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VIA E-MAIL (UT_Monticello_RMP_Comments@blm.gov) AND FIRST-CLASS MAIL

Mr. Nick Sandberg
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P.O. Box 7
Monticello, UT 84535

**Re: Comments on the Draft Resource Management Plan and Environmental
Impact Statement for the Monticello Field Office**

Dear Mr. Sandberg:

The National Trust for Historic Preservation (National Trust) appreciates the opportunity to comment on the Draft Resource Management Plan and Environmental Impact Statement for the Monticello Field Office (Draft RMP). Balancing the need to protect historic and cultural resources with other activities and resource development is critically important in the Monticello Field Office area. The development of an RMP is the appropriate place to achieve this delicate balance. For this reason, the National Trust is extremely concerned about the management approach proposed within the Draft RMP. Our concerns with the Draft RMP are highlighted below along with proposed recommendations for addressing these concerns.

Interests of the National Trust. Congress chartered the National Trust in 1949 as a private nonprofit organization to “facilitate public participation” in historic preservation, and to further the purposes of federal historic preservation laws. 16 U.S.C. §§ 461, 468. With the strong support of our 287,000 members around the country, including 800 members in the State of Utah, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government. In addition to our headquarters in Washington, D.C., the National Trust operates 30 historic sites open to the public, and eight regional and field offices throughout the country, including our Mountains/Plains Office in Denver, which is responsive to preservation issues in Utah.

For some time, the Bureau of Land Management (BLM) has recognized that public land now within the Monticello Field Office contains locally, nationally, and internationally significant cultural resources.¹ Examples include Alkali Ridge, the type site for the Pueblo II period and one

¹ See, e.g., Bureau of Land Management, Draft Grand Gulch Management Plan 11 (1980) (“The archaeological resource of the Grand Gulch Plateau is very rich. . . [and] contains probably the greatest concentration of Basketmaker II and III sites in the Southwest. . . .”); Bureau of Land Management, Management Situation Analysis 4331-1 (1985) [hereinafter 1985 MSA] (“Archaeologically, [the San Juan Resource Area] is one of the richest locales under BLM

of only two national historic landmarks managed by BLM in Utah, and Cedar Mesa, which contains “the greatest concentration of Basketmaker II and III sites in the Southwest” and a site density of twenty to 200 per square mile.² Unfortunately, Alkali Ridge, Cedar Mesa, and the thousands of other significant cultural resources in the Monticello Field Office have not always been managed in the spirit of preservation.³ Prior to the 1960s, BLM managed Cedar Mesa chiefly for grazing purposes and with little regard for the effects of grazing activities on cultural sites. Dale A. Davidson, “Managing Cedar Mesa: A Challenge from the Past for the Future,” *in* *Anasazi Basketmaker: Papers from the 1990 Wetherill-Grand Gulch Symposium* 266 (1993). In the 1970s and 1980s, BLM issued oil and gas leases on several parcels of land encompassing the extent of the

management.”); *Id.* at 4331-33 (“Cultural resources in [the Grand Gulch National Historic District] are of regional, national, and worldwide significance because of the wealth of intact Pueblo cliff dwellings. . . .”); *id.* at 4331-24 (“Cultural resources in [Fable Valley] are nationally significant because of the wealth of undisturbed Pueblo habitation sites.”); *id.* at 4331-33 (“Cultural resources in [the Alkali Ridge area] are regionally and nationally significant because of the wealth of Basketmaker and Pueblo village sites.”); Requirement for Special Recreation Permit and Fee for Non-commercial Recreation Use of the Grand Gulch portion of the Cedar Mesa Special Recreation Management Area, 56 Fed. Reg. 46,440 (Sept. 12, 1991) (“The Grand Gulch contains the greatest concentration of Anasazi Indian cultural remnants contained on the Public Lands managed by the [BLM]. . . .”); Winston B. Hurst & Christy G. Turner II, *Rediscovering the “Great Discoverer:” Wetherill’s First Cave 7 and its Record of Basketmaker Violence*, *in* *Anasazi Basketmaker: Papers from the 1990 Wetherill-Grand Gulch Symposium* 143 (Bureau of Land Management, 1993) (describing a location now within the Monticello Field Office where Richard Wetherill first confirmed the existence of pre-cliff dwelling cultures and from which he recovered the largest series of Basketmaker skeletal remains ever excavated from a single site); James Parker, *Cultural Resources and BLM: A Perspective from the Utah State Director*, *in* *Anasazi Basketmaker: Papers from the 1990 Wetherill-Grand Gulch Symposium* 260 (Bureau of Land Management, 1993) (describing the cultural resources of Grand Gulch as “some of the most important archaeological resources managed by BLM anywhere in the nation.”)

² In 1980, BLM considered drafting legislation to establish a National Conservation Area for the purpose of conserving and protecting the cultural resources of Cedar Mesa. Bureau of Land Management, Draft Grand Gulch Management Plan 18 (1980).

³ *See, e.g.*, Jack R. Rudy, *Archaeological Investigations in Beef Basin, Utah* iii (1955) (describing how after BLM constructed a road into Beef Basin to benefit local ranchers, several sites in the area were looted); 1985 MSA at 4331-3 (noting a downward trend in the condition of cultural resources due to the affects of energy development, recreation, and pot hunting); *id.* at 4331-9 (noting the majority of oil and gas exploration has occurred in areas with high site density); *id.* at 4331-20 (“Within certain zones of the [San Juan Resource Area], a critical threshold could be reached within 10 years (by 1995) because of impacts from use of other surface resources and intense pot hunting. . . . Protection of cultural resources is inadequate to ensure their availability for all proper uses now and in the future, and the rates of disturbance and destruction appear to be accelerating.”); *id.* at 4331-27 (noting that Comb, Butler, and South Cottonwood Washes and the Recapture, Mustang, and Alkali areas as areas experiencing “heavy” pot hunting); *Wetherill’s First Cave 7 and its Record of Basketmaker Violence*, *in* *Anasazi Basketmaker: Papers from the 1990 Wetherill-Grand Gulch Symposium* 143 (Bureau of Land Management, 1993) (noting that records of the location of the site where Wetherill first identified the existence of the Basketmaker culture had been lost); General Accounting Office, *Problems Protecting and Preserving Federal Archaeological Resources* 41 (1987) (discussing how the construction of roads in the Monticello Field Office to facilitate oil and gas development led to the disturbance or destruction of “many sites”); *id.* at 106 (discussing belief of the San Juan Resource Area archaeologist that unauthorized surface collecting “could possibly deplete the Resource Area’s surface resources within another 5 to 10 years.”); Closure of Public Lands; Utah, 55 Fed. Reg. 25,178 (June 20, 1990) (closing public land in and around Comb Wash to cross-country vehicle travel in part due to “severe” damage to cultural resources caused by “heavy” OHV use); Adrienne Babbitt, *Saving an American Treasure*, *Currents*, Fall 2006, at 4 (Ms. Babbitt, a public affairs specialist with BLM’s Utah State Office, discussing how sites within the Alkali Ridge National Historic Landmark are “subject to vehicle damage because many valuable architectural remains are below the surface and not ‘showy’ to the casual visitor.”); Julie Cart, *Utah fighting the laws of federal land*, *Los Angeles Times*, April 22, 2007 (describing the unauthorized construction of OHV trails in archaeologically rich Recapture Canyon).

Alkali Ridge National Historic Landmark (NHL). Bureau of Land Management, San Juan Resource Management Plan, Management Situation Analysis 4331-31 (1985) [hereinafter 1985 AMS]. Over the years, development associated with these leases has damaged sites within the NHL and facilitated widespread looting. *Id.* As former Utah State Director James Parker put it during a 1993 forum on cultural resources in Blanding, Utah, “BLM has not always done the kind of job that it should in cultural resources management.” James Parker, “Cultural Resources and BLM: A Perspective from the Utah State Director,” *in* *Anasazi Basketmaker: Papers from the 1990 Wetherill-Grand Gulch Symposium* 259 (1993).

In light of these management failures, the Draft RMP provides BLM with the opportunity to reflect upon the past and to adopt a comprehensive plan ensuring the long-term preservation of places like Alkali Ridge and Cedar Mesa. We believe that, in large part, BLM has failed to take advantage of this opportunity. The Draft RMP shows little commitment to scientific investigation in the field office, over 90 percent of which has never been surveyed for cultural resources. The Draft RMP also contains inconsistent management standards for comparable cultural resources and lacks an alternative focused primarily on their protection. Finally, the Draft RMP proposes to designate and implement nearly 2,000 miles of off-highway vehicle (OHV) routes without complying with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and with little recognition of its obligation to preserve and protect cultural resources pursuant to Section 110 of the NHPA, 16 U.S.C. § 470h-2.

I. Federal Land Policy and Management Act

A. BLM should maintain existing ACEC designations for areas with significant cultural values.

BLM should maintain the existing ACEC designations for areas with significant cultural values. Under the preferred alternative, BLM would eliminate ACEC protection for several areas with relevant and important cultural values, including Cedar Mesa, Butler Wash North, and Dark Canyon. Draft RMP at 2-37–39. However, BLM does not explain its rationale for eliminating these designations. Further, BLM lacks the authority under FLPMA to eliminate an existing ACEC designation unless it first finds that the area no longer meets the relevant and important criteria set forth in BLM’s regulations. 43 C.F.R. § 1610.7–2(a), (b). Thus, to the extent Cedar Mesa, Butler Wash North, and Dark Canyon continue to possess relevant and important values, then BLM must preserve their existing ACEC designations.

It is important for BLM to recognize that ACEC designations serves a higher purpose than focusing the attention of a field office on the relevant and important values of a particular area, although this purpose is certainly a valid and important one. ACEC designation also provides members of the public with notice that an area contains important values and heightened management restrictions. An individual unfamiliar with Cedar Mesa but familiar with the ACEC concept would know that the area is managed not for multiple uses but primarily for the purpose of protecting relevant and important values. 43 U.S.C. § 1712(c)(4). Thus, members of the public may tend to comport themselves in a manner consistent with preserving the cultural values of Cedar Mesa if they are aware of the ACEC designation.

B. BLM should develop a permitting scheme for OHV use.

BLM should develop and evaluate a permitting scheme for OHV use in the Monticello Field Office analogous to the system proposed for day hikers and overnight campers in Cedar Mesa. A permit system for OHV use would enhance the management of cultural resource in several ways. First, permits would allow BLM to control and limit OHV access to significant cultural resources, particularly those resources located in remote areas. Second, a permit system would provide BLM with information on the amount of OHV use occurring in the Monticello Field Office. Third, permitting would provide BLM with the opportunity to educate OHV users on the laws and regulations applicable to the public land as well as on the sensitive and significant nature of cultural resources within the Monticello Field Office. We strongly recommend that BLM develop and evaluate a permitting scheme for OHV users before finalizing the RMP.

II. National Environmental Policy Act

A. BLM failed to consider a reasonable range of alternatives in the Draft RMP.

The National Trust believes that the Draft RMP lacks a reasonable range of alternatives for managing the Monticello Field Office. Evaluating and objectively considering each reasonable alternative to a proposed action is a necessary and integral requirement of NEPA. 40 C.F.R. § 1502.14(a); Utahns for Better Transp. v. United States Dept. of Transp., 305 F.3d 1152, 1166–67 (10th Cir. 2002). The National Trust believes that BLM should have evaluated an alternative focusing primarily on cultural resource protection.⁴ Such an alternative is clearly reasonable in light of the local, national, and international significance of cultural resources located in the Monticello Field Office.

The proposed alternatives are fundamentally flawed because, without justification, they propose inconsistent management prescriptions for comparable cultural resources. For example:

- (1) The preferred alternative would manage Cedar Mesa and Alkali Ridge, both of which contain locally, nationally, and internationally significant cultural resources, under the least stringent visual resource standards—VRM III and IV—but would manage Shay Canyon under VRM II. Shay Canyon also contains locally and nationally significant cultural resources;
- (2) Similarly, BLM would close Tank Bench, Moon House, and the Grand Gulch National Historic District (NHD) to OHV use but would allow OHV use on designated routes within Comb Ridge, Beef Basin, Cedar Mesa, Alkali Ridge, and Shay Canyon;
- (3) For locatable minerals, BLM recommended mineral withdrawals for Comb Ridge, Moon House, Grand Gulch NHD, and the Alkali Ridge NHL but not for Tank Bench, Shay Canyon, Beef Basin, Hovenweep, Cedar Mesa, or Alkali Ridge ACEC. While we support

⁴ BLM is clearly capable of developing resource-specific management alternatives because it developed Alternative B to protect “wildlife and natural resources” and Alternative E to protect land with wilderness characteristics. Draft RMP at ES-4–5.

the proposed withdrawals, we are confused as to why some areas are withdrawn while other others are not;

(4) For recreation, BLM would require permits for Cedar Mesa and Moon House only—and then, only for hikers and overnight campers but not for OHV users; and

(5) For oil and gas, only one area—the Grand Gulch NHD—is classified as closed to oil and gas leasing. Comb Ridge, Alkali Ridge NHL, and Shay Canyon are all classified as open subject to no surface occupancy (NSO), while Tank Bench, Alkali Ridge ACEC, and Hovenweep would be open subject to standard lease stipulations.

In short, the proposed management for significant cultural areas lacks a rational basis. The Draft RMP provides no explanation for why the areas received disparate management prescriptions. Nor does the Draft RMP provide any specific information concerning the significance of particular relative to others. Consequently, the range of proposed alternatives is unreasonable under NEPA, lacking any identifiable support that BLM “rigorously explored and objectively evaluated” the preferred alternative.

Recommendations:

Develop a supplement to the Draft EIS in which a new alternative focused primarily on the protection of cultural resources is evaluated and provided to the public for review and comment. At a minimum, this alternative should propose some variation on each of the following actions:

- Develop a plan and schedule to survey the Monticello Field Office for scientifically valuable archaeological resources in accordance with section 14 of ARPA;
- Apply consistent management prescriptions for areas with comparable cultural resource values and/or explain why disparate management prescriptions were applied to areas with comparable cultural resources;
- Close cultural ACECs, cultural special management areas (CSMAs), and Cedar Mesa to OHV use;
- Close appropriate sacred sites and traditional cultural properties to OHV use after consulting with Indian tribes;
- Recommend mineral withdrawals for all cultural ACECs, CSMAs, and Cedar Mesa;
- Develop a permitting scheme for OHV use on public land within the Monticello Field Office; and
- Close all cultural ACECs, CSMAs, and Cedar Mesa to oil and gas leasing.

B. BLM failed to fully evaluate the direct and indirect impacts of the Draft RMP on cultural resources.

The analysis of the Draft RMP's direct and indirect impacts on cultural resources is inadequate. An EIS must analyze not only the direct impacts of a proposed action, but also the indirect impacts. 40 C.F.R. § 1502.16(a), (b); Custer County Action Ass'n. v. Garvey, 256 F.3d 1024, 1035 (10th Cir. 2001). Direct effects "are caused by the action and occur at the same time and place," while indirect effects are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. . . ." 40 C.F.R. § 1508.8(a), (b). In the Draft RMP, BLM erred in failing to evaluate the direct and indirect effects of OHV use and staffing and funding limitations on cultural resources.

1. BLM failed to evaluate the direct and indirect impacts of unauthorized OHV use on cultural resources.

An assumption that OHV users will comply with route designations underlies the Draft RMP impacts analysis. However, this assumption is misplaced and simply not supported by an existing body of evidence which tends to suggest that factions of the OHV community will willfully ignore restrictions and limitations on use and access, no matter how reasonable or necessary. For instance, in 2004, BLM denied the application of an OHV group to hold an event in Arch Canyon. Bureau of Land Management, Environmental Assessment UT-090-07-10, Permitted Jeep Use of Arch Canyon and the Hotel Rock Area 4 (2007). BLM based the denial in part on the need to conduct further environmental reviews of the proposal and also to evaluate the effects of issuing the permit on Arch Canyon's "one-of-a-kind" prehistoric architectural elements. Id.; Draft RMP at H-12. However, in defiance of BLM's order, the OHV group, led by the San Juan County sheriff and a San Juan County commissioner, went forward with the OHV event.

Another recent example concerns Recapture Wash, an archaeological district eligible for listing in the National Register. Donald R. Keller, Summary Report of Cultural Resources Inspection 25 (2007). There, OHV users, working in conjunction with San Juan County and without approval from BLM, willfully trespassed on federal land when they installed bridges, culverts, and other improvements to establish an ATV trail system in Recapture Wash. Julie Cart, *Utah fighting the laws of the land*, L.A. Times (April 22, 2007). The Draft RMP provides still more examples, including the unauthorized blasting of new roads, Draft RMP at 3-87, the unauthorized blading of new roads by San Juan County, id., the publication of unauthorized OHV trail maps by a private OHV group, id., OHV "intrusions" in wilderness study areas, id. at N-13, and illegal road building in Butler Wash. Id. at N-21.

To be clear, the National Trust supports BLM's effort to limit and control OHV use by classifying travel areas. However, we are not optimistic that classification alone or even in conjunction with other measures proposed in the Draft RMP will entirely mitigate the direct and indirect impacts of OHV use on cultural resources. As discussed above, certain members of the OHV community have displayed the willingness and ability to disregard legal restrictions meant to control the intensity and location of OHV use. Because it is foreseeable that these or like-minded individuals will intentionally violate restrictions in the new travel plan, BLM must take into account the direct and indirect effects of unauthorized OHV activity on cultural resources.

2. BLM failed to evaluate the direct and indirect impacts of staffing and funding limitations on cultural resources.

An additional deficiency of the impacts analysis concerns the sufficiency of staffing and funding levels in the Monticello Field Office. In the Draft RMP, BLM assumed for purposes of the impacts analysis that it “would have the funding and work force to implement the selected alternative.” Draft RMP at 4-2. However, BLM states that inadequate funding and staffing levels prevented it from implementing certain decisions from the 1991 RMP, including route designations and the development of cultural resource management plans for Alkali Ridge, Shay Canyon, and Hovenweep. *Id.* at N-5; Bureau of Land Management, Analysis of Management Situation 4-31 (2005) [hereinafter 2005 AMS]. This admission undermines BLM’s assumption that adequate staff and funding would be available to implement the Draft RMP decisions regarding cultural resource management. Thus, BLM may not make this assumption in the Draft RMP and must instead analyze the possibility that it may not have the funding and work force to implement the selected alternative as a reasonably foreseeable indirect impact on cultural resources.

C. BLM failed to adequately analyze the cumulative impact of the Draft RMP.

Under NEPA, BLM has an obligation to take a “hard look” at the potential cumulative impacts of the Draft RMP. 40 C.F.R. § 1508.25(c)(3). Cumulative impacts are the effects of an action in conjunction with “other past, present, and reasonably foreseeable future actions regardless of what agency . . . or person undertakes such actions.” *Id.* § 1508.7. These impacts “can result from individually minor but collectively significant actions taking place over a period of time.” *Id.*

The National Trust believes that two primary actions were not considered during the cumulative impacts analysis. First, BLM failed to analyze the cumulative impact of failing to implement several decisions in the 1991 RMP, including route designations, cultural resource management plans for Alkali Ridge, Shay Canyon, and Hovenweep, and National Register nominations for several historic properties. Draft RMP at N-5; 2005 AMS at 4-31. Second, BLM failed to describe the cumulative effect of numerous past management decisions on cultural resources. For example, in the past, “heavy oil and gas exploration and development, intense pot hunting, and road maintenance” occurred on Alkali Ridge. 1985 AMS at 4331-33. However, the Draft RMP provides the public with no indication that these uses previously took place and makes no effort to assess their cumulative effect in conjunction with the proposed decision, which includes allowing OHV use and oil and gas leasing on Alkali Ridge.

IV. National Historic Preservation Act

Congress recognized that “the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development,” and that “the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, esthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans.” 16 U.S.C. § 470(b)(2), (4). To accomplish this goal, Congress directed federal agencies to implement affirmative stewardship responsibilities—to manage and maintain their cultural resources in a way that considers the preservation of their historic, archaeological, and cultural values—as well as procedural responsibilities—to take into account the effects of their

actions on historic properties. However, the Draft RMP fails to incorporate BLM's responsibilities under the NHPA into the RMP process, and fails to ensure that irreplaceable historic and cultural resources are fully considered in management decisions..

BLM seems to focus heavily on accommodating recreationally users, in particular OHV users interesting in designating a nearly 2,000-mile network of OHV routes with the Monticello Field Office. Such an effort to please one user group without fully considering whether sensitive resources may not be compatible with that use does not represent either the analysis required by FLPMA and NEPA, or the preservation mandate promoted by Congress in the NHPA.

BLM's broad management objectives in the Draft RMP reflect an erroneous assumption that the preservation of irreplaceable cultural and historic resources can occur later in time, i.e., after BLM has committed areas to particular uses. In planning for the entire Monticello Field Office, it is imperative that BLM view entire area from a holistic perspective rather than through piecemeal projects and narrow boundaries. It seems paramount to BLM's stewardship responsibilities under the NHPA that BLM consider the larger context of cultural resources, prior to moving forward with irreversible management decisions that could harm or destroy them, while foreclosing alternatives for preservation and protection.

A. Section 106 of the NHPA

1. BLM Must Comply with Section 106 Prior to Implementing the Proposed Route Designations.

The Monticello Field Office must comply with Section 106 of the NHPA prior to implementing the route designations. Under Section 106, federal agencies are required to take into account the effect of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (Advisory Council) with a reasonable opportunity to comment. 16 U.S.C. § 470f. The Advisory Council's regulations flesh out these requirements and establish a process—the Section 106 process—with which federal agencies must comply before approving undertakings.

Here, the implementation of route designations is an undertaking that has the potential to affect historic properties. Implementing the designations will require federal funding for the publication of maps, manufacturing of signs, and allocation of law enforcement. Draft RMP at N-32–33, 35. Additionally, OHV use on public land requires federal approval. Thus, it is an undertaking under Section 106. See 16 U.S.C. § 470w(7) (defining an undertaking in part as an activity carried out with federal financial assistance and also in part as an activity requiring federal approval).

Historic properties may be directly and indirectly affected by the undertaking. In the Draft RMP, BLM found that, throughout the field office, OHV use is becoming increasingly common in areas with significant cultural resources. Draft RMP at 3-84–85. Consequently, sites in Cedar Mesa, Alkali Ridge, and Butler Wash have been directly and indirectly damaged by the use of OHVs in recent years. Draft RMP at 4-388; 2005 AMS at 4-33. These specific conflicts clearly show that

OHV use may cause effects on cultural resources, and thus, the implementation of OHV route designations triggers the Section 106 process.⁵

Because 1,947 miles of Class D routes are currently being considered for designation, Draft RMP at ES-6, BLM bears a formidable task under Section 106. Rendering this task even more difficult, less than 10 percent of the field office has been inventoried for cultural resources. Draft RMP at 3-18. Thus, carrying out the Section 106 process for thousands of OHV route miles will require a significant investment of the agency's time and resources. Further, the process will likely force BLM to reevaluate many of the proposed route designations, and will almost certainly require BLM as well as user groups and local governments to accept additional closures and restrictions on use. Surveys of the proposed routes and tribal consultation are likely to reveal previously undocumented sites some of which may have sacred or traditional cultural importance. See 36 C.F.R. § 800.4((a)(4) (requiring federal agencies to identify historic properties of religious and cultural significance to Indian tribes). Both the direct and indirect effects of OHV use on these sites must be addressed during the Section 106 process and measures developed to avoid, minimize, or mitigate these effects. See id. §§ 800.5(a)(1), 6(a).

Recommendations:

In light of the above concerns, we recommend that BLM develop a comprehensive strategy for complying with Section 106 prior to implementing the OHV route designations. These recommendations are not intended to represent an exhaustive list of what we believe Section 106 requires for this undertaking. Rather, we provide them here to highlight specific aspects of the Section 106 process that we feel are particularly important in this context.

- 1. Consult with Indian tribes.** BLM must consult with Indian tribes that attach religious or cultural significance to historic properties in areas potentially affected by the proposed OHV designations. In particular, BLM must consult with those tribes that have notified BLM that traditional cultural properties may exist in areas designated as either open or limited in the Draft RMP and with tribes who specifically requested consultation with BLM concerning recreation and OHV use.
- 2. Define the areas of potential effect for the proposed routes broadly and in such a way that fully captures their indirect and cumulative effects on cultural resources.**
- 3. Identify cultural resources within the areas of potential effect in accordance with IM 2007-030.** BLM must comply with IM 2007-030, which requires BLM to perform Class III surveys for new route designations prior to implementing the decisions.

⁵ In 1978, the Interior Department directed its agencies to comply with Section 106 prior to designating OHV routes on public land. Department of the Interior, Final Environmental Impact Statement: Departmental Implementation of Executive Order 11644, As Amended by Executive Order 11989, Pertaining to Use of Off-Road Vehicles on the Public Lands 141 (1978). The Advisory Council, the federal agency with expertise in historic preservation and that promulgated the Section 106 regulations, also believes that ___. See Letter from Don Klima, Director, Office of Federal Agency Programs, Advisory Council on Historic Preservation, to Linda Hansen, California Desert District Manager, Bureau of Land Management 2 (May 17, 2003).

4. Evaluate the direct, indirect, and cumulative adverse effects of the proposed routes.

The Section 106 regulations require BLM to identify and resolve the direct, indirect, and cumulative adverse effects of the proposed OHV designations on cultural resources. 36 C.F.R. § 800.5(a)(1). As part of this analysis, BLM must consider the possibility that OHV route designations will provide greater access to cultural sites and thus increase the likelihood of vandalism, looting, and the inadvertent destruction of cultural sites. See Jerry D. Spangler et al., *Chasing Ghosts: An Analysis of Vandalism and Site Degradation in Ranger Creek Canyon, Utah* 21 (2006) (finding a higher frequency of vandalized cultural sites within 200 meters of a section of the Range Creek Canyon road open to motorized use).

5. Integrate the requirements of the Section 106 process with the requirements of E.O. 11989. Executive Order 11989 requires BLM to close

6. Develop a programmatic agreement in consultation with the Advisory Council on Historic Preservation, Indian tribes, Utah State Historic Preservation Office, and other interested parties. The Section 106 regulations allow federal agencies to develop a programmatic agreement (PA) “to govern the . . . resolution of adverse effects from certain complex project situations or multiple undertakings” in consultation with the Advisory Council. 36 C.F.R. § 800.14(b). The designation of OHV routes in the Monticello Field Office clearly meets both of these criteria. A PA would allow BLM, in consultation with the Advisory Council, Utah SHPO, and other interested parties, to develop alternative methods for complying with the Section 106 requirements prior to implementing the OHV routes.

2. The Draft RMP Does Not Adequately Consider How BLM Will Carry Out Its Section 106 Responsibilities for the Issuance of Oil and Gas Leases.

The Draft RMP should provide an appropriate timeline for complying with Section 106 in the context of oil and gas leases. Issuing oil and gas leases is not only an “undertaking” triggering Section 106, but it is an activity considered to have “adverse effects” in accordance with the Section 106 regulations. See *Montana Wilderness Association v. Fry*, 310 F. Supp. 2d 1127, 1152 (D. Mont. 2004); *Southern Utah Wilderness Alliance*, 164 IBLA 1, 27-28 (Nov. 10, 2004). The court held in *Montana Wilderness Association* that BLM cannot defer compliance with Section 106 until the APD stage by simply adding stipulations to a lease. *Id.* (“[BLM] cannot skip the first step and go directly to the second. If the lease sales are an undertaking, BLM is required to initiate the NHPA process in accordance with the regulations”). In short, BLM must complete the Section 106 process prior to issuing leases, including consulting with interested tribes and other members of the public to identify traditional cultural properties and other historic resources. It is critical for BLM to begin to identify and document the existence of resources in the proposed leasing areas as a means of adequately informing any future decisions made during the leasing stage.

B. Section 110 of the NHPA

1. BLM Fails to Meet the Stringent Protection Requirement for National

Historic Landmarks.

Under Section 110 of the NHPA, BLM “shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm” on national historic landmarks. 16 U.S.C. § 470h-2(f). Although BLM recognizes that the Section 110 standard applies to the management of Alkali Ridge, Draft RMP at 4-385–86, the proposed management prescriptions are not in accordance with this stringent standard. For example, even though BLM found that OHV use is indirectly affecting the NHL, Draft RMO at 4-388, the preferred alternative would still allow this use to occur on designated routes within the NHL. *Id.* at 2-35. Similarly, despite “heavy” oil and gas activity within Alkali Ridge in the past, 1985 AMS at 4331-30, BLM would allow the issuance of new leases both within the NHL (subject to no-surface occupancy stipulations) and within the adjacent ACEC (subject to controlled surface use stipulations). Draft RMP at 2-35; H-5. Again, it is unclear how this prescription will ensure that “to the maximum extent possible” BLM “minimizes harm” on the Alkali Ridge.

2. BLM Fails to Integrate Compliance with Section 110 of the NHPA into the RMP Process.

BLM’s stewardship role under the NHPA is not one that begins only at the implementation stage, that is, once cultural resources are threatened by site-specific activities, but rather, BLM’s stewardship role should be a continuing one, which provides guidance throughout the planning process. According to Section 110 of the NHPA, BLM is required to identify, evaluate, and nominate historic properties to the National Register, as well as assume responsibilities for preserving historic properties. 16 U.S.C. § 470h-2(a). See also Executive Orders 13007 and 13287. Unfortunately, BLM is proposing management directives that will lead to increased recreational use and extractive uses without any effort to inventory resources as part of the RMP process in compliance with NHPA and FLPMA.

Throughout the draft RMP, BLM recognizes that recreational and surface disturbing activities could damage, degrade, or destroy cultural resources. See, e.g. Draft RMP at 4-27. However, BLM provides little or no analysis as to why these potential losses are acceptable when weighed against the destructive uses. BLM should integrate its Section 110 stewardship responsibilities within the Draft RMP at the same time that BLM is proposing activities that are potentially damaging to these resources. Making determinations about future acceptable uses, according to FLPMA’s multiple-use principles, is arguably the most appropriate point at which BLM can truly seek to identify, evaluate, and nominate historic properties to the National Register in a proactive manner.

3. BLM Fails to Integrate Compliance with Executive Order 13287, “Preserve America”.

President Bush’s recent Executive Order, entitled “Preserve America,” reiterates BLM’s responsibility to manage public lands in a spirit of stewardship of cultural and historic resources. Executive Order 13287 (Mar. 3, 2003), requires each federal agency to “prepare an assessment of the current status of its inventory of historic properties,” expanding on the requirement found in section 110(a)(2) of the NHPA. *Id.* § 3; see also 16 U.S.C. § 470(h)-2(a)(2). Additionally, the

President has required each agency to “ensure that the management of historic properties in its ownership is conducted in a manner that promotes the long-term preservation and use of those properties.” Id. § 4. The Draft RMP should take stronger steps not only to ensure compliance with the NHPA, but also to ensure that BLM has considered and integrated President Bush’s proactive stewardship agenda.

Recommendation:

Evaluate the proposed management prescriptions for the Alkali Ridge NHL and determine if each satisfies the heightened management standard of Section 110. Additionally, we strongly encourage BLM to address its Section 110 responsibilities during the RMP process, in order to balance cultural resource preservation with other uses.

IV. Additional Comments

A. Recapture Wash

The National Trust strongly urges that BLM to permanently close Recapture Wash to OHV use in the Draft RMP. Our belief stems from the circumstances surrounding the development of the unauthorized ATV trail system in Recapture Wash in 2005, circumstances with which BLM is closely familiar. We believe that a permanent closure would serve two important objectives. First, a permanent closure would defeat the presumed objective of the parties responsible for building the unauthorized trail system. Namely, the development of a relatively pristine natural and significant cultural area for motorized recreation. Second, a permanent closure would deter the responsible parties and like-minded individuals from undertaking similar types of unauthorized activities related to OHV use elsewhere in the Monticello Field Office.

B. National Register Nominations

Under each alternative, BLM would, “in coordination with San Juan County,” identify and evaluate historic trail segments for National Register eligibility. Draft RMP at 2-8. BLM must acknowledge that additional parties, including Indian tribes and the State Historic Preservation Officer, have designated roles during the identification and evaluation of historic properties under Section 106.

Conclusion

The National Trust believes that the Monticello Field Office manages the most significant collection of federally owned cultural resources not currently protected by a presidential proclamation or specific piece of conservation legislation. For this reason, we strongly encourage BLM, through the Monticello RMP, to protect these resources to the maximum extent allowable under existing law. We appreciate the opportunity to comment on the draft plan, and intend to remain fully involved in subsequent stages of the planning process. Please do not hesitate to contact me directly at (202) 588-6341 should you have any questions or concerns related to any matter addressed in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ti Hays". The signature is fluid and cursive, with a horizontal line extending to the right.

Ti Hays
Public Lands Counsel

cc: Barbara Pahl, National Trust for Historic Preservation
Matt Seddon, Utah State Historic Preservation Office