



# National Association of Conservation Districts

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Tracy Stone-Manning, Director  
Bureau of Land Management  
Attention: 1004-AE92, Director (630)  
1849 C St. NW, Room 5646  
Washington, DC 20240

***RE: Conservation and Landscape Health – Proposed Rule. RIN 1004-AE92***

Dear Director Stone-Manning:

The National Association of Conservation Districts (NACD) thanks the Bureau of Land Management (BLM) for accepting public comments to inform the development of the agency's proposed rule (1004-AE92) focused on incorporating conservation into the multiple-use framework. We appreciate the opportunity to provide input and thank the BLM for hosting public meetings to educate stakeholders, field questions, and offer clarifications.

NACD represents America's 3,000 conservation districts, their respective state and territory associations, and the over 17,000 individuals who serve on their governing boards. Conservation districts are local units of government established under state law to carry out natural resource management programs at the local level and work with landowners and operators in every part of the country to help them manage and conserve land and water resources on private and public lands. Conservation districts share a single mission: to work cooperatively with federal, state, and local resource and land management agencies, and private sector interest groups to provide technical, financial, and other assistance to help landowners and operators apply conservation to the landscape. Conservation districts work hand-in-hand with all levels of government to ensure that programs, regulations, and initiatives are tailored to address various local resource needs. NACD looks forward to working with BLM and all stakeholders to ensure that any final rule supports effective conservation while ensuring working lands work for our nation's producers and land stewards.

NACD appreciates BLM's intent for the proposed rule to "support President Biden's vision for locally driven and locally-led conservation, enabling communities, through the land management planning process, to help identify lands for restoration and protection and to provide input on where development may be appropriate." NACD also supports BLM's mission to ensure the health, diversity, and productivity of public lands while supporting multiple use and sustained yield. NACD supports maintaining multiple use on public lands including grazing, timber harvesting, resource extraction, and recreation. Supporting these and other uses are critical to the economies of communities across the country, ensuring the availability of essential resources, and facilitating constructive voluntary conservation. Conservation districts work closely with BLM and other governmental and local stakeholders to ensure that all activities on public lands are conducted in a safe and sustainable manner.

In the original Soil Conservation and Domestic Allotment Act of 1935, Congress correctly identified, and President Franklin Roosevelt agreed, that “wastage of soil and moisture resources on farm, grazing, and forest lands of the Nation, resulting from soil erosion, is a menace to the national welfare and that it is hereby declared to be the policy of Congress to provide permanently for the control and prevention of soil erosion and thereby to preserve natural resources, control floods, prevent impairment of reservoirs, and maintain the navigability of rivers and harbors, protect public health, public lands and relieve unemployment.” Conservation districts would argue the 1935 law created a working definition for conservation that is as relevant today as when it was first enacted – the well managed and sustainable use of resources to provide for the triple bottom line of people, economy, and environment. However, NACD has some concerns with the approach BLM is taking with this proposed rule and a shift to “preservation” rather than “conservation.”

Conservation is not hands-off preservation. NACD believes that the most effective way to empower and incentivize conservation on public lands is to promote multiple-uses of those lands and encourage the principles of conservation in all of those uses. In many ways, conservation is already built into the multiple use framework through the “sustained yield” mandate. Grazing, for instance, must be managed according to the principles of rangeland health and meet, or make significant progress towards meeting, the applicable land health standards. Other land use authorizations are also required to ensure the use does not cause unnecessary or undue degradation and the mitigation hierarchy of “avoid, minimize, mitigate” is already used in concert with authorizing any use through various terms and conditions. NACD believes conservation should remain as a component of all land uses and authorizations and encourages BLM to carefully consider the impacts of elevating conservation itself as a “use.”

NACD agrees that it is now more important than ever to effectively manage our country’s public lands to mitigate the impacts of growing environmental challenges and ensure that we can sustainably provide essential resources for future generations. The quick development of the rule and limited time to provide feedback means that key stakeholders have been unable to receive clarifications and pose questions. While NACD supports the stated goals of the proposed rule, we are concerned by the uncertainty regarding how several key components of the rule will be implemented and potential economic impacts on local communities and public land users.

**BLM has stated that no use will be prioritized over another. NACD is concerned that by its very nature, conservation will be prioritized over other uses. This risks placing current users in an adverse position to future voluntary conservation efforts on working lands.**

FLPMA defines multiple use as including the management of public lands in a way that “best meet[s] the present and future needs of the American people.”<sup>1</sup> Multiple use is further defined as a combination of uses including but not limited to “recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values.”<sup>2</sup> FLPMA also provides six principal uses for land management that include and are *limited* to, “domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.”<sup>3</sup>

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<sup>1</sup> 43 U.S.C. 1701(a)(12)

<sup>2</sup> 43 U.S.C. § 1702(c)

<sup>3</sup> 43 U.S.C. § 1702(l)

In the proposed rule and subsequent outreach, BLM insists that there will be no prioritization of one use over another. In reality conservation, under the proposed rule (as defined by BLM), will naturally result in the necessary prioritization of conservation over other uses. This may have unintentional negative impacts to the land and communities reliant on access and use of these lands. The working definition within the proposed rule states that conservation is for the protection and restoration of public lands, including the identification of intact landscapes and Areas of Critical Environmental Concern (ACEC). ACECs are defined as areas where special management attention is needed to protect important historic, cultural, and scenic values, fish, or wildlife resources, or other natural systems or processes, or to protect human life and safety from natural hazards.<sup>4</sup> As written, this definition may unintentionally restrict certain uses on public lands. The designation of intact landscapes and expanding the identification and restoration of ACECs may prioritize conservation as a priority over other uses if the goal is to preserve and protect those landscapes over time.

Intact landscapes are defined 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.” This definition contains subjective and vague terms that are open to a wide range of interpretations.

We are concerned that “intact” may be misapplied in terms of ecological function or ecological potential. For example, common dictionary definitions of “intact” include terms such as “not altered,” “untouched,” and “not influenced or swayed.” In many instances, conservation requires active restoration be it through removal of invasive species, reintroduction of native species, and rebuilding and stabilization of stream beds and water ways to name a few. Additionally, managed rangelands can never be “not altered” or “untouched” due to the extent of human habitation and development across the country. “Intact” is not defined or considered by the rangeland science community for this very reason. All ecosystems are “intact” in some functional way, even degraded ecosystems. An understanding and description of the ecological shifts or transitions that have occurred due to legacy management are imperative in order to frame management actions and implement successful practices.

Ecological function still exists in ecologically degraded sites. However, any ecological site not in a reference state cannot be “intact” by definition. They may be at risk of crossing an ecological threshold, but that does not mean function is not “intact.” NACD believes this needs to be clarified to prevent future conflict over what the “intact” area is and how it is determined. NACD suggests changing “intact” throughout the proposed rule to applicable variations of something like “stable ecological state” or “desired ecological state” as defined by established baseline metrics informed by the best available science. Without clarification, it is conceivable that almost all BLM managed land could be argued to be “intact landscapes” and designated as ACECs under the proposed rule’s vague and overly broad definition.

Under the proposed rule, BLM would be required to inventory and manage “intact landscapes” to protect them “from activities that would permanently or significantly disrupt, impair, or

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<sup>4</sup> 43 U.S.C. § 1702(a)

degrade the structure or functionality...” However, the activities that would impair these intact landscapes are not identified in the proposed rule. Management of intact landscapes under the proposed rule will undoubtedly adversely affect uses and activities currently occurring on BLM lands.

The reason much of BLM managed land could be characterized as intact is because of the past and current management and stewardship of ranchers, hunters, recreationists, and others. Yet the proposed rule sets the stage for conflict and potentially working against those who have proven track records of caring for these lands. The proposed rule's restrictive management on "intact landscapes" may prove to punish those land users that have stewarded the lands to be in the intact condition that they are today.

BLM's proposed rule requires that a restoration plan be developed within the land health assessment and subsequent land use plan. This may also have the effect of unintentionally prioritizing conservation over other land uses. The proposed rule states that such conservation leases “would not override valid existing rights or preclude other, subsequent authorizations so long as those subsequent authorizations are compatible with the conservation use.” However, BLM has not clarified within the proposed rule how conservation leases will be compatible with the other principal land uses laid out in FLMMA. Mining and grazing, for example, are uses that are likely inherently incompatible. Without proper clarification from BLM regarding how different land uses are permitted to interact, the proposed rule may serve to prioritize conservation over other interests, which is contrary to the statutory intent outlined in FLMMA. As a result, it may exclude various land uses programmatically simply because of their incompatibility with conservation. While BLM's objectives in the proposed rule are well-intended, the rule as written may, in some instances, require that conservation is prioritized over other uses.

**BLM should reconsider the determination that analysis under the National Environmental Policy Act was not necessary.**

The National Environmental Policy Act (NEPA) defines the process by which agencies assess the likely environmental impacts of changes to federal policy. NEPA provides that a “major federal action is one that significantly affects the quality of the human environment.”<sup>5</sup> To maintain functioning and productive ecosystems, it is imperative that local input is collected and considered during NEPA planning. NACD believes that local Resource Management Plan (RMP) development and implementation is the most appropriate way to make resource use, management priorities, restoration, reclamation, monitoring, and mitigation decisions. The addition of a new use into the multiple-use framework will potentially have a significant impact on stakeholders' ability to use public lands for certain activities and should be reflected in an Environmental Impact Statement.

Given BLM's aim for the proposed rule to modernize the agency and provide landscape-scale benefits, it is reasonable to assume that any program affecting the entirety of the BLM's 245 million surface acres and 700 million subsurface acres would have widespread impacts on the human environment, economy, social customs and culture, and ecosystems contained therein.

BLM is responsible for managing nearly half of the land area in the 11 contiguous Western states. Many of these states, and the local communities within them, rely heavily on the economic benefits

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<sup>5</sup> 42 U.S.C. § 4332(2)(C)

and social stability of various uses on these lands. Without clear guidance regarding the impact of a 10-year conservation lease or designation of intact landscapes and ACECs could have on the ability of communities to expand or begin projects on these public lands, this rule may not fully consider its impact on the multiple-use framework.

**State and Local Governments are the entities that will be impacted by the implementation of the proposed rule and should be included and coordinated with in the planning and operation of any proposed or approved projects, conservation leases, and ACEC designations.**

Conservation districts provide local leadership to ensure the long-term conservation and enhancement of natural resources. They focus on natural resource issues and solutions specific to and supported by the communities they represent, and in doing so play a key role in ensuring the socioeconomic stability of communities and their residents. Local conservation districts help land managers, cities, towns, and counties to meet their land management goals and objectives. NACD believes conservation districts play an invaluable role in facilitating conservation in local communities and should be provided the opportunity to consult on the development of conservation leases or ACEC designations.

NACD believes coordinating with and incorporating input from local communities is paramount to the successful implementation of this rule. NACD encourages BLM to work as closely as possible with local communities and conservation districts while planning land uses and provide them with a right of first refusal on conservation leases or landscape designations that will be implemented in their jurisdictions. This will help to avoid potential conflict with outside entities interested in leading projects and ensure that local communities have the opportunity to provide input and help shape projects.

Additionally, the proposed rule does not specify how BLM intends to engage in robust public outreach, ensure adequate consideration of local input and integrate the new systems into existing local policies and plans. NACD believes BLM's engagement must extend well beyond consideration of public comments. NACD encourages BLM to provide adequate resources and time to ensure that the input of local communities is considered throughout the development and implementation of the proposed rule.

**NACD believes that current federal regulations, rules, policies, and programs can successfully support BLM's goal of maintaining functioning and productive ecosystems while also supporting sustained yield for future generations even after disturbances and with environmental change.**

There are many tools and processes available to manage our public lands overseen by the BLM. Conservation districts are actively involved in projects to maintain, enhance, restore, and monitor healthy ecosystems. Conservation districts are involved in developing their local BLM RMPs, provide leadership in bridging the gap between the public and private lands, and work on landscape projects spanning multiple landowners. NACD would highlight that BLM currently already possesses many of the authorities required to meet the several objectives outlined in the proposed rule.

- While land health standards currently reside in Section 4180 of the grazing regulations, nothing precludes BLM from conducting ongoing, trend monitoring of BLM landscapes. Data is regularly gathered as part of multiple use management.
- BLM currently incorporates restoration, mitigation and broader concepts of conservation into each of the stipulated multiple use management activities. There are bonding, reclamation, and resource management requirements in each of the multiple use authorizations, which must consider sustained yield, and depends on ongoing conservation (balanced use and landscape health) of the landscape.
- BLM currently conducts restoration and mitigation initiatives and employs a variety of tools, including but not limited to: Memoranda of Understanding (MOU), cooperative agreements, volunteer agreements, conservation leases<sup>6</sup>, specific restoration projects<sup>7</sup>, compensatory mitigation<sup>8</sup> activities, and even the application of public dollars through the BLM Foundation<sup>9</sup>.
- BLM already has the ability to process and utilize ACECs, and has the ability to identify and prioritize the management of landscapes with specific attributes through the existing land management process.
- BLM already has existing range improvement authorities and ability to enter into cooperative range improvement agreements with third-parties with binding terms and conditions and financial assurances.<sup>10</sup>

BLM/DOI currently have the authority to utilize existing voluntary conservation programs to fulfill many of the goals outlined in the proposed rule. NACD encourages BLM to consider bolstering these existing systems with additional resources and staff as the agency works toward finalizing the rule.

**No advanced notice of intent to produce a rule and a limited comment period.**

BLM has consistently expressed their intent for the proposed rule to be shaped by public input and stakeholder interests, but NACD is concerned that the rollout may not have effectively achieved this goal. NACD joined hundreds of individual producers, land managers, and organizations in requesting BLM to extend the comment period. The proposed rule raises a variety of questions regarding how several key components of the new initiative will be implemented. Since BLM has not provided stakeholders guidelines, clarifications, and instruments needed to understand new systems mandated in the rule, NACD believes a 75-day or even a 90-day comment period is insufficient for stakeholders to properly interpret the rule, understand its potential ramifications, and provide meaningful input and guidance. For example, many livestock producers – one of BLM’s primary partners in fulfilling the agency’s mission of managing landscapes for multiple use and sustained yield – have expressed that the agency could have provided advanced notice of the rulemaking and allowed for time and opportunities for themselves and additional stakeholders to review the rule and seek clarifications. Moving forward, NACD encourages BLM to engage as

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<sup>6</sup> BLM staff outlined existing conservation leases as a tool for conservation during the BLM Informational Briefing in Reno, NV.

<sup>7</sup> <https://www.doi.gov/pressreleases/biden-harris-administration-announces-161-million-landscape-restoration>

<sup>8</sup> <https://www.doi.gov/sites/doi.gov/files/m-37075-compensatory-mitigation-m-op-reinstatement-04.15.22.pdf>

<sup>9</sup> <https://www.blm.gov/press-release/interior-department-announces-historic-launch-foundation-americas-public-lands>

<sup>10</sup> 43 CFR § 4120

closely as possible with all stakeholders, provide clarifications, and foster open dialogue as the agency works to develop and implement the rule.

### **Conclusion**

NACD truly appreciates BLM's efforts to bolster conservation, ensure the health, diversity, and productivity of public lands, while also supporting multiple use and sustained yield. We also appreciate that it is now more important than ever that our country ensures the effective conservation of public lands, a sustainable future for future generations, and economic opportunity for all communities. However, we are concerned that the proposed rule does not effectively satisfy many of the goals outlined by BLM to support multiple use and sustainable working lands. NACD respectfully requests that BLM carefully consider all comments provided, and looks forward to continue working closely with BLM to ensure that the final rule reflects the input and guidance from local communities and conservation districts in every part of the country.

Thank for considering NACD's comments.

Sincerely,

A handwritten signature in black ink that reads "Kim LaFleur". The signature is written in a cursive, slightly slanted style.

Kim LaFleur

NACD President