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Div. of Energy, Lands, and Minerals (CO-920)
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Lakewood, CO 80215

U.S. Department of the Interior,
Regional Solicitor, Rocky Mountain Region
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Re: Appeal of Grand Junction RMP ROD

Dear Sirs:

Please accept this correspondence and attachments as the appeal and objections of the above Organizations with regard to the Record of Decision regarding the BLM Grand Junction Resource Management Plan ("ROD"). For purposes of this appeal/protest these documents will be collectively referred to as "the ROD" or "the RMP". It is the Organizations position that the analysis of and information provided regarding the 966 ineligible cultural resource sites is insufficient, is arbitrary and capricious as a matter of law and fails to provide the hard look at issues mandated by NEPA. The Organizations submit that at some point in the ROD development, a decision was made that all possible cultural resource sites would be protected at all costs and there was to be no further analysis of that decision. This decision continues to materially and directly impact the ability of the public to address site specific concerns on impacts resulting from management changes causing changes to other uses of these possible cultural sites.

The ROD and related documents fails to provide the public with sufficient information to identify specific routes that were being closed due to cultural resource issues. The basic determination of if a route that has been closed is to protect a cultural site that has been found ineligible for protection on the national register is a critical step in developing site specific comments. By BLM regulation, all available information on illegible sites must be made public. This information has simply has been withheld by the GJFO under a claim of confidentiality and has precluded the public from reviewing any of the 966 sites found ineligible in order to create meaningful site specific comments regarding impacts from mandatory management standards for these sites.

Rather than provide the legally mandated information, the GJFO has provided the public with a spreadsheet that provides no additional information regarding ineligible sites when compared to eligible sites. This is a direct violation of relevant case law and regulations requiring additional information be provided regarding ineligible sites that were reviewed in order to explain why they were found ineligible.

The illegally limited scope of information regarding cultural sites that are specifically found ineligible for listing on the National Register of Historic Places has directly prejudiced the ability of the Organizations to address the impacts of the cultural resource management decisions on specific routes, as the Organizations are simply unaware of where any sites are located in the field office and as a result are unable to address specific routes. The Organizations submit the impacts of these decisions on the trail network have been significant. Additionally the proposed management of cultural resources fails to properly balance multiple use management standards with the protection of cultural resources, as the RMP seeks to manage possible cultural sites as a trustee would manage a trust rather than as a balanced multiple use of public lands.

The Organizations are very concerned about the site specific impacts of mandatory management closures, which the Organizations submit are very significant as more than 500 of the sites subject to mandatory closure either need data or analysis at the site specific level. Given the clearly limited scope of review that has been undertaken, the Organizations vigorously submit that any balancing of multiple uses on these sites is impossible as a matter of law. As a result of the failure to obtain sufficient information in the inventory process, the Organizations are now unable to prepare site specific comments.

Prior to addressing the appeal/protest of the Proposal, we believe a brief summary of each Organization is needed. The Colorado Off-Highway Vehicle Coalition ("COHVCO") is a grassroots advocacy organization the 150,000 registered OHV users in Colorado seeking to represent, assist, educate, and empower all OHV recreationists in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO is an environmental organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and recreational qualities for future generations.

The Trail Preservation Alliance ("TPA") is a 100 percent volunteer organization whose intention is to be a viable partner, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of trail riding. The TPA acts as an advocate of the sport and takes the necessary action to insure that the USFS and BLM allocate for trail riding to receive a fair and equitable percentage of access to public lands.

Colorado Snowmobile Association ("CSA") was founded in 1970 to unite winter motorized recreationists across the state to enjoy their passion. CSA advocates for the 30,000 registered

snowmobiles in the State of Colorado. CSA has become the voice of organized snowmobiling seeking to advance, promote and preserve the sport of snowmobiling by working with Federal and state land management agencies and local, state and federal legislators. For purposes of this document, CSA, COHVCO and TPA are identified as "the Organizations".

The Organizations comments on the draft RMP are submitted with this appeal/protest as an attachment.

1. Executive Summary.

The Organizations submit that simply understanding the scope of impacts from the massive changes in management of cultural resources on the GJFO is critical to understanding the issue. The Grand Junction RMP proposes to close 1,894 possible cultural sites, 612 miles of existing routes and 53,500 acres to all surface disturbing activity for protection of possible cultural resources sites. **This is expansion in management by a factor of 236 times from the 8 sites currently managed and an expansion of 5x the number of acres to be closed.** This level of expanded management directly conflicts with current management of sites, which only identifies 3 of the 1,894 sites as being on the National Register and manages 8 sites currently. By comparison there are only 50 sites in Mesa and Garfield Counties on the National Register, 1,492 sites in the entire state of Colorado and that the District of Columbia only has 597 sites. The Organizations submit that the sheer scale and impact of these management changes simply has not been analyzed in a manner that could be sufficient to satisfy NEPA and significant information has been illegally withheld from the public. The Organizations submit that these levels of expansion of any management issue would warrant a rather detailed discussion of the necessity of such management and especially how the expansion was balanced under multiple use mandates. This simply has not been provided.

The Organizations are concerned about the imbalance of usage resulting from cultural resource management standards, as these impacts are not remote or abstract and run well beyond the mileage of routes proposed to be closed. Each of the 1,894 sites identified in the GJFO RMP is subjected to a mandatory closure to surface disturbing activities of at least 100 meters and possibly 200 meters around the site to all surface disturbing activities including trails and recreational usage, oil and gas, grazing and many other uses. While defining surface disturbing activity would be a critical step in balancing usages, the RMP simply fails to define this term. This begs the question of how was the required hard look at balancing usages in any area undertaken when the usages to be prohibited is simply never defined. The Organizations further submit that implementation of this standard will directly conflict with a wide range of federal laws and other agency planning efforts and is unprecedented management of these issues.

The indications of the priority position given to cultural resources over all other multiple uses is directly evidenced by numerous allocations of resources in the planning process including:

1. The exceptionally high percentage of sites found eligible for further management;
2. The large number of sites that are lacking data;
3. Mandatory closures fail to address the seriously deteriorated nature of many of these sites as a result of previous management decisions;
4. The illegal withholding of data regarding sites not eligible for protection on the national register; and
5. While numerous other multiple uses changed between the draft and final, no aspect of cultural resource management changed.

Of the 1,894 sites identified only 7 were released from further management meaning that 99.3% of the sites identified were found suitable for management. The Organizations believe such a high acceptance rate for any activity in multiple use planning is an indication that the required balance of multiple use was badly out of balance. The reasoning for exclusion of these sites from further management also indicates an imbalance of multiple usage as the sites excluded from management were either sold by the BLM or destroyed by fire making further management impossible. The Organizations submit there is a significant difference between a site being "impossible to manage" and being "suitable to manage" and this distinction is simply never raised in the FRMP. Preparation of site specific analysis and comments is impossible for the public as there is simply not sufficient information provided to the public to allow for determinations on routes being impacted by mandatory closures.

The Organizations submit that a proper balancing of multiple usages with cultural resource protection is impossible with the current inventory and management. The exceptionally limited information in the cultural site inventory provided in appendix I clearly finds that 27% of the 1,894 sites identified either "need data" or "further assessment." While 27% of the sites need data, the Organizations are unable to address the impact of these sites on roads and trails in the area of the sites as all information has been withheld. The Organizations submit this void of data is direct evidence that cultural resource were arbitrarily given a priority position in balancing multiple uses, as the Organizations are unsure how this balance could be made when land managers are not aware of what is at the site or the true size of the site. The Grand Junction RMP simply fails to address the basis for management of 27% of the cultural sites to be closed and how the balancing of multiple uses has occurred in the decision making process. The Organizations are aware that while the specific locations of cultural resources sites are confidential, this confidentiality of sites is not a waiver of NEPA analysis.

The Organizations submit that the limited information inventory of cultural sites further provides that 51% of the 1,894 sites identified are "not eligible" for protection on the National Register. Again the Organizations must question how multiple uses are balanced with these sites as there is no distinction in the management standards being applied between sites that might be eligible and those areas that are not eligible for listing. **Again the Organizations vigorously assert that our ability to appeal any site specific concerns has been prejudiced by the illegal withholding of information regarding sites that are ineligible for listing on the national register, which by law must be publicly disclosed after the determination of ineligibility has been made.**

Even more serious concerns about the proper balancing of multiple usages in cultural sites result from changes in between the draft and final RMP, where recreational economic contributions in value and related jobs were expanded to almost 7 times original estimates. Many routes were reopened due to the heightened importance of recreation. While the economic contribution of recreational activity was expanded to 7 times original estimates, there was simply no change in any aspect of cultural resource management despite the fact that closures of 1,894 sites at least a football field in size to all usages could clearly have an impact on recreational access and the economic benefits that flow to local communities as a result. Again, cultural management analysis remains completely unchanged between the draft and final RMP indicating a serious imbalance in usages. The public is unable to address this imbalance at the site specific level as sufficient information is never provided to them under claims of confidentiality by the BLM.

The Organizations submit that management of cultural sites as a trustee has also precluded viable management options for these areas such as moving to a designated trail system instead of the continued open riding designations, which would provide a far more balanced usage of resources and protection of sites. The mandatory closing these sites would clearly impact routes that are critical to accessing other recreational opportunities that are totally unrelated to the cultural sites. The Organizations believe an economic analysis of the impacts to recreational access from these mandatory requirements would be highly site specific, as there are numerous geographic limitations in the GJFO which would severely impact access to significant portions of the field office. In numerous areas trails and routes are at the bottom of canyons and large washes due to steep and rugged terrain. The Organizations are forced to believe that many of the same geographic limitations currently in the field office forced herd animals and the Indians through the same canyon bottoms hundreds of years ago as are now being used for recreation. Expansion of recreational spending and jobs would clearly weigh against current closures in an area such as these types of bottlenecks as recreational values for the areas lost outside the bottleneck areas would be exponentially higher. The Organizations are further concerned regarding the long term impacts of these management standards as any site specific work in the future would be

subjected to mandatory closures and probably result in additional lost routes and an impossibility to build new routes.

2a. Standard of review for NEPA decisions on appeal.

The Organizations believe a brief summary of the standard of review applied by Courts reviewing agency NEPA analysis is relevant to this discussion, as the Courts have consistently directly applied the NEPA regulations to EIS review both at the landscape and site specific levels. As a general review standard, Courts have applied an arbitrary and capricious standard of review for agency actions under NEPA. This standard is reflected as follows:

"...it required only that the agency take a "hard look" at the environmental consequences before taking a major action. *See, Kleppe v. Sierra Club*, 427 U. S. 390, 427 U. S. 410, n. 21 (1976). The role of the courts is simply to ensure that the agency has adequately considered and disclosed the environmental impact of its actions, and that its decision is not arbitrary or capricious. *See generally, Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U. S. 402, 401 U. S. 415-417 (1971)."¹

The Organizations submit that the expanded scale and scope of protection of cultural resources is simply unprecedented as 99.3% of the sites proposed are found to be worthy of management and is arbitrary and capricious as a matter of law and a direct violation of cultural resource laws. The failure to properly balance cultural resource management with other multiple uses is also a violation of law as management is clearly reflected a trustee type position being taken for cultural resources to the detriment of other multiple uses to be balanced in a NEPA analysis. How can legally mandated balance be achieved at sites that are clearly identified as needing data and analysis? The Organizations submit it cannot.

The arbitrary and capricious nature of the cultural resource management standards is further evidenced by the fact that usages that created some of the sites is now prohibited from continuing as exemplified by the fact that routes created for or by multiple use are now closed to multiple use in order to protect the cultural values of the route. This position completely lacks any basis in law or fact.

2b. The standard of review for economic benefits is a de novo standard as the Courts have consistently substituted their judgment regarding the benefits of economic activity.

While the general standard of review for agency actions is an arbitrary and capricious standard of review, Courts have consistently held agencies to a much tighter level of review of economic

¹ See, *Baltimore G& E Co v. NRDC*; 462 US 87 (1983) at pg 98.

benefits in the NEPA process, as the court makes their own conclusions regarding the accuracy of review without deference to agency findings. Relevant court rulings addressing economic analysis and benefits have concluded:

"an EIS serves two functions. First, it ensures that agencies take a hard look at the environmental effects of proposed projects. Second, it ensures that relevant information regarding proposed projects is available to members of the public so that they may play a role in the decision making process. Robertson, 490 U.S. at 349, 109 S.Ct. at 1845. For an EIS to serve these functions, it is essential that the EIS not be based on misleading economic assumptions."²

The Court discussed the significance of economic benefits and analysis in planning as follows:

"Misleading economic assumptions can defeat the first function of an EIS by impairing the agency's consideration of the adverse environmental effects of a proposed project. *See, South La. Env'tl. Council, Inc. v. Sand*, 629 F.2d 1005, 1011-12 (5th Cir.1980). **NEPA requires agencies to balance a project's economic benefits against its adverse environmental effects.** *Calvert Cliffs' Coordinating Comm. v. United States Atomic Energy Comm'n*, 449 F.2d 1109, 1113 (D.C.Cir.1971). "³

The level of accuracy of the hard look at economic analysis applied by the Court in the Hughes River decision is significant as the Hughes River Court invalidated an EIS based on an error in economic contribution calculations of approximately 32%.⁴ As more specifically addressed later in this appeal, economic contributions of recreational usage and related jobs expanded to more than 7 times original estimates between the draft and final RMP but the management of the more than 1,894 sites identified for cultural resource management simply never changes in terms of total sites, allocation of these sites to use categories or management standards that are associated with the usage categories. The Organizations submit that any assertion that a 7x expansion of recreational spending and jobs would not impact these issues would completely be a factual and legal basis as recreational usage is directly impacted by the closure of 1,894 football field sized sites around the field office. NO additional information or analysis is provided to justify the continued application of mandatory closures of all cultural sites. Such a failure of analysis simply cannot be defended under the De Novo standard.

² Hughes River Watershed Conservancy v. Glickman; (4th Cir 1996) 81 F3d 437 at pg 442; 42 ERC 1594, 26 Env'tl. L. Rep 21276.

³ *See, Hughes River* Supra note 2 at pg 442 .

⁴ *See, Hughes River*, Supra note 2 at pg 442.

3. Management of possible cultural resource sites is governed by multiple use principals under federal law.

The Organizations believe a review of the statutory management requirements for cultural sites is highly relevant to this appeal and further emphasizes the critical need for the public to have information on sites. The Organizations do not contest that the National Historic Preservation Act of 1966 ⁵ ("NHPA") provides for an extensive process that must be undertaken in order to consult with Native Americans, identify and inventory cultural sites on public lands to be followed. The NHPA provides extensive guidance for the cultural site inventory process and general objectives, but the NHPA stops short of addressing management of these sites. Rather NHPA is largely procedural in nature and does not mandate a specific outcome in the management process, as it provides as follows:

" It is the policy of the Federal Government, in cooperation with other nations and in partnership with States, local governments, Indian tribes, Native Hawaiian organizations, and private organizations and individuals, to—

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the historic property of the United States and of the international community of nations and in the administration of the national preservation program;

(3) administer federally owned, administered, or controlled historic property in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) contribute to the preservation of nonfederally owned historic property and give maximum encouragement to organizations and individuals undertaking preservation by private means;

(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and

(6) assist State and local governments, Indian tribes and Native Hawaiian organizations, and the National Trust to expand and accelerate their historic preservation programs and activities. "⁶

⁵ See, Section 1 of the National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515 generally Title 54 of the United States Code

⁶ See, 54 USC 300101

Congress did not specifically address management of cultural sites until FLPMA was adopted in 1976, where Congress clearly stated that cultural resources are a factor to be balanced as a multiple usage of public lands. Congress has repeatedly had the opportunity since adopting FLPMA to exclude cultural resources from this balancing process and chose not to make such an amendment. Rather Congress has repeatedly and clearly stated the requirement that cultural resource protection be governed by multiple use requirements. The management of cultural resources on public lands is specifically addressed in FLPMA which states as follows:

"(8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use;" ⁷

Several years later, Congress had the opportunity to change cultural resources management standards and alter the balance of multiple use requirements in relation to cultural resources management. Again, Congress chose not to make such an amendment by clearly stating in the Archaeological Resource Protection Act as follows:

"SEC. 12. (a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands."⁸

The Organizations submit that cultural resource management is a two step process: 1: creation of an inventory and allocation of sites to use categories; and 2: balancing protection of inventoried sites with multiple usages of these areas. The Organizations vigorously assert that the Grand Junction FRMP clearly has placed the management of cultural resources ahead of all other multiple uses and has failed to balance impacts from cultural resource protections with other activities by managing each site as a trustee as evidenced by the fact that the only sites excluded from management were actually impossible to manage as they had been destroyed by fire or previously sold. The Organizations submit that this failure to balance multiple uses at the site specific level is directly evidenced by the fact that economic contributions from recreational activities expanded to more than 7 times original estimates between the draft and final RMP and absolutely no changes were made to the total number of cultural sites, allocation of cultural sites

⁷ See, 43 USC §1701

⁸ See, 16 USC §470kk(a)

to management categories, management standards for each category of usage or the fact that eligibility for the national register simply was not addressed.

Numerous BLM manuals issued relative to the application of these Congressional mandates and outlining proper implementation of the required balancing of multiple uses with cultural resources management have specifically stated clarified the **lack** of a priority management position for cultural resources in relation to other multiple uses on public lands as follows:

"B. The Nature of BLM's Tribal Consultation under Cultural Resource Authorities. In contrast, BLM's tribal consultation under cultural resource authorities generally does not involve either Indian lands or trust assets, and consequently there is no ownership-based presumption that a tribe's input will compel a decision that fulfills the tribe's requests or resolves issues in the tribe's favor. **The BLM manager must make an affirmative effort to consult, and must consider tribal input fairly; but decisions are based on multiple-use principles and a complex framework of legal responsibilities, not on property principles and the obligations of the trustee to the trust beneficiary.**"⁹

C. Apart from certain considerations derived from specific cultural resource statutes, management of cultural resources on the public lands is primarily based on FLPMA (see .O3H), and is governed by the same multiple use principles and the same planning and decision making processes as are followed in managing other public land resources."¹⁰

It is the Organizations position that consideration of tribal input applies both ways, as cultural resources must be balanced in multiple use and multiple usage must not be completely excluded from cultural resource sites. The Organizations submit that the GJFO applies cultural resource concerns in a manner consistent with a trustee and has simply ignored that decisions must be made on multiple-use principles and a complex framework of legal responsibilities.

The Organizations submit that the position of the Council on Environmental Quality ("CEQ") in recently released guidance documents for cultural sites is highly relevant to this appeal. Newly released CEQ guidance documents provide the following statement:

"Traditional cultural landscapes describe an area considered to be culturally significant. They can and often do embrace one or more of the property types

⁹ See, BLM Manual 8120.1B

¹⁰ See, BLM Manual 8100. 06C

defined in the NHPA: districts, buildings, structures, sites, and objects. **It is important to note that the challenges associated with the management of such sites, and their potential size, do not excuse the consideration of their significance.**"¹¹

It is the Organizations position that challenges in site specific management can no more justify the ignoring of cultural resources in multiple use planning as it can justify the exclusion of all multiple uses from cultural resource areas. Again, the Organizations submit that the GJFO RMP manages cultural resources as a trustee would manage a trust rather than a balanced interest in multiple usage as directly evidenced by the fact that the only sites released from further management were either sold by BLM previously or destroyed by fire.

4a(i). Information regarding ineligible historical sites has been illegally withheld from the public in the GJFO process and the FRMP must be reversed.

The Organizations submit that there is a preliminary evidentiary question of law for this tribunal to resolve prior to proceeding to the substantive claims in the appeal, which is

"How may a NEPA review be confirmed when inventory information that must be provided to the public for 966 sites that are subject to mandatory closure has been claimed to be confidential?"

The Organizations submit that as a matter of law the 51% of the possible cultural sites identified as "ineligible for listing" on the National Register (966 of 1,854 sites identified) are no longer subject to confidentiality provisions of a §106 designation. **Rather as a matter of law, inventory information regarding ineligible sites must be released to the public and simply has not been released.** The continued illegal withholding of this information has materially and directly impacted the Organizations ability to meaningfully comment or review the proposed mandatory closures any routes that have been lost due to possible cultural resource issues. The Organizations vigorously assert that the agencies must not be allowed to flagrantly disregard regulations waiving claims of confidentiality to avoid the public review process of NEPA and then hide behind claims of confidentiality on appeal. Such a position is both illegally and morally reprehensible.

As a matter of law, the confidentiality provisions of a §106 review are ineligible to sites that are found ineligible for listing on the National Register of Historic Places and are being addressed in

¹¹ See, Council on Environmental Quality- Executive Office of the President and Advisory Council on Historic Preservation; *NEPA and NHPA- A handbook for integrating NEPA and Section 106* (March 2013) at pg 23.

the NEPA process. The Organizations vigorously assert that determining a site is "not eligible" for management renders the site outside the protection of §106 as information must be disclosed in the public process of analysis of multiple uses under NEPA. **Under historic preservation laws, the release of information regarding the determination that a site is "ineligible" for listing is mandatory.** These regulations specifically provide:

(1) No historic properties affected. If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § [800.16\(i\)](#), the agency official shall provide documentation of this finding, as set forth in § [800.11\(d\)](#), to the SHPO/THPO. **The agency official shall.... make the documentation available for public inspection prior to approving the undertaking.** (i) If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.¹²

The illegal withholding of additional information on sites not eligible for listing on the National Register has directly and materially impacted the Organizations ability to comment at the site specific level. §106 experts clearly identify the scope of the §106 process and confidentiality in relation to continued analysis of sites under NEPA as follows:

"You may, of course, come out of the identification process having found nothing that's eligible for the National Register. In this case, you determine that no historic properties will be affected and give the SHPO/THPO and other consulting parties thirty days to comment, and if the SHPO/THPO does not object within that time, your through with Section 106 review. **You may have to deal with ineligible properties under NEPA or other laws, but section 106 review is done.**"

Representatives of the Organizations have repeatedly and vigorously requested supporting documentation to address the basis for mandatory closures of all historical sites, even those 966 sites found ineligible for listing on the National Register in the GJFO planning process. These requests have taken many forms, including formal FOIA requests. When these written requests were declined based on confidentiality and predecisional documents claims, the Organizations sought to obtain information in a more informal manner, such as requesting on site visits with staff to trails in historic areas during quarterly meetings with the GJFO. The Organizations submit that the information on historical sites was not predecisional as the §106 process is entirely

¹² See, 36 CFR 800.4(d)

separate from NEPA and concludes with determinations regarding eligibility of sites as a matter of law. Even these informal site visits have been declined due to confidentiality issues.

The Organizations submit that additional documentation addressing eligible sites could have been easily redacted from the complete inventory of cultural sites to remove confidential information regarding eligible sites and significant additional information regarding ineligible sites could have been provided to support the mandatory closures of areas in the NEPA process that were found ineligible for listing. The GJFO chose not to proceed in this manner and instead chose to create a simplistic summary worksheet in violation of regulations requiring the release of this information. The Organizations vigorously assert that the fact pattern in the **Block** decision, discussed subsequently, precludes this type of summary worksheet and withholding of underlying inventory information.

The Organizations submit results in the application of §106 confidentiality provisions in a manner that allows continued claims of confidentiality for ineligible sites is a direct violation of federal law. The Organizations vigorously assert this illegal withholding of information has directly and materially impaired the ability of the public to undertake site specific comments on route closures based on cultural resource concerns. The Organizations are simply unaware of any provisions outside §106 that provide for unilateral claims of the confidentiality of sites or artificial limitations on the scope of review by agency in the NEPA process. Such a position would directly conflict with one of the foundational hallmarks of NEPA analysis, mainly a full and fair public process of the agency decision making process regarding mandatory closures around cultural sites. The Organizations further submit that mandatory balancing of usages regarding closures of ineligible sites simply cannot be legally sufficient in a multiple use balancing decisions with evidence provided in Appendix I of the FRMP. That information is routinely limited to descriptions of "open lithic" or "open camp" that "needs data or assessment" for sites that are ineligible for listing. These descriptions are additionally insufficient to justify the limited range of management alternatives that are provided for sites that are ineligible for listing.

The Organizations further submit that the prejudice to the public resulting from the illegal assertion of confidentiality cannot be mitigated by an in camera review of the documents with the court to review the basis and scope of redaction of information. There simply has been no information provided to review in this manner and undertaking such a review would be a violation of the mandatory requirements of public disclosure of this information. The Organizations submit that failing to provide the basis for mandatory closures to all surface disturbing activities being imposed on the 966 sites found ineligible for listing is a reversible decision on appeal.

4a(ii). Analysis of cultural sites in order to balance multiple usages is highly site specific process.

A large number of trash scatters, open lithics and open camps on the inventory making detailed site specific information and analysis highly relevant. The Organizations are aware of a wide number of trash scatters and open camp sites that have been excavated and inventoried in the GJFO planning area. As more specifically outlined later in this appeal, the results have not yielded information or resources that are wither important or significant, and as a result the Organizations submit that justification of closures of these areas is simply impossible as they are of limited value.

Cultural resource experts have provided the following outline of how to deal with these types of sites as follows:

"But of course there has to be a rule of reason. The scatter of beer cans along the roadside is not something that "might be eligible" - unless of course the road is pretty old and the people who drank the beer out of the cans were pretty important. Well where do you draw the line? As usual, it depends. Age is part of the answer. Last nights beer cans don't plausibly make up a site that might be eligible for the National Register, but a scatter of cans from 75 years ago just might. Association is another factor. Your cans or mine don't make an eligible site, but cans left by the first Vulcan expedition to Earth would be another matter.

"¹³

Other experts have addressed this issue as follows:

"Good decisions about the importance of archeological data and about appropriate data recovery and analysis should be based on everything that we have learned to this time. Instead site significance and data recovery plans are too often treated as if these were the first sties of this type we have ever seen and the first ones we have dug. This means we end up not only reinventing the wheel but inventing the wheel over and over again." ¹⁴

As both these national experts clearly identify, the fact that there are artifacts in an area, does not make it eligible for protection or management. The Organizations submit that these types of

¹³ See, Thomas F King; *Cultural Resource Laws and Practice*; 4th Edition 2013 Altamira Press at pg 138.

¹⁴ See, Jennifer Richman et al; *Legal Perspectives on Cultural Resources*; 2004 Rowan and Littlefiled Publishers; at pg 11.

situations are exactly why the information regarding ineligible sites must be made public and why a balance of uses is important. Each site should not be treated as if it was the first site of this type ever identified. Unfortunately that is exactly the type of determination that has been made by the GJFO and must be reversed.

4b. Withholding of information on ineligible cultural sites is a per se violation of NEPA requirements.

In addition to the withholding of specific information on the 966 ineligible sites directly violating historical preservation laws, such a position violates both the spirit and requirement of sufficient public involvement in NEPA analysis and relevant case law applying these NEPA standards. Courts have routinely reversed NEPA decisions when there is a failure to provide supporting documents for public review. Courts have also clearly stated that when agencies seek to provide a worksheet instead of the underlying documentation do so at their peril, such as the roadless area inventory worksheet that was reversed in the **Block** decision. The Organizations submit that the GJFO prepared exactly the type of worksheet Courts have found to violate NEPA in the analysis of cultural resources on the GJFO, despite mandatory requirements for release of all information on sites found ineligible for listing. This was done so at the GJFO peril and risk, and the Organizations submit this worksheet is facially insufficient as no additional information is provided between sites eligible for listing and those found ineligible for listing on the National Register. This violation has directly and materially negatively impacted the Organizations ability to address sites and routes on a specific level.

In a NEPA proceeding, education and involvement of the public as to the basis and process of analysis utilized by the agency for decisions is one of the hallmarks of the proceeding. The Organizations submit that public involvement as a foundational principal in the NEPA process is woven throughout those regulations to such a degree as to make specific citation to each provision impossible. However, the Organizations submit that there are two specific provisions of the NEPA regulations that directly relate to the proper levels of public involvement in agency documentation as to warrant specific discussion. NEPA provisions specifically address the need to make related agency materials available for public review as part of the NEPA process. These provisions explicitly and clearly provide:

"If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to

the public before the decision is made any part of that document that relates to the comparison of alternatives."¹⁵

NEPA regulations further specifically address underlying documents and the broader scope of disclosure of these documents in the NEPA process as follows:

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. ¹⁶

Courts reviewing NEPA analysis where critical inventory information has been withheld have uniformly held not only EIS, but also the data and documents on which EIS rely, must be available and accessible to the public. If such materials are not readily available to the public, an agency is barred from invoking them in Court in defending the adequacy of the analysis and that failure to disclose this information is a reversible error under general NEPA analysis. The Courts have explicitly stated in matters addressing the intentional withholding of supporting documents in the NEPA process that:

"Second, in any event we conclude that the worksheets cannot be fairly considered as part of the RARE II Final EIS. **It is settled in this circuit that any supporting data or studies expressly relied upon in an EIS must be "available and accessible" to the public.** *Trout Unlimited, Inc.*, 509 F.2d at 1284. The WARS worksheets, however, are scattered all over the country in various Regional Foresters' offices, dooming any practical attempt to review comprehensively the worksheets. Given this inaccessibility, the worksheets may not be considered in determining the RARE II Final EIS's adequacy. "¹⁷

The Organizations submit that the Courts have had numerous opportunity to review summary worksheets prepared in the NEPA process for the public, similar to the **Block** Court determination above. The Courts have strictly required that in NEPA all underlying documentation to the determinations outlined in a worksheet must be made public, despite the worksheet being developed. The burden to release information is made higher with the GJFO inventory as in

¹⁵ See, 40 CFR 1505.1(e)

¹⁶ See, 40 CFR 1506.6(f)

¹⁷ See, *California v. Block*, 690 F.2d 753, 765 (9th Circ, 1982) ; See also, *Trout Unlimited v. Morton*, 509 F.2d 1276, 1284(9th Circ 1974).

addition to the public process required by NEPA, relevant regulations specifically require the release of all information on sites found ineligible for listing on the National Register.

The Organizations would be remiss if the similarity of the summary outline of decisions made in the roadless area inventory situation overturned in the **Block** Court decision and the GJFO handling of cultural resources inventory were not addressed. In both matters, site specific inventory information was withheld in favor of a worksheet style scoring summary of factors being provided to the public to outline the factors alleged to be used in balancing usages in the NEPA process. The **Block** Court decision directly addresses this policy as follows:

"Second, little explanation is given to justify the numerical values given these variables. The Final EIS, for instance, offers no explanation of how resource output levels were assigned to each area. The EIS states that the levels "may appear to have been arbitrarily selected but, in fact, represent a realistic establishment of acceptable resource trade-offs to provide various alternative approaches." RARE II Final EIS at 21. The Final EIS, however, does not explain what the tradeoffs were or why they were considered acceptable or realistic. *California v. Bergland*, 483 F.Supp. at 490. **Rather than utilizing the Final EIS as an instrument for airing the issue of resource demand, the Forest Service instead shrouded the issue from public scrutiny behind the claim of administrative expertise.**"¹⁸

The Organizations submit that as further information regarding the nature of ineligible cultural sites simply is not confidential, as the Agency completely lacks authority to unilaterally assert privilege in a NEPA proceeding, which is clearly stated in Federal Law. The GJFO has asserted the same administrative expertise in their worksheet as was found insufficient in the **Block** decision and intentionally withheld underlying information on cultural sites. This withholding of information is made even more egregious that the situation in the Block decision by the fact that all information regarding ineligible sites must be released to the public under federal law.

As a matter of law, GJFO is now precluded from relying on any illegally withheld information to substantiate the basis for their decisions to preclude all usage of the 966 sites found ineligible for listing on the National Register. The Organizations vigorously assert that when the entirety of evidence to support the mandatory closures of any area and artificially limited range of Alternatives for the management of ineligible areas under multiple use tenants is "open camp" or "open lithic" that "needs data or assessment", such a position is insufficient as a matter of law. The Organizations submit the unilateral and illegal decision to continue to treat ineligible

¹⁸ See, **Block** at 767.

sites as confidential directly evidences the priority position that these sites have been continuously provided in the NEPA balancing of multiple uses. The Organizations vigorously assert that the illegal withholding of information regarding ineligible sites has materially and directly impaired the public's ability to comment on the decision making process and address site specific issues on appeal.

As no information regarding cultural sites has been provided under an illegal assertion of confidentiality, the agency must be precluded as a matter of law from relying on any additional documentation to support management of these sites. Such reliance would be a direct violation of NEPA requirements. The Organizations submit that this preclusion applies to all phases of review, including a possible in camera review of evidence by the Court. The Organizations submit that the continued application of confidentiality claims under §106 to ineligible sites is a violation of NEPA planning requirements of a full and fair public involvement in the decision making process. The Organizations submit that any additional documentation on this issue is precluded from the administrative record as a matter of law and that as a matter of law both the decision to apply mandatory closures and a limited range of alternatives for management of these sites are unsustainable under multiple use management requirements. The Organizations submit the ROD and related documents must be reversed, multiple usages rebalanced for these areas and all information relied on in this process made available to the public for review. Again, the ROD must be reversed and returned to the Field office for a full and fair public process to be provided regarding the areas ineligible for listing on the national register and a proper review of multiple usage of all areas.

5a(i). The mandatory exclusion of all surface disturbing activities from cultural sites directly conflicts with national BLM standards which identify benefits of a designated trail system.

The Organizations vigorously assert that the determination that all cultural resources will be managed as a trustee would manage a trust rather than in compliance with multiple usage mandates has directly impacted the range of alternatives for site specific management that were provided to the public. The Organizations submit this failure is arbitrary and capricious and a per se violation of NEPA planning requirements and has limited the range of alternatives available for particular sites. CEQ regulations specifically address the proper range of alternatives in a NEPA analysis as follows:

"§ 1502.14 Alternatives including the proposed action. This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental

impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits."¹⁹

Newly released CEQ guidance documents address the relationship of NEPA and proper satisfaction of the informational requirements and historic preservation statutes clearly identify the range of alternatives and data quality for cultural resources to be provided in an EIS as follows:

"The CEQ regulations require agencies to describe the environment, including cultural resources, likely to be affected by the proposed action and alternatives, and to discuss and consider the environmental effects of the proposed action and alternatives, so decision makers and the public may compare the consequences associated with alternate courses of action. **Data and analysis vary depending on the importance of the impact, and the description should be no longer than necessary to understand the effects of the alternatives, with less important material summarized, consolidated, or referenced.**"²⁰

The Organizations are deeply concerned that the FRMP addressed cultural resource protection by adding 15 new standards for the management of these areas.²¹ These 15 new standards are **exactly the same** for every alternative, causing the Organizations to believe there was simply no intent to balance usages, as there was 45 different opportunities to balance usage and none were ever taken. The GJFO standards simply manage these areas as trustee would manage a trust. At no point is there any language that even references possible flexibility for balancing of multiple uses in the GJFO standards in order to account for cultural sites that were not eligible for listing on the National Register or might otherwise be of less value. Rather the GJFO simply treats each site as if it were exceptionally high value and without other usages, and fails to provide the public any information to address other usages at a site specific level.

¹⁹ See, 40 CFR 1502.14

²⁰ See, Supra note 9 at pg 16.

²¹ See, FRMP at pgs 2-134 to 2-136

The Organizations submit that there are clearly Alternatives for management of cultural resources that have not been explored in NEPA analysis, instead the determination was made early in the management process that cultural resources would be managed under standards of a trustee managing a trust rather than as a balanced usage. The Organizations further submit that proof of viable alternatives not being provided is directly evidenced by the fact that cultural resource management standards in the GJFO FRMP result in the application of standards that Congress has specifically determined are not appropriate for cultural sites, such as mandatory closures around routes and are simply unrelated to the historical usage of the site. The Organizations are again unable to appeal this issue at the site specific level as no information has been provided to the public regarding how management decisions were made or the locations of routes that were closed due to cultural resource concerns.

The Organizations submit that the limited range of alternatives provided for the management of OHV travel in association with cultural resource sites in the GJFO RMP becomes immediately apparent when GJFO management is compared to national BLM guidance for the use of OHV's in association with possible cultural resource sites. The national BLM guidance issued to supplement manual 8110 provides for a wide range of management alternatives to allow for continued OHV usage around these areas.²² The Memorandum starts the analysis by identifying categories of usage that are outside the cultural resource management issue as follows:

"Potential for Adverse Effect: The potential effects of proposed designations differ according to the extent of anticipated change in OHV use.

A. Proposed designations that will not change or will reduce OHV use are unlikely to adversely affect historic properties and will require less intensive identification efforts. These include designations that (1) allow continued use of an existing route; (2) impose new limitations on an existing route; (3) close an open area or travel route; (4) keep a closed area closed; or (5) keep an open area open."

Given that 40% of the GJFO remains managed as an open riding area designation and clearly there are routes that could be kept open, the Organizations submit that there are clearly alternatives that could have been developed to preserve access. No site specific analysis or discussion is ever provided as to why these alternatives were found insufficient to protect cultural

²² See, BLM Instruction Memorandum No 2007-030; *Clarification of Cultural Resource Considerations for Off Highway Vehicle (OHV) designation and travel management; Program areas: Cultural resources; Recreation; Planning* ; Dated December 15, 2006 A copy of this memorandum is available here http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2007/im_2007-030_.html .

resource sites. Such an alternative would be highly viable in areas that lack data or are ineligible for listing on the National Register, which encompasses 78% of the sites identified in the inventory. The Organizations submit this complete lack of analysis is direct evidence of the determination that all cultural resources would be managed as a trustee managing a trust rather than as a balanced multiple use of public lands. The management alternatives provided in national BLM memorandum clearly could have been reflected under one alternative of the 15 new categories of management. This simply was not done.

In addition to the above landscape level discussion of alternatives for these areas, the Memorandum continues with an extensive discussion of the relationship of travel management standards to the value of the historic site and alternative that are available to avoid closure of the route. These provisions specifically provide:

"D. Development of Planning Alternatives: Selection of specific road and trail networks and imposition of other use limitations, should avoid impacts on historic properties **where possible**. In accordance with 43 CFR 8342, existing cultural resource information must be considered when choosing among the range of alternatives for the design of a planning area travel system, including the potential impacts on cultural resources when determining whether each of the routes or areas in a planning area should be designated as open, limited, or closed. **Sensitive resource areas may be protected through rerouting, reconstruction, and new construction, limitations on vehicle type and time or season of travel, in addition to closure.** Evaluation of routes or areas to be designated as closed to protect cultural resources may be based on existing inventory information and should not be postponed until additional information is acquired. "

The Organizations submit that any position asserting mitigation of impacts by rerouting, reconstruction and limitations was not possible at all of the 1,894 sites identified in the inventory clearly lacks factual or rational basis. The Organizations submit that the complete lack of factual basis in such an assertion clearly evidences that alternatives that were available and simply never provided for public comment or analysis for reasons that are unclear. The Organizations are not able to address these impacts at the site specific level as this information simply has not been provided to the public in violation of a wide range of federal statutes. Again the BLM must not be allowed to illegally claim confidentiality, limit alternatives and then assert that appeals are insufficient.

5b(i). Determining the proper scope of protection and implications to multiple usages in the GJFO ROD simply cannot be addressed as 78% of sites need data or are ineligible for listing.

As more specifically addressed later in this appeal, the impacts of economic contributions flowing from spending and jobs was expanded by more than 7 times from draft to final versions of the RMP, yet no explanation of why the allocation of cultural resources was not impacted by this change has even been attempted. The Organizations submit that even without this change the lack of alternatives for management of possible cultural sites is immediately apparent when the allocation of sites to use categories and eligibility of sites is reviewed. Every alternative in the draft and final EIS had the same management standards associated with usage categories. These usages are summarized as follows:

<u>Use Category</u>	<u>Mandatory closure</u>	<u># of sites in Draft</u>	<u># of sites in Final</u>
Scientific	100m	1,574	1,574
Conservation	100m	4	4
Traditional	200m	135	135
Public usage	100m	95	95
Experimental	n/a	79	79
Discharge	n/a	7	7
TOTAL		1,874	1,874

While the analysis of possible usages of cultural sites is clearly highly site specific, as noted by experts previously in this appeal, at no point is there a change in any portion of this allocation throughout the public process. The Organizations are again unable to appeal the placement of any site in a particular use category as this information has simply never been provided to the public. The Organizations submit that this consistency of usage allocation is again direct evidence that the public was simply never provided the necessary information on site specific issues that might arise in the uniform management of these sites.

After a summary of the eligibility analysis in appendix I is prepared, additional basis for concern regarding the limited range of alternatives becomes immediately apparent as 78% of sites are identified as ineligible for listing, needing analysis or needing data. That summary of appendix I eligibility provides the following conclusions:

<u>Eligibility of site for Listing</u>	<u>Draft</u>	<u>Final</u>
Actively on National Register	3(.1%)	3 (.1%)
Possibly eligible for listing	398 (21%)	398 (21%)
Lacking data/assessment	520 (27%)	520 (27%)
Not Eligible	966 (51%)	966 (51%)
Released from further	7 (.3%)	7 (.3%)
Total	1,894	1,894

These eligibility criteria in no way relate to the classification of usage, again causing the Organizations to submit that the lack of data in no way was addressed in planning and has precluded public comment on site specific issues. Clearly the lack of data or ineligibility would warrant a higher percentage of these sites being in lower protection areas if balancing of usages had occurred. That simply did not happen. There simply can be no comparison of impacts from various management alternatives, as none have ever been provided despite the fact that 78% of sites have been identified as ineligible for protection on the National Register or completely lacking data for analysis. As 78% are lacking data or ineligible for listing there is a high degree of discretion in decision making that has been performed on these sites but no analysis or information has been provided to the public to provide insight into this process and how a proper balance of multiple usage was insured. Again, only 7 sites being released from management due to the impossibility of future management is a significantly different standard that a balanced approach to management of areas suitable for further management.

5b(ii). The scope of what a surface disturbing activity encompasses is simply never defined, making meaningful site specific analysis impossible.

The offensive lack of information provided to the public regarding the management of cultural sites is not limited to just site specific geographic information. Basic management standards for these areas simply are never defined in the ROD and related documents. The Organizations are aware that these terms have been used in Sage Grouse management, but the scope of the term has been the basis for vigorous discussion between BLM and the public. The Organizations submit that any expectation of public comment and meaningful analysis is without factual basis when the proposed management standards are not discussed. While 78% of sites simply have no data or are found ineligible for listing, all sites is subjected to a minimum 100m exclusion of all surface disturbing activity,²³ 135 sites are governed under a 200m mandatory closure to surface disturbing activity.²⁴ While the term surface disturbing activity is critical to understanding the closures, the term "surface disturbing activity" is simply never defined in the GJFO RMP, causing further concern about the ability to consistently address impacts from management at the site specific level. How can there be any argument that usages were balanced for these areas when the plan completely fails to define for the public what is and what is not a permissible usage?

²³ See, FRMP page 2-130-

²⁴ See, FRMP pages 2-132

While the term surface disturbing activity is not even defined in the GJFO RMP, the term "surface disturbing activity" is the basis for active and vigorous discussions in Sage Grouse management, which relies on the following definition:

"Surface-disturbing activities. An action that alters the vegetation, surface/near surface soil resources, and/or surface geologic features, beyond natural site conditions and on a scale that affects other public land values. Examples of surface disturbing activities may include: operation of heavy equipment to construct well pads, roads, pits and reservoirs; installation of pipelines and power lines; and the conduct of several types of vegetation treatments (e.g., prescribed fire, etc.). Surface disturbing activities may be either authorized or prohibited."²⁵

The Organizations are forced to assume that a similar standard has been developed for site specific cultural resource management but at no point is this term defined. NEPA requirements mandate that basic information such as this be provided to the public. Federal law has mandated protection of historical sites only if they are significant or important, and as a result mandates some type of site specific review on at least these issues before management standards can be determined. While additional sites may be managed under agency discretion, all management decisions must be balanced as a multiple usage of public lands and not as a trustee would manage a trust. The failure to balance multiple use in proposed cultural areas simply cannot be accurately addressed in this appeal/protest as much of the information needed to create a meaningful appeal/protest on this issue has simply been withheld. The failure to provide this information makes any appeal of specific impacts from the limited range of alternatives impossible. The Organizations submit that a designated trail system in these areas would effectively mitigate impacts to lesser important sites and make complete closure unnecessary, but such a site specific mitigating factor cannot be explored because the necessary information has been withheld.

5b(iii). Management standards provide no flexibility to address localized geographic issues which will result in significant unintended economic impacts.

The Organizations submit that the failure to balance multiple uses is also evidenced in the FRMP failure to provide any flexibility in management standards for localized issues. This lack of flexibility will cause the loss of opportunities in areas that are completely unrelated to the possible cultural sites, as many areas of the GJFO are exceptionally rugged and have limited areas where routes may be placed. While the access point to a large recreational area may be in a geographic bottleneck, opportunities that would be lost by closing the bottleneck would be significant as the bottleneck closure would result in the loss of opportunities beyond the

²⁵ See, DOI, BLM Northwest Colorado Greater Sage-Grouse Draft LUPA/EIS August 2013 at pg 1027

bottleneck. In many areas of the GJFO trails are forced into canyon and river bottom areas due to geography and then continue on to access larger high value recreational opportunities beyond the canyon area. It is simply unreasonable to assert that localized access can be preserved if a cultural site is in the bottom of a canyon that is also the location of an important route using the canyon bottom to access other areas. Closure of the 100 or 200 meters around the site could block a route and preclude all access to a large areas of the GJFO that are miles from the cultural site for a huge number of activities. Again this situation directly evidences the failure to properly balance site specific issues as part of the multiple use process.

5c. Mandatory closures of all possible cultural sites conflicts with national objectives for the utilization of historical sites.

The Organizations submit that the mandatory closures of all historical/cultural sites to surface disturbing activities in the GJFO RMP/ROD directly conflicts with management by other agencies in the Department of Interior for historical sites. The Organizations vigorously assert that such a programmatic conflict directly indicates that there are serious issues with the landscape level management decisions when they are applied at the local level. In contrast to the GJFO mandatory closures of all cultural sites to surface disturbing activity, the website for the National Register of Historic Places actively identifies 9,495 sites nationally that are vacant and solicits usage as these sites which may be an ideal location for your next home or business.²⁶ The arbitrary and capricious nature of the GJFO management is immediately apparent when compared to these utilization efforts, as living in a property is probably a surface disturbing activity.

Further programmatic conflict results as National Trust for Historic Preservation provides links to specialized realtors who specialize in connecting homes on the National Register of Historic Places with potential buyers.²⁷ The states of New Hampshire, Arkansas historic preservation offices facilitate the purchase of historic homes as primary residences. The Organizations would be remiss if they did not note that residing in a historic property is probably a surface disturbing activity and would now be prohibited under GJFO management standard. Again these programs directly evidence the kind of multiple use impacts that weigh heavily against imposition of blanket landscape level closures and the arbitrary and capricious nature of the determination that surface disturbing activities must be prohibited as there is a direct conflict with these programs and GJFO management.

²⁶ <http://www.nationalregisterofhistoricplaces.com/>

²⁷ <http://historicrealestate.preservationnation.org/>

6. GJFO management of cultural properties violates Federal law requirements of protection of sites that are important or significant.

The Organizations believe the protection of significant cultural sites is an important planning criteria. While this is an important planning criteria, the Organizations are aware that all historical sites are not significant and cannot be saved for a variety of reasons. The requirement of "significance" is an important factor in determining the proper levels of management and analysis of historical sites in the planning process. This determination also significantly impacts the amount of information on a site that is made available to the public. The Organizations are completely unable to challenge the importance or significance of any site in the GJFO, as no information on this issue has been provided to the public in the analysis. The summary worksheet provided to the public again fails to address these criteria and fails to provide information sufficient to allow the public to review these findings.

Prior to addressing the facial violations of federal law that are present in the FRMP standards for cultural sites, the Organizations believe a review of relevant federal statutes is warranted as these statutes provide exceptionally clear management standards. Federal law governing cultural resources provides a general standard to address cultural resources as follows:

"The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register."²⁸

The Organizations again submit that §106 provides a vigorous inventory methodology to insure cultural resources are balanced in multiple usage decision making and provides no priority for these sites in the multiple use process. Pursuant to the rules and regulations promulgated under §106, the "significance" of the cultural site and resulting eligibility of a site for designation on the National Register is a primary factor in determining if there is required management to be addressed in planning. The CFR provisions specifically provide:

"(c) Evaluate historic significance. (1) Apply National Register criteria. In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified

²⁸ See, 16 USC §1780f.

properties and guided by the Secretary's Standards and Guidelines for Evaluation, the agency official shall apply the National Register criteria (36CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) *Determine whether a property is eligible. **If the agency official determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible.*** If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility."²⁹

The need for findings regarding the "significance" or "importance" of a site to trigger mandatory management of historical places are specifically outlined in the BLM manual in a manner that is consistent with federal law. The manual specifically states:

"E. The National Register Criteria. A district, site, building, structure, object, traditional cultural property, historic landscape, or discrete group of thematically related properties, that represents America's history, architecture, archaeology, engineering, or culture may be eligible for the National Register. To be judged eligible, a property must possess integrity of location, design, setting, materials, workmanship, feeling, and association, and must meet at least one of the following criteria:

1. Property is associated with an event or events that have made a **significant** contribution to the broad patterns of America's history. (Corresponds to 36 CFR 60.4 criterion "a".)
2. Property is associated with the lives of persons **significant** in our past.

²⁹ See, 36 CFR §804c.

(Corresponds to 36 CFR 60.4 criterion “b”).)

3. Property embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic value, or represents a **significant** and distinguishable entity whose components may lack individual distinction. (Corresponds to 36 CFR 60.4 criterion “c”).)

4. Property has yielded or may be likely to yield information **important** in prehistory or history. (Corresponds to 36 CFR 60.4 criterion “d”).³⁰

While the lack of importance or significance does not preclude management, these factors clearly must relate to the level of management and usage of sites. Logically lesser significant sites would be allocated to usage categories with lower levels of protection, but in the GJFO planning process no information is provided on site specific importance as all sites are subjected to mandatory management.

The Organizations believe the GJFO has completely erred in its determination that every site now and in the future will satisfy the "significance" factor and permit additional management. As previously noted the findings of significance in the GJFO planning process are deeply inconsistent with the findings of significance by outside reviewers in the State of Colorado. No information is provided regarding the nature or location of cultural sites due to confidentiality requirements making any analysis difficult, if not impossible. Furthermore existing recreational usage of several sites is identified but not accounted for in planning.

The limited site specific summaries (95 of 1,894) directly evidence an overly broad application of protection for sites that are neither significant or important including:

- old road and rail beds;
- recorded telegraph lines and abandoned power lines;
- irrigation ditches on adjacent private lands;
- buried pipes and abandoned irrigation ditches;
- fences of unknown origin;
- two track roads of unknown origin and trails

The flagrant disregard for federal law and balancing multiple usage exhibited by these standards is simply astonishing and completely lacks factual or logical basis, as directly evidenced by the fact the GJFO plans to protect more site in the Field Office than are currently on the national register for the entire state of Colorado and three times as many sites as are currently in Washington DC. This standard also fails to address that many cultural experts in and around

³⁰ See, BLM Cultural Resources Manual 8110 at 8110.32E.

Grand Junction admit that many of these marginally significant historical sites will simply never be excavated, as specifically noted in the sections of this appeal addressing wickiups. The Organizations believe that the lack of funding for such excavations is evidence of the lack of belief these areas will yield significant archeological information.

The Organizations are aware there is no mandate that a site be eligible for listing on the National Register of Historic Places in order to be managed as a historical site, however the ineligibility of a site for protection **must** be addressed in planning. Tables I-2 through I-7 of the cultural resources appendix specifically conclude most sites to be managed for scientific values related to cultural issues are found "not eligible" for inclusion on the National Register. Only 398 of 1,894 (21%) are found possibly eligible for listing. The fact that 78% of sites were identified as not eligible or needing data weighs heavily against the levels of closures that are proposed. As previously noted only 7 of the 1,894 sites inventoried were found not to need additional management as a result of their destruction or sale. Again a review of the suitability for management based on multiple usage cannot be based on the exclusion of the site from management only because it was destroyed or sold and impossible to manage.

7a. Proposed management of all cultural sites in a manner similar to a trustee fails to address impacts of previous management in violation of federal law.

The Organizations vigorously assert that the FRMP cultural management standards again violate Federal law, as the management of all possible sites as a trustee completely fails to address impacts of previous management decisions and impacts to cultural resources that may have resulted from these management decisions. The Organizations submit that the impacts of previous management decisions has directly and significantly impacted the scale and quality of cultural sites that remain on the GJFO. As a result of previous management decisions, it is entirely possible that some percentage of the 1,894 sites now sought to be managed for cultural resources was previously inventoried and found unsuitable for additional management. This type of a determination would be highly relevant to the current management changes, but again the public cannot address these site specific issues because they are not provided the necessary information.

The FRMP proposes to protect 236 times the number of sites and more than 5x the number of acres for cultural sites as was identified in the 1985 RMP and 40% of the GJFO Field Office remains governed by an open riding designation for travel management. The Organizations are unable to find any information regarding the quality of the 1,894 new sites and how these sites have been previously managed in terms of travel management. Again, these site specific issues cannot be addressed by the public as all information on these issues has been withheld.

The Organizations submit that any assumption that previous management decisions have not significantly degraded these sites would lack factual or legal basis as there is no evidence to prove these areas were not reviewed previously and found unworthy of protection. Again the GJFO determination to manage all possible cultural sites as a trustee violates Federal laws mandating that the site specific management history of each cultural site must be addressed in new resource management, which specifically provides:

"The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and **the likely nature and location of historic properties within the area of potential effects."**³¹

The need for site specific analysis of the management history of each site to address possible impacts of previous management decisions as part of the management of cultural sites is again repeatedly addressed with far more specificity in the BLM NEPA handbook. The NEPA handbook specifically provides as follows:

"Scientific, cultural, or historical resources, including those listed in or eligible for listing in the National Register of Historic Places (40 CFR 1508.27(b)(8)). This factor represents a specific sub-set of the factor, "unique characteristics of the geographic area." **Significance may arise from the loss or destruction of significant scientific, cultural, or historical resources.** For resources listed in or eligible for listing in the National Register of Historic Places, significance depends on the degree to which the action would adversely affect these resources."³²

The BLM cultural resources manual specifically address the need to address possible site specific impacts of previous management decisions in several other locations as follows:

"(5) The human uses of the land and resources through time, as evidenced in the prehistoric and historic record, and the ways that this knowledge of successful and unsuccessful past adaptations might apply to decision making for current land use proposals." ³³

³¹ See, 36 CFR Part 800.4 (b)(1).

³² See, BLM NEPA Handbook 1790-1; January 2008 at pg 73.

³³ See, BLM Cultural Resources Inventory Manual- Manual 8110 @ 8110.21a(5).

The BLM cultural resources manual repeats the site specific nature of this standard as follows:

"d. Environmental Factors. Past and present environmental factors important for understanding the study area's prehistoric and historic human use and occupation, as well as factors affecting preservation, are discussed. Factors are those that describe the geographic system of the study area:

..... (6) The effects of human activity.

(7) The effects of time.

The factors are treated in terms of a dynamic, interactive system, and single-factor analyses are avoided."³⁴

As repeatedly and specifically noted in the BLM cultural resources manual, the proposed management standards are required to address how the precluded action or usage would adversely impact the specific resource to be protected at the site. This type of analysis can only occur at a site specific level and would normally be within the scope of appeal at this stage. This cannot occur as all information has been illegally withheld.

In the 1985 RMP, which is being replaced, all cultural resources are managed as follows:

"Cultural Resource Management - Eight sites covering about 11,600 acres would be actively managed as high value cultural resources. Active management includes inventory, stabilization, and protection from surface-disturbing activities."³⁵

The Organizations believe the requirement of site specific analysis of impacts resulting from previous management decisions is a major hurdle to the decision to management cultural sites as trustee, as closures simply will never improve a previously damaged cultural resource and allow for analysis in the future. The FRMP fails to account for possible impacts from previous management standards regarding the 1,894 sites now sought to be managed as cultural sites. The Organizations submit that any position asserting that previous management has not degraded these sites would lack factual or legal basis and would be arbitrary and capricious as a matter of law. The Organizations are unable to raise these site specific concerns as the locations of all sites are not made available to the public and at no point is the previous management of these areas addressed.

³⁴ See, BLM Cultural Resources Inventory Manual- Manual 8110 @ 8110.21a

³⁵ See, DOI BLM, Grand Junction Resource Area; *Resource Management Plan and Environmental Impact Statement* (November 1985) at pg 8.

Given that 42% of the GJFO is currently managed under an open riding designation, the Organizations are directly opposed to the closure of any area currently managed as an open riding areas for cultural issues. This management decision clearly may have impacted cultural sites previously and must be accounted for now. While it is unfortunate that previous inventory of cultural resources did not identify these possible resources as management issues, it does not alter the current status and lack of importance of these sites. In 1985 the GJFO analysis concluded these sites were marginal and not significant. These are areas where moving to a designated route system represents a viable management alternative that provides for a more balanced usage. Closing any area will simply not bring back resources that may have been lost due to previous inventory and management issues. Again these site specific issues cannot be addressed as no information has been provided to the public.

8a. There is simply no relationship between the proposed closure of several historic sites and the historic usage of the site.

The Organizations submit that the application of mandatory closures to all historical sites fails to address the historical nature and usage of each site and yields site specific management that are arbitrary as a matter of law and completely lacking any logical basis. The BLM cultural resources manual repeats the need to address the full history of the site and how it relates to any management standard proposed as follows:

"d. Environmental Factors. Past and present environmental factors important for understanding the study area's prehistoric and historic human use and occupation, as well as factors affecting preservation, are discussed. Factors are those that describe the geographic system of the study area:

..... (6) The effects of human activity.

(7) The effects of time.

The factors are treated in terms of a dynamic, interactive system, and single-factor analyses are avoided."³⁶

The limited site specific summaries (95 of 1,894) directly evidence an overly broad application of mandatory exclusion standards for protection for sites when compared to the historical usage.

- old road and rail beds;
- recorded telegraph lines and abandoned power lines;
- irrigation ditches on adjacent private lands;

³⁶ See, BLM Cultural Resources Inventory Manual- Manual 8110 @ 8110.21a

- buried pipes and abandoned irrigation ditches;
- fences of unknown origin; and
- two track roads of unknown origin and trails

The Organizations submit that the mandatory closure of old roads, trails and rail beds to multiple use recreation is arbitrary and capricious as a matter of law as the mandatory closure interferes with the historical usage and basis for the value in the site. Again as the public has not been provided any additional information beyond that noted above, these site specific issues simply cannot be addressed.

The Organizations further submit that mandatory closures for recorded telegraph line interests and buried pipes is arbitrary and capricious as a matter of law. The Organizations are unsure what historical value a recorded interest could be present and how mandatory closure protects an interest that is merely recorded in the county clerks office. The Organizations further submit that mandatory closure of areas over buried irrigation pipes simply has no basis in law or fact.

8b. Wickiups are frequently relied on for the basis for mandatory closures despite the limited importance and seriously deteriorated nature of these sites.

While wickiups are only mentioned briefly in the RMP, the Organizations believe that the management of these structures and associated areas is worthy of inclusion to address the lack of significance and importance of sites. This position is supported by the fact that there are a huge number of open camps or open lithics that are identified for mandatory closures moving forward. As noted previously in this appeal, beer cans do not make a site historic unless the people who drank the beer were very important or from the first Vulcan expedition to this planet.

³⁷ The Organizations further submit that a review of this issue allows for concrete examples of locations where management alternatives represent real solutions for protection of sites that simply are never even reviewed in the RMP and that site specific review must be looked at as an impact of landscape level standard for cultural resource management.

While there is limited information on these sites, it is clear that many of these sites are not eligible for mandatory protection as religious or burial sites for Native American societies previously living in the area. The Organizations believe these structures have been the basis for significant closures to motorized access in the GJFO, as there are numerous references to open and sheltered camps in Appendix I of the FRMP. Given the exceptionally deteriorated status of these sites and open camp would be an accurate summary of the resource. The Organizations

³⁷ See, Thomas F. King, supra note 6.

vigorously assert most of the wickiup sites on the GJFO are wholly insufficient to support designation on the National Register of Historic Places, and the overall poor condition must weigh heavily against any closures of access in the vicinity of these sites as most people will see at most a pile of sticks or small logs on the ground and pay not further attention to the pile of deteriorating trees.

Wickiups are briefly outlined in the FRMP as follows:

"The following sites of concern have been identified through consultation and would be a priority for nomination to the National Register of Historic Places and development of cultural resource management plans that would outline specific management objectives and actions for protection:

- Wickiup camps and open camps with definitive Ute occupation (associated to Ute rock art, artifact assemblages and/or trails);
- Isolated rock art;
- Culturally Modified Trees (includes Scarred and Prayer Trees); and
- Ceremonial features (e.g., eagle traps, vision circles, and special structures).

This list is in no way intended to be a comprehensive list and may continue to grow through consultation."³⁸

The Organizations believe that a definition of a wickiup is very relevant to concerns regarding importance and significance and the balancing of multiple uses, as most of the public simply is not aware of what a wickiup even is. This is a site specific issue that again cannot be addressed as basic information has been withheld. A wickiup is defined as:

"temporary conical and domed shelters and other brush and wooden structures have been constructed for millennia by the aboriginal inhabitants of the colorado river basin, just as they have throughout the world. based on the premise that in all temperate and harsh-weather regions of the world shelters were highly desirable, even necessary for human survival, it is likely that a significant percentage of prehistoric campsites in colorado included temporary shelters."³⁹

The Organizations believe that photos of a wickiup site are even more helpful in understanding what a wickiup site is as most people simply are not familiar with the term and are not able to

³⁸ See, FRMP 2-136.

³⁹ The Colorado Wickiup Project- Volume I- Context Data Assessment and Strategic Planning ; Domingez Archelological Research Group Inc; at pg 3.

form an accurate picture of what is being discussed from the definition. Often the public believes that wickiup sites are far more significant structures than they really are. The Organizations vigorously assert that neither one of the sites identified in the pictures are significant enough to warrant inclusion on the National Register of Historic Places, especially in their current deteriorated status. Given the sheer number of sites found on the GJFO, the Organizations believe these types of sites make up a large portion of the sites to be managed. Below is a well preserved Juniper Wickiup:



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This photo represents a "well preserved" but collapsed wickiup:

⁴⁰ *Id* photographic plate at pg 56.



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Given these pictures of "well preserved" wickiups, merely identifying a wickiup can be a significant concern. The Organizations are aware there are multiple volumes published to address wickiup research, and the Organizations encourage managers to review these volumes as they provide a significant review of the deteriorated condition and limited value items that are frequently identified at wickiup sites. This concern has been specifically noted by wickiup researchers as follows:

“ Identifying wickiups can be a challenge. Partially intact structures with standing elements or collapsed structures with well-preserved poles in an obvious radial pattern are relatively easy to recognize. All that may be left of highly deteriorated structures, however, are one or two decayed poles on the ground, a pole or two leaning into a tree, or a concentration of weathered juniper splinters.”⁴²

The ability of researchers to even locate a wickiup site and accurately analyze the site has resulted in several examples being provided in analysis documents to allow wickiup sites to be located if pictures are taken by researchers.⁴³ In addition to be hard to locate, deteriorated wickiup sites often are simply not subjected to scientific review:

“Wickiup sites will most often be encountered during surface inventories and **will only rarely be subjected to data recovery.....**”⁴⁴

⁴¹ *Id* – photographic plate at pg 70.

⁴² Rand A. Greubel, *Strategies and Methodologies for Investigating Wickiup Sites*; Presented at the Colorado Council of Professional Archaeologists Annual Meeting, March 5, 2005, Grand Junction, Colorado; at pg 1.

⁴³ See, Colorado Wickiup Project supra note 158 at pages 64-69.

⁴⁴ See, Gruebel supra note 161; at pg 2.

As previously noted, the Organizations have serious concerns regarding the site specific significance analysis provided for proposed cultural sites on the GJFO, and these concerns are directly substantiated by the common findings after analysis of a wickiup site. Researcher's findings at wickiup sites are summarized as:

“First, wickiup interiors should be examined for hearths as evidenced by fire-cracked rock, charcoal, or ash stains. Concentrations of juniper bark may be present, likely in highly deteriorated condition, representing floor covering, bedding, or clumps of fallen structure closing material Artifacts may be visible on the modern ground surface inside wickiups, including flaked and ground lithics, ceramics, metal and glass items, and beads. Finally, there may be hearth furniture such as large flat-topped stones that functioned as pallet stones, expedient tables, or bone-reducing anvils”⁴⁵

A review of the items found as a result of excavation of wickiup sites finds many items interesting and probably not of significance from a large scale historical perspective. The following photo reviews items found after excavation of a wickiup site:



The Organizations have to believe that the fact that most wickiup sites are not locatable by the public and probably will not be reviewed by scientists has to place these structures low on the priority list when compared with other multiple uses in the vicinity of the wickiup. Again these

⁴⁵ *Id.*

⁴⁶ See, Martin et al; *The Colorado Wickiup Project Volume V: Test Excavation of The Ute Hunters' Camp (5RB563) and the Documentation of Five Additional Aboriginal Wooden Feature Sites in Rio Blanco County, Colorado*; September 2010 plate 7

areas would be protected by the movement to a designated route system which would allow for a far more balance usage than that allowed under a mandatory closure standard as these are common sites not likely to reveal significant information.

The Organizations believe that management decisions, clearly made in violation of numerous planning statutes and federal law, similar to those outlined in this section have systematically plagued the GJFO FRMP development. The Organizations are simply not able to meaningfully comment on many of these site specific decisions as they are not discussed in the FRMP. Planners should not be able to make poor decisions and then benefit from their own failure to analyze or explain the basis for these decisions as part of a balancing of multiple usage.

9. Only one wickiup site is currently on the national register in Colorado.

With the issuance of several grants, BLM has successfully developed a significant body of research regarding wickiups and the cultures associated with them. While the body of work that has been generated is very interesting, the work has not developed a large amount of support for the preservation of wickiups under more general historic preservation initiatives, such as state and federal registers of historical places. The Organizations have to believe that attempts to generate public support for protection of these sites may be difficult too. A review of the Colorado register of historic places reveals only the Duck Creek Wickiup Village in Rio Blanco County has been designated as a historic site.⁴⁷ The Organizations have to note that this is a significantly refurbished location that simply is not comparable to the wickiups in the GJFO.

Given the sparse density of the wickiups in the Debeque area and on other areas of the GJFO, the Organizations have to question is sufficient concern regarding these structures to warrant development of management standards that effectively close thousands of acres to multiple usage for these structures in the FRMP. The Organizations have to believe that the generally unidentifiable status of most of the sites had to weigh heavily in the decision not to designate these areas as historically significant.

Wickiups provide a concrete example of an area that could be significantly preserved by moving to a designated trail system while preserving the benefit to local economies that results from recreational usage of the trail that is preserved. Motorized recreation has been addressed as a possible management concern for wickiup sites, however these concerns are specifically mitigated by the GJFO going to a completely designated trail system.

⁴⁷ http://en.wikipedia.org/wiki/National_Register_of_Historic_Places_listings_in_Rio_Blanco_County,_Colorado

10. 68 trash scatters and dumps are identified in the inventory but no background information is provided to determine the site is important or significant.

The Organizations must express additional concern regarding the mandatory closures of all cultural sites identified as trash scatters and dumps. Again the position of nationally recognized experts on the proper management of these areas is the basis for direct concern about the balance of multiple usage on a site specific level. These experts specifically state:

"But of course there has to be a rule of reason. The scatter of beer cans along the roadside is not something that "might be eligible" - unless of course the road is pretty old and the people who drank the beer out of the cans were pretty important. "⁴⁸

Again the Organizations are opposed to the mandatory closure of 68 sites on the FO based on a blanket determination that the roads are pretty old, and only important people left their trash in these locations. Such a position simply lacks any factual basis and would be more specifically addressed if the information was available to the public as required by federal law.

11. Recreational economics simply have not been balanced in cultural resource management standards.

While the Organizations have serious concerns regarding the failure to properly balance multiple usage on the site specific level, the Organizations are even more concerned that serious recalculations of economic contributions and jobs from recreational activity was undertaken between the draft and final GJFO RMP. For reasons that remain unclear, the expansion of the economic benefits of recreation by a factor of seven was not sufficient to trigger any recalculation of the total number of cultural sites to be managed, categorization of these sites in their usage category or rebalancing of management standards associated with categories or alteration of usage at sites that are needing data or ineligible for listing. Not only is this a violation of multiple usage requirements, it is a per se violation of the higher standards of review that courts apply to agency determinations on economic benefits in the NEPA process. If the expansion of recreational spending to more than 7 times original estimates is insufficient to trigger any review, the Organizations have to question what the threshold for reviewing these classifications is.

The Organizations submit that a review of the legal standard for the review of economic issues applied by the courts to agency NEPA analysis is significantly more stringent than an arbitrary

⁴⁸ See, Thomas F King; *Cultural Resource Laws and Practice*; 4th Edition 2013 Altamira Press at pg 138.

and capricious review of traditional agency decisions balancing multiple usage. The Courts have clearly stated the significance of economic benefits in planning as follows:

"Misleading economic assumptions can defeat the first function of an EIS by impairing the agency's consideration of the adverse environmental effects of a proposed project. *See, South La. Env'tl. Council, Inc. v. Sand*, 629 F.2d 1005, 1011-12 (5th Cir.1980). **NEPA requires agencies to balance a project's economic benefits against its adverse environmental effects.** *Calvert Cliffs' Coordinating Comm. v. United States Atomic Energy Comm'n*, 449 F.2d 1109, 1113 (D.C.Cir.1971). "⁴⁹

The Organizations submit that any position that the expansion of recreational spending to more than 7 times original estimates would not impact cultural resource balancing is exactly the type of misleading economic assumption that must be overturned. The expansion of economic contributions and jobs from recreational activity in the GJFO planning area is significant and even more compelling when direct impacts are not summarized. The draft RMP summarizes the total recreational economic contributions to the Grand Junction planning area in 2029 as follows:

"Recreation would generate nearly \$7.2 million in total spending, \$4.4 million in total value added and 90 full-time equivalent jobs by 2029. Specific types of businesses in which spending occurred would be influenced by the type of recreational activities that the visitors participate in." ⁵⁰

In the FRMP significant additional information was reviewed to allow for a more accurate analysis of both local spending (Mesa and Garfield Counties) and out of region recreational spending. The FRMP provides the following analysis of recreational spending and recreational jobs from outside the planning region:

Table 4-98
2010 (Year 1): Compare Economic Impacts from Recreation
by Alternative (2014 dollars) Using NVUM Values

Impact	Alternative A	Alternative Proposed	Alternative C	Alternative D
Total Output (Spending)	\$ 23,690,421	\$ 23,927,322	\$ 23,288,986	\$ 23,685,495
Total Value Added (Income)	\$ 13,881,208	\$ 14,020,017	\$ 13,639,908	\$ 13,875,737
Employment	256.6	259.2	252.4	256.6

Source: IMPLAN calculations from BLM and NFS data

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⁴⁹ See, *Hughes River* Supra note 2 at pg .

⁵⁰ See, DRMP at pg 2-247.

⁵¹ See, FRMP at pg 4-478.

Garfield and Mesa county based recreational spending and jobs was also specifically identified in the FRMP as follows:

Table 4-101
2010 (Year 1): Compare Economic Impacts from Recreation
by Alternative (2014 dollars) for Mesa and Garfield Counties Using NVUM Data

Impact	Alternative A	Alternative Proposed	Alternative C	Alternative D
Mesa County				
Total Output (Spending)	\$ 23,394,419	\$ 23,628,360	\$ 22,997,826	\$23,389,480
Total Value Added (Income)	\$ 13,693,155	\$ 13,830,085	\$ 13,454,935	\$13,687,678
Employment	254.5	257.1	250.3	254.5
Garfield County				
Total Output (Spending)	\$296,002	\$298,962	\$291,160	\$296,015
Total Value Added (Income)	\$188,052	\$189,933	\$184,974	\$188,059
Employment	2.1	2.1	2.1	2.1

Source: IMPLAN calculations from BLM and NFS data

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The FRMP concludes that 516 jobs are related to recreational usage of GJFO lands and more than \$47.5 million in spending flows to the Colorado state economy. The Organizations would note this estimate remains significantly lower than the amount in many other research. When these amounts are totaled the change in both total spending and total recreationally related jobs is significant is staggering , as each category as expanded by almost 7 times the original estimates. While this expansion of recreational spending to 7 times its original value caused changes in many other multiple usages, cultural resource management simply did not change in terms of total number of sites to be protected or allocation of the sites to usage categories.

While the expansion of recreational economic contributions to more than 7 times original estimates caused changes in many other multiple usages, cultural resource management simply did not change in terms of total number of sites to be protected or allocation of the sites to usage categories. Every alternative in the draft and final EIS had the same management standards associated with usage categories. These usages are summarized as follows:

<u>Use Category</u>	<u>Mandatory closure</u>	<u># of sites in Draft</u>	<u># of sites in Final</u>
Scientific	100m	1,574	1,574
Conservation	100m	4	4
Traditional	200m	135	135
Public usage	100m	95	95
Experimental	n/a	79	79
Discharge	n/a	7	7
TOTAL		1,874	1,874

⁵² See, FRMP at pg 4-479.

After a summary of the eligibility analysis in appendix I is prepared, additional basis for concern regarding the limited range of alternatives becomes immediately apparent as 78% of sites are identified as ineligible for listing or needing data. That summary of appendix I eligibility provides the following conclusions:

<u>Eligibility of site for Listing</u>	<u>Draft</u>	<u>Final</u>
Actively on National Register	3(.1%)	3 (.1%)
Possibly eligible for listing	398 (21%)	398 (21%)
Lacking data/assessment	520 (27%)	520 (27%)
Not Eligible	966 (51%)	966 (51%)
Released from further	7 (.3%)	7 (.3%)
Total	1,894	1,894

The Organizations submit that the failure to balance multiple uses in cultural resource management is directly evidenced by the failure to change any aspect of cultural resource management after the economic contribution of recreation has expanded to more than 7 times its original estimate. Cultural resource management remained the single largest factor to be weighed in multiple usage process that caused route closures. The Organizations submit such a position directly violates the courts requirement that misleading economic assumptions must not be relied on in the NEPA process.

13. Conclusion.

The Organizations submit that cultural inventory site specific information has been illegally withheld for the 966 sites that are found ineligible for listing on the National Register, as relevant Federal law provides this information **must be fully released** to the public after a finding of ineligibility. The Organizations further submit that the inventory that has been provided is facially insufficient to balance multiple uses at any site with mandatory closures for sites that are often only identified as open camps needing data. This lack of site specific data has specifically materially prohibited the Organizations ability to appeal any of these issues at the site specific level. The Organizations submit that they remain wholly unable to locate any of the sites that are to be closed. The Organizations submit that rather than utilizing the Final EIS/ROD as an instrument for airing the issue of resource demand, the BLM instead shrouded the issue from public scrutiny behind the claim of administrative expertise. This expertise was incomplete at best as the decision directly conflicted with federal laws requiring release of inventory information on sites found ineligible for listing. The Organizations submit that similar imbalances of usages exist at many other cultural sites and simply have been hidden from the public under illegal claims of confidentiality.

It is the Organizations position that the analysis of site specific issues with cultural resource management under NEPA is insufficient, is arbitrary and capricious as a matter of law and fails to provide the hard look at issues mandated by NEPA. Additionally the proposed management of cultural resources fails to properly balance multiple use management standards with the protection of cultural resources, as the RMP seeks to manage possible cultural sites as a trustee would manage a trust rather than as a balanced multiple use of public lands. The Organizations submit that the closure of sites created by surface disturbing activities from further surface disturbing activities simply is arbitrary and capricious.

The Organizations are submit that massive recalculations of economic contributions and jobs from recreational activity was undertaken between the draft and final GJFO RMP. For reasons that remain unclear the expansion of the economic benefits of recreation by a factor of seven was not sufficient to trigger any recalculation of the total number of cultural sites to be managed, categorization of these sites in their usage category or rebalancing of management standards associated with categories or alteration of usage at sites that are needing data or ineligible for listing. Not only is this a violation of multiple usage requirements it is a per se violation of the higher standards of review that courts apply to agency determinations on economic benefits in the NEPA process. If the expansion of recreational spending to more than 7 times original estimates is insufficient to trigger any review, the Organizations have to question what the threshold for reviewing these classifications is.

The Organizations submit that the RMP/ROD must be returned to the FO and public input must be undertaken after all necessary information has been released to allow for meaningful public input. Please feel free to contact Scott Jones at 518-281-5810 or via email at scott.jones46@yahoo.com or via USPS mail at 508 Ashford Drive, Longmont, CO 80504 for copies of any documentation that is relied on in this appeal or if you should wish to discuss any of the concerns raised further.

Respectfully Submitted,



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Enclosures

