



March 7, 2022

Submitted through <https://www.regulations.gov>

Office of the Secretary
Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

**Re: Request for Information to Inform Interagency Efforts to
Develop the American Conservation and Stewardship Atlas;
Docket No. DOI-2021-0016**

Dear sir or madam:

American Stewards of Liberty is a non-profit organization dedicated to protecting private property rights, defending the use of our land, and restoring local control. We work to ensure the American people have full protection of their private property rights, and retain the ability to produce our food, fiber, minerals and energy. We are submitting comments on behalf of ourselves and on behalf of the following local governments and organizations:

Chaves County, New Mexico

Cherry County, Nebraska

Coffey County, Kansas

Custer County, Idaho

Fergus County, Montana

Garfield County, Colorado

Grand County, Colorado

CFACT - Center for a Constructive Tomorrow

New Mexico Cattle Growers Association

Wyoming Farm Bureau Federation

We appreciate the opportunity to provide comments on the Department of Interior’s Request for Information to Inform Interagency Efforts to Develop the American Conservation and Stewardship Atlas (the “Atlas”). Our comments focus on three aspects of the Atlas:

- The Atlas and the larger program it supports should be evaluated and their effects disclosed pursuant to the National Environmental Policy Act (“NEPA”);
- The Atlas and the larger program it supports are inadequately described, precluding effective and informed public comments; and
- The Department must clarify that the Atlas is a non-regulatory document that will not affect the rights of private property owners or the management and use of any federal lands and waters.

I. The Atlas is a Part of a Larger Federal Program, the Effects of Which Should Be Evaluated and Disclosed Pursuant to a Programmatic Review Under NEPA.

For the reasons explained below, the Atlas and the underlying program it supports, the 30 x 30 Initiative, are subject to NEPA review. Once developed, the Atlas will be used to determine which stewardship and conservation actions satisfy the requirements of the 30 x 30 Initiative and which public, private, and Tribal lands and waters will be the focus of this sweeping federal land and resource management program. *See* 87 Fed. Reg. at 236 (discussing the purpose and uses of the Atlas). Because the Atlas, and the larger 30 x 30 Initiative it supports, will alter the management of at least 30 percent of lands and waters across the United States, their effects must be analyzed and disclosed pursuant to NEPA.

“NEPA aims to make certain that ‘the agency . . . will have available, and will carefully consider, detailed information concerning significant environmental impacts,’ and ‘that the relevant information will be made available to the larger [public] audience.’” *Lands Council v. McNair*, 537 F.3d 981, 1000 (9th Cir. 2008) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)); *see also Baltimore Gas & Elec. Co. v. Nat. Res. Defense Council*, 462 U.S. 87, 97 (1983). It ensures “that relevant environmental information is identified and considered early in the [decision-making] process in order to ensure informed decision making by Federal agencies.” 40 C.F.R. § 1500.1(b). The NEPA process also is intended to ensure that “the relevant information will be made available to larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Dept. of Transp. v. Public Citizen*, 541 U.S. 752, 768 (2004).

Prior to undertaking a “major federal action,” NEPA requires the preparation of an Environmental Impact Statement. *See* 42 U.S.C. § 4332(2)(C). The term “major federal action” is broadly defined by the Council on Environmental Quality (“CEQ”) and includes, among other things, “new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals.” 40 C.F.R.

§ 1508.1(q)(2). The CEQ’s regulations implementing NEPA also state that federal actions subject to NEPA may include:

- “formal documents establishing an agency’s policies which will result in or substantially alter agency programs”;
- the “[a]doption of formal plans, such as official documents prepared or approved by Federal agencies, which prescribe alternative uses of Federal resources, upon which future agency actions will be based”; and
- the “[a]doption of programs, such as a group of concerted actions to implement a specific policy or plan; [and] systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.”

Id. at § 1508.1(q)(3)(i)-(iii). Furthermore, the regulations provide that Environmental Impact Statements “may be prepared for programmatic Federal actions, such as the adoption of new agency programs.” *Id.* at § 1502.4(b).

A 2014 CEQ Memorandum also explains the types of federal actions that are subject to programmatic NEPA review. Michael Boots, Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies: Effective Use of Programmatic NEPA Reviews, 13-15 (Dec. 18, 2014).¹ “Adopting official policy” is described as a “[d]ecision to adopt in a formal document an official policy that would result in or substantially alter agency programs.” *Id.* at 13. “The programmatic analysis for such a decision should include a road map for future agency actions with defined objectives, priorities, rules, or mechanisms to implement objectives.” *Id.* The other category of action, “adopting agency programs,” is described as a “decision to proceed with a group of concerted actions to implement a specific policy or plan, e.g., an organized agenda with defined objectives to be achieved during implementation of specified activities.” *Id.* This type of programmatic action includes, for example, “[a] new agency mission or initiative” and “[p]roposals to substantially redesign existing programs.” *Id.*

Both the Atlas and the 30 x 30 Initiative meet these definitions. The Atlas and the 30 x 30 Initiative each prescribe a policy that will substantially alter agency programs and direct future agency action. Executive Order 14008 (the “EO”) ordered implementation of this sweeping national conservation initiative that will conserve at least 30 percent of the United States’ lands and waters by 2030 – called the 30 x 30 Initiative. E.O. 14008, Sec. 216 (Jan. 27, 2021). Conserving that amount of land will impact some **680 million acres of land** – a massive area that will obviously cause dramatic impacts on a nationwide scale.

The EO also ordered the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Chair of the CEQ, and the heads of other relevant agencies

¹ Available at <http://energy.gov/nepa/downloads/final-guidance-effective-use-programmatic-nepa-review> (visited February 8, 2022).

(collectively the “Departments”) to submit a report outlining the necessary steps to achieve the goal of conserving thirty percent of the nation’s lands and waters by 2030. It also ordered those agencies to include in the report guidelines for determining what lands and waters qualify for conservation and mechanisms to measure progress toward the 30-percent goal. Moreover, the Secretary of the Interior is required to make annual reports on the progress of this federal initiative.

In accordance with the EO, the Departments published a report entitled *Conserving and Restoring America the Beautiful* in May 2021 (the “May 2021 Report”). *See also* 85 Fed. Reg. 235, 235 (Jan. 4, 2022) (discussing background on the 30 x 30 Initiative in including the issuance of the report). In the May 2021 Report, the Departments announced eight principles that will guide the implementation of the 30 x 30 Initiative. *Id.* at 13-16. It also specifies that:

To develop and track a clear baseline of information on lands and waters that have already been conserved or restored, the U.S. Government should establish an interagency working group of experts to build an American Conservation and Stewardship Atlas. The Atlas would be an accessible, updated, and comprehensive tool through which to measure the progress of conservation, stewardship, and restoration efforts across the United States in a manner that reflects the goals and principles outlined in this report.

Id. at 17.

Thus, the Atlas is intended to establish the method that will guide and measure the success of the 30 x 30 Initiative. The Atlas will identify lands and waters that should be subject to future multi-agency conservation or stewardship efforts and measure the progress of conservation, stewardship, and restoration efforts in a manner that reflects the goals of the 30 x 30 Initiative. *See* 85 Fed. Reg. at 235-36. For example, the Interior Department’s information request asked for input on what attributes of lands and waters that should be included in the Atlas. *Id.* at 236. Additionally, the Atlas will track land and water contributions to biodiversity, climate change mitigation and resilience, and equitable access to nature and its benefits that are in line with the principles set forth in the May 2021 Report. *Id.* Thus, the Atlas appears to be an important aspect of this sweeping federal program.

Changes to other federal programs are already occurring pursuant to the aforementioned policy documents and are expected to expand to other aspects of the federal government. These changes are described in a recent report issued by the Departments entitled *Year One Report America the Beautiful* (Dec. 2021) (the “Year One Report”). The Year One Report describes numerous federal programs already impacted by the 30 x 30 Initiative and subject to coordination across agencies to fulfill the 30 x 30 Initiative’s goals. *See* Year One Report at 8-25. Further, the report states that the 30 x 30 Initiative’s policies, goals, and actions will expand to other federal departments and agencies, becoming an “all-of-government initiative.” *Id.* at 26. Thus, the scope of this new federal program is enormous. It is clearly a “major federal action” within the meaning of NEPA.

In short, the Atlas is an important part of a larger, multi-department program that involves a series of closely related, interconnected actions being undertaken by various federal departments, bureaus, and agencies. The EO establishing the 30 x 30 Initiative ordered that the May 2021 Report be developed to establish principles to guide the implementation of the Initiative. The May 2021 Report fleshed out the method – the Atlas – of guiding and tracking the implementation of the Initiative. Once developed, the Atlas will be used to guide future agency action in accordance with the 30 x 30 Initiative. Further, the Year One Report documented how other federal programs are already being altered to meet the goal of the 30 x 30 Initiative.

Thus, there is little doubt that these documents collectively constitute and are implementing a broad-based programmatic action affecting the management and use of a substantial portion of the land and water in the United States. Yet none of these program elements, nor the 30 x 30 Initiative itself, has undergone any NEPA review. To comply with NEPA, these interrelated actions must be evaluated together in a programmatic NEPA review. Given that the 30 x 30 Initiative is supposed to be locally driven, a robust NEPA process would provide State and local governments an opportunity to provide comments to the Departments. The Departments’ continued failure to comply with NEPA renders the 30 x 30 Initiative unlawful and undermines the lawfulness of the various federal actions being undertaken to implement the program. Until this violation is addressed, the Atlas should not be issued.

II. The Atlas and the 30 x 30 Initiative Are Too Vague to Allow Effective Public Comment.

While it is readily apparent that the 30 x 30 Initiative and its components, including the Atlas, are subject to NEPA, the details of this program are vague and poorly defined, making effective public comment extremely difficult. The purpose of the comment period is to allow interested members of the public to communicate information, concerns, and criticisms to the agency. *E.g., Connecticut Light & Power Co. v. Nuclear Regulatory Comm'n.*, 673 F.2d 525, 530 (D.C. Cir. 1982). If the notice fails to provide an accurate picture of the reasoning that has led the agency to issue its proposal, interested parties will not be able to comment effectively meaningfully. *Id.* The public is left to guess what the agency is actually proposing. This is improper. As one court stated, “[t]o allow an agency to play hunt the peanut with technical information, hiding or disguising the information that it employs, is to condone a practice in which the agency treats what should be a genuine interchange as mere bureaucratic sport.” *Id.*

While certain technical materials may have been identified in the Departments’ public disclosures to date, no overarching plan or rules that brings these materials together has been made available for review. The EO established an extremely aggressive, government-wide goal of conserving at least 30 percent of all lands and waters in the United States, but gave no detail on how this program will work. It instead directed that a “report shall propose guidelines for determining whether lands and waters qualify for conservation, and it also shall establish mechanisms to measure progress toward the 30-percent goal.” E.O. 14008, Sec. 216(a). The May 2021 Report, which was intended to provide the 30 x 30 Initiative’s framework, merely

listed a series of vague principles and general recommendations. It punted to the Atlas to determine which lands and waters count toward the 30 x 30 Initiative. *Id.* at 17.

The Federal Register notice for the Atlas states that the Atlas is intended to “measure the progress of conservation, stewardship, and restoration efforts in a manner that reflects the goals and principles of the initiative” but fails to disclose how the Departments will evaluate whether an action meets the 30 x 30 Initiative’s goals. *See* 87 Fed. Reg. at 235. In other words, ***there is no proposal to provide comments on***. Because of this uncertainty, the public is deprived of an opportunity to effectively comment.

In particular, nowhere in the Federal Register notice, the One Year Report, or the May 2021 Report do the Departments provide the public with the cornerstone definitions of “conservation,” “stewardship,” or “restoration.” Those terms are critical to understanding the 30 x 30 Initiative, including its impact on land use management. The importance of these terms has highlighted the questions posed by the Department of Interior in the Federal Register notice:

1. How can the Atlas reflect the meaningful ***conservation*** work underway in America?
2. What *stewardship* actions should be considered, in addition to permanent protections, to capture a more complete picture of ***conservation*** and ***restoration***?

Id. at 236 (emphasis added). And in some of the principles laid out in the May 2021 Report:

1. Pursue a Collaborative and Inclusive Approach to ***Conservation***;
2. ***Conserve*** America’s lands and Waters for the Benefit of All People;
3. Support Locally Led and Locally Designed *Conservation* Efforts;
4. Pursue ***Conservation*** and ***Restoration*** Approaches that Create Jobs and Support Healthy Communities; and
5. Honor Private Property Rights and Support the Voluntary ***Stewardship*** Efforts of Landowners and Fishers.

May 2021 Report at 13-15 (emphasis added). Without knowing what the italicized terms mean, it is impossible to provide detailed comments relating to the Atlas. The basic goals and principles underlying the 30 x 30 Initiative are unknown, and it is uncertain what the Atlas is supposed to contain or do.

In short, based upon the vague and highly general nature of the discussion in the Federal Register notice, the May 2021 Report, and the EO, it is impossible to understand how the Departments intend to implement the 30 x 30 Initiative or what the Atlas is intended to describe.

This problem can be eliminated through the completion of a robust NEPA process and development of a comprehensive programmatic review document. The NEPA process would facilitate development and disclosure of the program’s details and support informed public comments as well as satisfying the Departments’ public disclosure obligations. Without disclosure of the details of the underlying program, the public is left in the dark looking for the peanut, making the request for comments on the Atlas and, more generally, the 30 x 30 Initiative itself “mere bureaucratic sport.”

III. The Departments Should Clarify that the Atlas Will Have No Regulatory Impact.

The Departments should clarify and describe the regulatory role of the Atlas. Specifically, the Departments should confirm that the Atlas will not impact any existing property rights or alter how federal lands and waters are managed. Such authority does not exist because the Departments have no statutory authority to impose any conservation restrictions, and an executive order does not create such authority. A Presidential order to act, as with the exercise of any governmental power, must stem either from an act of Congress, or from the Constitution itself, or a combination of the two. *Medellin v. Texas*, 552 U.S. 491, 504-05 (2008); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585-86 (1952). Alternatively, if the Departments believe that such authority exists, it should be clearly disclosed and explained.

In *Louisiana v. Biden*, 543 F. Supp. 3d 388, 414 (W.D. La. 2021), the court already held that another section of EO 14008 could not create agency authority in the absence of an act of Congress. Section 208 of the EO ordered the Secretary of the Interior to “pause” new oil and gas leases on public lands and in offshore waters pending completion of a comprehensive review. *Id.* at 397. The court found that the Interior Department agency defendants did pause the lease sales in accordance with the EO’s directive. *Id.* at 411-12. By pausing the leasing program, the agencies were in effect overriding two Congressional statutes, the Outer Continental Shelf Lands Act (“OCSLA”) and the Mineral Leasing Act (“MLA”), which they lacked authority to do. *Id.* at 413. OCSLA and MLA instead require that the agencies continue to sell eligible oil and gas leases in accordance with those statutes’ requirements. *Id.*

An even more glaring statutory authority deficiency is apparent here. Section 216 of EO 14008 directed the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Chair of CEQ and the heads of other relevant agencies to recommend steps to achieve the goal of conserving at least 30 percent of the United States’ lands and waters by 2030. EO 14008, Sec. 216. However, the EO fails to cite a congressional act or an Article in the Constitution that grants authority to the agencies for the establishment of nationwide conservation program that would, for example, authorize the imposition of conservation measures on non-federal lands and water rights, or override federal land management statutes such as the Federal Land Policy and Management Act, the National Forest Management Act, and the Multiple Use – Sustained Yield Act. Like Section 208 at issue in *Louisiana*, Section 216 of the EO lacks a grant from Congress to burden private property with the goals of the Initiative and override the requirements of federal land management statutes.

The notice for the Atlas, however, simply disregards the lack of statutory authority for the 30 x 30 Initiative. The Department of the Interior seeks input on the following:

What are the attribute of lands and waters that should be included in the Atlas?

Considerations could include, for example, a clearly defined geographic boundary, status of ecological function, representation of species and habitats, extent of disturbance, expected future risks from climate change or other human stressors, ecosystem connectivity, or durability of management status.

Apparently, the Departments believe that the agencies have the power to identify privately owned property and lands managed under other federal laws for inclusion in the Atlas when the Departments lack statutory authority to burden this land. The Departments should clarify that this program is entirely voluntary and does not affect the management or use of any land, and that the Atlas has no regulatory effect. The Departments should also clarify that existing federal statutes such as Federal Land Policy and Management Act and the National Forest Management Act, and those statutes' implementing regulations, continue to govern the management of federal lands and resources.

Alternatively, if the Departments maintain that they have the legal authority to implement the 30 x 30 Initiative, that authority should be disclosed and clearly explained. To date the Departments have not done so in any of their public documents, adding to the confusion and uncertainty over how this massive federal program will impact federal, state and private lands.

We appreciate the opportunity to submit comments on the Atlas and the 30 x 30 Initiative. Please let us know if you have any questions.

Sincerely,



Margaret Byfield
Executive Director
American Stewards of Liberty