



NewsMAC

Newsletter of the New Mexico Archeological Council

**P.O. Box 25691
Albuquerque, NM 87125**

NewsMAC Fall 2023 (2023-3)

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PRESIDENT'S ADDRESS

Happy Fall, NMAC community!

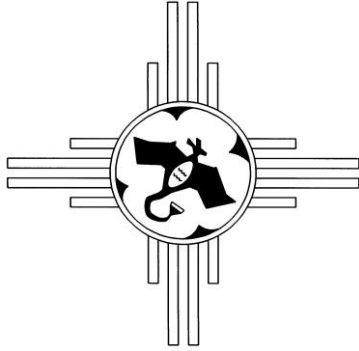
We are looking forward to hosting you all for the NMAC Annual Meeting, which will be held November 10th and 11th at the Hibben Center for Archaeological Study, UNM. The theme of this year's meeting is *Innovative Research and Management of Cultural Resources on Federal Land*. We have an excellent keynote presentation on the evening of November 10th related to the dating of the recently discovered White Sands footprints, and on November 11th we have a full day of presentations and panel discussions related to the meeting's theme. A full agenda will be made available closer to the meeting's date. Registration is now open on the NMAC website, so we encourage you to register soon because space is limited.

Beyond our preparations for the Annual Meeting, NMAC has also continued its advocacy efforts. In June, we submitted a comment letter to the Department of the Interior on the proposed Federal Land Policy and Management Act (FLPMA) regulations regarding Conservation and Landscape Health. FLPMA is the foundational law for the management of lands by the Bureau of Land Management and the proposed regulations would strengthen and clarify some of the land protection provisions within the law. Given that the Bureau of Land Management manages over 13 million acres of land in New Mexico, NMAC felt it was important to have a voice in the proposed regulations. You can find the comment letter in full within this NewsMAC issue.

Happy reading!

Sincerely,

Michael Spears
NMAC President, 2023
mspears6@gmail.com



NEW MEXICO ARCHEOLOGICAL COUNCIL
P.O. Box 25691, Albuquerque, NM 87125

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**

Director Stone-Manning:

The following comments are submitted by New Mexico Archeological Council (NMAC) 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). NMAC is a New Mexico-based nonprofit organization whose purpose is to maintain and promote the goals of professional archaeology in New Mexico. BLM-managed lands make up over 17 percent of New Mexico’s land base, and include tens of thousands of cultural resources, including many of traditional cultural significance to Indian tribes. Given the large amount of BLM lands within New Mexico, and their importance to Indian tribes and other interest groups, we strongly support BLM’s efforts to ensure protection and restoration of public lands and cultural resources through this Proposed Rule. We offer the following comments for further consideration to help ensure the effectiveness of the final rule.

A. Definitions

Intact Landscape - 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."

High-Quality Information - 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 of 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." This would remove the portion of the sentence which states "when that knowledge is authoritative, consensually obtained, and meets the standards for high-quality information."

Indigenous Knowledge - 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). We suggest the following definition of Indigenous Knowledge:

"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."

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. These rules are an important step toward making ACECs an effective tool for providing special management consideration on BLM managed lands, however, we believe that these clarifications can only be effectively implemented with the creation of a nationwide ACEC program within the BLM. This program could provide support to BLM field offices that are tasked with the identification, designation, and management of ACECs, while providing a nationwide perspective that could promote consistency in these practices.

In response to BLM's request for comments regarding management provisions (pages 19593-19594, Subpart 1610), we recommend the following: (1) Management prescriptions should be developed in consultation with consulting parties including Indian tribes; (2) The RMP should fully identify and describe the minimum management practices needed to protect ACECs; (3) RMPs should use binding language when describing special management prescriptions for ACECs, rather than using conditional or future tense terms; (4) Allowed uses within ACECs should be systematically reviewed against special management prescriptions to ensure that there are no contradictions between the management prescriptions and allowed uses; (5) Special management practices should be monitored for effectiveness and reevaluated at regular intervals; (6) Consulting parties should maintain an active role in evaluating and reviewing the effectiveness of special management prescriptions on protecting ACECs.

To further support our recommendations listed above, we suggest the following specific language changes to several subsections under § 1610.7-2:

§ 1610.7-2(a) states: "An Area of Critical Environmental Concern (ACEC) designation is the principal BLM designation for public lands where special management is required to protect important natural, cultural, and scenic resources, systems, or processes, or to protect life and safety from natural hazards." The term "values" should be added to this list as per the BLM's expanded definition to fully capture the scope of an ACEC designation.

§ 1610.7-2(a) states: "An Area of Critical Environmental Concern (ACEC) designation is the principal BLM designation for public lands where special management is required to protect important natural, cultural, and scenic resources, systems, or processes, or to protect life and safety from natural hazards." We are encouraged by the Department of Interior's proposal for ACEC to be the principal designation for public lands where special management is required, particularly given the wide applicability of ACECs. However, ACEC identification, designation, and management has not consistently provided special management consideration for resources, systems, values, or processes. This proposed rulemaking needs to be coupled with a revision of the section 1613 manual and a standardization of practices related to the identification, designation, and management of ACECs.

§ 1610.7-2(c)(3) states: "If nominations are received outside the planning process, interim management may be evaluated, considered, and implemented ..." This wording should be changed

from “may be evaluated” to “must be evaluated.” Strengthening this language will ensure that ACECs nominated outside the RMP process are timely considered. Land use planning at the BLM is a long process. The development of RMPs is a multi-year process for individual field offices that typically occur at 15-to-20-year intervals. If the evaluation of nominated ACECs only takes place during this planning process, there may be many years or even decades when no nominated ACECs would be considered.

§ 1610.7–2(f) states: “The Field Manager must identify the boundaries of proposed ACECs to encompass the relevant and important resources, values, systems, processes, or hazards, and any areas required for the special management attention needed to provide protection for the relevant and important resources, values, systems, processes, or hazards.” This rulemaking should clarify that “the Field Manager must identify the boundaries of proposed ACECs with tribal cultural significance in consultation with Indian tribes, and tribes must be given the opportunity to identify boundaries of culturally significant ACECs through their own methodological framework.” Further, this statement should clarify that ACEC boundaries are not restricted to administrative boundaries. Given the potential of ACECs to be at a landscape-scale, this rulemaking should instruct Field Managers to determine if identified ACECs cross administrative boundaries, and if so, instruct Field Managers to coordinate the management of resources, systems, or processes that require special management consideration with adjacent land managers, including Indian tribes.

§ 1610.7–2(3) states: “The Field Manager must seek nominations for ACECs, during public scoping, from the public, State and local governments, Indian tribes, and other Federal agencies (see § 1610.2(c)) when developing new plans or revising existing plans, or when designations of ACECs are within the scope of a plan amendment.” The federal government has a trust responsibility to Indian tribes, which include the proper management of public lands. In keeping with Executive Order 13175, § 1610.7–2(3) should separately require the Field Manager to engage in government-to-government consultation with associated federally recognized tribes, “when developing new plans or revising existing plans, or when designations of ACECs are within the scope of a plan amendment.”

§ 1610.7–2(3) should also state that external ACEC nominations can be provided in any form, including being verbally transmitted during government-to-government consultation. The traditional ACEC nomination process requires extensive documentation and many tribes do not have the capacity to nominate ACECs as the process currently stands. Allowing tribes to transmit information about resources, systems, and processes that require special management consideration on BLM-managed lands through multiple means will help ensure places of Tribal importance located on BLM-managed lands are taken into consideration during the land use planning process and may support the co-management and co-stewardship of BLM managed lands.

§ 1610.7–2(3)(i)(1) states: “Monitoring shall be performed, and inventories shall be updated at intervals appropriate to the sensitivity of the relevant and important resources, values, systems, processes, or hazards, to ensure that data are available to identify trends and emerging issues during plan evaluations.” The rule should explicitly state that monitoring of ACECs designated for their tribal cultural importance should be done in close consultation and collaboration with associated Indian tribes.

§ 1610.7–2(d)(1) states: “The area contains resources with significant historic, cultural, or scenic value; a fish or wildlife resource; a natural system or process; or a natural hazard potentially impacting life and safety.” The rule should state that resources, values, systems, and processes significant to Indian tribes have relevance as potential ACECs. The rule should also state that ACECs may be of any scope or geographic scale.

§ 1610.7–2(d)(2) states: “The resources, values, systems, processes, or hazards have substantial importance, which generally requires that they have qualities of special worth, consequence, meaning, distinctiveness, or cause for concern. Authorized officers may consider the national or local importance, subsistence value, or regional contribution of a resource, value, system, or process. Resources, values, systems, or processes may have substantial importance if they contribute to ecosystem resilience, including by protecting intact landscapes and habitat connectivity. A natural hazard can be important if it is a significant threat to human life and safety.” The rule should state that “resources, values, systems, or processes may have substantial importance if they have tribal cultural significance to Indian tribes.” The rule should note that Indian tribes are uniquely qualified to identify if resources, systems, values, or processes meet the Importance criteria, and their evaluations should hold equal standing to the evaluations of other experts.

§ 1610.7–2(d)(3)(h) states: “The approved plan shall list all designated ACECs, identify their relevant and important resources, values, systems, processes, or hazards, and include the special management attention, including mitigating measures, identified for each designated ACEC.” The identification of ACECs by Indian tribes may require the sharing of culturally sensitive information. The rule should protect this type of sensitive information about ACECs from public disclosure when such disclosure could result in a significant invasion of privacy, damage to the ACEC, or impede the use of an ACEC as a place of traditional use. This should include restricting the information provided about such ACECs within RMPs.

§ 1610.7–2(j)(1) states that an ACEC designation may be removed if: “The State Director finds that special management attention is not needed because another legally enforceable mechanism provides an equal or greater level of protection.” This section should be removed. It undermines the effectiveness of an ACEC designation if the State Director can unilaterally remove an ACEC designation if they consider there is another legally enforceable mechanism that provides an equal or greater level of protection. If this section is not removed, government-to-government consultation should be mandated as part of the removal of ACEC designation process.

C. Intact Landscapes

§ 6102.2(b)(3) and (4) state: “(3) The BLM can work with communities to identify geographic areas important for their strategic growth and development in order to allow for better identification of the most suitable areas to protect intact landscapes; (4) The BLM can identify opportunities for co-stewardship with Tribes.” We appreciate that the proposed rule provides Indian tribes an opportunity to identify intact landscapes, including ACECs. We propose that this language be strengthened to state “(3) The BLM must work with communities, including Tribes, to identify geographic areas important for their strategic growth and development in order to allow for better identification of the most suitable areas to protect intact landscapes;”. In keeping with the federal government’s trust responsibilities to

Indian tribes, these identification efforts should include meaningful and consistent government-to-government consultation with Indian tribes and opportunities for tribally led identification efforts that use their own ontological and epistemological frameworks. In addition, as proposed, the Tribal identification opportunities are un-funded. The BLM should commit funds to support Tribally-led identification efforts, Tribal monitoring, and consultation regarding the identification and management of 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. Procedural Matters

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

Respectfully,

Michael Spears
New Mexico Archeological Council President, 2023



New Mexico Archaeological Council 2023 Annual Meeting
Innovative Research and Management of Cultural Resources on Federal Lands

November 10-11, 2023
Hibben Center for Archaeological Study
University of New Mexico

The 2023 NMAC Annual Meeting's theme is *Innovative Research and Management of Cultural Resources on Federal Lands*. Federal lands make up over 30 percent of New Mexico's land base, and with this conference NMAC hopes to highlight innovative research, collaborations, partnerships, programs, and management related to cultural resources taking place on these lands. We will have a wide variety of papers from land managers, land stewards, and their collaborators on federal lands throughout New Mexico.

Keynote Speaker Event

November 10, 2023

6:00-7:30 PM

How Old are the White Sands Footprints? Why Ruppia Lake Balls are a Problem

Dave M. Rachal, Robert Dello-Russo, Jim Mead, and Matt Cuba

Conference

November 11, 2023

9:00 AM-5:00 PM

Innovative Research and Management of Cultural Resources on Federal Lands

Registration is now live at the New Mexico Archeological Council's website:

<https://nmarchcouncil.org/events/annual-meeting/>

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NMAC is a nonprofit organization whose purpose is to maintain and promote the goals of professional archaeology in New Mexico.

NMAC's goals are to:

- promote archaeological research within New Mexico and disseminate knowledge arising from that research
- promote awareness of New Mexico's cultural resources among public agencies, corporations, and members of the public.
- encourage the legal protection of cultural resources, and encourage high standards for professional archaeology

2023 NMAC Contacts

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