The Permitting Institute

February 7, 2022

Patricia Deibert, National Sage-grouse Coordinator (Acting),
Bureau of Land Management, Interior
440 W 200 S Suite 500
Salt Lake City, Utah 84101

Re: TPI Comments – Notice of Intent to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements

Dear Ms. Deibert:

Thank you for considering The Permitting Institute's (TPI) comments on the Bureau of Land Management's (BLM) Notice of Intent (NOI) regarding amendments to land use plans for greater sage-grouse conservation and preparation of associated environmental impact statements. TPI strongly supports science-based policies and land use management approaches that support both conservation of greater sage-grouse (GRSG) and sagebrush habitat and America's need to build critical infrastructure projects and repair and modernize aging infrastructure. This includes those infrastructure projects that advance the Department of the Interior's Climate Action Plan and the Administration's goal of permitting 25 GW of solar, onshore wind, and geothermal energy on public lands by 2025. TPI submits these comments because its members help build, fund, and develop America's infrastructure and have a vested interest in any policy or rule that imposes new permitting requirements or regulatory burdens on infrastructure deployment.

Introduction:

TPI is a Washington D.C.-based non-profit, non-partisan organization actively engaged nationwide at all levels of government that serves as a central resource and leading advocate for accelerating investment in rebuilding, expanding, and modernizing America's aging infrastructure while preserving our environmental, biological, cultural, and historic resources. TPI believes permits and permitting processes should conserve and protect cultural resources, the environment, and species while being more efficient than these processes are today. Current permitting processes are marred by contradictory and overlapping statutory and regulatory requirements, timelines, and policies that continue to cause avoidable process delays, cost overruns, and in some cases, project abandonment. These costs are simply too high and undermine new infrastructure initiatives in the Administration, Congress, states, cities, counties, Tribal Nations, and local communities across America. There is a better way, and TPI is grateful for the opportunity to provide comments on the BLM's NOI regarding the amendments to land use plans for GRSG conservation and preparation of associated Environmental Impact Statements.

Background:

On November 22, 2021, the BLM published an NOI in the federal register to seek public input on any issues, management questions, or concerns for the BLM to address in the land use plan amendments, particularly range-wide and state specific perspectives on fourteen preliminary issues identified by the BLM in the NOI. The BLM is further seeking public nomination or recommendations for areas that may be considered for designation as areas of critical environmental concern (ACEC). TPI, in coordination with its renewable energy membership, submits this letter to comment on the NOI.

Comment Summary:

TPI specializes in assisting its members with navigating complicated permitting issues and is therefore leveraging its experience to provide the following comments on the NOI to help the BLM assess issues related to the relationship between GRSG and sagebrush habitat management and management for other public land resources and values, particularly in light of this Administration's emphasis on building back better – on formally identified timeframes. TPI's comments will specifically address several of the BLM's fourteen identified preliminary issues for public comment regarding land management on BLM-managed public lands, generally from an example state-specific (Nevada) perspective. TPI's comments are designed to assist BLM in amending the applicable land use plans to provide for land use decisions that foster both GRSG conservation and responsible multi-use development, especially those projects that directly or indirectly provide climate benefits, including solar, wind, geothermal, and transmission projects, since climate change is identified as a major threat to GRSG and sagebrush habitat.

NOI Preliminary Issue 2/14:
"The designation of priority and general habitat management areas for GRSG, and how to adapt these management areas over time, according to the best available science, and how to manage non-habitat within habitat management areas"

The 2019 RMPA relied heavily on state conservation program objectives and mitigation, which should remain a foundational approach when designating priority and general habitat management areas for GRSG, but the BLM must also assess the effectiveness of the states' programs in the context of the species' entire range, using adaptive management practices to incorporate best available science over time. The 2019 Sage-Grouse RMP Injunction Order found that the "Report on National Greater Sage-grouse Conservation Measures" (NTT Report) from December 2011 was the best available science that should have been considered in the 2019 RMP Amendments. Extensive data was assessed by the National Technical Team (NTT) as part of that report, but this data is now 10 years old. Additional information and studies, particularly those utilizing newer technologies and modeling methods, and that look at stressors that have intensified over the last decade, should be examined as part of the record.

Several of the states, including Nevada, have developed excellent detailed data, analytical methods, and tools for determining and designating habitat, determining effects, and calculating mitigation, which should be synchronous with BLM's approach. States have developed robust

systems of habitat modeling, including the State of Nevada's Sagebrush Ecosystem Technical Team (SETT's) most current version of the Habitat Quantification Tool (HQT), which uses sage-grouse telemetry location data and extensive environmental data (vegetation communities, topographic indices, elevation model, water resources, and human activity factors) as inputs to predict suitability. This program is used in the State's Conservation Credit System (CCS).

These state models provide an agile and robust approach to ensure the most current versions of those models incorporate and can continue to be adapted to reflect best available science, including newer technologies, modeling methods, and ground-truthing when designating areas of priority habitat designation (PHMA), general habitat (GHMA), and other habitat management areas (OHMA).

BLM should also keep the following Management Decision (MD) measures that were included in the 2019 RMPAs, which further support continued incorporation of best available science and on-the-ground data to best inform land use decision-making.

- MD SSS 16 identified that the current mapping of PHMAs, GHMAs, and OHMAs are meant to be landscape-level references and not meant for land use plan decisions.

  "**MD SSS 16**: PHMA, GHMA, and OHMA boundaries are based on composite management categories contained within USGS's Spatially Explicit Modeling of Annual and Seasonal Habitat for Greater Sage-Grouse (Centrocercus urophasianus) in Nevada and Northeastern California—an updated decision-support tool for management (Coates et al. 2016), as adopted and modified by the State of Nevada on December 11, 2015 (see Appendix A: Maps).
    - Manage 9,265,800 acres as PHMA
    - Manage 5,748,000 acres as GHMA
    - Manage 4,868,900 acres as OHMA

  BLM recognizes that landscape level mapping may not accurately reflect on-the-ground conditions. Therefore, the HMAs (Figure 2-1) do not constitute a land use plan decision but rather a landscape level reference of relative habitat suitability. When a proposed project is thought to be in an area that is unsuitable for GRSG within PHMA, GHMA, and/or OHMA, habitat assessments of the project site and its surrounding areas will be conducted by a biologist with GRSG experience using BLM-approved methods such as Stiver et al. 2015 and compliant with current BLM policy, to identify suitable, marginal, or unsuitable GRSG habitats at multiple scales. This habitat assessment process will inform criteria (i) under Issue: Allocation Exception Process, Management Alignment Alternative and Proposed Plan Amendment. The BLM will track all on-the-ground assessments and share this information with USGS and the States of Nevada and California to consider when updating HMA maps in the future."

- MD SSS 17 allows for remapping at reasonable intervals.

> "**MD SSS 17**: Consistent with the State of Nevada's Greater Sage-Grouse Conservation Plan (2014, as amended) and CDFW's management recommendations, the HMA mapping process will be reviewed and refined every 3 to 5 years, or when new data are incorporated in the model. New or improved spatial data (e.g., additional GRSG telemetry data, updated or improved vegetation community data) will be incorporated during the refinement process. The review and refinement process will be scientifically based and include review and input from the Sagebrush Ecosystem Technical Team (SETT), NDOW, BLM, USFS, USFWS, and local agencies as appropriate. For refinements in California, this process will also include CDFW. Other stakeholders will be encouraged to participate in the process by submitting relevant information to the listed agencies. The USGS' habitat suitability modeling processes (Coates et al. 2016) will be the basis for future refinements, which may include results of BLM habitat suitability determinations shared with the USGS for their consideration. As these HMAs boundaries are adjusted and approved by the States of Nevada5 and California, adjustments to the BLM's PHMA, GHMA, and/or OHMA boundaries (along with the existing allocation decisions and management actions tied to these areas) will be made by the BLM through plan maintenance or amendment, as appropriate."

Utilizing the latest information from state models, such as the one provided in the Nevada example above, new technologies, and constantly emerging survey and other ground-truthing data allows BLM and State regulatory agencies to make well-informed decisions when designating areas of PHMA, GHMA, and OHMA and to take a more nuanced approach when evaluating land-use in areas of non-habitat within habitat management areas. BLM should consider appropriate land use proposals, particularly for renewable energy development and transmission, and remove the blanket ban for solar as identified in the 2015 RMPAs. BLM needs to be able to incorporate trade-off analyses when evaluating high energy resource locations (including commercial viability) with high quality and/or recoverable GRSG habitat that would best further conservation efforts.

Achieving goals for both wildlife protection and greenhouse gas reductions requires a fine-grained, place-based approach to ensuring GRSG have what they need while providing for needed infrastructure development. Land use decisions need to accommodate differences within sage-grouse habitat to differentiate between prime habitat and where sagebrush is short and widely-spaced, or otherwise imminently threatened by other stressors that would endanger (e.g. impacts from wildfire, predators, encroachment, noise, drought, grazing, etc.). This more nuanced approach also allows for connectively needs among HMAs to be more thoroughly understood and addressed through mitigation opportunities (see later comments supporting compensatory mitigation requirements related to renewable energy development).

NOI Preliminary Issue 5/14:
"The approaches to minimizing disturbance to GRSG and sagebrush habitats, including disturbance/density caps and buffers around important GRSG habitat types (e.g., leks), to ensure appropriate protection for the species while being able to concurrently implement other portions of the BLM's management responsibilities"

Buffers around important GRSG habitat types should remain a requirement, but should incorporate a range, so that regulatory agencies can account for site-specific characteristics that allow for variable distances within that range to ensure appropriate protection for the species. For example, the topography in a specific area may reduce or eliminate visual and sound impacts, and regulatory agencies should have the flexibility to incorporate the results of best available science from visual and sound studies when determining buffer distances for a specific site and proposed activity. This approach would allow BLM to incorporate the Conservation Buffer Distance Estimates for Greater Sage-Grouse in the US Geological Survey (USGS) report that the 2015 RMPA depended on, while also addressing the 2019 Injunction Order, which identified concerns with removal of lek buffers and stated that changing those buffers from mandatory to discretionary was problematic. Criteria and/or the process for determining those criteria for adjusting the distance associated with mandatory buffers based on site-specific characteristics will need to be well justified and clearly identified in the revised RMPAs in order to ensure defensibility and support site-specific agency land use decision-making using best available science. Specific buffer distance designations should be evaluated in project specific National Environmental Policy Act (NEPA) analyses to ensure protection of the species, or else require mitigation.

Where buffers may not be feasible to maintain for certain technologies, such as wind development, the revised RMPAs should provide for flexibility as new data and science continue to emerge that would support possible mitigation strategies, such as habitat enhancement and translocation of sage-grouse, with monitoring, similar to that available for listed threatened species, such as the desert tortoise. For example, a recent Wildlife Biological Bulletin article, *Field Methods for Translocating Female Greater Sage-Grouse (Centrocercus urophasianus) with their Broods*, details a recent sage-grouse translocation study for conservation purposes that demonstrated some successes[1]. BLM should consider translocation as a mitigation option where it could provide conservation benefits by addressing existing habitat fragmentation and degradation from multiple disturbances, such as through movement to areas that could have higher quality habitat and higher connectivity, once enhancements are completed.

In order to best protect prime habitat for GRSG (and the potential for improved connectivity in light of a constantly evolving landscape) on balance with other land uses within BLM managed lands, the current disturbance caps[2] should include renewable energy development (such as solar and wind) as allowable uses. In addition, BLM should maintain flexibility to consider compensatory mitigation for allowable uses should any proposed disturbance exceed the cap, if it would result in "net conservation gain." This allows for BLM to make decisions based on best available science, using an adaptive approach, and respond more quickly as stressors to the GRSG continue to impact and inform BLM's conservation efforts. Refer to later comments regarding renewable energy and compensatory mitigation.

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[1] https://wildlife.onlinelibrary.wiley.com/doi/full/10.1002/wsb.1199

[2] Disturbance caps were included in the both the 2015 and 2019 RMPAs and were set at a 3 percent cap for PHMAs in any Biologically Significant Unit (BSU) for allowable uses. Certain activities such as solar and wind development are currently prohibited from any development in PHMAs, so the cap does not apply to these activities.

Both disturbance caps and buffers should be established based on sound science and site-specific data related to the types of effects that each type of technology can have on known leks with an adaptive approach as more information and data is collected. This supports BLM in making better informed site-specific land use decisions while ensuring range-wide GRSG protections are achieved.

NOI Preliminary Issue 7/14:
"The leasing and development of renewable energy resources in GRSG and sagebrush habitat, including associated transmission lines, to support the mitigation of and adaptation to the effects of climate change through both habitat conservation and the expansion of renewable energy"

The 2015 RMPA prohibits solar development in any designated PHMAs, GHMAs, and OHMAs. The 2019 RMPA changed the 2015 approach by broadly allowing for exceptions through "voluntary compensatory mitigation, or state mandated programs." The 2019 Injunction Order took exception to the changing of mandatory compensatory mitigation to "voluntary" only at the Final EISs and stated that the change alone would require reevaluation of the Draft EISs. The Injunction Order also identified that this change, because it did away with the compensatory mitigation (albeit not an option for solar and other renewable energy) in the 2015 RMPA, could invalidate the USFWS's determination on the potential listing of GRSG as "not warranted" in 2015. The USFWS relied on the 2015 RMPAs to ensure that unavoidable adverse impacts from BLM-approved actions would be offset by off-site mitigation to provide a net gain to the species: "Requiring mitigation for residual impacts provides additional certainty that, while impacts will continue at reduced levels on Federal lands, those impacts will be offset to a net conservation gain standard". Per 80 Fed. Reg. at 59,881.

The BLM policy that banned compulsory compensatory mitigation has since been rescinded because the Compensatory Mitigation IM (IM No. 2019-018) was found to be inconsistent with the policies in EO 13990 and SO 3398. Compensatory mitigation, while the last option when looking at mitigation (with avoidance, minimization, and on-site options considered first), should be reinstated as an option in the revised sage-grouse RMPAs for energy projects that cannot avoid PHMA, GHMA, or OHMA habitats, as long as the compensatory mitigation results in net conservation gains for sage-grouse and otherwise meets RMPA objectives. The compensatory mitigation should be mandated by BLM, whether or not it is required by state programs, but should follow state program criteria where it can be shown those criteria also meet federal conservation objectives.

To reiterate, TPI encourages the BLM to implement mitigation mechanisms to compliment state programs to make appropriate federal lands available to offset critical transmission infrastructure and renewable energy development. Opportunities to achieve net conservation gains should not be limited to state jurisdictional boundaries when range-wide conservation gains can be realized. This opportunity for BLM to consider compensatory mitigation opportunities on federal lands also provides an avenue for BLM to target key stressors to the range-wide protections of GRSG and sagebrush habitat. Furthermore, BLM could work with fellow GRSG stewards and

stakeholders through existing or new multi-jurisdictional coordination opportunities (Federal and State agencies, Tribes, Industry, and other key stakeholders) to develop partnerships with existing commercial operators on BLM lands to mitigate stressors to the GRSG as a result of those existing or proposed land uses (e.g., agricultural fencing, cheatgrass management, and noise reduction). Such Federal and Regional State partnerships provide an opportunity to expand compensatory mitigation options from jurisdictionally created limitations to science-informed range-wide options to achieve greatest conservation impact.

The BLM should consider bringing MD SSS-5 (Allocation Exception Criteria) back from the March 2019 RMP Amendment (Nevada) into the new RMPAs, which allows for closer consideration of designated areas and a process for compensatory mitigation as exception criteria to allow for disturbance in HMAs. BLM can advance the Department of the Interior's Climate Action Plan and the Administration's goal of permitting 25 GW of solar, onshore wind, and geothermal energy on public lands by 2025 by applying this type of compensatory mitigation to projects that directly or indirectly provide climate benefits, including solar, wind, geothermal, and transmission projects. The compensatory mitigation would be a way to quantitatively off-set the direct disturbance impacts assuring no net loss, while the unquantifiable mitigation of climate change, a major factor in GRSG current decline, would further ensure net benefit. If further restrictions on exceptions are needed, the BLM could also consider granting exceptions for renewable energy projects in designated corridors within a certain buffer distance of transmission infrastructure, such as a 15-mile focused nexus, with implementation of compensatory mitigation.

MD SSS-5 from the 2019 RMPAs for Nevada should be brought back. The text of MD SSS-5 from the 2019 RMPA is included for reference below; however, several modifications would need to be made to the text. Modifications should be made to apply it only to projects that directly or indirectly provide climate benefits, including solar, wind, geothermal, and transmission projects, to potentially limit the allowance of exceptions to a set corridor around planned or existing large transmission infrastructure, to modify the framing of the focus on the state programs, and to ensure compensatory mitigation is mandatory, not voluntary.

MD SSS 5 (Allocation Exception Criteria): In PHMA, GHMA, and OHMA, the State Director may grant an exception to the allocations and stipulations described in **Table 2-1**: Comparative Summary of Alternatives if one of the following applies (in coordination with NDOW, SETT, and/or CDFW):

i. The location of the proposed activity is determined to be unsuitable4 (by a biologist with GRSG experience using methods such as Stiver et. al. 2015) and lacks the ecological potential to become marginal or suitable habitat; and will not result in direct, indirect, or cumulative impacts on GRSG and its habitat. Management allocation decisions will not apply to those areas determined to be unsuitable if the area has passed a threshold and lacks the ecological potential to become marginal or suitable habitat.

ii. The proposed activities impacts will be offset to result in no adverse impacts on GRSG or its habitat, through use of the mitigation hierarchy and the State's mitigation policies and programs, such as the State of Nevada's Executive Order

2018-32 (and any future regulations adopted by the State of Nevada regarding compensatory mitigation, consistent with federal law). In cases where exceptions may be granted for projects with a residual impact, voluntary compensatory mitigation consistent with the State's mitigation policies and programs, such as the State of Nevada's Executive Order 2018-32 (and any future regulations adopted by the State of Nevada regarding compensatory mitigation, consistent with federal law) will be one mechanism by which a proponent achieves the Approved RMPA goals, objectives, and exception criteria. When a proponent volunteers compensatory mitigation as their chosen approach to address residual impacts, the BLM will incorporate those actions into the rationale used to grant an exception. The final decision to grant a waiver, exception, or modification will be based, in part, on criteria consistent with the State's GRSG management plans and policies.

iii. The proposed activity will be authorized to address public health and safety concerns, specifically as they relate to federal, state, local government and national priorities.

iv. Renewals or re-authorizations of existing infrastructure in previously disturbed sites or expansions of existing infrastructure that do not result in direct, indirect, or cumulative impacts on GRSG and its habitat.

v. The proposed activity is determined to be a routine administrative function conducted by federal, state or local governments, including prior existing uses, authorized uses, valid existing rights and existing infrastructure (i.e., rights-of-way for roads) that serve a public purpose and will have no adverse impacts on GRSG and its habitat, consistent with the State's mitigation policies and programs, such as the State of Nevada's Executive Order 2018-32 (and any future regulations adopted by the State of Nevada regarding compensatory mitigation, consistent with federal law).

Another consideration should include a closer examination of mitigation options that could allow for sage-grouse to still occupy renewable energy facilities by adapting or modifying project designs to address the components of the design that have potential negative impacts on the species. These types of mitigations would be experimental but could allow for co-existence of renewable energy and sage-grouse and sagebrush conservation. The RMPA monitoring requirements could include the study of sage-grouse in or near existing facilities as well as allow for some experimental projects.

NOI Preliminary Issue 9/14:
"The strategies for conducting effective GRSG and sagebrush habitat restoration on BLM-managed public lands, including constraints on such efforts to avoid unintended consequences to other species' habitats"

BLM should consider establishing a restoration process to ensure that restoration can be effective without detriment to other species, and for that restoration process to focus on areas where the GRSG is the primary species of concern. The 2015 and 2019 RMPAs identify several methods of habitat restoration. The new RMPA could also identify how compensatory mitigation for renewable energy projects could contribute to existing restoration efforts and processes to ensure net benefit to the species.

NOI Preliminary Issue 11/14:
"The role of wildland fire and invasive species in the management of GRSG and sagebrush habitat, considering the vast acreages lost to wildland fire and invasive species over the last several years"

The RMPA should address ways in which renewable energy projects reduce wildland fire and mitigation strategies for infrastructure developers to enhance GRSG habitat through fuel management and invasive species removal.

NOI Preliminary Issue 13/14:
"How new and relevant scientific information affects GRSG and sagebrush habitat management, building upon the existing foundation of science relied upon in the 2015 and 2019 Sage-Grouse Plan Amendments"

See previous comments regarding best available science.

NOI Request for public comment re potential ACECs:
"The BLM also invites the public to nominate or recommend areas that may be considered for designation as areas of critical environmental concern (ACEC), per 43 CFR 1610.7-2. Nominations or recommendation of potential ACECs should be relevant to the preliminary purpose and need of this planning initiative."

The BLM should consider ACEC creation to allow for designation of areas that could benefit from enhancement from compensatory mitigation fees, similar to the approach taken for desert tortoise impacts from Solar Energy Zones under the Final Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States (2012).The concept of mitigation fees would be supported; however, rates should be developed in collaboration with the BLM, State Agencies and the project developer to ensure that fees are limited to that needed for the conservation efforts and are economically viable for the project paying into the fees.

ACECs should be established in areas of highest benefit but that do not conflict with the areas of greatest renewable energy development and where existing applications have been submitted, including along planned and existing transmission corridors. In this way, BLM can support the mitigation of and adaptation to the effects of climate change through both (GRSG) habitat conservation and the expansion of renewable energy, in furtherance of the Department of the Interior's Climate Action Plan and the Administration's goal of permitting 25 GW of solar, onshore wind, and geothermal energy on public lands by 2025.

Conclusion:

Revisions to the 2015 Sage Grouse RMPAs should be seen as an opportunity to define approaches that will allow for the building of critical renewable energy infrastructure, while also improving species conservation efforts and outcomes, consistent with the USFWS's 2015 determination on the potential listing of GRSG as "not warranted." Key points include:

1. Ensure that the technical evidence is provided to demonstrate how any changes to the RMPAs continue to support the conservation of GRSG, to create a legally defensible document. Bring back elements of the 2019 Sage Grouse RMPAs but be sure to provide substantial evidence for how those elements will incorporate best available science as it becomes available and continue to meet state and federal conservation needs, while also allowing for the building of critical renewable energy infrastructure. Focus on the climate benefits of renewable energy and how the indirect benefits are substantial and important for species and habitat conservation.
2. Continue to utilize the best available data and science, and methods provided by the states for identifying and designating habitat and mitigation models. Include a federal requirement for compensatory mitigation with federal land available or federal fee programs to mitigate for GRSG impacts from renewable energy and transmission projects. Mitigation fees should be calculated based on existing costs to improve degraded lands to primary sage grouse habitat by reducing threats such as wildfire, juniper and pinyon encroachment, and weeds.
3. Ensure that any ACECs established do not overlap with important existing and planned transmission corridors and areas around transmission corridors suited for wind, solar, and geothermal developments.

TPI reiterates that it is grateful for the opportunity to provide comments on the NOI to ensure that the BLM's land use planning process supports critical infrastructure development while delivering effective range-wide GRSG and sagebrush habitat restoration. In the wake of the President signing the Infrastructure Investment and Jobs Act (IIJA), infrastructure development is poised to proliferate and be accompanied by a revolution in solar, onshore wind, and geothermal energy, and a renaissance in carbon capture and clean hydrogen technologies. We stand ready to assist the BLM in developing its land use plan amendments and associated environmental impact statements in a way that helps America Build Back Better – sooner rather than later - and meet our country's urgent infrastructure needs.