



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

**Shash Jaa National Monument and Indian Creek National Monument Act (H.R. 4532)
House Natural Resources Federal Lands Subcommittee Hearing
January 9, 2018**

Chairman McClintock, Ranking Member Hanabusa, and members of the Committee, thank you for the opportunity to provide the National Trust for Historic Preservation's perspective on the Shash Jaa National Monument and Indian Creek National Monument Act (H.R. 4532). My name is Tom Cassidy, and I am the Vice President of Government Relations and Policy. For the reasons outlined below, the National Trust strongly opposes this legislation as introduced.

Interests of the National Trust for Historic Preservation

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.

Background

In accordance with our congressional charter, the National Trust works to engage the public and support protective designations of places that tell the stories of all Americans. Bears Ears encompasses one of the most significant cultural landscapes in the United States. More than 100,000 cultural and archaeological sites—many of which are sacred to tribal communities across the region—tell the diverse stories of 12,000 years of human habitation. 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 September 2014 and listed it among America's 11 Most Endangered Historic Places in 2016.

Legislative Initiatives

For more than a decade, the National Trust has been actively involved in efforts to protect Bears Ears. The National Trust's work has built upon efforts made by others to protect this remarkable landscape for 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 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 with Chairman Rob Bishop (R-UT) and Representative 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

¹ 54 U.S.C. §§ 312102(a), 320101.

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

Subcommittee on Federal Lands on September 14, 2016.³ Unfortunately, the legislation did not generate the broad bipartisan support necessary to be signed into 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.

Revocation of the Bears Ears National Monument

Despite extensive input from tribes, local communities, the State of Utah, elected officials, conservation and preservation organizations, and the American public prior to the designation of the Bears Ears National Monument, along with public meetings in Utah and almost 3 million comments opposing the proposed changes to this and other monuments by Secretary Zinke last year, President Trump issued a proclamation on December 4, 2017 that revoked the Bears Ears National Monument and replaced it with two significantly smaller monuments. This unlawful action purported to erase monument status for more than a million acres that include thousands of extraordinary archaeological sites vulnerable to looting and vandalism. This proclamation also removed the protections against harmful mining and oil and gas drilling that the original monument designation conferred. President Trump's proclamation also ignored the inclusive process that had engaged the public and thoroughly considered the cultural and natural resources to be protected, which resulted in the Bears Ears National Monument designation.

Therefore, the National Trust, along with a broad coalition of Native American, conservation and historic preservation organizations, outdoor industry, scientists, and outdoor recreationists, has filed suit against the Trump Administration to strike down the President's overreach of authority in revoking the Bears Ears National Monument.

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We believe this legislation is ill-advised and unnecessary given the already lawfully designated Bears Ears National Monument created by Proclamation 9558. This legislation is an attempt to legitimize President Trump's unlawful proclamation and affirm the unacceptable exclusion of over 85% of the original designation.

H.R. 4532 inappropriately delegates management of the monument—which consists of federal lands that belong to all Americans—to a non-federal entity narrowly comprised of local interests. This novel and unprecedented management structure goes well beyond ensuring local input—which is valuable and legally mandated in management of our public lands—to granting decision-making authority over management of public lands that are currently stewarded for the benefit of all Americans.

H.R. 4532 would also diminish the voice and significant contributions of the five tribes comprising the existing Bears Ears Commission established by the designation of the Bears Ears National Monument. The legislation would require the elected officials from the Hopi, Navajo, Ute Mountain Ute, Ute, and Zuni tribes of the already established Bears Ears Commission to provide their input to newly appointed Management Councils, a process which the co-chairs of the Bears Ears Inter-Tribal Coalition have described as “filtering our voice through the very individuals who fought most vociferously against our tribes having a voice in the management of our historic, religious, and cultural patrimony at Bears Ears.”⁴

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 Carleton Bowekaty and Shaun Chapoose, co-chairs of the Bears Ears Inter-Tribal Coalition, “Utah bill tramples on tribal sovereignty at Bears Ears,” The Hill <http://thehill.com/opinion/energy-environment/367227-utah-bill-tramples-on-tribal-sovereignty-at-bears-ears>; January 3, 2018.

We are also concerned about the restrictive criteria for the Tribal Management Councils, including a Utah residency requirement that denies eligibility for many of the duly elected representatives from five tribes with ancestral ties to the region, while prioritizing participation from San Juan County commissioners and others who have publicly denounced monument designations in the state of Utah. Requiring that appointments to the Councils be selected by the President in consultation with the Utah congressional delegation further excludes the Bears Ears Commission from decisions regarding their sacred lands.

While this legislation purports to establish the first tribally managed national monument, it falls far short of that goal. The worthwhile goal of robust inclusion of tribal perspectives in management would be better fulfilled by maintaining the existing direct government-to-government consultation mechanism of the Bears Ears Commission.

Finally, in light of well-documented opposition from elected leaders of the five tribes not only to the revocation of the Bears Ears National Monument, but also to the Tribal Management Council mechanism outlined in this legislation, as well as the reported lack of consultation with the tribes regarding development of the underlying bill, we urge opposition to the legislation moving forward without significant modifications.

Legislative Collaboration

As noted above, the National Trust for Historic Preservation and many of our colleagues have extensive experience collaborating with Congress on legislative proposals impacting federal land management and our shared public lands. While we have serious concerns with this legislative proposal that prevent us from supporting the bill in its current form, we welcome the opportunity to continue to engage this subcommittee and other stakeholders regarding optimal strategies for protecting our nation's historic and cultural heritage.

We appreciate that the Archaeological Resource Protection Units mentioned in the draft legislation acknowledge the significant contributions by archeological experts and the historic preservation community. The National Trust would be pleased to serve as a resource for connecting this subcommittee with experienced professionals in the field as you develop and consider alternate legislative proposals.

In addition, we concur with the need for additional staffing by federal agencies in the Bears Ears region, which we believe is vital to protecting against the looting and vandalism of historic and cultural resources. At your request, we can provide additional information supporting funding of the historic preservation efforts of federal agencies on the front lines of cultural resources protection in order to better ensure the adequate safeguarding of irreplaceable resources.

Lastly, while we appreciate that H.R. 4532 withdraws all federal land within the boundaries of the Bears Ears National Monument from entry, disposal, and patent under the mining laws and mineral leasing laws, this bill still removes substantial protections and does not restore the management priorities that were established by Proclamation 9558.

Please do not hesitate to contact me with any questions. I can be reached at tcassidy@savingplaces.org.