

May XX, 2016

Director (630)
Bureau of Land Management
U.S. Department of the Interior
1849 C Street, NW
Room 2134LM
Washington, DC 20240
Attention: 1004-AE30

Re: Comments on the Draft Proposed Planning Rule

Dear Sir:

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 respectfully offers the following comments to help and 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 the benefit of future generations. These comments build upon our January 16, 2015 scoping comments on the Rule, which are attached hereto.

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. 54 U.S.C. §§ 312102, 320101. 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" S. Rep. No. 1110, 81st Cong., 1st Sess. 4 (1949). With the support of 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. "BLM lands contain the largest, most diverse, and scientifically most important body of cultural resources of any Federal land managing agency."² BLM is responsible for managing over 250 million surface areas and more than 750 million acres of subsurface mineral resources. 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. The National Trust was a leading advocate for the codification of the National Conservation Lands System, which contains

¹ FLPMA specifically calls for the protection of "historical" and "archeological" values. 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 "Preserve America" Report, Executive Order No. 13287, Progress Report, September 2005. U.S. Bureau of Land Management.

some of our country's cultural, historic and archeological treasures, to ensure these lands received the high standard of management 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 funding to survey and preserve cultural resources on all BLM-administered lands.

The National Trust is largely supportive of the draft Rule, as we believe that many of the changes sought may create a more efficient and responsive planning process. However, we are very concerned that the draft Rule is almost entirely silent on BLM's statutory responsibility to identify, manage and protect cultural resources. Moreover, it fails to clearly identify the significant opportunities to advance a more efficient planning process by explicitly calling for a more robust incorporation of surveys and predictive models indicating the likely presence of cultural resources in the 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 being sought by BLM through the draft 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 (NHPA) Section 106 compliance reviews, which are typically project-based and not landscape-scale surveys, meaning they have limited value in informing resource management plans. Overall, less than 10% of BLM-administered lands have been surveyed for cultural resources, yet the Federal Land Policy and Management Act (FLPMA), the National Historic Preservation Act (NHPA), and several of the Executive and Secretarial Orders BLM references in the draft Rule, mandate BLM to conduct inventories of cultural resources. FLPMA provides clear guidance on this mandate:

"...the 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 §102(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." 43 U.S.C. 1701 §201(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" (emphasis added). 43 U.S.C. 1701 §102(a)(8)

The NHPA has a similar requirement that BLM establish:

“ . . . a preservation program for the identification, evaluation and nomination to the National Register of Historic Places and protection of historic properties. Such a program shall ensure – (A) that historic properties under the jurisdiction or control of the agency, are identified, evaluated and nominated to the National Register.” 54 U.S.C. §306102.

The National Trust believes that 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 an opportunity to 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. The National Trust also believes that robust implementation of landscape-scale cultural surveys will result in the identification of nationally significant cultural resources which will form the basis of future additions to the National Conservation Lands System.

We are hopeful that the Rule will shift the current practice of surveys completed primarily for NHPA Section 106 reviews, to the earliest stage of landscape-scale project planning in the assessment phase of the proposed Rule. The goal should be to avoid conflicts with cultural resources by avoiding them early in the planning process rather waiting to mitigate the impacts of the preferred alternative.

The National Trust recognizes that there are resource constraints that limit BLM’s ability to survey cultural resources to immediately fulfill the vast need for data. Nonetheless, the legal mandates, and the need to prioritize surveys of cultural resources, still exists.

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

In general, we recommend BLM address our cultural resource concerns with the draft Rule as follows:

- **Specifically reference cultural resources as a statutory priority for inventory, planning, and management, and similarly 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 step in the planning process should explicitly address cultural resource inventories and data, including data gaps and the use of predictive modeling, as referenced where 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 input from States and Native American Tribes are recommended or called for, including the sections on Consistency Review, Cooperating Agencies, etc. 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 statutory responsibilities established by the National Historic Preservation Act. We recommend strongly that those responsibilities be referenced in the cultural resources definition recommended above, within the Planning Assessment section and within the Authorities section. We further recommend BLM include an “Other Authorities” section in the draft Rule that would include the NHPA.**

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 specific section-by-section comments and recommendations with this document. 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 resource staff and the public to ensure that the Planning Handbook provides specific and robust guidance to improve the BLM’s inventory, planning and management of cultural resources.

Thanks you for considering our recommendations.

Sincerely,

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

Enclosures:

NTHP scoping comments submitted to BLM on the Rule dated January 16, 2015
Section-by-section comments on Draft Rule