



January 31, 2022

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Cease and Desist

Destruction of Irreplaceable Paleontological Resources at Mill Canyon Dinosaur Trackway Site

Mr. Sheehan:

The Center for Biological Diversity fights to save life on earth, which includes relics of the past which tell us the history of the biodiversity that preceded us. As such, we have an interest in ensuring BLM manages paleontological resources consistent with applicable laws and regulations.

Mill Canyon Dinosaur Tracksite near Moab, Utah is, in BLM's own words, "one of the most significant early Cretaceous tracksites in the world." With over 200 individual tracks from at least ten species of dinosaurs, including allosaurus and stegosaurus, it represents a globally unique paleontological resource. Since its discovery in the late 2000s, extensive effort has been made by the paleontological community to survey and protect this irreplaceable site.

We were shocked and appalled to see reports on January 30th that significant damage had occurred at Mill Canyon Dinosaur Tracksite near Moab, Utah, as a part of a BLM project to reconstruct visitor use trails there. BLM construction equipment, including apparently a backhoe which was left on site (Figure 1),¹ had driven directly over the fossil dinosaur tracks, permanently destroying as much as 30% of the site, per informal surveys of the damage (Figure 2).²

BLM approved the reconstruction of the trail through Environmental Assessment (EA) DOI-BLM-UT-Y010-2021-0092-EA, with a Finding of No Significant Impact (FONSI) and a Decision Record (DR) approved by Nicollee Gaddis-Wyatt, Moab Field Manager, on October 12, 2021. BLM claimed that the existing boardwalk presented "a serious trip hazard" due to warping, ostensibly necessitating the

¹ https://twitter.com/BrianEngl_Art/status/1487661149638336513

² https://twitter.com/BrianEngl_Art/status/1487940206976249856

construction of a raised walkway made with corrugated metal and concrete. Some observers have questioned the wisdom of pouring concrete near a tracksite composed of impressions in malleable rock.³

The EA states that “the public was notified of the Proposed Action and EA by posting on the ePlanning website on July 28, 2021. No responses were received,” (EA, p. 5). It’s unclear if BLM actually made any outreach to the paleontological community or local community in Moab to solicit public input.

The EA is a perfunctory document, providing little if any analysis of the potential impacts of the project. With regard to paleontological resources, it simply states, “Reconstruction of the walkway has the potential to disturb existing paleontological resources. Conditions of approval (marking and flagging of the tracks close to the construction site and the requirement for onsite inspections during construction) have been imposed to safeguard the paleontological resource,” (EA, p. 4).

Curiously, in the FONSI, BLM minimizes the importance of the potential risks to these resources, saying, “The project is a site-specific action directly involving no more than 5,000 square feet on BLM administered land that by itself does not have international, national, regional, or state-wide importance,” (FONSI, p. 1). This contradicts BLM’s own language about the site, describing it as “one of the most significant early Cretaceous tracksites in the world,” (EA, p. 1).

BLM appears to have violated their own EA. From the photos taken and shared on social media of the site, there does not appear to have been any flagging or marking of the tracks (Figure 1). The predictable but tragic result is that numerous irreplaceable dinosaur tracks have been permanently destroyed by construction equipment, as recent informal surveys have documented (see Figures 3-4).⁴

The Paleontological Resources Preservation Act (PRPA) instructs the Secretary of the Interior to “manage and protect paleontological resources on Federal land using scientific principles and expertise,” (16 U.S.C. § 470aaa-1(a)). PRPA states that “a person may not excavate, remove, damage, or otherwise alter or deface... any paleontological resources located on Federal land...” (16 U.S.C. § 470aaa-5(a)(1)).

The National Environmental Policy Act (NEPA) is our “basic national charter for protection of the environment,” (40 C.F.R. § 1500.1(a)). It serves twin goals. First, it aims to ensure that federal agencies carefully consider detailed information regarding the environmental impact of a proposed action before reaching a decision on the action. Second, it ensures that information about a proposal’s environmental impact is made available to members of the public so that they may play a role in the decision-making process. NEPA ensures that important effects will not be overlooked or underestimated only be discovered after resources have been committed or the die otherwise cast.

³ https://twitter.com/BrianEngl_Art/status/1487892147370139651

⁴ <https://twitter.com/JeremyBRoberts/status/1487899619451449347>,
<https://twitter.com/JeremyBRoberts/status/1487888484509573121>

The agency must take a “hard look” at all direct, indirect, and cumulative environmental impacts of the proposed action and reasonable alternatives thereto (40 C.F.R. §§ 1502.14, 1502.16). To fulfill its purpose, the agency’s environmental analysis must “provide full and fair discussion of significant environmental impacts and . . . inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment,” (40 C.F.R. § 1502.1). Part of the evaluation of environmental effects is consideration of possible outcomes that would be especially harmful. This analysis is particularly essential where a project includes uncertain impacts.

A NEPA document must rigorously explore and objectively evaluate reasonable alternatives to the proposed action, including a baseline alternative of taking “no action,” (40 C.F.R. § 1502.14). The NEPA implementing regulations refer to the selection and review of alternatives as “the heart” of the environmental analysis, (40 C.F.R. § 1502.14). Comparison of the alternatives helps to “sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decision maker and the public.” *Id.* The agency must “study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources,” (42 U.S.C. § 4332(2)(E)). Even if an agency prepares only an EA, it may violate NEPA if it limits its examination to its primary, preferred alternatives.

In this case, BLM produced a perfunctory NEPA document which contained essentially no substantive analysis of the potential impacts of the project on paleontological resources. Instead it proposed a single mitigation measure – flagging the tracks – and apparently failed to even execute on that single mitigation measure. In addition to inadequately disclosing and analyzing the potential impacts of the project, the EA failed to present a range of alternatives. Had it done so, BLM might have analyzed a minimum impact alternative to replace the boardwalk by hand.

The Federal Lands Policy and Management Act (FLPMA) is the “organic act” for BLM and governs the agency’s management of public lands and resources. In FLPMA, Congress declared that is the policy of the United States to manage the public lands “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values” and that, “where appropriate, will preserve and protect certain public lands in their natural condition,” (43 U.S.C. § 1701(a)(8)).

FLPMA provides that “[t]he Secretary shall manage the public lands . . . in accordance with the land use plans developed by him under section 1712 of this title,” (43 U.S.C. § 1732(a)). “All . . . resource management authorizations and actions” must “conform to the approved plan,” (43 C.F.R. §§ 1610.5-3(a)). If a proposed action is not consistent with the applicable land use plan, BLM must rescind the proposed action or amend the plan (43 C.F.R. §§ 1610.5-3, 1610.5-5).

The approved land use plan applicable to the Project is the 2008 Moab Resource Management Plan. This plan contains a provision PAL-3, which states that BLM shall: “Locate, evaluate, and protect significant paleontological resources. Provide for public visitation and education opportunities while simultaneously protecting and supporting the scientific and research value of paleontological resources.” Clearly, BLM’s actions at Mill Canyon Dinosaur Trackway appear to violate the conditions of their RMP and thus FLPMA itself.

By allowing and potentially perpetrating the destruction of irreplaceable paleontological resources at Mill Canyon Dinosaur Tracksite, BLM is in violation of PRPA, NEPA, and FLPMA.

This correspondence serves as a cease and desist notice to BLM Utah, and to any of its contractors or consultants, to stop all activity at the Mill Canyon Dinosaur Tracksite until the requirements of NEPA, FLPMA, and PRPA are obeyed. BLM has caused permanent and irreparable damage to a globally unique paleontological resource and any further activity at the site risks further loss. BLM must consult with appropriate paleontological experts to immediately stabilize the site, and provide for protection from use by visitors.

Please notify us of your intentions within 2 business days (by close of business, February 2, 2022).

Regards,

A handwritten signature in cursive script, appearing to read "Patrick Donnelly".

Patrick Donnelly

Great Basin Director

Center for Biological Diversity

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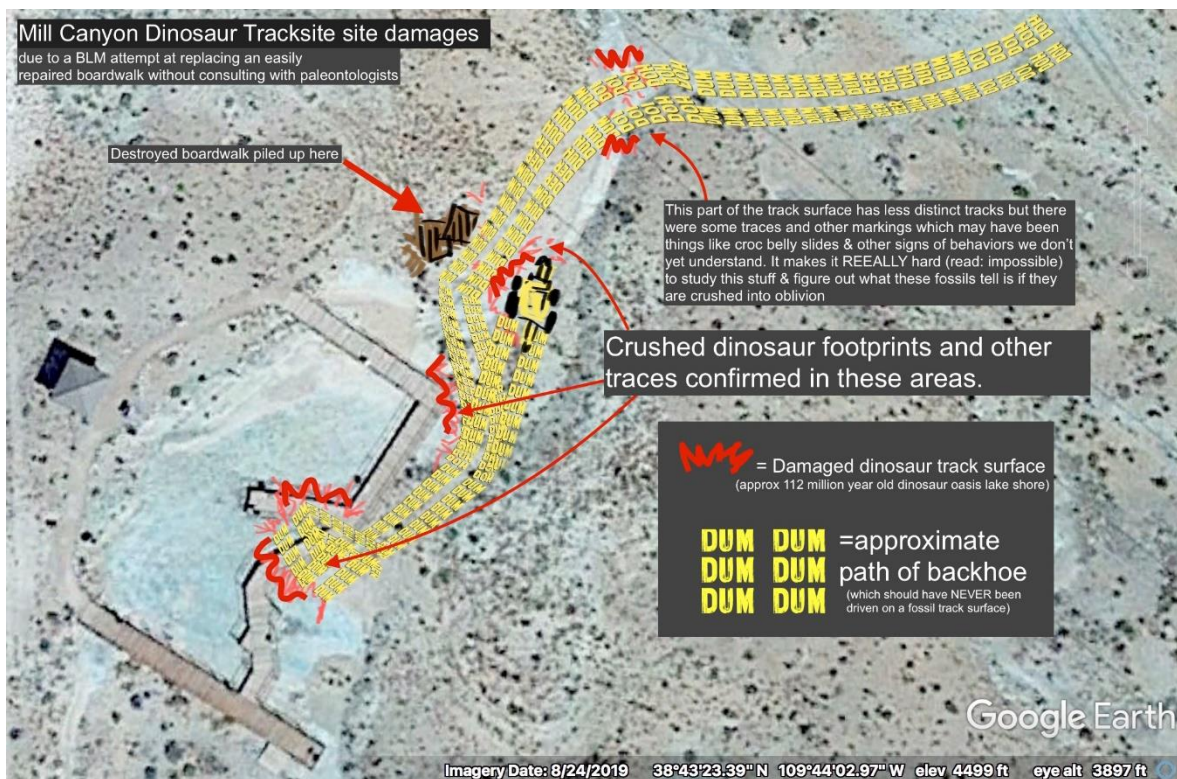
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Figure 1, from Twitter user BrianEngl_Art:⁵



Figure 2, from Twitter user BrianEngl_Art:⁶



⁵ https://twitter.com/BrianEngl_Art/status/1487661149638336513

⁶ https://twitter.com/BrianEngl_Art/status/1487940206976249856

Figure 3, from Twitter user @JeremyBRoberts, captioned “tire tracks on the sauropod tracks”:⁷



⁷ <https://twitter.com/JeremyBRoberts/status/1487899619451449347>

Figure 4, from Twitter user @JeremyBRoberts, captioned “This is a hadrosaur track. Close to a meter long: it’s destroyed.”.⁸



⁸ <https://twitter.com/JeremyBRoberts/status/1487888484509573121>