



July 5, 2023

U.S. Department of the Interior
Director (630)
Bureau of Land Management
1849 C St. NW
Room 5646
Washington, DC 20240
Attention: 1004-AE92

Re: Proposed Regulations on Conservation and Landscape Health (OMB Control Number 1004-0NEW; RIN 1004-AE92)

Dear Sirs and Madams:

The American Cultural Resources Association (ACRA), the trade association for private firms which specialize in cultural resource management (CRM), appreciates this opportunity to comment on the Bureau of Land Management's (BLM) proposed rule on Conservation and Landscape Health (OMB Control Number 1004-0NEW; RIN 1004-AE92).

ACRA-member firms undertake much of the legally mandated cultural resource management (CRM) studies and investigations in the United States and employ thousands of CRM professionals, including archaeologists, architectural historians, ethnographers, historians, and an increasingly diverse group of other specialists. To help guide smart, sustainable economic development and safeguard important historic and cultural heritage assets, ACRA members apply specialized research skills within a framework of federal, state, local, and/or Tribal law and facilitate an open dialog where every stakeholder has a voice.

Many ACRA member firms also are actively involved with Tribal programs, consultation, and the documentation of indigenous places. In recent years, landscapes and landscape management, particularly those of a Tribal nature, have become a focus of CRM investigations.

The majority of our comments address the draft 43 C.F.R. Part 1600 regulations, as those most directly address cultural resources. As the proposed rule notes, Areas of Critical Environmental Concern (ACEC) are "the principal designation for protecting important natural, *cultural*, and scenic resources." (emphasis added). The protection, interpretation and preservation of cultural resources are essential to enhance the understanding of our nation's heritage – including that of groups who too often have been neglected or outright ignored in the telling of our country's story.

CRM firms, which often conduct work for the BLM or on BLM lands, are committed to the protection and preservation of cultural resources on federal lands. As such, they need clear and consistent direction and precise language and definitions on protocols and procedures for landscape treatment. Too often, decisions are left to the District Manager, or even to the Field Office Manager, who may or may not have expertise in cultural or biological resources. Such field office or district decisions may create inconsistent application of the rules. ACRA therefore welcomes the Bureau's desire to encode these procedures into regulations.

Our comments on the proposed rule follow.

III. Background

- A. "The Need for Resilient Public Lands." The proposed rule places an emphasis on land management "to achieve sustained yield of renewable resources." Cultural, Tribal, historic, and other similar resources, including landscapes and Traditional Cultural Properties (TCPs) are *not* renewable; each is unique and irreplaceable. ACRA recommends modifying the language in this section.
- B. "Management Decisions To Build Resilient Public Lands." While ACRA applauds the need to build better conservation strategies, the way in which such strategies intersect with cultural resources is not defined in the proposed rule, and appears to be unrecognized as a consideration.

The rule identifies native landscapes as something recognizable as "intact landscapes." Such a position not only ignores millennia of modifications to landscapes predating the Euro-Americana incursion as well as those following incursion, but also seems to ignore American Indian contributions to creating such landscapes over a long period of time. Several hundred years of failure to recognize, understand, and incorporate American Indian landscape management practices have resulted in degradation of our public lands, catastrophic fires, modifications to watersheds, uncontrolled harvesting of old growth trees, and more, while ignoring that traditional cultural management practices do not "disrupt, impair, or degrade" ecosystem resilience. American Indian knowledge and practices handed down over millennia have created the landscapes the BLM now wishes to conserve. Tribal outreach on this issue is therefore essential.

- C. "Related Executive and Secretarial Direction." Secretary's Order 3289 (Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resources); Secretary's Order 3403 (Joint Secretary's Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters); and Executive Order [EO] 14072 (Strengthening the Nation's Forests, Communities, and Local Economies) are among the policies and strategies promoted by the proposed rules. However, because cultural resources are included in ACECs, EO 11593 (Protection and Enhancement of the Cultural Environment), Section 110 of the National Historic Preservation Act (NHPA), and EO 13007 (Indian Sacred Sites) also should apply to this proposal.

Specifically, EO 11593 (Section 2) requires federal agencies to “(a)...locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their [agency] jurisdiction or control that appear to qualify for listing on the National Register of Historic Places [NRHP].” EO 13007 requires federal agencies that manage federal land to “(1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.” Section 110 of NHPA, among other things, requires each Federal agency to establish a preservation program for identifying, evaluating, and nominating historic properties to the NRHP and that those properties under the jurisdiction or control of an agency be managed and maintained in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations, and the private sector. This appears to be missing from or acknowledged in the proposed rule.

IV. Section-by-Section Discussion of Proposed Rule

Under 43 C.F.R. Section 1610.7-2, ACEC designations are for public lands where special management is required to “protect important natural, *cultural*, and scenic resources” [emphasis added]. However, the emphasis throughout the proposed 43 C.F.R. part 6100 is on ecosystems; there is little mention of cultural resources or cultural landscapes.

The only mention in 6100 of cultural resources is in 6102(a): “The BLM may authorize conservation use on the public lands by issuing conservation leases ... through protecting, managing, or restoring natural environments, cultural or historic resources, and ecological communities, including species and their habitats.” “Cultural systems” is mentioned in the definition of Indigenous Knowledge (IK) in the definitions section, 6101.4. Other than that, there is no mention of historic properties or cultural resources. Further, there appears to be no recognized relationship between ecosystem resilience and long-term Tribal management of landscapes and their ecosystems.

This raises the question, what is the relationship between Section 1610 and Part 6100? The Summary at the beginning of the proposed rule focuses on ACECs, while the Executive Summary addresses both ecosystems and ACECs, implying BLM sees a direct relationship between the two. However, while the focus of 1610 is on ACECs, there is no mention of them in Part 6100. Conflating the two in one public notice suggests there is. ACRA believes this needs to be clarified.

In addition, the proposed rule leaves unclear the relationship between Conservation Leases in 6100 and ACECs in 1600. For example, can an ACEC be a Conservation Lease, and/or vice-versa? Combining the two sections has confused what their differences and distinctions might be.

Furthermore, section 6101.4 defines “intact landscape” as “an unfragmented ecosystem that is free of local conditions that could permanently or significantly disrupt, impair, or degrade the landscape’s structure or ecosystem resilience, and that is large enough to maintain native biological diversity, including viable populations of wide-ranging species. Intact landscapes have high conservation value, provide critical ecosystem functions, and support ecosystem resilience.” As written, this definition does not consider cultural associations with landscape as part of evaluating a landscape’s intactness.

Generally speaking, American Indian traditional cultural practices and uses of ecosystems do not disrupt or degrade landscape structure or ecosystem resilience. Euro-American practices and uses have affected many landscapes, often adversely; for example, mining activities can “move mountains” and farming and ranching have altered many landscapes across our country. If sufficiently old and important to the Nation’s history, these may be NRHP-eligible landscapes. These are but two examples, albeit divergent, of landscape interpretation that should be included in BLM’s proposals by referencing National Register Bulletins (NRB) 30 (*Guidelines for Evaluating and Documenting Rural Historic Landscapes*), NRB 38 (*Guidelines for Evaluating and Documenting Traditional Cultural Properties*), and NRB 42 (*Guidelines for Identifying, Evaluating, and Registering Historic Mining Properties*) at a minimum.

Section 6102.2 discusses opportunities for co-stewardship of conservation leases and recognizes that such agreements might provide additional protection of cultural resources. Opportunities for Tribes to be stewards extend to a maximum of ten years, which seems counterproductive to the idea that cultural resources, especially cultural landscapes, as non-renewable resources, might be protected in perpetuity. ACRA recommends the Bureau revisit this section.

Lastly, this section asks whether the rule should constrain lands which are available for conservation leasing. In most cases, lands that contain NRHP-eligible properties or areas of sacred/ceremonial significance to Tribes should be constrained from conservation leasing, unless such lease is directly related to the preservation and/or conservation of such resources. Without a dominant and committed monitoring system, historic properties are often damaged or undermined in other conservation activities, and there does not appear to be a monitoring protocol established by this proposed rule.

V. Procedural Matters

Consultation and Coordination with Indian Tribes. It is unclear how the BLM determined that the proposed rule will not have a substantial direct effect on the relationship between Tribes and the government. This rule alone, which fails to promote and elevate Tribal values in conserving and preserving resources, has the potential to affect the relationship between Tribes and BLM due to absence of clear consultation and communication protocols. Further, the assumption that consultation is not required but will be conducted as an afterthought is insulting to those Tribes protecting their important places. It is unclear how the BLM can determine that there is no effect without some sort of consultation with Tribes.

National Environmental Policy Act (NEPA). The BLM intends to apply a Departmental Categorical Exclusion (CX) because it considers that the environmental effects of these regulations “are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.” Yet Section 6102.41 (“Termination and suspension of conservation leases”) addresses those instances under which a lease may be terminated, including “non-compliance with applicable law, regulations, or term and conditions of the lease or failure of the holder to use the lease for the purpose for which it was authorized.” These conditions suggest that failure to comply could have a significant environmental impact. ACRA suggests BLM develop, at a minimum, a programmatic Environmental Assessment to determine

whether establishment of the conservation leases could have significant environmental and cultural impacts and to establish procedures for investigating effects of individual undertakings.

In conclusion, ACRA suggests that the proposed rule be revisited with a more comprehensive view of landscape, how such places came about, and how such places have been maintained over the centuries. Further, recognition that some resources may have greater value to the Nation than others, largely because of their unique and nonrenewable nature, should be acknowledged in both the proposed rule and in the guidelines for leases.

ACRA appreciates this opportunity to comment on the proposed regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Amanda Stratton". The signature is fluid and cursive, with the first name being more prominent.

Amanda Stratton
Executive Director