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Comments: Dear Mr. O'Donnell,

Thank you for the opportunity to comment on the Draft Supplemental Environmental Impact Statement (DSEIS) for Oil and Gas Leasing for the Little Missouri National Grassland unit of the Dakota Prairie Grasslands. The DSEIS proposes a management strategy for 216,300 acres of federal mineral estate in western North Dakota. The status quo allows for surface development on 141,200 acres of the 216,300 acres open for lease (i.e. "No Surface Occupancy" stipulations would be attached to leases on the other 75,100 acres). Notably, the DSEIS does not propose changes to the 629,200 acres in the management area that are currently leased, or the 47,700 acres currently withdrawn from leasing.

Interests of the National Trust for Historic Preservation

The National Trust for Historic Preservation is a private, nonprofit organization chartered by Congress in 1949 to facilitate public participation in the preservation of our nation's heritage, and to further the historic preservation policy of the United States. 54 U.S.C. [sect] 312102(a).

Our particular interest concerns the impacts of oil and gas drilling on the landscape surrounding Theodore Roosevelt National Park (the Park) and the Greater Elkhorn Ranchlands National Historic District (Elkhorn Ranch). This landscape is nationally significant because it was within this remote environment that Theodore Roosevelt formed many of his core views about conservation[mdash] views that would later shape his presidency, form the basis of the modern conservation movement, and establish a national conservation ethic. The area has long been characterized by its solitude and serenity, yet has been increasingly threatened by encroaching industrial activity, which has the potential to mar important viewsheds and harm the visitor experience.

Comments on the DSEIS

1. Support for Enhanced Protections for Theodore Roosevelt National Park

In managing oil and gas leasing in the Dakota Prairie Grasslands we urge the United States Forest Service (USFS) to enhance protections in the landscape surrounding the Park and Elkhorn Ranch. We urge the USFS to place particular emphasis on potential impacts to historic and cultural resources when considering all aspects of drilling operations, including the placement of roads, limitations on flaring, and pipeline development.

As Applications for Permits to Drill (APDs) are received, the USFS should inform applicants that compliance with the National Historic Preservation Act is required prior to the approval of drilling plans. The USFS must make clear that it maintains the authority to deny plans for operations that would cause adverse effects to historic and cultural resources.

2. Alternative 2: "No New Leasing" Would Not Enhance Protections for Heritage Resources if it Drives Oil Development onto Adjacent State-Managed Parcels.

The DSEIS acknowledges that federal public lands are intermingled in the planning area with State of North Dakota school trust lands and private lands. However, it does not discuss the risk that, if Alternative 2 were adopted, these adjacent lands would be subject to more development pressure. Adoption of Alternative 2 may give the public the illusion that USFS has given the landscape greater protection while, in actuality, it could cause

greater harm.

USFS can play a leadership role in adopting best practices that direct development outside of sensitive areas. We urge USFS to make clear in its final planning document that enhanced collaboration with state and private partners is the most effective way to eliminate the risk of harm to the areas closest to the Park and Elkhorn Ranch.

3. Support for a Modified Alternative 3 Focused on Protection of the Park and Elkhorn Ranch

The USFS proposes in its preferred alternative (Alternative 3) to modify the stipulations and notices for new leases. New stipulations would be intended to protect sage grouse, recreation sites, rare plants, and roadless areas, as well as paleontological resources. This position is a middle ground between Alternative 1, resulting in no change from the 2003 Record of Decision for Oil and Gas Development, and Alternative 2, which would result in no new leasing in the area.

While we generally support the USFS effort to update lease stipulations, we are disappointed that the agency has not included within the DSEIS a robust discussion of how stipulations can be tailored to protect heritage resources associated with Theodore Roosevelt's legacy in the region. At a minimum, lessees should be made aware that particular cultural resources will be a factor when USFS decision-making occurs at the application stage. This creates greater predictability for lessees and will assure the public that the significance of sites like the Elkhorn Ranch landscape is not confined to the specific boundaries previously listed in the National Register of Historic Places.

We urge USFS to develop stipulations for parcels in the vicinity of the Park and Elkhorn Ranch that specifically reference these resources and reflect their importance to our nation's heritage.

1. The Broad Claim That USFS Cannot Raise Nuisance Claims When Mineral Development Occurs on Federal Land is Incorrect.

The DSEIS makes a misleading statement that "[m]ineral estate rights override surface estate rights" (p.4). The USFS makes this summary conclusion in error, without acknowledging that North Dakota law provides some recourse under the Surface Owner Protection Act of 1979, which places various statutory requirements on mineral estate owners vis-à-vis surface estate owners. This includes the opportunity for the surface owner

- * to request the State Department of Health to inspect and monitor well sites for hydrogen sulfide;

- * to receive payments for damage and disruption;

- * to be apprised 20 days in advance of drilling activity;

- * to receive compensation for damage to water supplies

- * to bring an action for compensation in the court of proper jurisdiction¹

It is critical that USFS acknowledge that the primacy of mineral ownership has certain qualifications and it is the obligation of the federal agency managing surface resources to take action against damaging activity when warranted. The public needs to be assured that mineral estate owners will respect federal public lands in accordance with state law and that the USFS will use its authority to hold accountable mineral estate owners who violate the law.

1. Trends Indicate that Drilling has Effectively Ceased on Lands with Federally-Owned Minerals.

Further discussion is necessary in the DSEIS to explain recent trends in oil and gas leasing to the public. Figures 5 and 8 reveal that Applications for Permits to Drill have almost entirely ceased on federal lands; only 29 wells were drilled within the Little Missouri Grasslands in 2017, and all of them were on non-Forest Service lands. This statistic gives the public the impression that lands in the planning area are not being explored. But it would be helpful to have information on whether development has been driven instead to adjacent state or private lands. More explanation is needed to give the reader a sense of the current pressures on the landscape as a whole and not just the specific federal lands at issue in the DSEIS.

1. Impacts to Heritage Resources are Understated, and Require a More Robust Analysis.

In the DSEIS, the USFS has not conducted a sufficient analysis of impacts from oil and gas drilling on the sites associated with Theodore Roosevelt's legacy in the vicinity of the project area. Three individual units make up the Theodore Roosevelt National Park (Northern, Southern, and the Elkhorn Ranch District), and each is directly adjacent to the Little Missouri National Grassland. The USFS maintains an existing one-mile buffer of high scenic integrity objective around each of the units (see p. 121 re Special Areas and Designations). The USFS should conduct an analysis of whether this one-mile buffer is sufficient, and should consider expanding these protections in accordance with its heritage stewardship responsibilities.

Conclusion

The National Trust appreciates the opportunity to provide these comments. If we can provide you with additional information or otherwise be of assistance, we would be happy to do so.