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National Monuments and the Antiquities Act

Overview “National Monument Designation”

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Current Issues and Initiatives

Reports and Action Plans

Since March 2020, the ACHP has produced three reports with associated recommendations or action plans that are now being implemented in coordination with a wide range of preservation and federal agency partners.

The ACHP's Digital Information Task Force (2018-2020) focused on formulating recommendations for how the availability of digital and geospatial information about historic properties can be improved to inform federal project planning. The Task Force, with the input of an Advisory Group of technical and policy experts, developed the five issue areas to guide its study, resulting in the formulation of recommendations that the ACHP continues work to implement in coordination with federal, state, tribal, local government, and private partners.

[Digital Information Task Force Recommendations and Action Plan](#)

Section 3 of EO 13287, "Preserve America," requires that federal agencies with real property management responsibilities report every three years on progress in the identification, protection, and use of historic properties in federal ownership and make this report available to the ACHP and the Secretary of the Interior. The ACHP incorporates the received data into a report on the state of the federal government's historic properties and their contribution to local economic development that is submitted to the President. The most recent report was delivered to the White House in February 2021.

The report summarizes the state of the federal government's inventory of historic properties. It examines timely issues that are critical to the management of these holdings and how they relate to important issues facing the nation, such as infrastructure, jobs, public-private partnerships, and resiliency. The report conveys ACHP findings and recommendations to address current concerns in federal preservation practice and further improve federal stewardship of these important properties.

[*In a Spirit of Stewardship: Federal Historic Property Management 2021*](#)

The ACHP established a Leveraging Federal Historic Buildings Working Group in 2019 to assess the status of outleasing of federally owned or controlled historic buildings and to develop recommendations for overcoming obstacles to outleasing. The Working Group's final report, published in April 2021, presents its findings and recommendations.

The Working Group explored different aspects of outleasing by soliciting information about federal agency outleasing programs, prospective developers' and lessees' interests, and financing federal outleasing projects. The report's three overarching recommendations—to foster interagency coordination and administrative efficiencies, expand marketing and education, and incentivize outleasing policies—advance the ACHP's larger mission, which is to promote the preservation, enhancement, and sustainable use of the nation's diverse historic resources. The ACHP will carry out these items to implement the report's recommendations in cooperation with federal and nonfederal

preservation partners over the coming months. The report also highlights agency outleasing successes nationwide and provides a set of best practices for outleasing programs and projects and agency decision-making considerations, which should serve as a helpful reference for policymakers and practitioners alike.

[Leveraging Federal Historic Buildings: Working Group Final Report](#)

Infrastructure and Section 106 Review

The ACHP is a member of the Federal Permitting Improvement Steering Council (Permitting Council or FPISC), created by the FAST Act of 2015. The Permitting Council serves an oversight role for the FAST-41 process established in Title 41 of the Act, which aims to increase efficiency, transparency, and predictability for certain large-scale infrastructure projects requiring multiple federal environmental reviews and authorizations. The Permitting Council publishes best practices each year to foster wider improvements in federal infrastructure permitting processes. The ACHP has participated in other government-wide infrastructure permitting improvement initiatives, such as the Broadband Interagency Working Group. The ACHP has collected information and Q&As about infrastructure project reviews and Section 106 on a dedicated section of www.achp.gov.

[FAST-41 Fact Sheet](#)

[Permitting Council FY21 Best Practices Report](#)

[Section 106 and Infrastructure Projects webpage](#)

[Improving Tribal Consultation in Infrastructure Projects](#) (ACHP 2017 report)

Program Comment Review Panel

Program Comments have increased in popularity with federal agencies as program alternatives over the last several years. Concerns about the development process and how members are involved led to the establishment of a Program Comment Review Panel of four ACHP members. The panel is completing its work in spring 2021 and will convey recommendations to the Vice Chairman/Chairman.

[Additional information on Program Comments](#)

Section 106 E-News

The Office of Federal Agency Programs publishes a Section 106 e-Newsletter a couple of times a year. These newsletters relay helpful articles about current issues in working with Section 106 and news about federal agency programmatic activities, new guidance and training resources, and staff changes. The most recent edition came out in June 2021.



TRADITIONAL TRADES TRAINING TASK FORCE

As the number of skilled workers in the construction trades has plummeted in recent years, the shortage of skilled preservation craft workers has continued to grow. According to the Associated General Contractors of America (AGC), 81 percent of construction firms are reporting difficulty in filling salaried and hourly craft positions in the United States.

Restoration work on historic buildings simply cannot be done without skilled workers, making the training of new craftspeople a critical priority. Additionally, job training opportunities in traditional trades continue to contribute to economic recovery and growth in America's communities.

In May 2020, the ACHP formed the Traditional Trades Training Task Force to promote the development of a robust workforce in the skilled preservation trades.

Members include:

Rick Gonzalez, AIA, Task Force Chairman, is the President and Co-Founder of REG Architects, Inc. in West Palm Beach, Florida. The firm includes historic preservation among its specialties, and he is active in state and local preservation organizations. He is an expert member on the ACHP.

Moss Rudley, Task Force Vice Chairman, is Superintendent of the National Park Service Historic Preservation Training Center (HPTC). The center provides preservation services for national parks and training in traditional trades, including through the National Park Service's Traditional Trades Apprenticeship Program (TTAP).

Nicholas Redding, Task Force Vice Chairman, is Executive Director of Preservation Maryland, the largest preservation non-profit in Maryland. In 2019, Preservation Maryland launched the Campaign for Historic Trades in partnership with the HPTC.

Benjamin R. Curran is the Department Head of Savannah Technical College's Historic Preservation and Restoration Program and the director of the college's Center for Traditional Craft. He has been involved in the building trades since 1996 and has extensive experience in the preservation of numerous historic structures.

Morris (Marty) Hylton III is Director of Historic Preservation and Associate Scholar at the University of Florida's College of Design, Construction and Planning, where his research focuses on community engagement, 3D imaging technology, and preserving heritage sites of the recent past.

Aimee Jorjani, served as the first full-time chairman of the Advisory Council on Historic Preservation from 2019-2021 and created the Task Force during her tenure. She has nearly 20 years of experience in the fields of government and cultural resources in both the executive and legislative branches, as well as the non-profit sector.

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Milan Jordan is director of the HOPE Crew at the National Trust for Historic Preservation. HOPE Crew is bringing Hands-On Preservation Experience to the next wave of preservation tradespeople. Previously, she was Director of Workforce and Emerging Professionals at the American Institute of Architects.

Brian Lusher is the Historic Preservation Officer for the National Endowment for the Arts. He currently is involved in development of a preservation trades apprenticeship program in Puerto Rico. His previous work in the preservation field includes positions at the ACHP and the Department of the Navy.

James A. Turner is the owner of Turner Restoration in Detroit, Michigan, a company specializing in the repair and restoration of historic windows. He has promoted historic trades training with many organizations, including the Preservation Trades Network, National Trust for Historic Preservation, and Samuel Plato Academy.

Simeon A. Warren is Chief of Architecture and Engineering at the National Center for Preservation Technology and Training. A trained stone carver and former dean of the American College of the Building Arts, he has more than 20 years of experience in developing academic programs for trades training.

Katherine Wonson is Director of the National Park Service's Western Center for Historic Preservation, an education and resource center dedicated to the preservation and maintenance of cultural resources in Western national parks. The Center works to perpetuate traditional building knowledge and skills.

On October 19, 2020, the ACHP adopted its [Policy Statement on Promotion and Value of Traditional Trades Training](#).

The policy statement points out these key concepts: training opportunities in traditional trades should be widely available; open-source training curriculum is important; apprenticeship programs are essential; and industry-recognized credentials and/or qualification standards are needed.

The policy statement outlines several recommendations:

- Integrate traditional trades into existing Department of Labor apprenticeship programs.
- Encourage states to use existing Department of Education career and technical education funding for traditional trades training in state Perkins Plans.
- Encourage recipients of existing Department of Housing and Urban Development funding to address traditional trades training when meeting workforce development requirements.
- Consider options for federal support in development of open-source traditional trades training curriculum.
- Develop federal qualification standards for the traditional trades.
- Include traditional trades training when addressing deferred maintenance of historic properties under the Great American Outdoors Act.
- Promote traditional trades training in the work of conservation corps.
- Explore use of COVID-19 recovery/stimulus funding to create jobs and job training in the traditional trades.
- Utilize the Historic Preservation Fund for traditional trades training grants, as authorized by the National Historic Preservation Act.

- Explore development of sustainable, dedicated funding that would be a continuing source of revenue for traditional trades training.

In conjunction with the Task Force's continuing work to promote traditional trades training, the ACHP will explore opportunities for encouraging implementation of the Policy Statement's recommendations.



Preserving America's Heritage

**NATIONAL MONUMENT DESIGNATION
Office of Preservation Initiatives**

The Antiquities Act of 1906 authorizes the President to protect historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest on federal lands through designation of national monuments. It was the first federal law to offer protection for resources of historic or scientific interest on federal lands. Supporting presidential designation of national monuments has been a stated priority in the ACHP's legislative agenda for the past several years and was included in the ACHP legislative priorities for the 115th and 116th Congresses.

The unilateral power of the President to create national monuments has caused controversy over the years, particularly during the past four decades when the areas protected climbed into the millions of acres. Critics charge that the Presidential prerogative has been abused, and that vast tracts of public lands are being withdrawn from commercial, recreational, and other uses without adequate public input. Supporters counter that Presidential flexibility to protect significant natural and cultural resources is critically important, and that recent national monuments have only been designated after outreach and dialogue with local, state, tribal, and national stakeholders.

In April 2017, President Trump directed Interior Secretary Ryan Zinke to review the appropriateness and effect of designations of national monuments over 100,000 acres that have been made since 1996. Bears Ears National Monument in Utah was specifically called out for expedited review. In response to the Interior Department's request for comments, the ACHP wrote a letter in May 2017 that stressed the importance of the Antiquities Act and the significance of the historic resources in the Bears Ears National Monument, and recommended against revocation of the monument's designation or a contraction of its boundaries. Ultimately, Secretary Zinke recommended that four national monuments be reduced in size and that there be management changes at six others. On December 4, 2017, President Trump issued proclamations that reduced the size of Bears Ears National Monument by about 85% and Grand Staircase-Escalante National Monument by about 46%. This action has sparked multiple lawsuits. (The National Trust for Historic Preservation is party to one of the suits.)

Multiple bills have been introduced in Congress which would have negative impacts on designation of national monuments. Two were particularly problematic, prompting the ACHP to provide Congress with advice on those bills.

- On December 18, 2017, the ACHP wrote to the House leadership to oppose the National Monument Creation and Protection Act (H.R. 3990). The ACHP recommended against approval of the bill since it proposes a significant reduction in the scope of historic properties that could be designated as national monuments and proposes deletion of a resource protection standard for gauging the adequate size of a national monument. The bill previously had been reported favorably out of the House Committee on Natural Resources.

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- On January 9, 2018, the ACHP provided the House Natural Resources Subcommittee on Federal Lands with a statement for the record opposing the Shash Jáa National Monument and Indian Creek National Monument Act (H.R. 4532). H.R. 4532 would declare null and void the 2016 presidential proclamation that created the Bears Ears National Monument and would create two smaller national monuments. In keeping with the ACHP's position opposing legislative efforts to undermine the authority of the President to designate national monuments, the statement for the record advised against enactment of H.R. 4532.

Milford Wayne Donaldson, FAIA
Chairman

Leonard A. Forsman
Vice Chairman

John M. Fowler
Executive Director



Preserving America's Heritage

May 26, 2017

The Honorable Ryan Zinke
Secretary of the Interior
Monument Review, MS-1530
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

REF: Bears Ears National Monument Designation

Dear Mr. Secretary:

The Advisory Council on Historic Preservation (ACHP) appreciates the opportunity to provide its comments on the designation of the Bears Ears National Monument in response to your review of this designation pursuant to Executive Order (EO) 13792. Established by the National Historic Preservation Act (NHPA) of 1966, the ACHP's mission is to promote the preservation, enhancement, and sustainable use of our nation's diverse historic resources, and advise the President and the Congress on national historic preservation policy. While the ACHP focuses much of its efforts on oversight of the Section 106 review process established by the NHPA, we are well-aware that the Antiquities Act provides an important tool to assist the President in publicly recognizing and affirmatively protecting major aspects of America's irreplaceable heritage. The designation of the Bears Ears National Monument contributes significantly to achieving those goals, and its effect should not be diminished by revocation of the designation or a contraction of its boundaries.

It is important to note that the federal commitment to identify, manage, and protect important objects, sites, and properties began with passage of the Antiquities Act of 1906 but did not end there. Other statutes and executive orders, such as the Historic Sites Act of 1935, the NHPA, the Archaeological and Historic Preservation Act of 1974, the Archaeological Resource Protection Act of 1979, the Native American Graves Protection and Repatriation Act of 1990, and EO 13287 "Preserve America" (2003) have reaffirmed and intensified the enduring federal interest in and commitment to the protection of places and objects of significance in our nation's history. Taken together, these authorities form a comprehensive national preservation program that provides all levels of government a broad range of tools to preserve and enhance the nation's cultural patrimony.

Starting with the Antiquities Act, the Congress and the Executive Branch have placed a special emphasis on the federal government's stewardship of those unique historic places under its jurisdiction. Section 110 of the NHPA and Section 3 of EO 13287 provide the most detailed set of instructions to federal managers about the importance of identifying and protecting historic properties in federal ownership, mandating

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agency programs for preservation and establishing accountability systems to assess their effect. Special attention has been placed on those properties of national significance, recognizing their importance to all Americans. In that regard, designation of national monuments that contain highly significant historic objects and sites, such as the Bears Ears National Monument, is a critical management tool for affording the highest level of protection for such historic resources as part of this overall legal scheme, which has evolved over more than a century.

Few federal lands hold such rich and relatively pristine places, objects, and sites of importance to American culture and history as those within Bears Ears National Monument. This collection includes sacred places, traditional cultural landscapes, and intact pre-Columbian dwellings of profound significance to Indian tribes, many of which continue to play a role in the ongoing maintenance of their cultural and spiritual practices. Likewise, highly evocative archaeological resources abound there, above and below canyon walls, alongside historic resources that reflect early American movement into the West. For these reasons, tourists from every corner of our nation and beyond go there to see and experience these places, knowing they tell part of a widely shared and uniquely American story. Unfortunately, it is also well-documented that a number of these sites have been subject to active looting or inadvertent damage over many years. It is the nature of these resources, and the relatively undisturbed and often remote landscapes within the Bears Ears National Monument, that make this region worthy of the additional protections of National Monument designation.

While a definitive and complete inventory of all historic properties within and around the Bears Ears National Monument has not been completed, it is clear that thousands of highly significant places that are subject to protection under the Antiquities Act are present within its boundaries, and that these are tied together in a set of landscapes of extraordinary significance to all Americans, the boundaries of which likely go well beyond the Bears Ears National Monument. The ACHP's involvement in Section 106 reviews with similar sites in this region over the decades suggests that the entire area abounds with highly significant places such as these. Recognizing that other monuments have been designated with similar approaches to defining areas of significance, we remain confident that the entirety of the Bears Ears National Monument contains places worthy of protection.

We would also like to bring to your attention the requirements found in the Operational Guidelines for the Implementation of the World Heritage Convention (WHC.16/01 26 October 2016) with regard to buffer zones for World Heritage Sites. Paragraph 104 states:

For the purposes of effective protection of the nominated property, a buffer zone is an area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property. This should include the immediate setting of the nominated property, important views and other areas or attributes that are functionally important as a support to the property and its protection. The area constituting the buffer zone should be determined in each case through appropriate mechanisms. Details on the size, characteristics and authorized uses of a buffer zone, as well as a map indicating the precise boundaries of the property and its buffer zone, should be provided in the nomination.

While we recognize that Bears Ears National Monument is not currently a World Heritage Site (although it may well meet the criteria for listing), the fundamental concept of resource protection set forth in Paragraph 104 has universal application to sites like Bears Ears National Monument that have been recognized to be of outstanding cultural significance. We would urge you to carefully consider the guidance in any evaluation of the appropriateness of the current boundaries for Bears Ears National Monument.

The ACHP is aware that concerns have been expressed about the effect that National Monument designation may have on the economic use and public enjoyment of these lands. However, it is important to note that most designations have not had a negative effect on the economy and, in the case of Bears Ears National Monument, certain economic and recreational uses have been expressly allowed as part of the designation. Our experience demonstrates that these uses can typically be accommodated without sacrificing protections to historic properties. For example, the ACHP is participating in Section 106 consultations to address the impacts of grazing at the Grand Staircase Escalante National Monument in Utah and a similar effort to address carbon dioxide extraction within the Canyons of the Ancients National Monument in Colorado. In both cases, the federal planning process for development activities has enabled consulting parties, including state, tribal, and local governments, as well as preservation organizations, commercial interests, and citizens, to consider such impacts and develop reasonable measures for accommodating such uses with the protection of historic properties through a Section 106 agreement document.

Beyond these two National Monuments, the ACHP can attest to the effectiveness of the federal historic preservation review process over a half century to balance the needs of preservation and contemporary use for sites like Bears Ears National Monument. This public process allows all with an interest in the use of federal lands to participate in the management decisions that federal agencies make for historic places, including National Monuments. We have no reason to doubt that the Section 106 process would effectively address future management decisions at the Bears Ears National Monument, giving local government and citizens an opportunity to shape those decisions.

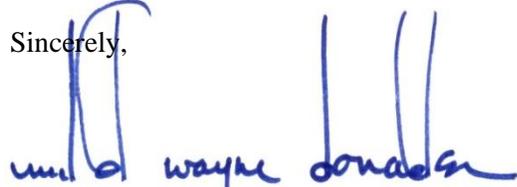
We note also that the Bureau of Land Management, as the principal federal property owner within Bears Ears National Monument, is committed to meeting its responsibilities under the Federal Land Policy and Management Act of 1976 in part by considering the continued development of existing mineral rights, grazing, and access by motorized and non-motorized constituents, even on lands within National Monuments under its management. If managed carefully, the ACHP believes that specified allowances for some forms of continued use and development in certain portions of Bears Ears National Monument can be accomplished without upsetting the overall protective goals of its establishment or requiring alteration to its boundaries.

In closing, the ACHP reiterates its support for the important protections this designation has provided to historic properties. Taken collectively, National Monuments contain some of the nation's most significant objects, places, and sites that tell an important part of the American story, and the Bears Ears National Monument is no exception. As you conduct your review, we urge you to ensure the federal government maintains the level of protection to historic properties afforded by the designation of the Bears Ears National Monument.

Should you consider pursuing changes to the Bears Ears National Monument, we would also urge that you be expansive in your outreach to all interested parties regarding such changes. It is critical to conduct government-to-government consultation with Indian tribes that may ascribe cultural and religious significance to any of the properties there, including pre-Columbian resources, and we would urge also that you fully engage the public and other governments and organizations with a clear interest in the protections of these important places. We would further suggest you consider modeling such outreach after the process established within the regulations implementing Section 106 of the NHPA.

We appreciate your consideration of these comments and remain ready to assist you further on this review as we indicated in our letter of April 28, 2017. If you have any questions, feel free to contact me directly at mwdonaldson@achp.gov, or your staff may wish to follow up with John Fowler, Executive Director, at jfowler@achp.gov. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Milford Wayne Donaldson". The signature is written in a cursive style with a large initial "M" and "W".

Milford Wayne Donaldson FAIA
Chairman

Milford Wayne Donaldson FAIA
Chairman

Leonard A. Forsman
Vice Chairman

John M. Fowler
Executive Director



Preserving America's Heritage

December 18, 2017

The Honorable Paul Ryan
Speaker of the House
Office of the Speaker of the House
U.S. House of Representatives
Capitol Building, H-232
Washington, DC 20515-6501

The Honorable Nancy Pelosi
House Minority Leader
Office of the House Minority Leader
U.S. House of Representatives
Capitol Building, H-204
Washington, DC 20515-6537

Dear Speaker Ryan and Leader Pelosi:

As consideration of the National Monument Creation and Protection Act (H.R. 3990) proceeds in the House of Representatives, the Advisory Council on Historic Preservation (ACHP) would like to take this opportunity to express its opposition due to the bill's potential negative impact on the protection of significant historic properties. Established by the National Historic Preservation Act of 1966, the ACHP is the independent federal agency charged with advising the President and Congress on historic preservation matters. The ACHP is concerned that the extensive changes to the national monument designation process proposed in the bill would limit the types of historic properties that could be protected and would greatly restrict their protection in the designation process. These changes would undermine a preservation tool that has been effectively used by every President since Theodore Roosevelt over more than a century to protect some of the nation's most iconic historic and natural places. Tellingly, the first efforts to protect the Grand Canyon, not only a renowned national park but a World Heritage site, were made by President Roosevelt in 1908 using the Antiquities Act.

Limits on Historic Properties Eligible for Protection. The Antiquities Act currently authorizes the President to protect properties of historic or scientific interest on federal lands through designation of national monuments. H.R. 3990 would significantly constrain the range of historic properties eligible for such designation. The Antiquities Act's existing provision for designation of "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" would be replaced by authorization to designate an "object or objects of antiquity." Such objects would be limited to relics, artifacts, skeletal remains, fossils, and "certain buildings" (a term that is not defined, but presumably is intended to be substantially more limited than under current law). Natural geographic features (such as the Grand Canyon, apparently) would be excluded, which would also preclude designation of such features that are historically or culturally significant because of their traditional religious and cultural significance to Indian tribes. In addition, since H.R. 3990 would prohibit designation of submerged lands, shipwrecks and other significant underwater archaeological resources also would not be eligible for national monument protection.

In his recent report to the President regarding Antiquities Act designations, Secretary of the Interior Ryan Zinke has recommended study of three new possible national monuments. It is not at all certain, however, that any of them would qualify for designation under the restrictive terms of H.R. 3990. Two of the proposed monuments focus on historically significant buildings: the home of civil rights activist Medgar Evers and Camp Nelson, a training and recruitment center for African-American soldiers during the Civil

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War. It is unclear whether these two properties could be designated under H.R. 3990's imprecise provision for designating "certain buildings" as "objects of antiquity." Secretary Zinke also has recommended potential designation of the Badger-Two Medicine area in Montana, citing the fact that it is a traditional cultural district considered sacred by the Blackfeet Nation. However, since geographic features no longer would qualify for designation under H.R. 3990, designating the sacred natural features of Badger-Two Medicine presumably would be difficult if not impossible. While the Badger-Two Medicine area also contains archaeological sites, its traditional cultural landscape is the key aspect of the area's significance.

The ACHP recommends against approval of H.R. 3990 due to its proposed reduction of the scope of historic properties that could be designated as national monuments and urges that the current range of historic properties eligible for designation not be diminished.

Lack of a Resource Protection Standard to Guide Designation Decisions. Presently, the Antiquities Act requires that national monuments be "confined to the smallest area compatible with the proper care and management of the objects to be protected." H.R. 3990 would delete this standard and replace it with acreage caps tied to a public review process. While the ACHP supports a public process to inform executive branch decisions, arbitrary criteria regarding the size of national monuments disregards the fundamental purpose of national monument designation – protection of significant historic and scientific resources important to the nation. Replacing the current standard, which is based on an objective assessment of resource protection needs, would seriously hamper the ability of the President and federal decision makers to fashion a proposed designation with the parcel size required to ensure adequate preservation of the historic properties in question. It also would circumscribe the ability of affected state, tribal, and local governments, other stakeholders, and the public to influence the federal decision.

The current standard for determining the needed size of a monument, which provides for case-by-case consideration of resource protection needs, is replaced in H.R. 3990 by a maximum acreage cap of 85,000 acres. This appears both arbitrary and artificially low. The Bears Ears National Monument as recently revised by President Trump is 201,876 acres; the revised Grand Staircase-Escalante National Monument is 1,003,863 acres. Secretary Zinke's proposal for a national monument in the Badger-Two Medicine area references an approximately 130,000 acre parcel. These examples underscore that the maximum acreage provision proposed in H.R. 3990 is not realistic and is not a reasonable substitute for a resource protection standard like that currently in the Antiquities Act.

The ACHP therefore recommends against approval of H.R. 3990 due to its proposed deletion of a resource protection standard for gauging the adequate size of a national monument and urges that such a standard be maintained.

At the November 9th business meeting of the ACHP, voting members agreed unanimously with the views conveyed in this letter. Federal agency members of the ACHP abstained from voting given the lack of a formal Administration position on the specific issues in question, as did the National Conference of State Historic Preservation Officers.

Please feel free to contact me to discuss these issues further or if the ACHP can be of any assistance during consideration of H.R. 3990. Our Executive Director, John Fowler, may be reached at (202) 517-0200.

Sincerely,



Milford Wayne Donaldson, FAIA
Chairman

Milford Wayne Donaldson FAIA
Chairman

Leonard A. Forsman
Vice Chairman

John M. Fowler
Executive Director



Preserving America's Heritage

**Statement of Milford Wayne Donaldson, FAIA
Chairman, Advisory Council on Historic Preservation**

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

The Advisory Council on Historic Preservation (ACHP) would like to take this opportunity to share its views with the Subcommittee regarding the Shash Jáa National Monument and Indian Creek National Monument Act (H.R. 4532). The ACHP is the independent federal agency that promotes the preservation, enhancement, and sustainable use of our nation's historic resources. Created by the National Historic Preservation Act of 1966, the ACHP is charged with advising the President and Congress on national historic preservation policy. In that capacity the ACHP often provides its views to the Congress on legislation under consideration that may affect the national historic preservation program and the preservation of historic properties of importance to the American people. In fulfillment of this duty, the ACHP advises against enactment of H.R. 4532.

The ACHP has long supported the National Monument designation system founded on the provisions of the Antiquities Act of 1906 as an effective historic preservation protective process. In the ACHP's legislative agenda for the 114th and the 115th Congresses, the membership specifically included opposition to any legislative efforts to undermine the authority of the President to designate National Monuments under the Antiquities Act.

As recently as November 2017, the ACHP membership took a position on H.R. 3990, the National Monument Creation and Protection Act, and resolved that:

“The ACHP supports Presidential designation of National Monuments as an important tool for the protection of historic properties on federal land...”¹

¹The resolution in its entirety reads as follows:

“Whereas, the ACHP supports Presidential designation of national monuments as an important tool for the protection of historic properties on federal land;

Whereas, the ACHP is concerned that the National Monument Creation and Protection Act (H.R. 3990) makes extensive changes in the current national monument designation process that would limit the types of historic properties that could be protected and deemphasize protection of cultural and natural resources in the designation process, thereby undermining a preservation tool that has been effectively used for more than a century to protect some of the nation's most iconic places; and

Whereas, the ACHP supports transparency and consultation with affected governments and stakeholders in the designation process for national monuments while respecting the role of the federal government as a steward of these resources for the entire nation;

Now, be it resolved that the ACHP opposes H.R. 3990 as reported out of committee and directs the chairman to advise the Administration and the Congress regarding these concerns.”

It is from this perspective that the ACHP must express its concern about a fundamental provision of H.R. 4532. Section 4 of the bill declares null and void Presidential Proclamation 9558 that established the Bears Ears National Monument. This National Monument was established by the President following the statutory directive given to him by the Congress in the Antiquities Act. It was an exercise of a valid legal authority based on over a century of practice, conforming to standards and procedures that have been thoughtfully evolved and scrupulously followed to achieve reasoned determinations through the objective application of professional standards and consideration of national and local interests, needs, and priorities.

The ACHP readily acknowledges that the Congress possesses the authority through legislative action to modify or rescind National Monument designations made by the President. However, we would note that the Congress has never, in the over century-long history of the Antiquities Act, exercised that power to vacate a presidential action. The ACHP opposes H.R. 4532 on those grounds, as the primary provisions that follow to establish two new reconfigured and drastically reduced National Monuments are premised on the abolition of the existing Bears Ears National Monument.

The ACHP appreciates this opportunity to share its views with the subcommittee. We value our longstanding and mutually beneficial relationship in working with the Natural Resources Committee and look forward to continuing to assist the committee in our shared goals to preserve and protect the Nation's irreplaceable cultural heritage. Please do not hesitate to call on me or my staff with any questions or requests for assistance on these issues.