

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0306E

IN THE MATTER OF MODIFICATIONS TO THE COMMISSION'S ELECTRIC RULES TO ADDRESS THE IDENTIFICATION AND PROTECTION OF SITES OF HISTORIC AND CULTURAL SIGNIFICANCE TO FEDERALLY RECOGNIZED TRIBAL NATIONS.

**COMMISSION DECISION GRANTING EXCEPTIONS,
IN PART, AND ADOPTING RECOMMENDED DECISION
NO. R25-0515 WITHOUT MODIFICATION**

Issued Date: August 29, 2025

Adopted Date: August 27, 2025

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I. BY THE COMMISSION**A. Statement**

1. By this Decision, the Commission adopts the Recommended Decision of the Administrative Law Judge in its entirety without modification. As such, we find it necessary to decline to adopt the proposed rules as set forth in the original Notice of Proposed Rulemaking (“NOPR”) issued on July 11, 2024. Instead, we intend to embark on a new rulemaking process developing rules in consultation with the Colorado Southern Ute Tribe, the Ute Mountain Ute Tribe, and the Northern Cheyenne Tribe, as well as the affected jurisdictional utilities, the Colorado Commission of Indian Affairs, History Colorado and other interested parties. Through this process, we intend to develop meaningful and useful rules that adopt a policy of avoidance encouraging utilities, developers and affected Tribes to work closely to protect significant sites and viewsheds located throughout Colorado.

B. Background

2. On July 11, 2024, the Commission issued a Notice of Proposed Rulemaking (“NOPR”) to amend the Commission’s Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (“CCR”) 723-3 (“Electric Rules”). Through the rulemaking, the Commission wanted to establish rules clarifying the process by which regulated electric utilities and wholesale generation and transmission cooperative associations (“wholesale cooperatives”) identify impacts to sites of historic and cultural significance to federally recognized Tribes, and present relevant information for consideration by the Commission in the context of certain resource planning and infrastructure decisions.

3. The proposed Rules were intended to clarify the process by which regulated electric utilities and wholesale generation and transmission cooperative associations (collectively,

“utilities” or “utility”) identify and address impacts that their infrastructure projects may have on significant sites, the historic and cultural resources thereof, and Tribal Governments, and to present information in the context of certain Commission resource planning and infrastructure proceedings.

4. These amendments emerged from a highly sensitive backdrop involving the protection of the Sand Creek Massacre National Historic Site, following requests and advocacy by affected Tribal Nations during transmission line and resource planning proceedings, most notably by the Northern Cheyenne Tribe in the context of Public Service Company of Colorado’s resource planning processes.

5. The Northern Cheyenne Tribe requested that the Commission engage in rulemaking and other actions to facilitate the preservation of the Sand Creek Massacre National Historic Site from the impacts of energy development. Additionally, the Commission recognized the vital government-to-government relationship between federally recognized Tribes and the State of Colorado. Based in part on those considerations, the Commission proposed requirements for electric utilities and wholesale cooperatives to coordinate with federally recognized Tribes, to identify and consider how best to mitigate impacts on significant sites, and to present relevant information to the Commission for consideration, in the interests of robust participation. The Commission strongly encouraged electric utilities and wholesale cooperatives to engage early and thoughtfully with federally recognized Tribes. The Commission also viewed this rulemaking as an early step as it develops appropriate Tribal consultation practices in pursuit of robust government-to-government relationships.

6. In the NOPR, the Commission also referenced Senate Bill (“SB”) 21-272, which requires the Commission to promulgate rules in which it considers “how best to provide equity,

minimize impacts, and prioritize benefits to disproportionately impacted communities and address historical inequalities.” The Commission further noted that SB21-272 directs that when making those rules, the Commission “shall identify disproportionately impacted communities,” and in so doing, “shall consider minority, low-income, Tribal, or Indigenous populations in the state that experience disproportionate environmental harm and risks [...].” The Commission also referenced HB23-1233 which created a statewide definition of disproportionately impacted communities, that specifically includes communities on the land of the Ute Mountain Ute Tribe and the Southern Ute Tribe.

7. The rules to be amended or added as part of the NOPR included Rules 4 CCR 723-3-3301, 3102, 3605, 3613, 3616-3618, new Rule 3620, and 3627.

8. Through the NOPR Decision No. C24-0494, issued July 11, 2024, the Commission provided notice of its proposed rules and referred the matter to an Administrative Law Judge for further proceedings and disposition.

9. On July 15, 2025, Administrative Law Judge (“ALJ”) Melody Mirbaba issued Recommended Decision No. R25-0515. ALJ Mirbaba’s RD was a thoughtful and well-analyzed Recommended Decision encompassing 95 pages of background information, recap of public comments and a thorough analysis of her conclusions and recommendations. The ALJ recommended the Commission not adopt the proposed rules and move forward with a rulemaking incorporating the comments received from the parties. The ALJ also offered a series of options for the Commission to consider in moving forward with a rulemaking based on the comments received in this Proceeding.

10. A wide range of parties filed comments to the proposed rule, including the Ute Mountain Ute Tribe, the Southern Ute Tribe, the Northern Cheyenne Tribe, the National Parks Conservation Association, Western Resource Advocates, History Colorado, Colorado Solar and Storage Association and the Solar Energy Industries Association, GRID Alternatives, Kiowa County Board of Commissioners, Interwest Energy Alliance, Public Service Company of Colorado, Tri-State Generation and Transmission, Inc., Black Hills Colorado Electric, Colorado Independent Energy Association.

11. The ALJ noted that despite widespread recognition of the underlying intent, the proposed rules attracted broad objections from utilities and developers. These objections spanned legal, procedural, definitional, practical, and economic matters, reflecting not only the intricacies of the Commission's regulatory environment but also the challenges of integrating Tribal consultation into state-level energy planning in a manner that is workable, fair, and non-contradictory to other mandatory obligations.

1. Major Stakeholder Concerns

a. Statutory Limits on Commission Authority

12. A key objection voiced was the proposed rules would require the Commission to undertake reviews and impose conditions that exceed its statutory authority, particularly regarding facility siting and land use domains reserved for local governments, federal agencies, or recognized Tribal Nations. Colorado's statutory framework, as reaffirmed by utilities limits the Commission's regulatory power mainly to the question of whether projects are necessary for the "public convenience and necessity." However, the Commission's jurisdiction does not extend to land use, facility siting, or permit decisions which remain local prerogatives under § 29-20-104(1), C.R.S., unless specifically preempted by the state or federal government.

13. The repeated refrain in written comments and in the Recommended Decision was that by treating site protection and consultation as a PUC-enforced requirement (not simply as a reporting or coordination prompt), the amendments risked both statutory and constitutional challenge, and could precipitate future litigation where Tribal, local, and utility rights intersect.

b. Definitions: “Significant Sites” and Related Terms

14. Utilities were unanimous that, without clear definitions, project developers would be forced to either take an overly conservative approach requiring expensive, exhaustive site surveys and potential rerouting for every proposed site, or risk violating undefined rules and subjecting themselves to legal or administrative challenges.

15. The Office of Archaeology and Historic Preservation (“OAHP”) recommended using established state and federal definitions (“historical,” “archaeological,” and “traditional cultural properties”) as found in the National Historic Preservation Act, the Colorado Historic, Prehistoric, and Archaeological Resources Act, and the National and Colorado Registers of Historic Places. OAHP cautioned strongly against inventing new or catch-all definitions, which would undermine existing expertise and well-accepted standards.

c. Tribal Perspectives

16. Some Tribal representatives requested greater authority to define significance but recognized the need for technical vetting by qualified entities to ensure consistent application and protect sensitive information.

17. Regarding how significant sites would be identified, the Ute Mountain Ute Tribe discussed the origin of Indigenous knowledge. The Tribe stated History Colorado’s database does not include all sites significant to Indigenous cultures, given (at least in part) that adding more sites to the database is a resource-intensive and difficult process. Tribal Governments have the

“intellectual property of sacred and sometimes non-sharable Indigenous Knowledge.” As a result, certain Indigenous knowledge may only be available through a Tribal Government (*i.e.*, its historic preservation department or office) and that the issue only becomes more complex. For example, “Traditional Ecological Knowledge” is often held in trust by a Tribal Government’s environmental department, whereas other kinds of Indigenous knowledge may be reserved for inside the Tribal Government’s Elders Council, as is the case with the Ute Mountain Ute Tribe.

18. This was made clear to the Commission during the testimony provided by Tribal Elders during a Commissioners’ Weekly Meeting in 2024. Several Elders from the Northern Cheyenne Tribe shared accounts of the Sand Creek Massacre that in part, had been handed down from generation to generation. While the Elders provided some details of the Massacre not generally known to the public, they also were careful in their accounts, noting they did not want to reveal certain aspects of the Massacre that were highly sensitive and confidential.

19. The Ute Mountain Ute Tribe also highlights that the federal government has made clear that Indigenous knowledge must be treated as expert knowledge, nothing less. It emphasizes that only the relevant Tribal Government can ultimately decide whether a site is significant to it.

20. COSSA and SEIA submit that the definition of “significant sites” matters tremendously from an implementation perspective and that the proposed definition is not clear. They explain that not all cultural resources in History Colorado’s database may qualify as a significant site, and not all significant sites may require the same level of protection to mitigate impacts. COSSA and SEIA assert that different types of significant sites may require different protection of a surrounding viewshed, depending on their type, and that the proposed Rule’s definition does not contemplate these differences or provide needed flexibility to treat different resources differently.

21. An example of the divergent interpretations is exemplified by the definition of a “viewshed.” The Ute Mountain Ute Tribe emphasizes that viewsheds should be maintained in Rules, explaining that a viewshed may be self-evident but may also vary depending on “the cultural orientation” of the viewer. It notes that viewsheds are places that influence or have been influenced by humans and that landscapes where viewsheds are important may be associated with a person, event, historic activity or cultural practice. Viewsheds may also implicate intangible elements, such as works of art, texts, narratives, and regional identity expressions. As a result, it asserts that viewsheds are not specific to Indigenous cultures.

22. The Ute Mountain Ute Tribe explains that viewsheds important to Indigenous cultures may not register in the same way to a Eurocentric mindset (*e.g.*, a single butte that aligns with a solar solstice or equinox from a particular vantage point may have cultural or religious significance to an Indigenous culture). It provides an example with view sheds that sightlines are not the only sensory experiences that are culturally significant and worth preserving, explaining that soundscapes, locations of tactile importance, or olfactory stimuli also have importance that may not be readily apparent to a casual observer in the dominant culture. For example, at a location in the Ute Mountain Ute Tribal Park hundreds of feet above the Mancos River, a visitor standing in a certain spot can hear the rush of water in volumes similar to that experienced by someone standing in the middle of the stream. It takes the position that to the Eurocentric mind, the location may be an interesting combination of distance and local geology, while to a “traditional mindset,” the location may be imbued with cultural, ceremonial, or spiritual meaning. However it is viewed, such a site demands preservation, despite the fact that its uniqueness is unrelated to visual perception.

23. In another example, the Ute Mountain Ute Tribe explains that Tribal cultures always consider spiritual impacts to a significant site, and that in some Tribal cultures, the sunrise and sunset orientation of a given site has important significance from a religious and astronomical perspective. For all these reasons, the Ute Mountain Ute Tribe proposes, when possible, impacts to a significant site should be evaluated from a Tribal perspective, and not necessarily from an “on the ground,” physical impact perspective.

24. The utilities and developers, on the other hand, take a different approach in addressing viewsheds. If the Commission adopts a Rule defining viewshed, Interwest suggests that viewsheds be removed from the definition. If viewsheds remain, Interwest submits that the Commission must identify an objective and understandable methodology to define and quantify viewshed and viewshed impact, which must be discernable from the earliest development phase.

25. Public Service asserts that although viewsheds should be considered when analyzing impacts on a cultural or historic resource, viewsheds are distinct from the underlying resource. Public Service elaborates that identifying a viewshed associated with a cultural or historic resource requires an individualized analysis that considers the nature and cultural significance of the resource. For example, siting energy infrastructure within the viewshed of the historic Brown Palace Hotel in Denver carries fundamentally different cultural impacts and considerations than siting energy infrastructure within the Sand Creek Massacre National Historic Site’s viewshed.

26. Public Service states that neither it nor the Commission are in a position to determine or identify in advance that a given site is eligible for listing, as that is a determination uniquely within these other entities’ purview. As such, it suggests that the Commission work with Tribal Governments, History Colorado, and others through a rulemaking proceeding, to identify

and map appropriate significant sites in the state, which could ensure that information on significant sites is transparent and readily accessible to the public and stakeholders.

27. Tri-State opposes including viewsheds in the definition, explaining that including them may result in an overly burdensome number of sites that would have to be assessed, and that as a practical matter, utilities typically lack site-specific route data at the time of a Certificate of Public Convenience and Necessity (“CPCN”) application. Tri-State agrees with Public Service that viewsheds relate to impact analysis and are not cultural or historic resources in and of themselves.

28. Black Hills is concerned that the proposed Rules lack clarity because the terms “cultural resources,” “sacred objects,” and “viewshed” are ambiguous. Without clarity on what those terms mean, utilities cannot identify impacts to them, propose mitigation, or describe requirements related to identifying and repatriating cultural and historic resources as contemplated by other proposed Rules.

29. The utilities share a concern that proposed Rules include sites registered in History Colorado’s database, which is not accessible to the public. They are unclear whether utilities will have access to information necessary to comply with the proposed Rules’ obligation to determine whether a geographic area constitutes a significant site under the proposed Rules. The utilities are also in agreement that even though there is a process to request access to History Colorado’s database, History Colorado gives no guarantees as to what information will be made available and when information will be provided. In support, Black Hills highlights History Colorado’s policy that only qualified users have access to “restricted information.” Black Hills points to other notable History Colorado restrictions, including: the type and extent of available data is determined on a case-by-case basis; restricted sites’ location information will be provided only in rare cases; and

that the State Archaeologist or other commensurate professionals must conduct a manual review of each data request. Black Hills argues that these restrictions may limit or prevent utilities and ERP project bidders from identifying whether a potential site is registered or otherwise protected.

30. The Ute Mountain Ute Tribe emphasizes the Commission's Rules must address five essential and interrelated elements: Tribal resources, cultural resources, historical resources, significant sites, and significant landscapes. These concepts are connected and represent aspects of the Indigenous experience.

31. The National Parks Conservation Association suggests the Commission approach the definition of significant site as a framework, which may include cultural resource databases which Tribal Governments maintain. It encourages the Commission to work in partnership with Tribal Governments to consider landscape-level areas of cultural or historical importance as part of this definition and to maintain significant site locations confidentiality to avoid looting.

32. These examples provide an indication of the complexity of the issues surrounding the proposed rules to protect sacred or significant sites. It is clear what started as an effort at government-to-government cooperation and collaboration has detoured into an area well beyond the expertise or jurisdiction of the Commission. While well-meaning in its intent, the execution was clearly lacking in this rulemaking. It is evident the rulemaking assumed a life of its own beyond what the Commission had originally intended.

33. It is for these reasons that the ALJ recommended the rules proposed here not be adopted and the rulemaking proceeding be dismissed. The ALJ did offer recommendations for options if the Commission did choose to proceed with an alternative rulemaking process.

C. Exceptions

34. In its exceptions, Western Resource Advocates (“WRA”) urges the Commission to explicitly enter orders about each decision point it decides to adopt. Doing so, according to WRA, is necessary to provide transparency and clarity to the Tribes, utilities, and other interested parties, and is within the Commission’s authority. WRA asserts that the failure to include explicit directives in the Decision on Exceptions would be a decision to throw away two years of concerted effort to address impacts to sites of historic and cultural significance and improve the processes for Tribes to participate in Commission proceedings.

35. It is WRA’s assertion that a comprehensive approach to protecting sites of historic and cultural significance will require policies and regulations that apply both to the Commission itself and to regulated utilities. In its Decision on Exceptions, the Commission should clearly lay out the future steps that it will take towards developing policies and regulations that govern regulated utilities.

36. On August 26, 2025, the Ute Mountain Ute Tribe filed an Out-of-Time Response to WRA’s exceptions. The Tribe states it wholly endorses WRA’s statement that “it is incumbent on the Commission to act on the issues presented in this rulemaking if it is to faithfully execute its statutory duties to serve the public interest and promote equity in all its work.” The Ute Mountain Ute Tribe recommends the Commission act expeditiously by clearly outlining any future courses of action following the Recommended Decision.

37. The Ute Mountain Ute Tribe agrees with WRA that this should include efforts to adopt a formal written Tribal Government Consultation Policy. As noted by the Recommended Decision, the Ute Mountain Ute Tribe indicates it provided some examples of federal and state utility commission consultation policies for consideration. As WRA explains, formalizing

meaningful consultation could help improve the Commission's communications with Tribes. Such a policy may also help further some of the Commission's aims in the July 11, 2024 Notice of Proposed Rulemaking that were the original impetus for this rulemaking. The response notes the Recommended Decision specifically recommends the Commission engage with the Colorado Commission on Indian Affairs ("CCIA") and meet with the State's two Colorado-based Tribes because this type of formal engagement may help advance the Commission's efforts to determine future rule proposals. The Ute Mountain Ute Tribe asserts these concrete engagement efforts can hopefully assist the Commission in the adoption of formal Tribal consultation practices, which can "ensure meaningful consultation, interaction, and engagement with Tribal Governments on topics significant to those entities, including protecting significant sites and cultural and historic resources."

38. The ALJ also suggests the Commission seek feedback from state and federal agencies that already have adopted consultation policies, including the Federal Energy Regulatory Commission and the states of California and Minnesota. It may also be helpful for the Commission to seek input from Public Service Company and any other regulated utilities that operate in other states where such Tribal consultation policies are or may be in place. The ALJ advises that these concerted efforts can help further the goal of a finalized Commission Tribal Consultation policy in a transparent and expedient manner.

39. The Ute Mountain Ute Tribe also agrees with WRA that time is of the essence for the Commission to continue its efforts on engaging with the Tribes, CCIA, utilities, and other interested stakeholders in ways that will ultimately result in codified Commission rules that protect Tribal significant sites. The Ute Mountain Ute Tribe submits that the Commission should explicitly enter orders on the various decision points presented in both the Recommended Decision and

WRA Exceptions. This course of action will help lay the foundation for the development of future Commission policies on Tribal consultation and engagement and regulations that govern regulated utilities' treatment of Tribal significant sites.

II. FINDINGS AND CONCLUSIONS

40. We would first like to acknowledge ALJ Mirbaba who did an extraordinary job capturing the essence of the comments raised during the course of the rulemaking public comment hearings and comments submitted in writing. Her Recommended Decision was thorough and well-reasoned in its analysis, conclusions and recommendations for going forward.

41. We agree with WRA and the Ute Mountain Ute Tribe, in part, that the Commission should include explicit directions in this Decision as to how we should now proceed with rules to protect Tribal sacred and significant sites and viewsheds.

42. The Commission adopts the findings of the Recommended Decision in its entirety and therefore chooses not to adopt the proposed Rules. Rather, we will take this opportunity to alter the Commission's course here and find that a new course is necessary to promulgate a Rule that adopts a policy of avoidance to express the Commission's commitment to protecting Tribal sacred sites and cultural landscapes from unnecessary impacts during the planning and development of transmission and generation infrastructure.

43. This Policy of Avoidance will inform Commission review of CPCNs for transmission or generation infrastructure, Electric Resource Plans, Clean Energy Plans, Beneficial Electrification Plans, other related projects and applications, and transmission coordination filings, and utility best practices in project planning and community engagement.

44. We find that without the requisite expertise needed to implement more prescriptive rules, adopting a policy of avoidance will encourage utilities and developers to work with Tribal

representatives and Tribal leaders to identify areas of significance and sacred sites as those areas are defined by the Tribes themselves. To the extent utilities are able to reach out to History Colorado and engage its services, as well as the services of other experts, the Commission encourages them to do so in a policy of avoidance.

45. We further find that the adoption of such a policy through rulemaking will be most effective through a separate rulemaking. As part of this rulemaking effort, the parties shall begin with pre-rulemaking workshops. These workshops will include appropriate Commission Staff, Tribal representatives from the Colorado Tribes and Northern Cheyenne, as well as any other federally recognized Tribes that wish to participate, as well as utility representatives and representatives from History Colorado, the Colorado Commission on Indian Affairs, the National Parks Conservation Association, the Office of the State Archeologist, the Sand Creek Massacre Foundation and any other agency or organization willing to assist in developing this policy of avoidance.

46. We expect these parties to work collaboratively to arrive at agreed to definitions which were controversial in this Proceeding. Those definitions are to include at a minimum: “cultural and historical resources;” “significant site;” “viewshed;” and “sacred objects.” However, we expect this to merely serve as a starting point list to define terms in a manner agreeable to all parties to the fullest extent possible. Should other terms require mutual agreement on a definition, we expect the workshop participants to come to some sort of a consensus on those terms as well. It is imperative to define those terms as much as possible prior to the issuance of a NOPR. In collaborating to define these important terms, the parties are to keep in mind the limited authority and jurisdiction of the Commission here and remain cognizant of other state agencies specializing in identification of sacred and significant Tribal sites.

47. At the first scheduled workshop, we urge the participants to set a schedule of priorities and then move forward with a schedule of discussions to resolve those issues in a logical and timely manner. Once those priorities have been identified, participants will then set a schedule of subsequent workshops at which each issue will be discussed, debated and a consensus reached as to how to include that resolution in a rule adopting a policy of avoidance.

48. We expect Tribal representatives and leaders to educate utility and developer participants in the meaning and importance of significant and sacred sites and viewsheds, so they have a deeper understanding and appreciation of their importance to each Tribe. By the same token, we expect utility and developer representatives, as well as Commission Staff, to educate Tribal representatives and leaders on the parameters of the Commission authority and jurisdiction in order that all parties have a clear understanding of the limits to what the Commission may enforce with regard to this important matter.

49. We also urge Commission Staff to consider opening a Miscellaneous Proceeding and holding Commissioner Informational Meetings in order to inform us of the ongoing work with Tribal representatives and leaders, utilities and developers to create and adopt a policy of avoidance that is clear, useable and that encourages discourse between utilities, developers and Tribal Nations.

50. We also agree with the parties that time is of the essence in opening a new rulemaking proceeding and issuing a NOPR to promulgate a rule adopting a policy of avoidance, strongly encouraging utilities to work with Tribes on a regular and sustained basis to protect Tribal sacred and significant sites and viewsheds. The Commission is committed to establishing meaningful government to government relationships with the Southern Ute and Ute Mountain Ute

Tribes, as well as the Northern Cheyenne Tribe and other federally recognized Tribes who may wish to participate in this important endeavor.

51. Therefore, we adopt the Recommended Decision without modification and decline to adopt the Rules pursuant to the NOPR issued July 11, 2024. This Rulemaking Proceeding is hereby closed.

52. We direct Commission Staff to move forward with pre-rulemaking proceedings in the form of workshops, Commissioner Information Meetings and potentially a Miscellaneous Proceeding (if it deemed necessary) in order to inform a Notice of Proposed Rulemaking and imbue it with a rule or rules that are relevant, unambiguous and developed by the workshop participants in the pre-rulemaking proceedings. As the parties noted in their respective comments, time is of the essence, so we urge relevant Commission Staff to proceed with urgency.

III. ORDER

A. The Commission Orders That:

1. The exceptions filed by Western Resource Advocates on August 4, 2025, to Recommended Decision No. R24-0515 are granted, in part, consistent with the discussion above.

2. The Out-of-Time Response to Exceptions filed on August 26, 2025, by the Ute Mountain Ute Tribe are also considered and adopted, in part, consistent with the discussion above.

3. The Commission adopts Recommended Decision No. R24-0515 in its entirety without modification.

4. As such, the Commission declines to adopt the Rules as set forth in this rulemaking proceeding.

5. This proceeding is now closed.

6. The Commission directs Staff and all interested parties to begin a new rulemaking process to create rules that adopt a Commission Policy of Avoidance consistent with the discussion above.

7. The 20-day time-period provided by section 40-6-114(1), C.R.S., to file an Application for Rehearing, Reargument, or Reconsideration shall begin on the first day following the effective date of this decision.

8. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 27, 2025.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners