



Providing leadership in conserving the natural resources in Weston County by providing information, education, and technical assistance to meet the needs of our users.

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Submitted Via: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Secretary Sherry Haywood  
Assistant Secretary Securities and Exchange Commission  
Division of Trading and Markets

**Re: Comments – Securities and Exchange Commission – Release No. 34-98665; File. No. SR-NYSE-2023-09**

Dear Secretary Haywood,

Following are the Weston County Natural Resource District (WCNRD) comments regarding the Proposed Rule Change to Amend the New York Stock Exchange Listed Company Manual to Adopt Listing Standards for Natural Asset Companies. Our comments are specific to our mandate per Title 11, Chapter 16 of Wyoming's Statutes: "...to provide for the conservation of the soil, and soil and water resources of this state, and for the control and prevention of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water, and thereby to stabilize ranching and farming operations, to preserve natural resources, protect the tax base, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect public lands, and protect and promote the health, safety and general welfare of the people of this state."

### **Ignoring Locally Led Conservation**

During the 1930s, the Dust Bowl made the need to conserve natural resources, particularly soil, very clear. Numerous programs and agencies were created to implement conservation practices throughout the nation.

Sometimes agencies working with conservation ended up competing with each other. Local leadership was needed to coordinate their efforts and tie them into local conditions and priorities. President Franklin Delano Roosevelt recommended the Standard State Soil Conservation Districts Act be signed into law by all state governors. This act gave states a step-by-step guide to create conservation districts and listing their powers and responsibilities. By 1945, all 48 states had passed district enabling acts. This process, as the enabling acts laid out, has worked well across the nation for over 75 years.

Conservation Districts have their own methods established in partnership with the USDA Natural Resources Conservation Service (NRCS) to collect and provide local guidance directing conservation efforts. Taking the management and directing of conservation efforts and placing them in a private entity defies all the processes in place, the role of locally led and voluntary conservation, and places it in the hands of an NAC who can direct activities, or restrict activities, access, etc. at will.

Authorizing the establishment of NACs that include public lands and National Forest System lands is not in the public interest because it would be an unlawful violation of the Federal Land Management and Policy Act of 1976 (FLPMA), 43 U.S.C. 1701 et seq, which governs public lands. NACs would also conflict with several statutes pertaining to the management of National Forest System Lands, and the U.S. Mining Law, 30 U.S.C. 21a et seq.

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## **No legislative grounds for acquiring public lands interest**

The Taylor Grazing Act (TGA) was passed in 1934 to “provide for the orderly use, improvement, and development of the range.” 43 U.S.C. § 315a. According to Congress, the TGA was intended to stabilize the livestock industry by preserving ranchers’ access to the federal lands in a manner that would guard the land against destruction. See Taylor Grazing Act, ch. 865, 48 stat. 1269 (June 28, 1934). There is nothing in the TGA that allows lands within a grazing district to be acquired by a NAC.

The Federal Lands Policy and Management Act (FLPMA) also does not allow NACs to acquire interests in federal or public lands. FLPMA was passed by Congress in 1976 and the first regulations implementing FLPMA were adopted shortly thereafter. FLPMA requires that BLM managed lands be open and managed for “multiple use.” As described by the BLM, “[T]he term “multiple use” seems fairly self-descriptive. For public land management, it means: public lands have many resources (renewable and non-renewable), such as forage, timber, energy, habitat, etc., and public lands have many uses, such as grazing, recreation, mining, etc. The multiple use ‘mandate’ through FLPMA states that the resources and uses on public land must be utilized in a balanced combination that will best meet the needs of the people (current and future needs for current and future generations).” Multiple Uses, Multiple Users – March 9, 2016 (blm.gov) Allowing a NAC to acquire lands or interests in lands where “no use” cannot occur violates that statutory mandate.

## **A Definition of Conservation**

The NRCS defines conservation as:

The protection, preservation, management, or restoration of natural environments and the ecological communities that inhabit them. Conservation is generally held to include the management of human use of natural resources for current public benefit and sustainable social and economic utilization ([https://www.nrcs.usda.gov/sites/default/files/2022-09/English%20Whats%20CONSERVATION%20Mean 4.pdf](https://www.nrcs.usda.gov/sites/default/files/2022-09/English%20Whats%20CONSERVATION%20Mean%204.pdf) What does conservation mean? NRCS 9/2022, last visited 1/2024).

The NRCS also defines sustainability as maintaining or improving the land with a long-term vision for the future use and enjoyment. On the contrary, with regard to public lands, the proposed SEC rules are premised upon the adoption by the Bureau of Land Management (BLM) of the “conservation use rule” issued in draft in the Federal Register on April 3, 2023. 88 Fed. Reg. 19583 (April 3, 2023). That rule has not been issued in final, and if it is, will be subject to numerous legal challenges because that proposed rule violates the Federal Lands Policy and Management Act, the Taylor Grazing Act, the Regulatory Flexibility Act and the Major Questions Doctrine. For example, like the BLM’s conservation use rule, the SEC proposed rule states that National Asset Companies (NAC) who acquire public or private lands as “assets” would be prohibited from:

[E]ngaging directly or indirectly in unsustainable activities. These are defined as activities that cause any material adverse impact on the condition or natural assets under its control, and that extract resources without replenishing them (including, but not limited to, traditional fossil fuel development, mining, unsustainable logging, or perpetuating industrial agriculture).

These are competing definitions of “conservation” and “sustainable” with regards to conservation and land management efforts. The NRCS definition implies that conservation is an active process and takes active effort to properly implement to preserve our natural resources for continued use and enjoyment. The new rules under a NAC would restrict uses in the name of conservation.

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The SEC proposed rule also notes that there are destructive activities that can negatively impact public and federal lands. These include such uses as wildfire and climate change. But on the contrary, removing uses including livestock grazing and timber production by NACs will increase the destructive harm intended to be eliminated by this action. As an example, both livestock grazing and timber harvest reduce the risk of wildfires by reducing the fuel load needed for those fires. "Moderate grazing decreases wildfire probability by decreasing fuel amount, continuity, and height and increasing fuel moisture content. Grazing, through its modification of fuels, can improve fire suppression efforts by decreasing flame lengths, rate of fire spread, and fire severity." Kirk W. Davies, Katie Wollstein, Bill Dragt, and Casey O'Connor "Grazing Management to Reduce Wildfire Risk in Invasive Annual Grass Prone Sagebrush Communities," Rangelands 44(3), 194-199, (24 June 2022).

### **Protecting the Tax Base**

This rule also neglects to consider the financial implications from removing the uses described as "unsustainable" in the rule. In much of Wyoming, and Weston County included, grazing on public lands is key to the survival of many ranching operations.

Ninety- seven percent of the United States is referred to as "rural America." An estimated 60 million or 17.5% of the U.S. population lives in these rural areas. Almost one-half of the land in the 11 continuous Western states is managed by the federal government. Is the displacement of this population base truly an ecological or socially equitable goal? It is certainly not for the rural communities, rural counties and the citizens who live in these areas. These communities, and counties, rely on the revenue generated from grazing. And with over \$100 billion dollars generated from grazing in Wyoming annually, it is very important.

The Regulatory Flexibility Act (RFA) generally requires that Federal agencies subject to the "notice and comment" rulemaking requirements found in the Administrative Procedures Act (APA) also prepare a flexibility analysis to evaluate the impact on small entities See RFA §603(a). And this rule will clearly have an impact on small businesses. By reducing multiple use on public lands this affects more than just ranching but also recreation including most notable in Wyoming, hunting. It is recommended that this study be completed by the Small Business Administration (SBA). As the SBA's purpose is to represent the views of small entities before federal agencies and congress.

### **Foreign Ownership of American Private, Federal, or Public Lands is Not in our Best Interest**

The SEC proposed rule specifically allows foreign ownership in NACs. According to research by the National Ag Law Center. In 2023 alone, 12 states passed laws restricting foreign ownership or investment in private lands located within their states. This is added to the 12 states that already had state laws limiting foreign ownership of private land within those states. In fact, this controversy traces back to the origins of the United States when the founding fathers signed treaties and took other actions to eliminate foreign ownership of lands now within the United States. This also brings up concerns over national security, and economic competitiveness.

Based on this evidence, we call for the withdrawal of the SEC regulation, as it violates American law and is against American interests.

Respectfully submitted,



David Tysdal

Chairman

Weston County Natural Resource District

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CC: Senator John Barrasso  
Senator Cynthia Lummis  
Representative Harriet Hageman  
Senator Ogden Driskell  
Senator Cheri Steinmetz  
Representative Allen Slagle  
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