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Preserving America's Heritage

**Statement of Milford Wayne Donaldson, FAIA
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**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.