May 25, 2017

Monument Review
MS-1530
1849 C Street NW
Washington, DC 20240

Sent via U.S. mail and submitted electronically via regulations.gov

Re: Review of Certain National Monuments Established Since 1996
Docket no. DOI-2017-0002 | Bears Ears National Monument

Dear Secretary Zinke:

The remarkable historic significance of the Bears Ears National Monument and the tens of thousands of archaeological and historic objects, structures, and other cultural resources found within its existing boundaries warrant continued protection.

The National Trust for Historic Preservation has long worked to protect these historic resources, including naming the area a National Treasure in 2013 and listing it among America’s 11 Most Endangered Historic Places in 2016. We strongly encourage you not to recommend changes that would reduce or rescind protections provided by the existing national monument designation.

**Interests of the National Trust for Historic Preservation**

The National Trust for Historic Preservation is a private, nonprofit organization chartered by Congress in 1949 to facilitate public participation in the preservation of our nation’s heritage, and to further the historic preservation policy of the United States. Congress intended the National Trust “to mobilize and coordinate public interest, participation and resources in the preservation and interpretation of sites and buildings.” 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 National Trust’s active involvement to protect Bears Ears began in 2007, and efforts by others to protect this remarkable landscape can be traced back over 80 years. We worked with the late Senator Robert Bennett (R-UT) on public lands legislation to protect cultural resources in southeast Utah, kicking off nearly a decade

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1 54 U.S.C. §§ 320101, 312102.

**Stephanie K. Meeks | President**

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of work with the Utah delegation in an attempt to craft legislation to protect the resources, balance competing uses and interests, and secure the bipartisan support necessary for congressional designation. We worked diligently with Chairman Rob Bishop (R-UT) and Rep. Jason Chaffetz (R-UT)—as did many other stakeholders—throughout their multi-year Public Lands Initiative process. We submitted extensive comments on draft legislation in February 2016 and testimony for a July 2016 Senate Energy and Natural Resources Committee field hearing, as well as testimony for a hearing held by the House Subcommittee on Federal Lands on September 14, 2016. Unfortunately, the legislation lacked sufficient support in Congress to become law.

Because of the pressing need for greater protection, and the lack of a path forward for congressional action, the National Trust joined tribes, local and national groups, and many others calling for the President to designate the area a national monument. On December 28, 2016, President Obama designated Bears Ears National Monument with boundaries reflecting clear attention to areas proposed for protection in the Public Lands Initiative. That designation was entirely appropriate and necessary to care for the irreplaceable cultural resources across the landscape. It should be maintained.

**Application of Criteria from Executive Order 13792**

Executive Order 13792 outlines a set of criteria for reviewing national monument designations. While we have concerns about the criteria selected for this review, and we reject the false premise that monument designations “curtail economic growth,” we offer the following comments:

(i) *The requirements and original objectives of the Act, including the Act’s requirement that reservations of land not exceed “the smallest area compatible with the proper care and management of the objects to be protected.”*

Bears Ears encompasses one of the most significant historic landscapes in the United States. Tens of thousands of archaeological sites, objects, and structures—many of which are sacred to tribal communities across the region—represent 12,000 years of human habitation. The 1.35 million acres of existing public lands managed by the Bureau of Land Management and United States Forest Service contain Ice Age hunting camps, cliff dwellings, prehistoric villages, and petroglyph and pictograph panels that show an enduring connection of people to this land. The remarkable historic and natural resource values of this place are well described in the Presidential Proclamation. The boundaries of the Bears Ears National Monument already reflect the smallest area compatible with proper care and management of the

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4 Executive Order 13792. See note 12 infra.
objects outlined for protection in the Proclamation. In fact, the boundaries track more closely with the conservation area protections proposed in the Public Lands Initiative than those initially proposed by the tribes and supported by the National Trust.

The "smallest area compatible" standard can best be understood through the legislative history of the Antiquities Act, as well as legal precedent upholding large monument designations. The "smallest area compatible" language was authored by the bill's chief architect, archaeologist Edgar Lee Hewett. Earlier drafts favored by western legislators proposed to limit the acreage of monument reserves to 320 or 640 acres, while the Department of the Interior favored large-scale reservations that could be designated solely for their scenic beauty. Dr. Hewlett's language was considered a middle ground.

Nonetheless, "the plain language of the Antiquities Act supports a broad construction of the President's authority to protect large tracts of land."5 Starting in 1920 the U.S. Supreme Court unanimously upheld President Theodore Roosevelt's designation of the Grand Canyon National Monument. Since that decision, every court that has considered a challenge to an Antiquities Act designation has upheld the President's action.6

The perspectives and traditional knowledge of Native Americans whose ancestors inhabited the region is particularly important to understanding the size of the Bears Ears National Monument, and why the existing boundaries are appropriate. Until the last half century, tribes had largely been left out of governmental decision-making that affected their ancestral sites on public lands. But cultural resources law and policy has evolved since that time to give tribes a recognized voice when the government takes action that could cause harm to these places.

The designation of Bears Ears National Monument was significant for multiple tribes who have deep connections to the Bears Ears region and sought to protect longstanding cultural connections to historic places. As recognized in the Presidential Proclamation, the area is critical for perpetuating cultural traditions of hunting, fishing, gathering and wood-cutting, as well as the collection of medicinal and ceremonial plants, edible herbs and craft materials.

The monument boundaries were developed in consultation with tribes, in accordance with federal government policy. Originally proposed by the tribes to include 1.9 million acres of public lands, the monument was reduced in size by more than 25 percent to contain only 1.35 million acres, to be managed jointly by the Bureau of Land Management and U.S. Forest Service. The Proclamation also recognized the importance of tribal participation to the ongoing management of cultural resources within the monument by establishing a Bears Ears Commission comprised of elected

officers from five tribes with ancestral ties to its resources. The agencies are instructed to “carefully and fully consider integrating the traditional and historical knowledge and special expertise” of the Commission.

(ii) **Whether designated lands are appropriately classified under the Act as “historic landmarks, historic and prehistoric structures, [or] other objects of historic or scientific interest.”**

Bears Ears includes historic landmarks, historic and prehistoric structures, and other objects of scientific interest that show an enduring connection of people to this land. We concur with the conclusion in the Bears Ears Proclamation that protection is warranted for “one of the most significant cultural landscapes in the United States,” which is “profoundly sacred” to many tribes including the Hopi, Navajo, Ute Mountain Ute, Ute Indian Tribe of the Uintah Ouray, and Zuni peoples, whose leaders formed an Inter-Tribal Coalition to advocate for federally protected status and are now formally involved in management of the Monument. In addition, archaeologists have overwhelmingly confirmed that there are highly significant prehistoric structures and objects throughout the Monument, along with paleontological, geologic, and other scientific resources. Protection of the landscape connecting these sites is fundamental to the preservation of these places.

Within the last 30 years, the National Park Service has increasingly recognized the value of protecting larger cultural landscapes. It has published guidance on the identification of cultural landscapes and traditional cultural properties, both of which are relevant to the Bears Ears National Monument. Rather than being conceived of as a collection of individual or noncontiguous historic sites, the lands within Bears Ears are best treated as a collection of interrelated resources, and their historic significance is best understood in the context of the landscape and setting. Isolated sites and objects would be devoid of meaning if they were separated from their broader cultural context on the landscape.

Further, the reference to objects of “other” historic and scientific interest is an important phrase that demonstrates the broad discretion afforded to the President when designating national monuments. In the 1945 case upholding President Franklin D. Roosevelt’s designation of the 221,610-acre Jackson Hole National Monument, the court gave great deference to the President’s judgment as to the historical and scientific importance of various features. And in upholding three large monument designations in Alaska another court stated that the executive authority

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8 *Wyoming v. Franke*, 58 F. Supp. 890, 895 (D. Wyo. 1945) ("If there be evidence in the case of a substantial character upon which the President may have acted in declaring that there were objects of historic or scientific interest included within the area, it is sufficient upon which he may have based a discretion.")
under the Act was "much enlarged" by the addition of language allowing for preservation of "other objects of historic or scientific interest."

(iii) The effects of a designation on the available uses of designated Federal land, including consideration of the multiple-use policy of section 102(a)(7) of the Federal Land Policy and Management Act (43 U.S.C. 1701(a)(7)), as well as the effects on the available uses of Federal land beyond the monument boundaries.

The Federal Land Policy and Management Act (FLPMA) applies to lands managed by the Bureau of Land Management (BLM), which was—and continues to be—responsible for managing 1.063 million acres of lands within Bears Ears National Monument. Protection of historic resources is consistent with the multiple-use policy outlined in section 102(a)(7) of FLPMA. Importantly, Congress specifically identified the long-term needs of future generations for renewable and nonrenewable resources, including "natural scenic, scientific and historical values," among other diverse uses of resources, such as recreation, timber, minerals, wildlife and fish, in FLPMA's definition of multiple use. Furthermore, when Congress established the National Landscape Conservation System, it required BLM to manage national monuments and other components of the system in a manner that protects the values for which the components of the system were designated.

The Bears Ears National Monument designation is consistent with these laws. The monument designation maintains valid existing rights, including water rights. It is important to note, however, that the area within Bears Ears has not been identified by oil and gas or mining interests as being a high priority for development in any event. Other diverse uses are explicitly discussed in the Proclamation and allowed to continue, consistent with proper care and management of the objects being protected. For example, existing laws, regulations, and policies regarding grazing permits and leases continue to apply. The Proclamation also directs the BLM and Forest Service to provide access by members of Indian tribes for traditional and customary uses, including collection of medicines, berries and other vegetation, forest products, and firewood for personal noncommercial uses.

Importantly, the BLM and Forest Service will develop a management plan for the monument with guidance and input from the recently established Bears Ears Commission of tribal representatives, a federal advisory committee made up of interested stakeholders, and the public. This management planning process allows for consideration of diverse views with explicit advisory roles for those with ancestral ties to the lands and other local stakeholders.

(iv) The effects of a designation on the use and enjoyment of non-Federal

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7 43 U.S.C. § 1702(c).

lands within or beyond monument boundaries.

The monument designation applies only to federal lands. It has no effect on the use and enjoyment of non-Federal lands, either within or beyond monument boundaries.

(v) Concerns of State, tribal, and local governments affected by a designation, including the economic development and fiscal condition of affected States, tribes, and localities.

Far from being incompatible with economic growth, monument designations can significantly benefit local economies and provide sustainable economic opportunities consistent with sound management and protection of historic and cultural resources. Local communities, states, and tribes each have significant roles to play in the management planning process for the monument, which can address the views of various State and local stakeholders.

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.

(vi) The availability of Federal resources to properly manage designated areas.

The National Trust has long been concerned that insufficient funding and staffing threatens the historic and cultural resources that the Department of the Interior and the Forest Service have responsibilities to protect under the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, the Archaeological Resources Protection Act, the American Indian Religious Freedom Act, the Antiquities Act, Executive Order 13007 and other laws and regulations. Constrained funding, however, does not absolve the agencies of their responsibilities.

In addition to properly funding land management agencies, the Administration and Congress should seek efficiencies through improving the land-use planning process to prioritize cultural resource surveys and public input early in the planning process. Furthermore, substantial efficiencies can be gained (and protracted lawsuits avoided) by identifying areas, such as the Bears Ears National Monument, that are inappropriate for mining, mineral leasing and certain other forms of development, and focusing those development activities in more suitable areas outside of National Monument boundaries with fewer resource conflicts.

(vii) Such other factors as the Secretary deems appropriate.

We encourage you to consider the legacy that Congress and President Theodore Roosevelt left to future generations through the use of the Antiquities Act and other conservation measures. Public lands belong to all Americans, and the designations made through the Antiquities Act ensure that the American people have access to the historic landscapes and cultural resources that tell the stories of our shared heritage now and for generations to come.

**Whether additional national monuments should be reviewed**

The request for comments asked whether any additional monuments should be reviewed, if they were designated “without adequate public outreach and coordination with relevant stakeholders.” The National Trust has been involved with, and supported, many national monument designations since 1996. We agree that public participation is an important component of sound management of our public lands and we have participated in the development of a number of management plans for these monuments.

The Antiquities Act provides the President with discretion to act quickly and decisively to designate national monuments on federal lands to protect historic and natural resources. 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. In our view, no additional monuments should be added to the list for review, and none of the recent monument designations were done “without adequate public outreach and coordination with relevant stakeholders.”

Thank you for your consideration of our comments.

Sincerely,

Stephanie K. Meeks