

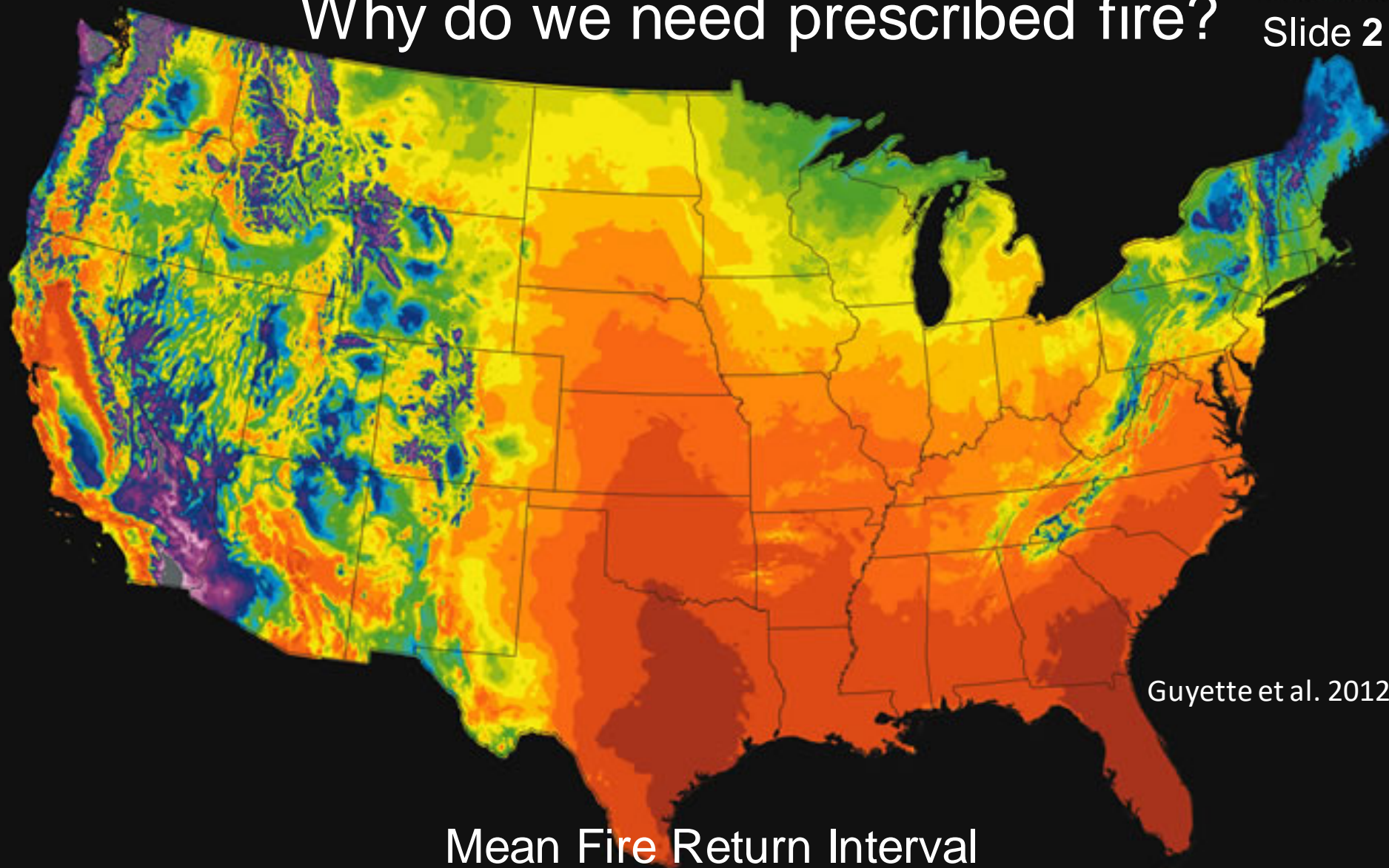
House Memorial 42 - Expanding the Use of Prescribed (Rx) Fire in NM



Presentation to Water and
Natural Resources Interim Committee

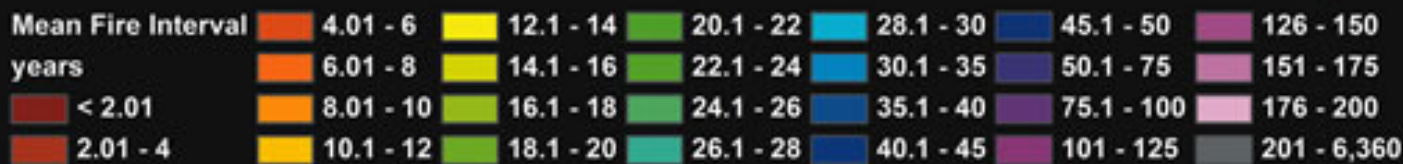
August 6, 2020

Why do we need prescribed fire?



Guyette et al. 2012

Mean Fire Return Interval



Thinning and Burning Changes Fire Behavior



Untreated



Thinned



Rx Burn



Thinned and Burned

2017 Cajete Fire Example

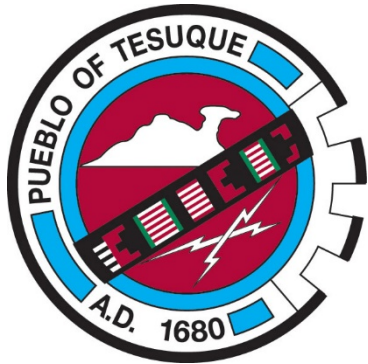
Slide 4

Wildfire (lower left) burned into area that was thinned and burned (center)
and was contained (upper right)



HM42 Working Group Participants

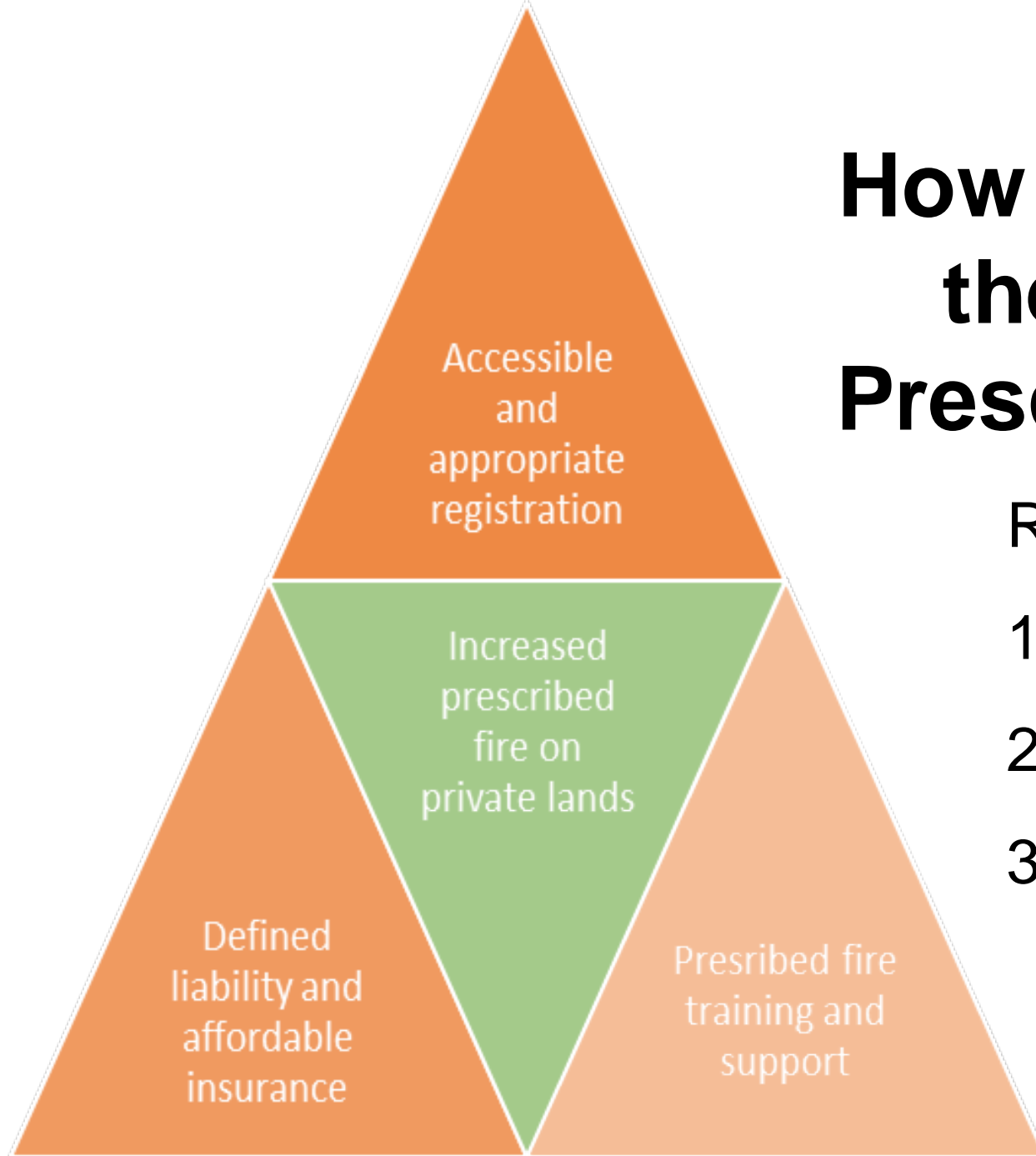
(See full list page 36 (page 4, Sources), Final Report 6.15.20)



United States Department of Agriculture

Natural Resources Conservation Service

How to Expand the Use of Prescribed Fire



Report Overview

1. Liability
2. Training
3. Permitting

Presenters

Laura McCarthy, State Forester,
Forestry Division Director,
Energy, Minerals and Natural
Resources Department



Emily Hohman, Director, U.S. Fire
Learning Network, The Nature
Conservancy



Dr. Doug Cram, Extension Forest
and Fire Specialist, Cooperative
Extension Service, New Mexico
State University



Liability



**See pages 9 – 14 &
Table 2 page 30,
Final Report 6.15.20**

Emily Hohman, Director, U.S.
Fire Learning Network, The
Nature Conservancy



Prescribed Fire Liability Overview

(see Table 2, page 30)

Strict Liability: a person is legally responsible for harm even if no negligence is found and regardless of standards of care taken.

Negligence: a standard of liability under which a person is legally responsible for harm if reasonable care was not taken

- Permits the defense that the accident occurred although the defendants satisfied all the applicable standards of care.

Gross Negligence: reasonable care must be taken but a person is legally responsible for harm only if it can be shown that there was a meaningful disregard for reasonable care (or an intentional failure to carry out a duty of care to others).

Uncertain Liability: liability not defined in statute; common law usually followed to assign liability (current situation in New Mexico).

Impact of Uncertain Liability

- Insurance is unavailable or limited and expensive
- Environment of uncertainty for private practitioners and landowners reduces use of prescribed fire
- Contractors and non-profit land management organizations are hesitant to invest in NM
- Uncertain liability in New Mexico is possibly the single most critical factor limiting implementation on private lands



Liability Options for NM



- Consider two options:
 - Negligence
 - Gross negligence
- Either standard would:
 - Reduce uncertainty
 - Improve insurance availability and affordability
 - Address most critical barrier to implementation on private lands
- Gross negligence likely to provide greatest benefit; however, a negligence standard would also be an improvement

Liability Options for NM

- Both standards often tied to training or other requirements; this is most common for gross negligence:
 - Eligibility for a “higher” standard of liability is contingent on demonstration of knowledge/competence
 - Certification through a training standard
 - Permitting
 - Insurance companies want the insured to meet a recognized industry standard



Additional Options

- Consider a “tiered” approach
 - Example: Negligence for all practitioners; gross negligence for trained and certified practitioners only
 - Tying liability standards or reduction in civil penalties to training and certification provides a strong incentive to participate in a voluntary program





Additional Options

- Include “right to burn” language recognizing prescribed fire as an accepted practice and right of the landowner
- Revise current “double damages” statute to actual damages
- Ensure synergy with any changes to training and permitting – issues are highly interconnected (see Table 1, page 29)

Training



**See pages 14 – 21 &
Table 3 page 31,
Final Report 6.15.20**

Dr. Doug Cram, Extension
Forest and Fire Specialist,
Cooperative Extension
Service, New Mexico State
University



New Mexico Cooperative Extension Service



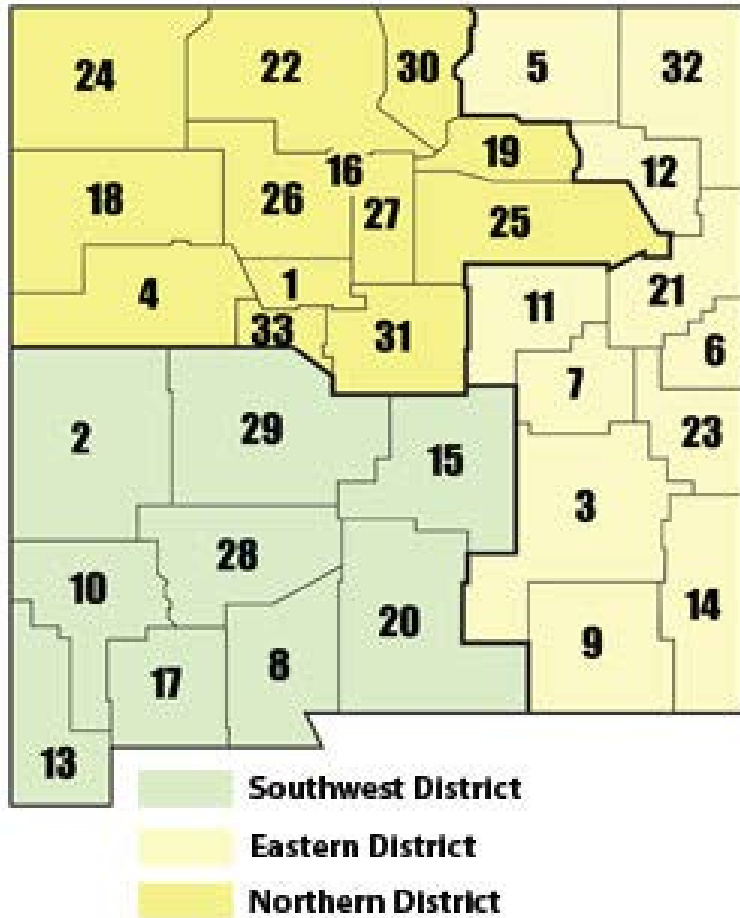
Cooperative Extension Service - provides the people of New Mexico with practical, research-based knowledge and programs to improve their quality of life.

1914 – 2014

100 Year Anniversary of the Smith-Lever Act

New Mexico

Cooperative Extension Service



- | | |
|-----------------------|-----------------------|
| 1. Bernalillo | 18. McKinley |
| 2. Catron | 19. Mora |
| 3. Chaves | 20. Otero |
| 4. Cibola | 21. Quay |
| 5. Colfax | 22. Rio Arriba |
| 6. Curry | 23. Roosevelt |
| 7. De Baca | 24. San Juan |
| 8. Doña Ana | 25. San Miguel |
| 9. Eddy | 26. Sandoval |
| 10. Grant | 27. Santa Fe |
| 11. Guadalupe | 28. Sierra |
| 12. Harding | 29. Socorro |
| 13. Hidalgo | 30. Taos |
| 14. Lea | 31. Torrance |
| 15. Lincoln | 32. Union |
| 16. Los Alamos | 33. Valencia |
| 17. Luna | |

Cooperative Extension Service - provides the people of New Mexico with practical, research-based knowledge and programs to improve their quality of life.



How to Pass the Torch: Training

Critical Issues:

- Limited access for private practitioners
 - Creates implementation knowledge gap
 - National Wildfire Coordinating Group (NWCG) not designed for private user
 - No training/certification and uncertain liability = limited insurance
 - Not NWCG ≠ Not Rigorous



How to Pass the Torch: Training

Considerations:

- Four Curriculum Options
 - Full-NWCG, Partial-NWCG, Minimum-NWCG or State specific

- Four Program Delivery & Administration Options



How to Pass the Torch: Training

Curriculum Options:

- Appropriately rigorous & state-specific
 - NM topography, vegetation, weather, fuels, etc.
- Collaborative development
- Delivered by NMSU Cooperative Extension
 - One full-time FTE
 - Existing Renewable Resource Extension Act (RREA) funding support: for materials and expertise stipends

How to Pass the Torch: Training

Curriculum Administration:

Training and Oversight Board:

1. Energy, Minerals, and Natural Resources, State Forestry Division
2. NM Prescribed Fire Council
3. NMSU Cooperative Extension





How to Pass the Torch: Training

Key Concepts:

- Voluntary/Optional Participation
- Incentivized by:
 - Gross negligence for certified burners
 - Reduction in civil damages (from double to actual cost)
 - Improved access to insurance products & rates

Permitting



**See pages 21 – 27 &
Figures 1 & 2, pages
32 - 33, Final Report
6.15.20**

Laura McCarthy, State
Forester, Forestry Division
Director, Energy, Minerals and
Natural Resources
Department



Permitting

Currently 2 types: smoke and ignitions

- Smoke permitting Air Quality Bureau/NMED
- Some (not all) local governments require permits for “open burning”
 - “Open burning” usually understood as small-scale, backyard burning of vegetative matter
 - These ordinances sometimes inapplicable to prescribed fire for land management



Findings of Local Govt Survey:

1. Variability in whether a permit is required and if it applies
2. Inconsistencies that make it more challenging to burn across jurisdictions
3. Variability in what type or amount of burning the permit authorizes
4. Requirements that are sometimes in conflict with state smoke rules
5. Inappropriate requirements as permit was designed for backyard “open burning”
6. Permits pencil-changed by practitioners and local authorities – which may open all parties to liability or scrutiny

Options to Address Permitting

1. Statewide ignition permit:

- a. Permit for burning for land management purposes
- b. Ensures consistency in requirements across jurisdictions
- c. Process could be combined with existing online smoke permit portal
- d. Would not change notifications to local authorities; ability of local governments to place burn bans to issue “open burning” permits

2. Guidelines to Local Governments:

- a. Statute would require local governments to address ignition permitting and would provide permit requirement guidelines for prescribed fire
- b. Local government would retain permitting responsibility for all types of burning
- c. Continued potential for some inconsistencies between jurisdictions
- d. Two separate permits at two levels of government would still be required

Recommendations



**See pages 27-28,
Final Report
6.15.20**

Laura McCarthy, State
Forester, Forestry Division
Director, Energy, Minerals
and Natural Resources
Department



Near-Term Recommendations

1. adopt “right-to-burn” legislation establishing prescribed fire as a beneficial and accepted landowner right
2. establish negligence liability standard for all private prescribed fire practitioners
3. create enabling conditions for development of a voluntary state-specific training and certification program
4. reduce civil damage liability from double costs to actual costs as an incentive to complete training and certification
5. establish requirements and criteria for local governments to follow when creating or revising prescribed fire ordinances and ignition permits

Other Considerations

1. establish a two-tiered liability standard based on status as a state certified prescribed fire practitioner as an incentive to provide certified burners with a gross negligence liability standard
2. develop a state-specific training curriculum specific to New Mexico's local factors through a collaborative process involving a wide range of SME experienced with Rx fire in the state
3. develop a state-sponsored certification program
4. if a state-issued ignition permit is required, then fund development of a one-stop, web-based portal in coordination with the existing smoke permit portal managed by NMED



Thank you.

Questions?

