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To: blm_ut_gs_comments@blm.gov[blm_ut_gs_comments@blm.gov]
From: Kya Marienfeld
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[HITR Repair Scoping_SUWA_TWS_GOB.pdf](#)

Good Evening,
Attached, please find scoping comments on the Hole-in-the-Rock Road Repair Project (DOI-BLM-UT-0300-2017-0066-EA), submitted by the Southern Utah Wilderness Alliance, The Wilderness Society, and Great Old Broads for Wilderness.

At your convenience, please confirm that you have received the comments, and please let me know if you have any questions.

Thank you,

Kya Marienfeld
Wildlands Attorney
Southern Utah Wilderness Alliance
(435) 259-5440



southern
utah
wilderness
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November 9, 2017

Matt Betenson
Grand Staircase-Escalante National Monument
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[blm ut gs comments@blm.gov](mailto:blm_ut_gs_comments@blm.gov)

Re: Hole-in-the-Rock Road Repair Project Scoping (DOI-BLM-UT-0300-2017-0066-EA)

Dear Mr. Betenson,

Please accept and fully consider the following comments on DOI-BLM-UT-0300-2017-0066-EA or the "Hole-in-the-Rock Road Repair Project," the purpose of which is to "stabilize washout prone areas, prevent erosion, and sediment loading in drainages" for 16 miles of the road within Garfield County, Utah. The Wilderness Society, the Southern Utah Wilderness Alliance, and Great Old Broads for Wilderness represent more than half a million members and supporters nationwide and in Utah and our staff and members have great interest in the protection and enhancement of the natural and cultural resources of the Grand Staircase-Escalante National Monument. We appreciate the opportunity to comment on the project and look forward to participating in this process to consider repairs to the Hole-in-the-Rock Road.

As a preliminary matter, we strongly oppose any attempt to pave the Hole-in-the-Rock Road with asphalt or black top or any other material appearing unnatural to the area. We appreciate that the stated purpose of this EA does not including paving the road, preparing to pave the road or even consideration of such actions. Such an action would be inconsistent with the Proclamation establishing the Monument, the Monument Management Plan, manuals and policy guidance for the National Landscape Conservation System, the National Historic Preservation Act and other applicable laws and regulations.

I. BLM Must Prioritize the Protection of Monument Objects

With the designation of the Grand Staircase-Escalante National Monument in 1996, the Bureau of Land Management (BLM) was given a new mandate for management of these lands to protect

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the “objects” identified in Proclamation 6920 and to do so by preserving the primitive, frontier state of the landscape as the most important aspect of the monument. Because of its significance, which merited designation as a national monument and inclusion in the National Landscape Conservation System (NLCS), the monument requires special management, different from other BLM lands. The overriding objective of the monument is the permanent conservation of its natural and cultural resources as described in the Proclamation. Management must place priority on conserving, protecting and restoring the natural and cultural values identified in the Proclamation, and must identify and restrict those uses of the land that are secondary to that objective.

Secretarial Order 3308 declares, among other things, that BLM must ensure that the objects and values for which an NLCS unit is designated will be prioritized over other multiple uses if those uses conflict with those values:

The BLM shall ensure that the components of the NLCS are managed to protect the values for which they were designated, including, where appropriate, prohibiting uses that are in conflict with those values. If consistent with such protection, appropriate multiple uses may be allowed, consistent with the applicable law and the relevant designations under which the components were established.

In order to ensure that no Monument objects will be harmed with this project, BLM should provide an updated inventory the Monument objects in the area that may be affected by the project and set appropriate criteria, terms and conditions on the project.

Regarding the proposed project area, the Proclamation states:

Early Mormon pioneers left many historic objects . . . and built and traversed the renowned Hole-in-the-Rock Trail as part of their epic colonization efforts. Sixty miles of the Trail lie within the monument, as does the Dance Hall Rock, used by intrepid Mormon Pioneers and now a National Historic Site.

In addition, there are likely other important or sensitive cultural or scientific resources in the area as identified in the Proclamation that require proper inventories and stipulations for protection prior to surface disturbance.

The Proclamation also makes it clear that “this unspoiled natural area remains a frontier, a quality that greatly enhances the Monument’s value for scientific study” and “[r]emoteness, limited travel corridors and low visitation have all helped to preserve intact the monument's important ecological values.” Thus, some of the most important qualities for the Monument’s protection are retaining its primitive, frontier character and moving towards a more natural state.

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Recommendation: The agency must take precautions to not allow harm to identified Monument objects. BLM should be explicit in the EA that the Monument, including the Hole-in-the-Rock Road area is to be managed in its primitive, frontier state, which includes a sense of remoteness and limited travel corridors. The document should also include an inventory of objects found in the area with specific criteria and strong terms and conditions the project.

II. BLM's Actions Must Be Consistent with the Monument Management Plan

The Federal Land Policy Management Act (FLPMA) requires that BLM manage public lands in accordance with land use plans, such that once a resource management plan is completed, FLPMA requires that “all future resource management authorizations and actions . . . and subsequent more detailed or specific planning shall conform to the approved plan.” 43 C.F.R. § 1610.5-3. FLPMA regulations further define “conformity” to mean “that a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment.” 43 C.F.R. § 1601.0-5(b).¹ The following comments and recommendations pertain to provisions of the Monument Management Plan (MMP) that should be directly addressed in the EA for the project:

A. No Travel Surface Upgrades or Widening

The MMP clearly addresses maintenance activities with regard to transportation and access:

... open routes may be maintained within the disturbed travel surface area as of the date of this Plan; no widening, passing lanes, or other travel surface upgrades could occur. MMP at 47; (TRAN-7).

The MMP allows for deviation from current maintenance levels along the Hole-in-the-Rock Road to “allow stabilization of washout prone areas, primarily along the southeastern end, to prevent erosion and sediment loading in drainages.” MMP at 47 (TRANS-7). It is noteworthy that the project is not in the southeastern end of the road but rather on the northwestern end.

Recommendation: The EA and project design cannot, under any circumstance, upgrade the existing road surface or widen the existing road corridor. This includes the use of surfacing agents or other outside materials for hardening or otherwise upgrading the travel surface that

¹ In *Norton v. SUWA*, the Supreme Court elaborated on these two obligations: The statutory directive that BLM manage “in accordance with” land use plans, and the regulatory requirement that authorizations and actions “conform to” those plans, prevent BLM from taking actions inconsistent with the provisions of a land use plan.

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currently exists on Hole-in-the-Rock Road. After hearing from project engineers and consultants during the two public scoping meetings held regarding the proposed project, there seemed to be conflicting information from BLM staff and contractors, where some believed hardening agents would be added to the road surface and others stated clearly that the travel surface would not be upgraded in any fashion. The EA should clearly and definitively state what material will be used to repair the road surface.

B. Passage Zone

The majority of the project is within the “Passage Zone” of the Monument. The Passage Zone “includes secondary travel routes which receive use as throughways and recreation destinations. While rudimentary facilities necessary for safety, visitor interpretation, and for the protection of resources will be allowed in this zone, the Bureau of Land Management (BLM) will generally avoid directing or encouraging further increases in visitation due to the condition of routes and distance from communities.” MMP at 9.

Recommendation: The project must abide by these principles set forth in the MMP and avoid encouraging of uses and visitation in this area due to the condition of the road and its status as in a Passage Zone.

C. Mitigation for surface disturbance and plant removal

Associated surface disturbance from repairs to the road could include blading, leveling, soil displacement and removal of vegetation. The MMP requires mitigation for soil and plant disturbing activities in the monument. Specifically, the MMP states the following:

Mitigation measures have been built into the Plan . . . During the next tier of planning, which allows for more detailed and site-specific analysis, additional measures will be taken, as necessary, in order to mitigate subsequent impacts to the environment. MMP at x.

The BLM will apply procedures to protect soils from accelerated or unnatural erosion in any ground disturbing activity, **including route maintenance and restoration** . . . This process will include inventories for affected resources and the identification of mitigation measures. MMP at 21; (SOIL-1) (emphasis added).

NEPA requires that BLM discuss mitigation measures in its environmental analysis. 40 C.F.R. §§ 1502.14, 1502.16. Also, under NEPA, BLM’s Finding of No Significant Impact (FONSI) is lawful only if “BLM has made a convincing case that no significant impact will result there from or that any such impact will be reduced to insignificance by the adoption of appropriate

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mitigation measures.” *Defenders of Wildlife*, 152 IBLA 1, 6 (2000) (citations omitted). In general, in order to show that mitigation will reduce environmental impacts to an insignificant level, BLM must discuss the mitigation measures “in sufficient detail to ensure that environmental consequences have been fairly evaluated.” *Communities, Inc. v. Busey*, 956 F.2d 619, 626 (6th Cir. 1992). Simply identifying mitigation measures, without analyzing the effectiveness of the measures, violates NEPA. Agencies must “analyze the mitigation measures in detail [and] explain how effective the measures would be . . . A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.” *Nw. Indian Cemetery Protective Ass’n v. Peterson*, 764 F.2d 581, 588 (9th Cir. 1985), *rev’d on other grounds*, 485 U.S. 439 (1988). NEPA also directs that the “possibility of mitigation” should not be relied upon as a means to avoid further environmental analysis. Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, available at <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>; *Davis v. Mineta*, 302 F.3d at 1125.

Further, general statements that BLM will conduct monitoring are also not an appropriate form of mitigation. Simply monitoring for expected damage does not actually reduce or alleviate any impacts.

The MMP requires all surface disturbing projects to require restoration or revegetation with a strong preference for the use of native species:

Restoration provisions will be included in all surface disturbing projects including provisions for post restoration monitoring of the area. Costs for these activities will be included in the overall cost of the project and will come out of the entire project budget. MMP at 23.

All projects proposed in the Monument will contain a restoration or revegetation component and will budget for the cost of seeding with native species. All planning for projects, in all except limited, emergency situations, will use native species, and the use of non-native species will not be analyzed as an alternative. MMP at 30.

Recommendation: BLM should set out measures in the EA to mitigate the unavoidable damage that will result from increased surface disturbance to the area. This does not only apply to direct mitigation of erosion or loss of vegetation, but where soils and vegetation may be removed from this project, BLM should prepare a plan for mitigating that loss by protecting and restoring other lands in the area, as required by the MMP.

III. BLM Must Update its Inventory of Lands with Wilderness Characteristics

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FLPMA requires BLM to inventory and consider lands with wilderness characteristics on a continuing basis. 43 U.S.C. § 1711(a); *see also Ore. Natural Desert Ass’n v. BLM*, 625 F.3d 1092, 1122 (9th Cir. 2008) (holding that “wilderness characteristics are among the values that FLPMA specifically assigns to the BLM to manage”).² IM 2011-154 and BLM Manuals 6310 and 6320 contain mandatory guidance on implementing that requirement. The IM directs BLM to “conduct and maintain inventories regarding the presence or absence of wilderness characteristics, and to consider identified lands with wilderness characteristics in land use plans **and when analyzing projects under [NEPA].**” (emphasis added). This includes the “necessary forms for each area” including photo logs, route analysis forms and inventory area evaluations (Manual 6310, Appendices A-D). Manual 6310 reiterates that, “[r]egardless of past inventory, the BLM must maintain and update as necessary, its inventory of wilderness resources on public lands.” BLM Manual 6310.06(A) Manual 6320 requires BLM to consider lands with wilderness characteristics in land use planning, both in evaluating the impacts of management alternatives on lands with wilderness characteristics and in evaluating alternatives that would protect those values. Wilderness inventories are to be done on a *continuing* basis and relevant citizen-submitted data is to be evaluated. BLM Manual 6310.04(C)(1).

We understand that BLM has been inventorying the Monument for wilderness characteristics per BLM Manual 6310. That inventory information has not yet been posted for the public to review. FLPMA’s mandate to maintain an inventory of public lands resources is the foundation on which all further management decisions are built, from land use allocations to site-specific project planning. BLM should therefore complete the LWC inventory for lands that could be affected by this project. Additionally, Instruction Memorandum 2013-106³ instructs that BLM field offices should make finalized and signed wilderness characteristics inventory findings available to the public as soon as practicable after their completion and before the inventory data is used to inform decisions.

Recommendation: The BLM must perform an inventory of wilderness characteristics before issuing a decision on this proposed project per FLPMA and BLM policy guidance.

IV. BLM Must Take a Hard Look at Impacts from the Project

NEPA dictates that agencies take a “hard look” at the environmental consequences of a proposed action and the requisite environmental analysis “must be appropriate to the action in question.”

² The BLM has taken the policy position that it does not designate new Wilderness Study Areas (WSA). We maintain that this policy is not valid and should not be maintained. BLM should specifically mention potential WSAs as something to inventory for during this process.

³ Available at http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2013/IM_2013_106.print.html.

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Metcalf v. Daley, 214 F.3d 1135, 1151 (9th Cir. 2000); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). In order to take the “hard look” required by NEPA, the agencies are required to assess impacts and effects that include: “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, *whether direct, indirect, or cumulative.*” 40 C.F.R. § 1508.8. (emphasis added). NEPA regulations define “cumulative impact” as:

the impact on the environment which results from the *incremental impact of the action when added to other past, present, and reasonably foreseeable future actions* regardless of what agency (Federal or non-Federal) or person undertakes such other actions. *Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.*

40 C.F.R. § 1508.7 (emphasis added).

To satisfy NEPA’s hard look requirement, the cumulative impacts assessment must do two things. First, agencies must catalogue the past, present, and reasonably foreseeable projects in the area that might impact the environment. *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 809–10 (9th Cir. 1999). Second, agencies must analyze these impacts in light of the proposed action. *Id.* If agencies determine that certain actions are not relevant to the cumulative impacts analysis, it must “demonstrat[e] the scientific basis for this assertion.” *Sierra Club v. Bosworth*, 199 F.Supp.2d 971, 983 (N.D. Ca. 2002). A failure to include a cumulative impact analysis of actions within a larger region will render NEPA analysis insufficient. *See, e.g., Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1078 (9th Cir. 2002) (analysis of root fungus on cedar timber sales was necessary for an entire area).

Recommendation: BLM must perform a detailed evaluation of the impacts to natural and cultural resources, including specific Monument objects, from the proposed project.

Recommendation: Pursuant to NEPA, BLM must take a hard look at the direct, indirect, and cumulative impacts resulting from the potential road repair project. Cumulative and indirect impacts include growth-inducing impacts on Hole-in-the-Rock Road and adjacent areas, including increases in dispersed camping along the route and connected roads, an increase in visitor numbers and expansion of potential seasons of use, and other foreseeable impacts to Monument objects when road access is improved.

Recommendation: BLM’s scoping letter regarding the Hole-in-the-Rock Road Repair Project states that it includes the entire Hole-in-the-Rock Road in the project analysis area. However, based on all other information presented to the public on ePlanning and at BLM’s two public scoping hearings in late October, only the Garfield County portion of the road is undergoing site-

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specific design proposals and is currently being analyzed and funded for repair. Due to the language of the scoping letter referencing the Kane County section of Hole-in-the-Rock Road, it should be clarified in the forthcoming EA that additional project-specific NEPA analysis will be required in the future if repairs are also considered and planned for other sections of the Hole-in-the-Rock Road outside the current repairs proposed for the 16 mile section of the road within Garfield County.

V. BLM Must Consider Protection of Historic Properties

Recognizing that “historic properties significant to the Nation’s heritage are being lost or substantially altered [] with increasing frequency,” Congress enacted the National Historic Preservation Act (NHPA) in 1966 to implement a broad national policy encouraging the preservation and protection of America’s historic and cultural resources. 16 U.S.C. §§ 470(b), 470-1. The “fundamental purpose” of the NHPA is “to ensure the *preservation* of historical resources.” *Te-Moak Tribe of W. Shoshone of Nev. v. U.S. Dep’t of Interior*, 608 F.3d 592, 609 (9th Cir. 2010) (emphasis added). To promote this purpose, the NHPA requires that federal agencies “take into account any adverse effects on historical places from actions concerning that property.” *Friends of the Atglen-Susquehanna Trail, Inc. v. Surface Transp. Bd.*, 252 F.3d 246, 252 (3rd Cir. 2001); *see also* 16 U.S.C. §§ 470f, 470h-2(a)(2).

The heart of the NHPA is Section 106, which *prohibits* federal agencies from approving any federal “undertaking,” 16 U.S.C. § 470w(7), unless the agency takes into account the effects of the undertaking on historic properties that are “included in or eligible for inclusion in the National Register.” *Id.* § 470f. Section 106 has been characterized as a “stop, look and listen” procedural provision that, like NEPA, requires federal agencies to consider the impacts of their actions on historic properties *before* acting. The goal of the Section 106 process is not to generate paperwork, but rather to provide a mechanism by which governmental agencies will play an important role in “preserving, restoring, and maintaining the historic and cultural foundations of the nation.” 16 U.S.C. § 470.

Recommendation: Pursuant to the NHPA, the BLM must initiate meaningful consultation with the State Historic Preservation Officer, relevant and affected Tribes and other interested parties, determine the area of potential effects, and conduct a Class III cultural resource inventory of the area of potential effects of the Hole-in-the-Rock Road Repair project prior to issuing a decision. The BLM must also seek ways to avoid, mitigate, or minimize these effects on cultural resources.

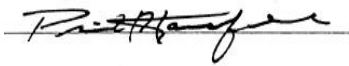
Conclusion

We appreciate the opportunity to provide scoping comments on this project and look forward to remaining engaged as BLM develops the forthcoming EA. Please keep us informed of any

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future activity that occurs in relation to this project or the Hole-in-the-Rock Road, via the email addresses listed below. Additionally, please send a copy of the Draft EA and other documents to either kya@suwa.org or Southern Utah Wilderness Alliance, P.O. Box 968, Moab, Utah 84532. If you have any questions or concerns, please feel free to contact us.

Sincerely,



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