



February 14, 2025

Submitted via the Federal eRulemaking Portal

Ms. Patricia Hoffman  
U.S. Department of Energy  
Grid Deployment Office, 4H-065  
1000 Independence Avenue SW  
Washington, DC 20585

**RE: Comments of the Land Trust Alliance on the Notice of Early Public and Governmental Engagement for Potential Designation of Tribal Energy Access, Southwestern Grid Connector and Lake Erie-Canada National Interest Electric Transmission Corridors**

**Docket No. DOE-HQ-2024-0096**

Dear Principal Deputy Director Hoffman,

Thank you for seeking input from the public on Phase 3 of the National Interest Electric Transmission Corridor (“NIETC”) designation process conducted by the U.S. Department of Energy (“Department”) pursuant to the Federal Power Act (“FPA”). The Land Trust Alliance (“Alliance”), joined here by the Colorado Cattlemen’s Agricultural Land Trust (“CCALT”), the Southern Plains Land Trust (“SPLT”), the Palmer Land Conservancy (“PLC”), the Rio Grande Agricultural Land Trust (“RGALT”), the New Mexico Land Conservancy (“NMLC”), the Ogallala Land & Water Conservancy (“OLWC”), and Keep it Colorado (“KIC”) appreciates the opportunity to submit comments on the potential effects of the proposed corridors and the contents of the Department’s engagement framework.

Founded in 1982, the Land Trust Alliance is a nonprofit corporation and national land conservation organization based in Washington, D.C., that works to save the places people need and love by strengthening land conservation across America. The Alliance represents about 950 member land trusts nationwide. Alongside our members, we harness three fundamental aspects of the American ethos: volunteerism, community spirit and connection to the land. CCALT is a state-certified and accredited land trust working in partnership with landowners to conserve working agricultural lands throughout Colorado. Since 1995, CCALT has worked with more than 400 landowners to conserve more than 808,000 acres of productive agricultural land. CCALT holds conservation easement interests within the proposed boundaries of the Southwestern Grid Connector corridor. SPLT is a state-certified and accredited land trust working to conserve and re-wild shortgrass prairie in southeast Colorado and across the southern plains. SPLT protects more than 60,000 acres of land (50,000 acres owned in fee)

and owns land in the vicinity of the Southwestern Grid Connector corridor as well as actively working towards buying land for endangered lesser prairie chickens (*Tympanuchus pallidicinctus*) that lies within the project's proposed boundaries. PLC is a state-certified and accredited land trust that has worked with individuals, private and public partners, and various communities to protect 138,000 acres of land in southeast and central Colorado since 1977. PLC's conserved lands include public parks and open spaces, important working farms and ranches, critical wildlife habitat, and iconic scenic views. The Rio Grande Agricultural Land Trust is an accredited land trust working in partnership with landowners, government agencies, and Native American Tribes to protect land and water for people and wildlife in New Mexico. NMLC preserves New Mexico's land heritage by helping people conserve the places they love. Founded in 2002, NMLC has protected over 770,000 acres of wildlife habitat and working lands across the Land of Enchantment. OLWC is dedicated to securing long-term water sustainability by partnering with private landowners, communities, and government agencies to conserve groundwater in Eastern New Mexico. Through innovative conservation easements, groundwater leases, and regenerative land management strategies, OLWC works to protect vital water resources for agricultural, municipal, and military needs, ensuring a resilient future for the region. KIC serves as a unified voice for conservation organizations focused on private lands conservation, and does so by bringing together land trusts, public agencies and conservation champions around a vision to create a Colorado where people, lands, waters and wildlife thrive. KIC advocates for sound public policy; provides connection and collaboration opportunities for conservation partners; offers a forum to address emerging conservation issues and opportunities; pursues sustainable funding and programmatic tools and solutions; and works to advance a culture of conservation in Colorado.

Our organizations recognize that we all need and use energy, and that energy needs are growing across the country. To achieve this at the scale and pace necessary, there needs to be a significant investment in transmission and grid capacity. At the same time, energy infrastructure projects — including linear transmission and other grid infrastructure — can put lands with high conservation, biodiversity, forestry, recreation and agricultural value at risk of development. These lands provide pure drinking water, healthy food, and clean air; protection from intensifying natural disasters; and strengthen the economy<sup>1</sup>.

### **Conservation Easements**

The Alliance applauds the Department for selecting NIETC routes that largely avoid conserved lands and align with already disturbed lands in many sections. There are, however, significant sections of the Southwestern Grid Connector Corridor<sup>2</sup> ("Southwestern Corridor") that include lands where private landowners have voluntarily exercised their private property rights and contracted for perpetual legal protections of the property's agricultural and conservation values. This form of legal protection is known as a conservation easement. Construction of transmission infrastructure within those properties would likely violate those legally binding real property rights and conservation protections established

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<sup>1</sup> Seidl, A., Crossett, C., Greenwell, A, Bennett, D., and Menefee, M., 2023. Public return to private lands conservation in Colorado: The Conservation Easement Tax Credit Program. Colorado State University, Fort Collins, Colorado.

<sup>2</sup> This includes conservation easements held by the Colorado Cattlemen's Agricultural Land Trust and the Nature Conservancy. These can be seen in detail by accessing the DOE's Geospatial Energy Mapper, available at <https://gem.anl.gov/tool/>, and adding the layer for the National Conservation Easement Database.

in the conservation easement. The Alliance urges the Department to re-route those sections of the corridors, as further discussed below, to avoid any government taking of a real property right as well as to avoid any impacts to those conserved lands.

Conserved lands include conservation easements, a unique legal tool used to keep land in private ownership and on the tax rolls while preserving resources vital to the public interest. As a public investment, conservation easements are a more affordable alternative to outright purchase. For private landowners, conservation easements are an opportunity to protect land from development and to keep working agricultural lands working. Conservation easements also have the added benefit to the landowner of income from the sale or tax savings from the conveyance of the easement. Landowners and their successors retain the right to possess and use the land consistent with the conservation purposes of the easement. Land trusts and government holders of conservation easements enter into a voluntary and legally binding agreement with the landowner where the land trust holds a real property interest in that land and agrees to perpetually monitor and enforce the conservation easement's provisions. This constitutes a major financial commitment by a land trust. Because of the perpetual and costly nature of holding a conservation easement, land trust easement holders don't enter lightly into these agreements. Instead, land trusts have a thorough process for strategic conservation planning, evaluating and selecting conservation easements that are consistent with the land trust's conservation priorities and provide public benefit.

Through this strategic process, land trusts have worked with landowners to collectively conserve more than 61 million acres of conserved lands. That is more land than is in our national park system. Recognizing the public value of this investment, the acquisition of such conserved lands by land trusts has been incentivized by billions of dollars in state and federal tax incentives and grants. At the federal level, conservation easements are recognized as a critical tool to protect environmentally important forest, farm, ranch, wetland and grassland areas that are threatened by conversion to other uses. Such programs include the U.S. Forest Service Forest Legacy Program, U.S. Department of Agriculture Agricultural Conservation Easement Program and the U.S. Department of Defense Readiness and Environmental Protection Integration Program.

In addition, Congress enacted Internal Revenue Code Section 170(h) and the accompanying Treasury regulations, to provide significant tax benefits to individuals who donate (or who receive a portion of the purchase price for the conservation easement and then donate the remaining value) a qualified conservation easement to tax-exempt organizations. States have also prioritized the preservation of conservation and agricultural lands by establishing state tax credit programs and grant programs. Forty-nine states have created state enabling legislation allowing for the use of conservation easements in response to increased alarm at the rate farmland, working forests and undeveloped lands were being converted to other uses. Conservation easements are key to these policy efforts. They serve a vital public need that has been recognized by lawmakers, scientists and scholars. In comment (a) of Section 7.11 of the Restatement (Third) of Property - Servitudes, the American Law Institute explains that the importance of conservation easements, "underscored by statutory requirements that they be

perpetual, will continue to increase as population growth exerts ever-greater pressures on undeveloped land and ecosystems.” In sum, protecting conserved lands is a shared priority nationwide.

Irresponsible siting of transmission infrastructure threatens and undermines the billions of public dollars invested by federal and state agencies in our natural and working lands and the economic returns associated with those investments. Smart siting of infrastructure avoids squandering this enormous prior public appropriation of taxpayer funds and instead harmonizes our nation’s shared goals of conserving land while supporting the energy buildout. As such, the Alliance continues to urge the Department to provide explicit protections for lands subject to a conservation easement and avoid any transmission build out on such lands.

### **Reroute of the Southwestern Grid Connector Corridor**

The Alliance urges the Department to reroute the Southwestern Grid Connector Corridor such that it avoids crossing any conservation easements. Such crossings would likely result in the taking of private property rights<sup>3</sup> and termination of any conservation easements within the Southwestern Corridor’s path. Such a taking would undermine the private and public investment and leave unprotected the critical agricultural and conservation values that were identified for protection by sophisticated conservation entities. As the Department engages in careful consideration as to whether the Southwestern Corridor avoids and minimizes, to the maximum extent practicable, and offsets to the extent appropriate and practicable, sensitive environmental areas pursuant to the Federal Power Act §216(a)(4)(G), it must look to these impacts to conservation easements as a type of sensitive environmental area that must be avoided.

Several conservation easements are located within the proposed Southwestern Grid Connector Corridor that constitute sensitive environmental areas that must be avoided.<sup>4</sup> One particularly striking example that illustrates the importance of rerouting this corridor is a conservation easement held by the Colorado Cattlemen’s Agricultural Land Trust known as the May Ranch. The May Ranch conservation easement encompasses more than 16,000 acres and is nearly entirely contained within the northern end point of the proposed Southwestern Corridor<sup>5</sup>. The land within the conservation easement is primarily ranchland, is agriculturally productive and is an important part of Colorado’s agricultural landscape as one of the largest, contiguous ranches in Prowers County, Colorado. The property is used to raise registered Limousin cattle and crops grown on the property include alfalfa, corn and wheat.

In addition, the area is ranked as high priority by the Western Association of Fish and Wildlife Agencies for the imperiled lesser prairie chicken, a federal- and state-listed species. It also lies within The Nature Conservancy’s highest priority core area in southeast Colorado. The property provides a significant relatively natural habitat including several state-threatened species. This includes rare species such as the prairie gentian, long-billed curlew and burrowing owl. The property is mapped by Colorado Parks and Wildlife as mule deer overall range, winter range, severe winter range, and a concentration area;

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<sup>3</sup> Federal Power Act §216(e) expressly allows for the taking of real property interests: “the permit holder may acquire the right-of-way by the exercise of the right of eminent domain in the district court of the United States for the district in which the property concerned is located, or in the appropriate court of the State in which the property is located.”

<sup>4</sup> See note 1 for details [**Confirm internal reference is correct prior to submitting final comments**].

<sup>5</sup> See enclosed map entitled “May Ranch Conservation Easement Southwestern Corridor NIETC Map” for more detail.

pronghorn overall range; and winter range for bald eagles. The property also contains a grasslands carbon bank and is a reintroduction site for the federally endangered black-footed ferret, with documented reproduction on site this past year.

Like most conservation easements, the May Ranch easement was granted “in perpetuity,” meaning it is structured in a manner to protect forever the land it encumbers for the agricultural and conservation purposes specified in the conservation easement and cannot be converted to another use. The May Ranch conservation easement provides significant public benefit by continuing to remain undeveloped and available to produce food and fiber and provide important wildlife habitat. The state of Colorado has invested significant resources into the conservation of the May Ranch through tax credits. Terminating this conservation easement for transmission infrastructure construction and maintenance, as would be required if the Southwestern Corridor is not rerouted, will put this critically important land at risk. This risk has already been demonstrated by an existing transmission line failure that caused a wildfire that burned 9,000 acres of the property in 2022. For these reasons, the Alliance urges the Department to reroute the Southwestern Corridor to avoid the May Ranch and the other properties along the route protected by conservation easements.

### **Public Engagement Framework**

The Alliance applauds the fact that public engagement is a core component of Phase 3 of the NIETC process, but given that the proposed corridors cover thousands of miles of land across the country, we recommend that the proposed Public Engagement Framework be improved, and the current comment period be extended by 30-60 days, to provide adequate time to hear from and properly engage impacted communities such as land trusts. As currently planned, beyond a single webinar and individual groups reaching out to the Department to set up meetings, there is no meaningful engagement planned with potentially impacted communities until after the Department determines if it will be initiating NEPA for designated corridors. By delaying public engagement until after deciding NEPA initiation, making changes to NIETC routes will be far more difficult and costly, as more resources will have been invested into the corridors as proposed, and community input has not yet been heard.

One of the greatest barriers to expediency in transmission siting and permitting is the failure of authorities to avoid disturbance of valuable conservation or agricultural lands, which sometimes triggers public opposition that in turn can create delays and potentially halt the siting process. It is widely acknowledged that “[l]ocal efforts to oppose large infrastructure projects [are] increasing as, among other things, the country becomes more densely populated and land use assumes greater and greater importance. Proposed transmission lines in particular are frequently delayed for months or years as a result of public opposition, driving up costs to developers and, ultimately, to consumers.”<sup>6</sup> Early identification of valuable conservation and agricultural lands in the process of designating NIETCs will likely expedite corridor approval and development as support from the local conservation community and the general public increases.

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<sup>6</sup> Americans for a Clean Energy Grid, *Recommended Siting Practices for Electric Transmission Developers* (2023) <https://cleanenergygrid.org/wp-content/uploads/2023/02/Recommended-Siting-Practices-for-Electric-Transmission-Developers-February-2023-Americans-for-a-Clean-Energy-Grid.pdf>.

For example, our member experts in eastern New Mexico can help the Department understand where the particularly sensitive areas are that should be avoided. Existing transmission line projects are already threatening prairie grasslands that are classified as Natural Resource Conservation Service Critical Conservation Areas and are conservation priorities for our members. The proposed Southwestern Corridor will only increase the development pressures on these imperiled grasslands and the wildlife that rely on them. Land trusts can help the Department by sharing information on the location of already conserved lands and other areas of high conservation or agricultural value that are yet to be conserved, the public investment and use of these areas, and proposals for less damaging alternative locations.

For these reasons, we urge the Department to take the public participation and engagement plans outlined as part of the Integrated Interagency Preapplication process finalized in the [Coordination of Federal Authorizations for Electric Transmission Facilities Rule](#) published in 2024 as 10 CFR 900 and apply them to the NIETC designation process. The Department should have a detailed plan of outreach to the impacted communities for each proposed corridor, with multiple in-person meetings and focused outreach to ensure that impacted communities are aware of the proposed corridors and have adequate time to provide feedback and adjustments to the proposals before moving on to determining if NEPA needs to be initiated. By waiting until after NEPA initiation, the Department risks needing to start NEPA processes over if significant changes are made to the boundaries due to community feedback.

### **Specific Entities for Outreach**

Our members have extensive knowledge of their local communities and natural resources and can help guide siting decisions in ways that minimize their impact. When local communities, including land trusts, are informed early and often, the permitting process for the siting of energy and transmission infrastructure is expedited. By revising and expanding the planned outreach and engagement process on the designation of these corridors, the Department will save time farther down the line when the corridor boundaries cannot be as easily adjusted.

From our communications with our members, we have identified the following land trusts as entities you should reach out to; however, it is not an exhaustive list, and we encourage you to reach out directly to the Land Trust Alliance for assistance in providing notification to our members.

- The Colorado Cattleman’s Agricultural Trust
- New Mexico Land Conservancy
- Southern Plains Land Trust
- The Nature Conservancy
- Rio Grande Agricultural Land Trust
- Palmer Land Conservancy
- Ogallala Land & Water Conservancy

In addition, the Alliance urges the Department to send notice to all holders of conservation easements within the proposed corridors.

We applaud the Department for undertaking this important task and seeking stakeholder input. We

look forward to a robust process that reroutes the Southwestern Grid Connector Corridor to avoid property subject to a conservation easement and that provides sufficient time and meaningful opportunity for all stakeholders to present their views. We also welcome any opportunity to meet with you and Department staff to discuss the critical public interest in avoiding conserved land when siting energy infrastructure. Thank you for your attention to this matter.

Sincerely,



Lori Faeth  
Government Relations Director  
Land Trust Alliance

**And the Following Organizations:**

Erik L. Glenn  
Executive Director  
Colorado Cattlemen's Agricultural Land Trust

Stephen D. Harris  
Land Stewardship Director  
Palmer Land Conservancy

Henry Pollock  
Executive Director  
Southern Plains Land Trust

Cecilia Rosacker  
Executive Director  
Rio Grande Agricultural Land Trust

Jonathan Hayden  
Executive Director  
New Mexico Land Conservancy

Dr. Ladona K. Clayton  
Executive Director  
The Ogallala Land & Water Conservancy

Hannah George  
Programs Manager  
Keep It Colorado

Encl.: Land Trust Standards and Practices, Public return to private lands conservation in Colorado: The Conservation Easement Tax Credit Program; May Ranch Conservation Easement Southwestern Corridor NIETC Map.