

**Monticello Field Office  
Bureau of Land Management  
P.O. Box 7  
Monticello, Utah 84535**

**Re: Comments – Arch Canyon Environmental Assessment**

Please accept and fully consider these comments on behalf of the Colorado Plateau Archaeological Alliance (CPAA). Founded in 2005, CPAA works to protect archaeological and historical properties on public lands throughout the West through sound scientific research into the causes and effects of adverse effects, through public outreach and education, and through cooperative projects with conservation and governmental entities. Our goal is to ensure that cultural resources are protected for future generations, for their scientific as well as aesthetic qualities. We appreciate this opportunity to comment on the Environmental Assessment UT-090-07-10 (Permitted Jeep Use of Arch Canyon and the Hotel Rock Area). The following comments are directly applicable to cultural resources as they relate to Arch Canyon.

FLPMA obligates the Bureau of Land Management (BLM) to protect cultural, geologic and paleontological resource values (43 U.S.C. §§ 1701(a)(8) 1702(c)), whereas the National Historic Preservation Act of 1966 (“NHPA”) (16 U.S.C. § 470 et seq.) provides for enhanced consideration of potential impacts to these resources through a cooperative federal-state program for the protection of historic and cultural resources. In particular, Section 106 (16 U.S.C. § 470f) obligates the BLM to consider the effects of management actions on historic and cultural resources listed or eligible for listing to the National Register of Historic Places, as provided under NHPA. Section 110 of the NHPA requires the BLM to assume responsibility for the preservation of historic properties it owns or controls (16 U.S.C. § 470h-2(a)(1)), and to manage and maintain those resources in a way that gives “special consideration” to preserving their historic, archaeological and cultural values. Section 110 also requires the BLM to ensure that all historic properties under the jurisdiction or control of the agency are identified, evaluated, and nominated to the National Register of Historic Places. Id. § 470h-2(a)(2)(A).

As discussed in Sections 1.2 and 1.4, motorized recreational use of Arch Canyon has occurred for many years, and this has been recognized as a “valid recreation use” under FLPMA and the Monticello Field Office Resource Management Plan. The document accurately notes the presence of “cultural sites in close proximity” to the Arch Canyon route (Section 1.7: Issue 4), and the Proposed Action (Section 2.2) states that “To avoid damaging cultural sites that may be near routes, the permit would not allow inappropriate passing of vehicles or parking off route. The turnaround point for the Arch Canyon route would be established in an area that would not cause new ground disturbance or impact cultural resources. Permitted trail use is on existing routes only, no off-route use. The staging area for Arch Canyon would be located outside of the canyon.”

Section 3.4.4 notes the Area of Potential Effect includes the canyon bottom and adjacent cliffs and benches where cultural sites are found, and that cumulative and

secondary impacts to cultural resources could occur. Section 4.2.1.4 further states that vehicle travel would not impact cultural resources near the travel routes due to mitigating measures stipulated in the Proposed Action, while acknowledging that indirect impacts could involve individuals returning to cultural sites at some later point as private individuals. CPAA concurs with several of the Stipulations for Proposed Action and requests that others be amended as follows:

- Stipulation 4: The permittee will take precautions to protect cultural or historic objects, *and the permittee shall specify what those precautions are and what measures will be taken to implement them.*
- Stipulation 4: Any government owned structures, *including historic properties*, property, land or resources shall be reconstructed, repaired, rehabilitated, and restored as may be required by the BLM.
- Stipulation 5: The permittee will take all reasonable measures to prevent and discourage vandalism, *and the permittee shall specify what those measures are and how they will implement them.*
- Stipulation 15: All personnel associated with the permitted activity will be informed by the permittee that they are subject to prosecution for vandalizing and/or collecting any historic or prehistoric artifacts. All guides will be specifically instructed in proper cultural site visitation behavior, *and all guides will instruct participants as to proper behavior when visiting cultural sites.*

In addition, CPAA has identified four major deficiencies in Environmental Assessment UT-090-07-10. These are herein discussed separately.

### **Inadequate Survey**

The assumption stated in the EA that a restriction of vehicles to the existing route will result in no adverse effect to historic properties is inherently flawed. Previous BLM inventories in the canyon have been extremely limited in scope, usually involving the superficial documentation of sites on cliff ledges and benches that were visible from the bottom of the canyon, but little or no examination of the route itself. In 1989, a BLM clearance “survey” was conducted in anticipation of a Jeep safari through the canyon. The archaeologist conducting the clearance indicated a pedestrian survey was conducted along some areas of the route, but the report does not indicate where the surveys were conducted, only that less than 5 acres were investigated. In other areas impacted by the creek or judged to have little potential for cultural remains, the survey involved driving a vehicle “at a slow enough speed to observe for potential areas of cultural resources.” No archaeological sites were observed (Davidson 1989).

A review of reported data currently on file with the Antiquities Section of the Utah Division of State History revealed no significant scientific research projects or cultural resource management initiatives conducted in the middle and lower portions of Arch Canyon. No Class II or comprehensive Class III surveys had been conducted to determine actual density, nor had any effort been initiated to determine the suite of site

types, the nature of prehistoric adaptations in the drainage specifically or the relationship of these adaptations to others on the Cedar Mesa generally.

The small clearance surveys conducted to date are clearly not consistent with professional standards for archaeological survey (Banning 2002). Hence, the BLM and SHPO findings of no adverse effect are based on these deficient survey data. In effect, the BLM cannot make an accurate determination of no adverse effect if the route has never been comprehensively inventoried (Class III) in accordance with acceptable archaeological survey standards.

Intuitive surveys conducted by CPAA in 2006 (Spangler 2006) demonstrated a high potential for a large number of eligible properties (ca. 100) on BLM-managed properties along the Arch Canyon route. Most of these would be located on ledges and benches adjacent to the route. However, these surveys also identified a potential for sites to be located along the actual vehicle route. Site 42Sa26615 appears to be a large kiva, limestone retaining wall and other associated features *immediately* next to the current OHV route. Artifacts were observed eroding down slope from the kiva-like depression to within a few meters of the road. If these artifacts continue to erode toward the main vehicle access route, they will become visible to those traveling the route and the artifact trail could then be followed to the features currently hidden by pinyon-juniper trees. This largely intact site is particularly vulnerable to off-route travel. Given the intact nature of the site and its potential ceremonial significance, non-disclosure of site location and site avoidance were strongly recommended.

In light of these concerns, it is recommended:

- Adequate compliance with Section 106 mandates that appropriate efforts be initiated to identify historic properties that could be adversely affected by the federally permitted activity. This should, at a minimum, include a Class III survey of the entire route. This should conform to professional standards for archaeological survey.
- The EA should formally acknowledge that there is a high potential for a large number of unknown historic properties that could be directly and indirectly affected by the permitted activity.
- If the Proposed Action is approved by the BLM, the stipulations should be modified to include a requirement that vehicles cannot stop and individuals cannot leave their vehicles in that area 1000 meters on either side of 42Sa26615. This zone should not be flagged to draw attention to an area with vulnerable cultural resources to ensure that the location of 42Sa26615 is not inadvertently disclosed to the public.

### **Site Visitation**

The Environmental Assessment is silent on whether or not individuals participating in the permitted event will be visiting archaeological sites visible from the OHV route. This omission creates a scenario where the permitted activity, as specified in

Section 2.2 Alternative A, could involve groups of 75 individuals walking from the OHV route to selected archaeological sites (the EA does not expressly prohibit it). With eight trips anticipated under the Preferred Alternative A, as many as 1,200 additional individuals could be visiting these sites per year. Pedestrian visitation to archaeological sites by such a large number of individuals could have significant adverse effects, especially in the absence of designated pedestrian trails. Such visitation has a high potential for damage to midden areas below archaeological sites, destabilization of architecture though leaning on or sitting on walls, and surface collection of artifacts. Such visitation has the potential to result in the creation of multiple ephemeral foot trails that could then accelerate erosion of subsurface cultural deposits. These potential adverse effects are not acknowledged in the EA.

The problem of accelerated erosion of pedestrian trails (and OHV spur routes) was personally observed in Arch Canyon during intuitive surveys conducted by CPAA in 2006. In numerous instances, pedestrian trails leading to archaeological sites became conduits for rainfall runoff, creating deep ruts on the slopes below the sites where cultural deposits (e.g., middens) would be expected (see Figure 1). This erosion has considerable potential to expose cultural materials not currently visible on the site surface, making them more susceptible to illegal surface collection. Hence, unrestricted pedestrian traffic can facilitate direct adverse effects and result in significant and immediate damage that is not considered in the EA.

The potential for as many as 75 individuals to walk to and through archaeological sites on each organized trip may result in unsupervised behavior that could result in significant harm to the integrity of these sites. CPAA has considerable experience hosting tours of archaeological sites in eastern Utah, and it has found it extremely difficult to monitor and properly educate as to proper site etiquette if the group size is greater than 10 to 12 individuals. It has found that a group size larger than 10 to 12 inevitably results in some individuals wandering off and not participating in monitored instruction and not remaining on established trails.

In light of these concerns, it is recommended that:

- Viewing of archaeological sites should be restricted to observation from the existing OHV route, and should not include actual on-site visitation without adequate Section 106 analysis of potential adverse effects of large groups of individuals visiting historic properties and the planning strategies to be implemented by the BLM to mitigate those adverse effects.
- In the event that on-site visitation is allowed, the ratio of guides to visitors should be at a minimum one guide to 10 participants, with guides properly instructed on proper site etiquette and the laws protecting cultural resources.
- The EA does acknowledge the potential indirect effect of individuals privately returning to visit sites in an unmonitored setting. All individuals participating in the permitted event should be properly and thoroughly informed as to proper site etiquette and laws protecting cultural resources. These should include printed materials, as well as verbal instruction.



**Figure 1: Eroded pedestrian trail leading to 42Sa5216 in Arch Canyon.**

Related to this issue, CPAA supports the efforts of BLM to utilize the Site Steward Program to document site conditions through records and photographs to determine if impacts are increasing as the result of more visits to cultural sites. However, the Site Steward Program is historically under-funded, and the number of volunteer site stewards has never proven sufficient to adequately monitor all sites that are potentially impacted by public visitation. Given the large number of sites in Arch Canyon, site stewards would be unable to monitor all sites visible to, and potentially visited by, the participants in the permitted event. CPAA recognizes that proper documentation of impacts by increased visitation is essential to the development and implementation of protective measures to ensure the long-term protection of cultural resources. It is therefore recommended that:

- Site monitoring and documentation of impacts should be given enhanced priority in the EA and in the BLM generally, and that the costs of such monitoring activities should be assigned to permittee. The permit should not be granted without adequately funded site monitoring and impact documentation.

### **Native American Concerns**

Section 3.4.4 of the Environmental Assessment acknowledges Native American concerns regarding motorized events in Arch Canyon, including support by the Hopi Tribe and Navajo Utah Commission for closure of the Arch Canyon road pending consultation on the issues raised in the closure petition. There is no indication in the EA that tribal concerns have been adequately addressed. In fact, the EA states only that March 7, 2007, letters were sent to 16 tribal groups, to which the Hopi requested an “immediate interim closure” of the route.

Given the concerns raised by the Hopi and Navajo, consultation efforts to date, as articulated in the Environmental Assessment, appear to be inadequate. Executive Order 13175 mandates “regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications,” and that tribal governments be granted “the maximum administrative discretion possible.” It would also appear to be inconsistent with a 2007 IBLA decision (IBLA 2004-124) supporting the Southern Utah Wilderness Alliance contention that “brief conversations with, or form letters to, tribal councils or leaders regarding the potential effects of oil and gas leasing and development are insufficient to meet BLM’s duty under NHPA to make a reasonable and good faith effort to seek information from Native American tribes” (citing *Pueblo of Sandia v United States*, 50 F.3d 856, 10<sup>th</sup> Circuit 1995). It is therefore recommended that:

- The EA should clearly state how the BLM has consulted with concerned Native American groups and how that consultation has specifically addressed tribal concerns related to Arch Canyon.
- The EA should clearly articulate BLM efforts to initiate consultation beyond “brief conversations with, or form letters to” tribal leaders.
- The EA should specify its strategies to mitigate tribal concerns.
- The BLM should conducted meaningful consultation with the tribal entities in a way that satisfies the Pueblo of Sandia case and IBLA authority, described above.

### **Miscellaneous Concern**

The Environmental Assessment states in Section 2.2 that the staging area for Arch Canyon would be located outside of the canyon, but it does not specify where staging areas would be. This could become a major concern *if* the staging area is located at the mouth of Arch Canyon, where several large significant Ancestral Puebloan open residential sites are located on BLM and Ute tribal lands. Section 1.3 indicates that one



event (Jeep Jamboree scheduled for April 21-22, 2007) would set up camp on Ute tribal property at the mouth of the canyon.

The area around the mouth of the canyon was beyond the scope of CPAA's 2006 intuitive surveys reported by Spangler (2006), but sites in this area are currently undergoing unrelated detailed documentation (Winston Hurst, personal communication 2006). CPAA revisited two of these sites in 2006 and found both had been directly impacted by OHV travel, including vehicular tracks directly to archaeological sites (Figure 2), through cultural deposits (Figure 3) *and* blocks of prehistoric rooms (Figure 4). Given that the OHV trails through these sites are substantial, this could provide an impetus (or excuse) for other vehicles, including those participating in permitted events, to use the routes and further damage the sites. This problem could be accentuated if the mouth of the canyon is the designated staging area.



**Figure 2: OHV trail leading to pueblo at mouth of Arch Canyon (Oct. 2006)**



**Figure 3: OHV trail through wall rubble and midden at mouth of Arch Canyon (Oct. 2006)**



**Figure 4: OHV tracks through Ancestral Puebloan roomblock at the mouth of Arch Canyon (Oct. 2006).**

In light of these concerns, it is recommended that:

- The mouth of Arch Canyon should not be designated an official staging area, and a BLM-designated staging area should be chosen that has no potential to directly or indirectly affect cultural resources.
- Given that camping activities would occur on Ute tribal lands immediately adjacent to BLM lands with significant archaeological sites, BLM monitoring of all sites at the mouth of the canyon should occur during all periods of time when participants are camped *and* otherwise participating in vehicular activities in Arch Canyon.
- OHV tracks leading to and through archaeological sites at the mouth of the canyon should be clearly posted as closed to vehicular traffic *prior* to the permitted event.

Thank you for considering my comments.

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## References

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