



**National Trust for
Historic Preservation**
Save the past. Enrich the future.

January 16, 2015

Joe Stout, Division Chief
Decision Support, Planning, and NEPA
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Re: Scoping comments on BLM's Planning 2.0 initiative

Dear Mr. Stout:

Thank you for the opportunity to submit comments on behalf of the National Trust for Historic Preservation and its members regarding the Bureau of Land Management's (BLM's) Planning 2.0 initiative. The National Trust has a long-standing interest in the preservation of our nation's irreplaceable historic resources. In 1949, Congress chartered the National Trust to "facilitate public participation" in historic preservation, and to further the purposes of federal historic preservation laws. 16 U.S.C. §§ 461, 468. With nearly 800,000 members and supporters nationwide, the National Trust has been involved in helping federal, state and local agencies effectively address and resolve issues affecting historic resources for more than 60 years. We have a long history of advocacy and engagement with BLM on efforts to protect significant sites and enhance federal identification and stewardship of cultural resources on our nation's public lands.

"BLM lands contain the largest, most diverse, and scientifically most important body of cultural resources of any Federal land managing agency."¹ In 2006, in an effort to raise the profile of cultural resource management needs at BLM, the National Trust issued a report, "*Cultural Resources On the Bureau of Land Management Public Lands: An Assessment and Needs Analysis*." The report is available online at <http://www.preservationnation.org/information-center/saving-a-place/public-lands/resources/NTHP-BLM-Report.pdf>. It identified challenges facing the agency in the management of cultural resources and offered a variety of recommendations on how to address those challenges.

¹ "Preserve America" Report, Executive Order No. 13287, Progress Report, September 2005. U.S. Bureau of Land Management.

Some of our concerns referred to in the report have been addressed through the enactment of legislation like the codification of the National Landscape Conservation System. We also commend the BLM for seeking input to develop a more dynamic, durable, and efficient planning process for public lands. We are encouraged by Secretary Jewell's Department-wide commitment to a landscape-level approach to planning for large development projects that seeks to minimize conflicts with resources. A similar approach for other types of development activities on public lands, with emphasis on cultural resource protection, would help to streamline planning processes and lead to better preservation outcomes.

There remains a need to identify and evaluate cultural resources on approximately 90% of the lands managed by the BLM. While it is unlikely BLM will ever survey 100% of its land, the current level of information about the location and significance of cultural resources does not allow BLM to make good land use decisions that avoid or minimize conflict with cultural resources. For this reason, the National Trust believes that a more dynamic, durable, and efficient planning process, as sought by BLM through the Planning 2.0 initiative, requires better baseline documentation of cultural resource sites and their significance.

Most of the sites in the current inventory have been surveyed by industry applicants in compliance with section 106 of the National Historic Preservation Act, which is required before they can receive permits to initiate their projects. Sites identified through this process are rarely nominated to the National Register of Historic Places or evaluated for their potential to be part of a larger group or settlement cluster that would enhance our knowledge about human history on BLM land. This approach also fails to produce survey and inventory data that could inform BLM's land use planning and management decisions on a broader scale. As a result, there is insufficient information to consider impacts to cultural resources at the landscape planning scale.

The National Trust agrees with the preliminary BLM assessment that targeted changes to BLM planning priorities, and associated BLM guidance materials, would lead to improved land use outcomes and would better align BLM's processes with its existing management obligations under federal law. With this background, the National Trust offers the following preliminary comments to support BLM's Planning 2.0 efforts. Our comments are organized under the three goals identified by BLM to facilitate ease of review.

- 1. Conduct effective planning across landscapes at multiple scales and clearly define the boundaries for different types of decisions.**

In response to goal #1, we agree that the BLM should conduct planning across

landscapes at multiple scales for different kinds of decisions. There are many cultural landscapes that stretch across state, district, and field office boundaries where this change would be wise and welcome. When considering the appropriate size of a planning area, some have looked at traditional political boundaries like state lines or even natural boundaries like watersheds. Effective planning across landscapes will need to consider indirect and cumulative effects of ground disturbing activities at the field, district, watershed and landscape levels.

Since the passage of the Federal Land Policy & Management Act (FLPMA) in 1976, cultural resource surveys have been conducted on approximately 10% of BLM lands. However, the majority of cultural resource surveys on BLM lands are conducted through an ad hoc system driven by specific development proposals requiring NHPA section 106 reviews, which results in approximately 0.3% of BLM lands being surveyed each year. Furthermore, those surveys are not focused on the places most likely to contain significant cultural resources, but are instead based on the needs of a development proponent seeking to carry out a project in a particular location with potential environmental impacts. This approach ignores the mandate contained in Section 110(a) of the NHPA, which requires the BLM to proactively identify and protect cultural resources under its jurisdiction. Section 110 requires each federal agency to establish “a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure -- (A) that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register.” 16 U.S.C. § 470h-2(a)(2)(A).² The National Trust recognizes that there are resource constraints that impact the ability to perform survey work sufficient to immediately fulfill this requirement. Nonetheless, the legal requirement, and the need to survey historic properties, still exists.³ BLM should make greater efforts to prioritize funding for surveys and thereby fulfill its obligation to effectively steward the cultural resources it is responsible for within its existing budgets.

² The National Environmental Policy Act also requires federal agencies to “describe the environment of the area(s) to be affected . . . by the alternatives under consideration.” 40 C.F.R. § 1502.15. This obligation cannot be satisfied when cultural resources are not adequately surveyed and identified. Similarly, FLPMA requires agencies to ensure that resources are managed “without permanent impairment of the productivity of the land and the quality of the environment.” 43 U.S.C. § 1702. Avoiding permanent impairment cannot be guaranteed if baseline identification of cultural resources and monitoring are insufficient, as is currently the case.

³ BLM is significantly behind the U.S. Forest Services’ cultural and heritage resource efforts. The U.S. Forest Service has surveyed 20% of its managed lands.

BLM should consider setting an annual acreage target and performance measures to complete new high-priority survey work and fill in existing survey gaps. In conjunction with this effort, BLM should conduct a study of existing survey documentation with the goal of prioritizing areas for survey that are likely to contain a high concentration of cultural resources. A long-term goal to survey and inventory 1% of BLM lands every year would help BLM meet its goals of improving the project review process, provide more certainty for project proponents, and better management of these cultural resources. Ending the ad hoc “flag and avoid” protocol and turning towards block surveys would allow BLM to better identify locations where project proponents can responsibly undertake land-disturbing activities, as well as provide more information about the cumulative and indirect impacts to cultural resources from all permitted activities on public lands. To ensure that cultural resources are fully considered as part of this approach, we urge BLM to require (not just recommend) the use of block surveys with 40-acre minimums before permits are issued.

The recent court decision in *Montana Wilderness Association v. Connell*, 725 F.3d 988 (9th Cir. 2013), 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, by failing to conduct Class III inventories for roads and other projects with potential adverse impacts. *Id.* at 1005-09 (citing 36 C.F.R. § 800.4(b)(1)). The court held that BLM’s Class I literature review for the RMP was not an adequately “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.” 725 F.3d at 1009. *See also Southern Utah Wilderness Alliance v. Burke*, 2013 U.S. Dist. LEXIS 157941, 2013 WL 5916815 (D. Utah Nov. 4, 2013) (BLM violated the NHPA by failing to conduct Class III surveys prior to designating OHV routes). These decisions confirm that on-the-ground surveys of previously unstudied areas are required prior to making land use decisions with the potential for adverse effects. Performing surveys systematically before they are needed to respond to specific project applicants would help to streamline project reviews by steering the location of harmful projects to areas that are less significant and less sensitive, and doing so earlier in the planning process.

We encourage BLM to review the *Secretary of the Interior’s Standards and Guidelines for Federal Agency Historic Preservation Programs*, 63 Fed. Reg. 20,496, 20,501-02 (Apr. 24, 1998), which contains detailed guidance that should be incorporated into the BLM planning procedures:

(a) Identification and evaluation of historic properties are critical steps in their long-term management, as well as in project-specific planning by Federal agencies. . . .

* * * *

(e) Where an agency is planning an action that could affect historic properties directly or indirectly (e.g., a land-use or construction project; a project that could change the way land or buildings are used or developed, or alter the social, cultural, or economic character of a community; and any program of assistance to or the issuance of a license for such activities), identification and evaluation should take place at the *earliest possible stage of planning*, and be coordinated with the earliest phases of any environmental review carried out under [NEPA] and/or related authorities. Identification and evaluation efforts must be carried out in consultation with SHPOs, Tribal Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public as appropriate. [Emphasis added.]

(f) Where identification and evaluation are carried out as a part of long-term planning, it may be appropriate to conduct background studies to develop a “predictive model” of historic property distributions that can be used in evaluating the likely effects of particular land management projects as the program proceeds. . . . It may also be appropriate and cost-effective to carry out the work in phases organized around particular property types or other such coherent units. . . . However, identification is not complete until all historic properties have been identified.

We understand the notion that less prescriptive and more adaptive plans could be helpful to encourage flexibility in management approaches for specific areas, but we also believe that plans need enough specificity to provide direction to the implementers about what is expected for compliance. A plan that simply contains a page or two about the general need to protect cultural resources by complying with the NHPA is not helpful in directing study approaches or guiding decision-making. A good example of a sufficiently detailed approach to cultural resources, on the other hand, can be found in the Resource Management Plan (RMP) for Canyons of the Ancients National Monument. That RMP outlines detailed goals, objectives, and management actions for cultural resources, and includes a similar level of detailed treatment information for all resource types. Less prescription in the context of cultural resource management too often means

a lack of direction that results in inadequate attention being paid to cultural resources.

The Planning 2.0 initiative provides BLM an opportunity to more fully meet its legal requirements to survey and protect the cultural resources, known and unknown, for which it is responsible. Surveys of cultural resources should be conducted before and during the development of planning alternatives, rather than after a preferred alternative is selected for a specific proposed project. Clear direction to embrace this policy would enable BLM to more fully meet its obligations to protect cultural resources.

2. Create a dynamic and durable planning process that is responsive to change, making it more efficient to keep plans current through amendments.

The National Trust agrees that creating a dynamic and durable planning process that is responsive to change should lead to more efficient planning. However, we also believe that when new information regarding the identification of cultural resources is made available in a planning area, the BLM should be prepared to make the necessary land use changes to protect those resources through actions like withdrawal from development, designation of ACECs or other protective prescriptions, and nomination of eligible sites to the National Register of Historic Places.

The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs provide useful guidance here, which should be fully adopted and incorporated by BLM:

(g) Identification of historic properties is an ongoing process. As time passes, events occur, or scholarly and public thinking about historical significance changes. Therefore, even when an area has been completely surveyed for historic properties of all types it may require re-investigation if many years have passed since the survey was completed. Such follow-up studies should be based upon previously obtained information, may focus upon filling information gaps, and should consider re-evaluation of properties based upon new information or changed historical understanding.

63 Fed. Reg. at 20,502.

The National Trust is not alone in experiencing frustration with RMPs that are many years old and outdated, yet do not ever seem to move to the top of the list

for being thoroughly reviewed and updated. For example, the North Dakota BLM RMP was completed in 1986. An update was begun in 2007, but it has not yet been completed. We have raised concerns about oil and gas development near Theodore Roosevelt's Elkhorn Ranch, but the agency's governing documents are outdated and not responsive to new developments, such as the North Dakota Bakken boom and the newly designated Elkhorn Ranchlands National Register Historic District. An updated planning framework should make it easier and faster to undertake, at a minimum, an interim amendment that could address new information regarding cultural resources.

In the interest of furthering collaborative planning efforts, we encourage BLM to more thoughtfully undertake planning collaboration with other Department of the Interior agencies, including the National Park Service, Fish and Wildlife Service, and the Bureau of Indian Affairs, which often manage adjoining property but do not have the same management directives as BLM. For example, as the BLM field office in Farmington, NM undertakes a major RMP amendment, it should collaborate closely with the Chaco Canyon National Historical Park and the BIA, which have significant related resource protection obligations. This collaboration can be furthered by conversations between high-level Interior staff, but is most efficient when there is also close collaboration among DOI staff on the ground.

In addition, we encourage BLM to continue its outreach to Tribes who have affiliations with areas that are about to undergo new planning efforts. It is particularly important to consult not only with Tribes who are current residents, but also with those who have cultural affiliations to an area, even though they do not live there today. Consulting early in the planning process should help to identify tribal resources and traditional cultural properties at a time when avoidance is still possible.

We applaud the BLM's completion of a landscape-level planning effort for utility-scale solar energy projects (which can have major impacts on cultural resources), by proactively preparing a Programmatic Environmental Impact Statement (PEIS) and associated Programmatic Agreement (PA) under Section 106 of the NHPA. The PA, which the National Trust signed as a concurring party, created a win-win solution, providing greater certainty for developers, while assuring protections for landscapes containing important cultural resources. The PEIS has proven to be a critical tool for allowing BLM the discretion to relocate or even reject projects where significant cultural resources are located. For instance, BLM's recent rejection of a major energy project in California's Silurian Valley was justified by the PEIS. Because the installation was to be located outside of an agreed-upon solar energy zone, the denial could occur at the pre-application stage, prior to significant investment in project planning. The PEIS has thus proven to be an important model that should be replicated for other

types of energy production and development impacts to secure greater landscape-level protections for cultural resources.

3. Create an efficient planning process that reduces the amount of time it takes to complete RMPs.

Creating an efficient planning process that reduces the amount of time it takes to complete RMPs is a goal shared by all public lands stakeholders. A major investment in survey and inventory for the 90% of BLM's lands that have not yet been surveyed for cultural resources would help to achieve this goal for RMPs and other planning initiatives. Using accurate survey data is essential to help BLM better protect cultural resources by making informed determinations about which lands should be closed to incompatible uses, which lands should be subject to No Surface Occupancy (NSO) stipulations, and which lands can be open to development.

Effective planning also involves implementing the principles reflected in IM No. 2012-108, which emphasizes gaining efficiencies in the environmental review and coordinating procedures for compliance with the National Environmental Policy Act and Section 106 of the National Historic Preservation Act, and for meeting the BLM's tribal consultation responsibilities. This coordination will reduce costs, increase efficiencies, and minimize the legal vulnerability of decisions to ensure full compliance with statutory obligations.

Conclusion

The National Trust genuinely appreciates BLM's efforts to enhance its commitment to protect important cultural resources on our public lands. We realize that managing more than 245 million acres of land is a challenge, and that inadequate funding impairs BLM from achieving all of its goals. Nonetheless, as described above, it is essential for BLM to enhance its survey of cultural resources if it is to fully meet its responsibilities to manage the extraordinary cultural resources and places it stewards for this and future generations. We look forward to continuing our partnership with BLM. Thank you for your consideration of these comments.

Sincerely,



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