

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

ADVISORY COUNCIL ON HISTORIC PRESERVATION

401 F Street NW, Suite 308 • Washington, DC 20001-2637
Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov

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