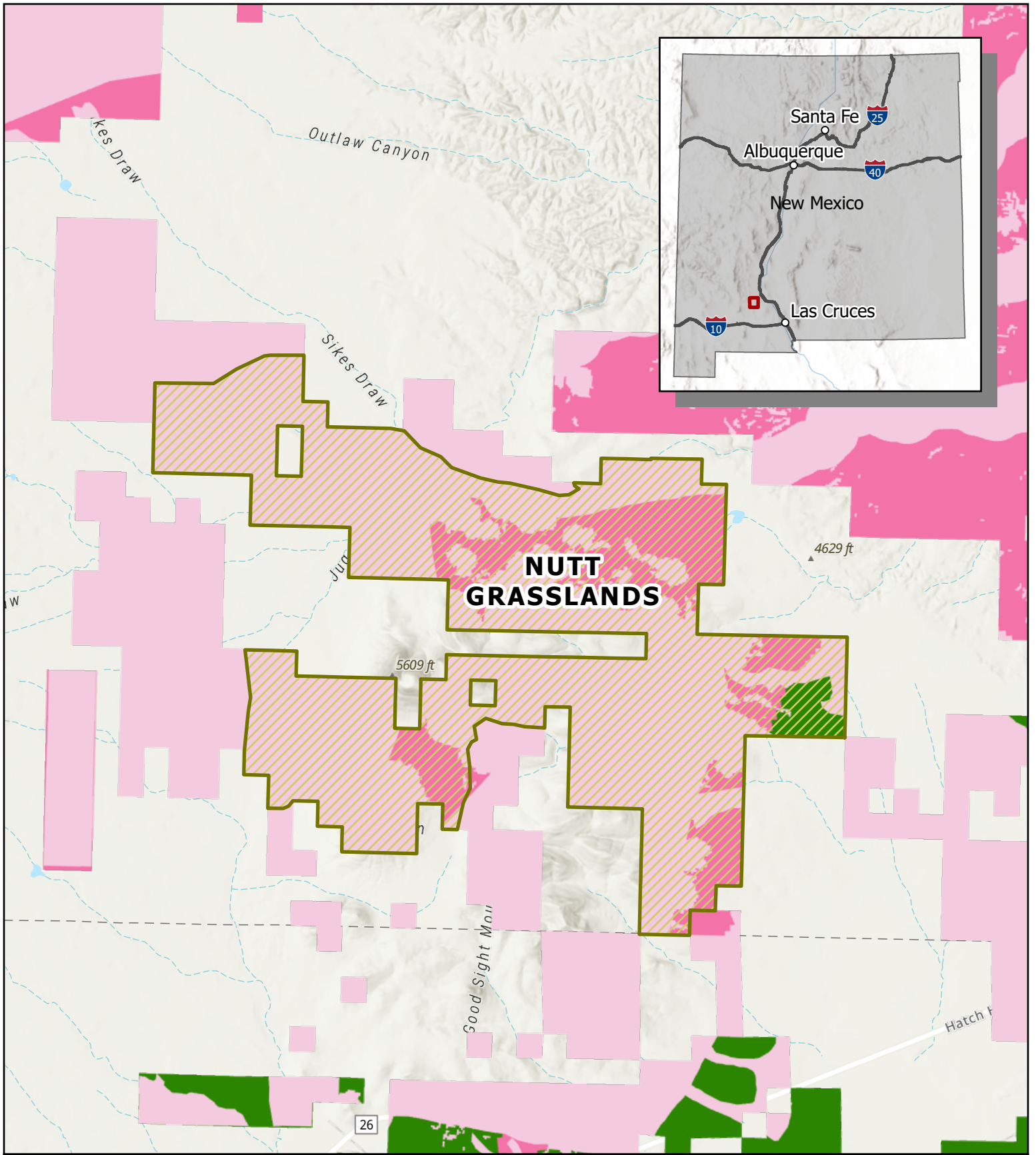
## Nutt Grasslands with BLM Draft Solar Alternative 3

BLM DRAFT Solar PEIS Alternative 3 January 2024

- BLM Lands Available for Application in Alternative 3
- BLM Resource-Based Exclusion Areas in Alternative 3
- BLM-Administered Lands Excluded Because Not Within 10 Miles of Transmission Lines


BLM Lands found to have Wilderness Characteristics








## Nutt Grasslands with BLM Draft Solar Alternative 5

BLM DRAFT Solar PEIS Alternative 5 January 2024

 BLM Lands found to have Wilderness Characteristics

-  BLM Lands Available for Application in Alternative 5
-  BLM Resource-Based Exclusion Areas in Alternative 5
-  BLM-Administered Lands Excluded Because Not Within 10 Miles of Transmission Lines or Not Previously Disturbed Land

