

**Coalition to Protect America's National Parks * National Parks Conservation Association
Badlands Conservation Alliance * Dakota Resource Council**

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May 5, 2026

Bureau of Land Management
Montana/Dakotas State Office
Branch of Fluid Minerals
Attention: Hattie Payne
5001 Southgate Drive
Billings, MT 59101

Subject: Comments on Draft Environmental Assessment and Finding of No Significant Impact for the BLM Montana-Dakotas 2026 Q3 (August) Oil and Gas Lease Sale (DOI-BLM-MT-0000-2026-0001-EA)

To whom it may concern:

This letter is submitted on behalf of the following organizations and our many members and supporters:

The **Coalition to Protect America's National Parks** (Coalition) is comprised of over 5,000 members, all of whom are retired, former, or current National Park Service (NPS) employees or volunteers who collectively represent more than 50,000 years of national park management experience. The Coalition studies, educates, speaks and acts for the preservation of America's National Park System. The Coalition and our members are deeply invested in the protection of national parks, including in the management of public lands surrounding the parks, so that they can remain unimpaired for the enjoyment of future generations.

National Parks Conservation Association (NPCA) is a national organization whose mission is to protect and enhance America's national parks for present and future generations. NPCA, along with its 1.9 million members and supporters, is active nationwide advocating for strong park landscape protections.

The **Badlands Conservation Alliance** (BCA) is dedicated to the restoration and preservation of the badlands and rolling prairie ecosystem comprising western North Dakota's public lands, both state and federal. We provide an independent voice for conservation-minded North Dakotans and others who appreciate this unique Great Plains landscape. It is also our mission to ensure that the public lands management agencies adhere to the principles of the laws that guide them and provide for wise stewardship of the natural landscapes with which the citizens of the United States have entrusted them — for this and future generations. BCA is a Voice for Wild ND Places.

The **Dakota Resource Council** (DRC) formed in 1978 in North Dakota in response to impacts to agricultural and rural residential communities from coal development. DRC works with communities across the state to organize around common goals of securing a thriving North Dakota and putting people first. Members take action to create public awareness and shape public policy in order to ensure safe and responsible development, to protect North Dakota's agricultural economy, and to establish a foundation for a just transition to a diverse energy economy.

We offer for your consideration the following comments on the Draft Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the Bureau of Land Management’s (BLM’s) Montana-Dakotas 2026 Q3 (August) Oil and Gas Lease Sale.

INTRODUCTION

Theodore Roosevelt National Park comprises 70,447 acres of land in three separate units: the South Unit, the North Unit, and the Elkhorn Ranch Unit in Billings and McKenzie counties in North Dakota. The park was established in 1947 as Theodore Roosevelt National Memorial Park (South Unit and Elkhorn Ranch Unit), to honor the memory of Theodore Roosevelt. The North Unit was added in 1948. In 1978 Congress redesignated the area as Theodore Roosevelt National Park (THRO) and also established the 29,920-acre Theodore Roosevelt Wilderness within the park’s North Unit and South Unit. This national park preserves a landscape—the North Dakota Badlands (also referred to as the Little Missouri River Badlands)—that had a profound effect on Theodore Roosevelt. The time Theodore Roosevelt spent living in the North Dakota Badlands ultimately inspired his conservation ethic, and he directly attributed his ascendance to the presidency to his experiences in this area. During his tenure as the 26th U.S. president, Roosevelt set aside more than 230 million acres of public land for national parks, forests, monuments, and wildlife refuges, thus earning him the nickname, “the Conservationist President.”¹

The Maah Daah Hey Trail (trail) is a 144-mile non-motorized single-track through the Badlands of North Dakota that was designated a National Recreational Trail in 2016.² The trail traverses an area of highly dissected badlands surrounded by large expanses of gently rolling prairie. Its name derives from the Mandan Indians. In the Mandan language, one word or phrase can describe a picture, feeling or situation. In this case, the phrase means “an area that has been or will be around a long time.”³ The trail is largely located in the Dakota Prairie Grasslands⁴; but also traverses all three units of Theodore Roosevelt National Park.⁵

The 2026 Q3 (August) Oil & Gas Parcel List provided in Appendix A⁶ identifies 66 parcels, totaling 29,086.62 acres, which are proposed for leasing. We are most concerned about and will focus our comments on the proposed leasing of the following six (6) parcels that are in close proximity to the North Unit of Theodore Roosevelt National Park⁷ (THRO-NU):

1. ND-2026-08-6900 (320 acres with the nearest portion located about 1.25 miles from the park)
2. ND-2026-08-0892 (350 acres with the nearest portion located about 2.25 miles from the park)
3. ND-2026-08-6908 (640 acres with the nearest portion located about 2.5 miles from the park)
4. ND-2026-08-0819 (838.14 acres with the nearest portion located about 3 miles from the park)
5. ND-2026-08-0822 (1,116.1 acres with the nearest portion located about 3.5 miles from the park)
6. ND-2026-08-0824 (1,116.94 acres with the nearest portion located about 4.5 miles from the park)

We are also concerned that the following lease parcels directly overlap or are located in close proximity to the Maah Daah Hey Trail⁸ (MDHT):

- * ND-2026-08-0819 (838.14 acres) **This parcel is also listed above.*

¹ <https://www.nps.history.com/publications/foundation-documents/thro-fd-2014.pdf>

² <https://mdhta.com/national-recreation-trail-designation/>

³ <https://www.fs.usda.gov/visit/destination/maah-daah-hey-trail>

⁴ <https://www.fs.usda.gov/r01/dpg>

⁵ <https://www.ndtourism.com/maah-daah-hey-trail>

⁶Appendix A at: <https://eplanning.blm.gov/Documents/?id=028d6bf4-a7f2-f011-8407-001dd80bcf93&spid=15cd1197-a8f2-f011-8407-001dd80db62a>

⁷ <https://www.nps.gov/thro/index.htm>

⁸ <https://www.fs.usda.gov/visit/destination/maah-daah-hey-trail>

- * ND-2026-08-0822(1,116.1 acres) *This parcel is also listed above.
- * ND-2026-08-0824 (1,116.94 acres) *This parcel is also listed above.
- 7. ND-2026-08-0893 (143.52 acres)
- 8. ND-2026-08-0895 (320 acres)
- 9. ND-2026-08-6938 (1,609.44 acres)

Collectively, the above nine different parcels equal approximately 6,454.14 acres of relatively undeveloped land that are being offered by the BLM for new oil and gas development **LESS THAN 5 MILES** from the THRO-NU boundary; or which directly overlap or are in close proximity to the MDHT, which runs through the Dakota Prairie Grasslands⁹, as well as through the North and South Units and near the Elkhorn Ranch Unit of THRO. As a result, the proposed leasing is very concerning considering the extensive amount of oil and gas drilling that is already occurring around the park and trail.

GENERAL COMMENTS

1. Oil and gas development is not compatible with the protection of the important natural, cultural, and recreational resources and values that are conserved within Theodore Roosevelt National Park – As described in great detail in our scoping comments¹⁰, Theodore Roosevelt National Memorial Park¹¹ was established in 1947 by an act of Congress in 1947. The site preserves the landscape that inspired Theodore Roosevelt to adopt a conservation ethic. In 1978, the area was given national park status when President Carter signed Public Law 95-625 that changed the memorial park to Theodore Roosevelt National Park (THRO). This same law designated 29,920 acres¹² of the park as Wilderness as part of the National Wilderness Preservation System.

The park’s 2014 Foundation Document¹³ expresses numerous NPS concerns about adverse impacts to park resources and values caused by the extensive amount of oil and gas development occurring on lands surrounding the park. Such concerns include the following:

- **Severe Impacts of Encroaching Energy Development and Associated Industrial Infrastructure.** Oil and gas development in the surrounding area is the most significant parkwide issue. (*Emphasis added*) (p. 14)
- The direct and indirect impacts on park resources and the visitor experience during seismic, drilling, and production activities include air emissions, increased noise, night sky degradation, and operations intruding upon the viewshed. Most notably, oil and gas wells, flares, and infrastructure are already present within the viewshed in all three park units. (*Emphasis added*) (p. 14)
- **Scenic Views and Clean Air.** Theodore Roosevelt National Park’s night skies, clean air, and wilderness qualities offer exceptional beauty, silence, and solitude, which encourage personal growth, inspiration, and healing, just as they did for Theodore Roosevelt in the 1880s... At the boundaries of the park, energy development is negatively impacting viewsheds and air quality. Oil and gas wells, storage tanks, drill rigs, flares, and related infrastructure outside park boundaries are visible from all three units of the park ...Continued energy and industrial development around the park will continue to degrade park viewsheds and soundscapes. (pp. 23-24) (*Emphasis added*)
- **The Theodore Roosevelt Wilderness and Wilderness Qualities Throughout the Park.** Oil and gas development is increasing in the areas surrounding the park... Energy development outside the

⁹ <https://www.fs.usda.gov/r01/dpg>

¹⁰ <https://protectnps.org/2026/02/12/urge-blm-to-defer-august-2026-oil-gas-leasing-near-theodore-roosevelt-national-park-and-the-maah-daah-hey-trail/>

¹¹ NPS, Theodore Roosevelt National Park History, available at <https://nps.gov/thro/learn/historyculture/park-history.htm>.

¹² NPS, Theodore Roosevelt National Park Acreage by Unit, available at <https://home.nps.gov/thro/learn/management/park-acreage-by-unit.htm>.

¹³ <https://npshistory.com/publications/foundation-documents/thro-fd-2014.pdf>

park threatens the wilderness character of the Theodore Roosevelt Wilderness as well as the quiet and chance for solitude in other areas of the park such as the Elkhorn Ranch. These threats impact the whole park but may be seen as especially damaging to designated wilderness because the National Park Service is legally required to manage for the preservation of wilderness character. The designated wilderness is relatively small and extends right to the boundary of the park in many places, which makes it especially susceptible to energy development impacts (energy development could be located a very short distance from, and within view of designated wilderness). (pp. 26-27) (*Emphasis added*)

2. The BLM must analyze the environmental impacts and consider a reasonable range of alternatives, including a deferral alternative, associated with the proposed lease sale – The BLM must evaluate the environmental impacts of this proposed lease sale under the National Environmental Policy Act (NEPA). *See e.g.*, 42 U.S.C. §§ 4331–4347. NEPA fosters informed decision making by federal agencies and promotes informed public participation in government decisions. *See Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97 (1983). To meet those goals, NEPA requires that the BLM “consider every significant aspect of the environmental impact of a proposed action” and inform the public of those impacts. *Id.* (internal citation omitted); *accord Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 553 (1978).¹⁴ The BLM must take a “hard look” at the environmental effects before making any leasing decisions, ensuring “that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-50 (1989). Environmental “[e]ffects are reasonably foreseeable if they are sufficiently likely to occur that a person of ordinary prudence would take [them] into account in reaching a decision.” *Sierra Club v. Fed. Energy Regulatory Comm’n*, 867 F.3d 1357, 1371 (D.C. Cir. 2017) (internal quotation omitted).

NEPA requires BLM to study, develop, and describe reasonable alternatives, including alternatives that do not involve leasing. The range of alternatives is the heart of a NEPA document because “[w]ithout substantive, comparative environmental impact information regarding other possible courses of action, the ability of [a NEPA analysis] to inform agency deliberation and facilitate public involvement would be greatly degraded.” *New Mexico ex rel. Richardson*, 565 F.3d at 683, 708. A NEPA analysis must cover a reasonable range of alternatives so that an agency can make an informed choice from the spectrum of reasonable options. Based on the specific circumstances of this proposed lease sale, it would be entirely appropriate for the BLM to evaluate an alternative that would defer leasing some if not all of the parcels in close proximity to the THRO boundary and/or parcels overlapping the MDHT. Deferring parcels that present significant conflicts with other resources and uses is precisely what the Leasing Rule contemplates.

However, as described in Chapter 2 of the Draft EA, the BLM has considered only two alternatives: Alternative A – No Action; and Alternative B – Proposed Action (i.e., full leasing). In other words, the EA does NOT consider an alternative that would include deferring any parcels in close proximity to THRO or the MDHT, including three parcels that are located less than 3 miles from the THRO boundary. For years, the BLM has included such a modified leasing or deferral alternative in its lease sale NEPA analyses. It should do so for this lease sale. Even if outright deferral is not legally required, the parcels located within three miles of THRO present distinct and well-documented resource conflicts that independently require

¹⁴ *See Kleppe v. Sierra Club*, 427 U.S. 390, 410, 413 (1976); *City of Rochester v. U.S. Postal Serv.*, 541 F.2d 967, 973–74 (2d Cir. 1976); *Concerned About Trident v. Rumsfeld*, 555 F.2d 817, 825 (D.C. Cir. 1976); *City of Davis v. Coleman*, 521 F.2d 661, 666-677 (9th Cir. 1975); *Brooks v. Coleman*, 518 F.2d 17, 18 (9th Cir. 1975); *Natural Resources Defense Council v. Callaway*, 524 F.2d 79, 89 (2d Cir. 1975); *Env’tl. Def. Fund, Inc. v. Corps of Eng’rs of U.S. Army*, 492 F.2d 1123, 1135 (5th Cir. 1974); *Swain v. Brinegar*, 517 F.2d 766 (7th Cir. 1975); *Minnesota Public Interest Research Group v. Butz*, 498 F.2d 1314, 1322 (8th Cir. 1974); *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 834–36 (D.C. Cir. 1972); *Hanly v. Kleindienst*, 471 F.2d 823, 830-31 (2d Cir. 1972); *Calvert Cliffs’ Coordinating Comm., Inc. v. U.S. Atomic Energy Comm’n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971).

analysis of a deferral or buffer alternative. BLM’s own prior practice of deferring parcels within a three-mile buffer zone of the park, combined with the 2014 THRO Foundation Document’s discussion of ongoing environmental harms from adjacent energy development, makes a deferral alternative plainly reasonable within the meaning of NEPA. BLM’s failure to analyze such an alternative is an unjustifiable legal deficiency.

Of utmost concern is that now, more than a decade after publication of the park’s Foundation Document (2014), the BLM still has not conducted a meaningful cumulative effects analysis that identifies, quantifies, and addresses the long-term impacts of incremental and ongoing increases in oil and gas drilling activity on park resources, wilderness character, and scenic values. In basic terms, the BLM has NOT even disclosed the cumulative number of oil and gas wells surrounding the park, which could serve as an indicator of the potential for adverse cumulative effects. We note that as of December 2024, McKenzie County, surrounding the North Unit of THRO, had 3,387 producing oil wells, 2,212 producing gas wells, and 707 shut or inactive wells, for a total of 6,306 wells, more than any other county in the state, and 29% of all wells statewide.¹⁵

Because such information points to the high number of wells surrounding the park, the BLM has a responsibility to determine and disclose in the final EA the total or approximate number of existing wells within a few miles of the THRO boundary. We recommend that the BLM identify the existing number of wells within 3, 5, and 10 miles of the park in the final EA as a starting point for meaningful cumulative effects analysis. When we have requested such information be included in past EAs, the BLM has directed commenters to independently locate such well data on their own in lieu of the BLM, the responsible agency, disclosing it. Such an approach is both legally and analytically questionable. Moreover, in its analysis of visual impacts the BLM has typically framed the existing numbers of wells as a neutral baseline rather than as an escalating problem that each new lease incrementally worsens. The cumulative impacts of the BLM’s repeated decisions to continue leasing parcels in close proximity to the park remain within the BLM’s jurisdictional responsibility regardless of the Seven County decision¹⁶ or other pending litigation. It is therefore incumbent upon the BLM to disclose and evaluate the cumulative effects of its past and pending leasing decisions.

3. The Draft EA improperly attempts to “defer” conducting a more detailed, site-specific analysis to the permitting stage – As stated in the Section 3.1 of the Draft EA at p. 13: “The act of leasing parcels would not cause direct effects to resources because no surface disturbance would occur. The only direct effects of leasing are the creation of valid existing rights and impacts related to revenue generated by the lease sale receipts. Future lease exploration and development activities proposed through individual APD submission would be subject to future BLM decision-making and NEPA analysis. Upon receipt of an Application for a Permit to Drill (APD), the BLM would initiate a site-specific NEPA analysis that considers the reasonably foreseeable effects of a specific action. At that time, detailed information about proposed wells and facilities would be provided for specific leases” (*Emphasis added*)

We realize that the BLM routinely defers site-specific impact analysis until the permitting stage; however, federal courts have repeatedly rejected agency claims that analysis at the lease sale stage would be speculative. *See, e.g., Northern Plains Res. Council, Inc. v. Surface Transportation Board*, 668 F.3d 1067, 1078–79 (9th Cir. 2011) (“Because speculation is implicit in NEPA, we must reject any attempt by agencies to shirk their responsibilities under NEPA labeling any and all discussion of future environmental effects as crystal ball inquiry.” (quotations and alternations omitted)). The BLM “cannot escape” proper analysis at the

¹⁵ Appendix D Q3 2026 Reasonably Foreseeable Development Scenario, Table 2.

¹⁶ *Seven County Infrastructure Coalition v. Eagle County*, Colorado, 605 U.S. 168, 173 (2025).

leasing stage “by claiming that a more precise analysis is not feasible and promising a more probing review of the site-specific effects at the APD stage.” *Wilderness Soc’y*, No. 22-cv-1871 (CRC), 2024 U.S. Dist. LEXIS 51011, at *61 (quotation marks omitted). Because leasing is an irreversible and irretrievable commitment of resources, the BLM may not defer detailed analysis until the permitting stage.

We also note that BLM’s “APD posting and processing” regulation at 43 CFR §3171.13¹⁷ does NOT provide for public comment if/when additional NEPA review is conducted. As stated in sub-section (a)(1) of the regulation: “The BLM will post information about the APD or Notice of Staking for Federal oil and gas leases to the internet and in an area of the BLM Field Office having jurisdiction that is readily accessible to the public... The posting is for informational purposes only and is not an appealable decision. The purpose of the posting is to give any interested party notification that a Federal approval of mineral operations has been requested.” (*Emphasis added*)

In essence, the Draft EA’s (p. 13) promise that any APD received would be subject to a “site-specific NEPA analysis” provides little assurance that any additional NEPA review would be subject to the same level of public involvement that has occurred with the Draft EA. Furthermore, after reviewing multiple years of MTDKs Applications for Permits to Drill (APD) at this BLM website¹⁸ and after spot checking MTDKs lease sale projects dating back to 2020 posted on the BLM *Eplanning* website¹⁹; we have been unable to find any “site-specific NEPA analysis” that was prepared by BLM to evaluate “the reasonably foreseeable effects of the specific action” identified in the respective APD(s).

Because we cannot readily find the site-specific NEPA analysis that the BLM states it will prepare for MTDKs lease parcels after it receives an APD, **we respectfully request that the BLM provide the following information with the final EA:**

- If/when the BLM conducts additional, site-specific NEPA analysis after it receives an APD, is that analysis made available to the public? And if it is made available to the public, where (i.e., what website) will such information be posted?
- Given that any additional, site-specific NEPA analysis prepared after the BLM receives an APD is apparently tiered to the lease sale EA²⁰, why is the additional analysis NOT posted on the same *Eplanning* page as the NEPA analysis for the lease sale? That would seem to be the logical place to post ALL related NEPA reviews related to leasing and development of the designated lease parcel(s).

Given the general nature of the analysis in typical BLM lease sale EAs, it is essential that the BLM systematically conduct additional site-specific NEPA analysis to evaluate and disclose to the public the potential impacts of the proposed drilling reflected in the respective APDs. We urge the BLM to make such information readily available to the public. Without full consideration of the impacts of leasing and development of the 2026 Q3 parcels near THRO and the MDHT, the BLM cannot make an informed decision whether to defer the aforementioned parcels or not. Until a full analysis is complete, the BLM should at least defer parcels ND-2026-04-0768, ND-2026-04-0766, and ND-2026-04-6878, which are located less than 3 miles from the national park boundary.

4. The BLM has ample authority to defer lease parcels proposed for this sale – The BLM is not mandated to lease any particular parcel for oil and gas development and production. Under the Mineral

¹⁷ <https://www.ecfr.gov/current/title-43/subtitle-B/chapter-II/subchapter-C/part-3170/subpart-3171/section-3171.12>

¹⁸ <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/operations-and-production/permitting/applications-permits-drill>

¹⁹ <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/montana-dakotas>

²⁰ <https://www.blm.gov/policy/pim-2022-001-0>

Leasing Act (MLA), lands “known or believed to contain oil or gas deposits *may* be leased” by the Interior Department. 30 U.S.C. § 226(a) (*emphasis added*). If DOI chooses to lease lands, sales are held only “where *eligible* lands are *available*.” *Id.* § 226(b)(1)(A) (*emphasis added*). For nearly a century, the U.S. Supreme Court and federal circuit courts have consistently recognized this “broad” and “considerable discretion” over the federal onshore leasing program.²¹ Where conflicts with other uses exist, as it does in this case, the BLM must analyze the deferral of lease parcels. The MLA does not contravene the resource conservation requirements of the Federal Land Policy and Management Act (FLPMA) 43 U.S.C. Ch. 35. Lands merely being designated as “open” for leasing under a particular BLM Resource Management Plan (RMP) does not mean the BLM is *required* to lease them. The BLM is therefore not obligated to lease any specific parcel of public land for oil and gas development. The agency retains the authority to defer any or all lease sale parcels, even after bidding has concluded.²² Moreover, where conflicts with other uses exist, as is does in this case with nine Low Preference parcels located near THRO and/or the MDHT, the bureau must affirmatively evaluate deferral of parcels in its alternatives analysis under the National Environmental Policy Act (NEPA). 43 U.S.C. Chapter 55.

In our scoping comments²³ dated February 12, 2026, we emphasized the need for the BLM to consider deferring some, if not all, of the parcels listed above due to their close proximity to the THRO boundary; and parcels that directly overlap or are in close proximity to the MDHT. We provided documented evidence for why oil and gas development is NOT compatible with the protection of the special recreational, historical, wilderness, and wildlife habitat resources and values that THRO and the MDHT have to offer. We identified specific conservation and multiple use conflicts and potential environmental impacts associated with the proposed lease parcels that the BLM is obligated to analyze under applicable law. We also expressed concerns about the BLM’s failure in previous lease sales to consider the cumulative effects of the ongoing, incremental increases in oil and gas drilling operations that the BLM has allowed to occur near THRO and the MDHT over the course of many years.

²¹ See *Udall v. Tallman*, 380 U.S. 1, 4 (1965) (“The Mineral Leasing Act [MLA] of 1920 . . . left the Secretary discretion to refuse to issue any lease at all on a given tract.”); *United States ex rel. McLennan v. Wilbur*, 283 U.S. 414, 419 (1931) (ruling that the Interior Secretary possesses “general powers over the public lands as guardian of the people,” which include the authority to deny oil and gas lease applications); *Mont. Wildlife Fed’n v. Haaland*, 127 F.4th 1, 44–45 (9th Cir. 2025) (“We note that there is no doubt that the government has the authority affirmatively to determine which parcels shall be offered for oil and gas leasing, as opposed to passively responding to expressions of interest.”); *W. Energy Alliance v. Salazar*, 709 F.3d 1040, 1044 (10th Cir. 2013) (“The MLA, as amended by the Reform Act of 1987, continues to vest the Secretary with considerable discretion to determine which lands will be leased.”); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1230 (9th Cir. 1988) (“[T]he Mineral Leasing Act gives the Interior Secretary discretion to determine which lands are to be leased under the statute. . . . Thus refusing to issue the . . . leases . . . would constitute a legitimate exercise of the discretion granted to the Interior Secretary under that statute.”); *McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) (“It is clear that the Secretary has broad discretion in this area. While the statute gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory.”); *Burglin v. Morton*, 527 F.2d 486, 488 (9th Cir. 1975) (“The permissive word ‘may’ in Section 226(a) allows the Secretary to lease such lands, but does not require him to do so. Although Section 226(c) requires the Secretary to issue the lease to the first qualified applicant if the land is leased, the Secretary has discretion to refuse to issue any lease at all on a given tract.”).

²² See *McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) (holding that the “fact that land has been offered for lease does not bind the Secretary to actually lease the land, nor is the Secretary bound to lease the land when a qualified applicant has been selected”); see also *Justheim Petroleum v. Dep’t of Interior*, 769 F.2d 668, 671 (10th Cir. 1985) (language in 30 U.S.C. § 226 mandating that “lands to be leased . . . shall be leased to the highest responsible qualified bidder” did not require issuing a lease, but only required awarding lease to that bidder “if [the Secretary] is going to lease at all”); *Wyoming v. U.S. Dep’t of the Interior*, No. 22-CV-247-SWS, 2024 U.S. Dist. LEXIS 235015, at *43 (D. Wyo. Dec. 31, 2024) (“When considering statutory language, the use of the word ‘may’ creates a presumption of discretion under normal rules of statutory interpretation, in contrast with the mandatory ‘shall.’” (cleaned up)); *W. Energy All. v. Salazar*, No. 10-cv-0226, 2011 U.S. Dist. LEXIS 98380, at *9–23 (D. Wyo. June 29, 2011) (holding that BLM is not required to issue leases after offering them at auction; it only needs to make a decision within 60 days on *whether* to issue the leases); 89 Fed. Reg. at 30,945 (“[T]he Secretary retains the discretion to decide, even after lands have been determined to be eligible and available, what lands will ultimately be offered for lease.”).

²³ <https://protectnps.org/2026/02/12/urge-blm-to-defer-august-2026-oil-gas-leasing-near-theodore-roosevelt-national-park-and-the-maah-daah-hey-trail/>

Last but not least, the BLM has previously established a precedent of deferring parcels that are located within three miles of the THRO boundary. Deferring on leasing parcels ND-2026-08-6900, -0892, and -0895 now would be consistent with the precedent established by the BLM during the March 2018 lease sale (DOI-BLM-MT-C030-2017-0133-EA); the September 2025 lease sale (DOI-BLM-MT-0000-2025-0001-EA); and the October 2025 lease sale (DOI-BLM-MT-0000-2025-0003-EA).

For these reasons, the BLM should have fully considered an alternative that would defer leasing the parcels closest to the THRO boundary. However, in reviewing the draft EA, it is evident that the BLM has NOT considered deferring any of the parcel(s) in this lease sale, including the nine parcels listed above that are in close proximity to THRO and/or the MDHT.

5. The BLM must determine the “preference” with which the proposed lease parcels should be given for lease and should consider deferring parcels found to have “low preference” for lease – 43 CFR §3120.32²⁴ provides that “[w]hen determining whether the BLM should offer lands specified in an expression of interest at lease sales, the BLM will evaluate the Secretary's obligations to manage public lands for multiple use and sustained yield and to take any action required to prevent unnecessary or undue degradation of the lands and their resources, along with other applicable legal requirements. In evaluating the lands to be offered, as part of the scoping process, the BLM will consider, at minimum:

- (a) Proximity to oil and gas development existing at the time of the BLM's evaluation, giving preference to lands upon which a prudent operator would seek to expand existing operations;
- (b) The presence of important fish and wildlife habitats or connectivity areas, giving preference to lands that would not impair the proper functioning of such habitats or corridors;
- (c) The presence of historic properties, sacred sites, and other high value cultural resources, giving preference to lands that would not impair the cultural significance of such resources;
- (d) The presence of recreation and other important uses or resources, giving preference to lands that would not impair the value of such uses or resources; and
- (e) The potential for oil and gas development, giving preference to lands with high potential for development.

In this case, as indicated in Appendix J, Leasing Preference Ratings for Q3 2026, **all nine of the parcels identified in the Introduction section above have a Low Preference for Leasing** based on having received Low Preference ratings on multiple rating criteria (e.g., due to conflicts with other protected resources or uses, such as proximity to Habitat or Other Important Uses and Resources). However, the BLM has NOT considered deferring the leasing any of these Low Preference parcels. And worse, the BLM has also NOT disclosed or analyzed the cumulative effects of continuing to lease Low Preference parcels in close proximity to THRO and MDHT.

SECTION-BY-SECTION COMMENTS

In addition to the above general concerns about the Proposed Action, we have the following specific concerns about certain sections of the Draft EA:

1. Chapter 3 – Affected Environment and Environmental Effects: Section 3.5 Air Quality – We are concerned about the accuracy and adequacy of the BLM’s air quality analysis with regard to potential impacts to air quality at THRO. First, the park is designated as a Class I area under the Clean Air Act, which creates affirmative obligations for Federal Land Managers to protect the park’s visibility and air quality. Congress enacted the Clean Air Act’s (CAA) Regional Haze Program as the framework for which states

²⁴ <https://www.ecfr.gov/current/title-43/subtitle-B/chapter-II/subchapter-C/part-3120/subject-group-ECFRd1323ca0dc40b60/section-3120.32>

must design and implement plans to curb haze-causing emissions within their jurisdictions. To meet Congress's natural visibility goal, the Environmental Protection Agency (EPA) issued the Regional Haze Rule (RHR), which requires states (or EPA where a state fails to act) to make "reasonable progress" toward eliminating human-caused visibility impairment at each Class I area.²⁵ Class I areas are afforded the strongest protections from air pollutants through the RHR; and, as stated above, THRO is designated as a Class I area.

We are particularly concerned about apparent decreases in visibility (i.e., increases in haze) at the park that the Draft EA does not adequately acknowledge or address. As background, nitrogen oxides (NOx) are one of the main haze pollutants that cause visibility impairment at THRO. As described in the North Dakota Department of Environmental Quality (NDDEQ) proposed revised regional haze plan (2022), oil and gas sources within the states' control account for "...72% of nonpoint NOx emissions [in the state]."²⁶ (*Emphasis added*) Despite this strong connection between oil and gas operations and haze, NDDEQ has NOT proposed any technological controls or emissions limits for the oil and gas nonpoint sources; even though NPS urged NDDEQ in early consultation on the haze plan for the state agency to consider oil and gas emission reduction opportunities.²⁷

Appendix O of the Draft EA provides "Figures by Issues Analyzed in Detail." Figure 3.3 (THRO1) describes Visibility Trends at Theodore Roosevelt National Park. We strongly disagree with the BLM's assessment that visibility trends at the park do not appear to have changed significantly for the period of 2000 to 2023. Figure 3.3 clearly demonstrates that since 2022 there has been an obvious uptick in the haze index for the haziest days, the most impaired days, and essentially all days at THRO, underscoring a concerning trend of worsening air pollution and hazy days in this highly valued Class I area. It is also clear, no pun intended, that the haze index for the most impaired days has NOT exhibited a consistent downward trend since 2015. Moreover, NPS noted in its consultation documents on the state's regional haze plan a similar concern: "While overall visibility impairment trends are improving, in recent years (2016-2019) haze has increased on the most impaired days in NPS Class I areas most affected by North Dakota emissions."²⁸ Given the high percentage of contributions to total NOx emissions by oil and gas operations and the lack of emissions controls or emissions limits on these operations, it is extremely concerning that hazy days at THRO have increased in the last 10 years as represented in Figure 3.3 and as identified by NPS. It is also very concerning that the BLM does not acknowledge the increase in hazy days in its air quality analysis for the proposed 2026 Q3 lease sale.

Similarly, Figure 3.6 shows Projected Reasonable Progress Goals (THRO1) for the park's progress towards reaching the Clean Air Act goal of natural visibility. The figure clearly demonstrates that the park is NOT on track to reach its goals; and recent measurements of the visibility tracking metric (i.e., deciviews or dv) are higher than (i.e., fail to achieve) the uniform rate of progress (URP). In light of the concerning evidence provided in Figures 3.3 and 3.6, the Draft EA's analysis of air quality trends in North Dakota fundamentally fails to acknowledge or address readily apparent concerns about increasing haze and decreasing visibility at THRO.

We therefore ask the BLM to review its air quality analysis and reconsider its conclusion that "this lease sale would be expected to have little to no impact on air quality, visibility, or atmospheric deposition in the

²⁵ 40 C.F.R. § 51.308(d)(1)-(3), (f)(2)-(3).

²⁶ Air Plan Partial Approval and Partial Disapproval; North Dakota; Regional Haze State Implementation Plan for the Second Implementation Period, 89 Fed. Reg. 95126 (December 2, 2024); North Dakota Department of Environmental Quality, North Dakota State Implementation Plan for Regional Haze (August 10, 2022), EPA Docket ID No. EPA-R08-OAR-2023-0495-0014, <https://www.regulations.gov/document/EPA-R08-OAR-2023-0495-0014> [hereinafter "ND 2022 SIP"], at 112.

²⁷ ND 2022 SIP Appendix D, at D.2.a-7.

²⁸ ND 2022 SIP Appendix D, at D.2.a-7.

areas.”²⁹ (*Emphasis added*) Such a conclusion is unsupported by the evidence provided in Figures 3.3 and 3.6. Such a review should include consultation with NPS regarding its concerns, if any, about air quality trends at THRO. The review should include a systematic cumulative effects analysis that considers not only recent trends in declining air quality, specifically visibility, at THRO. Because “oil and gas sources within the states’ control account for “...72% of nonpoint NOx emissions,””³⁰ the analysis should also consider projected increases in oil and gas development near the park over the next 10-20 years. More wells equate to more NOx emissions, which equates to more haze and reduced visibility. Last but not least, the BLM must also analyze whether continued and additional leasing of parcels this close to a Class I area is consistent with the Federal Land Manager’s obligations to protect visibility and air quality under the Clean Air Act.

2. Appendix C 2026 Q3 Lease Sale Maps – In general, the Q3 lease sale parcel maps in Appendix C lack important details about topographic features and special resource locations. In essence, the maps fail to show the location(s) of proposed lease parcels relative to important or sensitive resources that may be located nearby. For example, none of the maps for parcels near or overlapping the MDHT actually show the trail on the map. See parcel maps for ND-2026-08-0819, -0822, -0824, -0893, -0895, or -6938. As a result, the maps are NOT very helpful at identifying potential conflicts between future drilling and the protection of other resources and uses in the area.

In contrast, the USFS Stipulation Maps³¹ provided during the scoping period accurately identify and locate applicable USFS lease stipulations within their respective geographic settings. However, these maps do NOT show any of the lease parcels that the stipulations apply to. As a result, it is NOT possible to accurately discern from the USFS maps which, if any, stipulations apply to any of the parcels offered for leasing. In addition, the respective scales differ between the BLM parcel maps and the USFS stipulation maps, which makes it difficult for the reader to figure out which of the mapped stipulation areas may overlay which parcel locations. Last but not least, the USFS stipulation maps as presented on the BLM Eplanning website³² involve more than 50 separate documents, each of which must be downloaded individually, rather than as a multi-page, combined document (PDF). After much effort to review the many USFS map files and attempts to compare the stipulation locations with the respective BLM maps showing parcel locations, we have concluded that collectively the maps are NOT very informative or helpful with regard to showing which stipulations, particularly those indicative of sensitive resources, apply to any of the parcels.

For these reasons, we recommend that in future lease sales the BLM and USFS collaborate on their mapping efforts and jointly provide one set of maps that show both applicable stipulations and the locations of lease parcels on the same map. In basic terms, this would involve adding an outline(s) of the respective lease parcel boundaries to the respective USFS stipulation map(s). Such maps would effectively illustrate if and where specific stipulations overlay proposed lease parcels, which would be a major improvement in the quality of information provided for the lease sale environmental analysis.

3. Appendix L Issues Analyzed in Brief – Several sections of this appendix identify proposed lease parcels near THRO or MDHT and discuss potential impacts to the park and trail. These sections include the following:

²⁹ DOI-BLM-MT-0000-2026-0001-EA, Chapter 3, p. 25

³⁰ Air Plan Partial Approval and Partial Disapproval; North Dakota; Regional Haze State Implementation Plan for the Second Implementation Period, 89 Fed. Reg. 95126 (December 2, 2024); North Dakota Department of Environmental Quality, North Dakota State Implementation Plan for Regional Haze (August 10, 2022), EPA Docket ID No. EPA-R08-OAR-2023-0495-0014, <https://www.regulations.gov/document/EPA-R08-OAR-2023-0495-0014> [hereinafter “ND 2022 SIP”], at 112.

³¹ <https://eplanning.blm.gov/Maps/?id=028d6bf4-a7f2-f011-8407-001dd80bcf93&spid=16cd1197-a8f2-f011-8407-001dd80db62a>

³² <https://eplanning.blm.gov/Maps/?id=028d6bf4-a7f2-f011-8407-001dd80bcf93&spid=16cd1197-a8f2-f011-8407-001dd80db62a>

a. Section 1.7.4 Visual Resources – As described in this section, “[t]he nearest nominated lease parcels to TRNP are ND-2026-08-6908, -6900 and -0892 and are located directly south and southeast and are within 3 miles from the park’s exterior boundary and situated on USFS surface. Concentrated existing development on private lands and federal lands surround these parcels and may be visible from portions of the TRNP-NU, especially higher elevations.” (*Emphasis added*)

As mentioned previously in General Comment # 2 above, in its past analyses of visual impacts the BLM has typically framed the existing numbers of wells surrounding THRO as a neutral baseline, rather than as an escalating problem that each new lease incrementally worsens. For these reasons, we ask (again) that the BLM prepare a proper analysis of the cumulative impacts of the existing, pending, and proposed number(s) of wells surrounding THRO. The cumulative impacts of BLM’s repeated leasing decisions near the park remain BLM’s jurisdictional responsibility regardless of the Seven County decision³³ or other pending litigation.

b. Section 1.7.5 Recreation – As described in this section:

Developed recreation opportunities exist on State, USFS, USFWS, and NPS managed lands, [including] the USFS managed Little Missouri National Grasslands and Maah Daah Hey Trail; and the National Park Service’s Theodore Roosevelt National Park...Oil and gas related disturbances have the potential to modify recreation opportunities and the recreation experience primarily as a result of changes in the landscape (viewshed), soundscape (noise), habitat loss, and presence of oil and gas development related activities (construction, traffic, etc.)... Given that many outdoor recreation activities are dependent upon a high quality visual/aesthetic environment, such developments, including fluid mineral development, have the potential to lower the quality of recreational experiences in the project area. (*Emphasis added*)

Comment: Notably, of our nine parcels of concern parcels, seven (ND-2026-08-0819, -0822, -0824, -0893, -0895, -6908, and -6938) are subject to USFS stipulation LMG2020-NSO-13 due to their location within an area designated for nonmotorized backcountry recreation; and are also subject to LMG2020-NSO-14 due to their location within inventoried roadless areas. In our view, these No Surface Occupancy (NSO) stipulations may adequately protect visual resources and other qualities within and around the proposed lease parcels. However, we are very concerned that the two parcels closest to THRO (ND2026-08-6900 and -0892) are NOT mentioned in this section, indicating that they are NOT protected by the key NSO stipulations applicable to the other seven parcels listed above.

c. Section 1.7.6. Inventoried Roadless Areas – Similar to the above section, this section indicates that seven of our nine parcels of concern are subject to LMG2020-NSO-14 due to their location within inventoried roadless areas. These parcels include ND-2026-08-0819, -0822, -0824, -0893, -0895, -6908, and -6938). However, the two parcels closest to THRO (ND-2026-08-6900 and -0892) are NOT mentioned in this section, indicating that they are NOT protected by the No Surface Occupancy stipulations applicable to the other seven parcels of concern.

d. Section 1.7.7 Special Designations, Theodore Roosevelt National Park/Theodore Roosevelt Wilderness Area – We appreciate that this section provides an overview of the history and significance of THRO, as well as describing its key resources and values. However, there are some statements about the park that we find to be confusing and possibly misleading. These include:

³³ *Seven County Infrastructure Coalition v. Eagle County*, Colorado, 605 U.S. 168, 173 (2025).

- 1) 4th paragraph, p. 12, states, in part: “Although no statutory buffer or fixed setback distance has been established around TRNP, the USFS has implemented an existing 1-mile scenic integrity objective around TRNP-NU on the lands the agency manages to help protect key viewsheds and maintain the landscape setting.”

Comment: We find the above reference to the “1-mile scenic integrity objective” to be quite confusing because **there are no lease parcels in this lease sale located within the “1-mile buffer” along the park boundary**. See fifth paragraph of Section 1.7.7, which states, “[t]he nominated lease parcels within 3 miles of TRNP-NU include ND-2026-08-6900 (approximately 1 mile south), ND-2026-08-0892 (approximately 2 miles south), and ND-2026-08-6908 (approximately 2 miles south).” Does the “1-mile scenic integrity objective” even apply to the parcels in question?

We also question the effectiveness, in general, of the USFS 1-mile scenic integrity objective around THRO. The USFS 2020 Final SEIS for the Northern Great Plains Oil and Gas Leasing Plan³⁴ (leasing plan) describes it as follows:

Three individual units make up Theodore Roosevelt National Park (Northern, Southern, and the Elkhorn Ranch District) and all are directly adjacent to Little Missouri National Grassland lands. **There is an existing 1-mile buffer of high scenic integrity objective around each of the [park] units**. Any current or future development activity would include site-specific environmental analysis including a scenic resource analysis and a viewshed analysis to ensure sensitive views are protected and the desired landscape character is achieved. (p. 152) (*Emphasis added*)

Despite use of the word “buffer” in the 2020 leasing plan, the “1-mile scenic integrity objective” is not a true buffer or exclusion zone where drilling is strictly prohibited; it is not even the equivalent of an NSO stipulation since surface use can still occur within the 1-mile scenic integrity area. In effect, the 1-mile protection seems to be just another controlled surface use stipulation with “operational constraints” similar to USFS stipulation LMG2020-CSU-08.

We therefore ask that the BLM explain in the final EA the significance of the “1-mile scenic integrity objective” with regard to the lease parcels offered in this sale. Specifically:

- What protections, if any, does the 1-mile objective provide to the closest parcels to the park that are any different or better than the provisions provided under LMG2020-CSU-08?
 - If the 1-mile scenic integrity objective does NOT apply to this lease sale because there are no parcels less than 1 mile from the park boundary, then why is it mentioned here? Doing so creates the misleading impression that the closest parcels are somehow covered and protected by a special 1-mile scenic integrity “buffer,” while it appears that is not really the case.
- 2) Next to last paragraph, p. 13, states, in part: “Stipulation **LMG2020-CSU-07** regulates the placement of potential well pads, requiring that they be located within 0.25 miles of the centerline of existing maintenance-level roads at the time of proposal. The edge of the pad must be directly adjacent to the road right-of-way, and its long axis must run parallel to the road. **LMG2020-CSU-08** imposes operational constraints to ensure that development maintains the landscape’s visual character by repeating natural elements such as form, line, color, texture, and pattern at a scale that blends into the surrounding environment, particularly in areas with a high scenic integrity objective.” (*Emphasis added*)

³⁴<https://www.fs.usda.gov/sites/nfs/files/r01/dpg/publication/Final%20Supplemental%20Environmental%20Impact%20Statement%20for%20Oil%20and%20Gas%20Leasing%20%282020%29.pdf>

Comment: We understand from Appendix A that stipulations LMG2020-CSU-07 and -08 do, in fact, apply to the three parcels closest to the park boundary. Controlled Surface Use stipulations such as these do NOT constitute a true or highly effective “buffer” from likely impacts such as may be provided by an actual exclusion zone or NSO stipulation(s). While we appreciate the intent of the various CSU’s, we question the effectiveness of these stipulations when applied to drilling operations in such close proximity to the THRO boundary. The concept of applying Best Management Practices, such as described in the Gold Book³⁵, at best equates to relatively modest mitigation measures (such as suggestions for paint color and spatial orientation of drilling installations) that may lessen the severity of impacts, rather than actually prevent or avoid such impacts. Within a few miles of a national park boundary as in this case, the mitigation objective should be avoidance, not simply reducing the severity of the foreseeable impacts. After reviewing scores of BLM lease sale proposals over the past 10+ years, we are NOT aware of any paint color or finish, or any configuration or orientation of drilling equipment that would make a drilling operation “blend into the surrounding environment” from less than 2 miles away. For the BLM to think that such CSU stipulations could adequately protect THRO’s resources and values, as required under the NPS Organic Act, if/when drilling is allowed so close to the park boundary is contrary to reason and common sense.

- 3) Next to last paragraph, p. 13 states, in part: “**LMG2020-NSO-13** restricts surface occupancy and use in designated backcountry nonmotorized recreation areas to preserve natural-appearing landscapes and recreational experiences. **LMG2020-NSO-14** prohibits surface occupancy or use within inventoried roadless areas, except within a 0.25-mile corridor along existing maintenance-level roads, consistent with the CSU stipulation... **Each of these stipulations applies to all or portions of ND-2026-08-6900, ND-2026-08-0892, and ND-2026-08-6908**, as determined appropriate by the USFS.” (*Emphasis added*)

Comment: The underlined sentence above is confusing and does not seem accurate to us. As worded, it suggests that all three of the parcels closest to the park are protected by the most effective NSO stipulations that apply to nonmotorized recreation areas (LMG2020-NSO-13) and inventoried roadless areas (LMG2020-NSO-14). However, other sections of the EA and/or appendices clearly indicate that these two NSO stipulations do NOT apply to parcels -6900 and -0892, which are the two parcels closest to the THRO boundary. See comments about Appendix L Sections 1.7.5 and 1.7.6 above, as well as the information provided in Appendix A 2026 Q3 Lease Sale Parcels and Stipulations. In essence, we are most concerned about potential impacts of leasing the two parcels closest to the park (-6900 and -0892) because neither one is covered by an effective NSO stipulation. **We therefore urge the BLM to defer leasing of parcels ND-2026-08-6900 and -0892 due to the patently ineffective protection offered by the USFS’s weaker LMG2020-CSU-07 and -08 stipulations.**

Last but not least, similar to the Special Designation section about THRO that is discussed above, we suggest that the BLM add a new subsection to Section 1.7.7 summarizing the significance of, and potential impacts to, the Maah Daah Hey Trail (MDHT). As a National Recreational Trail, the MDHT should be included in the Special Designations section.

CLOSING COMMENT

In our comments above, we have described a variety of concerns about the BLM’s proposed leasing of up to six parcels located in close proximity to the Theodore Roosevelt National Park (THRO) boundary and up to six parcels overlapping or in close proximity to the Maah Daah Hey Trail (MDHT). The “parcels of concern” are listed in the Introduction section of this letter. Our key concerns about the proposed leasing include:

³⁵ <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/operations-and-production/the-gold-book>

- BLM has NOT considered deferring any of the parcels of concern despite the fact that ALL have received “Low Preference for Leasing” ratings in BLM’s own analysis (Appendix J).
- Despite considerable evidence that the numerous existing wells surrounding THRO are already causing considerable adverse impacts to park resources and values, the BLM has NOT prepared a proper cumulative effects analysis of such impacts. Lacking such an analysis, the BLM has no defensible basis for concluding that allowing even more drilling near the park will NOT cause additional harm.
- The BLM’s air quality analysis in EA Chapter 3 Section 3.5 regarding potential impacts to THRO, a Class 1 area, is flawed and should be re-evaluated.
- Most of the parcels of concern appear to be adequately protected by USFS No Surface Occupancy (NSO) stipulations, such as for nonmotorized recreation areas (LMG2020-NSO-13) and inventoried roadless areas (LMG2020-NSO-14). However, the two parcels closest to THRO (ND-2026-08-6900 and -0892) are NOT covered by the same NSO stipulations, which could result in new drilling operations within approximately 2 miles of the park. We therefore urge the BLM to defer leasing parcels -6900 and -0892, similar to the deferral decisions that occurred during the March 2018, September 2025, and October 2025 lease sales.

In closing, we appreciate the opportunity to comment on this important issue.

Sincerely,

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