



**National Trust for
Historic Preservation**
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**Statement of the National Trust for Historic Preservation
Tom Cassidy, Vice President for Government Relations and Policy**

**House Natural Resources Committee Hearing:
Forgotten Voices: The Inadequate Review and Improper Alteration
of Our National Monuments
March 13, 2019**

Thank you for this opportunity to submit testimony outlining the National Trust for Historic Preservation’s perspective on the Trump Administration’s review and alteration of national monuments, including Bears Ears National Monument in Utah. My name is Tom Cassidy and I am the Vice President of Government Relations and Policy.

The National Trust for Historic Preservation is a privately-funded charitable, educational and nonprofit organization chartered by Congress in 1949 to “facilitate public participation in historic preservation” and to further the purposes of federal historic preservation laws.¹ The intent of Congress was for the National Trust “to mobilize and coordinate public interest, participation and resources in the preservation and interpretation of sites and buildings.”² With headquarters in Washington, D.C., nine field offices, 27 historic sites, more than one million members and supporters and a national network of partners in states, territories, and the District of Columbia, the National Trust works to save America’s historic places and advocates for historic preservation as a fundamental value in programs and policies at all levels of government.

The Administration’s Review of Monument Designations Under the Antiquities Act

For more than a century, the Antiquities Act has enabled presidents to protect nationally significant examples of our shared American heritage. The Antiquities Act of 1906 is our nation’s first law to protect historic, prehistoric, and scientific features on federal public lands. Under the Antiquities Act, the President has discretion to act quickly and decisively to designate national monuments on federal lands. Beginning with President Theodore Roosevelt in 1906, seventeen Presidents—both Republican and Democrat—have used this authority more than 150 times to protect monuments with remarkable historic, cultural and scientific values.

The review of certain national monuments established since 1996 as required by President Trump’s Executive Order 13792 was problematic. The 120-day timeframe for review of these 27 national monuments was too short to fully evaluate the resources protected by the designations or to conduct government-to-government consultation with tribes with ties to the monuments. Furthermore, the Executive Order required review of criteria and policy standards outside the scope of what the Antiquities Act itself requires.

The subsequent presidential proclamations modifying the Bears Ears National Monument and the Grand Staircase-Escalante National Monument to revoke monument designation on more than 2 million acres of

¹ 54 U.S.C. §§ 312102(a), 320101.

² S. Rep. No. 1110, 81st Cong., 1st Sess. 4 (1949).

public lands were unlawful. The Antiquities Act provides presidents authority to designate national monuments on federal lands. Neither the Antiquities Act nor subsequent laws provide presidents the authority to reduce or rescind prior designations. No president has revoked a prior president's monument by removing protections for landmarks, structures, and other objects of historic or scientific interest in the 111-year history of the Antiquities Act preceding these proclamations.

National monument designations since 1996—and before—have been made within the scope of the authority Congress provided the President through the Antiquities Act and consistent with constitutional principles.

Bears Ears National Monument

The National Trust has worked to protect the Bears Ears cultural landscape for more than a decade. Beginning in 2007, we worked with the late Senator Robert Bennett (R-UT) and other stakeholders on public lands legislation to protect cultural resources in southeast Utah. The National Trust continued to engage with the Utah delegation with the goal of crafting legislation to protect the resources, balance competing uses and interests, and secure the bipartisan support necessary for a congressional designation. We worked with Representatives Rob Bishop (R-UT) and Jason Chaffetz (R-UT) throughout their multi-year Public Lands Initiative process, including submitting extensive comments on draft legislation in February 2016 and providing written testimony for a field hearing held by the Federal Lands Subcommittee on September 14, 2016.³

Because of the significance of the area and the threats to its cultural resources, the National Trust named the Bears Ears landscape a National Treasure in 2014 and listed it among America's 11 Most Endangered Historic Places in 2016. When it became clear that the Public Lands Initiative was not going to result in congressional designation protecting the area, the National Trust joined tribes, local and national groups, and many others calling for President Obama to designate the area a national monument using his authority under the Antiquities Act.

Proclamation 9558, issued on December 28, 2016, established the Bears Ears National Monument on approximately 1.35 million acres of federal public land managed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS).⁴ The Proclamation directed BLM and USFS to manage the monument's lands to conserve, protect and restore the area's landscape and cultural resources and instructed the agencies to jointly develop a management plan to protect the monument's historic objects informed by guidance from a new Bears Ears Commission representing tribes. Further, Proclamation 9558 included information and directions regarding the types of resources and values that the agencies should strive to protect and provided a clear rationale for setting the boundaries of Bear's Ears, including protecting lands and resources that are sacred to many Native American tribes. This focus on the protection of cultural resources that are significant to Native Americans was the result of the dedicated efforts of a coalition composed of Hopi, Navajo, Ute Mountain Ute, Ute Indian Tribe of the Uintah Ouray, and Zuni peoples, whose leaders formed an Inter-Tribal Coalition to advocate to designate Bears Ears as a national monument. Bears Ears is the first national monument in U.S. history designated largely because of tribal coalition efforts.

³ Testimony of Stephanie K. Meeks, President and CEO, National Trust. House Natural Resources Committee, Subcommittee on Federal Lands, Legislative Hearing on H.R. 5780 "Utah Public Lands Initiative Act." Sept. 14, 2016 (available at <http://forum.savingplaces.org/viewdocument/national-trust-testimony-utah-publ>)

⁴ 82 Fed. Reg. 1139 (Jan. 5, 2017)

The full Bears Ears National Monument protects an internationally significant cultural landscape that holds evidence of more than 12,000 years of human history. More than 100,000 archaeological sites with their associated artifacts lie within the monument's original boundaries, along with natural landscapes of outstanding scenic beauty that have deep cultural significance for Indian tribes with ancestral ties to the region. The monument designation appropriately prioritized protecting the remarkable cultural, historic, and scientific resources found throughout the area, while continuing to allow for traditional and recreational uses of these public lands. Protection of the landscape connecting these sites is fundamental to the preservation of these places.

This monument designation was the result of an inclusive process that thoroughly considered the cultural resources to be protected and recognized continued threats of looting, vandalism and inappropriate development. Prior to designating Bear Ears National Monument, the Obama Administration conducted substantial outreach, including engagement with tribes, local, state, and federal elected officials from Utah, and the public. Concerns and opposition were weighed against broad support and the long-term need for greater protection of this important historic landscape. This is precisely how the Antiquities Act was intended to be used.

By contrast, Proclamation 9681 issued December 4, 2017 to revoke monument designation for approximately 85% of the Bears Ears National Monument exceeded the authority delegated to the President under the Antiquities Act and runs counter to overwhelming public comments favoring maintaining existing monuments.⁵ The more than 1.1 million acres removed from monument protection include some of the most significant and highly visited archaeological areas such as Grand Gulch and most of Cedar Mesa. The vast area that the proclamation excludes holds more than 70 percent of the original monument's documented archaeological sites, historic and pre-historic structures, cliff dwellings, pictographs, petroglyphs, kivas, ancient roads, historic trails, artifacts, and other archaeological resources. These cultural resources require greater management focus, strategic planning, and visitor education, not less. Reducing the monument boundary is simply not compatible with the proper care and management of the objects designated by Proclamation 9558.

The National Trust is also concerned that the BLM and USFS are rushing to complete a management plan for the reduced monument boundaries.⁶ The draft plans embrace the Administration's sharply reduced boundary and do not propose any protections for the lands cut out from the original Bears Ears National Monument. Furthermore, of the four alternatives evaluated, BLM and USFS identified the least protective management plan as the preferred alternative for lands that remain within the Monument. If adopted, this plan would violate the purposes for which the National Landscape Conservation System was established. In our comments on the draft, we have urged the agencies to issue a Supplemental Draft EIS to analyze an alternative that prioritizes the protection of monument objects over other uses.

Conclusion

We appreciate the Committee holding this important oversight hearing. The Antiquities Act was enacted to provide permanent protections to ensure preservation of historic and prehistoric objects for future

⁵ See Department of the Interior, Report Summary by U.S. Secretary of the Interior Ryan Zinke, at <https://www.doi.gov/sites/doi.gov/files/uploads/monument-report-summary.pdf>

⁶ Notice of Availability of the Draft Bears Ears National Monument Indian Creek and Shash Jaa Units Monument Management Plans and Associated Environmental Impact Statement, Utah, 83 Fed. Reg. 41,111-12 (Aug. 17, 2018)

generations. The Administration's review of certain national monuments was based in large part upon criteria outside the scope of the Antiquities Act and was conducted in too short of a timeframe to fully evaluate the resources or meaningfully engage in government-to-government consultation with affected Indian tribes. The resulting proclamations to revoke monument designations for roughly 85% of the Bears Ears National Monument and 47% of the Grand Staircase-Escalante National Monument exceeded the President's authority. The National Trust is committed to rectifying this presidential overreach and restoring protections for these remarkable cultural landscapes. Thank you again for this opportunity to present our perspective.