



April 20, 2026

Tracy Parker  
Acting Director, Lands, Minerals, and Geology Management  
U.S. Department of Agriculture—Forest Service  
Sidney Yates Building  
1400 Independence Avenue SW  
1SE—Mailstop Code: 1124  
Attn: Director—LMG Staff  
Washington, DC 20250.

**Re: Locatable Minerals (RIN 0596-AD32)**

Dear Acting Director Parker:

The American Cultural Resources Association (ACRA), the trade association for companies specializing in cultural resources management (CRM), is submitting comments on the U.S. Forest Service's (Service) proposed rule on *Locatable Minerals* (RIN 3316-AA26).

ACRA member firms undertake much of the legally mandated CRM studies and investigations in the United States and employ thousands of professionals, including archaeologists, architectural historians, ethnographers, historians, and an increasingly varied 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.

America's national forests contain a multitude of historic and cultural resources that collectively help to tell the story of human civilization on this continent, reaching back thousands of years. Protecting and preserving this historic record is a critical component of the Service's stewardship responsibility to the nation.

Multiple federal statutes – including the National Historic Preservation Act (NHPA) (54 U.S.C. §§ 300101 et seq.), the Archaeological Resources Protection Act (ARPA) (16 U.S.C. §§ 470aa–470mm), and the Native American Graves Protection and Repatriation Act (NAGPRA) (25 USC §§ 3001-3013), among others – clearly define the obligations of federal agencies and those who use federal lands to protect and preserve property of historic and cultural significance. They also help the federal government fulfill its trust responsibility to Tribal nations.

With that in mind, ACRA is pleased to offer the following comments with respect to the proposed rule.

## Clarifying and Delineating Responsibilities Relating to Historic and Cultural Resources

ACRA appreciates language in the proposed rule that would more clearly delineate the responsibilities of operators and agency personnel to consider the effects of mining actions on historic properties, including provisions that would:

- define “surface resources” as including “scenic, cultural, archaeological, historic [or] paleontological” resources (proposed section 228.3(q)). The current regulations lack any definition of “surface resources,” leading to ambiguity over whether such resources include historic or cultural resources.
- include among the criteria and circumstances when an operator must obtain review and approval of a plan of operations “[o]perations situated on NFS lands that are or become. . . [a]reas of Tribal importance identified in a land management plan . . . [a]reas subject to an Indian Tribe’s reserved rights under a treaty or other Federal law or areas that contain sacred sites . . . [or] known to contain historic properties, or cultural or historic resources included in, or eligible for inclusion in, the National Register of Historic Places.” (proposed section 228.4(c)(8)).

As the Service notes in its proposed rule, such clarifications will help to remove ambiguity that exists in the current regulations about when a plan of operations is required. However, we are concerned that the phrase “known to contain” with reference to historic properties or cultural or historic resources included in, or eligible for inclusion in, the National Register of Historic Places, may lead to the disturbance of properties or resources yet to be discovered (ACRA’s comments address that issue in more detail below).

- require pre-submittal meetings, at which agency staff will provide to operators information regarding the existing conditions of the project area, including “[r]eserved treaty rights or other reserved rights of an Indian Tribe under Federal law; Cultural, historic, archaeological, or paleontological resources, or any other information necessary for the Forest Service to comply with applicable Federal laws,” including NHPA, the American Indian Religious Freedom Act, ARPA and NAGPRA. (proposed section 228.4(b)(2)(iv))

Early consultation and collaboration between parties is essential to ensuring that the potential effect of undertakings on historic properties is considered. In fact, it is a key principle underpinning Section 106 of the NHPA. By requiring pre-submittal meetings and requiring agency staff to provide information to operators about potential historic and cultural properties and resources, this provision helps ensure a more efficient permitting process with greater certainty and predictability.

- require operators to include in a plan of operation information, if known, regarding the presence of “[r]ights of an Indian Tribe reserved under a treaty or other Federal law; [and] [c]ultural, historic, archaeological, or paleontological resources, or any other information

necessary for the Forest Service to comply with applicable Federal laws. (proposed section 228.6(a)(5))

- expand upon the current requirements for the protection of surface resources, including the rights of Tribes reserved under a treaty or other Federal law and cultural, historic, and paleontological resources, including language specifying that the operator “shall comply with” NHPA, ARPA, NAGPRA and related laws. (proposed section 228.10(b))
- prohibit operations from disturbing, altering, injuring or destroying historic properties included on or eligible for inclusion on the National Register of Historic Places; paleontological or archaeological resources, or Native American or Alaska Native human remains; and which specify duties of both operators and agency staff should there be an inadvertent discovery, including compliance with ARPA, NGPRA and associated regulations. (proposed section 228.10(b)(5))

Inadvertent discoveries can and do happen during undertakings, particularly those that involve the disturbance of surface resources. This provision will help ensure that operators and the agency are better positioned to comply with federal statutes like NAGPRA.

- expand upon provisions in the current regulations regarding the availability of information to the public, expressly excluding “[i]nformation subject to the confidentiality requirements in” ARPA, NHPA and other statutes. (proposed section 228.18(b)).

ACRA strongly urges the Service to retain these essential provisions in any final rule.

### **Defining Historic Properties**

ACRA understands that there is some concern, as expressed in public comments to the Service, that the proposed rule does not define “historic” properties or resources.

ACRA believes that the statutes cited by the Service in the proposed rule provide ample definition and clarity as to what is meant by “historic” and related terms. This includes the definition of “historic property” contained in 54 U.S.C. §300308 of NHPA (which is referenced in Section 106 of NHPA at 54 U.S.C. §306108); the definition of “paleontological resource” in ARPA (16 U.S.C. §470aaa); and the definition of “cultural items” in NAGPRA (25 U.S.C. §3001).

With respect to concerns that small prospectors may have with respect to the impact of the proposed rules on activities with minimal effects, ACRA strongly encourages the Service to explore the development of a nationwide programmatic agreement as outlined in the Advisory Council on Historic Preservation’s (ACHP) regulations (36 CFR §800.14) as a potential way forward to ensure compliance with the NHPA for smaller undertakings.

### **Provisions Warranting Additional Consideration**

ACRA believes that additional consideration is needed for operations that will disturb less than 5 acres or for bulk sample removal that will cumulatively disturb 1,000 tons or more of material over the life of the operation, but for which there are no known historic properties, or cultural or historic resources included in, or eligible for inclusion in, the National Register of Historic Places. Under the proposed rules, operations that do not meet any of these criteria (in addition to other criteria) do not require an approved plan of operations before commencing (proposed section 228.4(c)).

There are likely to be instances in which operators plan to work in sites where historic properties may exist but have yet to be surveyed. Even a location smaller than five acres can have substantial historic or cultural resources, especially in places that are of significance to Tribes. Although the proposed rules contain provisions addressing inadvertent discoveries, as noted earlier, ACRA believes that additional consultation with Tribes over this provision is warranted.

Another area that ACRA believes is worthy of additional consideration is the provision in the proposed rules that includes, as an example of a limited operation for which an operator is not required to give prior notice, “removing certain types of non-woody species that will not exceed 10 feet in height at maturity and removing parts of plants not likely to result in the death of the plant, as necessary for line-of-sight activities for surveys, mapping, or geophysical activities, unless either of those operations involve species that are protected under the Endangered Species Act.” (proposed section 228.4(a)(2)).

ACRA notes that some vegetation may be tribally significant, but without adequate consultation, neither the agency nor the operator may know. ACRA encourages the Service to consider amending this provision to ensure that Tribal consultation is not overlooked.

### **The Forest Service’s Ability to Carry Out Its Responsibilities Under the Proposed Rule**

Although ACRA appreciates the Service’s efforts to provide greater clarity and consistency in the governance and use of NFS lands in connection with mining activities, we cannot ignore the larger context in which this proposed rule is being published. Regulations are effective only to the extent that there are qualified staff able to carry them out.

ACRA is deeply concerned that recently announced plans to move the Service’s headquarters to Utah and restructure of the agency<sup>1</sup> – on top of the reported loss of thousands of Service employees who voluntarily separated or faced reductions in force in the last year – will make it difficult for the Service to properly implement and enforce its regulations.

Throughout the Executive Branch we have seen qualified cultural resources expertise lost in the name of government efficiency. Unfortunately, these moves often have the opposite effect, making

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<sup>1</sup> <https://www.fs.usda.gov/about-agency/newsroom/releases/usda-prioritizing-common-sense-forest-management-moves-forest>

permitting processes *less* efficient as remaining agency staff confront ever-growing backlogs of statutorily required duties.

While agency structure and workforce are not covered by this proposed rule, ACRA strongly urges the Service to consider the downstream impact of these moves on its ability to provide proper stewardship of our national forests.

### **Conclusion**

Thank you for giving ACRA the opportunity to provide comments on the Locatable Minerals proposed rule.

We look forward to working with you to ensure that our national forests remain one of our nation's most valuable resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Amanda Stratton". The signature is fluid and cursive, with a large initial "A" and "S".

Amanda Stratton  
Executive Director