



June 26, 2023

U.S. Department of the Interior
Director (630), Bureau of Land Management
1849 C St., N.W., Room 5646
Washington, DC 20240

Submitted via Federal eRulemaking Portal at regulations.gov in Docket ID No. BLM-2023-0001-0001

Re: Comments on BLM Proposed Federal Land Policy and Management Act of 1976 (FLPMA) Regulations on Conservation and Landscape Health, Docket ID No. BLM-2023-0001-0001

Dear Director Stone-Manning:

The following comments are submitted by the Coalition for American Heritage on the Bureau of Land Management (“BLM”) Proposed Federal Land Policy and Management Act of 1976 (“FLPMA”) Regulations on Conservation and Landscape Health (“Proposed Rule”). 88 Fed. Reg. 19583-19604 (April 3, 2023). Protecting public lands by prioritizing the health and resilience of ecosystems across those lands is consistent with our fundamental values. We strongly support BLM’s efforts to ensure protection and restoration of public lands and cultural resources, sacred sites, treaty-reserved rights and other reserved rights of Indian Tribes and Indigenous Peoples. We offer the following comments for further consideration to help ensure effectiveness of the final rule.

I. Introduction

The Coalition is an advocacy group that protects and advances our nation’s commitment to heritage preservation. Supported primarily by the Society for Historical Archaeology and the American Anthropological Association, the Coalition collectively represents 350,000 cultural resource management professionals, academic archaeologists and anthropologists, and subject matter experts with an interest in the anthropology and archaeology of North America. Many of our members have conducted archaeological research on cultural resources located on BLM lands.

II. Background Information

We agree that BLM is authorized to promulgate this rule under FLPMA, which directs that the public lands should be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use. 43 USC § 1701(a)(8).

III. Comments on the Proposed Rule

A. Definitions

i. The proposed rule 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 the evaluation of a landscape’s intactness. In recognition that traditional cultural practices and uses of ecosystems by Indigenous Peoples do not disrupt, impair, or degrade a landscape’s structure or ecosystem resilience, the definition should state explicitly that an ecosystem’s support of the retention and transmission of the Indigenous Knowledge and practices of traditional communities qualifies that ecosystem as an intact landscape with high conservation value that is providing critical ecosystem functions and is supporting ecosystem resilience. BLM also could consider incorporating language from the National Register Bulletin 38 on evaluating cultural landscapes or traditional cultural places: “a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person, or exhibiting other cultural or aesthetic values.”

ii. In order to clarify that the definition of *High-Quality Information* includes Indigenous Knowledge that should be considered alongside other information that meets the standards objectivity, utility, integrity, and quality set forth in Federal law and policy, we suggest changing the definition as follows: “Indigenous knowledge can be relevant to and may qualify as high-quality information.”

iii. We suggest that the definition of *Indigenous Knowledge* should be modified so that it is consistent with prior Executive Orders and Proclamations and recent guidance which seek to define this term. (See Office of Science and Technology Policy-Council on Environmental Quality, *Memorandum on Indigenous Traditional Ecological Knowledge and Federal Decision Making*, November 15, 2021). OSTP and CEQ convened an interagency working group of more than 25 federal departments and agencies and sought and received input from Tribal Nations and Indigenous Peoples through Tribal consultation and listening sessions, and engaged with more than 1,000 individuals, organizations, and Tribal Nations (See Office of Science and Technology Policy-Council on Environmental Quality, *Memorandum on Guidance for Federal Departments and Agencies on Indigenous Knowledge*, November 30, 2022.) Thus, the definition we propose below is consistent with CEQ’s understanding and application of Indigenous Knowledge and has been well-vetted.

We suggest the following definition:

“Indigenous Knowledge is a body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment. It is applied to phenomena across biological, physical, social, cultural, and spiritual systems.

Indigenous knowledge can be developed over millennia, continues to develop, and includes understanding based on evidence acquired through direct contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation. Indigenous Knowledge is developed by Indigenous Peoples, including but not limited to, Tribal Nations, Native Americans, Alaska Natives, and Native Hawaiians. Each Tribe or Indigenous community has its own place-based body of knowledge that may overlap with that of other Tribes.

Indigenous Knowledge is based in ethical foundations often grounded in social, spiritual, cultural, and natural systems that are frequently intertwined and inseparable, offering a holistic perspective. Indigenous Knowledge is inherently heterogeneous due to the cultural, geographic, and socioeconomic differences from which it is derived, and is shaped by the Indigenous Peoples' understanding of their history and the surrounding environment. Indigenous Knowledge is unique to each group of Indigenous Peoples and each may elect to utilize different terminology or express it in different ways. Indigenous knowledge is deeply connected to the Indigenous Peoples holding that knowledge."

iv. We propose that BLM also include a definition of *Reserved Rights* as follows: "any rights to resources reserved or held by tribes or Indigenous Peoples, either expressly or implicitly, through treaties, statutes, executive orders, or other sources of Federal law."

B. Areas of Critical Environmental Concern

We support that the proposed rule seeks to clarify some aspects of the ACEC identification and management process. ACECs, if effectively implemented as FLPMA intended, have the potential to provide special management consideration for a wide array of places of tribal and cultural importance on BLM managed lands.

C. Intact Landscapes

We support the use of tribal co-management and co-stewardship agreements with tribes for the management, protection, and restoration of public lands. As currently proposed, § 6102.2(b)(4) requires authorized BLM officers to consider whether the BLM can identify opportunities for co-stewardship with Tribes; we suggest changing the language of that section to: "There are potential opportunities for co-management and co-stewardship with Tribes;". This minor modification would affirmatively require the BLM authorized officer to look for opportunities for tribal co-management and co-stewardship, rather than the less robust requirement to determine whether the BLM can identify any such opportunities.

D. Restoration

Federal agencies are bound by treaties and must both protect tribal reserved rights and provide access to tribal citizens with regard to sacred sites on federal lands. In addition, Executive Order 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All* (April 21, 2023), states that the pursuit of environmental justice is a duty of all executive branch agencies and should

be incorporated into their missions. Where tribal reserved rights and sacred sites on federal lands have been negatively impacted by environmental degradation, or access to specific sacred sites has been limited or impeded, restoration of those lands will positively impact Indigenous communities whose rights have been historically infringed upon by poor federal land management practices.

E. Conservation Leasing

We support the development and use of conservation leases for protecting, managing or restoring natural environments, cultural or historic resources, and ecological communities, and agree that BLM has this authority. In addition to a 10-year duration for certain conservation leases, we also suggest that there should be an option for 20-year leases, particularly for areas that need longer-term restoration or are culturally significant.

We note that some tribes may have an interest in entering into conservation leases, particularly for public lands that hold special significance or treaty-protected resources, but may lack financial or staff capacity to do so. We suggest that BLM consider whether financial support, administrative support, partnerships or other mechanisms might bolster opportunities for tribal co-management or development of Indigenous Knowledge for tribes seeking greater levels of involvement with federal land management policy and restoration but unable to do so because of resource constraints. For example, we suggest inclusion of a provision that would allow tribes or tribal entities to be granted an exemption from bonding requirements or other financial assurance requirements.

F. Management Actions for Ecosystem Resilience

We support the inclusion of Indigenous Knowledge as a core consideration by authorized officers prior to taking any management actions and as a part of the broader framework for the BLM to make wise management decisions. However, Section 6102.5, as written, fails to address principles related to Free, Prior and Informed Consent (“FPIC”) which are ethically essential to the sharing of Indigenous Knowledge. We suggest substantial revisions with respect to Management Actions for Ecosystem Resilience to ensure FPIC principles are squarely addressed within BLM’s processes.

G. Tools for Achieving Ecosystem Resilience-Land Health

The concept of land health as a tool to achieve ecosystem resilience holds promise. Indigenous Peoples have managed their lands and waters for millennia to achieve land health and ecosystem resilience. Integrating Tribal consultation, appropriate use of IK, and other obligations discussed throughout these comments into land health fundamentals, standards and guidelines, as well as assessments, evaluations, and determinations will be necessary.

H. Procedural Matters

BLM determined that this proposed rule would have no substantial direct effects on federally recognized Indian tribes, on the relationship between the Federal Government and tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We believe that there is potential for the proposed rule to have substantial direct effects on federally

recognized Indian tribes and firmly believe that tribal consultation is appropriate when agencies proposed rules that will impact Indigenous rights and resources.

We are generally supportive of the proposed rule, and are interested to see conservation leases and ACECs used more broadly to protect and restore public lands and tribal treaty rights and other reserved rights. We suggest that tribal consultation would be valuable for BLM to determine how the rule might most effectively achieve its aims in partnership with tribes for whom it holds resources in trust.

Respectfully,



Policy Director
Coalition for American Heritage