



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

May 25, 2016

Director (630)
Bureau of Land Management
U.S. Department of the Interior
1849 C Street, NW
Room 2134LM
Washington, DC 20240
Attention: 1004-AE29
oir_submission@omb.eop.gov

Sent via U.S. mail and email

Re: Comments on the Draft Proposed Planning Rule
81 Fed. Reg. 9,674 (Feb. 25, 2016)

Dear Director Kornze:

We thank the Bureau of Land Management (BLM) for this opportunity to provide input on BLM's draft Proposed Planning Rule (Rule). The National Trust for Historic Preservation (National Trust) applauds BLM's efforts to make its resource management planning process more efficient and effective, with the goal of improving the management of our country's public resources. The National Trust offers the following comments to support the BLM in this endeavor, with the goal of ensuring that the important cultural, historic and archeological resources (cultural resources¹) on our public lands are preserved and managed to ensure our country's cultural heritage is protected for this and future generations. These comments supplement our January 16, 2015 scoping comments on the Rule.

For nearly 70 years, the National Trust has been involved in helping federal, state and local agencies effectively assess and manage our country's cultural resources. The National Trust was chartered by Congress in 1949 as a private charitable, educational and nonprofit organization to "facilitate public participation in historic preservation" and to further the purposes of federal historic preservation laws.² 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."³ With over 800,000 members and supporters, the National Trust has worked with public agencies, Native American tribes, academia and the public to preserve thousands of historic and cultural sites across the country.

BLM performs an essential role in the management of the nation's cultural legacy, with responsibility for managing over 250 million surface areas and more than 750 million acres of subsurface mineral resources. "BLM lands contain the largest, most diverse, and scientifically most important body of

¹ FLPMA specifically calls for the protection of "historical" and "archeological" values. [43 U.S.C. § 1701(a)(8).] To provide clarity and readability with respect to this document, the National Trust uses the term "cultural resources" to capture the full range of historical, archeological, and cultural sites and artifacts.

² 54 U.S.C. §§ 312102(a), 320101.

³ S. Rep. No. 1110, 81st Cong., 1st Sess. 4 (1949).

cultural resources of any Federal land managing agency.”⁴ These lands contain well over a million cultural sites, including historic and archeological sites.

The National Trust has a long history of working with the BLM in the inventory, planning and stewardship of cultural resources on public lands. 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.

The National Trust was a leading advocate for the codification of the National Conservation Lands System, which contains some of our country’s most significant cultural resources, to ensure that these lands receive the high standard of stewardship they deserve. The National Trust has been instrumental in supporting efforts to protect cultural resources on BLM lands in such places as Nine Mile Canyon, Utah; Montana’s Upper Missouri River Breaks; and Canyons of the Ancients in Colorado. We have provided input on numerous resource management plans, and have been a key leader and collaborator in the designation of Areas of Critical Environmental Concern (ACECs) and the establishment of National Monuments to protect cultural resources on BLM-administered lands. We are strong supporters of the National Landscape Conservation System, including seeking and supporting increases in BLM funding to manage the National Conservation Lands, as well as survey and preserve cultural resources on all BLM-administered lands.

The National Trust is largely supportive of the Rule, as we believe that many of the changes have the potential to create a more efficient and responsive planning process. However, we are very concerned that the Rule is almost entirely silent on BLM’s statutory responsibility to identify, manage and protect cultural resources. For example, the commentary explaining the proposed rule cites various supporting documents that promote landscape-scale planning yet the focus is exclusively on “natural resource management” or “key conservation priorities.” 81 Fed. Reg. 9678-79 (Feb. 25, 2016). In fact, several of the cited documents *do* include cultural resources as a consideration in landscape-level planning, such as Secretarial Order 3330, which seeks to conserve “our Nation’s valuable natural and *cultural* resources” and the April 2014 report, “A Strategy for Improving the Mitigation Policies and Practices of The Department of the Interior” which identifies a near-term policy deliverable to “*Initiate Guidance for Landscape Scale Mitigation Under Section 106 of NHPA*” (emphasis added). The Rule affords a significant opportunity to prioritize cultural resources in the planning process.

We believe that the final Rule should also clearly identify the significant opportunities to advance a more efficient planning process by explicitly calling for a more robust incorporation of surveys and predictive modeling that would enable managers to differentiate low sensitivity areas from high sensitivity areas in the early assessment phase of planning.

In our scoping comments on the Rule, we highlighted the fundamental need for BLM to identify and evaluate cultural resources on the lands it administers. The National Trust believes that the more dynamic, durable and efficient planning process sought by the Rule requires better baseline documentation of cultural resource sites and their significance. However, this is not the current practice. BLM assesses only about .3% of its lands annually, most resulting from National Historic Preservation Act Section 106 compliance reviews, which are typically project-based and not landscape-scale surveys, meaning they have limited value in informing broader resource management plans. Overall, less than 10% of BLM-

⁴ “Preserve America” Report, Executive Order No. 13287, Progress Report, September 2005. U.S. Bureau of Land Management.

administered lands have been surveyed for cultural resources, yet the Federal Land Policy and Management Act (FLPMA), the National Historic Preservation Act (NHPA), the Archeological Resources Protection Act (ARPA), and several of the Executive and Secretarial Orders BLM references in the draft Rule, mandate that BLM conduct inventories of cultural resources. FLPMA provides clear guidance on this mandate:

“[T]he national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts.” 43 U.S.C. § 1701(a)(2).

“The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern.” Id. § 1711(a).

FLPMA also clearly articulates that managing cultural resources is a priority for BLM planning and management, stating that:

“...public lands be managed 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.” Id. § 1701(a)(8) (emphasis added).

The NHPA has a similar requirement that BLM must “ensure that”:

“...historic property under the jurisdiction or control of the agency is identified, evaluated, and nominated to the National Register.” 54 U.S.C. § 306102(b)(1).

The National Trust believes the revision of the planning rule provides BLM a critical opportunity to improve the inventory, management and protection of cultural resources on the lands it administers and elevate cultural resources in ways that could begin to address current deficiencies. We strongly believe that having better cultural resource information available during the planning process and using it to make plan-level decisions would in turn help to make better decisions about how to protect important cultural sites long before specific implementation projects are proposed. It would also serve to better align BLM’s processes with its existing management obligations under federal law. The National Trust also believes that robust implementation of landscape-scale cultural surveys will result in the identification of additional nationally significant cultural resources, some of which will form the basis of future additions to the National Conservation Lands System.

The Importance of National Conservation Lands

The enactment of the Omnibus Public Land Management Act in 2009 was a watershed moment for the conservation of some of the country’s most treasured natural and cultural resources. The creation of the National Landscape Conservation System (NLCS) provided the BLM the mandate and wherewithal to identify and manage what are often described as the “crown jewels” of our public lands. Many of the National Conservation Lands comprising the NLCS protect some of the nation’s most important cultural resources. We believe that future expansion of the NLCS will provide greater protection for nationally significant cultural resources and ensure that they are not lost or damaged.

With respect to the management of the National Conservation Lands, Secretarial Order 3308 states that “The BLM has the challenging mission of balancing the myriad competing land and resource uses, and remains committed to making the public lands and resources available for a wide variety of uses. This

Order recognizes that conservation of this Nation's rich natural and cultural heritage is an equally important land management objective, and an integral part of the BLM's multiple-use mission.”

The 15-year Strategy for the National Conservation Lands states the following goals for the agency:

- Manage cultural resources within the context of the cultural landscape and adjoining lands to provide the greatest conservation benefit.
- Adopt a cross-jurisdictional, community-based approach to landscape-level conservation planning and management.
- Engage tribal, local, state and other federal government agencies and members of the public at the earliest opportunity possible in NLCS planning, management and resource and geospatial data sharing.
- Serve as an information source for grassroots efforts interested in exploring possible designations through legislation pertaining to the NLCS.

The Trust recommends BLM specifically identify the National Landscape Conservation System policies as a model for landscape planning bureau-wide, and use these policies for landscape-level management as examples for landscape-level planning in the Rule and handbook.

Additionally, we recommend BLM consider the existing National Conservation Lands and identify potential additions. Goal 2A of the 15-Year Strategy for the National Conservation Lands states that BLM will “use large-scale assessments, such as BLM’s Rapid Ecoregional Assessments (REAs), to identify areas where NLCS units are important for resource protection and conservation within a broader landscape context.” The Strategy calls on BLM to “[u]tilize existing large-scale assessments and maps, such as the BLM’s REAs” and “other federal and state agency analyses” to “inform collaborative planning and land acquisition efforts.”

The National Trust recommends that BLM employ a variety of strategies including cultural resource surveys, predictive modeling and remote sensing mapping efforts, and consultation with State and Tribal Historic Preservation Officers, to expand REA’s to include cultural resources and incorporate this information into resource management planning efforts.

Importance of Early Surveys

We are hopeful the Rule will result in a shift from the current practice of surveys being completed primarily through NHPA Section 106 reviews, to initiating surveys at the earliest stage of landscape-scale planning in the assessment phase of the proposed Rule, as provided in section 110 of the NHPA. The goal should be to avoid conflicts with cultural resources by being informed about where resources are located early in the planning process, rather than waiting to mitigate the adverse impacts of a preferred alternative.

The National Trust recognizes there are resource constraints that limit the ability of BLM and its partners, especially State and Tribal Historic Preservation Officers, to survey cultural resources and develop the high quality cultural resource data required to meet legal mandates. Fortunately, in recent years, BLM and its partners have been developing and testing new and innovative approaches and methods that show great promise in addressing cultural resources data and survey needs. We encourage BLM to expand utilization of these approaches, and offer some key examples for BLM to consider for broader use.

Examples of Innovation

BLM has acknowledged the need for enhanced landscape scale planning, and has piloted several projects to investigate how its Rapid Ecoregional Assessment (REA) program could be applied to cultural

resource analyses. These projects include the San Luis Valley-Taos Plateau Landscape-Level Cultural Heritage Values and Risk Assessment, and an ethnographic study undertaken with the Northern Cheyenne in Montana that will identify, document, evaluate, and map places of traditional religious or cultural significance. Based on the utility of these pilots, we encourage BLM to begin incorporating cultural analyses into new or revised REAs, and undertaking ethnographic studies to establish a baseline understanding about regional tribal issues.

Another example of innovation is the use of LiDAR (Light Detection and Ranging) and photogrammetry by BLM's Farmington Field Office, which is currently working with the Remote Sensing Division of the BLM National Operations Center (NOC) in Denver to carry out LiDAR acquisition as part of the Mancos-Gallup Resource Management Plan Amendment. LiDAR is an effective remote sensing technique for obtaining bare earth surface data and has proven to be an effective way of detecting subtle features that can at times only be identified by a very slight difference in elevation. The data collected will enable the identification and mapping of the Chacoan road system in association with Chacoan communal structures known as great houses, or great kivas. Initially the BLM NOC had considered using photogrammetry for satellite imagery from DigitalGlobe WorldView-3 to create "LiDAR like" products and is now conducting a test of this method to compare the two remote sensing approaches. Both LiDAR and photogrammetry may have applications in other locations as an additional means of cultural resource data collection.

A number of modeling approaches provide opportunities for collecting cultural resources data. An approach being tested by Archeology Southwest utilizes planning tools that would enable BLM to discern patterns in cultural and historic resource data at broader scales beyond the site level, thereby enabling BLM to better characterize the landscape with respect to cultural resources. Significance modeling allows differentiation between sites by placing a value on site types, and priority area planning provides opportunities to identify where culturally significant areas occur that should receive the highest levels of stewardship.

In addition, there are significant opportunities for predictive modeling to identify the nature or kinds of cultural properties during the assessment phase. As discussed in the *Guidelines for Identification (in Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines)*, "(P)redictive modeling is an application of basic sampling that projects or extrapolates the number, classes and frequencies of properties in unsurveyed areas based on those found in surveyed areas. Predictive modeling can be an effective tool during the early stages of planning an undertaking, for targeting field survey and for other management purposes." Predictive models have the ability to establish survey priorities and help determine differing levels of survey intensity at either high or low sensitivity zones based on the likely presence of cultural resources. By employing these models early in the planning process, entire areas can be marked for avoidance or managers can utilize the model data to better assess required field investigation and mitigation resources in situations where it is impossible to avoid certain areas.

NEPA and NHPA Coordination

Finally, BLM should seek additional opportunities to implement successful models of NEPA and NHPA coordination. The Trust believes that this will lead to improved outcomes for cultural resources, as evidenced by the development of the Solar Programmatic EIS (PEIS) and Section 106 Programmatic Agreement (PA), where BLM recognized that cultural landscapes are uniquely at risk from utility-scale solar projects. Several PA provisions encourage early identification of sites such as historic trails and Traditional Cultural Properties, and encourage the agency to pay particular attention to potential impacts in order to drive development away from these landscape-level sensitive resources. In addition, the PEIS contains extensive documentation on cultural resource surveys that have occurred within each solar zone and is coordinated by the PA, which stipulates that even though much of this initial research has been

completed, BLM will abide by its obligations to engage in Section 106 consultation for project-specific reviews. The PA will support implementation of BLM's Western Solar Energy Program, which seeks to direct solar energy projects to areas with minimal resource conflicts.

Recommendations

Throughout the draft of the Proposed Rule, references to cultural resources are noticeably absent and in some instances seemingly excluded in favor of resources and issues that appear to diverge from FLPMA requirements. The National Trust believes this oversight must be corrected to improve the prioritization of identifying, managing and protecting cultural resources.

In general, we recommend BLM address the importance of cultural resources with the draft Rule as follows:

- Specifically reference cultural resources as a statutory priority for inventory, planning, and management, and identify cultural resources information as a key data set necessary to inform management decisions at the landscape-scale. For example, we recommend the Definitions section define cultural resources separately from other "resources." Additionally, the new Planning Assessment phase should explicitly address cultural resource inventories and data, including data gaps and the use of predictive modeling, as essential elements in the implementation of BLM's statutory obligation to protect cultural resources;
- State Historic Preservation Offices (SHPO) and Tribal Historic Preservation Offices (THPO), the data they collect and manage, and the plans they create, should be specifically included in the rule where input from States and Native American Tribes are recommended or called for. For example, this would require specifically including SHPOs and THPOs in the sections on Consistency Review and Cooperating Agencies. In addition, the Rule should provide a definition of "State Governments" similar to "Local Government" in the draft Rule and include SHPOs in that definition;
- We recognize that the Rule derives from FLPMA, however, BLM also has specific and independent statutory responsibilities established by the National Historic Preservation Act and the Archeological Resources Preservation Act. We strongly recommend that those responsibilities be referenced in the cultural resources definition recommended above, and within the Planning Assessment and Authorities sections.

BLM should specifically clarify that compliance is required with Section 106 of the NHPA, in addition to NEPA, for each action involving the adoption or revision of a resource management plan. In doing so, BLM should use the Proposed Rule to encourage the use of programmatic approaches to section 106 compliance, pursuant to 36 C.F.R. § 800.14(b), and should require compliance with the guidance issued jointly by the Council on Environmental Quality and the Advisory Council on Historic Preservation entitled *NEPA and NHPA: A Handbook for Integrating NEPA and Section 106* (Mar. 2013).

The National Trust believes these recommendations will significantly improve the draft Rule, and enable BLM to improve its inventory, planning and management of cultural resources, both to meet the agency's legal mandates and to ensure our country's cultural heritage is protected for this and future generations.

In addition to our principal areas of concern outlined above, we are including with these comments a detailed red-line version of the proposed Rule. We also understand that a number of our concerns and recommendations can be addressed in more detail in the planned revision to BLM's Planning Handbook.

We look forward to our continued collaboration with BLM to ensure the Planning Handbook provides specific and robust guidance to improve BLM's inventory, planning and management of cultural resources.

Thank you for considering our recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Cassidy, Jr.", with a stylized flourish at the end.

Thomas J. Cassidy, Jr.
Vice President of Government Relations and Policy

Enclosure:
Detailed Red-line version of the Rule