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Preserving America's Heritage

May 26, 2017

The Honorable Ryan Zinke
Secretary of the Interior
Monument Review, MS-1530
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

REF: Bears Ears National Monument Designation

Dear Mr. Secretary:

The Advisory Council on Historic Preservation (ACHP) appreciates the opportunity to provide its comments on the designation of the Bears Ears National Monument in response to your review of this designation pursuant to Executive Order (EO) 13792. Established by the National Historic Preservation Act (NHPA) of 1966, the ACHP's mission is to promote the preservation, enhancement, and sustainable use of our nation's diverse historic resources, and advise the President and the Congress on national historic preservation policy. While the ACHP focuses much of its efforts on oversight of the Section 106 review process established by the NHPA, we are well-aware that the Antiquities Act provides an important tool to assist the President in publicly recognizing and affirmatively protecting major aspects of America's irreplaceable heritage. The designation of the Bears Ears National Monument contributes significantly to achieving those goals, and its effect should not be diminished by revocation of the designation or a contraction of its boundaries.

It is important to note that the federal commitment to identify, manage, and protect important objects, sites, and properties began with passage of the Antiquities Act of 1906 but did not end there. Other statutes and executive orders, such as the Historic Sites Act of 1935, the NHPA, the Archaeological and Historic Preservation Act of 1974, the Archaeological Resource Protection Act of 1979, the Native American Graves Protection and Repatriation Act of 1990, and EO 13287 "Preserve America" (2003) have reaffirmed and intensified the enduring federal interest in and commitment to the protection of places and objects of significance in our nation's history. Taken together, these authorities form a comprehensive national preservation program that provides all levels of government a broad range of tools to preserve and enhance the nation's cultural patrimony.

Starting with the Antiquities Act, the Congress and the Executive Branch have placed a special emphasis on the federal government's stewardship of those unique historic places under its jurisdiction. Section 110 of the NHPA and Section 3 of EO 13287 provide the most detailed set of instructions to federal managers about the importance of identifying and protecting historic properties in federal ownership, mandating

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agency programs for preservation and establishing accountability systems to assess their effect. Special attention has been placed on those properties of national significance, recognizing their importance to all Americans. In that regard, designation of national monuments that contain highly significant historic objects and sites, such as the Bears Ears National Monument, is a critical management tool for affording the highest level of protection for such historic resources as part of this overall legal scheme, which has evolved over more than a century.

Few federal lands hold such rich and relatively pristine places, objects, and sites of importance to American culture and history as those within Bears Ears National Monument. This collection includes sacred places, traditional cultural landscapes, and intact pre-Columbian dwellings of profound significance to Indian tribes, many of which continue to play a role in the ongoing maintenance of their cultural and spiritual practices. Likewise, highly evocative archaeological resources abound there, above and below canyon walls, alongside historic resources that reflect early American movement into the West. For these reasons, tourists from every corner of our nation and beyond go there to see and experience these places, knowing they tell part of a widely shared and uniquely American story. Unfortunately, it is also well-documented that a number of these sites have been subject to active looting or inadvertent damage over many years. It is the nature of these resources, and the relatively undisturbed and often remote landscapes within the Bears Ears National Monument, that make this region worthy of the additional protections of National Monument designation.

While a definitive and complete inventory of all historic properties within and around the Bears Ears National Monument has not been completed, it is clear that thousands of highly significant places that are subject to protection under the Antiquities Act are present within its boundaries, and that these are tied together in a set of landscapes of extraordinary significance to all Americans, the boundaries of which likely go well beyond the Bears Ears National Monument. The ACHP's involvement in Section 106 reviews with similar sites in this region over the decades suggests that the entire area abounds with highly significant places such as these. Recognizing that other monuments have been designated with similar approaches to defining areas of significance, we remain confident that the entirety of the Bears Ears National Monument contains places worthy of protection.

We would also like to bring to your attention the requirements found in the Operational Guidelines for the Implementation of the World Heritage Convention (WHC.16/01 26 October 2016) with regard to buffer zones for World Heritage Sites. Paragraph 104 states:

For the purposes of effective protection of the nominated property, a buffer zone is an area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property. This should include the immediate setting of the nominated property, important views and other areas or attributes that are functionally important as a support to the property and its protection. The area constituting the buffer zone should be determined in each case through appropriate mechanisms. Details on the size, characteristics and authorized uses of a buffer zone, as well as a map indicating the precise boundaries of the property and its buffer zone, should be provided in the nomination.

While we recognize that Bears Ears National Monument is not currently a World Heritage Site (although it may well meet the criteria for listing), the fundamental concept of resource protection set forth in Paragraph 104 has universal application to sites like Bears Ears National Monument that have been recognized to be of outstanding cultural significance. We would urge you to carefully consider the guidance in any evaluation of the appropriateness of the current boundaries for Bears Ears National Monument.

The ACHP is aware that concerns have been expressed about the effect that National Monument designation may have on the economic use and public enjoyment of these lands. However, it is important to note that most designations have not had a negative effect on the economy and, in the case of Bears Ears National Monument, certain economic and recreational uses have been expressly allowed as part of the designation. Our experience demonstrates that these uses can typically be accommodated without sacrificing protections to historic properties. For example, the ACHP is participating in Section 106 consultations to address the impacts of grazing at the Grand Staircase Escalante National Monument in Utah and a similar effort to address carbon dioxide extraction within the Canyons of the Ancients National Monument in Colorado. In both cases, the federal planning process for development activities has enabled consulting parties, including state, tribal, and local governments, as well as preservation organizations, commercial interests, and citizens, to consider such impacts and develop reasonable measures for accommodating such uses with the protection of historic properties through a Section 106 agreement document.

Beyond these two National Monuments, the ACHP can attest to the effectiveness of the federal historic preservation review process over a half century to balance the needs of preservation and contemporary use for sites like Bears Ears National Monument. This public process allows all with an interest in the use of federal lands to participate in the management decisions that federal agencies make for historic places, including National Monuments. We have no reason to doubt that the Section 106 process would effectively address future management decisions at the Bears Ears National Monument, giving local government and citizens an opportunity to shape those decisions.

We note also that the Bureau of Land Management, as the principal federal property owner within Bears Ears National Monument, is committed to meeting its responsibilities under the Federal Land Policy and Management Act of 1976 in part by considering the continued development of existing mineral rights, grazing, and access by motorized and non-motorized constituents, even on lands within National Monuments under its management. If managed carefully, the ACHP believes that specified allowances for some forms of continued use and development in certain portions of Bears Ears National Monument can be accomplished without upsetting the overall protective goals of its establishment or requiring alteration to its boundaries.

In closing, the ACHP reiterates its support for the important protections this designation has provided to historic properties. Taken collectively, National Monuments contain some of the nation's most significant objects, places, and sites that tell an important part of the American story, and the Bears Ears National Monument is no exception. As you conduct your review, we urge you to ensure the federal government maintains the level of protection to historic properties afforded by the designation of the Bears Ears National Monument.

Should you consider pursuing changes to the Bears Ears National Monument, we would also urge that you be expansive in your outreach to all interested parties regarding such changes. It is critical to conduct government-to-government consultation with Indian tribes that may ascribe cultural and religious significance to any of the properties there, including pre-Columbian resources, and we would urge also that you fully engage the public and other governments and organizations with a clear interest in the protections of these important places. We would further suggest you consider modeling such outreach after the process established within the regulations implementing Section 106 of the NHPA.

We appreciate your consideration of these comments and remain ready to assist you further on this review as we indicated in our letter of April 28, 2017. If you have any questions, feel free to contact me directly at mwdonaldson@achp.gov, or your staff may wish to follow up with John Fowler, Executive Director, at jfowler@achp.gov. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Milford Wayne Donaldson". The signature is written in a cursive style with a large, stylized initial "M".

Milford Wayne Donaldson FAIA
Chairman