

April 11, 2018

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*Sent via email, eplanning and U.S. Mail*

**Re: Bears Ears National Monument Scoping Comments**

Dear Mr. Porter:

Please accept and fully consider these scoping comments for the Bears Ears National Monument Management Plan (MMP) and Environmental Impact Statement (EIS), submitted by The Wilderness Society, Southern Utah Wilderness Alliance, Grand Canyon Trust, Great Old Broads for Wilderness, National Parks Conservation Association, Western Watersheds Project, WildEarth Guardians, Western Resource Advocates and Wild Utah Project. The undersigned care deeply about the future management of the Monument and look forward to working cooperatively with the Bureau of Land Management (BLM) and the United States Forest Service (USFS) to conserve, protect and restore the natural and cultural resources for current and future generations. We appreciate this opportunity to comment and appreciate the BLM's commitment to addressing the circumstances and values related to management of the public resources within the Monument.

The Wilderness Society (TWS) is a non-profit national organization founded in 1935, with members who reside throughout the nation, including in Utah. TWS works to protect America's wilderness lands through public education, scientific analysis, and advocacy. TWS's mission is to protect wilderness and inspire Americans to care about our wild places, so that future generations will enjoy the clean air, water, wildlife, beauty, and opportunities for recreation and renewal that pristine deserts, mountains, forests, and rivers provide. Protecting wilderness quality and other sensitive lands managed by BLM is vital to achieving The Wilderness Society's mission.

The Southern Utah Wilderness Alliance (SUWA) is a non-profit environmental membership organization with members in all fifty states and offices in Washington, D.C. and Utah. It is dedicated to the sensible management of all federal public lands within the State of Utah, the preservation and protection of plant and animal species, the protection of clean air and water found on federal public lands, the preservation and protection of cultural and archaeological resources, and the permanent preservation of Utah's remaining wild lands. SUWA staff and members actively supported President Obama's exercise of his authority under the Antiquities Act to designate the Bears Ears National Monument and preserve the objects identified in the Proclamation for current and future generations of Americans. SUWA staff and members have worked for decades to obtain permanent, heightened protection for the Bears Ears area.

The Grand Canyon Trust (GCT) is a 501(c)(3) non-profit public lands advocacy organization founded in 1985 whose mission is to protect and restore the Colorado Plateau – its spectacular landscapes, flowing rivers, clean air, diversity of plants and animals, and areas of beauty and

solitude. The permanent protection of the outstanding cultural, natural, and historic resources of the entirety of the Monticello Field Office (including the Indian Creek and Shash Jaa' units of the Bears Ears National Monument) is directly aligned with our mission as a conservation organization. The Trust advocates for Native American sovereignty and self-determination, environmentally responsible management of public lands and their associated resources, access to these lands, and permanent administrative and legislative protections to maintain their cultural and ecological integrity. We submit these comments in the interest of the furtherance of the goals of our organization and our membership. The Trust is headquartered in Flagstaff, Arizona and has more than 4,000 active members and supporters. In addition to our Flagstaff headquarters, we operate satellite offices in Moab, Utah, and Denver and Durango, Colorado.

Great Old Broads for Wilderness (Broads) is a national grassroots organization, led by women, that engages and inspires activism to preserve and protect wilderness and wild lands. With over 8,000 members and supporters, Broads has 40 chapters across the country that engage citizens in education, advocacy, and stewardship of public lands. Broads was conceived in 1989 by older women who loved wilderness and organized to protect it. The wisdom of their combined years told them that the Broads could bring knowledge, commitment, and humor to the movement to protect our last wild places on earth.

National Parks Conservation Association was founded in 1919 and has been the independent, nonpartisan voice working to strengthen and protect America's favorite places. With 1.3 million members and supporters beside us, we are the voice of America's national parks, working to protect and preserve our nation's most iconic and inspirational places for present and future generations. We celebrate the parks — and work tirelessly to defend them — whether on the ground, in the courtroom or on Capitol Hill.

Western Watersheds Project (“WWP”) is a non-profit conservation organization founded in 1993 with the mission of protecting and restoring western watersheds and wildlife through education, public policy initiatives, and legal advocacy. Headquartered in Hailey, Idaho, Western Watersheds Project has 1,400 members and field offices in Idaho, Montana, Wyoming, Nevada, Arizona, and California. WWP has a long-standing interest in the preservation of the area in and around the Bears Ears National Monument because its members place a high value on wild, undeveloped deserts that are protected from industrial uses. WWP actively seeks to protect and recover the desert ecosystems of Bears Ears National Monument and has for many years advocated for stronger protections for native plants and ecosystem health there from a variety of uses.

WildEarth Guardians (“Guardians”) is a non-profit conservation organization founded in 1989. Guardians is headquartered in Santa Fe, New Mexico and has offices in Denver, Colorado; Portland, Oregon; Missoula, Montana; Tucson, Arizona; and Seattle, Washington. Guardians' mission is to protect and restore the wildlife, wild places, wild rivers, and health of the American West. Guardians has more than 184,000 members and activists across the United States who are committed to securing protection for the important scientific, cultural and historic resources of Bears Ears National Monument.

Founded in 1989, Western Resource Advocates is a non-profit organization dedicated to protecting the West's land, air, and water to ensure that vibrant communities exist in balance with nature. WRA uses law, science, and economics to craft innovative solutions to the most pressing

conservation issues in the region. With offices in Utah, Colorado, New Mexico, Nevada, and Arizona, and with over 44,000 members from across the West, WRA engages at Federal, state, and local levels to protect and connect half of western lands, and ensure that conserved areas across the region are preserved for future generations.

The mission of Wild Utah Project is to provide science-based solutions for wildlife and land conservation in Utah. We do this by working to insert best conservation science into agency decision making processes, particularly on public lands, including the Bears Ears National Monument.

**As a preliminary matter, the undersigned groups are not acquiescing to Proclamation 9681, 82 Fed. Reg. 58081 (Dec. 4, 2017), which we maintain is illegal. We make no admissions with regard to the new proclamation, waive no litigation rights, nor otherwise waive any rights or privileges. We are simply exercising our right to participate in the public planning process. As stated below, the agencies should not be planning under Proclamation 9681, 82 Fed. Reg. 58081 (Dec. 4, 2017) at this time until the legal status of this proclamation is decided by the courts. However, these comments and recommendations should be fully considered and applicable as part of the administrative record to the current planning process and environmental analysis.**

## Issues Addressed

<b>I.</b>	<b>MANAGEMENT FRAMEWORK OF NATIONAL MONUMENTS .....</b>	<b>4</b>
<b>II.</b>	<b>TRIBAL CO-MANAGEMENT .....</b>	<b>9</b>
<b>III.</b>	<b>PUBLIC PARTICIPATION/NATIONAL ENVIRONMENTAL POLICY ACT OBLIGATIONS .....</b>	<b>9</b>
<b>IV.</b>	<b>AREAS OF CRITICAL ENVIRONMENTAL CONCERN .....</b>	<b>15</b>
<b>V.</b>	<b>LANDS WITH WILDERNESS CHARACTERISTICS .....</b>	<b>17</b>
<b>VI.</b>	<b>CULTURAL RESOURCES .....</b>	<b>32</b>
<b>VII.</b>	<b>WILDLIFE MANAGEMENT AND VIABILITY .....</b>	<b>36</b>
<b>VIII.</b>	<b>RECREATION .....</b>	<b>40</b>
<b>IX.</b>	<b>TRAVEL MANAGEMENT .....</b>	<b>48</b>
<b>X.</b>	<b>VISUAL RESOURCE MANAGEMENT .....</b>	<b>50</b>
<b>XI.</b>	<b>SOUNDSCAPES .....</b>	<b>53</b>
<b>XII.</b>	<b>LIVESTOCK MANAGEMENT .....</b>	<b>57</b>
<b>XIII.</b>	<b>CLIMATE CHANGE .....</b>	<b>61</b>
<b>XIV.</b>	<b>SOCIO-ECONOMICS .....</b>	<b>69</b>

## **I. MANAGEMENT FRAMEWORK OF NATIONAL MONUMENTS**

### **A. Management of the Monument should not move forward until litigation is settled regarding President Trump's illegal Proclamation 9681 attempting to reduce the monument**

We maintain that Proclamation 9681, 82 Fed. Reg. 58081 (Dec. 4, 2017), attempting to reduce the size of Bears Ears National Monument is an unlawful revocation of the existing monument and will be overturned in a court of law. The president only has the authority to create a national monument under the Antiquities Act. Only Congress can revoke or reduce a national monument.

Trump's illegal Proclamation 9681 is already being challenged in court by a multitude of plaintiffs, many of which are the undersigned commenters. The BLM and USFS's rush to act while these lawsuits are ongoing is irresponsible. The BLM and USFS should abstain from planning efforts under Proclamation 9681 for Bears Ears National Monument until the legitimacy of the Proclamation is fully settled by the courts. If the BLM moves forward with these planning processes at this time, it will likely be a colossal waste of time and money for an already strapped agency as the new proclamation is expected to be overturned by the courts. Because Proclamation 9681 attempts to greatly reduce the collaborative management authority, scope, and scale granted to the five tribes (Hopi, Navajo, Ute, Ute Mountain Ute, and Zuni) under Proclamation 9558 of December 28, 2016, the BLM and USFS's undertaking of planning at this time undermines the authority, sovereignty, and self-determination of the Native American Tribes who advocated for the creation of the original Bears Ears National Monument. The BLM should spend its limited financial and staff resources on protecting the monument and the natural and cultural resources within them for current and future generations.

**Summary of Comments:** BLM and USFS should not move forward with planning for Bears Ears National Monument until all litigation regarding the monument's boundaries and challenges to Proclamation 9681 are settled.

### **B. Protection of the Monument objects must be the priority**

Any actions proposed within the original and valid boundaries of Bears Ears National Monument should only substantially advance the proper care and management of the objects of interest as set forth in Proclamation No. 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016) creating the Bears Ears National Monument.

The Federal Land Policy and Management Act (FLPMA) requires BLM to manage public lands under multiple use principles unless an area has been designated by law for specific uses, in which case BLM must manage the land for those specific uses. 43 U.S.C. §1732(a). In other words, BLM will manage the national monument not under the FLPMA multiple use mandate, but rather under Proclamation No. 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016) that established Bears Ears National Monument. This is expressly provided for in FLPMA itself:

The Secretary shall manage the public lands under the principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available, *except that where a tract*

*of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law."* FLPMA, 43 U.S.C. § 1732(a) (emphasis added).

Pursuant to the legal authority granted by Congress in the Antiquities Act of 1906 (16 U.S.C. §§ 431-433), President Obama designated Bears Ears National Monument for the explicit purpose of protecting and preserving identified "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest." Accordingly, the standard approach to multiple use management does not apply to this monument, and any effort to adopt such a management approach to the detriment of its natural and cultural objects and values would be in violation of Proclamation 9558 (Dec. 28, 2016) and the mandates of FLPMA. BLM must manage the Monument for the protection and preservation of its natural, cultural, historic and scientific values, and only allow uses other than those needed for protection of monument objects when those uses do not conflict with the directives of Proclamation No. 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016).

Because of its significance, which merited designation as a National Monument and inclusion in the National Landscape Conservation System (National Conservation Lands), the Monument requires different management from other BLM lands. The designation of National Monuments, together with the establishment of the National Conservation Lands themselves, represents the cornerstone of a new era in land stewardship, in which BLM focuses on a mission of stewardship to: "conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations." 16 U.S.C. § 7202 (2009).

Secretarial Order 3308 speaks to the management of the National Conservation Lands. The Order states in pertinent part that "[T]he BLM shall ensure that the components of the [National Conservation Lands] are managed to protect the values for which they were designated, including, where appropriate, prohibiting uses that are in conflict with those values." The Order also requires the incorporation of science into the decision-making process for the National Conservation Lands, stating, "[s]cience shall be integrated into management decisions concerning [National Conservation Lands] components in order to enhance land and resource stewardship and promote greater understanding of lands and resources through research and education." The 15-Year Strategy for the Conservation Lands reinforces this by stating the "conservation, protection, and restoration of the [National Conservation Lands] values is the highest priority in [National Conservation Lands] planning and management, consistent with the designating legislation or presidential proclamation." National Conservation Lands Strategy at 8.

The most important aspect of this planning effort is ensuring that the objects that these areas were designated to protect are conserved, protected and restored over the life of the monument management plan. While discretionary uses may be allowed to continue if compatible with that charge, BLM must limit or prohibit such uses if they are in conflict with the values that the areas were designated to protect.

At minimum, the BLM and USFS should put forth alternatives in its plan that protect the resources of the original monument as set forth in Proclamation No. 9558, 82 Fed. Reg. 1139 (Dec. 28,

2016), including consultation and recommendations from the Bears Ears Inter-Tribal Coalition's Land Management Planning Task Force. This will ensure that the MMP covers both the areas in the original proclamation as well as the reduced areas.

**Summary of Comments:** BLM must manage the Monument primarily for the protection and preservation of its natural, cultural, historic and scientific values, and only allow uses other than those needed for protection of monument objects when those uses do not conflict with the directives of Proclamation No. 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016). At minimum, if the process does move forward, BLM and USFS should put forth alternatives that protect the resources of the original monument as set forth in Proclamation 9558.

### **C. Established policy for National Monuments**

BLM has policies for newly-established National Monuments. BLM Manual 6220 specifically provides that upon the designation of a new monument, BLM must, in pertinent part:

- Review policies and governing RMPs for consistency with the designating legislation or proclamation.
- Subject to valid existing rights, and in accordance with applicable law and regulation, consider suspending or modifying discretionary uses and activities incompatible with the designating legislation or proclamation pending completion or amendment of a land use plan.
- Initiate inventories of the objects and values for which the Monument or National Conservation Area (NCA) was designated.

BLM Manual 6220 at 1.6(D).

Additionally, BLM Manual 6220 states that BLM monument management plans must:

- Clearly identify Monument and NCA objects and values as described in the designating proclamation or legislation; where objects and values are described in the designating legislation or proclamation only in broad categories (e.g., scenic, ecological, etc.), identify the specific resources within the designating area that fall into those categories;
- Identify specific and measurable goals and objectives for each object and value, as well as generally for the Monument or NCA;
- Identify management actions, allowable uses, restrictions, management actions regarding any valid existing rights, and mitigation measures to ensure that the objects and values are protected;
- Provide, to the extent possible, a thorough quantitative analysis of the effects of all plan alternatives on the objects and values;
- Where a thorough quantitative analysis is not possible, provide a detailed qualitative analysis of the effects of all plan alternatives on the objects and values;
- Consider designating Monuments and NCAs as right-of-way (ROW) exclusion or avoidance areas;

- Include a monitoring strategy that identifies indicators of change, methodologies, protocols, and time frames for determining whether desired outcomes are being achieved

With regards to identifying and analyzing Monument objects and values, we recommend that BLM consider using the approach used in the Sonoran Desert National Monument (SDNM) Proposed RMP.<sup>1</sup> The SDNM Proposed RMP specifically identified the Monument objects and values (SDNM Proposed RMP at 1-18 to 1-21) and a methodology for analyzing impacts to those objects and values (SDNM Proposed RMP at 4-543). Finally, BLM came up with a separate methodology for determining adequate protection of those objects and values (SDNM Proposed RMP at Appendix S, S-4 to S-6).

**Summary of Comments:** BLM's Manual 6220 provides guidance on National Monuments. This policy includes obligations to clearly identify and inventory monument objects, identify measurable goals and objectives for each object and value, extensive analyses, ensure consistent management with protecting objects and values, and others identified above. This planning process should consider the example for identifying, evaluating impacts and protection of Monument objects set forth in the SDNM's Proposed RMP.

#### **D. National Conservation Lands policies and manuals**

Secretarial Order 3308 states that the National Conservation Lands "shall be managed as an integral part of the larger landscape, in collaboration with the neighboring land owners and surrounding communities, to maintain biodiversity, and promote ecological connectivity and resilience in the face of climate change." The BLM's 15-Year Strategy for the National Conservation Lands discusses utilizing large-scale assessments, such as BLM's Rapid Ecoregional Assessments (REA), to identify how to connect and protect resources at the landscape-level.

Instruction Memorandum (IM) No. 2013-082 addresses the use of Regional Assessments and specifically stated that District and Field Office managers should "Use the REAs and other assessments, where appropriate, in developing new land use plans, plan amendments and project specific National Environmental Policy Act documents." The Colorado Plateau and Range REA was completed in 2012.<sup>2</sup> BLM should use the information in the REA to evaluate the landscape setting where the Monument sits.

**Summary of Comments:** While this planning process for the illegally-revoked Monument should not be going forward, any planning process for the Monument under Proclamation No. 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016) must be consistent with policies for the National Conservation Lands, including looking at the larger landscape for management of resources. BLM completed the Colorado Plateau REA in 2012. The agency should use this data to plan for the Monument in a broader landscape context. BLM's planning assessment should include considerations such as wildlife movement through and outside of the monument, route and

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<sup>1</sup> Sonoran Desert Proposed RMP available at: [https://eplanning.blm.gov/epl-front-office/projects/lup/11856/37525/39326/07-Chapter1-Purpose\\_and\\_Need.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/11856/37525/39326/07-Chapter1-Purpose_and_Need.pdf).

<sup>2</sup> Available at: <https://consbio.org/products/projects/blm-rapid-ecological-assessment-rea-colorado-plateau>.

road proliferation, potential for the spread of invasive species, and the impacts of climate change on the Monument.

### **E. Narrative of monument history and creation of Bears Ears National Monument**

The cultural landscape that is known as Bears Ears is an area that is considered home and sacred to Native peoples since time immemorial. The area is still cherished by Native peoples for its cultural, spiritual, and archaeological importance.

The push for advocating for the protection of the Bears Ears cultural landscape accelerated in 2010 with the creation of the grassroots non-profit organization, Utah Diné Bikéyah (UDB). UDB was formed with a primary objective of protecting Bears Ears. UDB defined its goal as establishing the proper boundaries – defined scientifically, culturally, and historically – necessary to protect the Bears Ears homeland.

Five tribes, the Hopi Tribe, the Navajo Nation, the Ute Indian Tribe, the Ute Mountain Ute Tribe, and the Zuni Tribe, created the Bears Ears Inter-Tribal Coalition and proposed designating the Bears Ears area as a national monument. Tribal leaders worked tirelessly, passing tribal council resolutions, writing letters, organizing community meetings, and making the long journey from their homes to Washington, D.C. to meet with federal agencies. Twenty-one Southwestern tribes and the National Congress of American Indians stood in solidarity, formally resolving their support through official resolutions. The important milestones of the development of the Bears Ears proposal is available online on UDB’s website and is incorporated by reference to these comments.<sup>3</sup>

The designation of Bears Ears National Monument provides an engaging story of how the Native American tribes persistently worked with the Federal government utilizing the government-to-government relationship, eventually influencing the permanent protection of the area. After President Obama signed Presidential Proclamation 9558, 82 Fed. Reg. 1139, on December 28, 2016, the BLM and USFS came to manage this area as a national monument and what it means to be part of the National Landscape Conservation System.

In the resource management plan for the adjacent Canyons of the Ancients National Monument, BLM prepared a document entitled “History and Intent of the Proclamation for Canyons of the Ancients National Monument.” Addendum to the Canyons RMP/ROD, p. 287. This document provides a history of the landscape, agency, and former conservation efforts on up to the present-day designation of the monument and National Landscape Conservation System. BLM should prepare a similar document for the Bears Ears National Monument as established by Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016).

**Summary of Comments:** BLM should provide a narrative within the MMP for Bears Ears National Monument that demonstrates the rich cultural history and the intent of Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016) establishing the monument as well as the monument’s place in the National Landscape Conservation System.

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<sup>3</sup> See: <http://utahdinebikeyah.org/history/>.



## II. TRIBAL CO-MANAGEMENT

In 2015, the sovereign governments of the Hopi, Zuni, Ute, Ute Mountain Ute, and Navajo nations formed the Bears Ears Inter-Tribal Coalition. Together, the Inter-Tribal Coalition sought added protection for the already public lands of the Bears Ears region by requesting a Bears Ears National Monument. For the first time in the 110-year history of the Antiquities Act, the act was used to honor a request from tribal nations to protect their sacred sites and cultural heritage, preserving an archaeological legacy matched almost nowhere else in America. It was the first successful Native American-led campaign for a national monument in U.S. history.

Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016) includes language acknowledging the important role of tribal participation in the care and management of the Monument. Proclamation 9558 recognizes the established Bears Ears Commission as a mechanism to reflect “tribal expertise and traditional and historical knowledge” and to provide “guidance and recommendations on the development and implementation of management plans and on management of the monument.” Proclamation 9558 recognizes that “[t]he traditional ecological knowledge amassed by the Native Americans whose ancestors inhabited this region, passed down from generation to generation, offers critical insight into the historic and scientific significance of the area. Such knowledge is, itself, a resource to be protected and used in understanding and managing this landscape sustainably for generations to come.” Proclamation 9558 outlines that the Bears Ears Commission will consist of one elected officer each from the Hopi Tribe, Navajo Nation, Ute Indian Tribe, Ute Mountain Ute Tribe, and Zuni Tribe, designated by the officers’ respective tribes. The Commission has the authority to “adopt such procedures as it deems necessary to govern its activities, so that it may effectively partner with the Federal agencies by making continuing contributions to inform decisions regarding the management of the monument.” Proclamation No. 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016). The Secretary of the Interior and the Secretary of Agriculture “shall meaningfully engage the Commission in the development of the management plan and to inform subsequent management of the monument.” Proclamation No. 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016). The BLM and USFS should acknowledge and respect this important co-management language in Proclamation 9558 and commit to consistently and proactively consulting with the interested Tribal leadership and communities throughout the Bears Ears planning process.

**Summary of Comments:** As the first successful Native American-led campaign for a national monument in U.S. history, Bears Ears National Monument should be managed in a manner that is respectful to the Tribal Nations who sought its protection. As such, the Bears Ears Inter-Tribal Coalition’s Land Management Planning Task Force should be extensively involved throughout the entire monument planning process, beginning with early consultation and continuing throughout subsequent management of the monument.

## III. PUBLIC PARTICIPATION/NATIONAL ENVIRONMENTAL POLICY ACT OBLIGATIONS

The National Environmental Policy Act (NEPA) is designed to foster informed and transparent decision-making. 40 C.F.R. § 1500.1; *Robertson v. Methow Valley Citizens Council*, 490 U.S. § 322, 349 (1989). NEPA requires BLM to “[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment,” 40 C.F.R. § 1500.2(d), and to use high quality information because “[a]ccurate scientific analysis. . . and public scrutiny are essential to implementing NEPA,” *Id.* 1500.1(b). To these ends, courts have held that environmental review

documents must be written in plain, clear language and “supported by evidence that the agency has made the necessary environmental analyses.” *See, e.g., Earth Island Inst. v. U.S. Forest Service*, 442 F.3d 1147, 1160 (9<sup>th</sup> Cir. 2006).

**A. The agencies have failed to provide meaningful public participation opportunities**

Secretary Zinke recently signed Secretarial Order (SO) 3355, which covers streamlining of NEPA reviews and implementation, and is designed to remove “impediments to efficient development of public and private projects that can be created by needlessly complex NEPA analysis.” SO 3355 imposes subjective and unrealistic page and time limitations for EISs on all DOI NEPA. This includes a suggested page limit of 150 pages, or 300 pages for “unusually complex projects,” excluding appendices. Additionally, a target deadline to complete all final EISs within one year.

We support efficient NEPA processes, but not those that eliminate the public from effectively engaging in the process or that result in agencies not fulfilling their responsibilities to take a hard look at the impacts from its actions. SO 3355 constrains the agency’s ability to satisfy NEPA’s mandatory legal requirements mentioned above and the imposition of arbitrary timelines significantly hinders opportunity for effective public engagement. The BLM and USFS must be sure not to undercut mandatory requirements, including those for public participation.

Though we disagree with moving forward with the planning process at this time, we recommended hosting additional scoping meetings to ensure meaningful public participation. For comparison, when the Grand Staircase Escalante National Monument Management Plan was originally developed, the BLM held 15 meetings in six states plus Washington, D.C., over the course of two months. We agree with hosting meetings in local communities such as Blanding and Bluff but believe meetings should also be held in major metropolitan areas where people frequently come from to visit the Monument, such as Salt Lake City, UT, Denver, CO, and Flagstaff, AZ.

Additionally, if this process continues to move forward, we feel strongly that the BLM and USFS should release alternatives for public review prior to publishing the draft MMP. Due to the volume of public interest in this process, BLM and USFS should also host public meetings in the appropriate locations listed above upon publishing the draft MMP.

Likewise, the Forest Service published a notice in the Federal Register on April 10, 2018 “to ensure that all persons and entities interested in Forest Service activities are aware of the Bureau of Land Management’s (BLM) January 16, 2018 Notice of Intent (NOI) to prepare an environmental impact statement (EIS) (83 FR 2181).” 83 Fed. Reg. 15,354. The announcement indicates that the Forest Service may amend its existing Forest Plan for the Manti-La Sal National Forest as a result of this monument management planning process. *Id.* (“The Forest Service decision to be made is approval of that portion of the Shash Jaa’ Unit MMP applicable to National Forest System lands and approval of a Forest Plan amendment, if analysis leads the Forest Service to conclude that an amendment is necessary and appropriate.”) The BLM established a deadline of April 11, 2018 by which the public should submit comments. *See* 83 Fed. Reg. 2181. (“Consistent with the January 16, 2018, BLM Notice of Intent, comments on issues as part of the public scoping process for the EIS may be submitted in writing prior to March 19, 2018, or 15 days after the last BLM public scoping meeting, whichever is later.”)

The Forest Service is providing the public with *just one day* by which to submit comments in response to this notice, which is completely inappropriate and antithetical to the rule's requirements to provide robust opportunities for public participation at 36 C.F.R. § 219.4 and public notification at 36 C.F.R. § 219.16. We also find it unusual that the Forest Service, as a cooperating agency, did not apparently have advance notice of the BLM's comment period such that the Forest Service could have provided more timely public notice and opportunity to comment on a possible amendment to the Manti-La Sal forest plan as required by its 2012 Planning Rule.

The Forest Service must follow the requirements of the 2012 Planning Rule in determining whether and how to amend the Manti-La Sal forest plan, including observing requirements for public involvement and comment. The Forest Service must initially base an amendment on a preliminary identification of the need to change the plan through the assessment process and notify the public and invite comment accordingly. 36 C.F.R. §§ 219.5(a)(1) (assessment), 219.6 (same), 219.4 (requiring public involvement in the assessment). It does not appear that the Forest Service complied with this aspect of the planning rule to timely engage the public in proposed changes to the Manti-La Sal forest plan.

The preliminary identification of the need to change the plan may be based on, among other things, "changed conditions" or "changed circumstances." 36 C.F.R. § 219.13(b)(1). President Trump's December 4, 2017 Proclamation to change the boundary of Bears Ears National Monument could certainly be considered a changed condition or circumstance. However, it is our position that the Trump Proclamation is unlawful<sup>4</sup> and therefore the only lawful need to change is President Obama's Proclamation No. 9558 designating the Bears Ears National Monument and requiring the development of the MMP. Consequently, a preliminary need to change the plan should be based on a comparison of Proclamation 9558 to the Forest Plan.

It is highly probable that the BLM's planning process will result in an amendment to Manti-La Sal's existing forest plan given that BLM's planning process will result in a National Monument containing National Forest System lands requiring new land management direction to protect the Monument's Objects. 83 Fed. Reg. 15,354 ("The Shash Jaa' Unit includes National Forest System lands, under management and decision-making authority of the Forest Service and managed under the land management plan for the Manti-La Sal National Forest (Forest Plan)"). Such an amendment is likely to trigger multiple substantive rule requirements, including sustainability, plant and animal diversity, and multiple uses, as the agency itself recognizes. *Id.* at 15,355 ("substantive requirements of the 2012 Planning Rule (36 CFR 219) likely to be directly related and, therefore, applicable to the Forest Plan amendment are 36 CFR 219.8(b)(1), (5), and (6), regarding social and economic sustainability; 36 CFR 219.10(a)(1), (4), (5), (7), (8), and (10), regarding integrated resource management for multiple use; and 36 CFR 219.10(b)(1)(ii), (iii), and (vi), regarding cultural and historic resources, areas of tribal importance, and management of

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<sup>4</sup> As you know, President Trump's proclamations have been challenged in federal court by numerous parties. Until the litigation is resolved, we urge the Forest Service to conserve scarce planning resources: it would be unfortunate if the agency expended these resources to revise the Manti-La Sal forest plan to accommodate the Trump proclamation only to have that underlying proclamation invalidated by a federal court, which would require the agency to spend additional dollars to plan another amendment in accordance with President Obama's proclamation. Consequently, we recommend that the Forest Service consider an alternative that develops plan components for each proclamation.

designated areas.”). In addition, where species of conservation concern (SCC) have not been identified and an amendment could have substantial adverse impacts to or substantially lessen protections for a specific species, the responsible official must determine whether that species is a potential SCC and, if so, must apply the requirements of 36 C.F.R. § 219.9(b) to that species as if it were an SCC. 36 C.F.R. § 219.13(b)(6). We encourage the Forest Service to rigorously apply the substantive and procedural requirements of the 2012 Planning Rule to the proposed action.<sup>5</sup>

In addition, it is imperative that the Forest Service explain how the BLM’s planning process and the potential forest plan amendment associated with the BLM’s planning process intersects with the Forest Service’s forest plan revision process that is currently underway for the Manti-La Sal National Forest. The agency has indicated that it, too, is uncertain the direction it plans to take with respect to incorporating plan direction sufficient to protect monument objects. *See* 83 Fed. Reg. 15,355 (expressing uncertainty regarding the “Nature of the Forest Service Decision To Be Made” and reserving to itself multiple options). While we can appreciate that uncertainty, it does not relieve the Forest Service of complying with the procedural and substantive provisions of the 2012 Planning Rule. We ask the Forest Service to provide as much clarity and transparency as possible in this process, given the highly controversial and contentious nature of the land at issue.

**Summary of Comments:** The agencies’ public participation opportunities so far have been woefully inadequate. BLM and USFS should host additional public meetings in several locations, including local communities as well as surrounding metropolitan areas to gather more information for scoping, preliminary alternatives and the draft MMP/EIS. BLM also should release alternatives for public review prior to publishing the draft MMP. The Forest Service has not provided an adequate comment period (1 day) for scoping nor has the agency explained how the BLM’s planning process and the potential forest plan amendment associated with the BLM’s planning process intersects with the Forest Service’s forest plan revision process that is currently underway for the Manti-La Sal National Forest. We highly recommend that the agency fulfill its obligations under NEPA by ensuring that its analysis is thorough and complete rather than sacrifice the integrity of the EIS for arbitrary restrictions set forth in SO 3355.

## **B. A reasonable range of alternatives must be considered**

The range of alternatives is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. NEPA requires BLM to “rigorously explore and objectively evaluate” a range of alternatives to proposed federal actions. *See* 40 C.F.R. §§ 1502.14(a), 1508.25(c). “An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.” *Nw. Env’tl. Defense Center v. Bonneville Power Admin.*, 117 F.3d 1520, 1538 (9th Cir. 1997). An agency violates NEPA by failing to “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. *City of Tenakee Springs v. Clough*,

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<sup>5</sup> We note that the Forest Service’s National Environmental Policy Act (NEPA) regulations require the Forest Service to conduct scoping on a proposed action to amend a forest plan. 36 C.F.R. § 220(4)(e); *see also* 40 C.F.R. 1501.7 (Council on Environmental Quality NEPA regulations requiring scoping prior to the preparation of an EIS). However, because the Forest Service has not yet decided whether to amend the Manti-La Sal forest plan, or even the exact nature of the “proposed action” at issue, *see* 83 Fed. Reg. 15,355 (expressing uncertainty regarding whether the agency will undertake an amendment: “In the event that the Forest Service determines that it intends to amend the Forest Plan...” ) we expect that the agency will provide the public with a true scoping opportunity once it has developed a proposed action.

915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14). This evaluation extends to considering more environmentally protective alternatives and mitigation measures. *See, e.g., Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1122–23 (9th Cir. 2002) (and cases cited therein). The consideration of more environmentally protective alternatives is also consistent with FLPMA’s requirement that BLM “minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved.” 43 U.S.C. §1732(d)(2)(a).

NEPA requires that an actual “range” of alternatives is considered, such that the Act will “preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative (i.e., the applicant’s proposed project).” *Col. Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1174 (10th Cir. 1999), citing *Simmons v. U.S. Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997). This requirement prevents the EIS from becoming “a foreordained formality.” *City of New York v. Dep’t of Transp.*, 715 F.2d 732, 743 (2nd Cir. 1983). *See also Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002).

Further, in defining what is a “reasonable” range of alternatives, NEPA requires consideration of alternatives “that are practical or feasible” and not just “whether the proponent or applicant likes or is itself capable of carrying out a particular alternative”; in fact, “[a]n alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable.” Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, Questions 2A and 2B*, available at <https://www.energy.gov/sites/prod/files/G-CEQ-40Questions.pdf>; 40 C.F.R. §§ 1502.14, 1506.2(d).

Throughout the planning process, BLM and USFS should put forth alternatives in its plan that protect the resources of the Monument as set forth in Proclamation No. 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016). This will ensure that the monument management plan evaluates a reasonable range of alternatives. This is particularly important while litigation regarding the legality of Proclamation 9681 is pending. Importantly, BLM would be in violation of NEPA if it did not consider alternatives for the protection of the Monument as set forth in Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016).

**Summary of Comments:** The BLM and USFS must consider a reasonable range of alternatives throughout the planning process, including alternatives that are environmentally protective, practical and feasible, which must include protecting resources in the Monument as set forth in Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016).

### **C. Hard look must be appropriate to proposed action and include direct, indirect, and cumulative impacts**

NEPA dictates that BLM take a “hard look” at the environmental consequences of a proposed action and the requisite environmental analysis “must be appropriate to the action in question.” *Metcalf v. Daley*, 214 F.3d 1135, 1151 (9th Cir. 2000); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). In order to take the “hard look” required by NEPA, BLM is required to assess impacts and effects that include: “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic,

historic, cultural, economic, social, or health, *whether direct, indirect, or cumulative.*” 40 C.F.R. § 1508.8. (emphasis added). NEPA regulations define “cumulative impact” as:

the impact on the environment which results from the *incremental impact of the action when added to other past, present, and reasonably foreseeable future actions* regardless of what agency (Federal or non-Federal) or person undertakes such other actions. *Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.*

40 C.F.R. § 1508.7 (emphasis added).

To satisfy NEPA’s hard look requirement, the cumulative impacts assessment must do two things. First, BLM must catalogue the past, present, and reasonably foreseeable projects in the area that might impact the environment. *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 809–10 (9th Cir. 1999). Second, BLM must analyze these impacts in light of the proposed action. *Id.* If BLM determines that certain actions are not relevant to the cumulative impacts analysis, it must “demonstrat[e] the scientific basis for this assertion.” *Sierra Club v. Bosworth*, 199 F.Supp.2d 971, 983 (N.D. Ca. 2002). A failure to include a cumulative impact analysis of actions within a larger region will render NEPA analysis insufficient. *See, e.g., Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1078 (9th Cir. 2002) (analysis of root fungus on cedar timber sales was necessary for an entire area).

**Summary of Comments:** The BLM and USFS must take a hard look at the impacts of decisions from this planning process.

#### **D. Baseline information must be sufficient to permit analysis of impacts**

Importantly, 40 C.F.R. § 1502.15 requires agencies to “describe the environment of the areas to be affected or created by the alternatives under consideration.” Establishment of baseline conditions is a requirement of NEPA. In *Half Moon Bay Fisherman’s Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988), the Ninth Circuit states that “without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA.” The court further held that “[t]he concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process.”

**Summary of Comments:** BLM and USFS must establish baseline conditions sufficient to permit analysis of environmental impacts.

#### **E. Mitigation measures must be described with specificity and must include commitments for action**

NEPA requires that BLM discuss mitigation measures in an EIS. 40 C.F.R. §§ 1502.14, 1502.16. Also, under NEPA, BLM’s Finding of No Significant Impact (FONSI) is lawful only if “BLM has made a convincing case that no significant impact will result there from or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures.” *Defenders of Wildlife*, 152 IBLA 1, 6 (2000) (citations omitted). In general, to show that mitigation will

reduce environmental impacts to an insignificant level, BLM must discuss the mitigation measures “in sufficient detail to ensure that environmental consequences have been fairly evaluated.”

*Communities, Inc. v. Busey*, 956 F.2d 619, 626 (6th Cir. 1992). Simply identifying mitigation measures, without analyzing the effectiveness of the measures, violates NEPA. Agencies must “analyze the mitigation measures in detail [and] explain how effective the measures would be . . . . A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.” *Nw. Indian Cemetery Protective Ass’n v. Peterson*, 764 F.2d 581, 588 (9th Cir. 1985), *rev’d on other grounds*, 485 U.S. 439 (1988). NEPA also directs that the “possibility of mitigation” should not be relied upon as a means to avoid further environmental analysis. Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, available at <https://www.energy.gov/sites/prod/files/G-CEQ-40Questions.pdf>; *Davis v. Mineta*, 302 F.3d at 1125.

Further, general statements that BLM will conduct monitoring are not an appropriate form of mitigation. Simply monitoring for expected damage does not actually reduce or alleviate any impacts.

**Summary of Comments:** BLM and USFS must identify and analyze mitigation measures to demonstrate how effective the mitigation will be. In general, BLM and USFS must ensure that NEPA compliance demonstrates how and why the proposed decisions avoid significant environmental impacts.

#### **IV. AREAS OF CRITICAL ENVIRONMENTAL CONCERN**

When developing a land use plan, FLPMA mandates that BLM “*give priority* to the designation and protection of areas of critical environmental concern.” 43 U.S.C. § 1712(c)(3) (emphasis added). Areas of critical environmental concern (ACECs) are areas “where special management is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes.” *Id.* § 1702(a).

The designation of ACECs are appropriate in the Monument and Management Plan. ACEC nominations must be considered by BLM in the land use planning process and nominations will be forthcoming at our earliest convenience.

##### **A. Retention of existing ACECS and designating new ACECs**

In evaluating ACEC proposals, BLM’s ACEC Manual requires that each area recommended for consideration as an ACEC, including from external nominations, be considered by BLM, through collection of data on relevance and importance, evaluation by an interdisciplinary team and then, if they are not to be designated, the analysis supporting the conclusion “must be incorporated into the plan and associated environmental document.” BLM Manual 1613, Section .21 (Identifying Potential ACECs). An ACEC is to be as large as is necessary to protect the important and relevant values. BLM Manual 1613, Section .22.B.2 (Size of area to receive special management attention).

**Summary of Comments:** BLM should not only retain existing ACECs but should also designate new ACECs per FLPMA. These should include landscape-scale ACECs that help connect

important habitat within the Monument pursuant to Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016). BLM must analyze and respond to any ACEC submissions submitted by the public during this planning process. We will be submitting nominations for ACECs at our earliest convenience.

## **B. Management of ACECs**

As stated above, BLM is required by FLPMA to prioritize the designation *and protection* of ACECs. BLM's ACEC Manual directs that, for ACECs proposed in at least one alternative, management prescriptions are to be "fully developed" in the RMP. BLM Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs). BLM should include specific management prescriptions for each designated ACEC that will protect the highlighted values, such as mineral withdrawal and travel management and route designations. *Id.* and Section .33.C (Provision for Special Management Attention). Setting out more detailed management prescriptions in the MMP will ensure protection of the ACEC values and can obviate the need for additional planning activities.

**Summary of Comments:** BLM should set specific management prescriptions for each ACEC in order to protect ACECs from irreparable harm and provide special management attention for the ACEC as required by FLPMA and other laws and regulations.

## **C. Layering ACECs with the Monument and other designations**

The obligations of the BLM with regard to ACECs under FLPMA remain in place in conjunction with the duties under Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016) creating the Monument. A critical aspect of the statutory language cited above is FLPMA's requirement that BLM "give priority" to ACEC designation *and* protection. 43 U.S.C. § 1712(c)(3). This cannot be overlooked when thinking about ACECs in the context of the draft plan. Even though BLM is proposing to manage the Monument to protect the objects and values of the Monument, it still must also prioritize designation and protection of ACECs within the Monument. This means the Monument should not subsume ACECs, but are another layer of complimentary management.

Overlapping designations are common in BLM land use planning, including for the National Conservation Lands. For example, just a few of these include:

- Perry Mesa and Larry Canyon ACECs in the Agua Fria National Monument
- High Rock Canyon and Soldiers Meadows ACECs in the Black Rock Desert—High Rock Canyon Emigrant Trails NCA
- Cow Creek ACEC in the Upper Missouri River Breaks National Monument
- Appelton-Whittell ACEC in the Las Cienegas NCA
- Scotch Creek and Oregon Gulch ACECs in the Cascade-Siskiyou National Monument
- Vekol Valley Grassland ACEC in the Sonoran Desert National Monument
- Watermelon Mountains ACEC in the Ironwood Forest National Monument
- San Rafael RNA, San Pedro River RNA and St. David Cienega RNA ACECs in the San Pedro Riparian NCA

In the RMP for the Monticello Field Office, BLM responded to resistance to layering designations in the following appropriate way:



“Layering” is planning. Under FLPMA’s multiple use mandate, BLM manages many different resource values and uses on public lands. Through land use planning BLM sets goals and objectives for each of those values and uses, and prescribes actions to accomplish those objectives. Under the multiple use concept, BLM doesn’t necessarily manage every value and use on every acre, but routinely manages many different values and uses on the same areas of public lands. The process of applying many individual program goals, objectives, and actions to the same area of public lands may be perceived as “layering”. BLM strives to ensure that the goals and objectives of each program (representing resource values and uses) are consistent and compatible for a particular land area. Inconsistent goals and objectives can lead to resource conflicts, failure to achieve the desired outcomes of a land use plan, and litigation. Whether or not a particular form of management is restrictive depends upon a personal interest or desire to see that public lands are managed in a particular manner. All uses and values cannot be provided for on every acre. That is why land use plans are developed through a public and interdisciplinary process. The interdisciplinary process helps ensure that all resource values and uses can be considered together to determine what mix of values and uses is responsive to the issues identified for resolution in the land use plan. Layering of program decisions is not optional for BLM, but is required by the FLPMA and National BLM planning and program specific regulations.

Monticello Proposed RMP, Response to Comments, at 7-48.

**Summary of Comments:** In order to meet the statutory requirement of prioritizing the designation and protection of ACECs, BLM must apply special management to protect the values identified for each of the ACECs and identify new ACECs as appropriate. BLM will not meet its duty under FLPMA to prioritize ACECs if the designation is subsumed by the overlapping Monument; and layering to protect the meaning of both designations is consistent with applicable law and policy.

## **V. LANDS WITH WILDERNESS CHARACTERISTICS**

FLPMA requires BLM to inventory and consider lands with wilderness characteristics during the land use planning process. 43 U.S.C. § 1711(a); *see also Ore. Natural Desert Ass’n v. BLM*, 625 F.3d 1092, 1122 (9th Cir. 2008) (holding that “wilderness characteristics are among the values that FLPMA specifically assigns to the BLM to manage in land use plans”).<sup>6</sup> IM 2011-154 and BLM Manuals 6310 and 6320 contain mandatory guidance on implementing that requirement. The IM directs BLM to “conduct and maintain inventories regarding the presence or absence of wilderness characteristics, and to consider identified lands with wilderness characteristics in land use plans and when analyzing projects under [NEPA].” This includes the “necessary forms for each area” including photo logs, route analysis forms and inventory area evaluations (Manual 6310, Appendices A-D). Manual 6310 reiterates that, “[r]egardless of past inventory, the BLM must maintain and update as necessary, its inventory of wilderness resources on public lands.” BLM Manual 6310.06(A) Manual 6320 requires BLM to consider lands with wilderness characteristics

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<sup>6</sup> The BLM has taken the policy position that it does not designate new Wilderness Study Areas (WSA). We maintain that this policy is not valid and should not be maintained. BLM should specifically mention potential WSAs as something to inventory for during the planning assessment phase.

in land use planning, both in evaluating the impacts of management alternatives on lands with wilderness characteristics and in evaluating alternatives that would protect those values. Wilderness inventories are to be done on a *continuing* basis and relevant citizen-submitted data is to be evaluated. BLM Manual 6310.04(C)(1).

#### **A. The multiple values of lands with wilderness characteristics**

In order to possess wilderness characteristics, an area must “possess sufficient size, naturalness, and outstanding opportunities for either solitude or primitive and unconfined recreation” and can also contain supplemental values. BLM Manual 6310.06(C)(2). Through this planning process, BLM should recognize the wide range of values associated with lands with wilderness characteristics that supplement and benefit other resources that the agency manages for. Many of these resources are specifically identified in Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016) as purposes for which Bears Ears National Monument was designated and/or Monument objects which must be protected. These include the following:

(a) Scenic values – FLPMA specifically identifies “scenic values” as a resource of BLM lands for purposes of inventory and management (43 U.S.C. § 1711(a)), and Proclamation 9558 identifies scenic values such as “stunning,” “fantastical” and “vividly hued.” The unspoiled landscapes of lands with wilderness characteristics generally provide spectacular viewing experiences. Protecting lands with wilderness characteristics would help ensure the scenic values of these lands exist for future generations.

(b) Recreation – FLPMA also identifies “outdoor recreation” as a valuable resource to be inventoried and managed by BLM. 43 U.S.C. § 1711(a). Lands with wilderness characteristics provide opportunities for primitive recreation, such as hiking, camping, hunting and wildlife viewing. Many primitive recreation experiences would be severely impacted if the naturalness and quiet of these lands are not preserved.

(c) Wildlife habitat, connectivity and riparian areas – FLPMA acknowledges the value of wildlife habitat found in public lands and recognizes habitat as an important use. 43 U.S.C. § 1702(c). Proclamation 9558 acknowledges the Bears Ears area supports a variety of wildlife species, and spends much of the proclamation explaining the various species and connections. These values must be prioritized in the Monument management plan.

Due to their unspoiled state, lands with wilderness characteristics provide valuable habitat for wildlife, thereby supporting additional resources and uses of the public lands. As part of their habitat, many species are also dependent on riparian and other wetland habitats, especially during either seasonal migrations or seasons and years when surrounding habitats are dry and unproductive. Wilderness-quality lands support biodiversity, watershed protection and overall healthy ecosystems. In addition, they provide connectivity that facilitates wildlife migration, seasonal movements and dispersal of young. The low route density, absence of development activities and corresponding absence of motorized vehicles, which are integral to wilderness character, also ensure the clean air, clean water and lack of disturbance necessary for productive wildlife habitat, large scale connectivity and riparian areas (which support both wildlife habitat and human uses of water).

Further, inventorying lands with wilderness characteristics will also provide important data on existing large blocks of habitat and how BLM can restore these blocks of habitat to better match the historic range of variability. Identifying, restoring and protecting substantial roadless areas will provide crucial benefits to wildlife, especially to endangered and sensitive species.

(d) Cultural and historic resources – FLPMA also recognizes the importance of protecting “historical” and “archeological values” as part of the resources of the public lands. 43 U.S.C. § 1701(a)(8). Proclamation 9558 elaborates extensively on the rich cultural history of the area dating back 12,000 years, as well as significant modern history. The lack of intensive human activity on lands with wilderness characteristics helps to protect these resources. Managing lands to protect wilderness qualities will also help protect cultural and archaeological sites.

(e) Economic benefits – The recreation opportunities provided by wilderness quality lands also yield direct economic benefits to local communities. According to the U.S. Fish & Wildlife Service, in 2011 state residents and non-residents spent \$1.2 billion on wildlife recreation in Nevada.<sup>7</sup> In addition, local communities that protect wildlands reap measurable benefits in terms of employment and personal income. For instance, a report by the Sonoran Institute found that:

Protected lands have the greatest influence on economic growth in rural isolated counties that lack easy access to larger markets. From 1970 to 2000, real per capita income in isolated rural counties with protected land grew more than 60 percent faster than isolated counties without any protected lands.<sup>8</sup>

We discuss the economic benefits of wilderness quality lands in more detail elsewhere in these comments.

(f) Quality of life – The wildlands located within Bears Ears National Monument help to define the character of this area and are an important component of the quality of life for local residents and future generations, providing wilderness values in proximity to the Canyon Country District Office, a major western tourism destination, and other communities near the Monument.

(g) Balanced use – The vast majority of BLM-managed lands are open to motorized use and development. FLPMA recognizes that “multiple use” of the public lands requires “a combination of balanced and diverse resource uses” that includes recreation, watershed, wildlife, fish, and natural scenic and historical values. 43 U.S.C. § 1702(c). The National Conservation Lands provide critical balance to public lands management by directing the agency to adopt conservation-focused management of our most spectacular western landscapes. Protection of wilderness characteristics will benefit many of the other multiple uses and values of BLM-managed lands such as air and water quality, night skies, soundscapes, and viewsheds, while other more exclusionary uses (such as off-road vehicle use and timber harvesting) will still have adequate opportunities on other BLM lands.

**Summary of Comments:** BLM should recognize the wide range of values associated with lands with wilderness characteristics that supplement and benefit other resources that the agency

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<sup>7</sup> USFWS 2011, National Survey of Hunting, Fishing and Wildlife-associated Recreation, available at <http://www.census.gov/prod/2013pubs/fhw11-nv.pdf>.

<sup>8</sup> Sonoran Institute 2004, Prosperity in the 21st Century West - The Role of Protected Public Lands.

manages for, including specifically resources that are identified in Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016) as purposes for which Bears Ears National Monument was designated and/or Monument objects which must be protected. These associated values should be acknowledged and discussed in the environmental analysis, and reflected in the decisions made, in the Monument management plan.

## **B. Citizen inventory information**

Citizen inventory data must be evaluated and considered in making decisions in the Monument management plan. BLM Manual 6310.06(A)(3). This includes inventory information that has been submitted previously by the Southern Utah Wilderness Alliance and others.

This inventory meets the criteria laid out in Manual 6310 as the “Minimum Standard for Review of New Information”:

1. A map of sufficient detail to determine specific boundaries of the area in question;
2. A detailed narrative that describes the wilderness characteristics of the area and documents how that information substantially differs from the information in the BLM inventory of the area’s wilderness characteristics; and
3. Photographic documentation.

BLM Manual 6310.06(B)(1)(b).

As such, this information must be evaluated by the BLM. BLM should document this evaluation and make the documentation and findings available to the public as soon as practicable, and before BLM moves forward with developing management alternatives for lands included in the citizen inventory.

**Summary of Comments:** BLM should further document and evaluate the initial citizen LWC inventory information, which meets the minimum standards for review of new information as set forth in BLM Manual 6310. BLM should document this evaluation and make the documentation and findings available to the public as soon as practicable, and before BLM moves forward with developing management alternatives for the lands included in the citizen inventory.

## **C. Recommendations for ensuring a compliant and accurate inventory of lands with wilderness characteristics**

BLM Manual 6310 sets forth the agency’s policy for conducting wilderness characteristics inventory on BLM lands. In compliance with FLPMA, BLM is directed to maintain an inventory of lands with wilderness characteristics on a continuing basis, including during land use planning, or when the public identifies wilderness characteristics as an issue during a NEPA process or submits new information concerning wilderness resources. BLM Manual 6310.06(A). Additionally, BLM is given broad discretion to update its wilderness characteristics inventory in other circumstances.

BLM’s inventory procedures require that necessary forms are completed for each area (included as appendices to Manual 6310), and that a Permanent Documentation File for each area is developed and updated. BLM Manual 6310.06(B)(4). Proper documentation of inventory findings is to

include relevant narratives, maps, photographs, new information and any other relevant information. BLM Manual 6310.06(A). This information should be published online, or otherwise released to the public as soon as documentation files are complete, and BLM should respond to new information and comments submitted on preliminary inventory findings. Instruction Memorandum 2013-106 provides additional guidance to BLM Manuals 6310 and 6320 on public and cooperating agency involvement in the LWC inventory and planning process. The IM instructs that BLM field offices should make finalized and signed wilderness characteristics inventory findings available to the public **as soon as practicable after their completion and before the inventory data is used to inform decisions**. If possible, this should occur prior to, and no later than, the publication of the draft NEPA analysis associated with the action.

BLM should use the below recommendations to reevaluate its inventory that has been completed to date and in considering additional inventory work.

1. GIS analysis can be useful to identify lands meriting field inventory but a desktop inventory is not sufficient

We recommend BLM begins the LWC inventory process by conducting a GIS-based roadless analysis of the entire field office or planning area to determine potential lands with wilderness characteristics. For example, most BLM field offices in Colorado completed GIS roadless analyses as a starting point for their LWC inventories, and these types of analyses have proven useful and informative for determining potential LWC units to be inventoried in the field. However, because BLM road data is often faulty or incomplete, and because BLM road data does not differentiate between routes that meet the definition of a “road” for wilderness inventory purposes as defined by Manual 6310, the resulting analyses based on this data is often flawed and/or incomplete and therefore must be verified on the ground. Our experience is that GIS analysis alone is inadequate to ensure that the routes ultimately used to identify boundaries and make size determinations comply with BLM guidance in Manual 6310. BLM must utilize the definition of “wilderness inventory roads” established in Manual 6310 to assess roadlessness, and field inventory must confirm the existence and present condition of those roads on the ground.

For example, the White River Field Office in northwestern Colorado conducted an initial “desktop inventory” to identify potential lands with wilderness characteristics, using GIS data to determine roadless areas. The Wilderness Society verified the White River Field Office’s findings on the ground, and found many errors resulting from inaccurate or outdated GIS data. Specifically, we found two major issues arising from the preliminary inventory:

1. **Several parcels were entirely missed by the desktop inventory.** Possibly because the BLM’s desktop inventory was based on an out-of-date or inaccurate road layer the resulting collection of potential LWC polygons was deficient and missed several blocks of BLM lands that could qualify as LWCs. In particular, several contiguous blocks of unroaded BLM lands less than 5,000 acres in size but that were later found to be adjacent to Wilderness Study Areas were originally overlooked. BLM Manual 6310 is clear that units of less than 5,000 acres in size can meet the size criteria if they are found to lie adjacent to lands currently managed for their wilderness characteristics.

2. **The potential LWC units that were identified were often defined by boundaries that do not meet the criteria for boundary delineation laid out in BLM Manual 6310.**

Manual 6310 states that the boundary delineation for a LWC unit “is generally based on the presence of wilderness inventory roads.” BLM Manual 6310 at .06(C)(1). BLM defines a wilderness inventory road as a vehicle route that has “been improved and maintained by mechanical means to ensure relatively regular and continuous use.” BLM Manual 6310 at .07. A “way” that is either solely “maintained” by the passage of vehicles, is used regularly but not maintained, or was originally constructed using mechanical means *but is no longer being maintained by mechanical methods* is not a road. *Ibid.* Without conducting field visits to these areas with the express intent of assessing whether or not the proposed boundary line meets the definition of a “wilderness inventory road” or other defining feature, it is very difficult to draw an accurate boundary for a potential LWC unit.

We would expect similar errors to occur in any GIS-based desktop inventory. Therefore, while we support utilizing GIS analysis to obtain an initial understanding of the lay of the land, fieldwork is necessary to verify boundaries and assess the presence or absence of wilderness characteristics within potential LWC units. This information is likely not have available from GIS inventory alone.

Notably, after conservation organizations conducted field inventory in the White River Field Office and submitted comments to the BLM outlining these errors in detailed specific instances, BLM was prompted to conduct its own field inventory of those areas. BLM then agreed with the conservation organizations’ assessment and adjusted its inventory to match the citizen inventory almost exactly.

2. Assessment of wilderness characteristics should not be overly conservative and should look at apparent naturalness and the standalone opportunities of each unit

BLM Manual 6310 directs, “avoid an overly strict approach to assessing naturalness.” BLM Manual 6310.06(C)(2)(b)(ii)(2). BLM is to assess *apparent naturalness*, which the manual distinguishes from natural integrity, meaning that naturalness determinations should be based on whether an area looks natural to the average visitor regardless of ecosystem health. Features listed in Manual 6310 that may be considered “substantially unnoticeable” and thus have no effect on apparent naturalness include trails, spring developments, fencing, stock ponds, and certain types of linear disturbances. Furthermore, the manual specifically states that “undeveloped ROWs and similar undeveloped possessory interests (e.g., mineral leases) are not treated as impacts to wilderness characteristics because these rights may never be developed.” BLM Manual 6310.06(C)(3)(d).

Impacts to naturalness must be documented to allow the public to adequately review and understand said impacts. BLM should not only photograph and map substantially noticeable human impacts located within the boundaries of a wilderness inventory unit, but should describe in the associated narrative how these impacts, either individually or cumulatively, detract from the apparent naturalness of the unit as a whole. BLM Manual 6310 also requires Route Analysis forms for boundary roads and for routes that are considered to be substantially noticeable impacts to naturalness. These Route Analysis forms are critical to provide the public with the rationale behind naturalness and unit boundary determinations.

We note that Manual 6310 emphasizes the importance of the word “or” in determining whether an area possess outstanding opportunities for solitude **or** a primitive and unconfined type of recreation:

Determine if the area has outstanding opportunities for solitude or a primitive and unconfined type of recreation. The word “or” in this sentence means that an area only has to possess one or the other. The area does not have to possess outstanding opportunities for both elements, nor does it need to have outstanding opportunities on every acre, even when an area is contiguous to lands with identified wilderness characteristics. In most cases, the two opportunities can be expected to go hand-in-hand. An outstanding opportunity for solitude, however, may be present in an area offering only limited primitive recreation potential. Also, an area may be so attractive for primitive recreation that it would be difficult to maintain an opportunity for solitude.

BLM Manual 6310.06(C)(2)(c).

The manual provides important detailed information for making determinations as to outstanding opportunities, including that BLM should not compare the lands in question with other parcels. *Id.* Each area should be evaluated on its own merits, regardless of whether its qualities are perceived to be common or typical of a planning area, or how it compares to other wilderness-quality lands.

Furthermore, Manual 6310 plainly states that “an area can have wilderness characteristics even though every acre within the area may not meet all the criteria.” BLM Manual 6310 at .06(C)(3)(e). BLM should assess the overall qualities of an area, and not disqualify primarily natural areas based on minimal impacts.

Supplemental values should be documented, such as important habitat and other elements of ecosystem integrity. However, the presence or absence of those elements should not affect an area’s naturalness for purposes of lands with wilderness characteristics inventory according to Manual 6310.

3. Boundary delineation should be used to define LWC areas, including through adjusting units and cherry-stemming

BLM Manual 6310 states that the “boundary [for a wilderness characteristics inventory unit] is usually based on the presence of wilderness inventory roads” but can also be based on changes in property ownership or developed rights-of-way. Wilderness inventory roads are further defined as those roads that are “improved and maintained by mechanical means to insure relatively regular and continuous use... A route that was established or has been maintained solely by the passage of vehicles would not be considered a road for the purposes for wilderness inventory, even if it used on a relatively regular and continuous basis.” BLM Manual 6310.07. As stated above, Route Analysis forms are required to document that routes used as boundaries meet the criteria for wilderness inventory roads.

Where substantially noticeable human impacts do occur within a potential LWC unit, BLM should make an attempt to cut them out of the unit, either through the cherry-stemming of wilderness inventory roads or by cutting out sub-sections of the potential unit entirely, in order to determine if

a smaller area can be identified that still meets the size criteria but that doesn't contain substantially noticeable impacts such as wilderness inventory roads, well pads, or other features. Manual 6310 directs BLM to define the area to "exclude wilderness inventory roads and other substantially noticeable human-caused impacts," and that "lands located between individual human impacts should not be automatically excluded." BLM Manual 6310.06(C)(3).

4. Manageability considerations should not be part of determining whether lands have wilderness characteristics

BLM must inventory all potential lands with wilderness characteristics, regardless of potential manageability of those characteristics. This inventory serves as the information base from which BLM makes land use decisions, and therefore must precede planning decisions.

**The inventory process should not be conflated with management of lands with wilderness characteristics.** BLM should not eliminate areas from inventory because they may be difficult to manage; rather those areas should be inventoried and the full results of those inventories — including road determinations, photographs, and maps detailing the locations of the photographs — should be released for public review and verification. If BLM finds them to possess wilderness characteristics, then BLM can decide whether or how to manage those characteristics. Potential manageability for wilderness characteristics does not affect BLM's obligation to maintain an accurate inventory of wilderness resources on the public lands.

5. U.S. Forest Service's specific duties to inventory, evaluate and recommend areas for wilderness protection

Chapter 70 of the Forest Service's Land Management Planning Handbook 1909.12 governs the four-step wilderness inventory, evaluation, analysis, and recommendation process that forests are required to complete as part of a forest plan revision under the Forest Service's 2012 planning rule.<sup>9</sup> This protocol is meant to provide additional direction on citizen implementation of the inventory and evaluation steps. In addition to the Chapter 70 directives, you should obtain and carefully review any regional guidance or protocols and any information about the Chapter 70 process from the relevant region and national forest.<sup>10</sup>

We expect the Forest Service to conduct a robust, high-quality wilderness inventory and evaluation process pursuant to FSH 1909.12, chapter 70. The Manti La Sal National Forest has released a draft wilderness inventory pursuant to the Chapter 70 but has yet to release a wilderness evaluation. The Forest Service should finish its draft evaluation before developing alternatives so that the alternatives are informed by the inventory. To ensure a reasonable range of alternatives, the Forest Service should make sure to have at least one alternative that analyzes all or almost all of the potential wilderness areas identified in the inventory in the Draft EIS. The Wilderness Society has engaged in many Chapter 70 processes across the country. Based on this experience, we have

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<sup>9</sup> 36 C.F.R. § 219.7(c)(2)(v) (a new plan or plan revision must "[i]dentify and evaluate lands that may be suitable for inclusion in the National Wilderness Preservation System and determine whether to recommend any such lands for wilderness designation").

<sup>10</sup> Other helpful documents include: a Q&A developed by the Forest Service Washington Office (currently in Version 1.1) related to the Chapter 70 process (attached as Appendix B), and two white papers by The Wilderness Society on the Chapter 70 process that include case studies from early-adopter forests (attached as Appendix C).



developed a detailed protocol for conducting a wilderness inventory and evaluation. *See*, Appendix A. The Forest Service should either use this protocol or something similar when developing and implementing its Chapter 70.

**Summary of Comments:** BLM should complete a comprehensive inventory of lands with wilderness characteristics in the entire planning area, complying fully with the process and definitions set forth in BLM Manual 6310 and Forest Service Handbook 1909.12, Chapter 70. BLM should consider utilizing GIS analysis to identify potential lands with wilderness characteristics and follow up with field inventory to identify appropriate boundaries and make determinations as to the presence or absence of wilderness characteristics. The inventory should be a complete, objective assessment of wilderness resources on the public lands, regardless of perceived manageability or other management issues. Inventory findings, including thorough documentation files, should be available to the public prior to the inventory being used to inform management decisions, and BLM should refine and update the inventory based on any new information and/or comments provided by the public.

#### **D. Management of lands with wilderness characteristics**

1. An accurate and comprehensive inventory of lands with wilderness characteristics is necessary to inform management alternatives, impact analysis and decision-making

Evaluating management alternatives for lands with wilderness characteristics requires an accurate inventory to serve as baseline information. FLPMA requires BLM to inventory the resources of the public lands in order to develop management plans. 43 U.S.C. § 1711(a). NEPA, 42 U.S.C. § 4321 *et seq.*, requires agencies to “describe the environment of the areas to be affected or created by the alternatives under consideration.” *See* 40 C.F.R. § 1502.15. Establishment of baseline conditions is a requirement of NEPA. In *Half Moon Bay Fisherman’s Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988), the Ninth Circuit states that “without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA.” The court further held that “[t]he concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process.”

The U.S. Court of Appeals for the Ninth Circuit has held: “wilderness characteristics are among the ‘resource and other values’ of the public lands to be inventoried under § 1711. BLM’s land use plans, which provide for the management of these resources and values, are to ‘rely, to the extent it is available, on the inventory of the public lands, their resources, and other values.’ 43 U.S.C. § 1712(c)(4).” *Ore. Natural Desert Ass’n v. Bureau of Land Management*, 531 F.3d at 1119. Therefore, BLM is required to consider “whether, and to what extent, wilderness values are now present in the planning area outside of existing WSAs and, if so, how the Plan should treat land with such values.” *Id.* at 1143.

As discussed previously in these comments, BLM Manual 6310 provides instruction on how to conduct and maintain lands with wilderness characteristics inventories under Section 201 of FLPMA. Conducting an accurate and comprehensive inventory as directed by Manual 6310 is BLM’s current policy for establishing the baseline conditions required by NEPA. BLM must ensure its LWC inventory is fully compliant with Manual 6310 to meet its requirements for

documenting wilderness resources per FLPMA and NEPA, and to allow for adequate evaluation of management alternatives and environmental consequences per BLM Manual 6320.

**Summary of Comments:** In order to establish a true set of baseline conditions as required under NEPA, BLM must ensure its lands with wilderness characteristics is fully compliant with Manual 6310 before the inventory can be used to inform management decisions.

2. BLM must consider multiple alternatives in the MMP for managing lands with wilderness characteristics

BLM Manual 6320 states that BLM will “use the land use planning process to determine how to manage lands with wilderness characteristics as part of the BLM’s multiple-use mandate.” BLM Manual 6320.06. The manual specifies that where lands with wilderness characteristics have been identified through the inventory process, the land use plan “shall contain a full range of reasonable alternatives to provide a basis for comparing impacts to wilderness characteristics.” BLM Manual 6320.06(A)(2)(d). Each alternative is to include management actions and allowable uses and restrictions for lands managed to protect wilderness characteristics. *Id.*

The range of alternatives is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. NEPA requires BLM to “rigorously explore and objectively evaluate” a range of alternatives to proposed federal actions. *See* 40 C.F.R. §§ 1502.14(a) and 1508.25(c).

NEPA’s requirement that alternatives be studied, developed, and described both guides the substance of environmental decision-making and provides evidence that the mandated decision-making process has actually taken place. Informed and meaningful consideration of alternatives — including the no action alternative — is thus an integral part of the statutory scheme.

*Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988), *cert. denied*, 489 U.S. 1066 (1989) (citations and emphasis omitted). BLM Manual 6320 directs BLM to “consider a full range of alternatives for [lands with wilderness characteristics] when conducting land use planning.” BLM Manual 6320.06.

An agency violates NEPA by failing to “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14). This evaluation extends to considering more environmentally protective alternatives and mitigation measures. *See, e.g., Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1122-1123 (9th Cir. 2002) (and cases cited therein); *see also Env’tl Defense Fund., Inc. v. U.S. Army Corps. of Eng’rs*, 492 F.2d 1123, 1135 (5th Cir. 1974); *City of New York v. Dept. of Transp.*, 715 F.2d 732, 743 (2nd Cir. 1983) (NEPA’s requirement for consideration of a range of alternatives is intended to prevent the EIS from becoming “a foreordained formality.”); *Utahns for Better Transportation v. U.S. Dept. of Transp.*, 305 F.3d 1152 (10th Cir. 2002), *modified in part on other grounds*, 319 F.3d 1207 (2003); *Or. Env’tl. Council v. Kunzman*, 614 F.Supp. 657, 659-660 (D. Or. 1985) (stating that the alternatives that must be considered under NEPA are those that would “avoid or minimize” adverse environmental effects).

NEPA requires that an actual “range” of alternatives is considered, such that the Act will “preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative (i.e., the applicant’s proposed project).” *Colorado Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1174 (10th Cir. 1999), citing *Simmons v. United States Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997). This requirement prevents the EIS from becoming “a foreordained formality.” *City of New York v. Department of Transp.*, 715 F.2d 732, 743 (2<sup>nd</sup> Cir. 1983). *See also, Davis v. Mineta*, 302 F.3d 1104 (10<sup>th</sup> Cir. 2002).

**Given the broad purpose of the preparation of the Monument management plan and the information compiled by the public regarding lands with wilderness characteristics, the range of alternatives for these lands should include a number of alternatives to protect their wilderness values.** This range of alternatives must be consistent with BLM’s FLPMA obligations to inventory its lands and their resources, which includes wilderness character. FLPMA also obligates BLM to take this inventory into account when preparing land use plans, using and observing the principles of multiple use and sustained yield. 43 U.S.C. § 1712(c)(4); 43 U.S.C. § 1712(c)(1). Through management plans, BLM can and should protect wilderness character and the many uses that wilderness character provides on the public lands through various management decisions, including by excluding or limiting certain uses of the public lands. *See*, 43 U.S.C. § 1712(e). This is necessary and consistent with the definition of multiple use, which identifies the importance of various aspects of wilderness character (such as recreation, wildlife, natural scenic values) and requires BLM’s consideration of the relative values of these resources but “not necessarily to the combination of uses that will give the greatest economic return.” 43 U.S.C. § 1702(c). It is also consistent with the purpose of the Monument and its inclusion in the National Conservation Lands, which are lands the agency is directed to manage with a conservation focus.

**Summary of Comments:** The MMP should evaluate a full range of alternatives for managing inventoried BLM and USFS lands with wilderness characteristics, including multiple alternatives that protect lands with wilderness characteristics.

3. BLM should manage a substantial amount of lands to protect their wilderness characteristics in the MMP in order to meet the agency’s statutory and regulatory obligations

BLM should protectively manage all lands with wilderness characteristics in Bears Ears National Monument. These areas are treasured by tribes, hikers, artists, wildlife viewers and many others who visit our public lands to experience the sights and sounds of nature and revel in our most spectacular western landscapes – the National Conservation Lands. As stated above, in addition to providing backcountry recreation opportunities, lands with wilderness characteristics harbor important wildlife habitat, riparian areas, cultural resources and other resources of the public lands that are better protected within lands managed to protect wilderness characteristics.

FLPMA directs BLM to inventory for the many values of the public lands and consider ways to protect them in the MMP (i.e., not all uses are appropriate in all places). 43 U.S.C. §§ 1711, 1712. FLPMA further requires that: “In managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, **take any action necessary to prevent unnecessary or undue degradation** of the lands.” 43 U.S.C. §1732(b) (emphasis added). BLM’s duty to prevent unnecessary or undue degradation under FLPMA is mandatory, and BLM must, at a minimum,

demonstrate compliance with this standard. *See Sierra Club v. Hodel*, 848 F.2d 1068, 1075 (10<sup>th</sup> Cir. 1988). As the court found in *Mineral Policy Center v. Norton*, “in enacting FLPMA, Congress’s intent was clear: **Interior is to prevent, not only unnecessary degradation, but also degradation that, while necessary to mining, is undue or excessive.**” 292 F.Supp.2d 30 (D.D.C. 2003) (emphasis added). Further: “FLPMA, by its plain terms, vests the Secretary of the Interior with the authority—and indeed the obligation—to disapprove of an otherwise permissible mining operation because the operation though necessary for mining, would unduly harm or degrade the public land.” *Id.* at 20.

Protecting all of the inventoried lands with wilderness characteristics in Bears Ears National Monument is the appropriate action to prevent unnecessary and undue degradation to wilderness resources on the public lands, and specifically in the National Conservation Lands. BLM can do this by adopting the recommended three-tier approach set out below in section (v)(2) of these comments. Accordingly, BLM is under a statutory obligation to demonstrate compliance with FLPMA’s requirement to not cause undue or unnecessary degradation to important resources. *See e.g., Kendall’s Concerned Area Residents*, 129 IBLA 130, 138 (1994). BLM should discuss a variety of options to protect this important resource, including through explicitly managing to protect wilderness characteristics.

Furthermore, BLM should maximize protection of wilderness characteristics through layering management. Layering management that protects a variety of resources is an important tool that BLM consistently uses. Protection of wilderness characteristics can be effective as a standalone management approach but is also effective along with designation of ACECs and other conservation-oriented designations, as well as portions of special and extensive recreation management areas.

**Summary of Comments:** BLM should manage a substantial amount of land in Bears Ears National Monument for protection of wilderness characteristics to comply with FLPMA’s unnecessary and undue degradation standard. BLM should layer management of LWC with other administrative designations where necessary to adequately manage and protect all relevant resources and values.

4. The MMP must evaluate the economic benefits of protecting lands with wilderness characteristics

IM 2011-154 provides that BLM must “consider the benefits that may accrue to other resource values and uses as a result of protecting wilderness characteristics.” In accordance with NEPA, this should include considering the economic benefits. BLM has current guidance on estimating nonmarket environmental values and analyzing those values in land use planning.<sup>11</sup> IM 2013-131 directs BLM to “utilize estimates of nonmarket environmental values in NEPA analysis supporting planning and other decision-making.” Nonmarket values are described as values that “reflect the benefits individuals attribute to experiences of the environment, uses of natural resources, or the existence of particular ecological conditions that do not involve market transactions and therefore lack prices,” such as “the perceived benefit of hiking in wilderness.”

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<sup>11</sup> IM 2013-131, available at: <https://blm-prod.opengov.ibmcloud.com/policy/im-2013-131-ch1>.

BLM's guidance directs the agency to analyze nonmarket values for each alternative and adopt management decisions that are informed by that analysis:

In framing information for management decisions, focus on the *difference in changes to nonmarket values* between action alternatives. Such information can highlight tradeoffs. For example, an alternative designating an additional thirty miles of trails for off-highway vehicles may *increase* the visitor days of use – therefore the total nonmarket benefits – from motorized recreation, but may *decrease* the benefits of subsistence hunting and watershed protection in this area. The *difference* between the changes to nonmarket values between this alternative and an alternative that, for example, only designates an additional ten miles of trails, can inform the choice among action alternatives.

IM 2013-131, Attachment 1-5. The guidance also directs that quantitative analysis of nonmarket values is strongly encouraged when “the alternatives to be considered present a strong contrast between extractive and nonextractive uses of land and resources. For example, an RMP may include alternative resource allocations that vary between managing land primarily for oil and gas development or managing it for habitat conservation and recreation.” IM 2013-131, Attachment 1-7. While the Monument management plan will not evaluate alternatives that have a strong extractive or development focus, BLM should nonetheless complete quantitative analysis of nonmarket values to the extent possible, particularly to help the public understand the economic benefits that could be realized by visitation to the Monument.

The recreation opportunities provided by wilderness quality lands yield direct economic benefits to local communities. Communities near protected public lands reap measurable benefits in terms of employment and personal income. A report by the Sonoran Institute found that protected lands have the greatest influence on economic growth in rural isolated counties that lack easy access to larger markets. Rasker et al. 2004. From 1970 to 2000, real per capita income in isolated rural counties with protected land grew more than 60 percent faster than isolated counties without any protected lands. This report also found that rural western counties with a higher dependence on extractive industries showed lower income and employment growth. *See also* Rudzitis and Johansen (1989, 1991), Whitelaw and Niemi (1989), Johnson and Rasker (1993, 1995), and Lorah (2001) for additional research on the role of wildlands in the local economy.

These findings confirm earlier research, showing that wilderness and open space are in fact beneficial for local economies. Residents of counties with wilderness cite wilderness as an important reason why they moved to the county, and long-term residents cite it as a reason they stay. Recent survey results also indicate that many firms decide to locate or stay in the West because of scenic amenities and wildlife-based recreation, both of which are strongly supported by wilderness areas. Morton 2000b. Other “non-market” economic values arise from the ability of wildlands to contribute to recreation and recreation-related jobs, scientific research, scenic viewsheds, biodiversity conservation, and watershed protection. *See* Morton 1999. All of these economic benefits are dependent upon adequate protection of the wilderness characteristics of the lands.

We have included additional information and recommendations regarding socioeconomic analysis in a separate section in these comments.

**Summary of Comments:** BLM should analyze the economic benefits of protecting lands with wilderness characteristics for each alternative and utilize that analysis to inform the management decisions ultimately adopted in the MMP.

## 5. Management Prescriptions

- i. *BLM should base management decisions on the analysis of the affected environment and environmental impacts*

BLM Manual 6320 specifically provides that BLM must document its rationale for its determination regarding the management of lands with wilderness characteristics:

In making the final planning decision regarding management of lands with wilderness characteristics, consider both the resources that would be forgone or adversely affected, and the resources that would benefit under each alternative. As with any planning decision, document the reasons for its determination regarding management of lands with wilderness characteristics.

BLM Manual 6320.06(A)(2)(g). In addition, Manual 6320 requires BLM to “consider and document the wilderness characteristics for each area identified as possessing wilderness characteristics” and provides factors for consideration including:

1. Considering and documenting whether the lands can be effectively managed to protect their wilderness characteristics and if a boundary modification might improve manageability;
2. How wilderness characteristics will be managed over the life of the plan;
3. Documenting the land status and mineral ownership of the lands;
4. Potential impact of providing access to non-Federal inholdings;
5. The fact that incompatible activities or uses can be seen or heard from areas possessing wilderness characteristics should not be a determining factor when analyzing the manageability of such areas unless these impacts are pervasive and omnipresent;
6. The degree to which other resources or uses are present in the area with wilderness characteristics;
7. The potential for further development or use of the other resources on the lands with wilderness characteristics;
8. The degree to which other resources or uses are present on other public and private lands outside the area containing wilderness characteristics;
9. Local, regional, or traditional (e.g., Tribal) economic value of various resources on the lands with wilderness characteristics and the potential to enhance the economic importance by protecting the lands with wilderness characteristics; and
10. The degree to which use or development of each resource is compatible with or conflicts with management of the area to protect wilderness characteristics.

Furthermore, one of the core purposes of NEPA is to disclose how an agency is making a decision when that decision may significantly impact the environment. The U.S. Supreme Court has reinforced this principle:

The statutory requirement that a federal agency contemplating a major action prepare such an environmental impact statement serves NEPA's "action-forcing" purpose in two

important respects. It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that **the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.** *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (internal citations omitted) (emphasis added).

The MMP should document and analyze the uses, trends, resources of each unit in order to come up with and justify management prescriptions that are appropriate to specific units. The affected environment discussion in the MMP should assess individual LWC units as to the current and trending uses of those lands, including both values and threats. The environmental impacts analysis and alternatives should reflect the current conditions, including by evaluating management alternatives that ensure protection of existing values and/or target specific threats.

**Summary of Comments:** The MMP should clearly tie the analysis of the affected environment and environmental impacts to the alternatives and ultimately to the management decisions. Individual lands with wilderness characteristics units should be assessed on their own merits and threats, and management decisions should be considered that are appropriate to the current and trending uses of those lands.

- ii. *Management prescriptions must be robust to adequately protect wilderness resources identified for protection in the MMP and BLM should consider a variety of management regimes for lands identified as possessing wilderness characteristics.*

BLM must adopt meaningful protections for wilderness resources as part of its multiple use mission. Manual 6320 directs that “an alternative that protects lands with wilderness characteristics must contain management actions to achieve protection.” Manual 6320.06(A)(2)(d). The manual provides examples of land use plan decisions that could protect wilderness characteristics, including: recommend withdrawal from mineral entry; close to leasing or NSO with no exceptions, waivers or modifications; right-of-way exclusion; close to construction of new roads; close or limit motorized and/or mechanized use; designate as visual resource management (VRM) I or II; among others.

BLM maintains discretion to set management actions for lands with wilderness characteristics that it is managing for the protection of those wilderness characteristics as a priority over other multiple uses. However, BLM should set baseline management actions that will ensure appropriate protection of all LWC units being prioritized for protection of wilderness characteristics. For the Monument, which already has limitations on development that would impair lands with wilderness characteristics, the most important baseline management action is prohibiting construction or maintenance of roads. From this baseline, BLM can and should consider tailoring management prescriptions to individual units or categorizing units based on specific threats to wilderness values and supplemental values that are present. This approach is similar to BLM’s management of ACECs, where relevant and important values must be protected but the management actions are developed based on the threats to those values and the opportunities to enhance and experience them.

For Bears Ears National Monument, we recommend BLM manage lands with wilderness characteristics in two categories: very high quality LWC meriting the strongest levels of protection and additional LWC in which other resources are emphasized. Both categories should include management direction to consider impacts to wilderness characteristics in implementation-level decisions and avoid, minimize or mitigate those impacts to the extent possible.

For example, the Rio Puerco (NM) Draft RMP developed three approaches for managing lands with wilderness characteristics: Protect Wilderness Characteristics, Minimize Impacts to Wilderness Characteristics, and Not Managed to Protect Wilderness Characteristics. Rio Puerco Draft RMP, p. 2-38—40. All three categories, **including lands not managed to protect wilderness characteristics**, have management prescriptions in place to minimize impacts to wilderness characteristics. Similarly, the White River (CO) Approved RMPA grouped inventoried LWC into 3 management tiers ranging from most restrictive management to least. Even the least restrictive tier allows for applying management decisions to avoid and minimize impacts to wilderness characteristics. White River Approved RMPA at Map 2-9.

**Summary of Comments:** BLM should set baseline management actions, the most important being prohibiting construction or maintenance of roads, that will ensure appropriate protection of all LWC units. From this baseline, BLM should tailor management prescriptions to individual units or categorizing units based on specific threats to wilderness values and supplemental values that are present. We recommend BLM manage LWCs in two categories: very high quality LWC meriting the strongest levels of protection and additional LWC in which other resources are emphasized. Both categories should include management direction to consider impacts to wilderness characteristics in implementation-level decisions and avoid, minimize or mitigate those impacts to the extent possible.

## **VI. CULTURAL RESOURCES**

### **A. National Historic Preservation Act obligations**

Section 106 of the National Historic Preservation Act (NHPA) requires BLM to account for the effect of its actions on historic properties. 16 U.S.C. § 470f. Specifically, a federal "undertaking" triggers the Section 106 process, which requires the lead agency to identify historic properties affected by the action and to develop measures to avoid, minimize, or mitigate any adverse effects on historic properties. 16 U.S.C. § 470f; 36 C.F.R. §§ 800.4, 800.6. NHPA regulations provide that an agency "shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey." 36 C.F.R. § 800.4(b)(1). Prior to authorizing a proposed action, BLM must determine whether the proposed action is an undertaking under the NHPA. 36 C.F.R. § 800.3; *Mont. Wilderness Ass'n v. Fry*, 310 F. Supp. 2d 1127, 1152 (D. Mont. 2004).

Section 106 review must occur prior to approving the designations of routes in the record of decision since the designation of routes in a MMP is an "undertaking," BLM's regulations indicate that formal designation of ORV routes occur not at the implementation level but with "[t]he approval of a resource management plan. . . ." 43 C.F.R. 8342.2(b); *see also, Norton v. S. Utah Wilderness Alliance (SUWA)*, 542 U.S. 55, 69 n.4 (2004) (holding the "affirmative decision" to



open or close a specific ORV route occurs through land use planning.) The *SUWA* Court’s interpretation is consistent with national guidance from the Interior Department stating that “[p]roposed decisions to designate new routes or areas as open to OHV use. . . are subject to section 106 compliance” See BLM IM 2007-030. Therefore, it is clear that road and route designations made during the land use planning process are undertakings requiring review under Section 106 of the NHPA prior to approval of the MMPs.

In *Montana Wilderness Association v. Cornell*, the court held that the BLM violated the NHPA’s “reasonable and good faith” inventory requirement when it adopted the Upper Missouri River Breaks National Monument RMP. Appeal No. 11-35818, 2013 WL 3927754, Slip Op. at 35-45 (citing 36 C.F.R. § 800.4(b)(1)). The court held that BLM’s Class I literature review for the RMP did not amount to a “reasonable effort to identify historical and cultural resources” because “[c]onsistent with BLM’s own policy documents, BLM is required to conduct Class III inventories for roads, ways and airstrips that have not been surveyed previously or were surveyed decades ago.” Slip Op. at 43. The court remanded to the district court to enter an order requiring BLM to conduct Class III surveys. Slip Op. at 45.

As remarkable as the known archaeological record is for Bears Ears National Monument, it likely constitutes only a small fraction of what is actually in the Monument area, protected for millennia by the remote wilderness from modern threats. The known and registered cultural sites together constitute a rare continuous record of human passage.

Given the recognized impacts to cultural resources and the fact that these resources have priority status as Monument objects and values, BLM should have a more complete inventory before allowing uses that impact these resources to continue. BLM should prioritize the most sensitive, important, and at-risk areas for cultural resources and commit to performing surveys before making final resource allocations in the MMP.

**Summary of Comments:** BLM should prioritize cultural resource inventories in the Monument to have the best information available for planning for and managing cultural resources. In accordance with NHPA, BLM must initiate and complete the Section 106 process prior to the designation of roads and routes located within Bears Ears National monument during the planning process. BLM should not designate any roads without a proper cultural survey along those roads.

## **B. Indian sacred sites and traditional lifeways**

Indian sacred sites and traditional cultural properties (TCP) are different, but both require tribal consultation and should be considered as components of the human environment as part of the NEPA analysis.

According to EO 13007, sacred sites are defined as “specific, discrete, narrowly delineated locations on Federal land that are identified by an Indian tribe, or . . . authoritative representative of an Indian religion, as sacred by virtue of their established religious significant to, or ceremonial use by, an Indian religion . . .”

The NHPA and the 36 C.F.R. § 800 regulations refer to “properties of traditional religious and cultural significance” and “properties of traditional religious and cultural importance.” These terms are geographic places prominent in a group’s cultural practices, beliefs, or values, when those values:

- Are widely shared with the group,
- Have been passed down through the generations, and
- Have served a recognized role in maintaining the group’s cultural identity for at least 50 years.

TCPs are given special management attention to ensure the protection of areas of traditional religious and cultural importance. TCPs can include traditional subsistence areas used for hunting or gathering resources or places that traditionally have a wealth of resources for subsistence activities (e.g., caribou movement corridors, wood for fuel and construction, plants for ceremonial use, etc.). TCPs can also include large areas and a variety of culturally important activities, such as the Medicine Lakes Highlands Traditional Cultural Places District in California (approximately 24,000 acres, sacred sites and training areas for medicine men) and Mount Taylor Traditional Cultural Property in New Mexico (over 400,000 acres, pilgrimage sites, traditional cultural and religious activities, which include gathering items and hunting).

Chapter 6 of the BLM Handbook H-1790-1 implementing NEPA identifies the need to assess effects on the social and economic elements of the environment, including areas and locations of socio-cultural importance to tribes and others. The Council on Environmental Quality regulations implementing NEPA states that the human environment “shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.” It goes on to state that, “When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment” 40 C.F.R. § 1508.14.

The entire area encompassed in Bears Ears National Monument’s boundaries is sacred to Native peoples. As such, BLM must comply with its government-to-government responsibilities and consult with the Inter-Tribal Bears Ears Coalition, as well as relevant Tribal governments about management strategies. Consultation, as required under NEPA and Section 106 of the NHPA, require BLM to give tribes opportunities to:

- Identify their concerns about historic properties, including those of traditional religious and cultural importance;
- Advise the agency on identifying and evaluating these properties;
- Provide their views on how agency actions might affect those properties; and
- Participate in resolving adverse effects.

The BLM must consult tribes about projects potentially impacting sacred sites or traditional cultural properties, and ask for information to assist with management of these areas very early in the planning process. It is up to the tribes to decide what information to share and it is up to the BLM to listen and respect the information provided.

**Summary of Comments:** Broader cultural landscapes and values in addition to more specifically defined locations of cultural importance to tribes should be addressed as human environment elements through the NEPA analysis. The BLM and USFS must consult tribes about projects potentially impacting sacred sites or traditional cultural lifeways very early in the planning process, and ask for information to assist with management of these areas.

### **C. Cultural landscapes**

As stated in the 15-year Strategy for the National Conservation Lands, BLM will "[m]anage cultural resources within the context of the cultural landscape and adjoining lands to provide the greatest conservation benefit" *See* 15-Year Strategy, Goal2A(3). We encourage BLM to emphasize the management of cultural landscapes and its approach to this in more detail in the MMP.

The Canyons of the Ancients National Monument RMP (Canyons RMP) contains one of the best examples of protecting cultural resources for BLM National Conservation Lands. The Canyons RMP begins by establishing the goal for cultural resources management as the protection of cultural resources in the monument at a "landscape- level," and recognizing the "integral and independent relationship between sites" *See* Canyons RMP, p. 2. The Canyons RMP then proposes to implement this goal by identifying "settlement clusters" in the monument — places where numerous sites are in proximity to each other — and prohibiting or restricting uses that may directly or indirectly harm those clusters. Canyons RMP, p. 3. Again, the intent of this approach is to protect the context and setting of cultural resources through landscape-level management. The Canyons RMP states the following:

The term "landscape" in the [National Landscape Conservation System] title is a key element to how public lands within the [National Landscape Conservation System] are managed. The emphasis is on protecting entire landscapes for cultural and natural values, instead of preserving only isolated parcels and fragmented ecosystems. Therefore, for the Monument, management and protection is extended to settlement clusters and the surrounding natural resources (the "setting") in order to gain a better understanding of how people settled and used the land. Canyons RMP, p. 1.

**Summary of Comments:** The management approach for cultural resources taken by BLM at Canyons of the Ancients National Monument promotes the spirit of the National Landscape Conservation System through innovative land management to protect the objects and values first, while allowing for multiple use management to continue where consistent with protecting the objects and values of the Monument. We strongly encourage BLM to come up with similar solutions for the management of important Monument values during the current planning process.

### **D. Outdoor museum**

As mentioned above, Bears Ears National Monument is home to many sacred and unique cultural sites and is considered sacred to Native peoples. The MMP should incorporate tools to educate visitors and support safe public access, while also respecting and maintaining the unmanaged backcountry nature and sacredness of sites. We feel strongly that BLM and USFS should work

closely with the interested tribes to identify certain areas within the monument that should not be managed heavily, and instead be preserved in their natural state without signs, maps, and established trails. The BLM and USFS should still account for human visitation and protect heavily visited areas with appropriate management techniques such as signs and information kiosks.

This concept, known as the “outdoor museum”, was incorporated into Canyon of the Ancients National Monument’s management plan. Canyons of the Ancients allocated 13 cultural resource sites in the frontcountry for development and public use, including interpretive signs and brochures for visitors, while still maintaining the areas natural setting. However, the remaining 22 cultural resource sites in the backcountry remain accessible through self-discovery as an “outdoor museum.” The BLM developed this strategy based on input received from Native American tribes, local communities, and the visiting public that there was a desire for the agency to manage the area with a “light hand” and that development should be minimized. *See* Canyons of the Ancients ROD 1.3.1.

All cultural resources are allocated under the plan to “Uses A-D,” and “Use D” is further allocated to be listed as “D- developed” (i.e., promoted to the public) or “D- undeveloped” (sites that are not promoted to the public, but may be visited in a backcountry context). Canyons of the Ancients’ management plan does maintain some standing architecture according to Historic American Building Survey standards, but only as necessary to address visitor safety and repair human-caused impacts. For much of the monument, standing walls can deteriorate naturally. The outdoor museum management tool protects the natural setting of the monument, while allowing primitive recreational experiences at the developed sites and providing unique opportunities to visit unique and unmanaged cultural resource sites in the backcountry. The outdoor museum concept is incorporated into all public messages, contact opportunities, and interpretive/education materials.

**Summary of Comments:** Bears Ears National Monument should incorporate the Canyon of the Ancients’ “outdoor museum” concept into its management plan, allowing for heavily visited areas to be developed with educational materials while still maintaining the primitive nature, but leaving sacred, backcountry sites for unmanaged, self-discovery. The BLM and USFS must work closely with the Inter-Tribal Coalition’s Land Management Planning Task Force and interested tribal governments to identify and manage these sites. Using the strategy from Canyon of the Ancients’ Monument management plan, BLM and USFS should consider allocating all cultural resources into distinct categories, specifically listing which will be “developed” or “undeveloped,” and managing accordingly.

## **VII. WILDLIFE MANAGEMENT AND VIABILITY**

### **A. Wildlife corridors**

A large portion of Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016) is spent describing the various wildlife resources and their habitat. As such, BLM and USFS should identify and protect wildlife corridors in the Monument to ensure that usable habitat and migration pathways will remain.

The Western Governors Association's *Wildlife Corridors Initiative*<sup>12</sup> defines wildlife corridors as:

"Crucial habitats that provide connectivity over different time scales (including seasonal or longer), among areas used by animal and plant species ...and serve to maintain or increase essential genetic and demographic connection of populations."

Reduction in habitat connectivity through increased fragmentation — due to roads, residential and commercial development, energy development, and off-road vehicles — substantially decreased the amount of ecologically intact core habitat available for many wildlife species. Ecologists have long recognized that the loss of core habitat and habitat connectivity pose the greatest threats to species persistence and overall biodiversity. *See* Wilcove et al. 1998.

Secretarial Order 3308 states that "[t]he NLCS components shall be managed as an integral part of the larger landscape, in collaboration with the neighboring land owners and surrounding communities, to maintain biodiversity, and promote ecological connectivity and resilience in the face of climate change." In addition, the 15-Year Strategy for the National Conservation Lands includes the following guidance:

- Use large-scale assessments, such as BLM's REAs, to identify areas where NLCS units are important for resource protection and conservation within a broader landscape context; such as providing for large-scale wildlife corridors and water-dependent resources.
- Maintain or increase habitat connectivity with other important habitat areas to provide for sustainable populations of native species.
- Utilize existing large-scale assessments and maps, such as BLM's REAs, wildlife corridor mapping effort, wilderness inventories, and other federal and state agency analyses to inform collaborative planning and land acquisition efforts.

Through RMPs and MMPs, BLM plans for the management of its lands at the landscape level, which gives the agency the ability to designate and protect naturally-occurring wildlife corridors. The BLM has the legal authority to implement protective management of wildlife corridors, and the legal obligation to address threats to wildlife and wildlife habitat as stewards of the western public lands. Protecting wildlife corridors through administrative designations is consistent with the BLM's obligations under the Monument's Proclamation, FLPMA, 42 U.S.C. § 1701, *et seq.*, and NEPA, 42 U.S.C. § 4321, *et seq.*

Secretarial Order (SO) 3362, issued by Secretary Zinke on February 9, 2018, represents the Department of the Interior's most recent attempt to address large-landscape connectivity and wildlife corridor protection. While we do not support all aspects of SO 3362, including categorical exclusions for vegetation management and no mention of species other than big game, we've included some important concepts from the Order below.

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<sup>12</sup> Available at: [http://www.westgov.org/index.php?option=com\\_content&view=article&id=123&Itemid=68](http://www.westgov.org/index.php?option=com_content&view=article&id=123&Itemid=68).

SO 3362 acknowledges and directs federal agencies to take a leadership role on the issue. The political boundaries of states, private lands and federal public lands cut through wildlife corridors, and recognition of the need for national leadership to fully protect and manage corridors is a positive step.

SO 3362 directs agencies to review “data regarding wildlife migrations early in the planning process.” This information is critical to landscape-scale planning and management. Incorporating this information early and often is the best way to ensure that wildlife corridor management isn’t an afterthought, but is an integral component of plan development. SO 3362 directs the U.S. Geological Survey to develop maps and tools to track movement, land use and effectiveness of current habitat treatments. These important steps will help develop the body of science that will be important to understand the effectiveness of conservation actions.

SO 3362 also includes direction for site-specific activities, including fencing modification, “avoiding development in the most crucial winter range or migration corridors,” and “minimizing development that would fragment winter range and primary migration corridors.” These steps, if undertaken consistently and appropriately, could significantly improve habitat function and protection across the West, benefiting other species as well.

In the Pinedale Record of Decision and RMP, the BLM specifically designated and protected an important wildlife corridor as an ACEC. The BLM designated the Trapper’s Point ACEC with the specific goal to “preserve the viability of the big game migration bottleneck, cultural and historic resources, and important livestock trailing use.” Pinedale ROD/RMP, 2008, p. 2-56.

The RMPs for the Lower Sonoran Field Office and Sonoran Desert National Monument were completed on dual track and were both finalized in September 2012. This RMP process is like the planning efforts underway for the Monument as there are decisions being made for units within the National Conservation Lands as well as for lands adjacent covered by the Bears Ears MMP. This makes it easier to view the broader landscape, though we still feel strongly that there needs to ultimately be separate records of decision for the Bears Ears MMP.

To address the challenges with managing and protecting priority wildlife, the Lower Sonoran RMP identifies “priority habitats” in the planning area. These areas contain designations for wildlife habitat areas as well as wildlife movement corridors that connect important wildlife habitat. The RMP provides the following explanation:

Priority habitats are large areas that encompass wildlife habitat areas (WHAs) and wildlife movement corridors. Connection between these habitat patches is important to provide wildlife the ability to move along elevation gradients and between habitat areas. As climate conditions change, wildlife must be able to adapt by expanding or contracting according to the needs of their lifecycles. Therefore, it is necessary to maintain corridors of undisturbed vegetation that connect to other undisturbed habitat areas.

Lower Sonoran/Sonoran Desert National Monument Proposed RMP at 2-76.

The BLM should establish “priority habitats” in the planning area within Bears Ears National Monument, similar to the Lower Sonoran RMP to ensure important corridors are protected.

**Summary of Comments:** We recommend identifying wildlife movement corridors at the broader landscape level during the planning assessment to inform the designation of wildlife corridors through the planning process in accordance with Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016), SO 3362 and BLM policies for the National Conservation Lands. We also recommend using the Lower Sonoran Field Office/Sonoran Desert National Monument example to establish “priority habitats” in the planning area within Bears Ears National Monument to ensure important corridors are protected.

## **B. Science-based wildlife management**

Given the sizable land management challenges of the coming decades — including federal land management agencies’ response to climate change and the complex natural resource dilemmas associated with climate change (i.e., species adaptation, extreme variability in natural processes) — it is imperative that the BLM, the Canyon Country District Office, and the management plan for Bears Ears National Monument employ effective and efficient science-based planning and analysis methods to support robust and legitimate decision-making processes.

The effective application of science to land management planning and decision-making requires three “essential ingredients”:

- Well-defined, measurable standards (e.g., wildlife population or habitat condition targets), developed via robust public involvement processes
- The employment of science-based analytical tools to evaluate compliance with the standards (e.g., population viability analysis, or the spatially explicit Decision Support System recommended by the Western Governors’ Association)
- Consistent implementation of science-based analysis and decision-making (i.e., dedicated funding for monitoring and science-based adaptive management processes)

Rohlf, D.J. 2004. Science, Law, and Policy in Managing Natural Resources: Toward a Sound Mix Rather than a Sound Bite. Pages 127-142 in K. Arabas and J. Bowersox, editors. *Forest futures: science, politics, and policy for the next century*. Rowman and Littlefield, Lanham, Maryland, USA.

The Canyon Country District Office should consider these essential elements as it moves forward with efforts to respond to the pressing land management challenges of the coming decades.

### **1. Well-defined standards**

Providing functioning habitat for wildlife and ensuring the long-term persistence of wildlife populations are part of the BLM’s responsibilities to manage the public lands for multiple use and sustained yield. FLPMA specifically directs that management of public lands “takes into account the long-term needs of future generations” for wildlife, as well as other resources, and is implemented toward “achievement and maintenance in perpetuity” 43 U.S.C. §§ 1712(c)(1); 1702(c) and (h). Achieving these goals for wildlife can best be realized by establishing well-

defined, measurable standards. The use of well-articulated concepts and operational planning practices associated with the literature and practice of population viability assessment may provide land managers with effective and efficient means of applying science-based conservation methods to wildlife planning decisions.

## 2. Science-based analytical tools

In order to adopt a legitimate, efficient and effective science-based planning framework, the Canyon Country District Office should look to the well-established conservation planning and population viability assessment literature, as well as models employed by other BLM units and neighboring agencies. See U.S. Department of Agriculture, Committee of Scientists. (March 15, 1999). *Sustaining the People's Lands: Recommendations for Stewardship of the National Forests and Grasslands into the Next Century*.<sup>13</sup> For example, the Grand Mesa, Uncompahgre and Gunnison (GMUG) National Forests in Colorado monitor populations of “management indicator species” to measure the effects of management activities on unmeasured species and to provide insights into the integrity of the ecological systems to which they belong. The use of an indicator or focal species approach, in combination with robust knowledge of the link between species and habitats, allows managers an effective means to apply science-based principles to resource management decisions. Indeed, to meet the challenges of 21<sup>st</sup> century land management and conservation, agencies will need to cooperate on vital management planning activities, including the sharing and co-generation of biological information.

**Summary of Comments:** Bears Ears National Monument MMP should adopt planning and decision-making processes (including data collection, analysis, and monitoring) that employ measurable planning objectives at multiple biological scales (i.e., wildlife populations, habitat and ecosystem conditions) to ensure viable wildlife populations.

## VIII. RECREATION

### A. Recreation Management Zones

BLM should consider delineating Management Zones for the entire Monument that emphasize certain types of management and experiences for the Monument as allocated in the MMP. This can be an effective way to integrate recreation goals and experiences into the MMP, particularly for management plans for the National Conservation Lands, which have a visitor experience element throughout the entire planning area.

Management Zones are broadly-defined landscapes that describe the type of uses and experiences that will be expected in the specific areas. This allows for other management decisions, such as designated routes for travel or management of invasive species, to be based on the criteria for that zone.

BLM guidance states that "Field Offices may choose to establish [Travel Management Areas] or management zones (i.e., recreation management zones) that cover the entire planning area." See *BLM Handbook H-8320-1, Planning for Recreation and Visitor Services*. This policy direction (H-

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<sup>13</sup> Available at: <http://www.fs.fed.us/emc/nfma/includes/cosreport/Committee%20of%20Scientists%20Report.htm>.



8320-1) outlines BLM's guidance for integrating Comprehensive Travel and Transportation Management (CTTM) into land use planning. The Monument management plan would benefit greatly from delineating Management Zones to set the overarching goals for visitor experiences as well as a basis for designating routes in a CTTM.

There are several examples where BLM has defined these types of management zones in MMPs. One is the Grand Staircase-Escalante National Monument Management Plan (November 1999). In this plan, BLM described four zones to "provide guidance to help define permitted or excluded activities and any stipulations pertaining to them." Monument Management Plan at 8. These zones included Frontcountry, Passage, Outback, and Primitive Zones. *Id.* at 8-9.

Another example is the Craters of the Moon National Monument RMP which included the Frontcountry, Passage, Primitive, and Pristine Zones for the entire planning area. Craters RMP at 13-14. The plan describes the use of zones as a useful way to guide decisions to meet desired conditions.

Management zoning is established throughout the planning area to provide and maintain a range of recreation and access for different user types with varying interests and abilities. Each separate zone has distinct settings to be provided and maintained. Physical settings consider the degree of naturalness and amount and type of facilities, as well as proximity to roads. Social settings consider the number of contacts with other people, the size of groups, and evidence of other users. Managerial settings consider the amount of visitor management used to achieve desired social and resource conditions, the compatibility of traditional land uses with the recreational environment, and the type of access and vehicle use allowed in the area.

Other management zones for the planning area that BLM has used include titles like "Rustic" and "Wilderness" zones or can parallel labels for Recreation Management Zones that are designated in Special Recreation Management Areas (SRMAs). There is currently no standard way to create management zones for a planning area; they are often based on the needs and uses of that particular area. However, once designated, zones can provide guidance for not only travel and transportation management decisions, but also for management of other resources and management prescriptions, such as visual resource management classifications.

BLM should consider the following management zones and descriptions for Bears Ears National Monument. The MMP should make clear that future route designations would be based on the goals and objectives for each zone.

1. **Passage Zone:** special areas on the urban interface where the primary activities are non-motorized trail activities, yet there is a need for recreational and passenger vehicles to travel through to access other zones, internal trail heads, or for administrative purposes. These areas will have a high level of administrative control, including speed limits, and may further restrict vehicle to travel to only passenger vehicles or authorized uses. These areas are highly visible and serve a variety of non-motorized experiences at medium to high densities often while protecting special resources. Emphasis in these zones is on

highly developed, well planned and designed non-motorized trail systems. The density of motorized use routes would be very low.

2. **Motorized Backcountry Zone:** provide routes or loops designated for motorized recreation. In addition to use of ATVs and motorcycles on roads, special ATV width or single track motorized trails may be developed or designated for the specific use of these machines. Full size passenger vehicles may be restricted on certain trail segments. Routes in these areas should be designated to support long distance recreational travel, geo caching and sightseeing activities by ATV or motorcycle. Administrative control will be at a moderate level, with trail and route markers and designated parking/staging areas. Density of routes may be medium to high in select areas to form loop experiences. Other non-motorized routes may exist in these zones at low densities. Routes for transportation and access may exist at varying densities as determined by need.
3. **Primitive Zone:** are special non-wilderness backcountry areas that serve quiet non-motorized recreation in a primitive setting where visitors may enjoy a less developed recreational experience. These areas generally have sensitive resources; therefore, non-motorized trails in these areas will have a low to medium density.
4. **Pristine Zone:** are lands with wilderness characteristics and other highly sensitive ecological areas where there will be no motorized routes or travel permitted. Evidence of administrative control should be little to none. Non-motorized routes are generally undeveloped, and areas are generally accessed by foot or horseback.

**Summary of Comments:** BLM should designate the management zones as proposed above to help guide the comprehensive travel and transportation management process, as well as other management decisions and prescriptions in the MMP. BLM and USFS should release preliminary maps of management zones for public comment prior to issuing the draft MMP.

## **B. Recreation Management Areas**

BLM guidance for recreation and visitor services planning in the land use planning process (H-8320-1) creates a three-category system for lands in the planning area to be designated as SRMAs, managed as extensive recreation management areas (ERMAs), or classified as public lands not designated as recreation management areas.

Management focus for SRMAs is to "protect and enhance a targeted set of activities, experiences, benefits, and desired recreation setting characteristics," whereas ERMAs are managed to "support and sustain the principal recreation activities and the associated qualities and conditions of the ERMA." In SRMAs, recreation is to be the dominant use, and in ERMAs management is "commensurate with the management of other resources and resource uses." Whereas SRMAs are intended for more intensive management, ERMAs may be appropriate to designate for quiet-use, backcountry experiences and layer with other special designations that are compatible with quiet recreation, such as ACECs and lands with wilderness characteristics. Both SRMAs and ERMAs provide mechanisms for the BLM to

actively manage different types of recreation to the benefit of users while protecting the other resources of the public lands.

We generally support designation of ERMA for quiet-use recreation experiences. ERMA are to be less intensively managed and thus provide a primitive experience in a backcountry setting. ERMA are also by definition commensurate with management of other resources, such as lands with wilderness characteristics, ACECs and other areas being managed for conservation values. Moreover, the management toolbox offered by those resources and designations complements management of quiet-use recreation opportunities. We therefore recommend BLM designate ERMA for non-motorized recreation that overlap with other specially managed areas.

This approach is adopted in the Rio Puerco (NM) Draft RMP, which evaluates multiple ERMA with Recreation Management Zones that correspond to ACEC and LWC boundaries. The Petaca Pinta ERMA, for example, would be designated to promote a range of recreation activities including hiking, wildlife viewing, and off-highway vehicle use in non-restricted areas, and creates the following Recreation Management Zones accordingly:

The Petaca Pinta ERMA is located in a remote area southwest of Los Lunas and Belen, NM. There are five zones within the ERMA: Pronoun Cave ACEC zone, Cerro Verde ACEC zone, Volcano Hill zone, Cimarron Mesa zone, and Sandy Wash zone. The Volcano Hill and Cimarron Mesa zones roughly correspond to the areas of the same name identified as lands with wilderness characteristics. Rio Puerco Draft RMP at 2-63.

Rio Puerco Draft RMP's analysis of the affected environment details corresponding benefits to cultural resources from recreation management decisions, including mineral restrictions and closures for motorized travel. Such a strategy also aligns with dual objectives for quiet recreation and protection of lands with wilderness characteristics. In the Monument management plan, BLM should identify places and resources where management can address multiple goals and objectives.

We emphasize that both SRMA and ERMA require robust management prescriptions to protect and promote the recreation opportunities they are designated for. While ERMA are to be less intensively managed (such as, requiring minimal infrastructure or implementation actions), the MMP still must set forth allowable uses that will retain the recreation activities ERMA are targeting. For example, intensive motorized recreation would preclude quality, backcountry hiking and hunting opportunities and therefore must be prohibited or limited in ERMA designated for those purposes.

While ERMA can support objectives for quiet and non-motorized recreation, SRMA may also be appropriate designations to achieve the necessary management approach to achieve BLM's goals and objectives. SRMA are intended for more intensive management, but this does not also infer more intense forms of recreation. The BLM Handbook makes clear that recreation and visitor service objectives in RMA are recognized as a primary resource management consideration, and specific management is required to protect the recreation opportunities. BLM can also use SRMA to create management that maintains or enhances the *desired* physical, social, and operational resource setting conditions, including for quiet recreation.

Areas that have primitive character should be managed for that experience and desired future condition, even if they do not currently meet all of the criteria that the BLM has set for primitive physical settings or designation. By adopting such a prescriptive, or aspirational management approach, as opposed to a more descriptive or reactive approach of just basing the management of the RMAs on perceived evidence of human presence or an acceptance of more people wanting to use the area, BLM can ensure that some level of existing disturbance does not disqualify areas which do provide a primitive experience from a decision to manage them to protect and enhance such qualities and provide this important experience.

In designating SRMAs that include quiet recreation objectives alongside other recreation activities, we recommend BLM consider Recreation Management Zones to protect quiet and non-motorized recreation. RMZs provide a useful management tool to manage recreation resources in complex situations. When making divisions, each RMZ should have discrete objective and provide for specific recreation opportunities.

In the Grand Junction Approved RMP, for example, the Bangs SRMA provides opportunities for: mountain biking, hiking and trail running on world class single-track trails; OHV use on a network of motorcycle, ATV, 4X4 and rock crawling routes. Grand Junction RMP K-7-25. Given the range and complexity of these competing recreation uses, zones allow for management for discrete settings and objectives. Of note, the backcountry zone of the Bangs SRMA is substantially larger than the other zones at over 32,200 acres. BLM should provide sufficiently large quiet recreation RMZs to provide quality primitive recreation experiences and minimize disturbance to quiet-use activities from other forms of recreation and resource-uses.

**Summary of Comments:** BLM should designate ERMA for non-motorized recreation that overlap with other specially managed areas such as lands with wilderness characteristics. In places with high recreation demand for a variety of activities, BLM should develop Recreation Management Zones. The MMP must put in place robust management prescriptions for SRMAs and ERMA to protect and promote the recreation opportunities they are designated for.

### **C. Special Recreation Permits**

BLM should adopt unambiguous, protective criteria for issuance of special recreation permits (SRPs) to effectively manage the increase in commercial and competitive group activities that can have a significant impact on the lands in Bears Ears National Monument. The BLM Handbook on Recreation Permit Administration (H-2930-1) clearly states that BLM can and should develop guidelines for issuing SRPs. The Handbook states: "Field Offices are encouraged to develop thresholds through land use planning for when permits are required for organized groups and events for specific types of recreation activities, land areas, or resource settings" H-2930-1 at 13. On the issue of Special Area Permits, the Handbook states: "Applications for Special Area Permits issued to individuals are processed according to the area- specific land use and/or business plan, or guidelines approved by the State Director." H-2930-1 at 17. BLM therefore must provide clear guidelines for processing Special Area Permits, because in this situation the Handbook directs that permit issuance will tier to the RMP.

The Price Field Office (Utah) RMP provides an excellent example for evaluating SRP applications and issuing such permits. It classifies SRPs into four distinct classes, ranging from least intensive to most intensive, based on specific factors such as type of equipment, size of area used, number of participants, etc. These factors are defined and then compared in a simple permit classification matrix consisting of Classes I through IV (with I being for smaller and less impacting events and IV being for larger, more impacting events). Each Class also has an example of the type of event that may fit into the category. After the Class is determined, the BLM can then look to see how permit types fit into Recreation Opportunity Spectrum Classifications and/or SRMA or ERMA. Various SRMAs can be broken into classes and it is easy to see what types of uses and events should be permitted for each area. Because the standards set out in the Price RMP are very specific (for example, surface disturbance of 5-40 acres ranks as "medium intensity"), BLM can easily determine whether to issue an SRP and where, and can better estimate cumulative impacts from such permits. The Monument management plan should use the model provided by the Price RMP for classification of SRPs to define which uses may be appropriate or inappropriate in specific areas.

Competitive events should not be permitted in Bears Ears National Monument. As discussed throughout these comments, BLM manages national monuments not under the FLPMA multiple use mandate, but rather under Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016) that established Bears Ears National Monument. BLM must manage the Monument for the protection and preservation of its natural, cultural, historic and scientific values, and only allow uses other than those needed for protection of monument objects when those uses do not conflict with the directives of Proclamation 9558.

Of the fifteen National Monuments that are both managed (at least in part) by the BLM and have Approved RMP/ROD in place, only two do not have language regarding the management of commercial or motorized events through an SRP. *See* the table below. The other thirteen Monument RMPs either outright prohibit this use or place special limitations on it due to potential conflicts. Clearly BLM recognizes that competitive events are often not compatible with managing the National Conservation Lands.

National Monument	Commercial/Motorized Events?	Text	Page
Agua Fria	No	<b>RR-41.</b> Prohibit competitive motorized or mechanized races, and consider other competitive events on a case-by-case basis as long as they do not conflict with achievement of all resource DFCs for the location.	RMP, at 54
Grand Canyon-Parashant	No	<b>MA-RR-25.</b> No motorized speed events will be authorized in the Monument.	RMP, at 2-84

<b>Ironwood Forest</b>	Not prohibited, but limited	<b>AA-145:</b> Manage commercial/group vehicle touring opportunities in accordance with special recreation use permits (SRPs). <b>AA-146:</b> Manage SRPs in accordance with 43 CFR §2930 Special Recreation Permits requirements for: (1) commercial, (2) competitive, (3) vending, (4) individual or group use in special areas, and (5) organized group activity and event use, and on a case-by-case basis, and to achieve recreation management objectives. <b>AA-147:</b> Limit issuance of SRPs based on the potential for resource damage and conflicts with other uses.	RMP, at 72
<b>Sonoran Desert</b>	No	<b>RM-2.1.13:</b> Competitive motor sports will not be allowed in the SDNM.	RMP, at 2-75
<b>Vermilion Cliffs</b>	No	<b>MA-RR-29</b> No motorized speed events are authorized in the Monument.	RMP, at 2-66
<b>Carrizo Plain</b>	No	<b>Allowable Use REC-6(P):</b> Low-impact, non-motorized competitive activities and events that are consistent with the Monument Proclamation and cultural and biological objectives may be authorized.	RMP, at II-62
<b>Santa Rose and San Jacinto Mountains</b>	Not prohibited, not specified	No language.	n/a
<b>Canyons of the Ancients</b>	No	Prohibit commercial filming (still and movie photography), except for educational purposes relevant to the objectives of the Monument, as determined by the Monument Manager. Prohibit competitive and special events, except for educational purposes relevant to the objectives of the Monument, as determined by the Monument Manager. Allow private special events, at the discretion of the Monument Manager.	RMP, at 8
<b>Craters of the Moon</b>	Not prohibited, not specified	No language re: OHV events; SRP -not defined.	n/a
<b>Pompeys Pillar</b>	Not prohibited, but limited	<b>MD REC-13:</b> The BLM will issue special recreation use permits as appropriate for commercial, competitive, and special events subject to guidelines in BLM Handbook 2930, resource capabilities, social conflict concerns, professional qualifications, public safety, and public needs. <b>MD TTM-11:</b> SRPs for motorized events, competitive events, or organized group activities will be considered and addressed through site-specific analysis.	RMP, at 3-31, 3-33, K-78, K-80

<b>Kasha-Katuwe Tent Rocks</b>	Not prohibited	No language on competitive events	
<b>Upper Missouri River Breaks</b>	Not prohibited, but limited	Special recreation permit applications for organized group activities or events may be granted, if the activity will not impact the resources or values for which the Monument was designated. Large group events will be authorized subject to restrictions to protect resources. These restrictions may include, but would not be limited to, the designation of specific roads or trails for a particular event, limitations on parking, use of campfires, sanitation requirements and the number of people involved in the event. The BLM may also issue permits for commercial hiking, horseback riding and other commercial recreation activities that are not associated with big game hunting or river boating.	RMP, at 24,63,65
<b>Prehistoric Trackways</b>	Not prohibited, but limited	<p><b>"The Chile Challenge"- OHV event...2.3 Recreation and Visitor Services:</b> The BLM will authorize commercial, competitive, and organized group activities on a discretionary, case-by-case basis per 43 CFR Part 2930, Special Recreation Permits, and in compliance with NEPA....<b>SRPs for OHV</b> events will be limited by the following requirements, or other restrictions that provide for the protection of fossil resources:</p> <ul style="list-style-type: none"> <li>-Will not degrade fossil resources;</li> <li>-No more than three permitted OHV events per year (first-come, first-served, no multiple year events permits will be considered);</li> <li>-No permits will be issued for OHV events lasting for more than 4 consecutive days.</li> <li>-No more frequently than 1 every 3 months;</li> <li>-No more than 250 vehicles per event;</li> <li>-No more than 20 vehicles per "run";</li> <li>-No more than two "runs" per trail route will be authorized during each event;</li> <li>- Only Registered Event vehicles (including event support and BLM staff vehicles) will be allowed on the routes, during the event.</li> </ul>	RMP, at RMP-23
<b>Cascade - Siskiyou</b>	Not prohibited overall	<b>REC-36</b> SRPs are considered on a case-by-case basis and may be denied based upon factors such as potential impacts to resource values ...Use must also be primarily recreational. RNAs specifically prohibit OHV use.	
<b>Grand Staircase - Escalante</b>	No	EVENT-3: No competitive events will be allowed.	RMP, at 36

There are millions of acres of public land in Utah managed under BLM's multiple use mandate that may provide appropriate areas for competitive events. There is no reason to risk damage to the important resources of our National Conservation Lands by permitting competitive events in Bears Ears National Monument.

**Summary of Comments:** BLM should establish guidelines for issuing Special Recreation Permits in order to protect the resources that the Monument is intended to protect and sustain. Competitive and non-commercial events with excessively large group sizes should not be permitted in Bears Ears National Monument.

## **IX. TRAVEL MANAGEMENT**

### **A. Criteria specific to monuments and ACECs**

As discussed previously in these comments, National Monuments are held to a higher standard of protection as units of the National Conservation Lands. Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016) identifies a wide range of resources and values to be protected as Monument objects, including cultural, archaeological, geologic, ecological, historical, and scientific resources. These values can be adversely affected by motorized and mechanized travel. BLM should limit these uses within the Monument to protect the aforementioned resources and provide opportunities for quiet, backcountry recreation experiences.

The National Landscape Conservation System 15-Year Strategy has a goal, Goal 1F, for managing facilities within Conservation System units that conserves, protects, and restores the values for which those lands were designated. Action item 2 under Goal 1F of the Strategy states that "[t]he BLM will only develop facilities, including roads, on [National Conservation Lands] where they are required for public health and safety, are necessary for the exercise of valid existing rights, minimize impacts to fragile resources, or further the purposes for which an area was designated." This is a clear recognition that roads should be limited to the minimum network necessary for the management of the monument.

Additionally, Proclamation 9558 includes specific travel management guidelines for the Monument. Motorized travel in the Monument is to be limited to designated roads and mechanized use is to be limited to designated roads and trails. The Carrizo Plain National Monument RMP limits motorized vehicles in the monument to street-licensed vehicles only. *See* PRMP 2-114. This helps prevent illegal off-road use in the monument, and we recommend BLM adopt a similar approach in this Monument.

**Summary of Comments:** BLM has policy direction for units of the National Landscape Conservation System that requires designation of roads only when required for public health and safety, are necessary for the exercise of valid existing rights, minimize impacts to fragile resources, or further the purposes for which an area was designated. This is, in short, the "minimum road network" necessary for protection of the values for which the unit was designated. BLM should both analyze a minimum road network alternative and choose it as the best option consistent with BLM policy and for the protection of monument objects.



## **B. Mapping of routes**

As part of comprehensive travel management planning, BLM must produce route maps to illustrate a base travel network, to generate various route designation proposals, and for purposes of receiving public comments. In these contexts, it is vital that the agency clearly mark on all maps or proposed maps areas with existing restrictions on motorized use, such as wilderness areas, WSAs, primitive non-motorized designations and ACECs. Depicting existing restrictions will ensure that public comments are informed by the knowledge that additional routes will not be permitted in certain areas. Further, maps should indicate resources that could be affected by motorized use, such as wilderness characteristics and wildlife habitat. Public comments will then be informed by the potential resource conflicts and the best opportunities for designating areas for non-motorized recreation.

Route maps should also distinguish user-created routes from roads that were created and are maintained by the BLM to serve planned transportation needs. Also, user-created routes in areas that have motorized restrictions should only be shown as closed and/or for prioritizing restoration. To be added to the transportation system, user-created routes must go through NEPA analysis to ensure they are not damaging resources and comply with BLM regulations, such as the minimization criteria for ORV use discussed in these comments. In addition, BLM should commit in the Monument plan to completing a NEPA analysis with application of the minimization criteria for any proposal for new routes or trails in the future.

In addition, as part of designating routes, BLM should use consistent definitions of roads, primitive roads, and trails. IM 2006-173 ("Implementation of Roads and Trails Terminology Report"), sets out and defines these terms, and includes a definition of a road as:

A linear route declared a road by the owner, managed for use by low-clearance vehicles having four or more wheels, and maintained for regular and continuous use.

It is important that BLM use these terms to distinguish both the types of routes and the appropriate types of motorized use.

**Summary of Comments:** BLM should identify both existing restrictions on motorized access and other areas that can be damaged by motorized use on all maps used in travel planning. User created routes should be distinguished from legitimate roads on travel planning maps, and, where they were created illegally, should be excluded from the baseline inventory. Within the Monument plan, BLM should make any future proposals for additional routes or trails subject to site-specific NEPA, the minimization criteria, and all applicable other laws and regulations. In order to protect sensitive natural and cultural resources, BLM should analyze an alternative that closes Arch Canyon, Davis Canyon, and Lavender Canyon to motorized travel. If BLM's current planning process only addresses general area designations — as opposed to making specific route determinations — BLM should analyze an alternative that designates the areas of Arch Canyon, Davis Canyon, and Lavender Canyon, as well as other areas with sensitive natural and cultural resources, as "closed" to motorized use.

### **C. Non-motorized trail system network**

We encourage BLM to designate a network of non-motorized trails located throughout the Monument. The MMP should designate non-motorized trails to enable and encourage primitive and quiet recreation experiences, and should be deliberate in designing a non-motorized trail system that comprehensively addresses the needs and desires of quiet trails users. BLM should identify this system as a separate network in the MMP.

In implementing its 2006 Roads and Trails Terminology Report, BLM emphasized the importance of taking a "holistic" approach to the management of roads and trails. *See* Instruction Memorandum 2006-173. Likewise, the agency's 2011 Travel and Transportation Management (TTM) Manual generally recognizes that:

Whereas a comprehensive interdisciplinary approach to travel and transportation management incorporates the concerns and needs of multiple programs, the recreation program has a specific need to recognize and manage motorized recreational use of off-highway vehicles (OHVs) and non-motorized travel, such as foot, equestrian, and non-motorized mechanical travel. The planning process should consider and address the full range of various modes of travel on public lands, not only motorized access needs. An understanding of the regional supply and demand of recreational opportunities and access needs is important in designating a system of roads, primitive roads, trails, and areas for specific recreation and other uses.

BLM Manual 1626, § .06(A)(1) (emphasis added).

BLM's TTM Manual lays the foundation for looking holistically at a network of non-motorized trails and "quiet use" recreational experiences for any given planning area.

FLPMA requires BLM to develop land use plans that "consider the relative scarcity of values involved and the availability of alternative means and sites for realization of those values." 43 U.S.C. § 1712(C)(6). Access to a "quiet use" recreation experience on our public lands through non-motorized trails is a growing need as opportunities for this use are shrinking with an increasing motorized population. Furthermore, increased visitation to the Monument will require BLM to be more proactive and deliberate in designing travel networks that preserve quiet recreation opportunities.

**Summary of Comments:** The MMP should designate a standalone non-motorized trail network that is comprehensively designed to meet the needs of quiet trails users and provides and preserves backcountry recreation experiences while prioritizing protection of monument objects.

## **X. VISUAL RESOURCE MANAGEMENT**

### **A. Classes I & II**

It is BLM policy that VRM classes are assigned to all public lands as part of the Record of Decision for RMPs. The objective of this policy is to "manage public lands in a manner which will protect the quality of the scenic (visual) values of these lands." BLM Manual MS-8400.02.

Under the authority of FLPMA, BLM must prepare and maintain on a continuing basis an inventory of visual values for each planning effort. 43 U.S.C. § 1711; BLM Manual MS-8400.06. In addition, Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016) notes the "stunning vistas" and other resources such as the "vast, rugged landscape" and geologic features which depend on unimpaired viewsheds for visitors to enjoy. Therefore, BLM must update its visual resources inventory for the Monument and reclassify lands where necessary. The Monument should be re-inventoried and classified in the context of its new designation status, which is more protective than its previous allocation.

BLM should ensure that scenic values are a public lands resource that is conserved and must establish clear management direction describing areas inventoried and possessing high scenic importance with clearly defined objectives that limit surface disturbance within important viewsheds, including:

- Lands managed to preserve their natural values, such as primitive recreation areas and lands with wilderness characteristics, should be managed as Class I to "preserve the existing character of the landscape." BLM Manual 6320 affirms that VRM Class I may be appropriate to protect lands with wilderness characteristics. BLM Manual 6320 at .06(A)(2)(d).
- Lands within popular and easily accessible vantage points should be managed for visual resources, such as VRM Class II to "retain the existing character of the landscape," including clear provisions dealing with oil and gas development, renewable energy infrastructure, and other human disturbance.
- ACECs and other special management designations and prescriptions should be used to protect scenic landscapes and lookout points within the resource area with stipulations specifically addressing and managing human development impacts, including VRM Class I to "preserve the existing character of the landscape" or VRM Class II to "retain the existing character of the landscape" as appropriate.
- All Wilderness Study Areas must be rated as VRM Class I per BLM policy guidance. Instruction Memorandum No. 2000-096 (2009).
- Developed campgrounds should not negatively impact the viewshed.

NEPA requires that measures be taken to "assure for all Americans . . . aesthetically pleasing surroundings." Once established, VRM objectives are as binding as any other resource objectives, and no action may be taken unless the VRM objectives can be met. *See* IBLA 98-144, 98-168, 98-207 (1998). The MMP must make clear that compliance with VRM classes is not discretionary.

**Summary of Comments:** BLM must update VRM classifications for all of the public lands in the Monument in the context of the Monument designation. Specially-managed areas with high conservation values, such as lands with wilderness characteristics, backcountry recreation areas and ACECs, should be managed as VRM I and II to protect scenic values. The MMP must make clear that compliance with VRM classes is not discretionary.

## **B. Night skies**

BLM should be actively managing BLM-administered lands for the value of the dark night sky resources they contain. Night skies unimpaired by light pollution are important for the role they

play in visitor perception and experience and in various ecological processes. BLM has been given an explicit, obligatory mandate to manage the lands under its jurisdiction for their scenic and atmospheric values, which includes night skies. *See* FLPMA, 43 U.S.C. § 1701(a)(8) (stating that “. . . the public lands be managed in a manner that will protect the quality of the . . . scenic . . . [and] air and atmospheric . . . values . . .”); NEPA, 43 U.S.C. § 4331(b)(2) (requiring measures to be taken to “. . . assure for all Americans . . . esthetically pleasing surroundings. . .”); NHPA, 36 C.F.R. § 800.1(a) (requiring federal agencies to consider measures to avoid impacts on historic properties, including their “settings”). A dark night sky is undoubtedly a scenic and atmospheric value within that term's meaning as defined in FLPMA.

Other federal land-use management agencies, such as the National Park Service, have already recognized the importance of this fading resource. *See Managing Lightscapes*, National Park Service.<sup>14</sup> While the NPS operates under a different set of legal obligations than BLM, NPS's Organic Act mandate to "conserve the *scenery* and natural and historic objects and the wild life therein to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations," Organic Act of 1916 § 1 (emphasis added), clearly has parallels to BLM's multiple use mandate in FLPMA to "take into account the long-term needs of future generations. . . including *natural scenic . . . resources*," 43 U.S.C. § 1702(c) (emphasis added).

Since 1984, BLM has interpreted its mandate as a "stewardship responsibility" to "protect visual values on public lands" by managing all BLM-administered lands "in a manner which will protect the quality of scenic (visual) values." Visual Resource Management Handbook, H-8400-1(.02), (.06)(A). Night sky management is an inherent component of this responsibility. VRM is not restricted to land-based resources. To this end, the MMP should include analysis and management prescriptions that give due consideration to the value of a dark night sky, consistent with BLM's multiple use mandate, as defined at 43 U.S.C. § 1702(c).

We highlight that a BLM national monument was the first recipient of official recognition for dark skies on public lands, when the Grand Canyon-Parashant National Monument was designated as an International Night Sky Province by the Dark Sky Association. In celebrating the designation, BLM Director Neil Kornze remarked that the designation "is an ideal match with the Monument's focus on conserving pristine natural resources."<sup>15</sup> BLM also noted that the Monument's new International Night Sky Province status could "prove to be a boost to local economies which rely heavily on tourism dollars by attracting a more diverse group of low-impact visitors to the remote Monument, including the scientific community, eco-tourists, and astronomy enthusiasts." *Id.* The designation recognizes BLM's role in managing and garnering support for dark skies in the Monument, and will help protect the area from light pollution and preserve the starry nights that visitors enjoy on our public lands. The designation will also help promote scientific research and tourism. Bears Ears National Monument should strive to similarly achieve renowned dark skies by adopting management decisions that protect important night sky resources in the Monument.

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<sup>14</sup> Available at: <https://www.nps.gov/subjects/nightskies/index.htm>.

<sup>15</sup> *See* <https://www.stgeorgeutah.com/news/archive/2014/03/22/grand-canyon-parashant-national-monument-receives-international-night-sky-province-designation/#.WqBxOujwaUk>.

BLM can meet its duty to manage for night sky resources by setting management prescriptions for this important resource in the MMP. For example, the Arizona Strip District incorporated the following prescriptions in the RMPs for the District:

- Permanent outdoor lighting in VRM Class I areas will not be allowed.
- Impacts to dark night skies will be prevented or reduced through the application of specific mitigation measures identified in activity level planning and NEPA review. These measures may include directing all light downward, using shielded lights, using only the minimum illumination necessary, using lamp types such as sodium lamps (less prone to atmospheric scattering), using circuit timers, and using motion sensors.
- Any facilities authorized will use the best technology available to minimize light emissions.

Arizona Strip RMP at 65; Grand Canyon-Parashant National Monument RMP at 67; Vermilion Cliffs National Monument RMP at 47-48.

**Summary of Comments:** BLM should explicitly include considerations for night skies in the VRM portion of the MMP as well as management prescriptions for night sky protection.

## **XI. SOUNDSCAPES**

Like viewsheds and air quality, sound is one of the resources on the public lands that is affected by agency-authorized uses and can impact other resources as well, such as recreation and wildlife. BLM has a statutory obligation to manage the public lands "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." 43 U.S.C. § 1701(8). To fulfill this mandate, it is important for BLM to consider natural soundscapes in order to give meaningful effect to this provision, especially on those lands which are to be managed in their "natural condition," including lands with wilderness characteristics.

As a part of its multiple use and sustained yield mandate, as well as agency direction for managing the National Conservation Lands, BLM must provide opportunities for quiet recreation on the public lands. As a result, BLM must also consider activities that interfere with the soundscape associated with quiet recreation opportunities, such as energy development and off-road vehicle use. Research shows that for many people, especially quiet recreationists, the primary reason for visiting primitive landscapes is to attain a sense of solitude and tranquility, which are interrupted by non-natural noises. A study performed by psychologists at Colorado State University (CSU) found that acoustic stressors impact visual landscape quality. Mace 1999. In other words, non-natural noise affects the perceived naturalness of a landscape. Therefore, to preserve the naturalness of an area, BLM must preserve the natural soundscape.

Furthermore, the authors of the CSU study note that "tranquility" and "solitude" are explicitly addressed in the Wilderness Act as values that must be preserved by land management agencies. BLM guidance directs the preservation of "naturalness" in Wilderness Study Areas, Visual Resource Management I zones, and other areas managed to protect wilderness qualities. These values are negatively impacted when the natural soundscape is impacted; therefore, BLM

must retain the natural soundscape in wilderness-quality lands and primitive recreation areas. As supported by the U.S. Geological Survey, dissatisfaction with recreational opportunities can "diminish public support for land-management programs." Ouren 2007.

BLM's obligation to preserve natural soundscapes is further described in Executive Order 11644 (1972), as amended by Exec. Order 11989 (1977), which directs the BLM to locate areas and trails to: "Minimize conflicts between off-road vehicle use and other existing or proposed recreation uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, *taking into account noise and other factors.*" BLM regulations at 43 C.F.R. § 8342.1 reiterate the directives of the executive order.

Soundscapes are also important to managing wildlife resources. Environmental noise can affect the physiology, behavior, and spatial distribution of wildlife. While the impacts vary by species and habitat, studies have shown that transportation-based and other human-caused noise can impact species in ways crucial to survival and reproductive success. Havlick 2002; Ouren et al. 2007; Knight and Gutwiller 1995.

BLM has determined that it will consider noise and its potential impacts on public land during the planning and authorization process. BLM Manual 7300.06D states the following:

When BLM programs, projects, and/or use authorizations have the potential to affect existing resources that may be sensitive to noise such as public health and safety, wildlife, heritage resources, wilderness, wildland/urban interface areas, and other special value areas (such as Areas of Critical Environmental Concern and National Landscape Conservation Areas), BLM will consider noise and its potential impacts on the public and the environment, as well as any appropriate mitigation measures, during the planning and authorization review process. This is especially important when land use proposals include high volumes of motorized vehicles or mechanized equipment.

Additionally, courts have upheld the responsibility of federal land management agencies to evaluate noise impacts on the natural soundscape. *Izaak Walton v. Kimbell*, 516 F. Supp. 2d 24 982, 985, 995-96 (D. Minn. 2007) (EA prepared by U.S. Forest Service for plan to construct snowmobile trail adjacent to Boundary Waters Canoe Area Wilderness failed to properly analyze noise impacts from snowmobile use, as required by NEPA; EA provided no quantitative evidence of analysis of decibel levels to be projected by snowmobile use of the trail into adjoining wilderness).

BLM should utilize acoustic modeling to analyze and preserve natural soundscapes, especially in special management areas managed for quiet use recreation. The Wilderness Society has developed a GIS-based model based on The System for the Prediction of Acoustic Detectability (SPreAD; Harrison et al. 1980), which is a tool that was developed by the USFS and EPA to predict the acoustic impacts of recreational activity in wildland settings. SPreAD was originally developed as a system of worksheets and tables, where the user could enter information about the sound source and environment and manually calculate noise propagation from a single point source to a single point receiver. TWS adapted the SPreAD model to ArcGIS, automating the

hand calculation method to predict the propagation of noise for all directions throughout the area of interest.

SPreAD-GIS can be used to 1) determine the areas within a planning unit where the natural soundscape is predominant and protect that setting through recreation planning; and 2) model sound propagation from uses such as motorized vehicles in a proposed quiet-use recreation area to determine what planning decisions, such as route closures, could restore and enhance the natural soundscape. In this way, BLM could ensure that travel and recreation planning decisions provide opportunities for experiencing naturalness and solitude. There are other models and methodologies available, but we highlight SPreAD-GIS because it is available by request from TWS.<sup>16</sup>

We recommend BLM manage sound resources on the public lands similar to visual resources, with a classification gradient ranging from most protective of natural soundscapes to allowing significant impacts to the soundscape. This would provide for areas where maintaining the natural soundscape is prioritized to benefit recreation, wildlife, wilderness and other natural values on the public lands. It would also assist the agency with managing activities that impact sound resources by clearly defining where and how those impacts may occur.

The following classes provide an example of a possible approach for inventorying and managing sound resources in landscape-level planning:

- *Class I Objective:* The objective of this class is to preserve the natural soundscape. This class would be appropriate for lands managed to preserve wilderness characteristics, promote primitive recreation experiences, and protect wildlife habitat and ecological systems. The level of change to the characteristic soundscape should be very low and must not attract attention.
- *Class II Objective:* The objective of this class is to retain the natural soundscape such that noticeable impacts are infrequent and isolated instances. The level of change to the natural soundscape should be low. Management activities may be *heard on occasion*, such as a passing motorized vehicle, but should not detract from the experience of the natural landscape.
- *Class III Objective:* The objective of this class is to partially retain the natural soundscape where practicable. Management activities may attract attention but should not dominate the auditory experience of the casual observer. This class would be appropriate for front country recreation areas or other areas where natural soundscapes are not critical to the experience being sought out by visitors.
- *Class IV Objective:* The objective of this class is to provide for management activities which require significant impacts to the natural soundscape, including highly impactful events or impacts sustained over the long term. These management activities may dominate the sound of the landscape and may be the major focus of viewer attention. However, every attempt should be made to minimize the impact of these activities through careful location, minimal disturbance, and repeating basic elements.

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<sup>16</sup> The tool is free, but installation of SPreAD-GIS requires ArcInfo-level licensed copy of ArcGIS 9.3 or higher with the Spatial Analyst extension.

These potential management objectives for sound resource classes are similar to the BLM Manual for Visual Resource Classes (BLM Manual 8400). Likewise, planning areas could be delineated into sound quality rating units for management purposes. Considerations on rating sound resources, such as landform, vegetation, and scarcity, are among the factors that could logically be incorporated into baseline data and management objectives for auditory resources. Acoustic modeling would be an important component of assessing sound quality rating units.

There are several examples of BLM analyzing and managing natural soundscapes in land use planning:

- The Vermilion Cliffs National Monument Approved RMP identifies soundscapes as a separate and specific resource addressed in the plan. Approved Vermilion Cliffs National Monument RMP at 2-50. The plan includes a desired future condition that "Natural quiet and natural sounds will be preserved or restored, where practicable." *Id.*
- The Red Cliffs NCA RMP/ROD states the following
  - **Goal:** Public land users can experience natural soundscapes in the NCA.
  - **Objective:** Land uses and authorized activities are managed to conserve and protect natural soundscapes.
  - **Management Action - General:** Identify and provide opportunities for visitors to enjoy the atmosphere of peace and tranquility afforded by the natural soundscapes of the NCA.
  - **Management Action - Public Education and Interpretation:** Provide educational materials through various media and venues (e.g., trailhead kiosks, websites, educational programs, school curriculum) focused on increasing public awareness of natural quiet and the benefits of protecting natural soundscapes where they are present in the NCA.
  - **Management Actions - Scientific Research:** Identify appropriate acoustic monitoring locations in the NCA using established protocols [and] Install sound level meters and supporting hardware to collect, analyze, and determine the levels and types of natural sounds in the NCA and to identify potential anthropogenic sources of soundscape impacts. Red Cliffs RMP/ROD at 55.
- The Northwest Colorado Greater Sage-grouse EIS includes soundscapes as a separate resource in its affected environment and environmental consequences analyses. The EIS modeled ambient background noises at specific points to determine the expected levels of sound dissipation during winter and summer months as tied to vegetation and topography, using the SPreAD-GIS model. Northwest Colorado Greater Sage-Grouse Draft EIS at 397-401. The Draft EIS finds that any change from ambient noise levels would be an adverse impact on soundscapes and commits to further analyze impacts on soundscapes at the project implementation level. Northwest Colorado Greater Sage- Grouse Draft EIS at 831-833.

**Summary of Comments:** BLM should acknowledge the sound resource on the public lands and address the soundscape as a separate resource which must be analyzed; complete sound



modeling to the extent practicable to assess noise impacts of management alternatives on recreation and wildlife; adopt management decisions based on sound modeling data or other information generated from soundscape analysis that minimize or mitigate noise impacts on recreation and wildlife; and identify areas of the public lands where protection of the natural soundscape is prioritized.

## **XII. LIVESTOCK MANAGEMENT**

**Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016)**, outlines the “wide variety of vegetation” within the Monument. In areas of the Monument where grazing is consistent with the values identified in the Proclamation, it should be done in a manner that conserves, protects, and restores the Monument’s “cultural, prehistoric, and historic legacy and maintain[s] its diverse array of natural and scientific resources, ensuring that the prehistoric, historic, and scientific values of this area remain for the benefit of all Americans.” 82 Fed. Reg. 1139.

The Proclamation addressed livestock grazing with the following statement: “Laws, regulations, and policies followed by USFS or BLM in issuing and administering grazing permits or leases on lands under their jurisdiction shall continue to apply with regard to the lands in the monument to ensure the ongoing consistency with the care and management of the objects identified above.” 82 Fed. Reg. 1139. The “laws, regulations, and policies” that the Proclamation refers to include but are not limited to the Taylor Grazing Act, 43 U.S.C. §§ 315-315r; Federal Land Policy and Management Act, 43 U.S.C. §§ 1701-84; National Historic Preservation Act, 16 U.S.C. §§ 470-470w-6; Fundamentals of Rangeland Health and Standards, 43 C.F.R. § 4180.1; and the Omnibus Public Lands Management Act of 2009, 16 U.S.C. 7202.

The **Taylor Grazing Act** (“TGA”) governs grazing activities within the Monument. Under the TGA, a grazing permit is not a constitutionally protected property interest. *U. S. v. Fuller*, 409 U.S. 488 (1973). The BLM may regulate stocking levels, designate foraging locations, establish seasonal timing restraints, and impose related restrictions to protect range resources. The grazing privileges are subject to reasonable regulation to accomplish the Monument’s protective purposes. The Proclamation’s grazing provision viewed against the broader context of the TGA leads to the understanding that grazing is not a protected right but a privilege that may be regulated within the Monument in order to protect Monument resources.

The **Federal Land Policy and Management Act** (“FLPMA”), contains several provisions that are relevant to livestock grazing on the Monument. FLPMA’s multiple use provision requires the BLM to balance competing resource values to ensure that the public lands are managed in a manner “that will best meet the present and future needs of the American people,” 43 U.S.C. § 1702(c). *See, National Wildlife Federation v. BLM*, 140 IBLA 85 (1997). Because the Monument was created for the conservation of the Monument’s resources, the multiple use provision should be interpreted in light of the Monument’s conservation purpose. Furthermore, FLPMA contains an exception to the multiple use provision, stating that public lands are to be managed under the principles of multiple use except where “public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.” *Id.* at § 1732. Because Bears Ears National Monument was created for the specific purpose of protecting the Monument’s resources, the Monument should be managed according to that purpose.

Additionally, FLPMA directs the BLM to manage resources “without permanent impairment of the productivity of the land and the quality of the environment,” *Id.* at § 1702(c), and “to prevent unnecessary or undue degradation of the lands,” *Id.* at § 1732(b). FLPMA also mandates that the BLM adhere to its land use plans, “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values.” *Id.* at §§ 1701(8), 1712. The Proclamation, viewed in light of FLPMA’s mandates, encourages prioritizing preservation in managing the Monument.

The **Omnibus Public Land Management Act of 2009** (16 U.S.C. § 7202), established the National Landscape Conservation System (“National Conservation Lands”) to “conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations....” 16 U.S.C. § 7202(a). The Act requires that the National Conservation Lands be managed “in a manner that protects the values for which the components of the system were designated.” *Id.* at § 7202(c)(2).

**Secretarial Order 3308** speaks to the management of the National Conservation Lands. The Order states in pertinent part that “[T]he BLM shall ensure that the components of the [National Conservation Lands] are managed to protect the values for which they were designated, including, where appropriate, prohibiting uses that are in conflict with those values.” The 15-Year Strategy for the Conservation Lands reinforces this by stating the “conservation, protection, and restoration of the [National Conservation Lands] values is the highest priority in [National Conservation Lands] planning and management, consistent with the designating legislation or presidential proclamation.” National Conservation Lands Strategy at 8.

The Order also requires that the National Conservation Lands “be managed as an integral part of the larger landscape, in collaboration with the neighboring land owner and surrounding communities, to maintain biodiversity, and promote ecological connectivity and resilience in the face of climate change.” The Order goes on to require the incorporation of science into the decision-making process for the National Conservation Lands, stating, “[s]cience shall be integrated into management decisions concerning [National Conservation Lands] components in order to enhance land and resource stewardship and promote greater understanding of lands and resources through research and education.”

BLM recently issued manuals to implement policies for the National Conservation Lands. **BLM Manual 6220** addresses management of grazing within National Monuments and states:

1. Where consistent with the designating legislation or proclamation, livestock grazing may occur within Monuments and NCAs.
2. Grazing management practices will be implemented in a manner that protects Monument and NCA objects and values unless otherwise provided for in law.
3. The BLM will use Monuments and NCAs as a laboratory for innovative grazing techniques designed to better conserve, protect, and restore NLCS values, where consistent with the designating legislation or proclamation.

BLM Manual 6220, *National Monuments, National Conservation Areas, and Similar Designations* (July, 13 2012).

The **National Historic Preservation Act** (“NHPA”), states that “the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people.” 16 U.S.C. § 470. The BLM must “administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations.” *Id.* at § 470-1. NHPA requires the BLM to assume “responsibility for the preservation of historic properties which are owned or controlled by” the agency. *Id.* at § 470h-2. The Proclamation recognized the importance of the cultural resources in the Monument, stating that the area constitutes “one of the densest and most significant cultural landscapes in the United States.” 82 Fed. Reg. 1139 (Dec. 28, 2016). Livestock grazing has the potential to impact archaeological and historic resources directly by trampling artifacts, pushing over standing structures, rubbing on rock art panels, and surface disturbance from construction of range facilities. The Proclamation’s grazing provision viewed against the backdrop of the NHPA leads to an interpretation favoring the preservation of cultural resources and limiting impacts to those resources from livestock grazing. *See, Great Old Broads for Wilderness v. Kempthorne*, 452 F. Supp. 2d 71, 87 (D.D.C. 2006) (remanding the Grazing Management Plan for Glen Canyon NRA in part because of the lack of analysis of impacts to cultural resources under the NHPA). In addition, any routes authorized for use for grazing or other purposes must have intensive (Class III) surveys completed pursuant to the NHPA, BLM policy (Instruction Memorandum No. 2012-067). *S. Utah Wilderness Alliance v. Burke*, Case No. 2:12CV257DAK (D. Utah Nov. 4, 2013).

The **Fundamentals of Rangeland Health and Standards and Guidelines**, 43 C.F.R. § 4180.1, also guide grazing management. These regulations established fundamentals of rangeland health and directed each state BLM director to develop state specific grazing standards. Overall, the BLM is required to “promote healthy sustainable rangeland ecosystems,” and ensure these ecosystem components are “properly functioning.” *Id.* at § 4100.0-2. Consequently, the BLM’s own regulations require the agency to balance grazing levels with the need to maintain functioning ecosystems.

The BLM **Utah Standards for Rangeland Health and Guidelines for Grazing Management** provide further guidance on implementing the Fundamentals of Rangeland Health. The standards provide measures and indicators of land health such as soil permeability and infiltration, properly functioning riparian areas, and maintenance of desired species. The guidelines provide methods for improving land health and achieving desired conditions on the ground. Standards and guidelines must be used in order to ultimately achieve the Fundamentals of Rangeland Health under BLM regulations. Decisions in this plan amendment should be made to facilitate the restoration of healthy sustainable rangeland ecosystems.

While rangeland health standards are an important tool, they do not specifically address impacts to all Monument objects and values from livestock grazing. In conducting an evaluation of the compatibility of grazing with protecting monument objects in the Cascade-Siskiyou National Monument, BLM contrasted the findings using rangeland health standards and using a test of compatibility with protection. *See Determination of Compatibility of Current Livestock Grazing Practices with Protecting the Objects of Biological Interest in the Cascade-Siskiyou National Monument*, Table 1, p. 5 (available on-line at:

<http://www.blm.gov/or/resources/recreation/csnm/csnm-grazing.php>). An examination of the approach used in the Cascade-Siskiyou National Monument will demonstrate the contrast between

attaining rangeland health standards and a more detailed examination of impacts to Monument objects and values.

In making land use decisions, federal agencies have an obligation under NEPA to take a “hard look” at the environmental consequences of a proposed action, and the requisite analysis “must be appropriate to the action in question.” 42 U.S.C. § 4321 et seq.; *Metcalf v. Daley*, 214 F.3d 1135, 1151 (9<sup>th</sup> Cir. 2000); *Robertson v. Methow Valley Citizens Council*, *supra*. The impacts and effects of a proposed action, such as livestock grazing, that federal agencies are required to assess include: “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8.

Under the **Data Quality Act**, federal agencies are required to use information that is of high quality and that is objective, useful, and verifiable by others. *See*, Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub.L.No. 106-554, § 515.

Agencies must also use “sound statistical and research” methods. **Presidential Memorandum on Scientific Integrity** (March 9, 2009) states that federal agencies must ensure “the highest level of integrity in all aspects of the executive branch's involvement with scientific and technological processes.” Following this mandate, the Office of Science and Technology Policy released a guidance memorandum on scientific integrity (2010) and the Department of Interior issued Manual 305 DM 3.

These documents provide directives for ensuring the highest level of scientific integrity in the Department of Interior as well as for redress for scientific or scholarly misconduct. BLM must guarantee that it will abide by the highest scientific and scholarly conduct in its preparation of the grazing EIS and plan amendment. *See also*, Secretarial Order 3308, § 4(d) (“Science shall be integrated into management decisions concerning NLCS components in order to enhance land and resource stewardship and promote greater understanding of lands and resources through research and education.”); 15-Year Strategy for the National Conservation Lands, Goals 1C and 1E(2) [BLM must “provide a scientific foundation for decision making” and “Use the best available science to conduct capacity studies, establish specific, measurable, attainable, relevant, and time-specific (SMART) objectives (or similar), and develop monitoring plans for compatible uses to ensure the NLCS values are protected, consistent with the designating legislation or presidential proclamation. Use the monitoring results to adaptively manage the NLCS values.”]; National Landscape Conservation System Science Strategy (generally guides the study and use of science in National Conservation Lands); MMP, “Science and Research” at 44-46 (discussing the priority for research and applied science in the Monument).

Under **Secretarial Order 3289**, BLM is required to “consider and analyze potential climate change impacts when undertaking long range planning exercises ... (and) developing multi-year management plans.” Secretarial Order 3289 also provides authority for Landscape Conservation Cooperatives (LCC). These LCCs were established to bring together a variety of stakeholders to “develop landscape-level strategies for understanding and responding to climate change impacts.”

BLM should call on the expertise of the Colorado Plateau LCC to come up with strategies to respond to climate change in the planning area. Specifically, BLM should request that the Colorado Plateau LCC help analyze vulnerability and provide scenario planning models to help the agency respond to the threats associated with global climate change from livestock grazing. One example of assessing vulnerability to climate change was recently done for the planning process for BLM Alaska's NPR-A. *See*, Final NPR-A Integrated Activity Plan/EIS, Appendix C: [https://www.blm.gov/epl-front-office/projects/nepa/5251/41008/43158/Vol6\\_NPR-A\\_Final\\_IAP\\_FEIS.pdf](https://www.blm.gov/epl-front-office/projects/nepa/5251/41008/43158/Vol6_NPR-A_Final_IAP_FEIS.pdf).

In addition, as part of BLM's "Landscape Approach to Managing the Public Lands," the agency has committed to completing REAs. *See*, Information Bulletin No. 2012-058. The Colorado Plateau REA should be used to assess baseline conditions and projections for climate change as it relates to livestock grazing.

Finally, the **National Landscape Conservation System** is particularly well-suited for leading the way in demonstrating landscape-level management. Secretarial Order 3308, which provides direction on the management of the National Landscape Conservation System, states that "[t]he NLCS components shall be managed as an integral part of the larger landscape, in collaboration with the neighboring land owners and surrounding communities, to maintain biodiversity, and promote ecological connectivity and resilience in the face of climate change." In addition, the 15-Year Strategy for the National Landscape Conservation System provides further details on managing units within the context of the broader landscape, integrating science into decision-making and monitoring management to adapt to respond to additional stressors, such as climate change.

The BLM's **Land Use Planning Handbook** (BLM 2005a) sets out certain factors for the agency to consider when making a determination of whether to make lands available to livestock grazing in land use plans pursuant to its regulations. 43 C.F.R. § 4310.2(a). These factors include:

1. Other uses for the land;
2. terrain characteristics;
3. soil, vegetation, and watershed characteristics;
4. the presence of undesirable vegetation, including significant invasive weed infestations; and
5. the presence of other resources that may require special management or protection, such as special status species, special recreation management areas (SRMAs), or ACECs.

BLM Land Use Planning Handbook H-1601-1, Appendix C at II(B), p. 14.

**Summary of Comments:** There are several laws and regulations that govern livestock grazing other than the Proclamation itself, including guidance from the broader National Landscape Conservation System. BLM is required take into account all of these applicable authorities, along with the Proclamation, and govern livestock grazing within the Monument accordingly.

### **XIII. CLIMATE CHANGE**

#### **A. BLM's obligation and authority to analyze climate change in RMPs**

BLM has a legal duty to address the impacts of climate change both from land management actions and to the resource area in the Bears Ears National Monument Management Plan. The Canyon Country District will undoubtedly experience real effects of climate change during the 20-year period that the MMP is in effect and beyond. Many management decisions in the MMP may contribute to and exacerbate the impacts of human-induced global climate change, and BLM stewards many resources that must be managed to maximize their ability to adapt and endure in the face of climate change.

1. BLM must take a hard look at climate change impacts from management decisions in the environmental impact statement for the MMP

Impacts to the ecosystem from climate change include shrinking water resources; extreme flooding events; invasion of more combustible non-native plant species; soil erosion; loss of wildlife habitat; and larger, hotter wildfires. Many of these impacts have been catalogued in recent studies by federal agencies showing the impacts of climate change specifically in the United States such as the National Climate Assessment.<sup>17</sup>

Secretarial Order 3289 unequivocally mandates all agencies within the Department of Interior "analyze potential climate change impacts when undertaking long-range planning exercises, setting priorities for scientific research and investigations, developing multi-year management plans, and making major decisions regarding potential use of resources under the Department's purview." SO 3289, *incorporating* SO 3226 (emphasis added). This MMP falls squarely under this guidance and BLM must assess impacts from the proposed actions that may directly, indirectly, or cumulatively result in exacerbating climate change within this document.

BLM must fully analyze the cumulative and incremental impacts of the proposed decisions in the MMP. *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172, 1217 (9th Cir. 2008). In *CBD v. NHTSA*, the NHTSA failed to provide analysis for the impact of greenhouse gas emissions on climate change and was rebuked by the U.S. Court of Appeals for the Ninth Circuit, which observed that "[t]he impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct." 538 F.3d at 1217. For example, off-road vehicle designations, oil and gas management stipulations, and renewable energy development may significantly increase or reduce greenhouse gas emissions contributing to climate change and must be analyzed under NEPA.

Further, NEPA regulations require that NEPA documents address not only the direct effects of federal proposals, but also "reasonably foreseeable" indirect effects. These are defined as:

Indirect effects, which are caused by the action and are later in time or farther removed in distance, *but are still reasonably foreseeable*. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." 40 C.F.R. § 1508.8(b) (emphasis added).

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<sup>17</sup> Available at <http://nca2014.globalchange.gov/>.

As held by the U.S. District Court in Montana:

BLM cannot acknowledge that climate change concerns defined, in part, the scope of the RMP revision while simultaneously foreclosing consideration of alternatives that would reduce the amount of available coal based upon deference to earlier coal screenings that had failed to consider climate changes.

*Western Organization of Resource Councils v. U.S. Bureau of Land Management*, CV 16-21-GF-BMM (Mont. March 26, 2018).

Finally, BLM IM 2013-094 regards management during drought. This IM requires BLM to modify uses and management to lessen impacts from drought including activities such as grazing, recreation, lands actions and minerals activities. IM 2013-094 also states that BLM should consider the information in BLM's REAs in assessing drought and mitigation measures and states a preference for MMPs and other plans to proactively address potential drought and its effects.

BLM is required to take a hard look at direct, indirect, and cumulative impacts to and from climate change in the planning area in the MMP. The following sections provide recommendations for analyzing fugitive dust emissions and assessing baseline conditions in the planning area.

a) *Analyzing fugitive dust emissions*

Fugitive dust suspended in the air has the potential to impact more total area than any other impact of roads (paved or unpaved), and it can have significant effects on ecosystems and wildlife habitat. Forman et al., 2003; Westec, 1979. Motorized vehicles create fugitive dust by travelling on unpaved roads and through cross country travel; it is then dispersed along roadsides or carried further afield via wind currents. An example of fugitive dust plumes caused by ORV traffic is documented in 1973 satellite photos. These photos show six dust plumes in the Mojave Desert covering more than 1,700 km<sup>2</sup> (656.2 mi<sup>2</sup>). These plumes were attributed to destabilization of soil surfaces resulting from ORV activities. Nakata et al. 1976; Gill 1996.

Fugitive dust can have serious consequences for plant and animal species. BLM should also analyze impacts to climate change from fugitive dust emissions. A hard look at impacts from fugitive dust is necessary to understand and disclose to the public the likely contributions to regional climate change caused by this plan. In September 2009, Dr. Jayne Belnap of the United States Geological Survey gave a presentation to the Colorado Water Conservancy District. Dr. Belnap's presentation addressed the connection between increased temperature, disturbance, invasive species and dust. This presentation focused much attention on the impacts from ORVs and noted the cycle of increasing temperatures, which increases dust, which is exacerbated by ORV use, which increases the effects of climate change (temperature increases), with the key indicator of these problems being earlier snowmelts. Of concern is the amount of dust that results from motorized routes, which settles upon snow pack and alters the melt rate which, in turn, alters the availability of warm season infusion of water into streams and lakes, when such water is critical to wildlife. For example, in 2005 and 2006, disturbed desert dust melted snow

cover 18 to 35 days earlier in the San Juan Mountains. Painter et al. 2007. In 2009, disturbed desert dust melted snow cover 48 days earlier in the San Juans. Painter 2009.

Neff et al. (2008) found that "dust deposition onto snow cover in the western United States has recently been shown to accelerate melt and reduce snow-cover duration by approximately one month, a finding that has broad implications for water resources in mountainous regions of the United States" (citing Painter, T. H. et al. The impact of disturbed desert soils on duration of mountain snow cover. *Geophys. Res. Lett.* 24 (2007)).

BLM should analyze impacts to climate change from fugitive dust emissions that would result from recreation activities authorized under this MMP and adopt a final MMP that minimizes and/or mitigates those impacts.

b) *Addressing climate change conditions*

BLM baseline data on climate change must be sufficient to permit analysis of impacts under NEPA. Importantly, 40 C.F.R. § 1502.15 requires agencies to "describe the environment of the areas to be affected or created by the alternatives under consideration." Establishment of baseline conditions is a requirement of NEPA. In *HalfMoon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988), the Ninth Circuit states that "without establishing... baseline conditions ... there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA." The court further held that "[t]he concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process."

There is a growing body of scientific information already available on climate change baseline conditions, much of it generated by or available through federal agencies. Where there is scientific uncertainty, NEPA imposes three mandatory obligations on BLM: (1) a duty to disclose the scientific uncertainty; (2) a duty to complete independent research and gather information if no adequate information exists unless the costs are exorbitant or the means of obtaining the information are not known; and (3) a duty to evaluate the potential, reasonably foreseeable impacts in the absence of relevant information, using a four-step process. Unless the costs are exorbitant or the means of obtaining the information are not known, the agency must gather the information in studies or research. 40 C.F.R. § 1502.22. Courts have upheld these requirements, stating that the detailed environmental analysis must "utiliz[e] public comment and the best available scientific information." *Colorado Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1171-72 (10th Cir. 1999) (citing *Robertson v. Methow Valley Citizens' Council*, 490 U.S. at 350); *Holy Cross Wilderness Fund v. Madigan*, 960 F.2d 1515, 1521-22 (10th Cir. 1992).

As the Supreme Court has explained, while "policymaking in a complex society must account for uncertainty," it is not "sufficient for an agency to merely recite the terms 'substantial uncertainty' as a justification for its actions." *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 52 (1983). Instead, in this context, as in all other aspects of agency decision-making, "[w]hen the facts are uncertain," an agency decision-maker must, in making a decision, "identify the considerations he found persuasive." *Small Refiner*



*Lead Phase Down Task Force v. EPA*, 705 F.2d 506, 520 (D.C. Cir. 1983), quoting *Ind. Union Dept., AFL- CJO v. Hodgson*, 499 F.2d 467, 476 (D.C. Cir. 1974).

BLM's duty to evaluate reasonably foreseeable significant adverse impacts includes "impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason." 40 C.F.R. § 1502.22(b). Such impacts are especially significant in the face of climate change.

2. BLM must craft long-term management prescriptions without permanent impairment and unnecessary or undue degradation to the resources in the face of climate change

FLPMA gives BLM the authority to manage and plan for emerging issues and changing conditions that global climate change will affect in the planning area. FLPMA mandates that when BLM revises land use plans, it must "use and observe the principles of multiple use and sustained yield set forth in this and other applicable law" 43 U.S.C. § 1712(c).

The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions... a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources... and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output. 43 U.S.C. § 1702(c) (emphasis added).

Additional pertinent requirements of FLPMA that specifically apply to land use planning include using "a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences; consider[ing] relative scarcity of the values involved; and weigh[ing] long-term benefits to the public against short-term benefits. *Id.* FLPMA also provides that BLM must "take any action necessary to prevent unnecessary or undue degradation to managed resources." 43 U.S.C. § 1732(b). Collectively, the provisions of FLPMA highlighted above necessitate on-the-ground implementation of climate change policies.

In addition to the agency's duty under NEPA to take a hard look at the impacts of climate change to and from decisions in the MMP, BLM must also include a range of alternatives that includes a strategy for mitigating these impacts. CEQ regulations instruct agencies to consider alternatives to their proposed action that will have less of an environmental impact, specifically stating that "[f]ederal agencies shall to the fullest extent possible: . . . Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize

adverse effects of these actions upon the quality of the human environment." 40 C.F.R. § 1500.2(e) (emphasis added); *see also*, 40 C.F.R. §§ 1502.14, 1502.16.

The impacts of climate change should be a major factor in every alternative that is created since it is an undeniable reality that will drive all land use planning decisions. As provided in the Oregon/Washington BLM State Office guidance document IM OR-2010-012, "[r]esource management plans and other broad programmatic analyses are actions that would typically have a long enough duration that climate change could potentially alter the choice among alternatives."

Further, general statements that BLM will conduct monitoring are also not an appropriate form of mitigation. Simply monitoring for expected damage does not actually reduce or alleviate any impacts. Instead, a vigilant science-based monitoring system should be set out in the MMP in order to address unforeseeable shifts to the ecosystem. A detailed monitoring approach is also required under the BLM's planning regulations:

The proposed plan shall establish intervals and standards, as appropriate, for monitoring and evaluation of the plan. Such intervals and standards shall be based on the sensitivity of the resource to the decisions involved and shall provide for evaluation to determine whether mitigation measures are satisfactory, whether there has been significant change in the related plans of other Federal agencies, State or local governments, or Indian tribes, or whether there is new data of significance to the plan. The Field Manager shall be responsible for monitoring and evaluating the plan in accordance with the established intervals and standards and at other times as appropriate to determine whether there is sufficient cause to warrant amendment or revision of the plan. 43 C.F.R. § 1610.4-9 (emphasis added).

Such vigilant monitoring is necessary to create an effective adaptive management framework in the face of climate change.

**Summary of Comments:** The MMP provides BLM and USFS with an excellent opportunity to analyze the impacts from climate change to the planning area over the next two decades, as well as the contribution to climate change from management decisions made in the plan. This analysis should lead to the development of thoughtful management prescriptions and alternatives in the land use plan that will address how BLM will mitigate these causes and adapt its management over the coming years to prevent permanent impairment and unnecessary or undue degradation to the resources in the face of climate change.

## **B. Recommended approach to managing climate change in MMPs**

Under the pressures of global change, it must be acknowledged that many objects of conservation are at risk wherever they are found, and the traditional natural resource management paradigm of modifying ecosystems to increase yield must change to a new paradigm of managing wildland ecosystems to minimize loss — specifically loss of the ecosystem composition, structure, and function that yields the benefits we seek from wildlands. Natural resource management must change from a paradigm of maximum sustained yield to a paradigm of risk management.

Although there is no widely-accepted method of assessing and managing risk, we recommend breaking risk down into its component parts — vulnerability, exposure, and uncertainty — as a useful way to think about risk to biodiversity and productive potential. In the TWS report, "Recommended Risk Assessment and Management Approach for Addressing Climate Change in BLM Land Use Planning", we recommend an approach for assessing risk in the planning area as well as an approach for management of that risk for BLM to comply with its legal obligations under NEPA and FLPMA as set out above.

**Summary of Comments:** BLM should utilize the management framework above to address and manage climate change in the MMP.

### **C. Adapting to climate change**

In addition to the analyzing the impacts of climate change, The Department of Interior Manual for climate change adaptation (523 DM 1) requires BLM to plan for uncertainty and risk in the face of climate change. Among other things, this policy guidance requires BLM to:

- Use the best available science of climate change risks, impacts and vulnerabilities,
- Use the network of Landscape Conservation Cooperatives, Climate Science Centers and other partnerships to understand and respond to climate change,
- Use well-defined and established approaches for managing through uncertainty including vulnerability assessments, scenario planning and other risk management approaches,
- Promote landscape-scale, ecosystem-based management approaches to enhance the resilience and sustainability of linked human and natural systems,
- Manage linked human and natural systems that help mitigate climate change impacts, such as:
  - Protect diversity of habitat, communities and species,
  - Protect and restore core, unfragmented habitat areas and key habitat linkages,
  - Maintain key ecosystem services,
  - Monitor, prevent and slow the spread of invasive species,
  - Focus development activities in ecologically disturbed areas and avoid ecologically sensitive landscapes, culturally sensitive areas, and crucial wildlife corridors.

The biggest question that land managers face today is how we respond to uncertainty in the face of global climate change. It is especially challenging for planners to make predictions about future ecosystem dynamics 10, 20 or 50 years down the line. Adaptation to changing conditions is and will be essential. However, general statements that BLM will plan to "be adaptive" is not planning – it is a strategy that is reactive only. A true plan for climate adaptation will require applying knowledge and foresight gained from a "learn as you go" approach.

We recommend using an experimental, adaptive design known as the "portfolio approach" of management strategies in the MMP. *See* Belote et al.<sup>18</sup> As stated by Belote et al., "[u]ncertainty about how ecosystems and species will respond to co-occurring, interactive, and synergistic impacts of the Anthropocene precludes our ability to know which strategy will best sustain wildland values in to the future." Thus, Belote et al. concludes that land managers should use an experimental zoning approach for managing certain lands that include the following zones as management strategies:

- **Restoration Zones:** areas that are devoted to forestalling change through the process of ecological restoration;
- **Innovation Zones:** areas that are devoted to innovative management that anticipates climate change and guides ecological change to prepare for it; and
- **Observation Zones:** areas that are left to change on their own time to serve as scientific "controls" and to hedge against the unintended consequences of active management elsewhere.

These strategies should be used in conjunction with each other to spread the risk among the different strategies and to allow for diverse outcomes to inform rapid learning about management strategies in the future. This is the kind of deliberate yet dynamic planning process that BLM should be fostering in MMPs.

The BLM is especially equipped to apply this type of portfolio approach due to its wide variety of designations and management regimes. The purpose of **restoration zones** is to sustain existing or historical ecosystems. This type of strategy lends itself to designations such as national conservation areas, ACECs and other lands that are set aside for conservation of natural and cultural resources, but that may also be appropriate for restoration in certain areas.

Due to the acknowledgement that returning to historical range of variability is an increasingly challenging concept in the study of climate change, **innovation zones** are also necessary. This is where the forecasting of climate change may drive greater intervention to experiment with things like anticipatorily boosting resiliency or facilitating transition to an altered future state where shifts seem inevitable. This strategy would be more appropriate for BLM-managed lands that have already sustained substantial change or where future impacts of climate change may severely disrupt the production of ecosystem goods and services. Conservation designations or allocations would typically not fall within this management strategy.

The third strategy of establishing **observation zones** is necessary to allow for ecosystems to generally change without specific intervention, as a scientific control. This management strategy would be most appropriate for Wilderness, WSAs, and lands managed for wilderness characteristics, but would also be the default strategy for lands that could not be managed for treatment under the restoration and innovation zones due to budget and operational constraints or in lands between such designations where connectivity is desirable to facilitate movement in response to climate change.

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<sup>18</sup> These concepts are set out in Belote, et al. "Wilderness and Conservation Strategy in the Anthropocene." The Pinchot Letter (Spring 2014).

**Summary of Comments:** BLM should implement a portfolio approach to land use planning that allows for diverse strategies and adaptive, dynamic planning as a climate change adaptation strategy. This involves establishing restoration, innovation and observation zones in order to "learn while doing."

#### **XIV. SOCIO-ECONOMICS**

The analysis of the socio-economic impacts of the MMP must be thorough and accurate in order to responsibly manage the public lands. The Wilderness Society's "Socio-Economic Framework for Public Land Management Planning: Indicators for the West's Economy" details our expectations for the baseline analysis of the region's economy as well as the analysis of the potential impacts of proposed management alternatives on the area. The analysis of socio-economic considerations in Bears Ears National Monument should follow the approach set out in this document, as well as the more specific considerations detailed below.

These comments focus specifically on how BLM should evaluate the costs and benefits of conservation alternatives versus development alternatives within the Monument. We note that as a national monument, the range of alternatives in the plan would be better described as more conservation focused to less conservation focused, as BLM is not evaluating extractive uses in the Monument or intensive development. Nonetheless, the principles are relevant to planning in the Monument, particularly in terms of evaluating nonmarket and wildland values, the baseline analysis of the regional economy and broader economic implications, and the need to evaluate the benefits and costs of both conservation and development. Past analyses of conservation alternatives have tended to focus only on the costs; the agency needs to fully evaluate all the benefits as well for these alternatives. On the other hand, analyses of development alternatives tend to emphasize the benefits and ignore the costs. For these alternatives the agency must fully evaluate all the costs.

##### **A. General considerations**

In general, when looking at the economic implications of various management alternatives, BLM should do a full accounting of the costs and benefits. To facilitate informed investment decisions about publicly owned wildlands, economic analysis must take into consideration both market and nonmarket benefits and costs. Loomis, 1993.

##### **1. BLM should utilize a Total Economic Valuation Framework for evaluating alternatives**

To account for the full array of market and nonmarket wildland benefits, economists have derived the total economic valuation framework. Peterson and Sorg 1987; Morton 1999, 2000a. The total economic valuation framework (TEV) is the appropriate measure to use generally when evaluating alternatives developed for the MMP, and specifically for evaluating the benefits of conserving wilderness character.

All Americans own Federal public lands and the scope of the economic analysis should therefore look beyond the employment and income impacts on local communities to include all Americans. Taking a narrow "regional accounting stance" that only includes local counties will

ignore the benefits and costs that accrue to Americans outside the region from management of public land. Because public lands are owned by all Americans, we recommend the BLM take a national accounting stance when estimating the benefits and costs of management alternatives for

the  
Monument

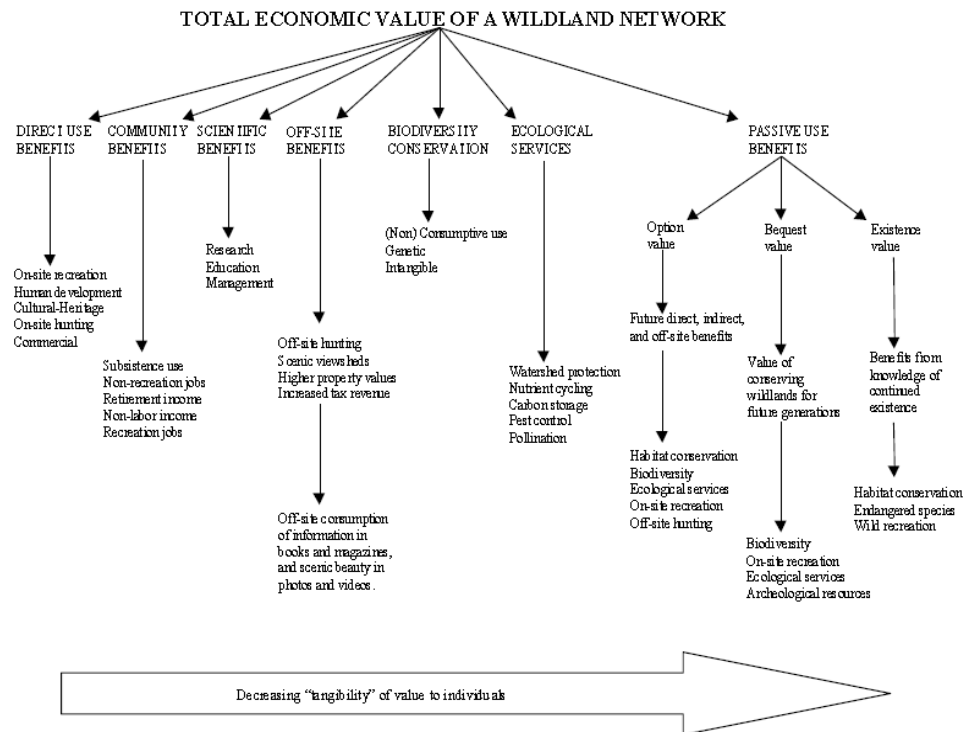


Figure 1. Total Economic Valuation Framework for Wilderness Quality Lands. Morton 1999.

management plan.

To provide an analytic framework (see Figure 1) for such an analysis, economists have developed the total economic valuation concept that includes non-market benefits. Randall and Stoll 1983; Peterson and Sorg 1987; Loomis and Walsh 1992. Under this approach, non-market benefits of a primitive and wild landscape may be substantial. Morton 1999. Researchers have consistently found that passive use benefits of wildlands, including the benefits of retaining the option to visit wilderness, simply knowing wilderness exists, and being able to pass it on to future generations (known to economists as option, existence, and bequest benefits), are greater than other wildland benefits. BLM planners must derive and fully utilize a total economic valuation framework when evaluating land management alternatives. It is the appropriate framework for evaluating management alternatives for public land.

2. BLM should avoid IMPLAN or other input-output models that are grounded in Economic Base Theory when estimating jobs-income for each alternative

The IMPLAN model is an economic model used by the Forest Service and the BLM to project jobs and income from proposed actions. While the IMPLAN model can be useful as a static analysis of the regional economy, communities must be aware of the shortcomings and poor

track record of the model. A more accurate, dynamic, and complimentary approach examines regional trends in jobs and income. We recommend that BLM use the EPS model developed by, and available free from, the Sonoran Institute. In general, models like IMPLAN are grounded in economic base theory. These models assume that an economy is static (i.e., it does not change), which everyone knows is not true. IMPLAN models also do not consider the impacts of many important variables that affect regional growth in the rural west, such as regional amenities like high quality hunting, fishing and recreational opportunities, open space, scenic beauty, clean air and clean water, a sense of community, and our overall high quality of life. Many of these amenities are associated with attracting new migrants as well as retaining long-time residents.

Many long-time residents and new residents earn retirement and investment income. As shown by an analysis of economic trends, retirement and investment income is becoming increasingly important to rural economies of the west. A 2003 letter from 100 economists reinforces the importance of non-labor income to the economy of the West. Whitelaw et al. 2003. Unfortunately, most IMPLAN models completely fail to consider the important economic role of retirement and investment in the economy of a community, which can be a fatal flaw of the model.

Our more specific concerns have to do with the technical assumptions used in most IMPLAN models. These questionable assumptions include: no changes in relative prices, no input substitution or technological change in the production processes; no labor mobility; no change in products or tastes; no regional migration; and no changes in state and local tax laws.

In a review of 23 studies that empirically tested the economic base hypothesis, Krikelas (1991) found only four studies that provided any evidence in support of economic base theory as a long run theory of economic growth -- a dismal track record. History is replete with cases of communities and areas that lost their export base and continued as reasonably successful economies with their social capital intact. The local-serving sectors of the economy were the persistent ones, as new exports were substituted for the old.

Even Tiebout (1956) recognized the shortcomings of the economic base theory when he wrote, "Without the ability to develop residentiary activities, the cost of development of export activities will be prohibitive." Krikelas (1992) concludes that economic base theory has severe limitations, especially for economic planning and policy analysis. This is a conclusion that community leaders and BLM officials and planners can no longer ignore, and one that should be incorporated into public land and community-level planning. As Haynes et al. (1997) note:

Where the economic base approach gets into trouble is when it is used inappropriately as a tool for planning or predicting impacts of greater than one year in duration; a snapshot of current conditions tells little about the form a region's future economy may take.

Economists with the Forest Service and Office of Technology Assessment concluded that while IMPLAN is useful for appraising the total economic impacts of a management plan, the model is insufficient for evaluating the economic impacts for communities. Hoekstra et al., 1990; OTA 1992. According to the OTA (1992), IMPLAN has an additional shortcoming for assessing

community impacts: the economic data used to construct IMPLAN do not provide comparable details for all resource-based sectors of the economy. While economic data for oil and gas is classified as a separate manufacturing industry, recreation is scattered among a variety of industries generally classified in services and retail, with some in transportation. The ease of data acquisition for estimating oil and gas impacts combined with the difficulty of estimating the impacts of recreation and tourism underscores the potential oil-gas bias in IMPLAN modeling.

The 25th anniversary issue of the Journal of Regional Science included an article by H.W. Richardson, a noted regional scientist, who believed that 40 years of research on economic base models "has done nothing to increase confidence in them". In addition, he concluded that it would be hard to "resist the conclusion that economic base models should be buried, and without prospects for resurrection." Richardson 1985. He is not alone. Many have suggested that economic base theories be abandoned in favor of other, more comprehensive theories of regional growth and development. Krikelas 1992; Rasker 1994; Power 1995 and 1996. Many of these economists recommend analysis of regional trend in total personal income as a better way to understand where the local economy came from and where it is headed.

The concern over the accuracy of regional growth models like IMPLAN combined with concern over the use of these models for planning, suggests that it is not only inappropriate but a disservice to rural communities to rely on IMPLAN to estimate the economic impacts of public land management alternatives on rural communities. If the BLM decides to use IMPLAN, we insist that the BLM shall fully discuss the assumptions, the shortcomings, and the poor track record of the model in planning efforts. At the same time the BLM must also complete a trend analysis of regional jobs and income to provide a better and more complete understanding of their economic past and their economic future. We recommend the Economic Profile System that is available free from the Sonoran Institute.

3. BLM should use Total Personal Income as a basis for examining economic impacts

For the analysis of regional economic trends, BLM should include an analysis of all sources of income, rather than relying solely on employment-which will dramatically overstate the importance of oil and gas industries to the local economy. A full accounting of income is necessary to an understanding of the important role that transfer payments and other sources of non-labor income, such as interest payments, rents, and profits have upon the regional economy. For example, in Colorado in 2007, investment and retirement income accounts for 25% of total personal income in the state which makes its contribution to total personal income larger than the contribution from any single industry. Therefore, an economic impact analysis that excludes non-labor income is totally inadequate and misleading.

4. To provide socio-economic context, BLM should examine historic trends in county income and employment

A growing number of economists are recognizing that protecting the quality of the natural environment is key to attracting new residents and business and therefore the environment is the engine propelling the regional economy. A letter to President Bush from 100 economists



concludes "The West's natural environment is, arguably, its greatest, long-run economic strength... A community's ability to retain and attract workers and firms now drives its prosperity. But if a community's natural environment is degraded, it has greater difficulty retaining and attracting workers and firms." See Whitelaw, et al. 2003. Given these findings, we request that the BLM economists fully consider the indirect role of wildlands (i.e., the "conservation alternative") in attracting non-recreational businesses and retirees when completing the economic impact analysis (including total personal income) of management alternatives.

Completing an analysis of income and employment trends and the role of wildlands in those trends is especially relevant given the growing body of literature suggesting that the future diversification of rural economies is dependent on the ecological and amenity services provided by public lands in the west. Power 1996; Rasker 1994; Haynes and Horne 1997; Rasker et al. 2004. These services (e.g., watershed protection, wildlife habitat, recreation opportunities, and scenic vistas) improve the quality of life, which in turn attracts new businesses and capital to rural communities.

Public lands in the west represent natural assets that provide communities with a comparative advantage over other rural areas in diversifying their economies. Public land management can contribute to decreasing dependence/specialization and diversifying local economies by de-emphasizing resource extraction and emphasizing management and budgets on providing high-quality recreation and conserving habitat for the region's biological resources.

As noted by Freudenburg and Gramling (1994):

It needs to be recognized as a serious empirical possibility that the future economic hope for resource-dependent communities of...the United States could have less to do with the consumption of natural resources than with their preservation.

Resource managers, economic planners and community leaders must become aware of this potential. We therefore request our concerns be fully addressed as part of the Monument management plan.

**Summary of Comments:** BLM should use a Total Economic Valuation framework to account for the full array of market and nonmarket wildland benefits, rather than relying on IMPLAN or other input-output models that are grounded in Economic Base Theory. BLM should utilize The Wilderness Society's "Socio-Economic Framework for Public Land Management Planning: Indicators for the West's Economy" for the socio-economic analysis for the Monument management plan details our expectations for the baseline analysis of the region's economy as well as the analysis of the potential impacts of proposed management alternatives on the area.

## **B. Value of ecosystem services**

The importance of an analysis of the value of ecosystem services cannot be underestimated in the development of the Monument Management Plan. Ecosystem services are those services provided by the ecosystem, seemingly for free. These ecosystem services include such tangible

things as food, clean water, and carbon sequestering; but also include intangible services such as beauty, cultural heritage, and a place for solitude and quiet. Because it appears difficult to calculate the value of ecosystem services and because this variety of services has appeared to be free, their loss frequently does not get evaluated in the economic planning process for public lands. However, it is critical to note that these services do have economic value, that can be calculated, and the loss of those values can be significant.

Seemingly the loss of an ecosystem service would bring the value of that service to \$0. However, the loss of a service brings the value of the service into a minus value, because if that service must be restored, then there is an actual cost to return the ecosystem to its previous functioning state. As an example, the pollution of the Rio Grande River by the mine at Summitville brings the value of clean water not to zero, but to the cost of building and maintaining the now necessary water treatment facility at the Summitville superfund site. Unfortunately, while current economic models do not take these costs and losses into account, worse still are models based on GNP methodologies, that would see the cleanup or restoration based on the loss of an ecosystem as a positive value as the labor and materials needed for such cleanup or restoration would be goods and services that contribute to the Gross National Product. By extension, such a model would imply that ecosystem services should be destroyed to raise the value of the GNP.

BLM has current guidance on estimating nonmarket environmental values and analyzing those values in land use planning. *See* IM 2013-131.<sup>19</sup> IM 2013-131 directs BLM to "utilize estimates of nonmarket environmental values in NEPA analysis supporting planning and other decision-making." Nonmarket values are described as values that "reflect the benefits individuals attribute to experiences of the environment, uses of natural resources, or the existence of particular ecological conditions that do not involve market transactions and therefore lack prices."

IM 2013-131 explains that "Ecosystem goods and services":

Include a range of human benefits resulting from appropriate ecosystem structure and function, such as flood control from intact wetlands and carbon sequestration from healthy forests. Some involve commodities sold in markets, for example, timber production. Others, such as wetlands protection and carbon sequestration, do not commonly involve markets, and thus reflect nonmarket values.

BLM's guidance directs the agency to analyze nonmarket values for each alternative and adopt management decisions that are informed by that analysis:

In framing information for management decisions, focus on the *difference in changes to nonmarket values* between action alternatives. Such information can highlight tradeoffs. For example, an alternative designating an additional thirty miles of trails for off-highway vehicles may *increase* the visitor days of use — therefore the total nonmarket benefits — from motorized recreation, but may *decrease* the benefits of subsistence hunting and watershed protection in this area. The *difference* between the

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<sup>19</sup> Available at: <https://www.blm.gov/policy/im-2013-131-ch1>.

changes to nonmarket values between this alternative and an alternative that, for example, only designates an additional ten miles of trails, can inform the choice among action alternatives.

IM 2013-131, Attachment 1-5.

The guidance also directs that quantitative analysis of nonmarket values is strongly encouraged when "the alternatives to be considered present a strong contrast between extractive and nonextractive uses of land and resources. For example, a MMP may include alternative resource allocations that vary between managing land primarily for oil and gas development or managing it for habitat conservation and recreation." IM 2013-131, Attachment 1-7. While the Monument management plan will not evaluate alternatives that have a strong extractive or development focus, BLM should nonetheless complete quantitative analysis of nonmarket values to the extent possible, particularly to help the public understand the economic benefits that could be realized by visitation to the Monument.

**Summary of Comments:** As outlined above, the economic value of ecosystem services can be calculated. That value is ongoing each year into the future. The loss of ecosystem services can be great, and costly. Choices made in land use planning can immediately reduce or destroy the existent ecosystem services, or perhaps do the same at some point in the future. For these reasons the economic value of ecosystems services must be included in the analysis of social economic impacts and fully considered as recommendations are made for land use in the MMP.

## CONCLUSION

Thank you for considering these comments. We look forward to working with BLM as the planning process for Bears Ears National Monument MMP continues. Please keep us informed of publication of documents related to the MMP and opportunities to provide comments and recommendations throughout the process.

Sincerely,

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