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# Traditional Cultural Properties

## What You Do and How We Think

Patricia L. Parker

To begin with a definition—a "traditional cultural property" is a property, a place, that is eligible for inclusion on the National Register of Historic Places because of its association with cultural practices and beliefs that are (1) rooted in the history of a community, and (2) are important to maintaining the continuity of that community's traditional beliefs and practices. Examples of places important to maintaining the traditional beliefs of a community are the vision quest sites important to many Indian tribes of the northern plains and the Sandia sandbars, important to maintaining the ceremonial practices of the people of Sandia Pueblo. Examples of places important to the continuation of traditional subsistence practices include the special sedge fields from which Pomo basketmakers gather the materials they need to continue their basket making traditions, and the habitat ranges of birds, fish, turtles, and other animals whose continued presence and use are essential to continue on-going cultural traditions.

*(**Parker**—continued on page 3)*

**It is necessary to try to understand traditional places *through the eyes of those* who value them. This rock outcrop in California (above) is called "bag of bones" by local Native American elders, one of whom drew this picture of it—literally a container full of bones, powerfully associated with the traditions of his people (right). Photos by Frank LaPena, Wintu Nomtipon.**

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Information for
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# What You Do and How We Think

*(continued from page 1)*

The authority to protect properties important to maintaining community traditions is not new. One of the purposes of the National Historic Preservation Act of 1966, is to "preserve the historical and cultural foundations of the Nation as living parts of community life." The National Register itself consists of "districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and **culture** (emphasis added). Mount Tonaachaw in Micronesia was listed in the National Register in the early 1970s. It is the location where Chuukese society took form, whose top is the metaphorical head of a giant octopus with tentacles that link hundreds of islands into the empire of the warrior-god Sowukachaw. The mountain as a whole, as well as specific locations upon it, are physical manifestations of events recorded in traditional narratives still used in ceremonial occasions in Chuuk today.

New or not, I believe that the concept is here to stay. It is consistent with a broader social and political climate supporting enactment of the Native American Graves Protection and Repatriation Act, and widespread interest in amending the American Indian Religious Freedom Act in ways that better protect the religious rights of American Indians, Alaska Natives and Native Hawaiians. It is consistent with the interest in schools, local governments, and the general public in celebrating, and hopefully protecting, the nation's cultural diversity.

The 1992 amendments to the National Historic Preservation Act strengthen the concept in several ways. The new Section 101(d) states specifically that properties of "traditional religious and cultural importance to Indian tribes or Native Hawaiian organizations may be determined eligible for inclusion on the National Register." New provisions also exist for establishing tribal preservation offices which may, under certain circumstances, assume some or all of the responsibilities of State Historic Preservation Offices. Section 110, which outlines the preservation responsibilities of federal agencies, has been strengthened. Agencies are now directed to manage and maintain historic properties in ways that "consider the preservation of their historic, archeological, architectural, and **cultural** values in compliance with Section 106...(emphasis added).

Section 304 broadens the authority of the Secretary of the Interior and the heads of federal agencies to withhold from public disclosure information about the location, character, or ownership of a historic property if such disclosure may (1) cause a significant invasion of privacy, (2) risk harm to the historic resource, or (3) impede the use of a traditional religious site by practitioners.

The term, "traditional cultural property," or TCP as used in some circles, is frankly bureaucratic and boring. It is even offensive to some American Indian groups—like the Navajo, who prefer to call these kinds of places "sacred sites." However, we selected these words because they can be defined administratively in relatively neutral terms and because they embrace the full range of properties that have cultural value, not only those that are "sacred."

"Traditional" is used in National Register Bulletin 38 to refer to the "beliefs, customs, and practices of a living community that are passed down through generations, generally through oral literature or oral history, or through the practice of traditional skills. "Culture" in the Bulletin refers to the beliefs, practices, lifeways, and social institutions of any community—not just Native American communities. "Properties" in the Bulletin refer to places or "historic properties" as defined in the National Historic Preservation Act. The Act established the National Register of Historic Places and the requirements under Section 106 of that Act that federal agencies take into account the effects of their actions on historic properties listed on or eligible for inclusion on the National Register. This term is also offensive to some American Indians who dislike the implication that places of cultural, historical, ancestral, and spiritual value are "property," presumably to be bought and sold. Nevertheless, it is "historic properties" that the National Historic Preservation Act is designed to protect, and we use the term "property" to emphasize that federal agencies, State Historic Preservation Offices, and others who conduct activities pursuant to environmental and historic preservation legislation are responsible for identifying, documenting, and evaluating them and considering them in planning.

The process of fulfilling these responsibilities brings together a variety of perspectives, or worldviews.

One perspective is that of the National Register staff and the National Register eligibility process as it has developed over the past 25 years. Given that process, one of the strategies we used when writing National Register Bulletin 38 was to make traditional cultural properties fit within the existing structure as much as possible without rendering the concept meaningless.

*(**Parker**—continued on page 4)*

Most of the articles in this special edition of the *CRM* were originally prepared for two symposia dealing with traditional cultural properties held at the 58th Annual Meeting of the Society for American Archaeology in St. Louis, MO on April 15, 1993. All of the papers from the symposium called "Take Me to Your Leader: Archeologists and Consultation with Native American and Other Traditional Communities" are included in this publication, and are introduced by Lynne Sebastian and commented upon in the concluding article by Thomas F. King, co-author of National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. The papers by Patricia Parker and by Sally Thompson Greiser and T. Weber Greiser were prepared for a symposium entitled "Vanishing Spaces: Native American Sacred Places" organized by Sally Thompson Greiser. The paper by Alan Downer and Alexa Roberts was presented at another symposium at the same meeting, while those by Carol Shull and Antoinette Lee were prepared especially for this issue.

*(**Parker**—continued from page 3)*

Consistent with this, traditional cultural properties are defined and evaluated for the most part by standard operating procedures.

1. Traditional cultural properties are always places—they are not "intangible."
2. A traditional cultural property is eligible for the National Register only if it meets one or more of the National Register criteria. From the writers' perspective, this poses no real problems, and in the Bulletin we show how traditional cultural properties can be evaluated under each of the criteria. However, at recent meetings where TCPs were discussed, tribal and federal agency representatives argued for a separate, presumably additional, criterion for TCPs, which may be desirable given further study.
3. Like other kinds of historic properties, to be eligible for the National Register, a traditional cultural property must have integrity—integrity of relationship and integrity of condition.
4. A traditional cultural property is subject to the same general time threshold as other historic properties—it must have been important to maintaining traditions for at least 50 years.
5. To be determined eligible, traditional cultural properties must not be ineligible because of one or more National Register criteria considerations.
6. Traditional cultural properties must be described, and their significance documented.
7. Traditional cultural properties must have some kind of boundaries.

Meeting these standards makes the National Register staff comfortable. They are doing business as usual.

However, "business as usual" for the National Register is not "business as usual" for American Indians, because the Register's business is based on one culturally specific way of thinking about places and their connection with the past, present, and future and this way of thinking is decidedly not an Native American way of thinking.

I would like to establish the context from which I make my observations concerning "Native American perspectives." In 1990, Congress provided the National Park Service with the opportunity to assess and report on the preservation needs of Indian tribes on tribal lands. The assessment was to be based on direct discussions with Indian tribes and Alaska Native groups. The resulting report, *Keepers of the Treasures—Protecting Historic Properties and Cultural Traditions on Indian Lands,* was sent to Congress in September 1990. In that same year, Congress for the first time appropriated funds for direct grants to Indian tribes to "protect their unique cultural heritage" as authorized by the 1980 amendments to the National Historic Preservation Act. Appropriations have continued annually. Because "cultural heritage" is a culturally relative term, the National Park Service has defined the grant program in response to the cultural needs expressed in the grant applications we receive. My comments are based upon the two to three hundred grant applications we review each year, on the findings of the Keepers report, and on discussions currently being held with tribal representatives concerning implementing the tribal provisions of the 1992 amendments to the National Historic Preservation Act.

It comes as no surprise that "preservation" from a tribal perspective, concerns a much wider set of issues than those traditionally associated with the programs of State Historic Preservation Offices, Certified Local Governments, and federal agencies authorized by the National Historic Preservation Act. Cultural priorities for Indian tribes often include, (1) the return and reburial of tribal ancestors, (2) the institution of strong measures to rescue, maintain, and support the retention of American Indian languages, oral history, and oral literature, and (3) reinforcing, nurturing, and strengthening the spiritual traditions of life. These priorities often take precedence over identifying and evaluating traditional cultural properties unless such places are in imminent danger of damage or destruction.

In such circumstances, however, when Indian tribes are brought into the National Register process to deal with traditional cultural properties, it can be difficult to make the system work because of fundamentally different cultural beliefs and values.

The National Register process is based on linear chronology and basic assumptions about cause and effect through time that are simply not applicable when dealing with many traditional cultural properties. True, in order to be eligible for the National Register, the significance of traditional cultural properties must be rooted in time. But traditional cultural properties are also significant now, in the present. It is the continuity of their significance in contemporary traditions that is important, and that makes them significant in the past and present simultaneously. While the Register has found a way to handle this "problem" by checking appropriate boxes on the National Register form, checking the boxes does not really address the differences between a view of history shaped by linear chronology and a view of history based on cyclical time in which past is recreated in the present through traditional beliefs and practices.

There is the issue of boundaries. Many, if not most, traditional cultural properties, were and are simply not meant to have lines drawn around them marking where they begin and where they end. Trying to do so can lead to some fairly bizarre and artificial constructs. For example, with vision quest sites, what is eligible for the National Register? The place where an individual sat or stood? That area and the path the individual took to get to the quest site? Those areas and everywhere the individual gazed while seeking a vision?

Many Native Americans know of general areas where ancestors or spirits stay and think of these areas as general locations, not specific "houses" that can be bounded on maps. In the context of the National Register process, boundary issues usually can be resolved through consultation concerning the nature of the property and how it might be effected by proposed actions. However, such decisions may necessarily be arbitrary given the nature of some traditional cultural properties.

Many traditional cultural properties are considered sacred by American Indians. To many American

Indians, the entire earth is sacred—or an entire mountain range is sacred, or the entire landscape, including spaces invisible to most, but visible to the knowledgeable. A tribal elder once told me, "you are talking about preserving the environment and the plants and animals that we see. I am worried about preserving the environment that we do not see—the places where the spirits live." The photos on the cover of this issue illustrate how dramatically different these perspectives can be. To Euro-American observers, "Bag of Bones" is an interesting rock outcrop. To a religious practitioner it is literally a bag of bones, powerfully reflecting the tribe's cultural beliefs.

One fundamental difference between traditional cultural properties and other kinds of historic properties is that their significance cannot be determined solely by historians, ethnographers, ethnohistorians, ethnobotanists, and other professionals. The significance of traditional cultural properties must be determined by the community that values them. A traditional cultural property is a functional property type. It is not based on aesthetics, stylistic types, or the potential to provide information about the past. A traditional community, usually represented by its traditional leaders, decides which places are important to maintaining their traditions and whether those places retain integrity of relationship and condition. Thus the methodological emphasis in National Register Bulletin 38 is on consulting—talking to the people who may value traditional cultural properties. There is no substitute for this no matter how much has been written about a place.

Native Americans and archeologists are likely to have different standards of evidence. An archeologist, or National Register historian, will look for scientific or historical evidence to document the significance of a place. However, in traditional communities the elders or traditional leaders are the culture bearers whose words are historical truth. A group member does not ask a traditional leader to "prove it." Some tribal members have told me that by asking the elders to make treasured knowledge public by documenting, or writing down, why a place is important, is too painful to do, even to protect the place. One man said, "by documenting these places, we are doing to ourselves what we don't want others to do to us."

After a day's discussion on these issues with a group of tribal members, one of them observed "there is just too much of a gap between what you do and how we think."

Having said all this, can National Register Bulletin 38 serve as a bridge between the worldviews of an established administrative process and the worldviews of hundreds of different American Indian tribes? Some tribal people say "no", and several have suggested that traditional cultural properties be kept on a different register than the National Register and held to different standards of evidence. That may be what needs to be done.

On the other hand, I am hopeful that guidelines like Bulletin 38 can be helpful in identifying and evaluating traditional cultural properties. The past 3 to 4 years since the bulletin came out correspond to the 3 to 4 years that the National Park Service has been offering grants for cultural projects to Indian tribes and Alaska Native groups. Before 1990, to my knowledge, only the Makah Nation and the Navajo Nation had conducted surveys of traditional cultural properties on their reservations, supported in part by grants from State Historic Preservation Offices. Both tribes found the results very helpful. The Makah surveyed places associated with sea harvesting traditions and identified, with the help of tribal elders, fishing grounds, sea mammal hunting grounds, whale sighting points, canoe landing places and so forth, on their reservation and on their ancestral territory off the reservation. This year they applied for, and were awarded, funding to expand their traditional cultural property survey efforts to forest or land-based resources important to maintaining their traditions related to forest resources.

Over the past four years, tribal interest in identifying, documenting, and evaluating traditional cultural properties has increased five-fold as measured by the grant proposals the National Park Service receives. There is nothing in the application and guidelines to account for this. We are as likely to fund a language retention project as a TCP survey. In 1990 we received one or two proposals for standard archeological surveys. The second year, 1991, we received 2-3 archeological proposals. The third year we received 2-3 archeological proposals and one proposal to do a traditional cultural properties survey. This year we received 22 proposals from all over the country—California, Montana, Arizona, North Carolina, Nevada, and Washington—to do traditional cultural properties on reservations or on ancestral lands off reservations.

One way to account for this that may be overly optimistic is that Indian tribes find value in the process of identifying and evaluating places important to them because of the role that they play in maintaining their cultural traditions. Those who sent us proposals to do so want to use the information to influence land use planning decisions by tribal governments, federal agencies, or others who may control their ancestral lands. If they are successful in doing this, then the process as it applies to traditional cultural properties is a valuable, if not a perfect, one.

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# Traditional Cultural Properties in the National Register of Historic Places

## Educating the Public About Cultural Heritage

**Carol D. Shull**

Americans are woefully uninformed about the history and the contributions of many cultural groups in the United States. Often they do not even know that contemporary traditional cultures exist. Our children are not taught about the events and places that embody the heritage of many of our peoples. Without this knowledge we cannot expect our people to respect, honor and assist in preserving the traditions and places that reflect the proud achievements and cultural heritage of all of us.

The National Register of Historic Places can be a powerful tool in cultural preservation by helping Americans learn about the diverse groups that have created this country. One only has to read the papers in this special issue of *CRM* to realize what an impact the publication of National Register Bulletin 38 and its affirmation that traditional cultural properties are eligible for the National Register have had in educating us about the values of traditional cultural properties. National Register Bulletin 38 and the work that has followed have sensitized us to the need for traditional cultural groups; ethnohistorians; archeologists; ethnographers; federal, State, and local officials; and project sponsors to work together to develop appropriate strategies for identifying, documenting, registering, and preserving them. These papers suggest some of the important strategies for the future that have been learned in the field. Most importantly, traditional cultural groups are finding that the National Historic Preservation Act and the National Register apply equally to them, to their history, and to the places they treasure as important to that heritage.

These papers describe how American Indian tribes and traditional Hispanic communities can use the authority of the National Historic Preservation Act and the National Register to assure that traditional cultural properties eligible for the National Register are considered in project planning. The National Register Criteria for Evaluation can be used to help recognize and protect properties important to all cultural groups on lands under their jurisdiction as well as those that are not. This is very important as the authors of "Working Together: The Roles of Archeology and Ethnohistory in Hopi Cultural Preservation" emphasize, "the Hopis today face a situation where they are concerned not only about the preservation of sacred areas, ancestral graves, and cultural sites on their own reservation, but also in other areas being developed where they have no jurisdiction." (p.2)

As the nation's inventory of its cultural resources, the National Register can be broadly used for heritage education, as well as for planning. It now includes well over 61,000 listings encompassing nearly 900,000 buildings sites, structures and objects. Registration itself provides national recognition and verification of the worth of traditional cultural properties and the people they represent. As Toni Lee discusses, the registration of places important to the diverse groups that make up our multicultural society is not new.

While it may not be appropriate for cultural groups to release information about certain places, there are many traditional cultural properties that can be formally registered where the information about them is not confidential or only selective information should be secured. With the expanded authority of Section 304 of the National Historic Preservation Act provided by the 1992 amendments, there is broad discretion to withhold information that is confidential and still list traditional cultural properties, even those for which selective information should be kept confidential.

An index of National Register listings has been published by the American Association for State and Local History and is now available from the Preservation Press of the National Trust for Historic Preservation. A new comprehensive index will be published by the Preservation Press in 1994. This index is available in many libraries. Anyone may write or call the National Park Service to obtain copies of National Register registration documentation on listed resources, except for information that should be kept confidential because it falls under Section 304. Thousands of researchers order copies of National Register documentation each year. States, federal agencies, Indian tribes, and communities learn what others have done so that they too can survey, nominate similar properties to the National Register, and protect these resources. The descriptions, statements of significance, maps, photographs, bibliographical references and other materials in National Register listing files are an invaluable, unique record of cultural resources nationwide.

These records are accessible because they are all indexed in the computerized National Register Information System (NRIS), where any combination of about 45 data elements can be used to identify properties by such indicators as associated ethnic groups, cultural affiliation, areas and periods of significance, and so forth. This capability helped the National Register staff identify the nearly 800 properties associated with African-Americans being used to produce the first in what is planned as a series of books that will highlight places that reflect the heritage and contributions of different cultural groups.

Using the National Register in a variety of ways to educate Americans and making the records accessible to the public for different types of interpretive and educational uses are high priorities. After all, the taxpayers' money has been invested in collecting the information that records and recognizes our shared heritage. For instance, the National Register staff is working with the Soil Conservation Service to adapt a slide show on traditional cultural properties prepared for SCS by Tom King. The slide show will be turned into a videotape that shows how traditional cultural properties representing a number of traditional cultural groups meet the National Register cri-

*(**Shull**—continued on page 8)*

# Recognizing Cultural Heritage in the National Historic Preservation Program

**Antoinette J. Lee**

The National Historic Preservation Act of 1966 provides a broad mandate for preserving America's cultural heritage, including traditional cultural properties. Among the purposes of the Act is the statement that "the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people." Thus, in 1966, the framers of the National Historic Preservation Program viewed historic preservation as essential to contemporary community identity as well as to future generations of Americans.

The origins of the historic preservation movement in the United States lie in the commemoration of the nation's political leaders, such as at Mount Vernon, and military achievements, such as at national military parks. However, in parallel activities, explorers, naturalists, geologists, and scientists noted the great antiquity of the American Indian presence in North America and sought to protect their cultures from extinction. Scientific excavation of archeological properties associated with American Indian groups by Thomas Jefferson and his contemporaries provided early recognition of the significance of archeological properties. Throughout much of the 19th century, scientists and explorers who led expeditions throughout the West undertook archeological work on Indian pueblos, ruins, cliff dwellings, and Spanish colonial buildings. In 1892, President Benjamin Harrison, under the authority of the U.S. Congress, created the Casa Grande Ruin Reservation. The Antiquities Act of 1906 declared as a national policy the protection of antiquities on federal land.

The creation of the National Park Service in 1916 consolidated national parks and monuments previously assigned to the Department of the Interior and future national parks and monuments under a single bureau. In the 1933 reorganization of the federal government by a Presidential executive order, national monuments under other federal departments (War and Agriculture) were transferred to the National Park Service. These properties included American Indian sites such as Canyon de Chelly in Arizona and Bandelier in New Mexico. The 1933 executive order provided the foundation for the National Park Service's acquisition of properties representing a full scope of the nation's heritage.

The interpretation of African American history was frequently a secondary issue in the interpretation of Civil War battlefield properties that came under the National Park Service, particularly as the issue of slavery was addressed. However, the first property to enter the National Park Service specifically for its primary relationship to black history was the George Washington Carver National Monument in Diamond, Missouri, which was added in 1943. Thirteen years later, in 1956, the Booker T. Washington National Monument in Hardy, Virginia, was added to commemorate the achievements of the famous black educator. In response to the civil rights movement of the 1950s and 1960s and the development of African American studies in historical institutions throughout the post-World War II period, other properties associated with African American history were added to the national park system. They included the Frederick Douglass Home in Washington, D.C. in 1962; part of the campus of Tuskegee Institute in Tuskegee, Alabama in 1974; the Maggie L. Walker National Historic Site in Richmond, Virginia; and the Martin Luther King, Jr., National Historic Site in Atlanta, Georgia in 1980. As the years progressed, other cultural groups, such as the Japanese Americans, were recognized through the addition of properties such as Manzanar National Historic Site, representative of the relocation centers for people of Japanese descent during World War II.

For historic and cultural properties outside of the national park system, the Historic Sites Act of 1935 provided for the federal government to conduct a national survey of historic resources through research and investigation. While the results could be used to make recommendations for future National Park Service acquisitions, the survey results also were intended to call to the attention of States, municipalities, and the private sector the presence of such properties "which the National Government cannot preserve, but which need attention and rehabilitation." The survey of nationally significant properties continues today. More than 2,000 properties are now designated as National Historic Landmarks and include properties associated with America's cultural groups, such as sites significant in black history. Other ethnic groups have been studied for potential properties that could be designated National Historic Landmarks, including Chinatowns, Swedish and German settlements in the Midwest, and the Irish community in Boston. It is interesting to note that of the relatively small group of U.S. properties inscribed in the World Heritage List, several are associated with the heritage of American Indians: Cahokia Mounds State Historic Site in Illinois, Chaco Culture National Historical Park in New Mexico, and Mesa Verde National Park in Colorado.

The national mandate provided by the national park system itself and the National Historic Landmark program served as the foundation for the establishment of the National Register of Historic Places in the National Historic Preservation Act of 1966. The National Register is the nation's official list of its significant patrimony and provides federal recognition to properties of State and local, as well as national significance. The creation of the National Register coincided with a significant change within the historical profession itself. Academic programs, historical museums, and historical societies were caught up in the social upheavals of the 1960s and early 1970s and sought relevancy with contemporary social concerns through the study of the histories of America's ethnic groups, histories of women and feminist movements, and neighborhood and family histories. The "new social history" found an outlet in the groundswell of grassroots preservation that the 1966 Act sought to support.

*(Lee—continued on page 8)*

(*Shull—continued from page 6*)

teria. Like the National Register bulletins, the videotape will be broadly distributed to encourage the appreciation of traditional cultural properties and their identification, evaluation, registration, and preservation. Another project is the publication of a series of regional travel itineraries that link National Register properties from National Parks to local historic districts to showcase the role of various groups in exploration and settlement, including those of traditional cultures.

The National Register and the National Trust for Historic Preservation have joined together in the new *Teaching with Historic Places* program to produce a series of lesson plans and instructional kits on using historic places in the classroom. A special issue of *CRM* devoted to *Teaching with Historic Places* was published in March of 1993. The very first lesson plan published in the series and reprinted in *CRM* was on the Knife River Indian villages in North Dakota. This native American site is important to a number of contemporary Indian tribes, who have expressed enthusiasm that a lesson plan that showcases the contributions of their people is published and available to use in schools nationwide.

The first kit of lessons now in production on "American Work: American Workplaces" is to include a lesson on Hopi lands that have been farmed since prehistoric times using specialized agricultural techniques which are still highly effective today. Young people will learn how innovative, creative, and adaptable the Hopi have been and how they have contributed to the development of agriculture in arid areas of the Southwest. With lessons such as these, young people will develop greater understanding and appreciation for the contributions of diverse cultural groups in our multicultural society. Traditional cultural groups can create their own lesson plans modeled on the *Teaching with Historic Places* lessons.

The National Register needs to hear from traditional cultural groups about what we should be doing to help them identify, register, protect, and educate Americans about their cultural heritage. The National Register can and should recognize the places that represent the heritage of all cultural groups. We must be mindful that some of the information about traditional cultural properties is not appropriate for release to the public, but if we care about cultural preservation, those of us who participate in studies to identify and document cultural heritage have the responsibility to assure that significant places and the information about them is used responsibly to educate our citizens about their values.

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Carol D. Shull is Chief of Registration, National Register of Historic Places, Interagency Resources Division, National Park Service.

(*Lee—continued from page 7*)

From its inception, the National Register of Historic Places provided federal recognition of the national, statewide, and local historical values that were found in communities and their cultural groups nationwide. As historic preservation tools developed over the past 27 years at all levels of government, properties listed in the National Register became beneficiaries of financial incentives and environmental regulation. The process of identifying, evaluating, and registering properties for the National Register often served important educational purposes. Information accumulated during the nomination process is used for interpretive signs, brochures, and other publications and can be used for educational purposes.

It was largely in the area of identifying and evaluating properties at the local level of significance that much of the ethnic and cultural diversity in the National Register emerged. Preparers of National Register nominations are at the forefront of discovering and documenting Chinese mining sites in Idaho, Finnish and Czech settlements in South Dakota, and African Americans in Texas agricultural history. In the National Register Information System (NRIS), properties associated with African Americans, Native Americans, Hispanics, Asians, Pacific-Islanders, European groups, and other cultural or ethnic groups can be sorted and pulled from the database. Although nearly 2,000 National Register properties are classified and encoded as associated with one of these ethnic and cultural groups, many more National Register properties could be associated with the nation's cultural and ethnic groups if additional documentation were available and properties reevaluated.

National Register Bulletin 38 was a milestone in the evolution of the National Register because it provided a specific mandate for addressing cultural and ethnic heritage and the heritage of "living cultures." The roots of the publication can be found in the ferment in historical and anthropological studies of the 1970s and 1980s and in the discussions of and publications on cultural conservation and American folklife and culture. Although not classified as such, a significant number of traditional cultural properties are listed in the National Register. It is important to note that eligibility for and listing in the National Register requires demonstrated significance under at least one National Register criterion. Many properties include aspects of traditional cultural significance, which were not documented in the nomination form at the time of submission to the nominating authority and to the National Register of Historic Places. However, these additional aspects, such as traditional cultural significance, should be noted where they exist and added to the documentation when feasible.

In recent years, the National Register of Historic Places has listed and determined eligible a number of properties specifically for their traditional cultural values. They include the listing in the National Register of Kuchamaa (Tecate Peak) in California, a sacred mountain unique to the ethnic identity of the Kumeyaay Indians, and a determination of eligibility for the Sandia Sandbars in the Rio Grande River, New Mexico, used by generations of the Sandia Pueblo people for rituals involving immersion in the river's waters. National Register Bulletin 38 provided important guidance for the identification, documentation, and evaluation of these properties. Doubtless, future National Park Service publications and technical assistance as well as those of other organizations and agencies, will draw attention to the heritage of America's cultural and ethnic groups in order to increase appreciation, protection, and interpretation.

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# Two Views of the World

**Sally Thompson Greiser**
**T. Weber Greiser**

West of the Blackfeet Reservation and south of Glacier National Park, in Montana, lies an area of more than 100,000 acres known as "the Badger-Two Medicine," after the two major drainages within its boundaries. Within the domain of the Lewis and Clark National Forest, these mountains are the site of proposed oil and gas exploration. Prior to 1896, the mountains were part of the Blackfeet Reservation and the aboriginal homeland of the Piegan, or Pikani, people who have continued to use the area into the present day. It remains the land of the mountain goat, the cougar, and the grizzly bear. From an environmental point of view, it is one of the most pristine areas of the Rocky Mountains.

Archeological and anthropological investigations of this area have taken various forms over the last decade. Such studies intimately involve two cultures, two views of the world. At this juncture in our history—when anthropologists and archeologists are accused of being holdovers from a colonial era—what is the archeologist's role? To what end do we conduct our research? Is it for purely objective, scientific study of the past? Is it for "sound management" of cultural resources? And if sound management, what does that involve? Is there room for consideration of spiritual values as well as scientific? Are these values—spiritual and scientific—mutually exclusive? If so, which takes precedence? Please keep these questions in mind as we review the sequence of archeological and anthropological studies of the Badger-Two Medicine area. Following this review, we'll consider the issues raised.

The first phase of compliance work involved archeological surveys of proposed well pads and associated access roads, with consideration of National Register eligibility and potential adverse effects, for compliance with Section 106 of the National Historic Preservation Act (NHPA). Several small studies were sporadically conducted by cultural resource contractors over a four-year period, which resulted in a lack of cohesiveness and integration.

In this early phase, there was no attempt to understand use of the area from a Pikani perspective. The forest archeologist at that time contacted the Blackfoot Cultural Representative by mail and asked that he identify sacred sites on a map so that they could be avoided. He never responded. The Forest Service believed they had made a good faith effort to identify and protect sites important to the Blackfoot people. The cultural representative believed he had been asked to do the impossible. Following the surveys, the forest archeologist and the Blackfoot Cultural Representative visited one of the identified sites. The forest archeologist concluded the site was probably not a significant Blackfoot cultural site and instructed the Cultural Representative to relay that conclusion to Blackfoot traditionalists. Results of the various archeological studies, with limited input regarding specific locations by Blackfoot representatives, comprised the basis for consideration of potential adverse effects on archeological properties in the Environmental Impact Statement (EIS) which was released in 1990.

**The key to understanding traditional cultural properties is culturally sensitive consultation with traditional knowledge holders. Here a Micronesian elder imparts traditions about his islands to a respectful listener. Photo by Patricia Luce Chapman.**

The second phase of research was a review of the ethnographic literature with a primary goal "to acquire information necessary to understand the Blackfeet use

*(Greiser—continued on page 10)*

*(Greiser—continued from page 9)*

of the Badger-Two Medicine area with particular emphasis on any religious/cultural use of the area" (Deaver 1988:1). This study, in addition to the archeological investigations, formed the basis of compliance to the National Environmental Policy Act (NEPA), the Federal Land Management Policy Act (FLMPA), the Archaeological Resources Protection Act (ARPA), and the American Indian Religious Freedom Act (AIRFA). Excerpts from this study comprised the section in the Environmental Impact Statement (EIS) (1990) which addressed effects of the proposed action on traditional Blackfoot use of the Badger-Two Medicine area.

The EIS was appealed on the basis that Traditional Cultural Practices, as defined in National Register Bulletin 38, were not considered. As a result, a third phase of anthropological investigations was initiated. The primary goal of this study was to conduct interviews with a cross-section of interested parties for information regarding traditional use of the area, with followup on-site investigations of identified locations.

It seems obvious from this vantage point that the process was backwards. The archeological studies would have benefited greatly from the context provided by the ethnographic literature review and the subsequent interviews with traditional Pikani practitioners. Without the two ethnographic studies the archeologists operated in a cultural vacuum. Fortunately, no one is to blame. Bulletin 38 was only a concept in the minds of Pat Parker and Tom King in 1983 when these studies were initiated.

Results of the Traditional Cultural Practices study are just now being compiled, and specifics are not yet public information. However, certain points are generally accepted by all parties and are already part of previous written documentation.

It is well established that high mountain peaks have traditionally been used for seeking visions, and continue to be used for this purpose. Napi, the incarnate Creator, told the first dreamer to seek a place several days away from other people; that is, a remote area. He gave instructions for a sweat lodge ritual as part of the quest. This activity requires the presence of particular rocks and pure water. The best location of a dream bed is one that requires great bravery, either due to its proximity to fierce predators, such as grizzlies, or because of the situation of the dream bed on a high, narrow ledge. The Badger-Two Medicine area offers many such locations.

Most involved parties agree that vision quests and other traditional activities such as ritual gathering of plants and paints, have been and continue to be sought in the Badger-Two Medicine area. It is also recognized that Sun Lodges have been erected on both Badger Creek and Two Medicine River, and that sweat lodges are regularly erected and used along both these rivers.

What is at issue is the relative value of these practices—or, rather, how adverse effects to these practices, compare to the perceived loss to the Nation if gas development is not undertaken. At this time we don't know what decision will be made regarding potential impacts to Blackfoot traditional cultural beliefs, customs, and practices in the study area. However, we can take this midstream opportunity to examine certain issues that anthropologists (including archeologists) are faced with in the conduct of such research.

1. Many voices are represented within a tribe. For the Blackfoot, there is the Blackfeet Tribal Business Council, the official voice of the people when dealing with the U.S. Government. There is also the traditional community—not always represented in official circles. Even within the traditional community there are factions. To whom is the professional responsible?

   With regard to working with traditional people, there is a specific protocol for interaction, especially with regard to requests about sensitive matters. Among the Blackfoot, winter is the time for story-telling. The Lewis & Clark Forest is to be commended for considering such traditional practices in planning the ethnographic study. In fact, when springtime came two months early and significantly shortened the data collection phase of the research, the forest archeologist agreed to a one-year extension.

2. Language is critical. Many traditional practitioners are not comfortable or able to speak English. Even when they are fluent in English, they find it difficult to talk about sensitive issues or traditional beliefs in a language other than their native tongue. As anthropologists, we know how "language is culture"—and direct translations are not often possible. Even working with translators, some native speakers will remain uncomfortable with the ultimate disposition of the information once it is translated. What are the options for anthropologists in these contexts? What are the options for native speakers?

3. We believe that "once an oral culture, always an oral culture." Our experience with indigenous peoples is that written communication is not favored, and with sensitive subject matter it is simply not an option. When figuring schedules and travel for such projects, we always factor in extra trips to personally review with the Tribe any written materials that we generate. In the past we tried sending reports for review, but never received any response. In some cases the material had not even been reviewed, in others, it had been reviewed and discussed, but the requested written response was never prepared. The people simply were not comfortable writing about sacred matters in some formal and finite way. We believe that accommodating this need for oral rather than written communication is part of the "good faith effort" required by law.

   The request for written documentation of sacred sites is one factor that caused the forest archeologist's request for map locations to fail. Beyond this limitation, however, is the much greater issue of intellectual property rights. At risk of understatement and over-abbreviation, we will attempt to simply state how this issue pertains to the Badger-Two Medicine study from the point of view of some Pikani Traditionalists.

These people are being asked to disclose the foundations of their religious and cultural beliefs in order to prove that the area in question is important enough to be protected from desecration. In so doing, they translate into a foreign tongue and worldview that which is most sacred to them. Potential "adverse effects" from such disclosure include loss of personal powers acquired through religious practices, and perhaps wider cultural devastation. To them, this is a no win situation. If they don't tell, then there is no documentation of traditional cultural practices, and thus, nothing to protect. If they do tell, the mystery that sustains them is lessened if not lost.

4. Because the American Indian Religious Freedom Act (AIRFA), at this time, has no teeth, we are dealing with 1st Amendment issues within a regulatory framework of historic preservation. Historic preservation, by its nature, connotes the saving of tangible resources of the past. Within this framework, the professionals' reports can fail to convey the vitality of the traditional culture. Some reports read as if the culture in question is part of the past—not the present and future.

   We are not, at this time, recommending new legislative efforts, but we are certainly reminded of the magnitude of our potential impact to traditional cultures—especially when these studies may end up in litigation. If our research isn't thorough, if our phrasing is not carefully construed, our carelessness may have dire consequences for native peoples.

5. Perhaps the most important distinction between the represented worldviews is in perception of life in either the particular or the whole. Forest Service archeologists ask for specific locations to be identified for protection. This task is often a difficult one for the traditionalist who sees the whole area as sacred—not just one location where they may have fasted. However, when asked a direct question they find it impolite not to respond, so they do their best to identify that which has been asked. Once identified, the archeologist usually wants to see something that can be recorded—that is, "show me an archeological site." Because of our training, it is difficult to accept that an area has traditional value if it has not been, in some way, modified. The archeologist may continue to prod.

   The traditionalist patiently responds with a parable about life. Somewhere in the parable is the story of being led by the dream, by the "Grandfathers", to the places where the veil is thin. If the listener is of Celtic ancestry, perhaps there is some dim recognition in the holiday of Beltane, on April 30th, when the veil between our world and the spirit world gets very thin. But probably the listener has no common ground, and so returns to a request for more specific information, something more tangible. The traditionalist may suggest that the listener try the sweat lodge... perhaps the "Grandfathers" can explain.

We are faced with political, linguistic, cultural, and religious differences of great magnitude as we attempt to address issues of traditional cultural importance to the indigenous peoples of this land. What is the responsibility of the Forest Service and other agency archeologists in situations such as this? What are our responsibilities as we attempt to translate the culture of another? The Ethics Guidelines of the American Anthropological Association provide a beginning for discussion of these issues, but only a beginning. We believe that anthropologists and archeologists who work with Native Americans directly or indirectly must expand the discussion of ethics with regard to our impact—our adverse effects—in our roles as "objective" observers. In some cases, our visitation to a site, in itself, may have negative consequences to the power of the place for a traditional practitioner. Furthermore, our persistent questioning of traditional people takes their energy away from their own people. What might be the impact of this exhaustion of traditional leaders?

***How does your work touch on these issues?***

As we seek to justify ourselves as archeologists—as we look for an argument to counter the accusation that our work is merely a holdover of colonialism, we cannot refrain from asking, "What right have we to save somebody else's past for our future if the process goes against the deepest concerns of the people in question? What if the tables were turned?"

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# Traditional Cultural Properties, Cultural Resources Management and Environmental Planning

**Alan S. Downer**
**Alexandra Roberts**

The cultural resources management community's reaction to the 1990 issuance of National Register Bulletin 38 by the Keeper of the National Register was one of concern, confusion, and, in some instances, outright hostility. While most CRM professionals acknowledged the importance of "traditional cultural properties" (a term we dislike but use for consistency with federal guidelines), most also argue that such places are essentially unmanageable, and that to be asked to do so placed an unfair burden on agencies and cultural resources managers. Many argued that federal involvement in the management of the sacred places of one ethnic group constituted a clear violation of the Constitutional prohibitions against the federal entanglement in religious matters. Some (such as the Bureau of Indian Affairs) simply argue that Bulletin 38 was only a guideline, not a law, and that compliance with it was not mandatory and therefore, unnecessary.

These reactions came as no surprise to those of us working for the Navajo Nation. They were the sorts of things we heard virtually every time we raised concerns regarding protection of places of traditional importance to Navajos. We are glad to note that there has been a positive evolution in the dialogue between most CRM professionals and Indian tribes during the last few years. Most cultural resources managers now accept that traditional cultural properties can be successfully considered in the Section 106 compliance process.

Spider Rock, in Canyon de Chelly on the Navajo reservation, is associated with a number of important cultural traditions among the Navajo, including the teachings of Spider Woman, one of the First People. Photo by Thomas F. King.

**Section 106 and Managing Traditional Cultural Properties**

Still, concerns about practical matters continue to be raised by federal agencies, private developers and their cultural resources contractors, as well as by various State Historic Preservation Offices. These practical concerns focus on how to identify traditional cultural properties, how they can be evaluated, how to handle the confidentiality of information developed in the course of identifying such places, and how to consult with American Indian tribes about all these issues. To a great extent we think that most of these practical concerns can be addressed by long-range planning, and the development of direct relationships between federal agencies and Indian tribes.

One reason problems with management of traditional cultural properties persist is that, in the context of Section 106, traditional cultural properties continue to be thought of in the same way as archeological sites or historic buildings. Traditional cultural properties must be identified, evaluated and treated during the Section 106 compliance process along with archeological and historic properties. To do so, agency managers require traditional cultural properties to be neatly bounded places. This emphasis derives in part from the National Register's "real estate" perspective, and from the fact that many cultural resources managers are archeologists, who are trained to deal with spots on the landscape, rather than the landscape itself. In the context of individual undertakings, managers often insist that traditional cultural properties be neatly bounded so that the kinds of management decisions routinely made regarding conventional historic properties can be applied to traditional cultural properties. However, the artificial isolation of important places from the whole landscape of which they are an integral part often violates the very cultural principles that make certain places culturally significant to begin with. Not surprisingly, Navajos (and undoubtedly many other American Indians) have great difficulty in dividing up the physical world in a way that is most comfortable and convenient for cultural resources managers.

As we see it, there are two issues that must be addressed to alleviate some of the practical problems

mangers continue to grapple with in considering traditional cultural properties in the Section 106 process. First, the people to whom traditional cultural properties hold cultural significance are generally the only people with the expertise to identify them, determine if and how they may be affected, and determine whether or not treatment is necessary and recommend that treatment. Second, adverse effects to most traditional cultural properties can't be "mitigated" in the same way effects to archeological sites or historic buildings can, so treatment of traditional cultural properties must be part of project design and planning, not something to be taken care of during the Section 106 compliance process after project designs are in place. Addressing these issues has two implications: 1) the people to whom traditional cultural properties are significant must be an integral part of the planning and management process, and 2) incorporation of traditional cultural properties into the planning and management process must begin much earlier than it usually does when managers rely entirely on the Section 106 compliance as a means of dealing with them.

**Alternative Approaches**

NEPA 1: An example of how identification, evaluation and treatment of traditional cultural properties can be either a "problem" encountered in the context of Section 106 or, conversely, part of the project design and planning process, is the current planning for a large transmission line project crossing the Navajo Reservation. As part of its responsibilities under the National Environmental Policy Act (NEPA), the lead agency is preparing an environmental impact statement (EIS), designed to select a preferred alternative from a variety of potential transmission line routes. The planning process for development of the EIS includes five major phases:

(1) Regional Studies/Alternatives Review
(2) EIS/Corridor Studies
(3) EIS Preparation
(4) Siting Process
(5) Preconstruction Activities

After all of this EIS work is completed "preconstruction activities" may commence. The last task in this last phase, after completion of all of the rest of the project planning, is "cultural surveys." While general environmental data collection and public scoping begin in June 1993, preconstruction activities are scheduled to begin after the record of decision in late 1995 or 1996.

The practical realities of this process are that Navajos will be asked to identify traditional cultural properties after planning is completed, when few design options remain. Cultural resource professionals, in the context of Section 106, will have to try to determine the boundaries of traditional cultural properties, evaluate their National Register eligibility and potential effects to them and arrive at treatment measures, all the while trying to keep the information confidential. All of this occurs after all of the critical planning and design work has been finalized, when it will be virtually impossible to make significant design change that might be required to protect traditional cultural properties.

The overall project planning process in this case perpetuates the practical problems so often encountered with incorporating traditional cultural properties in the Section 106 process. From our perspective, these problems can be avoided by restructuring the planning process recognizing consideration of impacts to traditional cultural properties can often not simply be "mitigated" as they routinely can be for archeological sites at the late, "preconstruction activities" stage.

Impacts to archeological sites are generally considered to be those that directly disturb archeological deposits or at least that occur within site boundaries. Whereas avoiding direct construction impacts to an archeological site may ensure that it is not affected in terms of 36 CFR Part 800, avoiding direct project impacts may not be sufficient to ensure that traditional cultural properties are not affected. For example, the limits of the "area of potential effect" may extend far beyond the artificial boundaries of a traditional cultural property administratively established to meet the needs of the cultural resources manager. Further, the specialized categories of effect defined in 36 CFR Part 800 may not encompass all the potential effects to a traditional cultural property. The mere act of identifying certain places to outsiders may be culturally inappropriate, robbing a place of its power and causing unavoidable adverse impacts.

*Problems with traditional cultural properties arise when the people knowledgeable about them are asked to respond to requests for information after development plans are already in place. Interacting with tribes as partners in the agencies' planning processes avoids these traps for the tribes, the agencies, and the places that must be preserved.*

These problems are likely to prove fairly intractable as long as the planning process focuses exclusively on individual undertakings and as long as the people who hold the knowledge about the traditional cultural properties and what constitutes effects to them are not an integral part of the planning process. In the example of the transmission line planning process, we think that the identification of traditional cultural properties could be successfully integrated into the earliest stages of the EIS planning process, such as the public scoping periods, so that traditional cultural properties can be thought of as components of the total landscape, rather than isolated spots that must be "dealt with" as a final obstacle to construction. Through long range, integrated landscape planning, knowledgeable Navajos may help design the project to have the least impact on places of cultural significance without having to divulge specific confidential information and without having to resort to artificial boundaries. They may also aid cultural resources managers in decision making about significance, effects, and treatment.

NEPA 2: An example of how cooperative planning can work is the Navajo Nation's (and six other tribes') current involvement in the development of an extremely large and complex EIS for the operation of Glen Canyon Dam on the Colorado River in northeastern Arizona. The

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*(Downer—continued from page 13)*

operation of the dam has and continues to affect all of the resources in the 300-mile-length of the Colorado River corridor in the Grand Canyon. The Bureau of Reclamation (BOR), the project's lead federal agency, invited all potentially concerned tribes into the EIS development process as Cooperating Agencies pursuant to NEPA implementing regulations. BOR entered into direct contracts with each tribe to research their own traditional cultural properties concerns. Each tribe has direct input into the EIS development, providing management recommendations that help protect the Colorado River corridor, including specific traditional cultural properties within the larger sacred landscape, without having to divulge confidential information. The tribes' traditional cultural properties concerns are then incorporated into a programmatic agreement for compliance with Section 106 of NHPA.

We realize that neither Section 106 nor the NEPA compliance/ planning process provide the ideal context for holistic landscape or ecosystem planning and/or management. Both are designed to deal with specific, individual projects and the more-or-less isolated zones in which impacts are defined as likely to occur. Although NEPA compliance entails consideration of a wide range of natural and cultural resources, it is still an approach that is directly linked to consideration of specific undertakings. Nonetheless, it provides a mechanism through which consideration of traditional cultural properties, along with the natural resources and larger landscape of which they are a part, may be incorporated into project planning and design long before potential impacts become unavoidable.

### General Land Management Planning

Agencies can take this "proactive" position beyond the individual undertaking, and begin incorporating direct consultation with Indian tribes and traditional cultural landscape planning at the annual and/or general management planning level. This is the approach we are advocating with the U.S. Forest Service and the National Park Service; both situations show great potential. The Rocky Mountain Region of the U.S. Forest Service formed an inter-tribal advisory committee to advise them on long-range planning. We recently recommended a similar arrangement to another U.S. Forest Service District, from whom the Navajo Nation currently receives dozens of individual requests for consultation on specific undertakings each year, ranging from timber sales to installation of picnic areas. Similarly, Grand Canyon National Park has formed a Native American Work Group to assist in development of their General Management Plan, so that the tribe has a role in long-range, comprehensive planning prior to the level of individual undertakings. Problems with traditional cultural properties arise when the people knowledgeable about them are asked to respond to requests for information after development plans are already in place. Interacting with tribes as partners in the agencies' planning processes avoids these traps for the tribes, the agencies, and the places that must be preserved.

### Conclusion

We believe that traditional cultural properties fit into a larger trend in cultural resource management and environmental planning more generally which is leading toward efforts that take a broader approach to planning and resources impact assessment. This broader context is based on landscapes or ecosystems rather than artificially-defined impact zones derived from narrow project based criteria and artificially bounded cultural resources. Such an approach is emerging from various disciplines active in environmental planning. We are convinced that this is the only realistic approach to meaningful consideration of traditional cultural properties and the cultural landscapes of which they are integral parts, just as this methodology is the only approach that genuinely deals with the real issues of environmental management.

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# Traditional Cultural Properties and Consultation with Traditional Communities

**Lynne Sebastian**

The 58th Annual Meeting of the Society for American Archaeology, held in April, 1993, included a symposium on traditional cultural properties and consultations with traditional communities, which I co-organized with Charles Carroll of the New Mexico Bureau of Land Management. The symposium was entitled "Take Me to Your Leader" as an ironic comment on one of the common misconceptions about consultations with traditional communities—the misconception that one can simply walk into such communities like the proverbial little green men off the proverbial space ship and be taken to "the leader" who will answer all questions and make all things clear in an encounter between two cultures.

Dr. Judy Brunson Hadley of the Salt River Project consults with Eric Polingyouma about Hopi ethnobotany during the Fence Lake Project, March 17, 1992. Photo by T.J. Ferguson, Institute of the NorthAmerican West.

The actual process of consultation with traditional communities is much more complicated and is still actively evolving as new laws and regulations requiring consultation are promulgated and as those of us in federal and state agencies charged with carrying out such consultations learn by trial and error. Most of the participants in this symposium have been involved in one way or another in consultations concerning a proposed coal strip mine in west-central New Mexico called the Fence Lake Project. If developed, the Fence Lake Mine will provide the Salt River Project Agricultural Improvement and Power District, a utility company based in Phoenix, AZ, with coal for one of their power plants.

Salt River Project has been very cooperative in trying to identify all historic properties that could be affected by the development of the proposed mine, including traditional cultural properties. Since this project is the first major case in New Mexico where we have tried to integrate traditional cultural property identification completely into Section 106 compliance, the Fence Lake Project had a very big learning curve for everyone involved.

As the word got out that we were working on a major project involving traditional cultural properties, many of us involved with Fence Lake began to receive requests for help and advice from CRM professionals all around the country. These requests were the catalyst for the Society for American Archaeology symposium. We realized that we had learned a lot and that we had things to share with our colleagues who are just beginning to wrestle with the issue of how best to preserve and protect those historic properties classified as traditional cultural properties.

The papers presented below represent a wide spectrum of those involved in preserving traditional properties: federal CRM personnel, SHPOs, Native American specialists in consultations about these issues, archeologists, ethnohistorians, and private industry CRM specialists. We were also very fortunate to have Dr. Thomas F. King, one of the authors of National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*, to serve as our discussant. We hope that the information and the ideas in these papers will be of material assistance to our CRM colleagues who are looking for practical advice on the subject of including traditional cultural properties in the Section 106 process.

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# Administering Federal Laws and Regulations Relating to Native Americans

## Practical Processes and Paradoxes

**Charles Carroll**

For several decades, Indians and concerned non-Indians, including members of Congress, have recognized the need and have taken steps on many fronts to ensure communication with tribes during federal planning processes. For example, when federal actions may affect locations of religious or traditional cultural concern to Native American or Native Hawaiian groups, consultations are prescribed with tribes and/or traditional practitioners. Many avenues for communication have been opened or mandated through direct legislation, such as the American Indian Religious Freedom Act of 1978 and the Native American Graves Protection and Repatriation Act of 1990. In keeping with the intent of Congress, even more avenues of communication have been opened by federal agencies through revision, reinterpretation, or more rigorous application of existing regulations (e.g., 36 CFR 800), and agency guidelines such as National Register Bulletin 38. These and other changes are aimed at ensuring the opportunity for Native American concerns to be considered in the planning and completion of federal actions. At the same time, many states have instituted state laws that, at a minimum, protect Native American burials, and each may have one or more of its own consultation processes.

In regions of the country where federal and tribal lands are common and federally originated or permitted actions are frequent, the increased avenues of communication have virtually overwhelmed the infrastructure of many smaller tribes and have severely impacted workloads in even the largest tribal governments. Newly proposed amendments to the American Indian Religious Freedom Act seek to address this problem of workloads by extending review periods for tribes to 90 days. While such time extensions may provide near-term relief for workloads in some tribes, they treat only a symptom. Greater relief for all parties to consultations could be found through integration of consultation requirements.

The present process of tribal consultation is the result of accretion of steps prescribed by unrelated laws, regulations, and guidelines, most of which are designed to stand alone, so that if a particular criterion is met, a consultation is triggered. Frequently, however, some or all of the mandates come together creating a complex matrix of consultations to ensure that federal agencies and applicants for federal permits comply with each of the individual mandates. These mandates are not always compatible in timing, nor identical in topic or purpose. In addition to the process itself, which is complex, the volume of technical documentation that changes hands in the communications process can be immense.

In order to comply with responsibilities under laws, regulations, and guidelines, a federal agency may, for example, mail a 450-page archeological report to six different tribes and request a review and written, official tribal response within a set time frame. One week later, the same federal agency, for the same project, may mail a 275-page hydrology report to the same six tribes, requesting a different type of technical review and official comments, while in another few weeks, another archeological survey or testing report may be received and additional requests will be mailed. Very few tribes—and very few federal agencies—possess the infrastructure and resources to meet the demands of mandated consultations for very large federal undertakings, particularly if several are underway concurrently.

The nature of the parallel or randomly converging processes of tribal consultation and the extensive time frames of major federal undertakings combine to create numerous misunderstandings about what is taking place, even among experienced players. Large-scale federal undertakings requiring either an Environmental Assessment (EA) or full Environmental Impact Statement (EIS) generally have a two-year minimum planning period, but more often the planning, data gathering, writing, and decision-making take three to seven years. These long time frames frequently span the political terms of office of several successive tribal governments.

The earliest phases of such projects involve public scoping, and federal agencies today routinely involve tribes at this point. Unless the proposed undertaking makes intensive, continuing demands upon the time of all interested parties (which happens in some cases but not in others), a year or more may pass between the initial "scoping" contacts, in which the tribal governments are apprised of a proposed action, and successive phases that require consultations for various reasons. Meanwhile, in the time between each formal contact, tribal governments may change. The succeeding governments may know nothing of the project descriptions provided to their predecessors through face-to-face meetings and may not even be aware of voluminous documents on file within the tribal offices concerning the proposed project. This may result in complaints that the federal agency has failed to contact the tribe early enough in the planning process for an undertaking, when in fact, consultations may have been on-going for years, but with different tribal representatives. Ironically, the problem in some cases, therefore, is not that the federal process moves too fast with procedures such as 30-day response periods, but that the federal EIS process is too slow to mesh with political terms of office.

In order to understand the impact of mandated consultations between federal agencies and tribes upon the agencies, private proponents of federal actions (such as private industry and state and local governments), and

tribes, the individual mandates are summarized below. Points of convergence and divergence of the various laws, regulations, and guidelines are noted. As will be apparent, archeologists regularly play a role in tribal/agency consultations since several of the mandates for consultation have been added to new or existing processes that include archeology as a major component, such as compliance with Section 106 of the National Historic Preservation Act.

**Act One: National Environmental Policy Act**

Procedural Summary (Full-Scale EIS):

Agency Tribal Contact: May be EIS Coordinator, an agency field manager, cultural resource specialist, third-party EIS contractor, and/or representatives of an outside applicant.

Topic of Consultation: Broadest of all consultation channels; not limited specifically to Native American issues, all elements of an EIS are covered and are open to comment by tribes and the public.

Duration of Consultation Period: Minimum of two years, extreme of five, seven, or more years.

Method of Consultation: Public meetings, possible initiation of ethnographic and other channels of data gathering both for NEPA and in anticipation of subsequent legal requirements.

Volume of Documentation Generated (Review Workloads): Immense, if a tribe believes potential effects are significant enough to warrant full review of all background technical data collection and analyses. EIS technical reports typically fill several library shelves. Review requirements remain heavy even if a tribe chooses to focus only on a few topics, such as soils, hydrology, and cultural issues.

The formal planning process for large federal undertakings begins under the authority of the National Environmental Policy Act of 1969 (NEPA). NEPA requires the federal agency to consider whether a proposal to conduct some action on federal lands or with federal funds will have a significant effect upon the environment. The proposed action may originate within the agency, such as an erosion control project proposed to meet the agency's mission, or it may be received from outside the agency, from private industry, or state, local, or tribal governments. Certain proposals, such as large-scale power transmission lines, electric power plants, and coal mines, invariably are found to pose a significant threat to the environment and move directly to an EIS process. Lesser actions may be evaluated through Environmental Assessments (EAs), and certain specific actions of established minimal impact may be categorically excluded from full environmental assessment.

Among the first steps in initiating the EIS process are public "scoping" meetings, which are held to determine what issues are identified by the public as being significant given the specific proposed action. Public meetings are held following notice to the general public, while special interest groups, individuals, local governments, federal and state agencies, and Indian tribes are all routinely notified of meetings with direct invitations by mail. For federal EIS actions in New Mexico and other states with actively interested tribes, most agencies now coordinate special public meetings on tribal lands for the convenience of tribal members.

Three basic purposes should be served by NEPA "scoping" meetings: the agency (or the applicant for a federal permit under the direction of the agency) should provide the public with a reasonable understanding of what it proposes to do on federal lands or with federal monies. Next, the public is requested to identify the issues it believes are raised by the proposed action. Finally, alternative actions are defined; in practice this is frequently done by the agency or the outside applicant, but alternatives are open to modification and addition through discussions with the public.

NEPA scoping meetings occur at the beginning of the planning process for major federal actions and usually provide the first notification for tribes and the general public that an action is under consideration. When a tribe or any member of the public expresses interest in a proposed action a mailing list is established that is maintained and updated throughout the life of the EIS process—which can last from several to many years. For EIS projects of long duration, interested parties typically receive a newsletter updating progress. Interested parties or tribal entities may request to review all technical documents generated by the EIS data collection and analyses (within certain limits, such as the exclusion of archeological site locations to the general public), or only those related to selected topics of interest. Federal agencies conducting EIS processes are required at several junctures to seek and address public opinion on all issues related to the EIS (e.g., as draft documents are completed). This affords tribes and the public the opportunity to comment on at least several invited occasions over a period that may last three, five, or even seven or more years.

Almost immediately, as the NEPA process begins, consultations with tribes for other more specific purposes are triggered by the process itself and in anticipation of legal and regulatory processes that generally begin at later stages of a federal undertaking.

**Act Two: National Historic Preservation Act**

Procedural Summary:

Agency Tribal Contact: Generally an agency field manager or cultural resource specialist.

Topic of Consultation: Potential for adverse effect upon historic properties, including traditional cultural properties.

Method of Consultation: Correspondence, consultation meetings, field work, ethnographic studies

Duration of Consultation: For small projects managed under an Environmental Assessment, consultation may consist of a one time exchange of communications. Larger EIS projects may cover several months (excluding earlier NEPA consultations) to several years.

Volume of Documentation Generated (Review Workloads): Primary document is generally an archeological inventory report, which may range from a few pages for a very small proposed project, to a few hundred pages or several volumes for a large one.

It might come as a shock to some federal land managers who served their careers in the 1970s and '80s that the National Historic Preservation Act of 1966 (NHPA) is

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probably now the best understood and most routinely implemented piece of legislation relating to cultural resources. The early years of its implementation were confused and contentious, and many issues were settled in the courts and through the federal appeals system.

Among other things, the law and its implementing regulation (36 CFR 800) established the Advisory Council On Historic Preservation (ACHP), the State Historic Preservation Officers (SHPOs), and the requirement for federal agencies to identify and evaluate historic properties and consider the effects of federal actions upon them. Although the law was enacted in 1966, the full effect of NHPA as originally drafted was not realized in many federal agencies for another decade, not until the Federal Land Policy and Management Act (FLPMA) of 1976 directed significant changes in philosophy and policy.

Recent amendments to NHPA (H.R. 429, October 30, 1992) provide major clarifications to long-standing questions, in some cases by codifying practices that had developed in many regions as measures for compliance with perceived intents of various portions of the original Act. Among these is the requirement to consult with tribes as well as local governments and the public in assessing adverse effects of federal undertakings upon historic properties. It is important to note that this portion of the NHPA amendments recognizing tribes as a "named public" for this specific purpose is similar to, but not the same as, the consultation required for NEPA, and it is decidedly different from guidance provided in National Register Bulletin 38, a set of guidelines and recommendations concerning consultations with traditional communities such as tribes. Bulletin 38 has been controversial and it is not universally accepted by all federal agencies. Finally, this consultation requirement is not the same in purpose or timing as other mandated consultations described below.

Virtually all federal undertakings requiring an EIS under NEPA also require a parallel process for compliance with Section 106 of NHPA. In practice, the identification process required for Section 106 compliance begins in order to fulfill analytical requirements of the EIS, but the undertaking-specific Section 106 process can be fully implemented only after a decision is issued on the EIS.

**Act Three: The American Indian Religious Freedom Act**

Procedural Summary:

Agency Tribal contact: Generally agency field manager or cultural resource specialist.

Topic of Consultation: Policies (or in practice, actions, see discussion) which could affect free practice of traditional religion.

Duration of Consultation: Can be a single exchange of communications for minor policies or small projects, or years of continuing discussion when incorporated into an EIS process.

Method of Consultation: Specific informational meetings with tribal officials and elders; can often include ethnographic studies, literature reviews, review of archeological survey data, and specific-purpose field inventories.

Volume of Documentation (Review Workloads): Review of project descriptions, archeological reports, and other documents commensurate with the project scope, up to major documentation described under NEPA.

The American Indian Religious Freedom Act (AIRFA) has fallen into disfavor with many Indians, who expected much more when it was signed into law in 1978. The Act was passed as a joint resolution of Congress primarily to assert that traditional religions should be considered equally with all other religions, and that federal agencies should not inadvertently infringe upon the freedom to practice traditional religions through such measures as seasonally closing national parks, or enforcement of certain controlled substance laws upon Indians. As originally passed, AIRFA was not intended by Congress to be regulatory and required only that federal agencies review existing policies to ensure noninfringement. Amendments to AIRFA sponsored in 1993 by Senator Inouye of Hawaii are designed to create a regulatory process under the Act.

Although AIRFA has been found through the courts not to possess the show-stopping power that some tribes had hoped, its passage in 1978 had a major impact upon the way that federal agencies do business, and vitalized the intensive communication matrix between agencies and tribes. Without specific direction from the law and in the absence of regulations many federal agencies and applicants for federal permits attempted to comply with the law's intent by means of ethnographic consultations with tribes and traditional leaders to identify impacts that had never been considered before. Although confusing at first, initial attempts at AIRFA compliance were an extremely positive step in reshaping relationships between federal agencies and tribes (for a bibliography of such transitional studies, see National Register Bulletin 38).

**Act Four: Archeological Resources Protection Act**

Procedural Summary:

Responsibility for Initiating Agency/Tribal Contact: Federal Land Manager, generally the field manager or cultural resource specialist.

Topic of Consultation: Effects of permitted archeological work upon archeological resources on public lands.

Duration of Consultation Period: May consist of single exchange of correspondence, or may be extremely detailed and carry over a period of one or more years.

Method of Consultation: Routinely handled through correspondence for small projects; large projects, with numerous or complex sites may involve face-to-face meetings, field site visits, detailed analysis and discussions of the analytical techniques proposed by the archeologists requesting a permit to conduct research or mitigation of effects through data recovery.

Volume of Documentation Generated (Review Workloads): Documents at a minimum consist of an archeological research design or treatment plan. Documents may be brief but are generally technical; large project or complex sites can generate treatment plans consisting of hundreds of pages, requiring extensive, detailed review. Very large projects with extensive

time frames may be subject to multiple mitigation phases conducted simultaneously or years apart by different archeological contractors.

The Archeological Resources Protection Act of 1979 effectively replaced the Antiquities Act of 1906 by establishing civil and criminal penalties for disturbance of certain resources on federal and Indian lands (the earlier Act having proved to be nearly unenforceable) and by restating a permitting procedure for professional excavation and removal of archeological resources. Unlike permits to conduct non-disturbing archeological inventories on federal lands, which are issued under FLPMA and can have a relatively wide geographic scope and wide time frames for conducting such work, ARPA permits for excavation and removal are site-specific. Every ARPA permit requires approval of a technical research design or treatment plan prepared by a qualified applicant. One of the steps in issuing such a permit (Sec.4.c. of the Act) is that, "If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the federal land manager, before issuing such permit the federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance."

In the continuum of consultations within a large-scale EIS process, ARPA consultations would normally occur after those for NEPA, NHPA, and AIRFA, and sometimes NAGPRA, depending upon whether burials are anticipated given the nature of the resources involved. If burials are likely, NAGPRA consultations would be carried out early in the consultation process; conversely, in some regions of the United States, and under certain circumstances, burials might be unusual and consultations might parallel ARPA or even be omitted unless invoked under a discovery situation.

**Act Five: Native American Graves Protection and Repatriation Act**

Responsibility for Initiating Agency/Tribal Contact: Federal Land Manager, generally field manager or cultural resource specialist

Topic of Consultation: Disposition of human remains, associated funerary objects, and sacred objects (as defined under the Act)

Duration of Consultation: Uncertain, pending finalization of regulations, but a full range is likely under the regulations, which will probably provide the opportunity for agencies and tribes to enter into agreements to routinely handle certain common occurrences, while large or unusual projects may warrant special consultations over extended periods, for example, over the 30-year life of a mine.

Method of Consultation: If memoranda of agreement are permitted under the pending regulations, certain consultations under NAGPRA may involve single exchanges of communication (e.g., an agency notifies a tribe that it will or has reinterred remains in accordance with an existing agreement). Other forms of consultation may involve project-specific meetings or field visits.

Volume of Documentation: Archeological documentation of occurrence of human remains and other materials covered under the Act at a minimum. For large projects, concurrent review (with NHPA and ARPA reviews) of treatment plans, data recovery plans, etc., as they relate to human remains and other materials covered under the Act.

The Native American Graves Protection and Repatriation Act of 1990 deals with both the past and the future, concerning ownership of Native American human remains, associated funerary objects, sacred objects, and objects of cultural patrimony. Past collections of such materials are to be inventoried and the disposition of materials is to be determined under provisions of the Act. The Act further establishes procedures for federal agencies to follow when human remains are discovered in the future, or when they are intentionally excavated under permit. Unlike Section 106 of NHPA, the provisions of NAGPRA apply only to federal and Indian lands, and responsibility for compliance on federal lands lies with the land managing agency (as opposed to a permitting agency, which might assume "lead" in NEPA and NHPA actions). In some cases, however, in states such as New Mexico and Arizona with state laws that cover burials on state and private lands, NAGPRA agreements between federal agencies and tribes can be expanded to include uniform compliance on all lands by including the state regulatory agency in the development of memoranda of agreement.

**Summary And Discussion**

Five federal laws prompt consultations between federal agencies and Indian tribes:

The National Environmental Policy Act of 1969
The National Historic Preservation Act of 1966, including its 1992 Amendments and its interpretation in National Register Bulletin 38
The American Indian Religious Freedom Act of 1978
Archeological Resources Protection Act of 1979
Native American Graves Protection and Repatriation Act of 1990

Each law can stand alone and trigger consultations under certain circumstances and for different purposes, while in large projects all five may be invoked. When the latter occurs, the consultation and compliance process can become confusing for federal agencies and tribes alike.

The various laws and processes of compliance do not necessarily follow, one to the next, but sometimes run in parallel, or even with some contradiction of timing. For example, in the normal course of even a small project, it is not unusual for an archeological consulting firm to submit on behalf of their client (a company proposing an action on federal lands), an archeological survey report and treatment plan with an application for an ARPA permit to carry out mitigation of effects as proposed in the treatment plan. The federal agency then sends copies of these documents to tribes for review, asking for consultation under the following mandates:

- *under AIRFA*, concerning sites that may be of traditional religious concern that are not represented in the archeological record, if this issue had not been raised previously

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- *under NHPA,* concerning identification of traditional cultural properties potentially eligible for the National Register of Historic Places
- *under ARPA,* concerning the likelihood that the proposed program of archeological mitigation might affect sites of religious importance
- *under NAGPRA,* if burials are anticipated and addressed in the treatment plan.

The above list comprises only a few of the consultation issues that might arise at a particular juncture of a project. When a proposed project is controversial, the five laws and their implementing regulations not only present a confusing array of consultations between federal agencies and tribes, they create a legal mine field of compliance.

It has been suggested that these processes, in particular the NEPA and Section 106 process, are compatible and not only can, but should be conducted simultaneously, with Section 106 process completed prior to the NEPA decision (King 1993). This would certainly be the preferred approach if cultural resources were the only issue, but in many cases it creates a paradox in NEPA's mandate to assess alternatives to a proposed action.

**The NEPA/NHPA Problem**

For all internal and external federal projects, it is useful to consider NEPA as the fundamental process and time-line that links the other processes. All federally approved, permitted, or authorized actions must consider likely environmental effects and must be addressed at a level of detail commensurate with the threat to the environment.

Certain actions are defined as "categorical exclusions," and each federal agency may have specific definitions of categorical exclusions that apply to its normal operations that pose minimal environmental threat, or that are required by other laws. These actions are documented at a level less than an EA, but (in most agencies) documentation still addresses, at a minimum, the issues of cultural resources and threatened and endangered species.

Small projects or proposed actions that do not meet the agency definitions of categorical exclusions are addressed through EAs, while large projects may warrant an extensive EA or full EIS.

It is important to note that other compliance processes relating to other laws are also set in motion by the NEPA time-line. When considering the multiple processes of cultural resource compliance, it is important to be aware of these other compliance requirements, each of which may be supported or opposed by its own special interest group.

Large projects require an almost continuous consultation process between agencies and tribes. The consultations are centered on the laws protecting various forms of cultural resources, but frequently shift in focus from secular, to religious, to traditional cultural, and back again many times over an extended time period that may span a decade or more. For large-scale EISs, initial contacts between the agencies and tribes frequently begin with the public scoping meetings described earlier. The outcome of these meetings—which is the identification of issues and alternatives to be addressed and carried through the EIS process—frequently is not a matter of science, but a matter of public perception.

Cultural resource issues will always be addressed insofar as required for compliance with the various laws and regulations, but if they are not identified by the public as "issues" they usually will not receive prominent billing in the EIS, as might issues such as jobs, air pollution, water pollution, or other items of high public interest. Tribes can and sometimes do identify cultural resource matters as potential issues through the scoping process, but the issues of top priority are frequently the same as those defined by non-Indian communities with cultural resource issues added.

The initial contacts between federal agencies and tribes for a specific project often occur months, and sometimes a year or more, before any form of active archeological or ethnographic data gathering might begin for compliance with the Section 106 or any of the concurrent compliance processes. These contacts are also frequently conducted by "third-party" EIS contractors, hired and paid by an applicant and theoretically directed by an agency. If the contacts are made by the agency itself, they are rarely carried out by the same personnel who will handle the majority of the detailed agency-tribal consultations later in the project.

While certain types of proposed actions can allow NEPA and Section 106 compliance to go forward in parallel to some extent, full Section 106 compliance frequently is not compatible with one intent of NEPA, which is to weigh all alternatives to a proposed action—including the "no-action" alternative.

The early and intermediate steps in the Section 106 process—archeological and ethnographic inventories, determinations of eligibility, and evaluations of effects posed by the proposed project—all now include consultations with Indian tribes. These pre-mitigation steps have become so expensive that their completion, in itself can present a strong argument by a company to their legislators that they have been led down a costly primrose path by an agency. This can bring extreme pressure to bear upon the agency to permit the action regardless of its EIS findings. Precisely the same set of conditions can be used by special interest groups opposed to the action to argue that the federal agency has prejudiced its decision by focusing on a preferred alternative while ignoring or only giving lip service to the rest.

During the EIS process, the federal agency must not prejudice its decision among the alternatives. No matter how likely one alternative may be, and no matter how unlikely the rest, if the federal agency initiates or approves initiation of a full-scale Section 106 process for one alternative prior to an EIS decision, it places itself in a highly vulnerable position, in appearance or in fact, of having approved an undertaking prior to completion of the assessment process.

This is a critical point that is likely to continue to frustrate attempts to streamline tribal consultations and related fieldwork efforts in the early NEPA/NHPA phases of many types of major projects. While from strictly a cultural resource point of view it would be ideal to have the Section 106 process completed before an EIS decision is

issued by the agency, it is neither economically realistic, nor technically compatible with NEPA. When NEPA became law in 1969, only three years after NHPA, this technical incompatibility was never envisioned, since at that time it was assumed that compliance would involve agency managers simply reviewing a list of properties already on the National Register; cultural resource compliance did not become a growth industry until FLPMA, 10 years later.

The paradox of the five consultation laws may be summed up in a statement that is a little tongue-in-cheek, but not much: agencies and tribes must consult—but not too much—until an unbiased decision has been reached under NEPA.

An emerging problem of the consultation laws is that although agencies and tribes have consulted regularly on large-scale or particular types of projects since AIRFA was passed in 1978, no projects or federally licensed, permitted, or approved undertakings are exempt from the requirements for consultation. This is a truism, but one that has been ignored until recently. Federal agencies conduct, permit, and approve vastly more projects than they have historically consulted upon.

Very recently, the Bureau of Land Management (BLM) Washington Office has added a line called: "Nat. Amer. Rel. Concerns" as a check box on an abbreviated EA form intended for very minor proposed projects, and has added the same topic as a critical element in the BLM manual for EAs in general. At the moment of this writing, virtually no one in the BLM perceives that this check box dictates consultation. In the absence of other provisions, however, BLM offices conducting federal business in areas of interest or concern to Indian tribes now need to consult on all proposed actions, not just large-scale proposals as they typically have in the past. Projects such as range fences, vegetative treatments, drinking tubs, issuances of minor rights-of-way, recreation permits—every action that the agency conducts or approves—is subject to consultation with the tribes.

Ironically, while some cultural resource advocates and probably some tribes might be aghast to learn that this hasn't been the case all along (AIRFA having been passed 15 years ago), the majority of BLM managers, specialists in other resources, and outside industries are going to be even more aghast when they find that every proposed project requiring an EA under NEPA will require individual consultation with all potentially interested tribes with a minimum 30-day response period, which will be extended to 90 days if the current draft amendments to AIRFA receive Congressional approval.

### Programmatic Complexities

Over the past few years, agencies and tribes have turned to Programmatic Agreements (PAs) whenever the complexities of major projects have seemed overwhelming (there are other reasons for PAs, but this is one of the leading ones). These agreements are written under the authority of 36 CFR 800.13(b) to deal with Section 106 compliance, and have proven a workable vehicle for spelling out who does what and when, in order to meet the intentions of NHPA. Currently, even before final regulations for NAGPRA, some agencies are drafting project-specific NAGPRA Memoranda Of Agreement (MOAs) with tribes, and considering more generalized PAs to cover occurrences related to NAGPRA which may not be related to a particular large project.

It would be clearly beneficial to develop an agreement concerning consultations under AIRFA, but since AIRFA did not call for regulations, it is not clear what the authority for entering into such an agreement would be. If it can be legally drawn, such a PA could be patterned after portions of the Section 106 PAs in effect in many states between the ACHP, SHPOs, and agencies concerning levels of consultation and the classes of proposed actions subject to various forms of consultation.

Even the development of PAs to simplify matters is fraught with complications, however. One is that the different laws mandating consultations between tribes and agencies also empower different players. NAGPRA and AIRFA involve only Native Americans and the federal land managing agencies. NHPA includes the ACHP and SHPOs. It is problematic whether a unified PA could be devised to legally encompass all potential sources of consultations, and if it can, whether anyone would sign it given the divergent agendas surrounding these issues.

Unless and until congress passes "The Native American Consultation Unification Act of 19XX (or 20XX)," it is likely that even the simplification process will be unwieldy, since at least two separate agreements are likely to be required between each agency and tribe. One might combine AIRFA and NAGPRA consultations, with a second agreement for NHPA. Given its site-specific nature, ARPA will necessarily remain a source of case-by-case consultations. This may not seem particularly daunting, unless one realizes that some tribes may deal regularly or occasionally with a dozen offices of various federal agencies, and some agencies may conceivably need to consult with 50 or more Native American groups.

The best estimate right now is that many tribes and agencies are likely to find themselves requested to be signatories to dozens of such agreements—or to face the alternative of possibly thousands of individual consultations in the course of a year. Legislative relief in unifying tribal/agency consultations is highly unlikely, so it is up to the tribes and agencies to decide how they wish to communicate within the limited flexibility offered by the statutes.

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# Protecting Traditional Cultural Properties Through the Section 106 Process

**Lynne Sebastian**

Section 106 of the National Historic Preservation Act requires federal agencies to "take into account the effects" of their undertakings—which may include licensing, funding, or permitting of activities carried out by private parties as well as activities actually performed by agency personnel—on historic properties. Historic properties are defined as sites, districts, structures, or objects that are on or eligible for inclusion in the National Register of Historic Places.

To be eligible for the National Register, a property must be at least 50 years old; must possess integrity of location, materials, and workmanship; and must meet one or more of the following criteria:

a. it is associated with events that have made a contribution to the broad pattern of our history;
b. it is associated with the life of a person significant in our past;
c. it embodies a type or period or method of construction; it represents the work of a master or has high artistic values; it is a part of a larger, significant historic property; or
d. it has yielded or has the potential to yield important information about history or prehistory.

The process by which federal agencies meet this responsibility to take into account the effects of their undertakings on historic properties involves four steps:

- **Identification** of any potential historic properties in the area of effect for the undertaking;
- **Evaluation** of any properties identified to determine whether those properties are eligible for the National Register;
- **Assessment** of the effects of the undertaking on any eligible properties; and, if there will be an effect on those qualities that make a historic property eligible for the Register,
- **Treatment** or mitigation of the effect.

The federal agency carries out this process in consultation with the federal Advisory Council on Historic Preservation and the State Historic Preservation Officer in the affected state and with input from interested parties of many sorts.

Until about two years ago, most of the historic properties being identified in the Section 106 process were buildings of various sorts and archeological sites. They were properties identified through pedestrian survey by architectural historians or archeologists and documented through on-the-ground recording and archival research.

With the publication in 1990 of National Register Bulletin 38, "Guidelines for Evaluating and Documenting Traditional Cultural Properties," however, federal agencies became aware that there was another class of historic properties that they needed to identify within the Section 106 process: traditional cultural properties.

### What is a Traditional Cultural Property?

Bulletin 38 defines traditional cultural properties as historic properties whose significance derives from "the role that the property plays in a community's historically rooted beliefs, customs, and practices." The bulletin goes on to say that traditional cultural properties are eligible for the National Register because of their "association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community."

Traditional cultural properties are historic properties, and as such, they are subject to exactly the same Section 106 process as other historic properties. There are differences between traditional cultural properties and other kinds of historic properties in exactly how the steps in the Section 106 process are carried out, just as there are differences in how we handle prehistoric sites vs historic architecture, but the process is the same. The unique aspects of identifying and evaluating traditional cultural properties have to do with tapping into the specialized knowledge and information that is maintained within the traditional community.

Although many traditional cultural properties have physical manifestations that anyone walking across the surface of the earth can see, others do not have this kind of visibility, and more important, the meaning, the historical importance of most traditional cultural properties can only be evaluated in terms of the oral history of the community. To **identify** some traditional cultural properties and to **evaluate** all traditional cultural properties requires that agencies obtain the services of knowledgeable individuals in the traditional communities whose traditional use areas will be affected by an undertaking.

Likewise, in evaluating the **effect** of an undertaking on a traditional cultural property and in determining appropriate **mitigation** for any adverse effects, the input of the traditional community is essential. The question of effect still has to do with effects to those qualities of a site that make it eligible for the National Register, and mitigation still has to do with lessening effects to those qualities. Because the historical significance of traditional cultural properties is rooted in the cultural practices of the community, however, and because these properties are important in maintaining cultural continuity, we have to be certain that we are not "preserving" the property or mitigating effects to it in such a way that we destroy the property's ability to function appropriately in the context of the community and its cultural traditions.

### Misconceptions

These methodological differences in how traditional cultural properties are handled vs how prehistoric and historic architectural sites are handled, coupled with the general unfamiliarity of most federal agency managers and most public land users with traditional communities, has

led to a number of misconceptions and unfounded fears about traditional cultural properties and about their incorporation into the Section 106 process.

The first of these is what I call the "Gertrude Stein" complaint. Ms. Stein, you will recall, is the lady who said of Oakland, CA, that there was no "there" there. I frequently hear the same assessment of traditional cultural properties. It is true that some traditional cultural properties have no material manifestations. Some are readily visible landforms or landscape features, such as buttes or springs or mountains, that are associated with an event or person but exhibit no human modification or associated artifacts. Others are less clearly delimited "empty" spaces and could not be identified without the specialized knowledge maintained in the community.

The misconceptions here are that **all** traditional cultural properties are of this type and that **only** traditional cultural properties have these characteristics. I'd like to deal with the second misconception first. Consider Walden Pond, the Treaty Oak, Donner Pass, Plymouth Rock—all landforms and landscape features that have very specific but not empirically obvious historic associations. And consider Civil and Revolutionary War battlefields, the route of the Lewis and Clark Expedition, the Chisholm Trail, and the Trinity Test Site where the first atom bomb was exploded; all are "empty" landscapes with excellent historic credentials. None of these sites could be identified and evaluated were it not for the availability of historical records, yet no one would deny their historic importance. To doubt the historic importance of traditional cultural properties because "you can't see them" and because they can be identified and evaluated only through oral history is to claim that people who don't have written history don't have history.

Misconception number 2, that **all** traditional cultural properties are physically unmodified by human activities, is equally untrue. Traditional cultural properties often have artifactual and architectural manifestations. Native American shrines, for example, may have both; rock art panels, trail markers, ruined and dismantled structures, and many other material manifestations may mark the location of Native American traditional cultural properties. Archeological sites may be identified as ancestral sites of living tribes through specific oral traditions about the site or through artifactual evidence.

Traditional cultural properties of concern to non-Native American traditional communities may also be material or "immaterial" in the sense discussed above. In one New Mexico case, an electrical substation was built on a seemingly "empty" piece of ground, but in fact, this was the location where a Hispanic community traditionally held the costumed dance known as "Los Matachines." Other Hispanic traditional cultural properties might include the remnants of traditional land-use patterns—long-field systems, community ditches—or the shrines, descansos, roadside crosses, moradas, and other properties associated with folk religious traditions and practices that are central to the unique culture of Hispanic New Mexico.

A third misconception that often arises with Native American traditional cultural properties is that they are religious or sacred sites, not historic sites, and that they should be handled under the American Indian Religious Freedom Act, not the National Historic Preservation Act. The misconception here results from a failure to understand that in many cultures there is no separation or distinction between sacred and secular; what we would call the sacred permeates and informs all of life. In such cultures, most places, events, and things have "sacred" associations or connotations as well as "secular" functions and meanings in our terms. The idiom of explanation in Native American societies often focuses on these "sacred" associations rather than on what we would call material or secular aspects of the situation. But this discussion of the importance of a place in what we would call "religious" terms does not obviate the historical importance of that place.

In some ways, I agree that it would be better if we could handle protection of Native American traditional cultural properties under AIRFA rather than under NHPA. Some of the requirements for protecting these properties are difficult to meet in the Section 106 process, and the Section 106 process is, in many ways, badly suited to meeting the preservation needs of these properties. The emphasis on historic qualities and on criteria of eligibility focused on historic importance requires that tribes make a distinction that they find very artificial and excludes some types of very important sites from consideration and protection under NHPA. The need to establish mappable boundaries for historic properties, the extremely sensitive and confidential nature of the information about some traditional cultural properties, and the lack of actual protection (as opposed to consideration) inherent in the Section 106 process make this process a poor fit with the preservation needs of Native American traditional communities.

Having said this, however, I need to point out that for all that this process sometimes does violence to the traditional properties and for all that these properties do not fit very well with the process, it is the only process that we have right now for offering some level of protection to traditional cultural properties located off tribal lands. And with flexibility and cooperation and understanding on both sides, we can make it work. Having dealt summarily with the misconceptions, I would like to devote the rest of this paper to sharing with you some techniques that we are using to make the Section 106 process work for traditional cultural properties in New Mexico.

**Identification**

In order for a federal agency to take into account the effects of an undertaking on historic properties, it must first know what properties are within the area to be affected. As noted above, many properties of concern to traditional communities cannot be identified through pedestrian surveys and archival research, but must be identified through interviews with knowledgeable individuals within the community.

For federal agencies, this raises the issues of when to ask, who to ask, and how to ask. The latter two questions will be addressed by far more qualified folks in subsequent papers in this issue; here I would like to address the issue of when to ask. One problem that arises is in defining "traditional communities." With Native Americans, there are federal criteria for recognition of tribes and other groups, but in some parts of the country most Native Americans do not belong to federally recognized tribes, and some mechanism must be found to include them in the traditional cultural property identification process.

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For non-Native American traditional communities, this issue can also be somewhat complicated. In New Mexico, some Hispanic traditional communities are coterminous with recognized legal entities such as villages or land grants; others are simply informally recognized neighborhoods or rural settlements; still others are largely nonresidential. For the purposes of knowing when to ask about traditional cultural properties, we have defined traditional communities as those that depend heavily on oral transmission of their history and traditions, those whose unique historical practices depend on continued access to and use of places whose history cannot be discovered in written records.

Another "when to ask" issue is a critical one in a state such as New Mexico where federal agencies carry out or fund or license or permit thousands of undertakings every year. Native American groups now living in New Mexico and in bordering states have identified immense and frequently overlapping aboriginal use areas. In some areas, the overlapping aboriginal use areas are also overlapped with Hispanic land grants and traditional use areas of considerable antiquity. Because these use areas greatly exceed the boundaries of modern reservations and communities, many federal undertakings on federal, state, and private lands have the potential to affect traditional cultural properties. In some cases, the situation in complicated even on Indian lands because the tribe that currently owns the land is unrelated to or even a traditional enemy of tribes that ascribe traditional value to properties now under the jurisdiction of the land-owning tribe.

In order to ensure that traditional cultural properties are taken into account along with other historic properties potentially affected by federal undertakings, traditional communities with historic ties to sites within the area of potential effect must be identified and consulted. The problem, of course, lies in determining which communities have historic ties to which areas so that the agency will neither fail to consult potentially concerned communities nor place the burden of unnecessary consultations upon communities who have no concerns.

Among the Indian tribes having traditional cultural property concerns in New Mexico, very few have established means by which to respond to requests for consultation. Even for those who do, consultations about each of the thousands of federal undertakings every year would constitute an unbearable and unnecessary burden. In the State Historic Preservation Division we are working to establish procedures that will trigger consultations only when they are necessary, creating a manageable process for both the federal agencies and the traditional communities.

Beginning with Native American traditional communities, we are funding an ethnohistorical study to identify and develop base maps of traditional and aboriginal use areas beyond the boundaries of each tribe's current reservation. When this study is completed, we will begin a series of consultations with the tribes to refine and add to the information on the maps. The tribes will be able to add or delete areas and increase or decrease the boundaries of areas shown on the maps. The important thing to stress here, however, is that these maps will not serve as a **substitute** for consultation about federal undertakings; they will serve as a **trigger** for such consultation. In addition to establishing the geographic areas about which particular tribes wish to be consulted, we plan to initiate discussions about classes of undertakings, kinds of landforms, and other categories of activities and places that are of particular concern to the tribe or of generally little concern to the tribe. For example, sand and gravel operations might be of little concern to a tribe if they are confined to arroyo bottoms but of great concern if they involve isolated buttes or other prominent landscape features. A tribe might decide that well pads for oil and gas drilling in a particular area would require no additional consultation provided that archeological sites could be avoided. Prescribed burns might be of no concern in an area where there was no history of plant collecting but of great concern in an area where there was a long tradition of plant collection.

Ultimately, what we plan to do is to develop a GIS database that includes the mapped geographical areas about which tribes wish to be consulted and as much information as possible about when and how each tribe wishes to be consulted. When a federal agency determines that it has an undertaking requiring Section 106 consultations, it will be able to call up this database, input the UTM coordinates of the area of potential effect for the undertaking, and receive information about what tribes, if any, have asked to be consulted about this area as well as any available information about particularly sensitive landforms or types of undertakings, etc.

We also plan, with the consent of the tribes, to include information on known traditional cultural properties in this database. The information will be limited to location, eligibility to the National Register (if determined), identification of the tribe or tribes who ascribe traditional value to the property, and possibly a very general statement about the nature of the property. Access to this information would be restricted just as access to our archeological site data is restricted now.

When an agency queries the database about traditional communities to be consulted for an undertaking, it will also receive information about known traditional cultural properties within and near the area of potential effect for the undertaking along with information on which tribe or tribes to contact concerning the property. We will maintain files containing at least summary information about all traditional cultural properties identified through Section 106 consultations; more detailed, religiously sensitive information will be retained by the tribes.

Access to our files will be decided in consultation with the affected tribes. Some properties are not particularly sensitive and access to the information could be available to researchers as well as to federal agencies planning undertakings. For very sensitive properties information would be much more restricted, requiring case-by-case consent of the tribe prior to any access. The recent amendment to Section 304 of NHPA gives both federal agencies and SHPOs, in consultation with the Secretary of the Interior, much more discretion to maintain the confidentiality of information concerning the nature as well as the location of historic properties when disclosure of that information would increase the risk of harm to the property or impede use of a traditional religious site.

Using the information from our traditional cultural property database, the federal agency will be responsible for completing a good faith effort to identify traditional

cultural properties within the area of potential effect for the undertaking. We will be encouraging agencies to deal with this issue programmatically rather than on a case-by-case basis, to develop prior agreements with tribes about how these consultations will be handled.

Yet another "when to ask" issue that is causing controversy in New Mexico right now concerns identification of traditional cultural properties through field survey by Native American elders or religious use. This differs from field visits to known sites or general localities of known importance; this is commonly done as part of the traditional cultural property identification process. The controversial issue involves field visits to localities for which there is no oral history to indicate that historic properties are present.

The position of New Mexico SHPO has been that the whole point about traditional cultural properties is that information about these sites is preserved in the oral traditions of a living community. Furthermore, the eligibility of these sites to the National Register is based on their association with the cultural practices and beliefs of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community. Our position has been that if there are no practices involving a place, no beliefs concerning that place, and no mention of the place in the oral history of the community, it is not a traditional cultural property. The oral history component is essential. If there is no history of use of a place, no hint that it exists in the oral traditions of a community, then it is difficult to argue that preservation of this place is integral to maintaining the continuing cultural identity of the community. An alternate view on this issue is presented in the paper by Othole and Anyon below.

### Recording

In order for federal agencies and SHPOs to make decisions about eligibility of and effect on traditional cultural properties and in order for federal agencies to appropriately manage such properties under their jurisdiction, those carrying out identification of these properties need to collect and record certain kinds of information. In New Mexico we haven't designed or adopted any sort of standardized recording form, largely because we don't feel that we understand the range of variability in traditional cultural properties well enough to do so yet. We have developed a draft set of guidelines for traditional cultural property recording, however, and we consider the following to be critical classes of information.

There should be a physical description of the property. As Bulletin 38 points out, traditional cultural properties must be tangible, they must have a fixed physical referent. We require a map location with boundaries that are clearly indicated and with information about how and why the boundaries were defined. It is virtually impossible to protect a property in a land-management situation without some kind of boundary definition. There should also be a physical description of the property including artifactual remains and any man-made or natural landscape features.

The site records should include references for any published sources describing this property or establishing the historic context of the property. For previously identified traditional cultural properties, this information is often sufficient for determinations of eligibility and may spare community members the necessity of revealing information that they would prefer to keep confidential.

The records for the property must include information about the time depth of use for the property and about its integrity. They must also discuss the ways in which this property meets one or more of the criteria of National Register eligibility found in 36 CFR 60.4 and must provide sufficient contextual information to permit a determination of eligibility. There must be a direct and necessary association between the event, practice, individual, etc., and the physical location of the property. Additionally, in conformance with Bulletin 38, we require information establishing that the property is of importance to a community, not just to an individual or family.

In my experience, we often get far more information than we need for an eligibility determination, but this is good news for the traditional community. We keep reminding consultants and the communities that it is the historic qualities of the site that are of concern in the Section 106 process, not its sacred qualities. And although this is considered a nonsensical dichotomy by many traditional people, it has the advantage of limiting or largely eliminating the need for disclosure of sensitive information.

I always encourage ethnographic consultants to keep in mind the fairly limited information that is needed to determine eligibility. I need to know about a property's association with a historic personage, with historic events, etc. I don't need to know, and don't wish to know, about the layers of confidential, sensitive, sacred knowledge associated with this historic property. Generally this information isn't germane to or needed for the determination of eligibility, and its confidentiality can best be assured if it isn't revealed in the first place. If for some reason some part of this information does prove necessary to the eligibility determination, it can be revealed later as needed.

Finally, because the identification process for traditional cultural properties is unique in relying on oral testimony, we ask that consultants include information about the age and special qualifications of those being interviewed and, if possible, their names as well. Notation of any corroborating physical or archival evidence is also very desirable. Various special circumstances may also lend additional weight to oral testimony.

The Hopi, for example, make a distinction between *Navoti*, which is an oral narrative based on historical knowledge of events which the speaker has experienced personally or knowledge that has been entrusted to the speaker as a member of a religious society, and *Tuuwutsi*, which is an oral narrative based on stories that the speaker has been told second hand and in a more secular context. Thus, we are inclined to give extra weight to information from a Hopi consultant that he or she classifies as *Navoti*.

### Eligibility

As much as possible we are trying to treat traditional cultural properties just like other kinds of historic properties when it comes to determinations of eligibility. The

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use of the property must date back at least 50 years unless it is a truly unique or outstanding property; it must have integrity; and it must meet one or more of the criteria of eligibility.

One important consideration for consultants who are collecting traditional cultural property information: You need to provide those of us who have to make decisions about eligibility with sufficient information to place a property in a larger historic context. In order for us to evaluate these sites we need to understand where they fit into both the written history and the traditional history of the community.

In addition to these basic issues in determinations of eligibility, we also keep in mind the guidance in Bulletin 38 that says a traditional cultural property is eligible because of its association with the cultural practices or beliefs of a living community and because it is important in maintaining the continuing cultural identity of the community. For this reason we look for documentation that the site in question is of concern to a community, not just to one or a few individuals (although the definition of community in this context is pretty tricky), and we also look for evidence that the property is associated with practices that are ongoing in the community or could be re-instituted if the property can be preserved. Even in traditional communities, traditional practices die out and are no longer important in maintaining the continuing cultural identity of the community. We believe that preservation efforts for traditional cultural properties should be focused on those properties that are or could again become part of the cultural repertoire of a living community.

**Effect and Mitigation**

As with eligibility, we are trying to keep consultations about effect and mitigation for traditional cultural properties as much like those for other types of historic properties as possible. As defined in 36 CFR 800.9, effect is an alteration of those characteristics of a property that qualify it for inclusion in the National Register. Adverse effects are those that diminish a property's integrity through destruction, damage, or alteration; through isolation from or alteration of the property's setting; through introduction of audible, visual, or atmospheric intrusions; through neglect resulting in deterioration or destruction; and through lease, sale, or transfer of the property.

Because of the necessary association between traditional cultural properties and traditional cultural practices or beliefs, determinations of effect must also take into consideration any effects of the undertaking on the community's ability to continue using the property in culturally appropriate ways. Likewise, mitigation or treatment programs for undertakings should treat or mitigate effects on those qualities that qualify the site for inclusion on the National Register while taking into account the culturally specified requirements for continued, appropriate use of the property.

**Final Thoughts**

Trying to protect traditional cultural properties through Section 106 is a challenging but rewarding process. So far I have focused on ideas for meeting some of the challenges, and there are challenges. The fit between traditional cultural properties and Section 106 is inexact at best, and the fit between the Section 106 process and the preservation needs of traditional communities is often worse. This is a new line of inquiry for most federal managers, for most archeologists, and for most traditional communities, and we are just starting to work the bugs out of the process.

But the rewards are also great, and I would like to close with a few words about those rewards. For all its failings and drawbacks, the Section 106 process is a real functioning process, backed up by law and by implementing regulations. In one form or another this process is operating in most federal agencies in every state and trust territory. For the great majority of federal undertakings that have the potential to affect historic properties, those effects get at least some consideration because of Section 106. For all the frustration that we sometimes feel over a law that requires no more than that the federal agency "take into account" those effects, the widespread applicability of Section 106 provides us with a very powerful opportunity to make a difference.

Every time that we work successfully with a traditional community to have their traditional cultural properties considered in the 106 process we offer those properties a possibility of protection that they have not had before. The longer that one works with traditional communities and the more one comes to realize the degree to which these communities cherish their historic properties, the greater the rewards.

The inclusion of traditional cultural properties in the Section 106 process is an issue that seems to give rise to strong feelings and sincere questioning among all the participants. I once had a devoted preservation professional tell me that he objected to inclusion of traditional cultural properties in this process because of the high requirement for keeping information confidential. He said that our mandate as public officials was to serve the public interest and that he could not see how a public process could be conducted in secret for the benefit of a few. He asked me, "What is the public interest that we are serving by doing this?"

My answer to him is the thought with which I would like to close this paper. As an anthropologist I believe that we can best serve the public interest by doing what we can to preserve cultural diversity in much the same way that biologists attempt to serve the public interest by preserving species diversity. The contribution that we can make through the Section 106 process is in preserving places that are integral to the customs, beliefs, and practices of traditional communities. When such communities lose access to or appropriate use of those places, they begin to lose the customs, beliefs, and practices that contribute to their cultural uniqueness. Every time one of the traditional cultures in this country dies out or loses more of its integrity, we all are poorer for that death or that loss. And that is where I would say that the public interest lies in our efforts to preserve traditional cultural properties through the Section 106 process.

# Working Together

## The Roles of Archeology and Ethnohistory in Hopi Cultural Preservation

**T.J. Ferguson, Kurt Dongoske, Leigh Jenkins, Mike Yeatts, and Eric Polingyouma**

Through the acts and omissions of the United States, many of the aboriginal lands claimed and used by the Hopi Indians have been taken from them (Indian Land Claims Commission 1970). As a result, the Hopis today face a situation where they are concerned not only about the preservation of sacred areas, ancestral graves, and cultural sites on their own reservation, but also in other areas being developed where they have no jurisdiction. In response to this situation, the Hopi Tribe's Cultural Preservation Office has embarked on a vigorous attempt to use existing historic preservation legislation as a means to gain input into decisions made about the management of historic properties in a wide area of Arizona, New Mexico, Colorado, and Utah.

The Hopis, with a population of about 8,500, today occupy 12 villages on three mesas in a reservation in northern Arizona (Connelly 1979). *Tutsqwa*, the historic Hopi heartlands, covers a much larger area, beginning at *Tokonavi* (Navajo Mountain), and extending to *Öngtupka* (Grand Canyon), *Koninhahawpi* (Point Sublime), *Tusaqtsomo* (Bill Williams Mountain), *Nuvatukyaovi* (San Francisco Peaks), *Yotse'hahawpi* (Apache Trail at head of Mogollon Rim), *Tsimontuqwi* (Woodruff Butte), *Sio Önga*, (Zuni Salt Lake), *Namituyqa* (Sanders), *Wukopacavi* (Ganado), *Qaö'uytaqtipu* (Burnt Corn), and *Looloma* (Kayenta) from whence the description returns to *Tokonavi*. These points are shrines on a religious pilgrimage undertaken to pay homage to all ancestral Hopi lands and several of the other sacred sites important to Hopi clans. The shrine areas thus do not constitute the boundaries of Hopi lands, only a symbolic representation of them. They represent the "plaza" of Hopi land. In addition to *Tutsqwa*, the Hopi Tribe is also concerned about cultural sites located in adjoining areas that were used and occupied by Hopi ancestors during a long period of clan migrations preceding the consolidation of the Hopi Tribe on the Hopi Mesas.

The efforts of the Hopi Tribe to participate in the decision-making process regarding impacts to their ancestral cultural sites coincides with a burgeoning movement in the field of historic preservation to consider traditional cultural properties as historic sites for the purposes of the National Historic Preservation Act (NHPA) as amended on October 30, 1992, and with efforts by federal and state agencies to begin implementation of the Native American Graves Protection and Repatriation Act (NAGPRA; P. L. 101-601) and parallel state legislation (A.R.S. § 15-1631, 41-841 and 41-865). Implementation of NAGPRA and Section 106 of NHPA and its implementing regulation, 36 CFR Part 800, requires consultation with the Indian tribes and traditional religious leaders whose resources are subject to impact. The Hopi Tribe takes the opportunity and responsibility to consult seriously. Additionally, the Cultural Preservation Office believes that a true inventory and consideration of the effects of a proposed project on cultural resources cannot be obtained without ethnographic and ethnohistoric research to complement a standard archeological inventory. The experience of the Hopi Tribe is that for many projects a genuine consultation requires more than simply notification of a proposed impact from a land management agency via letter with a 30-day period for comment.

The Hopi Cultural Preservation Office uses information derived from archeology, ethnohistory, and interviews with elders to identify traditional cultural properties, evaluate potential impacts to these resources, and recommend appropriate mitigation measures. This information is then used in consultation with land management agencies. In this paper, we (1) describe how the consultation process at Hopi works, (2) discuss the perspectives of the Hopi Tribe on how and why archeological sites constitute traditional cultural properties, and (3) examine the goals of cultural preservation in relation to

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**Prologue**

*Aliksa'i!* Listen! What follows is an account of the Hopi origin. The Hopis emerged into this, the Fourth World, from the *Sipapuni* in the Grand Canyon. Upon emerging, they encountered *Ma'saw*, the guardian of the Fourth World. A spiritual pact was made with *Ma'saw*, wherein the Hopis would act as the stewards of the earth. As a part of this pact, the Hopis vowed to place their footprints throughout the lands of the Fourth World as they migrated in a spiritual quest to find their destiny at the center of the universe. Hopi clans embarked on a long series of migrations that led them throughout the Southwest and beyond, settling for a time in various places. Following divine instructions, the Hopis continued their migrations until after many generations they arrived at their rightful place on the Hopi mesas.

During the period of migrations, the Hopi clans established themselves throughout the land by cultivating and caring for the earth. As directed by *Ma'saw*, the setting of Hopi "footprints" included the establishment of ritual springs, pilgrimage trails, shrines, and petroglyphs. As the Hopis migrated they left behind the graves of their ancestors, as well as ruins, potsherds, grinding stones, and many other artifacts to pay the mother earth for the use of the area, and as evidence that they had vested the land with their spiritual stewardship and fulfilled their pact with *Ma'saw*. These archeological sites today constitute monuments by which Hopi people verify their clan histories and religious beliefs. Archeological sites thus provide physical proof that the Hopis have valid claims to a wide region. Yes, this is the way it is. *Ta'ay, yanhaqam.*

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archeological and ethnohistorical research. The objective of our paper is to describe the need and importance of the consultation process to give state and federal agencies and their research contractors a realistic idea of what the consultation process entails for the Hopi Tribe.

**The Hopi Cultural Preservation Office**

The Hopi Cultural Preservation Office was established as a tribal program in the Department of Natural Resources in 1988. It currently has a full-time staff of 11 people, including a director, a Tribal archeologist, two project archeologists, a media specialist, three Hopi research specialists, an administrative assistant, a transcriber, and several secretaries. On two projects, the Cultural Preservation Office has entered into a collaboration with the Institute of the NorthAmerican West to obtain the services of a consulting ethnohistorian. The Cultural Preservation Office is dedicated to preserving the spiritual and cultural essence of the Hopi people. The mandate of the Cultural Preservation Office encompasses a variety of concerns, including archeology, ethnology, recovery of stolen sacred artifacts, and preservation of the Hopi language and farming technology. The program is supported through a combination of direct funding from the Hopi Tribe and supplemental funding from project sponsors who need the professional services it is uniquely capable of providing. With respect to archeology and ethnology, the Cultural Preservation Office is faced with a challenge of developing an appropriate means for the Hopi villages, clans, and religious societies to participate in program activities by contributing the esoteric, highly guarded information needed for management purposes.

**Representatives from the Acoma, Hopi, and Zuni tribes during consultation meeting with Salt River Project, the Bureau of Land Management, and the New Mexico State Historic Preservation Office about proposed treatment of human remains on the Fence Lake Project. Photo by T.J. Ferguson, Institute of the NorthAmerican West.**

Much of the esoteric information needed by the Cultural Preservation Office is embedded in clan history or the ceremonial knowledge of Hopi religious societies. Clan history is ritual knowledge and is rarely shared legitimately with other clans, much less with non-Indians. The actions of early anthropological researchers such as Voth (e.g., 1901, 1903, 1905; 1912), Fewkes (e.g., 1897, 1898, 1906), and Stephen (e.g., Stephen 1936; Fewkes and Stephen 1892), and subsequent violations of researcher/informant confidence at Hopi have contributed to the current guarded context of research at Hopi. The Hopis objected to much of this research at the time that it was conducted but had no way to control it. The legacy of this past research has left many Hopi people suspicious of scholarly research. The cautious attitude of these tribal members affects many of the activities that the Hopi Cultural Preservation Office needs to undertake while documenting concerns about historic sites and traditional cultural properties. To address these concerns, the Hopi Cultural Preservation Office decided that direct involvement of Hopi elders from the Hopi villages was the way to make current research more acceptable.

**The Hopi Cultural Resources Advisory Task Team**

A Hopi Cultural Resources Advisory Task Team was established in 1991 to guide and assist the research activities of the Hopi Cultural Preservation Office. This advisory team currently consists of 18 men representing virtually all of the Hopi villages and a number of prominent clans, priesthoods, and religious societies. The organization and functioning of this advisory team is a significant accomplishment because it includes representatives from autonomous villages that decline to send representatives to the Hopi Tribal Council and that do not otherwise participate in the activities of the centralized Hopi tribal government.

The Hopi Cultural Resources Advisory Task Team holds regular monthly meetings where a wide range of topics are discussed, and special meetings are conducted to consult on specific issues. Field trips are made as needed to inspect project areas and evaluate Hopi cultural sites; recent trips have included the Grand Canyon National Park, Glen Canyon Dam Recreational Area, Arizona State University's Roosevelt Dam Platform Mound Project, Bureau of Reclamation's Horseshoe and Bartlett Dam Projects, Petrified Forest National Monument, Aztec Ruin, and Mt. Graham. When more intensive field investigations are required, a subset of the Cultural Resources Advisory Task Team is generally appointed to undertake this work, including river trips through the Grand Canyon and field surveys for the Salt River Project Fence Lake Mine Project. Field visitation is a critically important means to contextualize project impacts and evaluate resources. It also provides an opportunity to identify traditional cultural properties that archeologists may have overlooked or not recognized during cultural resource surveys.

The members of the Cultural Resources Advisory Task Team hold distinguished positions of authority within the traditional social structure of their villages, but their participation on the committee is a secular activity that is not a part of their regular religious responsibilities. Since participation in the Cultural Resources Advisory Task Team meetings and field trips takes these men away from farming and the other productive activities in which they would otherwise be engaged, the policy of the Hopi Tribe is to provide an honorarium for the time

they spend on Cultural Preservation Office activities. Some of the funding needed to support the Cultural Resources Advisory Task Team is provided directly by the Hopi Tribe; other funding is made available by project sponsors.

With regard to the funding of the Cultural Resources Advisory Task Team, the attitude of many land management agencies and outside researchers is a source of consternation to the Hopi Cultural Preservation Office. The members of the advisory team are all experts in Hopi culture, and they possess information needed by land management agencies to fulfill their legislative mandate for historic preservation and NAGPRA related consultation. The Cultural Preservation Office therefore values their contribution in the same way that it values the contribution of any specialist or expert.

Unfortunately, many federal and state bureaucrats and archeologists do not view traditional learning with the same value as western education. This view is demonstrated in the double standard that has been commonly applied in ethnohistoric research. The people who actually have most of the knowledge are the least likely to be viewed as "educated" and therefore are the least likely to be compensated for their knowledge. It is the anthropologists and historians who use this same information, gained through informants, who receive compensation for the "knowledge." This situation stems from a number of historical prejudices. First is the traditional view some scholars hold that Native Americans are the subject of research not active participants in research as cultural experts in their own right. This view objectifies people and reduces them to data, and some anthropologists refuse to pay for "data." Second is the lack of recognition afforded to traditional forms of education as an alternative but equally intensive and valid means to gain knowledge as that provided by western schools. Finally, there is the belief of many federal and state bureaucrats that traditional cultural properties are of greatest concern to the Native Americans who use them, and that these Native Americans should therefore be willing to volunteer their time and knowledge to protect them.

This last belief might be valid if an undertaking that would impact a resource were controlled by Native Americans, but this situation is the exception rather than the rule. Rarely will a Native American group propose an action that will knowingly destroy a resource that has cultural value for them. More often it is the case that impacts are related to federal, state, and private agencies pursuing their own agendas for development. Requesting that tribes volunteer information in this context is similar to extortion in that tribes are coerced into providing free information because it is in their "best interest" to protect resources of value to them.

The Hopi Cultural Preservation Office thinks this situation is analogous to that of archeologists who also have an interest in cultural resources. Archeologists are no longer asked to donate their time to undertake routine procedures to locate and evaluate cultural resources in areas being developed or to mitigate the adverse impacts of land modifying projects on those resources. Professional archeologists established the need to be paid for this work three decades ago. The Hopi Tribe thinks the emerging federal and state requirements for consultation with cultural advisors and tribal elders need to be similarly funded.

The size of the Hopi Cultural Advisory Task Team brings up an important point in relation to the symposium for which this paper was prepared, entitled as it was, "Take Me to Your Leader." Many federal agencies have a misperception that there is a single political or religious leader they can contact to undertake consultation. A tribal organization with a single leader was imposed upon the Hopi people through the implementation of the 1934 Indian Reorganization Act. This act established a centralized tribal government based on that of the United States, incorporating a democratically elected Chief Executive Officer (i.e., the Tribal Chairman) and legislature (i.e., the Tribal Council). This form of governance, however, does not incorporate a centralized source for traditional knowledge which is still held and transmitted within clans and religious societies at Hopi.

Hopi accounts of clan migrations relate that the ancestors of the Hopis passed through many areas of the Southwest during the peregrinations that led to the gathering of clans on the Hopi mesas. During these migrations, each clan followed its own unique route and established its own history. The Hopi people refer to these ancestors as the *Hisatsinom.* The Hopi people know that the area occupied by the *Hisatsinom* transcends the culture areas defined by archeologists, i.e., some *Hisatsinom* lived in the Hohokam area of southern Arizona during the migratory period, while others resided in the Mogollon and Fremont areas as well as the Colorado Plateau. The prehistoric cultural constructs and culture areas defined by archeologists play an important role in contemporary archeological theory, but they constitute foreign concepts in the Hopis' understanding of the past. The Hopis know that prehistoric peoples were not as tied to the constraints of geography as the theory of archeological culture areas suggests. During the migratory period people were very mobile and moved over great distances. The knowledge and history obtained by each clan during its migration is specific to that clan, and constitutes esoteric information that should not be shared with other clans. Consequently, the process of acquiring information for legal and management purposes is complex and time consuming, requiring consultation with many people.

Consultation with the Hopi Tribe by governmental agencies or contractors should be initiated through a letter, addressed to the Tribal Chairman, presenting the relevant information concerning the proposed development and requesting information about any concerns the Hopi Tribe may have. The consultation process should be initiated as early as possible during project planning since efforts by the Hopi Cultural Preservation Office to acquire the relevant information may be time consuming. Federal and state agencies should not assume that consultation will consist of a single exchange of letters or that a lack of response during a 30-day consultation period constitutes concurrence by the Tribe. Unless consultation is initiated early enough in project planning to allow for sufficient flexibility, an adequate consultation cannot be achieved and compliance with the intent of the historic preservation law cannot be realized. Consulting

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agencies should be prepared to accept the fact that even with a sizable and well organized Cultural Resources Advisory Task Team, some projects will require input from additional Hopi people before relevant knowledge can be collated for cultural resources management.

**Examples of Research Projects for Consultation**

The Hopi Cultural Preservation Office has worked out a protocol for combining archeological and ethnohistorical research in conjunction with participation and review by the Cultural Resources Advisory Task Team on two large projects. One of these projects is the Glen Canyon Environment Studies (GCES) sponsored by the Bureau of Reclamation to study the environmental impacts relating to the operation of the Glen Canyon Dam. The Hopi Tribe is a cooperating agency in the preparation of an Environmental Impact Statement on the operations of Glen Canyon Dam. This is a multifaceted effort that also incorporates primary research in the form of an archeological survey of the Little Colorado River Gorge, and ethnographic and ethnohistoric research on the Hopi use of the Grand Canyon.

The second project is research conducted with the Institute of the NorthAmerican West for the Salt River Project's (SRP) Fence Lake Mine and Transportation Corridor Project in New Mexico and Arizona. In this project the Hopi Tribe conducted an extensive ethnohistorical investigation of traditional cultural properties in or near the proposed SRP coal mine near the Zuni Salt Lake in New Mexico and along an associated transportation corridor from the coal mine to the Coronado Generating Station in Arizona.

**Archeological Sites as Traditional Cultural Properties**

For the purposes of implementing the National Historic Preservation Act of 1966 as amended, traditional cultural properties are defined as historic sites that are important because of "their association with cultural practices or beliefs of a living community that (a) are rooted in the community's history, and (b) are important in maintaining the continuing cultural identity of the community" (Parker and King n.d.) To qualify as historic sites eligible for inclusion on the National Register of Historic Places traditional cultural properties must exhibit four attributes: an age greater than 50 years; existence as a tangible property; integrity in relationship to the transmission and retention of cultural beliefs or the performance of ceremonial practices; and integrity of condition wherein their traditional cultural significance has not been reduced through alteration of location, setting, design, or materials. Consultation to identify and evaluate traditional cultural properties should play a key role in the historic preservation compliance process. If state and federal regulators determine traditional cultural properties to be eligible for the National Register, the impact of a project on these sites must be considered and this process provides an opportunity to protect the site.

The Hopis have many different types of traditional cultural properties, including shrines, sacred sites, springs, resource collection areas, and geographical landforms with place names that commemorate events in Hopi prehistory or history. From the Hopi perspective, every ancestral archeological site is also a traditional cultural property. This is because ancestral archeological sites are tangible monuments validating Hopi culture and history and the Hopi's covenant with *Ma'saw*. As such, archeological sites play a central role in the transmission and retention of Hopi culture. Moreover, every prehistoric Hopi village also has a village shrine associated with it that retains contemporary religious significance. The Hopi Tribe's definition of ancestral archeological sites as traditional cultural properties was derived from consultation with the Hopi Cultural Resources Advisory Task Team. During this consultation, the standard definition of traditional cultural properties was read and discussed by the Cultural Resources Advisory Task Team in the context of a specific set of archeological sites in the SRP Fence Lake Mine project area. The criteria for the eligibility of these sites for inclusion on the National Register of Historic Places were also reviewed, and Hopi Advisors decided archeological sites were eligible under the criterion (a): they are associated with events that have made a significant contribution to the broad patterns of Hopi history (i.e., clan migrations); under criterion (b): they are associated with the lives of persons significant in our past (i.e., the Hopi ancestors); under criterion (c): they are a portion of a larger entity that is significant (i.e., clan migrations); and under criterion (d), in that they have yielded or have the potential to yield information pertinent in prehistory and history.

Some of the archeologists working for regulatory agencies stated at the outset of consultation with the Hopi Tribe that they did not think the definition of traditional cultural properties was intended to be applied so broadly to all ancestral archeological sites. In their view, the conception of traditional cultural properties had targeted a different set of cultural sites not usually recorded by archeologists. In the absence of any other means of management the Hopis are glad to see these other cultural sites managed as historic properties. Taking the definition of traditional cultural property as published in Bulletin 38 (Parker and King n.d.) at face value, however, they decided that it also applies to all ancestral archeological sites. This application is an example of different special interest groups interpreting the same language in very different ways.

Archeologists should realize that their interpretation of the language in federal guidelines, rules, and regulations is sometimes not the only or even the best interpretation. The Hopi Cultural Preservation Office has been successful in convincing all parties to the consultation process that their definition of archeological sites as traditional cultural properties is culturally valid. This definition means, of course, that the Hopis now expect to be consulted about the treatment plan for mitigation of adverse impacts to those archeological sites so classified.

[Editor's note: To my knowledge, no decision has been made by the Keeper of the National Register about the Hopis' position that all *Hisatsinom* sites (Anasazi, Hohokam, Mogollon, and Fremont archeological sites) are eligible for the National Register under all criteria of 36 CFR 60.4. Regardless of the outcome on this issue, the Hopi have been and will continue to be consulted about treatment plans for Section 106-

related mitigation of adverse impacts to any archeological sites that they wish to be consulted about. Acceptance or rejection by regulatory agencies of the notion that all archeological sites are traditional cultural properties will not have any affect on the Hopis' opportunities for consultation, since these sites are already recognized as historic properties and the Hopi are already identified as interested persons. If all prehistoric archeological sites are found to be eligible under criteria (a), (b), and (c), the difference, as the following section makes clear, will be not in consultation opportunities, but in decisions about mitigation of adverse effects.]

### The Role of Archeology

Conventional archeological culture history (Adams 1978; Brew 1979) has focused on the Hopi's relations to archeological sites on or near the Hopi Indian Reservation. While these sites are obviously significant to the Hopi Tribe, Hopi concerns for *Hisatsinom* archeological sites extend over a much wider region as discussed above. Professional archeologists on the staff of the Hopi Cultural Preservation Office play an important role in identifying *Hisatsinom* archeological sites.

On the Hopi Indian Reservation, the professional staff conducts archeological inventories and prepares reports that meet the standards of cultural resources management. Special attention is given to locating traditional cultural properties as well as more conventionally defined archeological sites. In a recent survey of 24.4 miles along State Highway 264, conducted for the Arizona Department of Transportation, the Hopi Cultural Preservation Office located 48 archeological sites and 19 traditional cultural properties (Yeatts and Dongoske 1993). Ethnographic interviews and archival research identified an additional four traditional cultural properties that had been destroyed during prior road construction. Potential impacts to orchards and farming areas that are culturally important to the Hopi people were also identified.

**Hopi Cultural Resources Advisory Task Team members Eldridge Koinva, Bryan Tyma, Eric Polingyouma, and Dalton Taylor review ethnohistoric report for the SRP Fence Lake project, February 22, 1993. Photo by T.J. Ferguson, Institute of the NorthAmerican West.**

This highway survey exemplifies the difficulty in classifying and managing historic properties. The categories of archeological sites and traditional cultural properties are not mutually exclusive and one site may exhibit characteristics that allow its classification in both categories. Many resources that archeologists readily recognize as "archeological sites" are also eligible for the National Register of Historic Places as traditional cultural properties using the criteria as interpreted in Bulletin 38 (Parker and King n.d.). Similarly, many "traditional cultural properties" also have archeological manifestations.

The dual classification of sites can create a management dilemma. For instance, the Hopi Tribe simultaneously wants to enter archeological site data into the archives maintained by the Arizona State Museum and not to reveal the location of certain traditional cultural properties. When a location is classified as both an archeological site and a traditional cultural property this is problematical. The description and location of archeological sites in site forms and technical reports may inadvertently reveal information about an associated traditional cultural property, even if specific information about that traditional cultural property is withheld. Classification of a historic property as being eligible for the National Register only under criterion (d) may facilitate a management decision to mitigate adverse impacts to the property through scientific data recovery.

If the site is also a traditional cultural property, such as a shrine, however, then there can be no real mitigation of an adverse impact to it, and its destruction may have a deleterious effect on Hopi culture. Ignoring the qualities of a site that make it a traditional cultural property therefore creates problems in appropriate management. The Hopi Tribe is currently seeking an appropriate resolution to this research and management dilemma.

For projects conducted by other agencies outside of the Hopi Indian Reservation, the professional archeologists on the Cultural Preservation Office staff review the cultural resource survey reports to collate data and summarize that information for review by the Cultural Resources Advisory Task Team. For instance, a recent National Park Service archeological survey of 255 miles along the Colorado River through the Grand Canyon documented a total of 475 sites (Fairley et al. 1991), of which 235 were deemed to be *Hisatsinom* sites of concern to the Hopi Tribe. Archeological surveys of the SRP Fence Lake Mine and Transportation Corridor Project identified about 600 archeological sites, the majority of which are prehistoric puebloan sites deemed to be *Hisatsinom* by the Hopi Tribe. The services of professional archeologists are essential in sorting through the voluminous information presented in technical cultural resources management reports. Without these services the Hopi Cultural Preservation Office would suffer from information overload.

Some archeologists believe that Indians may be interested in preserving archeological sites that are traditional cultural properties, but that they are not interested in archeology *per se*, i.e., the discipline that scientifically studies material culture. At Hopi, however, people are interested in archeology. Hopi elders want to know what types of data archeologists collect and how archeologists

*(**Ferguson**—continued on page 32)*

*(Ferguson—continued from page 31)*

use these data to reach conclusions. Many Hopis engage in a sophisticated intellectual exercise wherein they compare archeological findings to their own system of knowledge. Points of congruence between the two systems of knowledge are often explained in terms of Hopi ritual knowledge (*wuknavoti* and *wimi*, see Dongoske et al. 1993). For instance, Hopi prophecy states there will be a time when even the ashes left by Hopi ancestors will be used to prove their claims. Hopi cultural advisors are quick to make the connection between this prophecy and floatation analyses of hearth contents for macrobotanical studies that are a standard technique in archeological data recovery.

In general, archeologists have applied an inconsistent use of Hopi knowledge in the interpretation of the archeological record. For instance, archeologists have been quick to pose the questions of "What happened to the prehistoric Pueblo people? Where did they go?" The Hopis know where the prehistoric Pueblo people went—to the Hopi mesas, among other places. At the same time, many of these archeologists use the Hopis in an ethnographic analogy to interpret architectural function and label archeological features. Many of the terms and concepts used by archeologists derive from the Hopi lifeway, e.g., kiva and Katsina. The Hopi Cultural Preservation Office thinks that the discipline of archeology would benefit if archeological theorists would more rigorously and consistently research and use Hopi understanding of the prehistoric cultures of the Southwest.

When development threatens ancestral archeological sites, the Hopi Cultural Preservation Office always recommends these resources be preserved and protected from damage. It is difficult for a Hopi to ever recommend the destruction of an ancestral archeological site. However, the Hopi Tribe recognizes that while its consultation allows it a role in the decision making process, it is not actually charged with making final decisions about the management of sites outside of their jurisdiction. While the Hopi Tribe does not condone the destruction of ancestral archeological sites, it will recommend measures to mitigate adverse impacts to sites that other people have decided to destroy. The Hopi Cultural Preservation Office recommends that archeologists scientifically study sites slated for destruction to provide a documented record of their existence. Many Hopis think a written record of archeological sites is better than no record at all. The written record will provide documentation of the monuments of the Hopi territorial domain as they once existed so that memory of them will not be entirely lost once their physical manifestation is gone.

**Osteology and Reburial of Human Remains**

The remains of ancestors buried in archeological sites are of special concern to the Hopi Tribe. These ancestors are of great significance in the Hopi religion, and the Hopi people feel strongly that their physical remains need to be treated with respect. From the Hopi perspective the only proper disposition of disturbed or excavated ancestral human remains and their associated funerary objects is reburial.

The Native American Graves Protection and Repatriation Act protects Indian graves on federal and tribal land, and its implementation necessitates consultation with Native American groups claiming cultural affinity to the people buried in those graves. NAGPRA also requires the repatriation of human remains and associated grave goods on federal or tribal lands to tribes with valid claims, if they so request. The regulatory procedures to implement NAGPRA are still being developed, but it is clear that the research and consultation required for NAGPRA substantially overlap with the requirements of the National Historic Preservation Act, as amended, since both federal laws often pertain to the same sites.

The issue of cultural affinity, as defined in NAGPRA, raises questions about how that affinity is determined. The Hopi Cultural Preservation Office realizes that it is one thing to claim cultural affinity and that it is another thing to prove affinity through objective scientific study. There are also different levels of cultural affinity of interest to the Hopis. At a general level the Hopis are concerned about all *Hisatsinom* human remains. *Hisatsinom* remains can often, but not always, be identified through their associated archeological context, i.e., by association with puebloan architecture and certain types of pottery. No osteological analysis is required for this type of identification. Some Hopis are also interested in the genetic affinity between different tribes in the Southwest and what this means for prehistoric migrations. In addition to affinity, the age, sex, and pathologies of disinterred human remains are deemed to be important variables, as well as the nature of associated funerary objects, which may indicate whether an individual held a special social status (e.g., a priest) that would warrant a specific treatment. Nondestructive osteological analyses and studies of artifacts are seen as appropriate means to collect the data of interest to the Hopi Tribe.

The Hopi men on the Cultural Resources Advisory Task Team want to make informed decisions regarding what they think are appropriate archeological or scientific techniques for the study of human remains. As part of the consultations for the Fence Lake Mine Project, SRP facilitated a meeting where Dr. Charles Merbs, a physical anthropologist from Arizona State University, reviewed for the Team the state of the art of osteological analyses and what can be learned using various methods and techniques. This allowed the Hopis to develop recommendations on the appropriate level of osteological analysis for any human remains recovered during the Fence Lake Mine Project with an understanding of what can be learned and how that knowledge can be gained. For instance, some Hopis think their interest in tribal affinity and clan migration might be productively pursued through genetic studies that entail destructive analysis of human remains, and they are willing to consider this as an analytical option. Other Hopis have a more conservative view, however, and think that such analyses, while interesting, would be culturally inappropriate. The important point here is that the Hopi cultural advisors are willing to listen to archeologists and physical anthropologists present research designs that address specific sets of data in terms of specific problems of mutual interest to anthropologists and Hopis, and then make their recommendations on the basis of the informa-

tion presented to them as tempered by their cultural values.

Archeologists can conceptually reduce human remains to archeological resources (i.e., artifacts) and make decisions about sampling a number of archeological sites in a project area, leaving many sites containing human graves to be destroyed without any data recovery. Hopis, however, apply different, more humanistic values, and when consulted have recommended that every ancestral grave in the direct impact zone of development be located and moved out of the project area and safely reburied as close as possible to its original location. For the Hopis, reinterment of human remains is the only acceptable mitigation measure for the disturbance of graves because of the Hopi concepts of death. Hopis believe that death initiates two distinct but inseparable journeys, i.e., the physical journey of the body as it returns to a oneness with the earth and the spiritual journey of the soul to a place where it finally resides. A disruption in the physical journey by the excavation and removal of human remains interrupts and obstructs the spiritual journey. This creates an imbalance within the spiritual world and hence the natural world.

The Hopis have a reburial ceremony that they conduct when ancestral human remains recovered in archeological work are reburied. Several elders on the Cultural Resources Advisory Task Team have traveled extensively to conduct the appropriate rituals as needed on a wide range of recent projects.

**Role of Ethnohistory**

The Hopi Cultural Preservation Office uses ethnohistory in conjunction with archeology as another means to collect the information it needs to consult with land management agencies. The ethnohistoric research supported by the Hopi Tribe entails the collection and analysis of information from archival sources, published literature, and oral history interviews. The published literature on Hopi is extensive (Laird 1977), but the information in this literature is not always accurate from the Hopi perspective. Consultation with Hopi elders is needed via formal interviews to verify published information or correct it where it is erroneous. The Hopi Cultural Preservation Office prefers to tape record and transcribe oral history interviews to build a body of documentation for their internal archives. This procedure allows oral history interviews to be referenced and cited in the same scholarly fashion as written sources.

The oral history interviews and ethnographic research sponsored by the Cultural Preservation Office are conducted under a "need to know" basis where only that information needed for management purposes is made available for research. The basic questions pertaining to historic preservation include the antiquity of use of a traditional cultural property, the general way the resource functions to retain or transmit the cultural identity of the Hopi community, and whether it has integrity of condition wherein the traditional cultural significance has not been reduced through alteration of location, setting, design, or materials. Answers to these questions do not generally require esoteric aspects of rituals to be divulged. Many interviews are conducted entirely in Hopi, and only portions of the interview are transcribed or summarized in English. There is a filtering process that works to keep esoteric information from being needlessly divulged. The concern for confidentiality is not only to keep esoteric information from non-Indians, but also to safeguard it within the Hopi Tribe from other clans or villages that are not supposed to be privy to that information.

The ethnohistoric research conducted by the Hopi Cultural Preservation Office uses documentary sources to help to fill in the gaps in knowledge maintained through oral history. During the consultations concerning the SRP Fence Lake Mine Project, for instance, there were no Hopi elders available who knew the entire route of the pilgrimage trails that run from the Hopi Mesas to the Zuni Salt Lake in New Mexico. Recent pilgrimages have been conducted using pick-up trucks traveling via modern roads. Even though the route of the old trails was not precisely known, these trails are still significant traditional cultural properties. The shrines and offering places along the trails are still used in prayers, and the trails have not lost their cultural significance even if their physical location is not well-known. For this reason, the Hopi Cultural Resources Advisory Task Team thought it was important to locate the old pilgrimage trails and determine how these would be impacted by the SRP project. An ethnohistorical research strategy was developed using oral history interviews, review of published literature, analysis of aerial photographs and remote sensing, and extensive field work to identify the location of the pilgrimage trails. Using this combination of techniques, the precise location of one pilgrimage trail and the general locations of two other trails were determined.

Ethnographic research to document contemporary Hopi values and beliefs about archeological sites and traditional cultural properties is another important component of ethnohistoric research. This information provides the Hopi Cultural Preservation Office with the documentation it needs to consult with regulatory agencies and help evaluate historic properties in terms of the criteria for eligibility for the National Register of Historic Places.

**Cultural Preservation vs. Historic Preservation**

The Hopi Tribe approaches the research needed for consultation with regulatory agencies from a perspective of cultural preservation, yet the framework within which this work is conducted is one of historic preservation. While there is a substantial overlap in these two pursuits, there are also important differences that need to be considered in the design of appropriate research and the dissemination of results. A basic concern is the fact that preservation of Hopi culture requires that esoteric religious information remain secret. The historic preservation compliance process, however, requires documentation of Hopi values and beliefs in order to assess the historical character of properties in relation to the eligibility criteria of the National Register. There is a potential conflict here.

This issue was resolved on the research conducted for the SRP Fence Lake Mine Project and the Glen Canyon Environmental Studies by the project sponsors allowing

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the Hopi Tribe to collect all the cultural information it needed for its own purposes and then subsequently decide what information would be released to the project sponsor and state and federal regulators. By guaranteeing the confidentiality of esoteric information and by directly participating in the research, the Hopi Cultural Preservation Office is able to successfully balance cultural preservation with historic preservation and help agencies satisfy their federal mandates.

**Review of Research Reports**

The Cultural Preservation Office has implemented an intense review process to ensure that esoteric or privileged information not needed for management purposes is not inadvertently released to sponsors and historic preservation regulators. Project reports are read in draft form by the Director and staff of the Cultural Preservation Office and then submitted for review by the Cultural Resources Advisory Task Team. This is a time-consuming process, and the internal review schedules following Hopi logic do not always coincide with the schedules of project sponsors.

The final review of the ethnohistoric report for the Fence Lake Mine Project, for instance, was initiated six months after the draft report was completed, and at the same time the report was released for review by the state and federal regulators. The actual review by the Cultural Resources Advisory Task Team entailed reading virtually the entire report out loud in both English and Hopi. English words and cultural resources management concepts were defined and discussed when these were not readily understood, and there was detailed discussion of all the information, recommendations, and conclusions in the report. The primary concern was that all of the information in the report be accurate, and the contemporary knowledge of the cultural advisors was used to verify the anthropological data in the report in this regard. Another concern was whether or not the information in the report should be restricted to use by the sponsor and regulators or whether it should be released to the public.

The Cultural Resources Advisory Task Team review took six full days and involved working groups ranging in size from 12 to 22 people. Those people at the review sessions who are quoted or cited in the report gave their explicit permission to be identified by name as the source of information. Similar permission from those people who were not able to attend the meeting was obtained by reviewing the report with them in private. The intense level of scrutiny to which the SRP report was subjected guarantees both that the Cultural Resources Advisory Task Team fully understands the information contained in the report, and that it contains no erroneous information.

**Accommodation of Academic and Hopi Values in Dissemination of Knowledge**

After review of the SRP Fence Lake Project ethnohistory report, the Cultural Resources Advisory Task Team recommended that the Cultural Preservation Office only release this information to the project sponsor and the state and federal historic preservation regulatory agencies. The Cultural Resources Advisory Task Team did not feel comfortable with releasing this information to the public where it would be available for scholarly research conducted outside the auspices of the Hopi Tribe. The Cultural Preservation Office is thus releasing the final report in a limited distribution with the caveat that it cannot be copied or used for scholarly purposes unrelated to project management without the written permission of the Hopi Tribe. The Hopi Tribe's right to restrict their report was guaranteed in the contractual arrangements with SRP and the Institute of the NorthAmerican West through which the work was undertaken.

There is some irony in the restriction of ethnohistoric reports prepared by the Cultural Preservation Office, given that these reports draw upon past anthropological work that would not be available if it had been similarly restricted. The restriction of reports may result in that information not being readily available to Hopis for use in future projects. Quite honestly, restriction of reports creates a tension between the professional ethics of the anthropologists employed by the Cultural Preservation Office who are expected to disseminate the results of their work to other scholars and the cultural ethics of Hopi tribal members to not divulge information. This tension is diffused by open discussion of the issue between the Hopis and their non-Indian employees and consultants and by an ongoing evaluation of the respective goals of cultural preservation and scholarly research. It is also mitigated to some extent by that fact that some publication of activities of the Cultural Preservation Office has been deemed appropriate and approved (Dongoske et al. 1993; Ferguson 1992).

Hopi people use archeology and ethnohistory to verify their own beliefs and to enrich their personal understanding of their place in the universe. Archeologists have a less personal and more abstract interest in adding to the general store of knowledge and reaching scientific or historical conclusions that are of interest to them professionally. These two objectives are not mutually exclusive, of course, but their joint accommodation is still being worked out. That this is the case is not surprising given that the Cultural Preservation Office is still a relatively new institution in the Hopi Tribe, working in a largely uncharted cross-cultural context. Perhaps in time the Hopis will decide that cultural resource management projects provide an appropriate means for the Hopi Tribe to advance scholarly knowledge as well as their self-defined preservation goals.

**Consultation with Sponsors, Regulatory Agencies, and Other Tribes**

The Cultural Preservation Office and Cultural Resources Advisory Task Team have benefited from a number of meetings with regulatory agencies where state and federal responsibilities were explained in relation to the historic preservation compliance process. For people who have not been formally inculcated into the sometimes arcane rules and regulations of historic preservation, the compliance process can be bewildering and confusing. Effective consultation at Hopi is dependent upon the Cultural Resources Advisory Task Team understand-

**Hopi Cultural Resources Advisory Task Team members consult with Salt River Project archeologist Dr. Judy Brunson about an archeological site that the Hopi tribe considers to be a traditional cultural property, August 7, 1991. Photo by T.J. Ferguson, Institute of the NorthAmerican West.**

ing exactly what they are consulting about. For the Fence Lake Mine project, a series of informative meetings were held with SRP, representatives of the Arizona and New Mexico State Historic Preservation Officers, and the Bureau of Land Management. The Cultural Preservation Office held additional consultation meetings with the various Hopi villages and other local groups to share information about the project and to seek advice as to how to proceed. A total of 27 consultation meetings were conducted for the SRP Fence Lake Mine Project. Similar meetings concerning the Glen Canyon Environmental Studies have been held with the Bureau of Reclamation and the National Park Service.

Presumably these meetings have laid the groundwork so that such intensive consultation on the compliance process will not be needed on every future project. The fields of historic preservation and cultural resources management are dynamic, however, and as new laws are passed, and as management agencies develop new ways to implement existing rules and regulations, there will be a continuing need for educational meetings.

In formal consultation for NAGPRA and the National Historic Preservation Act, the Hopi Tribe has explicitly stated that its participation in the compliance process does not imply endorsement or support of a particular development or project. The Hopi Tribe's interest is in trying to protect as many cultural sites as possible, not in facilitating their destruction through new development.

All traditional cultural properties of concern to the Hopis can be reduced to historic sites for purposes of management. This is not an entirely satisfying procedure, however, because for the Hopis the real significance of many of these cultural properties is as sacred sites. The Hopis recognize, however, that under existing federal laws sacred sites have less protection than historic sites. Since all Hopi shrines and religious practices were established in ancient times and are integral in the transmission and retention of Hopi culture, these sacred sites meet the criteria for classification as traditional cultural properties. The conceptual and legal reduction of sacred sites to historic sites is pragmatic management, but it is nonetheless an emotionally difficult process for tribal elders engaged in the consultation process.

The Hopis realize they share a cultural affinity to many *Hisatsinom* archeological sites with other Pueblos and non-Puebloan tribes. There is thus a need to consult with these tribes as well as state and federal regulatory agencies, especially with regard to the proper treatment of human remains and funerary objects. On the Fence Lake Mine Project, SRP sponsored a series of historic meetings between the Acoma, Hopi, and Zuni Tribes that allowed tribal elders to discuss their concerns and recommendations with each other in a forum that facilitated a uniform set of recommendations for the proper disposition of human remains and grave goods under the provisions of NAGPRA. The knowledge that what the Hopi Tribe was recommending to SRP with respect to treatment of the dead did not conflict with what the other pueblos were recommending allayed many anxieties. The inter-tribal meetings of the Pueblo tribes was thus in everyone's best interest.

### Suggestions for Future Consultation

Based on the experience of the Hopi Cultural Preservation Office, the following suggestions can be made concerning future consultations regarding NAGPRA and NHPA compliance.

- Initiate consultation as early as possible in the project planning and development process. Do not expect any meaningful results from sending an anthropologist unannounced to the tribe half way through the project.
- Try to coordinate consultation for traditional cultural properties with that for NAGPRA to make best use of the effort it takes to contextualize the project and evaluate impacts.
- Allow adequate time for review of all aspects of the project, including technical reports. Tight bureaucratic schedules may not be culturally appropriate or practical in consulting with tribal elders.
- Do not make the mistake of assuming that a lack of response in a 30-day period following the initiation of consultation means that the tribe has no concerns or is in concurrence with the project.
- Sponsors should be prepared to support the costs associated with consultation. This includes the time of the Cultural Resources Advisory Task Team as well as travel expenses to inspect project areas and conduct field evaluations of traditional cultural properties.
- Sponsors should attempt to accommodate a request from the tribe to employ particular ethnographers or historians in the research needed to complete consultation. It takes a long time for researchers to earn the trust of tribal elders. Use of professional scholars who have already gained this trust will result in a more efficient and comprehensive research program.
- Sponsors and regulators should be prepared for meetings in which many cultural issues are discussed at length. The relevance of all these issues to a particular project may not be obvious to sponsors or regulators, but their full consideration may be essential using Hopi standards of logic and ethics.
- Regulators need be honest in their assessment of the potential to protect traditional cultural properties so that the cultural advisors they consult are not misled into thinking that everything they deem important will be

*(**Ferguson**—continued on page 36)*

saved. The efforts of the New Mexico and Arizona State Historic Preservation Offices in this regard have been laudable.

- Sponsors and regulators should recognize that it may be pragmatic and necessary to reduce sites whose highest values stem from religious use to the lessor status of historic properties for management purposes, but this is an emotionally painful and sometimes confusing process for cultural advisors. Non-Indian participants in the consultation process need to retain an anthropological perspective that there are many different ways to view a cultural site and that multiple perspectives may need to be applied simultaneously.
- Sponsors and regulators need to carefully word discussions with cultural advisors so that they are not misled into thinking that consultation is the same as making a management decision. Exactly who is going to make management decisions needs to be clearly explained at the outset of consultation.
- Cultural triage (Stoffle and Evans 1990), i.e., the ranking cultural sites in terms of significance and selecting a subset of those sites for preservation, is a non-Hopi concept. Decisions about what resources to sacrifice to facilitate development are the responsibility of land managers not Indian people. Keep in mind that decisions in medical triage are made by doctors not patients. Indian values on traditional cultural properties should be duly considered, but it is unfair to ask a native religious leader to make a decision, and therefore assume responsibility, for the destruction of any traditional cultural property.
- The consultation process may be more time-consuming and require more effort than a federal or state agency may anticipate at the outset. Be Patient! Adequate consultation may require federal representatives to visit the tribe and, with permission from tribal authorities, seek out individuals who may have the necessary knowledge. All tribes do not have the response capabilities or network that the Hopi Cultural Preservation Office has developed, and adequate consultation with these tribes may require a greater effort on the part of federal agency. Once a federal agency has established this communication network with a tribe, however, future consultation should become easier and more efficient. Above all maintain an open and honest communicative relationship.

## Prospects for the Future

Archeological research concerns the Hopis, particularly when their ancestors are the subject of that research. The findings of archeologists are important and have real impact on how the Hopis perceive themselves. The destruction of archeological sites by construction projects, land development, or scientific excavation is of great concern, in part because the record established by their ancestors is obliterated. Consultation with Hopis and Hopi participation in research will help to ensure that Hopi perspectives and concepts are incorporated into the written record that will remain after archeological sites are destroyed. Beyond consultation, the Hopis want to be treated as peers in archeological research projects so that their knowledge, values, and beliefs are regarded with the same respect that archeologists afford one another when there are differences in research methods and interpretation of the archeological record. The Hopis do not, however, want to impose their sacred knowledge indiscriminately on the archeological record or to constrain archeological interpretation unfairly. They do not want to censor the ideas of archeologists, nor do they wish to impose research designs on archeologists.

Not all information should be divulged, however, and not all archeological research is suitable for direct involvement of Hopi tribal members (e.g., osteological analysis). No universal written guidelines exist that define what is appropriate research or what research is appropriate for Hopis to participant in. Decisions about the appropriateness of research depend on a number of variables, including the nature of the project, the project research design, the project personnel, and the goals and objectives of the research. It is almost certain that Hopi standards for what constitutes appropriate research and how that research should be conducted will evolve in the future as archeological method, theory, and techniques develop, and as the Hopis see a need to obtain new information about their past.

Cooperative research ventures between the Hopi Tribe and anthropologists in the future may serve to identify and advance mutually beneficial research interests. This means that archeologists should not be discouraged if the Hopi Tribe does not choose to support their proposed research at the present time. Archeologists working with ancestral Hopi archeology should continue to consult with the Hopi Tribe to explain what they are interested in researching, how this research can be conducted, and what will be learned. In the future, the Hopi Tribe may support research that is not considered appropriate today.

## Conclusion

Cultural preservation is important to the Hopi Tribe. As Vernon Masayesva, Chairman of the Hopi Tribe, remarked at the 1991 Hopi Cultural Preservation Day, it is true that,

*"early in life . . . when we are taught to plant, the elders would tell you that if you want to plant a straight row of corn, you have to first pick where you are going to be going, where you wish to end up at. And then you start planting, but every so often you have to look back. Because it is what happened that tells you where you are at, and where you are going. So, when we talk about cultural preservation, its just not because we want to save something, I think it's because we don't want to forget who we are as Hopis. That we don't want to ever forget our responsibilities, and our traditions and values—all of those things that make us different in many ways from other cultures. And this is why cultural preservation . . . is very important. Because you will never know who you are unless you know where you came from. You never know where you are going unless you understand where you have been."*

The Hopi Cultural Preservation Office thinks that archeology, ethnography, and ethnohistory have important roles to play in Hopi cultural preservation, and that the research needed to supply the information needed for consultation with state and federal regulatory agencies will result in lasting benefits for the Hopi people.

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# The Fence Lake Mine Project

## Archeology as Traditional Cultural Property

E. Richard Hart

This paper describes the organization and structure of an Institute of the NorthAmerican West (INAW) project designed to identify traditional cultural properties of concern to tribal communities within the area of a proposed coal mine and to explain tribal conclusions about archeological sites as possible traditional cultural properties, with a focus on the conclusions of one tribe, the Zuni.

In 1991 the Salt River Project Agricultural Improvement and Power District (SRP), a non-profit, public utility based in the state of Arizona, contracted with the Institute of the NorthAmerican West, a non-profit educational institution, to conduct ethnohistorical research pertaining to Native American traditional cultural properties that may be impacted by the development of the Fence Lake Mine Project. The Native American groups that expressed concerns when contacted, and were therefore the focus of research, included the Acoma Tribe, the Hopi Tribe, the Ramah Chapter of the Navajo Nation, and the Zuni Tribe.

The Fence Lake Mine Project entails a proposed coal mine in western New Mexico, with an associated transportation corridor for conveying coal to the Coronado Generating Plant in eastern Arizona. The proposed SRP coal mine encompasses a tract of land covering approximately 17,600 acres, located in an area that surrounds Cerro Prieto, a prominent volcanic cone about nine and one half miles northeast of Zuni Salt Lake. The proposed mine is near the tiny community of Fence Lake, New Mexico, from which it derives its name. The transportation corridor is approximately 40 miles long and follows a general route westward from the mine through Nations Draw, Largo Creek, and the Carrizo Wash. The transportation corridor passes about 13 miles to the north of the Zuni Salt Lake maar.

As a result of SRP's application for a federal coal lease in Catron and Cibola Counties, New Mexico, in 1990 the Socorro Resource Area of the Bureau of Land Management (BLM) prepared first a draft and then a final Environmental Impact Study (United States 1990a; United States 1990b). In December of that year the BLM agreed to lease 6,400 acres of federal lands in the project area to SRP for the proposed coal mine, and in 1991 that lease was officially issued (United States 1990c). SRP had previously obtained a large state lease and owns a substantial amount of the private land within the project area. There are no tribally owned or tribal trust lands located within the Fence Lake Mine and Transportation Corridor project area.

Because of the potential destruction of cultural resources having significance to members of nearby Native American communities, during the EIS process (in 1989 and 1990) SRP contacted each of the tribes in the area and asked them if they had concerns about the proposed coal mine. Meetings were held throughout the area, including at Zuni Pueblo, during the EIS process. The Zuni and Hopi Tribes and the Ramah Chapter of the Navajo Nation initially expressed concerns about potential impacts that might occur as a result of the mine. Later, the Acoma Tribe also expressed concerns. The Draft EIS and the Final EIS were made available to each group along with other pertinent documents that they requested. A condition of the lease was that there would be further consultation between SRP and the tribes, and that a thorough ethnographic report on the Native American use of the area would be completed. This report would document known historic and prehistoric sites in the project area that are important to each tribe. Cultural resources were to be identified and recommendations for avoiding or mitigating potential project impacts were to be made.

In 1991 Salt River Project met with each of the tribes that had expressed concerns about the proposed Fence Lake Mine. Representatives of Hopi, Zuni and Ramah all told SRP that they had worked with the Institute of the NorthAmerican West on other cultural and natural resource projects and asked that SRP contract with the Institute to produce the necessary ethnohistoric report. Subsequently, Hopi, Zuni, Acoma and the Ramah Chapter of the Navajo Nation entered into sub-contracts or agreements with INAW to carry out the activities necessary to complete the ethnohistoric report.

Details of the contract between INAW and SRP, as well as the subcontracts between INAW and the tribes, were important to the success of the project. Under terms of the contracts, the tribes were guaranteed several levels of confidentiality. Information gathered within the tribes by tribal members did not have to be passed on to either INAW or SRP if this was not deemed to be necessary or if the information was deemed too sensitive. Information obtained by INAW did not have to be passed along to SRP if either of these conditions prevailed. The experts hired by INAW were thus able to offer opinions relative to management of a site without disclosing sensitive religious information about the site. The tribes' ability to control the levels of confidentiality was essential to the success of the project.

It is important to clearly establish tribal responsibility and accountability in the contracting process. Tribal contracts defining accountability are sometimes difficult to conclude. The Ramah Navajo Chapter contract in this project provides a good example. The Ramah Navajo Chapter (RNC) agreed with representatives of the Navajo Nation Historic Preservation Department (HPD) at the outset of this project that RNC represented only the concerns of its own people and not those of the entire Navajo Nation and that RNC did not speak for the Navajo Nation in general. At the same time RNC welcomed assistance from Navajo Nation HPD in providing consultation and expert services helpful in the preparation of its report. The Ramah Navajo Chapter recognized that the Navajo Nation might have addi-

tional concerns about this project beyond those of RNC. After considerable correspondence and much consultation among the various parties, including review by the Navajo Nation Department of Justice, questions concerning RNC's right and ability to continue to operate under its contract were resolved, and RNC completed its consultation on the project in conjunction with INAW. Even with this contract, when RNC reached conclusions contrary to what NNHPD desired, NNHPD suggested that RNC should not be allowed to sign agreements.

INAW assigned a number of experts to work with the various tribes during the project, to provide field, research, and ethnohistoric services and to assist with the production of the subsequent report. Each tribal group established a research team to work with INAW experts on the project. The tribal cultural resource teams were made up of individuals with special religious and traditional knowledge about their tribe and/or the Fence Lake area, and they were responsible for providing pertinent information of a religious or traditional nature on the project area. They held meetings, interviewed other tribal elders, and did extensive research among tribal members. Experts retained by INAW gathered past ethnographic research, historic documentation, tribal traditional history, and other materials that tied the tribal concerns to the archeological and historic record. Both the INAW staff and the cultural resource teams were responsible for working with SRP to produce a satisfactory Memorandum of Agreement on the subject of reburial of human remains recovered within the project area.

The Hopi, Zuni, and Acoma cultural resource teams met jointly on two occasions to discuss sensitive reburial issues. Representatives of Acoma, Zuni and Ramah met jointly at Zuni Salt Lake once. The Ramah Chapter held an open community meeting to discuss the project. Extensive fieldwork was carried out by the cultural resource teams of Hopi, Ramah, Acoma, and Zuni. The project was carried out in two phases. Phase I of the project was carried out during 1991 and focused on the portion of the proposed transportation corridor located in Arizona. Phase II of the project was carried out between 1991 and 1992 and included an examination of the eastern portion of the transportation corridor and the area of the proposed mine.

The objective of the project and of the subsequent resulting report was to enable the tribal groups and SRP to provide the Bureau of Land Management, the lead agency for cultural resource compliance, with the information needed to identify and consider the effects on historic properties within the project area, as required by Section 106 of the National Historic Preservation Act (NHPA). The information from this project will also be used by BLM in achieving compliance with other cultural resource laws that have been enacted in order to protect Native American religious freedom and ancestral burials, including the American Indian Religious Freedom Act (AIRFA) and the Native American Graves Protection and Repatriation Act (NAGPRA).

This paper provides only those conclusions relative to the application of Section 106 to archeological sites within the project area. Other reports and activities associated with the Fence Lake Mine project focused on archeology as prehistory. Here we are concerned with archeology as traditional cultural property. Traditional cultural properties are protected by Section 106 of the National Historic Preservation Act because they are historic properties in the sense of the law. The working definition that is being used to define traditional cultural properties is drawn from National Register Bulletin 38 published by the National Park Service (Parker and King n.d.).

INAW and the tribes believe that many of the archeological sites investigated during the course of this project are eligible for inclusion on the National Register of Historic Places because of their traditional cultural values as well as for their archeological data potential. These sites include shrines, sacred places associated with the traditional history of the tribes, ancestral homesites, ancestral graves, rock art panels, and traditional collection areas. The three pueblo tribes—Acoma, Hopi and Zuni—each claim cultural affinity to the prehistoric Pueblo ruins in the project area and with the burials that are found associated with the those sites. They, and the Ramah Navajo Band, all have layers of traditional beliefs that are applied to the archeology. In addition, members of each of the tribes make traditional use of materials associated with the archeological record. Ramah Navajo people claim a cultural affinity with Navajo archeological sites or cultural materials, as well as to Navajo burials.

**Archeology as Traditional Cultural Property**

Zuni conclusions relative to archeological sites provide a good example of the tribal relationship with archeology as traditional cultural property. During the many field trips undertaken during the course of the Fence Lake Project (1991-1992), the Zuni advisory team provided numerous examples of how the Zuni people treat ancestral archeological sites in their aboriginal territory as traditional cultural properties. A body of traditional religious and cultural beliefs are held communally by Zunis in regard to these sites, including beliefs associated with petroglyphs, potsherds, clay found associated with sites, lithics, areas identified as shrines, the roomblocks themselves, and, especially, associated burials. Lithics and sherds that are found by Zunis at ancestral sites are used for religious purposes. Advisory team members predicted what types of ceremonial offerings would be found during archeological testing procedures. They based their predictions on their interpretation of archeological features. For instance, at one site which they identified as having had a religious use, they predicted archeologists might find pipes, salt blowers, hematite, salt crystals and eagle bones shaped into whistles. Archeological testing of sites like this may or may not corroborate the Zunis theses. Testing the analogous relationship between contemporary Zuni beliefs and prehistoric archeological features has very important potential.

The Zunis readily identified many figures portrayed in rock art. Some petroglyphs were clearly meant to represent Zuni supernatural beings, such as the *Kolowisi* (or plumed serpent). The Zuni advisory team reported

*(**Hart**—continued on page 40)*

*(**Hart**—continued from page 39)*

that shrine areas are found around petroglyphs that have religious designs rather than animal figures. Some petroglyph figures seemed to be more recent, while others seemed temporally remote, with little contemporary meaning to the team.

While archeologists tend to focus on human-made features at sites, the Zunis frequently provided interpretations that related to the geomorphological features associated with archeology. For instance, at several sites the Zunis suggested that a main reason for the location of the site might have been the proximity to a clay source. In one case a site was found next to *he:e thlupsikwa* (yellow clay). The team indicated beliefs held in common by the Zuni community in regard to how such clay should be handled and used. "If you don't respect it and treat it properly, keep your mind clear, it (the yellow ochre) will turn to stone." Other important geomorphological features found associated with archeological sites included stone nodules (*Athlashe:é*, which were created when the world was fresh), petrified wood, and natural water catchment features.

The Zunis have their own temporal classification of archeological sites, with names for Paleoindian, Archaic, Pueblo I, Pueblo II, Pueblo III, and Pueblo IV sites. These different types of sites are associated with different aspects of the migration narratives.

The Zunis have made an honest and fairly comprehensive effort to understand the concept of traditional cultural property as it applies to archeology within their territory. There are numerous examples of specific tribal responses to archeological sites. *Kiamakya* and *Kiatsutuma* are two sites not directly impacted by the Fence Lake project that are good examples of the Zuni position. *Kiamakya* is a place name that is familiar to nearly all Zunis from stories, traditions, prayers, and ceremonies, yet only a few—indeed, a handful—know where it is. If taken to this place, however, most Zunis will recognize it for what it is (the traditional descriptions are detailed) and will apply the body of knowledge about *Kiamakya*—restrictions, prayers, rules, etc.—to that site if they happen to encounter it. It is certainly important to Zuni culture to preserve this site.

*Kiatsutuma* is another good example of an archeological site that is a traditional cultural property. No Zuni that we talked with was able to tell us exactly where this site was (it was identified using a combination of documentary sources), yet it is very important to Zunis. It is named in Zuni stories, traditions, and prayers, and it is important to Zuni culture to preserve this site to which a body of traditional knowledge is applied by Zunis.

Other archeology (not all, but much of the total) is associated with traditional tribal knowledge that explains its presence and **demands** certain behavior when the site is encountered. Shrines, trails, and markers are obvious examples. A Zuni does not have to know where a shrine is in advance to know how he/she should behave on encountering it, and preservation of the shrine is important to Zuni culture. It is not uncommon for an individual to encounter a shrine that was previously unknown to that individual. Oftentimes tradition provides that a cultural property should not be used; sometimes not even purposely visited or seen. This does not decrease its value as a traditional cultural property. Knowledge of a site may be centuries old (far more than the 50-year requirement), but knowledge of the location of the site may be limited or even temporarily absent. Again, this does not lessen the site's importance as traditional cultural property.

The Zuni Cultural Resources Advisory Team has concluded that ancestral archeological sites within the area of their traditional sovereign boundaries are traditional cultural property of the Zuni Tribe. These archeological features should not be disturbed. Burials are associated with these features, and they should not be disturbed. Should disturbance of Zuni ancestral archeological features be absolutely necessary, it should be carried out by qualified archeologists, in accordance with Zuni Tribal policy, and in coordination with the Zuni Archaeology Program.

**Conclusions**

Zuni believes, and INAW concurs, that ancestral archeological sites qualify for designation as Traditional Cultural Properties and possess the necessary criteria for inclusion in the National Register of Historic Places. Ancestral sites meet the tests for both tangibility and integrity of relationship and condition. The archeological sites are manifestations of those who lived in the region and who are not only representative of, but responsible for a broad portion of the history of that region. Many of the sites are associated with a number of important spiritual, mythic, and real persons of significance to the four tribes, and with important narratives that explain the religious and traditional history and meaning of the region to the four tribes. Construction at most of the sites embodies distinctive characteristics of recognizable types, periods, or methods. Continued research into these archeological sites will yield a wealth of information about the history and prehistory of the region.

Complete avoidance of sites is the preferred choice of all tribes in order to prevent potential damages to traditional cultural properties in the project area. Zuni and the other tribes emphasize that their primary desire is to see avoidance of all of the traditional cultural properties, sacred areas, shrines, and other sites of cultural affinity and patrimony within or adjacent to the Fence Lake Mine project area. They want it to be understood that their participation in consultations concerning this project does not indicate any acquiescence on their part toward development of the Fence Lake Mine.

Mitigation of adverse impacts to all rock art should include intensive documentation using state-of-the-art techniques. Minimally, documentation of rock art should include photos and line drawings of individual elements with a visible scale, and photos and videos to show spatial context of the panel and its relation to other panels and land form geography. Tribal input into interpretation of rock art is needed in the preparation of final archeological reports for the project.

Many tribal elders think that scientific archeology alone cannot adequately interpret the archeological record. Tribal elders have esoteric knowledge about particular artifacts and their context that is considered

essential to their interpretation. The tribes also suggest the establishment of an ongoing mechanism for involving the tribal teams in order to provide traditional knowledge relative to questions that will arise should the project be implemented.

The tribes expressed their appreciation for the efforts made by both the company (SRP) and the federal agencies as they worked to achieve compliance with the National Historic Preservation Act. Although the tribes oppose the mine, they worked closely with SRP on the consultations needed to ensure compliance with Section 106 of NHPA. Additionally, all of the tribes expressed serious concerns relative to overall United States energy policy. They questioned the need for this proposed mine and federal priorities in allowing such an undertaking, and they strenuously criticized the historic preservation and environmental compliance processes. The tribes stressed their belief that the Section 106 process begins too late, and that it should be started concurrently with the NEPA process so that information gathered would be available for study during the EIS phase. These concerns and criticisms were presented in supplemental letters, reports, and memoranda submitted to government agencies. All of the tribes stressed the fact that their participation in this project and the compliance process in no way represented any acceptance, support, or endorsement of the proposed mine.

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# A Tribal Perspective on Traditional Cultural Property Consultation

**Andrew L. Othole**
**Roger Anyon**

For tribes, accomplishing consultation on traditional cultural properties is neither easy nor simple. Because the entire legal, regulatory, and guideline framework is a non-Indian construct it is often difficult to fit the needs of the developer and agency with the needs of the tribe. In this paper we briefly outline a tribal perspective on the consultation process, with particular reference to the Zuni experience over the past two years.

Zuni traditional cultural property consultations have covered numerous projects, including developments on Navajo Nation lands, pipelines and roads on various federal lands, a wastewater pipeline line through the Pueblo of Zuni National Historic Register District, the effects of the Glen Canyon Dam operations through the Grand Canyon, major federal water development projects, and a proposed coal mine covering approximately 35 square miles of federal, state, and private lands. Some of these consultations are completed, while others remain ongoing. Our experiences on these projects have been varied. As may be expected, we have encountered differing degrees of enthusiasm for the consultation process from different segments of the federal government, the state, and the private sector. While some developers and agencies have been exceptionally proactive and very supportive of tribal consultation, the lack of communication from some agencies and developers makes us wonder whether they are even aware of the need for consultation about traditional cultural properties.

In this paper we have chosen to concentrate our discussion on traditional cultural properties consultation under the National Historic Preservation Act. We do not address the multitude of issues raised by consultation under the Native American Graves Protection and Repatriation Act, the Archaeological Resources Protection Act, and the American Indian Religious Freedom Act.

### Initial Issues at Zuni With Respect to the Consultation Process

At Zuni any consultation regarding traditional cultural properties requires that western concepts be introduced into the Zuni community, a community that holds nonwestern traditional, cultural, and religious values. For communities with nonwestern world views such an introduction of western values into fundamentally traditional parts of the culture can be quite threatening. Even the term "property," albeit a necessity of terminology because of the language in federal law and guidelines, can raise serious concerns within the traditional and religious leadership.

When the concept of consultation over traditional cultural properties was first introduced at Zuni a number of serious issues immediately arose. Who should consult for the tribe? Here a major difference in information and decision-making structures between the agencies and the tribe was clearly identified. Agencies, working in the standard hierarchical western organizational mode, began consultation by sending a letter to the elected Tribal Governor and Council. The tribe, working in its nonwestern nonhierarchical organizational mode was faced with a quandary. While the elected Tribal Governor and Council have the authority to interface with non-Zuni agencies, the power to make decisions regarding traditional, cultural, and sacred issues lies with the religious leadership, from whom, on these issues, the elected tribal officials take direction. The question faced by the Tribal Council was, who in the religious leadership do we contact?

Resolving the matter of who to approach in the religious leadership at Zuni is not easy. There is no authority for religious leadership vested in any one person, nor even in any one group of individuals. Like the structure of Zuni society, the religious structure of the tribe is such that esoteric knowledge is spread among a large number of groups and people, including six kivas, fourteen medicine societies, and a number of clans and priesthoods. Even within each of these groups knowledge is spread among its members. Thus, for example, the rain priests all have general knowledge about water and water sources, but specialized knowledge of water and water sources in different geographic areas is divided among them (e.g., North, South, East, West, etc.). Consequently, in order to consult about water concerns as traditional cultural properties in any specific geographic area, the appropriate individual within the rain priesthood must be identified. Consultation with any other rain priest will be inadequate. To help simplify the issue of consultation within the religious leadership the tribe has formed a cultural resources advisory team, a topic we discuss below.

Another issue that immediately arose from the consultation process, and one that is still not yet resolved, is the question of consultation time frames. Again we find ourselves in a classic clash of world views over a fundamental concept. Agencies are locked into the regulatory process and have anticipated time frames for every consultation. To developers, of course, time is money, and this translates directly into pressure to conclude the consultation process as efficiently as possible. To Zuni religious leaders, however, time reckoned as days or dollars is not relevant to the issue of consulting about the traditional and cultural values of the tribe. In issues where the past, the present, and the future are all contemporaneous how can a time frame be put on consultation? In addition, if certain religious leaders are occupied for days or weeks in performing their sacred obligations for the welfare of the community they cannot break these obligations to consult with an agency. The time frame of the agency may be completely preempted by the obligations of the very individuals who must be consulted to adequately fulfill that agency's needs.

**Mechanisms For Consultation At Zuni**

Zuni is fortunate in that, even before traditional cultural properties consultations began, it already had a Tribal Archaeology Program that could act as a culture broker between the tribe and the outside agencies and project sponsors. The Archaeology Program already had over fifteen years experience working with religious leaders and various Tribal Councils on issues such as the repatriation of the War Gods and a series of law suits including the land claims, land damages, access to *Koluwala:wa*, and the water rights cases. In this respect Zuni found itself in a somewhat advantageous situation when faced with traditional cultural property consultations. Even so, these consultations required the tribe to develop a new and innovative approach to this challenge.

When requests for traditional cultural property consultations became a regular occurrence at Zuni, the tribe decided that it must establish a formal mechanism to accommodate its needs and the needs of federal agencies. To this end a meeting of religious leaders was called at the *Suski:kwa*, or Coyote House. More than 75 religious leaders attended this meeting. A number of topics were discussed, including the reasons for consultation and the Section 106 process, and the need for agencies to gather potentially confidential information. The coordination of information gathering, confidentiality, and dissemination were of major concern to the religious leaders. In addition, the relationship between the religious leaders and the elected Tribal Council in this regard had to be clarified in order to establish how the tribe would communicate with outside agencies.

The result of this and subsequent meetings was the formation of the cultural resources advisory team. A cultural preservation coordinator was selected to coordinate the activities of the advisory team and act as the point of contact between the advisory team and outside agencies and between the advisory team and the Tribal Council. The cultural preservation coordinator is a full-time position within the Zuni Archaeology Program.

The current advisory team consists of religious leaders holding the following positions; *Komosona* (the leader of the Rain Dancers), *Bi:la:shiwani* (a Bow Priest), *Kopekwin* (the leader of all six kiva groups), and *Kopekwin ts'ana* (alternate for the leader of all six kiva groups), *Koyemshi* (a Mudhead society member), *A:lu:na: kwa* (the messenger of the kivas), and an ex-officio member from the Tribal Council who acts as a liaison between the advisory team and the Tribal Council. Each of the religious leaders on the advisory team was chosen because of his roles and responsibilities within the religious leadership as a whole, and his broad knowledge of the religious structures at Zuni. The selection of these leaders was designed to provide the tribe with the most effective means of internally disseminating and gathering information.

In the Tribal Council Resolution formally establishing the advisory team, the Council approves of the advisory team working with the Zuni Archaeology Program. The Council also approves the advisory team working with project sponsors, land-managing agencies, State Historic Preservation Officers, Tribal Historic Preservation Officers, and other officials to gather and assess information, to identify the appropriate religious leaders with knowledge or concerns about any particular project, to discuss this information and gather advice from the appropriate religious leaders, and then relay this information and advice to the Zuni Archaeology Program for the purpose of making recommendations regarding traditional cultural properties.

The roles and responsibilities of the cultural resources advisory team and the relationships of the advisory team with the Tribal Council, the cultural preservation coordinator, and the Zuni Archaeology Program are specified in another Tribal document approved by the Tribal Council entitled "Pueblo of Zuni Cultural Resources Advisory Team, Roles and Responsibilities." In this document the cultural preservation coordinator is identified as the official coordinator and liaison between the advisory team and project sponsors, between the advisory team and non-Zuni agencies, and between the advisory team and Zuni agencies.

When a consultation request is received at Zuni it is sent to the cultural preservation coordinator, who reviews the request and determines whether or not the information provided with the request is adequate for consultation. Should more information be needed from the agency the coordinator makes this request directly to the agency. For example, requests are often received that specify the area and nature of the undertaking but do not include the report and site forms generated as a result of the archeological survey. We have found that, in order to adequately provide consultation, a review of the archeological documentation is a necessary prerequisite for traditional cultural property consultation.

Once the information has been reviewed by the coordinator, he then calls a meeting of the advisory team to discuss the documentation and what steps should be taken next. Typically the advisory team then consults with the appropriate religious leaders concerning the project. They then schedule a field visit to the project area to determine the presence or absence of traditional cultural properties and assess the importance of any properties to the tribe's historically rooted beliefs, customs, and practices.

At the conclusion of fieldwork the coordinator and the anthropologist, if an anthropologist is working for the tribe on the project, will put the advisory team's identifications, assessments, and recommendations on paper. This document is then given to the advisory team for their review and editing to ensure that their concerns are adequately represented, and that no confidential information is released to non-Zunis. After any necessary changes are made, the coordinator submits the report and recommendations to the Tribal Council for their review. If the Tribal Council agrees with the report and recommendations, the Governor signs a Certificate of Approval and Release for the report at which time it is released to the agency.

Confidential information that may be collected during consultation, but cannot be released to non-Zunis, is kept in restricted files at the Zuni Archaeology Program. These records as well as other records generated Zuni during the project, remain the real and intellectual property of the tribe and can only be accessed by initiated

*(**Othole**—continued on page 44)*

*(Othole—continued from page 43)*

tribal members. They may not be copied in any form without the written permission of the advisory team.

To date we have found that the newly developed internal process works well for the tribe. There have already been a number of situations where traditional cultural properties have been protected as a result of advisory team consultations. What works for Zuni, however, may or may not work for other tribes.

**The Advantages and Disadvantages of Consultation for Zuni**

We realize that the specifics of traditional cultural properties consultation are still evolving, and that any system presently in place will continue to undergo changes. The tribe is pleased that National Register Bulletin 38 is being followed by agencies and that the recent amendments to the National Historic Preservation Act provide added authority for the assessment of traditional cultural properties. In addition, recently proposed amendments to the American Indian Religious Freedom Act regarding the protection of sacred sites important to Indian tribes, if enacted into law, will also provide mechanisms for consultation. The Zuni Tribe sees these concerted efforts to protect places of importance to its traditions and culture, other than archeological sites, as positive progress.

The Zuni Tribe has a number of concerns, however, about the present traditional cultural property consultation structure. Because Section 106 compliance is performed when the final project area has been selected, we often find ourselves in a reactive and mitigative mode regarding the protection of places that have significance to the tribe. We believe that any project requiring NEPA compliance, especially an Environmental Impact Statement, should make a major effort to assess the potential impact to traditional cultural properties while alternatives are being explored. This may help to eliminate difficult choices for the tribe during the Section 106 process. As we noted above, the time frames for Section 106 compliance are often incompatible with the time frames of the tribe. More flexibility in agency time frames would be a great help to the tribe, especially given that Zuni has at least 100 religious leaders, many of whom may need to be contacted for any one compliance activity.

We are somewhat dismayed to have been told by some agencies that, in their opinion, some projects do not require fieldwork if the tribe does not know of any existing traditional cultural properties in a project area. Surely this would not be considered an option if archeologists said that no sites were known in an area? We are convinced that if this were the case archeologists would find no known sites in the project area to be a perfectly reasonable justification for conducting an inventory. We do not understand why unknown traditional cultural properties should be treated any differently than other unknown historic properties.

In part, we believe, this position is a result of some confusion among non-Zunis about what constitutes a traditional cultural property and what this may mean in terms of properties that are significant to the ongoing traditions and culture of the Zuni Tribe. For example, while some named places may feature prominently in Zuni oral tradition, it is not necessary for the actual geographic location of these places to be known by tribal members. The fact that these places are known through oral tradition and that their general, but not specific, geographic location is known is perfectly appropriate to the tribe, so long as these places are not threatened by destruction. Once an undertaking threatens such a traditional cultural property however, the tribe has major concerns. Consequently it is critical that fieldwork be conducted in areas of undertakings to determine whether or not the specific geographic location of a generally located traditional cultural property is within that area of undertaking.

[Editor's note: In this example, there is a known traditional cultural property in the general area of a development project. Even though the exact location may not be known, the evidence of its existence in the oral traditions is very strong. In such cases, field work is not only appropriate, but essential to identifying the location of this property and ensuring that effects to it will be taken into account by the federal agency. The issue between the Zuni Archaeology Program and New Mexico SHPO is whether field work by the Zuni advisory team should be required when there are no oral traditions concerning traditional cultural properties in a particular project area.]

It must also be clearly understood that not all traditional cultural properties require use for them to have significance to the ongoing traditions and culture of the tribe. In fact some traditional cultural properties should not be visited by tribal members. Other properties do not need to be regularly or even intermittently used to have significance to the culture of the Zuni Tribe. Many trails and shrines, for example, that may not have been used for centuries still have spiritual links to the ongoing traditions and culture of the tribe.

We would also like to note that the standard practice of having archeologists perform traditional cultural property surveys is not always in the best interests of the tribe or the agency. We find the notion of archeologists performing anthropological fieldwork as strange as expecting that any cultural anthropologist is fully qualified to perform archeological fieldwork. If the tribe requires that a cultural anthropologist be hired to perform traditional cultural property compliance surveys, then we see no reason why such a qualified individual should not be hired or contracted by the agency or sponsor. For some years after the passage of the National Historic Preservation Act in 1966, very few agencies had full time archeologists on staff, and it has taken many years for archeology to be recognized as a specialized discipline requiring full-time professionals within agencies. We hope that this process will not take as long for qualified anthropologists, and we look forward to the day when all agencies provide traditional cultural properties equal consideration to that presently given to archeological sites.

Delineating boundaries for traditional cultural properties can be a serious logistical problem for the tribe, even though we recognize some need of this for management purposes. In certain cases, drawing boundaries around a traditional cultural property is neither feasible nor culturally appropriate; offering places that have connection with other areas cannot be separated from one another. For example the Zuni Salt Lake, which is located 65 miles

south of Zuni, is one of the most important traditional cultural places to the Tribe. Because the spiritual linkage between Zuni Salt Lake and Zuni acts as an umbilical cord to the Zuni people we do not know how boundaries can be established. In the Zuni world view the links between the Salt Lake and Zuni preclude drawing boundaries around this extremely important traditional cultural place.

The tribe is extremely concerned about the confidentiality of proprietary information. Despite the tribe's system for controlling confidential information, we are concerned that, in order for the appropriate agencies to assess and evaluate a traditional cultural property, the tribe may be required to provide more information about a place than the tribe feels comfortable providing. Given federal and state laws on the freedom of information, we are not fully comfortable providing agencies with confidential information. If we do not provide adequate information, however, the eligibility of the property to the National Register cannot be determined, and therefore it may lose any possible protection it would otherwise have had through the Section 106 process.

On the other hand we are all too aware that federal and state agencies cannot guarantee the protection of these properties even with such additional information. This puts the Tribe in an extremely awkward situation. Often the protection of a traditional cultural property under the Section 106 process may require the release of confidential information, which in itself diminishes the power and significance of the place to the tribe. When faced with a dilemma such as this the tribe may decide that it is more culturally appropriate to say nothing and risk the destruction of the traditional cultural property rather than divulge proprietary information.

The evaluation of a traditional cultural property's significance through a process of consultation between the agency and State Historic Preservation Office is difficult for the tribe to accept. We do not understand how a place of significance to the tribe, as it has been identified by the tribe, could possibly be considered any further by any other entity. It is our opinion that only those people to whom the place is significant can possibly make a determination of significance for a traditional cultural property. [Editor's note: It is not the significance of the property to the tribe that is the subject of consultation between the agency and SHPO; that is a subject on which we have no expertise. Rather, the consultations concern the eligibility of the property to the National Register of Historic Places, a very specific question involving criteria defined in federal regulations.]

Mitigation of impact, a common way of dealing with historic properties, is often not an option for traditional cultural properties. The only known culturally acceptable way to mitigate impact for most traditional cultural properties is not to have any impact at all by avoiding the property, and thus providing for its protection. Mitigation of impact to a traditional cultural property is truly a western concept that has no place in the traditional Zuni world view.

While traditional cultural property consultation under Section 106 of the National Historic Preservation Act is a step forward in providing protection for places important to the ongoing culture and traditions of the Zuni Tribe, from a tribal perspective this consultation process is not an adequate compromise between the needs of the dominant society and the needs of Zuni society. All too often the tribe finds itself reacting to what the tribe sees as untenable situations where traditional cultural properties are threatened by undertakings.

In general the tribe finds that the consideration of traditional cultural properties provided under the Section 106 of NHPA occurs far too late in the planning for an undertaking. Traditional cultural properties should be considered when there are still alternatives to the undertaking. By the time the agency begins the Section 106 process, the decision to proceed with a project has usually been finalized. At that point, historic properties are dealt with through avoidance, at best, or most commonly, through a program of treatment designed to mitigate the effects of the undertaking on those properties. The tribe knows of no way to mitigate impact to a traditional cultural property that is to be affected by an undertaking. Consequently, from the perspective of the Zuni Tribe, it would be much more appropriate for agencies and developers to consider traditional cultural properties when the feasibility of projects is being initially considered. In this way more equity can be developed between the dominant society's needs and those of the Zuni Tribe.

**Representatives of the Zuni, Acoma, and Hopi tribes and the Ramah band of Navajos consult with the Bureau of Land Management and the U.S. Geological Survey at Zuni Salt Lake, March 10, 1992. Photo by T.J. Ferguson, Institute of the NorthAmerican West.**

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Roger Anyon is the director of the Zuni Archaeology Program.

# Traditional Cultural Properties

## Pros, Cons, and Reality

**Judy Brunson Hadley**

As the archeologist for the Salt River Project, a large electrical and water utility, I am currently in the interesting position of trying to complete the cultural clearance process for a large proposed coal mine project. The Fence Lake Mine will be located in west-central New Mexico with a transportation corridor that runs from the mine to the existing coal generating station located 45 miles to the west. The project area is primarily located on lands owned by the Salt River Project, but also includes lands under the jurisdiction of the states of New Mexico and Arizona and lands administered by the Bureau of Land Management. There are no tribal lands in the project area.

It is always interesting to try to wade through the cultural resource compliance process for any project, but it becomes even more interesting when you are working with new federal laws that do not yet have regulations (NAGPRA) and with new guidelines from the National Register that have sections written with an Alice-in-Wonderland approach to the real world. Let me just say that Salt River Project's desire to structure an approach to identify traditional cultural properties on the Fence Lake Project was rarely aided by clear-cut guidelines from the federal agencies involved or by the infamous National Register Bulletin 38, "Guidelines for evaluating and documenting traditional cultural properties."

The intentions of the authors of Bulletin 38 were good, but this document has probably created more questions than answers. It does not set forth well-defined methodologies for how to proceed, and since it is only a guideline, there are no clear federal regulations backing the Bulletin. It is difficult to proceed on a new project when few federal agencies or State Historic Preservation Offices have had an opportunity to create their own approaches and written requirements for the identification of traditional cultural properties, and indeed, some federal agencies just seem to be trying to avoid the entire subject.

There has been almost no consistent guidance from the Advisory Council on Historic Preservation as to when traditional cultural property identification will be required or what the level of documentation should be, and decisions from the Council about who will be required (or allowed) to be signatories to Programmatic Agreements and Memoranda of Agreement have been quite inconsistent. For companies currently trying to get through the cultural resource compliance process, the federal process is oftentimes inconsistent, confusing, complex, contradictory, and extremely lengthy.

Among those agencies that are requiring that traditional cultural properties be documented there often exists the naive idea that the needed information will be easily accessible. The project proponent just needs to approach the appropriate tribe and ask where the important sacred sites are located. The tribal representatives will then hand over a nice neat statement of importance, together with a map, and this information can then be forwarded to the federal agencies for a determination as to whether the site or sites are eligible for the National Register, together with recommendations for mitigation.

The idea is good, but few, if any tribal groups have accumulated the necessary data on their own history in enough detail to be able to provide the information required by the federal government. And even when the information is available, in some cases they may not be comfortable providing that information to outsiders.

When I contacted the tribal groups that had expressed concerns about our project during the Environmental Impact Statement phase, I very quickly came to realize that the tribes had important concerns about pilgrimage trails that crossed our project area on their way to the sacred Zuni Salt Lake. The lake is located 12 miles southwest of the mine and four miles south of the transportation corridor, entirely outside of the project area.

In recent years, all of the tribes had been utilizing existing roads and modern vehicles to reach the Zuni Salt Lake. In most instances, no one was left who had been on the actual trails, except for a few who had been on them as children; and needless to say their memories of the exact route were not clear. It is an unfortunate fact, but knowledge of many of the sacred site locations for some tribal groups has been lost as elders who held this important information have passed on without imparting that information to younger tribal members or leaving a written history.

On a legal basis, it is questionable whether Salt River Project would have been required to do anything further since the exact pilgrimage routes could not be identified by the tribes. We felt, however, that it was important, from a historical perspective and realizing the spiritual significance of the trails to some of the tribes, to try to identify their locations. Owing to the timing of the Fence Lake Project, little direction was available from the federal agencies about how to proceed or about the appropriate level of study to be completed. Clear-cut written directions from the federal agencies on how to proceed apparently do not exist. In the absence of regulations, many of the agencies have not even decided whether they are going to implement the guidelines requiring identification of traditional cultural properties, and even if they have decided that they should, none have decided how they will implement them. On the positive side, it should be noted that several agencies and State Historic Preservation Offices are diligently working on creating guidelines and requirements. For the current project, the Bureau of Land Management and State Historic Preservation Office archeologists have worked closely with us to try and determine a feasible methodology.

The level of tribal interest and interaction on the Fence Lake Project has varied through time. The SRP and BLM have been working with some of the tribes since the mid-1980s on the current project. In at least two cases, the tribes have changed their minds from earlier evaluations and increased their level of interest and involvement. In 1991, it became obvious from meetings that SRP, the New Mexico Bureau of Land Management, and the Arizona and New Mexico State Historic Preservation Offices held with the tribes that for the traditional cultural properties study to

proceed, additional meetings would be necessary, together with interviews with elders and some time spent in the field with the appropriate elders to identify the trails. The Institute of the NorthAmerican West was contracted to complete the interviews, field work, and ethnohistoric report (as well as make my life infinitely simpler—if there is such a thing on this type of project).

The decisions on the best approach for the project were developed in consultation with the Institute ethnohistorians, who with their long history of working with tribal groups had some excellent suggestions as to how to proceed. We subsequently held individual meetings with each of the tribal groups, with the specific ethnohistorian who would be working with that group, and discussed how the tribe would like to proceed. In all cases, each tribe identified a research team as the main contact group for the ethnohistorian. In some cases the research team included tribal council members, while other tribes chose not to involve council members. In all cases, tribal elders were prominent members of the committee. In addition, a tribal interpreter and coordinator was appointed to work closely with the ethnohistorian and to help with the interviews.

In an initial effort to identify potential sacred areas or traditional use areas, the ethnohistorian, tribal coordinator, and research team walked a portion of the coal haul transportation corridor to locate properties. Walking the project area did not work well for identifying trails, since it was not clear exactly where the trails were located, and the tribes had not identified any other specific traditional properties to be located.

During the following summer and winter and prior to returning to the field, a second phase of the identification process was implemented. Phase 2 consisted of detailed interviews between the ethnohistorian and tribal interpreter and any appropriate tribal members as identified by the tribe's research team.

While the interviews were taking place, two other independent lines of research were occurring. A detailed aerial analysis of existing imagery of the project area was undertaken by Dr. G. Lennis Berlin of Northern Arizona University. Berlin's task was to identify any potential trails in the vicinity of the project area. This was not a simple task, since the area has drawn people for years, both prehistorically and historically, because of its proximity to the Zuni Salt Lake. In addition, it has been heavily grazed. Not only were we looking for wagon roads, but also for burro pack trails and foot trails. In essence, we were trying to identify trails that had been impacted by soil accumulation, erosion, sheep, and cows—cows who love to follow trails and make their own. To aid Berlin's study, several helicopter and field reconnaissance trips were scheduled to view the potential trail segments, both from the air and on the ground.

Simultaneously the ethnohistorians were continuing their archival studies, searching for information and maps that might describe the old trails. As it turned out, they were able to recover a series of 19th-century maps that were quite valuable in locating some of the trails. As the studies proceeded and available information reached a point where the investigators thought that a certain trail could be identified and its use associated with a particular tribe, the ethnohistorians and Berlin met with the tribal research teams in the field. Together they tried to locate specific segments of the trails on the ground and to determine whether the information recovered in the interviews matched what was found on the ground. By using several sources of information—archival research, aerial analysis, oral tradition, and field reconnaissance—we were able, in many cases, to identify the locations of trails even when this information had been largely lost through time.

The ethnohistoric report is currently in draft, being reviewed by the numerous federal and state agencies involved in this project. Although the report is not yet finalized, I feel it safe to say that in most cases, for everyone concerned, the venture has been very positive and important historical information has been recovered. It is hoped that future projects will use a similar approach for incorporating different cultural groups who have concerns about a project, into the planning and historical data recovery stage. The final report will provide an important contribution to the documentary history of those tribes involved and to the larger history of the diverse groups that make up the Southwest region of the United States.

Having said that, I have suggestions and comments to make for future projects for everyone concerned. For these types of projects, the ethnohistorian will be expected to provide an unbiased expert opinion based on his or her knowledge of all facets of the studies. With any group or individual being studied, there are likely to be political or emotional considerations that affect how individuals wish to be viewed historically. The ethnohistorian needs to look beyond the political and emotional issues and report, to the best of his or her ability, the known factual materials. That job becomes even more difficult when there is little documentary information available and decisions must be based on current oral traditions. In many cases, different lines of evidence can be pulled together to reconstruct history. But in some cases, the final source is the traditional beliefs.

I also would like to suggest that if tribal groups want to be involved in projects outside reservation lands, they need to start working on their own archives, identifying and documenting sites of concern to them. The reality is that many development projects do not have a great deal of time or money to identify traditional cultural properties prior to the start of construction. If the tribe is unable to respond in a reasonable time, it is unlikely that their concerns will be addressed. In addition, the tribes should implement the same programs and mitigation requirements on their own lands that they are requesting on projects outside of the reservation, otherwise it will be difficult to convince others that their concerns are legitimate.

Federal agencies need to start making some hard decisions about the content requirements as well as the level of effort they will require for ethnohistoric studies. In addition, they need to start applying a balanced and consistent approach to when such studies need to be done and to how tribes should be included in the Section 106 compliance process. By regional areas, strict decisions on what constitutes a traditional cultural property need to be made. The current definitions are extremely broad and ill-defined.

Questions about who should be responsible for paying for tribes to interview elders and try to locate sacred sites need to be addressed. In many cases, I would argue that it is inappropriate for the project proponent to have to pay

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for a tribe to research their own history. I do not believe that was the intent of the preservation laws, but often the tribes can not afford to pay someone to complete the interviews and research. If federal agencies are to take into account the effects of projects on public lands on traditional cultural properties, shouldn't the federal agencies be working with tribes to identify such features, so that every new project is not kept on hold while the research takes place?

In addition, federal agencies must be held responsible for producing clear-cut guidelines and regulations governing this process. Companies need to know exactly what it is that they are suppose to do; both companies and tribes need to know when it is appropriate for tribes to be involved and at what level of intensity the involvement should occur.

Now I come to archeologists. Our attitudes about whether it is appropriate to involve modern tribes in reconstructing the prehistoric past need to be updated and brought into the 1990s. Many of the tribal groups on the Fence Lake Project have gone out of their way to point out features to me and explain their significance so that I can better understand their concerns. Much of that information has been classified by the tribes as confidential. I can tell you that there are important features out there that we archeologists are not trained to recognize.

On our project, the tribes, working in conjunction with the ethnohistorians, have provided information about physical archeological features that can now be tested as part of a planned scientific data recovery program. Certain prehistoric features, for example, were tentatively identified by one tribal group as potential shrines. When asked how an archeologist could test the feature to determine if it was indeed a shrine, the research team detailed some of the type of materials that might be found, based on their knowledge of present-day shrines. The tribal members felt that it was important to determine, through archeology, what the prehistoric feature was and to help to provide information about that period long ago.

These historical data provide new insight for archeologists to work with and provide clues for interpreting the past, a past that while memorialized in oral traditions, may be foggy in details that may have changed through the years. By working to develop a mutual trust between Native Americans and archeologists we can develop data recovery programs that will open windows of information for reconstructing the past that have been closed to us by our own attitude of doing things without input from historical tribes.

I am not advocating that we throw hypothesis testing out the window and decide that everything a Native American tells us is historically accurate. All humans tend to have their own view of their history, one that is not necessarily historically accurate in all details. Memories fade through time, some oral traditions change depending on the storyteller, and some things are just forgotten. As the saying goes, put three archeologists together and you will get three theories on any subject. I also have found, put three Native Americans from the same tribe together and ask them a question, and you are likely to get three answers on certain topics.

Modern day tribes do have valuable insights into their own activities that we are not privy to, however, and these insights may shed light on interpreting the past. And, I would like to add, in many cases this can be done without the tribal groups having to reveal sacred information. As archeologists we have to realize that there is certain information that tribes will not share with us, nor do they share with other tribes. There is a public level of information that we can share, however, and use to study the past, but creating a situation in which this information may be shared requires an effort on everyone's part and a development of trust.

Many of the Native Americans I have worked with are interested in how archeologists may help them to recover lost information about their past and to determine affinity to the prehistoric inhabitants of certain village sites. On the Fence Lake Project, as a result of the positive dialogue that had occurred, two of the tribes requested that a physical anthropologist come talk to their elders and explain to them why burials are studied and what, if anything, could be learned from these studies that might benefit the tribe. We called on Dr. Charles Merbs, from Arizona State University, to help us, and he did a great job. While the elders did not necessarily agree with the scientific conclusions on some issues, they were quite interested in the level of the information that could be recovered through analysis. In turn they used the new information that they acquired to help determine the level of analysis they would approve for the burials prior to repatriation. In fact, those presentations were made early last year, and some of the elders are still discussing with interest what they learned about skeletal analyses.

It has been an honor to work with the tribal elders, and I look forward to our continuing involvement. Despite the overall seriousness of the project, we have had fun times together (although most of the jokes have been on me), and our consultation process has been an education for everyone involved. As a consequence of what I have learned, I firmly believe that the scientific techniques that are the foundation of archeological studies must be upheld, but by working closely with the tribes, together we can provide a means for learning about our past ...to the benefit of all.

**Acknowledgements**

There are numerous individuals who have been involved in this project and deserve a warm thank you. In particular I would like to thank and acknowledge the representatives of the Institute of the NorthAmerican West. They've endured hours of meetings, field research, and trying to balance everyone's concerns, combined with episodes of food poisoning, and despite it all have maintained an exemplary level of professionalism and produced a model ethnohistoric report. The research teams from Acoma, Hopi, Ramah, and Zuni have gone beyond the call of duty to work with me and teach me about themselves and their beliefs. The New Mexico Bureau of Land Management and both the Arizona and New Mexico State Historic Preservation Offices continue to provide help and support to see this project through. Any statements in this paper, are mine, and do not necessarily reflect the opinion of others involved in this project.

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# When Worlds Collide

## Indians, Archeologists, and the Preservation of Traditional Cultural Properties

**David W. Cushman**

Over the past 30 years, American archeology has expanded from an academic discipline to an environmental science. The impetus to do archeology has shifted accordingly from pure research to cultural resources management, from an interest in the past to a concern for the future. These changes were prompted by the development of preservation laws and regulation during the 1960s and 1970s that resulted in the emergence of archeology as a vital component of the nation's historic preservation program (Keel 1991). Today, most archeology is conducted in response to the compliance requirements of a growing body of federally mandated historic preservation law. As these laws have changed in response to new preservation priorities, archeology and other forms of applied anthropology have also changed.

Recent developments in preservation law and policy have begun to impose new conditions on the practice of archeology as historic preservation. Over the last three years, the concerns of Native Americans, Hawaiians, Alaskans, and other traditional societies have been deliberately added to the process through which the nation preserves its heritage resources. The passage of the Native American Graves and Repatriation Act in 1990 and the recent enactment of the amendments to the National Historic Preservation Act in October of 1992 have given native peoples a direct and unprecedented role in the preservation of their cultural patrimony. These new laws, together with the American Indian Religious Freedom Act (1978) and the Archaeological Resources Protection Act (1979), are changing the relationship among federal and state agencies, archeologists, and Native Americans.

One of the more hotly debated subjects to develop over the last few years is the concept of "traditional cultural properties" as defined in National Register Bulletin 38 issued by the National Park Service in 1990 (Parker and King nd). A traditional cultural property (TCP) is one that is "eligible for inclusion in the National Register of Historic Places because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community" (Parker and King nd:1). For Native Americans this definition encompasses the socio-religious aspects of their lives as these relate to the traditional uses of their environment. Bulletin 38 argues that properties with these kinds of values and associations should be incorporated into the review process mandated for all federal undertakings under Section 106 of the National Historic Preservation Act (ACHP 1984).

A good deal of frustration, confusion, and resistance has developed among cultural resource managers over traditional cultural properties, also referred to as properties of traditional cultural value. Some object to the religious nature of these properties, arguing that they should be excluded from consideration. Others are concerned with the practical matter of recognizing a place that may lack any physical manifestation of cultural behavior. Still others question why such a place should be eligible for the National Register of Historic Places to begin with. The problems surrounding this issue are complex and involve social, legal, and political considerations. In its essential form, however, this is a cultural conflict between Indian and non-Indian people; a collision between two very different and separate worlds. The challenge for state and federal agencies, preservation experts, and Native Americans is to find an effective means of making Indian people a real partner in the preservation of their cultural heritage.

In this paper I summarize the problems associated with traditional cultural properties as a concept and make some general recommendations for solving these problems in practice. I address these recommendations to the tribes, the federal agencies, the state historic preservation offices, and to the archeologists who are currently out there on the ground busy doing surveys that in many cases do not include looking for traditional cultural properties.

### Problems

When the Park Service issued Bulletin 38 three years ago it challenged the status quo of the nation's historic preservation program. It declared, in short, that the federal government has failed to exercise its responsibility to consider the effects of its actions on the heritage resources of the nation's traditional societies. Since this declaration, perceptual and procedural conflicts have developed as state and federal preservation officials, cultural anthropologists, archeologists, and Native Americans have begun to grapple with ways to rectify the situation. The problem is that what is considered to be the past and what is believed to be worthy of preservation are both culturally defined (Anyon 1991).

Native Americans view their world in different terms than do those who are inculcated with western Euro-American cultural values and perceptions. They do not view the past as something separate from the present; to them the past is a part of their daily lives (NPS 1990). Nor do they share the objective view of reality that characterizes the Euro-American world view (Parker and King nd). Their world view embraces the animate and inanimate as inseparable aspects of life. Native Americans find the priority given to material culture in historic preservation law arbitrary, and they do not understand this narrow concern (Anyon 1990). They see all aspects of their culture as worthy of preservation, not just some it

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(NPS 1990). And yet, it is a Euro-American world view that forms the basis of the legal and regulatory framework that drives the historic preservation process in this country.

The cultural differences that exist between Indian and non-Indian people is manifested by a perceptual asymmetry: what one group sees as vital to its cultural identity, the other often does not even recognize. Without the benefit of the conceptual framework that enables Native Americans to interact with the sacred and traditional aspects of the landscape, Euro-American archeologists and preservation officials cannot "see" these elements, and as a consequence they do not take steps to consider them in their actions. It is this lack of consideration that Bulletin 38 addresses. The debate over how and why traditional cultural properties fit under federal regulation is a product of this clash over cultural values and perceptions. The first step in overcoming these problems requires an understanding of the issues that are most divisive. In the debate over traditional cultural properties, those issues include religion, law, property, and political self-determination.

One of the more profound differences between Native Americans and Euro-Americans is the way in which people of each group view and practice their religion. Native American communities do not separate their religious world from their secular world as do most Euro-Americans (Parker and King nd). Every aspect to their lives is linked to their spiritual view of existence (NPS 1990). For this reason, both cultural and natural features in the environment may hold traditional values that make them eligible for the National Register (Parker and King nd).

It is important to understand that properties of traditional cultural value cannot be eligible for the National Register for their intangible associations alone, such as beliefs or other sacred qualities (Parker and King 1990). The explanation for why sacredness in and of itself is not sufficient to make a property eligible for the National Register touches on one of the more contentious aspects of debate over traditional cultural properties. The first amendment of the U.S. Constitution guarantees a separation of church and state (King 1990). The National Register criteria under 36 CFR 60 are structured to reflect this separation by normally excluding properties used for religious purposes, unless—and this is crux of the matter—these properties derive their primary significance from their historical importance (NPS 1966). Thus, a place of profound religious importance to Native Americans cannot be listed on the National Register for its sacred qualities, but can be listed for its historical role in maintaining the cultural identity of a community. The Navajo Nation Historic Preservation Department describes the term "traditional cultural properties" as a "euphemism intended to obscure the religious qualities that these places have for people who do not separate the sacred from the secular." (NNHPD 1991:1). They are right, of course, but like most euphemisms, this one was coined to serve a particular purpose.

Some federal agencies have argued that the provision for excluding religious properties from the National Register prevents them from considering traditional cultural properties in Section 106 reviews of their undertakings. Such a position is arbitrary and overtly ethnocentric (King 1990). Since Native Americans do not separate the spiritual from the secular, to force them to do so in order to conform to a Euro-American world view would be unconscionable. The case for religious exclusion fails on its merits, however. The exclusion provision in the National Register criteria was added "in order to avoid allowing historic significance to be determined on the basis of religious doctrine, not in order to exclude arbitrarily any property having religious associations" (Parker and King nd: 13).

An equally complex issue involves the sensitivity of information on traditional cultural properties. To many Native Americans, knowledge about places of traditional cultural value is extremely sensitive, highly guarded, and not intended for dissemination to others. Release of information of this kind is a serious matter and could be dangerous or even fatal to those responsible (Parker and King nd). This situation has created a bit of a conundrum and begs the question: if traditional cultural properties are to be considered in the federal review process, but information on them is restricted, how then are state and federal preservation officials to evaluate their eligibility to the National Register? Providing meaningful guarantees to the tribes on the confidentiality of information is absolutely necessary if traditional cultural properties are to be successfully integrated into the federal review process. Most of the thinking on this subject involves some level of compromise where some, but not all, information on traditional cultural properties is collected and where strict prohibitions are placed on its dissemination. Despite these assurances, most Native Americans have deep misgivings about the disclosure of sensitive information of any kind to those who are not members of their communities. Unfortunately, anthropologists have an old legacy of violating the trust of Indian people which only makes communication more difficult (Evans 1993). One of the greatest challenges facing state and federal preservation officials is to convince Native Americans that their participation in the historic preservation process can be worth the effort and risks involved.

Perhaps the greatest irony of the change in law giving Native Americans a greater voice in the preservation of their heritage resources is that most of those resources are not on Indian-controlled lands. Over the past centuries, Native Americans have lost control of approximately 2 billion acres of land in the United States. Today, Indian tribes and individuals own approximately 52 million acres of land or about 2.5% of their original territory (NPS 1990). Obviously, this means that the vast majority of places of importance to Native Americans are owned or controlled by other people.

The implementing regulations for the National Historic Preservation Act give explicit instructions to federal agencies working on tribal lands about the necessity of inviting the tribe to be a consulting party in any decisions affecting National Register eligible properties (ACHP 1986). Compliance with this requirement varies, depending upon the agencies involved and the nature of their relationship with the tribes.

For those agencies that serve Indian people, and where federal actions are prompted by a tribal request, consul-

tation is a regular part of the working relationship. Under these circumstances, there is greater opportunity to work out preservation problems in advance of an undertaking because the tribes are involved in the planning process itself. Agencies that do not serve the tribes, but that work on tribal lands, have been less prone to consult in the past, especially if their interaction with Indian people is limited. Normally, the agency initiates the undertaking and consultation occurs only after plans have been formulated when there are fewer options available. In both cases, however, the tribes technically have considerable input in addressing the effect of federal actions on heritage resources because they control the land. When federal undertakings occur off reservation, however, the legal requirements for consultation change and the matter of control becomes more problematic. This is an especially sensitive issue when federal agencies work on non-tribal lands that are considered to be ancestral territory by one or more Indian tribes.

In off reservation situations, the tribe must be given the opportunity to comment on the undertaking, but only as an "interested person." As a practical matter, the views of interested persons do not have the force of law, and decisions can be made over their objections. Often, federal agencies are unaware of the importance of the land to a particular tribe or they do not know that consultation of any kind is required when working off reservation. For this reason, tribes have started to insist on being made full consulting parties to any decisions affecting their heritage resources on or off reservation lands.

The problem of land ownership is further complicated when it comes to state lands and private property. Many states have some sort of Antiquity Act, and some have provisions to protect burials, but few have laws that require consultation with tribes over matters of cultural heritage and patrimony. Private lands generally are not affected by the federal, state, or municipal preservation laws unless they are part of an action that is subject to a legally mandated review. This means that most non-federal land is not included in any consultations with Native Americans over heritage resources of any kind. Indian people feel a deep connection to their heritage resources regardless of who might own the land under them (NPS 1990). They do not understand why some of these resources should be protected under law and why some are exempt from that protection (Anyon 1991).

The vagaries of who owns what land and the effect that this has on historic preservation only contributes to the belief held by many Native Americans that they have little or no control over their heritage resources (NPS 1990). To many groups, the preservation of their heritage resources, especially burials and traditional cultural properties, is an issue that has become linked to their political aspirations for self-determination (Downer 1990). In New Mexico, for instance, the Navajo and the Zuni have argued that they have a right to be a party to decisions that effect their heritage resources wherever they are located (Anyon 1991). Other tribes across the country can be expected to make similar arguments as they become more actively involved in historic preservation. The central issue here is the desire of Native Americans for greater control of their lives (NPS 1990). Their concern with the protection of properties of traditional cultural value and other heritage resources is a part of this desire and should be understood in those terms.

As the reader can tell by this brief summary of the problems that influence the debate over traditional cultural properties, Bulletin 38 has prompted a reevaluation of the entire preservation process as it affects Native Americans. Archeologists and other professionals in the preservation community must pay attention to the changes that are occurring as Native concerns are incorporated into the federal review process. To do otherwise is to invite conflict and litigation, to ill serve the public, and to mislead private industry.

**Solutions**

The solution to the conflicts associated with traditional cultural properties lies in the establishment of meaningful dialogue between Native Americans and Euro-Americans. This will happen when all parties first agree to several points: 1) that properties of traditional cultural value may be eligible for the National Register of Historic Places; 2) that federal agencies therefore have a responsibility to consider the effects of their actions on traditional cultural properties; and 3) that Native Americans have the right to fully participate in the decisions that affect these properties both on and off the reservation.

As discussed above, part of the problem is perceptual: different people view the world and interact with it in different ways. The very terms we use in discussing the traditional cultural property issue are a barrier to mutual comprehension. For instance, many Indian people are offended by the terms "historic property" and "cultural resource" used by preservation officials to refer to things or places of cultural concern. They feel that these terms denigrate those things or places by turning them into commodities (NPS 1990). To preservation professionals, these are simply regulatory code words for "something important" that we try to use consistently so that we know that everyone is talking about the same kinds of things or places.

Native Americans and Euro-Americans must strive to understand the language that the other party uses in speaking about historic preservation. The key is communication; not just "consultation" but an open and honest dialogue that leads to agreement on what is to be done, why, and how. To this end, I suggest changes in the way that the tribes, the states, the federal government, and the archeologist interact with regard to traditional cultural properties.

***Tribes***

Indian people need to know that to be effective in protecting their heritage resources they must become actively involved in the federal review process. Some tribes have already established tribal archeology programs or historic preservation offices. These programs provide a mechanism that enables the tribe to respond to requests for consultation from federal and state agencies on matters of cultural heritage and patrimony. In my dealings with federal officials, the most common complaint I hear is that a tribe does not respond when the agency makes a

*(**Cushman**—continued on page 52)*

*(Cushman—continued from page 51)*

request for consultation. It is likely that there is more than one explanation for why this occurs, including the manner in which the request was made, who the request was made to, and the level of understanding that each person involved in the consultation has about the historic preservation process.

In many cases, however, the problem is that the tribe does not have a mechanism for dealing with preservation-related requests for consultation, especially those having to do with sensitive matters such as traditional cultural properties. If the agency officials do not have a contact within the tribe, and if there is no process within tribal government for responding to their requests, then the answer from the tribe is likely to be silence. The problem is compounded when the agency official accepts the tribe's silence as a lack of concern, which may be far from the truth.

Tribes must give serious thought to setting up their own means of handling Section 106, NAGPRA, ARPA, and AIRFA related inquiries. Federal monies have become more available for this purpose through the National Park Service, and the Advisory Council on Historic Preservation can provided technical assistance (NPS 1990). The recent amendments to the National Historic Preservation Act enable the tribes to essentially take over the functions of the SHPO and manage their own resources (NCSHPO 1992). Until such time as they are able to do so, the establishment of tribal cultural committees or preservation offices that act as an interface between the tribe and federal and state government in the consultation process would go a long way toward giving Native Americans a real voice in preservation issues of direct concern to them.

***SHPOs***

The states have a direct responsibility to act as an advocate for the cultural heritage of their citizens. Native American and other traditional communities form a part of the constituency in many states and territories. While Native Americans often view the states as interlopers in the sovereign relationship between the tribes and the federal government (Downer 1990), the SHPOs can and do provide funding and other forms of assistance to tribes for preservation planning. The most important role for the SHPO, however, is sometimes that of a mediator between the tribes and federal agencies. A recent experience illustrates the point.

Several years ago, I became involved in a sewer line project at Zuni Pueblo sponsored by the Environmental Protection Agency. The EPA hired an engineering firm to develop plans to upgrade the sewer system at Zuni, a critically important project for the community. I heard about the project from the Zuni Archaeology Program, not the EPA, and so a meeting was arranged for all parties to review the plans and to initiate Section 106 consultations. The EPA was unfamiliar with their responsibilities under Section 106 and not at all aware of traditional cultural properties. The plans they developed passed through the heart of old village in an area where many important ceremonies are conducted throughout the year. To add injury to insult, the line truncated the Zuni river, itself a place of great religious and historical importance to the community.

I informed the EPA that there was a problem and that they had just developed plans for the equivalent of building a pipeline through the Vatican. This they understood. I explained that they had a legal obligation to address the problem and to work with the Zuni Cultural advisory team, an established group that acts as a liaison among tribal elders, the governing Council, and outside agencies. The EPA agreed and had two surveys performed: a standard archeological survey and an ethnographic survey to identify the traditional cultural properties. As a result, eleven traditional cultural properties were identified and determined to be National Register eligible. Since construction is still two years off, however, the EPA has had enough time to revise their plans and thereby avoid all of the areas of concern to the Zuni people.

Experiences like this demonstrate that adding traditional cultural properties to the standard consultation process works. In this case, the SHPO got involved and instructed the federal agency, the agency listened to the Zuni, and the Zuni had a mechanism for responding to the consultations. It is this role as facilitator that the SHPO must be able to play in order to bring about the necessary dialogue between the tribes and the federal agencies. There are sensitive issues involved here and SHPOs must be willing to take the lead if the agency or the tribe is unable to do so.

I recommend that the SHPOs become actively involved during the earliest planning stages of any projects where there might be traditional cultural properties. This will maximize the options that greater planning depth can bring.

***Federal Agencies***

Under the National Historic Preservation Act, the federal agencies are given the responsibility for complying with the Act. It is their job to consult with the SHPO, the tribes, and all interested parties in advance of any federal undertaking that may affect historic properties, including those of traditional cultural value.

There are two planning areas that the agencies need to develop in order to effectively address the traditional cultural property issue. The first is that they have to come up with a means of identifying which tribes should be consulted, in what area, and under what circumstances. For agencies that work on tribal land, it's obvious who they should be talking to. [Editor's note: Agencies should be aware, however, that tribes other than the current occupants of the land may have important traditional cultural property concerns about an undertaking.] Off reservation, the question of which tribes to contact becomes more of a challenge, especially if multiple tribes have ancestral claims to the same land.

The second planning area that federal agencies need to work on is in the development of procedures that anticipate the need to identify traditional cultural properties and to take into account the effects of federal actions on these properties. In other words, federal agencies need to take a proactive posture on this issue instead of waiting to react to the problems as they arise (Parker and King nd). There are really only two options for the agencies: 1) establish internal policies that require specific consultation on traditional cultural properties with tribal governments as a regular part of the compliance process; 2) develop a programmatic agreement or agreements with tribes that will structure future consultations traditional cultural properties.

The benefit of the first option is that it is relatively easy to achieve, and it starts the agency down the path of regular consultation with the tribes on the matter of traditional cultural properties. The drawback to this unilateral approach is that it is an overly simple fix to a complicated problem, one that does not provide for the necessary level of dialogue so that tribes will understand what is being asked of them and why. For this reason, the second choice is recommended.

Programmatic agreements can be used to meet an agency's responsibilities under the National Historic Preservation Act by modifying the standard regulatory procedures for compliance. They are extremely effective preservation tools, their biggest advantage being their versatility. A PA can be tailored to fit the needs of both the agency and the tribe. Since a PA is developed by the parties involved, it gives the tribes a direct role in the decision-making and, in effect, works out many of the problems in advance. This is exactly the kind of discussion that Native Americans want to have, because it puts them "in the loop" on decisions that affect their cultural patrimony at an early stage in the planning process.

Agency officials who want to get ahead of the curve on traditional cultural properties should start looking into Programmatic Agreements. This is especially true for agencies who have responsibilities on tribal lands, since traditional cultural properties will become a frequent part of their Section 106 compliance responsibilities.

*Archeologists*

Archeologists are particularly affected by the recent changes in historic preservation law, and they will continue to be so as Native American assert their interests. As experts in the art of deciphering the past, archeologists are frequently involved with cultural resources of Native American origin. Their work brings them into contact with both the remnants of the aboriginal past and, increasingly, with the decedents of the people who are the subject of their research. As Native Americans become more active in the preservation of their heritage resources, archeologists on the ground and in government offices can expect greater interaction with Native American peoples, especially over issues such as traditional cultural properties.

There are two basic problems that archeologists must face in order to add traditional cultural properties to their work load. The first, as explained, is cultural. The average Euro-American archeologists, steeped in his or her own culture, often cannot "see" that portion of the cultural landscape that contains traditional cultural properties. Now another set of eyes may be needed to identify all that needs to be identified. The second problem is one of training. Because of the nature of their profession, archeologists are most often concerned with the material, as opposed to ideological, aspects of cultural behavior. They are not trained to be sensitive to the kinds of issues that are associated with properties of traditional cultural value. The twin products of culture and training, therefore, represent major impediments to effectively addressing the challenges of recognizing, recording, and evaluating traditional cultural properties.

Archeologists, however, are adept at learning new skills that help them to perform their jobs. They are also used to commanding a wide variety of information from many different sources and making sense of it all. With new training, archeologists can either coordinate their work with ethnologists or other persons better able to identify traditional cultural properties, or they can learn to ask the right questions of the right people themselves. Either way, the business of doing federally mandated historic preservation is changing, and archeologists, because they are often the only cultural resource specialists in an agency or environmental firm, must adapt to these changes.

The challenges of identifying properties of traditional cultural value have added a new dimension to the work normally performed by archeologists. Now, instead of being concerned with the objective, material aspects of the past, they must also become aware of the subjective, nonmaterial aspects of the present; this is no longer an academic exercise. Naturally, there is a certain confusion over what this means, but this is not an insoluble problem. It does mean making a conceptual adjustment to new working conditions. It means making operational changes as well, i.e., adding interview to the standard survey procedure, talking to agency and tribal officials, educating private industry, anticipating the need for extra time for consultation, and generally doing what must be done so that traditional cultural properties are identified and evaluated.

I highly recommend that archeologists become well acquainted with traditional cultural properties both in concept and in practice. They can expect to run into issues that relate to Native Americans both on and off reservation, be it the reburial issue, Native American religious freedom, or the preservation of properties of traditional cultural value. The days of little or no accountability to tribal peoples for the research that archeologists do are fast disappearing. Archeologists must become better anthropologists and in doing so be better prepared for the work they are being called upon to perform.

**Conclusion**

In 1962 Thomas Kuhn spoke of paradigmatic change in science. He explained that change is often resisted, and in many cases even ignored, if it challenges the accepted norm (Kuhn 1962). In my opinion, the historic preservation profession in general and archeology in particular are experiencing a similar clash between old and new views of these disciplines. The title of this paper "when worlds collide" is an apt metaphor for the relationship between Indian and non-Indian cultures as it relates to the issue of traditional cultural properties. It also describes the conflict within archeology and the role that it plays in the field of historic preservation.

It would be an exaggeration to say that today American archeology is historic preservation or it is nothing, but it is by no means a wild exaggeration. Most archeology is driven by historic preservation law, and as such, archeology is no longer about the past, but about the present and the future as well. The changes in the legal requirements affecting how and why archeology is conducted in this country have imposed a sensitivity to the living that, heretofore, has not been a hallmark of the profession. In 1973, Willey and Sabloff warned archeologists that they cannot ignore the feelings of native peo-

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ples concerning their work. This admonition was presented as a matter of moral and ethical choice; now it is a legal requirement.

The legal trends affecting historic preservation will infuse archeology with new knowledge and awareness of Indian culture, and this will benefit the discipline as a whole. It will also bring Native Americans into the process through which the nation's heritage resources are protected and preserved for the future. Archeologist must acknowledge, however, that the past is no longer their sole domain; other people are involved now, and they have a right to be involved. To be an archeologists in this country means that one must learn to work within the social, cultural, and political environments of the day. The present controversy over traditional cultural properties serves as a reminder of this truth.

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**At El Rancho, NM, traditional use of the dirt parking lot shown here ...**

**... for the conduct of Matachines dances was found to have made the site eligible for the National Register.**
**Top photo by Patricia L. Parker.**
**Bottom photo by Los Matachines de El Rancho.**

# Documenting Traditional Cultural Properties in Non-Indian Communities

**Frances Levine**
**Thomas W. Merlan**

Archeologists have debated long and heatedly over the definition of cultural properties, the concept of significance, and the application of National Register criteria to our diverse resource base throughout the developmental and administrative history of cultural resources management. With the Antiquities Act of 1906, the United States Congress ventured a first definition of cultural property. It defined such property in terms of material remains, principally features and artifacts as seen by archeologists. Subsequent statutes, such as the Historic Sites Act of 1935 and the Historic Preservation Act of 1966, followed this line.

Recently, however, perhaps as a result of the insight gained from generations of ethnographic studies, and undoubtedly owing also to the civil rights movement that transformed American historical thought in the 1960s and 1970s, the federal government arrived at the realization that cultural properties reflect living cultures as well as dead ones and express systems of belief. This is something that anthropologists had known for a hundred years, but then law always lags behind social science. The government also belatedly grasped that some cultural properties are not readily observable until the observer gains some understanding of the system of belief behind the site. The American Indian Religious Freedom Act of 1978 tried to straddle the gap between property and process. More recently, the National Register of Historic Places produced Bulletin 38 to provide guidance on the identification of traditional cultural properties.

**Blessing of the waters in the *acequia*, or irrigation ditch, that serves the communities of La Joya and Contreras, NM. Photo by Nancy Hunter Warren.**

Federal agencies and state historic preservation programs are now instructed to take traditional cultural properties into account when examining the effects of federal undertakings. The need to identify and document traditional cultural properties prior to federal undertakings raises questions about the documentation process in culturally diverse communities throughout the United States that federal agencies and others involved in cultural resource management need to consider. For example, do the communities in a particular study area have traditions that meet the threshold of eligibility envisioned by the traditional cultural property process?[1] How are traditional cultural properties defined in communities where there may be many traditions but no single cultural or religious tradition?

If a traditional cultural property is as intangible as an open space or a mountaintop devoid of features and artifacts in the conventional archeological sense, how can it be identified? How do you identify the people who have the cultural knowledge and community sanction to speak about the significance of the property? Last, and perhaps most important, what do traditional communities risk and gain when they identify traditional cultural properties for outsiders?

These are at least some of the questions that cultural resource managers must address in identifying traditional cultural properties of concern to a broad range of traditional communities. We will address many of these questions below, with an emphasis on working with local sources in the documentation of traditional cultural properties. We will make suggestions for (1) defining the physical and social boundaries of communities; (2) for documenting traditional practices; and (3) for interviewing community members.

We use the term traditional cultural property here consistent with the guidance in National Register Bulletin No. 38. The Bulletin describes a traditional cultural property as a historic property whose significance derives from the role the property plays in a community's historically rooted beliefs, customs and practices.[2] Traditional cultural properties become eligible for inclusion in the National Register because of their association with the cultural practices or beliefs of a living community. While they are eligible because of the historical depth of the practice, they are also important in the continuing cultural identity of the community.

Traditional cultural properties are defined in a historical context that is significant to cultural resource specialists. To traditional communities, however, cultural survival and cultural revitalization are contemporary social issues.[3] For researchers, documenting traditional cultural properties requires insight into the cultural and temporal contexts within which properties have significance to the community.

Establishing the length of time a community has practiced a particular ritual or custom is largely a matter of historical or ethnohistorical research. For some traditional practices, particularly those that involve public demonstrations such as processions, ritual dances, performances, or other events, documentation may exist in earlier anthropological or sociological studies of the community. There may even be photographic documen-

*(**Levine**—continued on page 56)*

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tation that helps to establish the time depth associated with a traditional cultural property.

Based on our experiences in New Mexico communities, it is best to demonstrate the persistence of a community tradition through a multidisciplinary approach integrating ethnography, ethnohistory, folklore and archeology. Oral accounts by participants are often useful in showing the continuity of a cultural practice, but rarely provide specific dates for the inception of a cultural tradition. The National Register guidance anticipates that it may be difficult to establish with certainty when a traditional practice originated, and permits some flexibility in applying the standard 50-year rule of eligibility.[4]

Establishing the significance of the practice to the community can be more problematical. The significance to the participants in a ritual may vary from individual to individual and from time to time. The significance of the practice and the importance of a particular place in the ritual may change in response to how the community perceives the social costs and benefits of sharing its cultural practices with others. It is important to remember that traditions are not fixed social forms. Traditions are part of an interpretive process in which present events are filtered through a learned body of customs and beliefs.[5] Traditions die; traditions are revitalized; traditions are modified to meet the social needs of traditional communities. The maintenance of traditional cultures involves a tremendous balancing of conventional conformity with a range of innovations introduced from within and from outside the community.[6] In the course of field work in traditional communities, can expect to observe the balancing process. Disclosing knowledge about a traditional cultural property is, in itself, a cultural innovation for many communities.

**Image of the patron saint of farmers, San Isidro Labrador, on a tree in a corn field at La Manga, NM. Photo by Nancy Hunter Warren.**

With these questions and cautions as background we want to proceed to a discussion of field methods that can help in documenting traditional cultural properties through local resources. The examples we use are taken from our own fieldwork in the Indo-Hispanic[7] communities of New Mexico. Some specific examples of our research methods are taken from a project that Dr. Levine is now directing under contract to the National Park Service.

The Office of American Indian Programs of the National Park Service, Southwest Regional Office awarded a contract to Dr. Levine, Ms. Marilyn Norcini, and Dr. Morris Foster to conduct consultations with American Indian and Hispanic communities concerning traditional uses of lands now contained in the more than 5,000 acres of Pecos National Historical Park. Pecos NHP is located in the Sangre de Cristo Mountains of northeastern New Mexico. Dr. Levine is working with the Hispanic communities in the Pecos Valley in the immediate vicinity of the park. The Hispanic communities have traditional ties to the church at ruined pueblo of Pecos within the park, where they hold a feast honoring the patroness of the church each summer. Ms. Norcini, a cultural anthropologist, is conducting interviews with Jemez Pueblo members whose ancestors emigrated from Pecos in the 19th century. She is also conducting interviews at other pueblos and with the Jicarilla Apache Tribe. Dr. Foster has been hired to conduct interviews in the Comanche and Apache communities of Oklahoma, with whom, documentary sources tell us, the people of Pecos Pueblo maintained an active trading relationship. This work is part of the on-going preparation of a General Management Plan that will guide park management and public interpretation for the next 10 to 15 years.

The team is interviewing American Indian and Hispanic informants who have traditional associations with the lands that are now in the park; we hope to elicit information about the customary and traditional uses of natural and cultural resources identified in the park. This information can then be used by park staff to ensure the protection of places and resources of significance to the American Indian and Hispanic communities with traditional ties to the park. We also propose to outline a consultation procedure for the park staff to follow in future contacts with the traditional communities.

### Defining the Community

The first step in documenting traditional cultural properties is to define the communities and the community traditions that are associated with the properties. This is done through literature search, by a reconnaissance of the project area, and through consultation with community representatives. A community can be described by political boundaries, by physical properties, and by distinctive cultural practices, or ethnic criteria.

In New Mexico there are many traditional non-Indian communities that are defined by political, cultural, and ethnic boundaries. Land ownership often serves as a basis for identifying traditional communities in New Mexico, where land grants titled in the 17th and 18th centuries continue to preserve traditional land-use and settlement practices.[8] In other cases, traditional cultural properties might be important to many people who do not share a home community. The shrine at Chimayo is such a place. Pilgrims walk from all over the Southwest to this sacred place during Easter week. Traditional cultural property research, then, might focus first on a community, or more specifically on a particular site, depending on how much you already know about the traditions of the community.

We use a number of mapping and diagramming techniques to define the boundaries and social organization of the community or group for whom a site is significant. Mapping is important for recording observations about the political, geographical, and symbolic relationships visible in the cultural landscapes of communities.[9] Maps and visual records can be useful in interviews, although in some cases drawing or photographing the community or locating traditional cultural properties on a map gives

offense. In these cases, maps might be part of your fieldnotes, but might not be incorporated into a final report. Be aware of community views on these matters.

We have found that aerial photographs are particularly useful as base maps for communities. They can often be copied at planning departments of municipal offices, at state highway departments, and at federal offices such as the Soil Conservation Service or other federal planning and conservation agencies. Overlays can be used to record the various classes of information that assist in defining the community context of a traditional cultural property. Overlay maps can be used to locate public spaces such as schools and service centers, sacred spaces such as cemeteries and churches, and social spaces such as plazas, all of which are important in knowing the community where you are working.

In addition to defining community space and boundaries, it is important to have some idea of the formal contexts and informal associations that constitute the social organization of a community. Local newspapers, church and social organization news bulletins, notices posted in public spaces, such as the public library or the post office, can help to identify the social organization and the traditions of a community. Look for information about scheduled celebrations and for reports of more spontaneous events, as well as for the names of people who might serve as community consultants.

### Identifying the Traditions

*The Southwest has so many feast days that its notable dates are days when nothing in particular is going on.* [Erna Ferguson 1940:340-341 as quoted in Weigle and White 1988:363.]

When you enter a traditional community it is important to have some understanding of the annual or seasonal round that serves as the basis for scheduling events in the community. In some communities economic activities are the basis of the annual round. In other communities religious or ritual events set the cycle of activities. We use cultural modeling techniques[10] to prepare schematics of annual cultural events in communities. These may indicate when traditional cultural properties are used.

In New Mexico, traditional observances are tied to the ceremonial calendar of the Catholic church and to the agricultural economy of the region. The Catholic ritual calendar, for example, lists some 58 feast days in honor of saints that are observed in New Mexico villages.[11] The village church is usually named after the village's patron saint, and this will serve as one indication as to which feast days are observed in a particular community.

Figure 1 was drawn on the basis of an annual cultural calendar that we assembled for New Mexico traditional communities. It was compiled from a number of publications and primary sources, including the Catholic outreach service calendar, a list of saints' days and feast days observed in the Hispanic and Pueblo villages, as well as Chamber of Commerce and New Mexico Tourist Bureau pamphlets. The importance of the calendar and diagram of the annual round is that it can be used during community interviews to elicit information about the practices and locations which might involve traditional cultural properties.

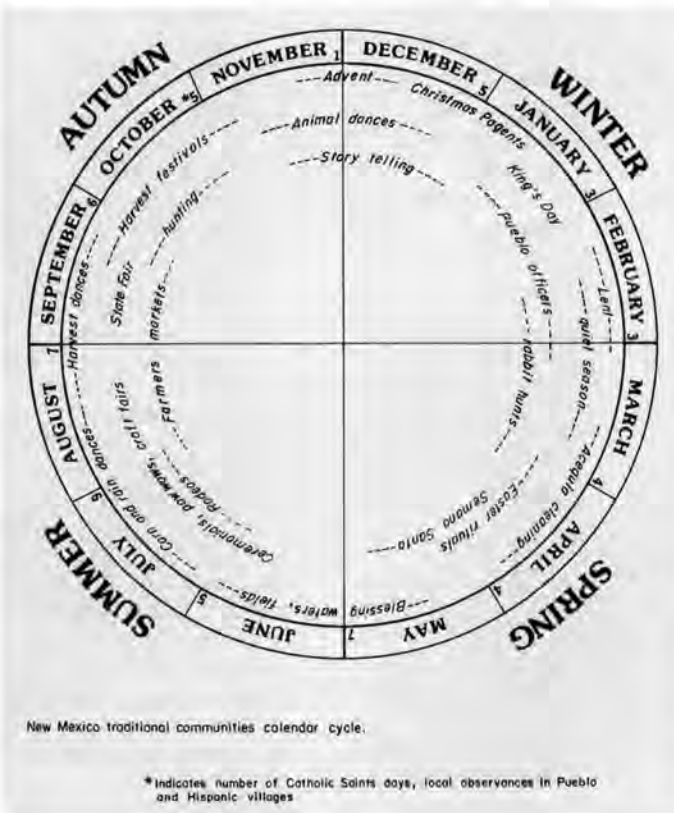
The diagram is a visual representation of community process, but it is important to remember that the details of how any community observes traditions may vary from year to year. Some traditions are "moveable," not specifically fixed by date or community obligation. Depending upon local social and economic conditions, there may even be some years when communities choose to forego public observances. How do you know who to ask for information? Who is going to want to tell all of this to a new kid in town?

### Identifying Community Consultants

Interviewing requires special skills and patience. This is especially true when it comes to traditional cultural properties, since participants may be prohibited from discussing the rituals of their communities with outsiders. In New Mexico communities we have also found that the transgressions of past researchers can make it difficult to find acceptance in a community. The community's memory of the mistakes of your predecessor may still be vivid decades later. We are often told stories about Matilde Coxe Stevenson, Elsie Clews Parsons, and Evan Vogt that have a profound immediacy, which is surprising, to say the least, since it has been 50 to 100 years since these researchers worked in New Mexico—a mere wink of an eye in a traditional way of reckoning time. Community consultants need time to assess your behavior, to determine whether they are placing themselves in jeopardy with their community by cooperating with you.

In American Indian communities, particularly in the northern Rio Grande pueblos, the tribal council usually directs researchers to community leaders and representatives authorized to speak with government

(*Levine—continued on page 58*)




New Mexico traditional communities calendar cycle.

*Indicates number of Catholic Saints days, local observances in Pueblo and Hispanic villages

Fig. 1. Calendar Cycle for Traditional Communities in New Mexico.

*(Levine—continued from page 57)*

agencies and outsiders. We recognize that many times the political leaders of American Indian communities are not necessarily the sanctioned traditional leaders. While tribal planners and tribal officers may not be the only people you will want to speak to in a community, they are usually familiar with the tools and language of historic preservation.

In other traditional communities there may be no readily identifiable speakers on traditional matters, and there may be no one who is familiar with the workings of historic preservation planning and compliance. In non-Indian communities a village government, a County Commission, or other elected officials may be able to direct you to the traditional leaders in the community, but we would not rely solely on the political bodies for community consultation. There may be many interests and points of view on a project that influence what a person may tell you as an elected official and what he may say as a private individual.

Absent a community body that speaks for the traditions of the community, it is important to devise a specific plan to elicit information from a range of people whose customs and traditions may be affected by your project. There are usually a number of groups whose points of view represent the range of community traditions and community concerns. Once again we use modeling techniques, that is visual representations and verbal classifications of the community, to identify those groups that might be consulted or interviewed.

Below are some examples of the community interest groups that we identified for the Pecos project. The seven groups that we defined represent a stratified and, we believe, a representative sample of the community's interests. Since our interest in the Pecos project has a larger ethnographic focus than the identification of traditional cultural properties, the groups were identified to sample a broad cross-section of community members who may wish to voice a concern about the impact of NPS policies on their community.

1. Adjacent Landowners--these are people whose lands adjoin the park. Their concerns have largely to do with the impact of park operations on the long-term value and use of their own lands.

**Religious processions are an important part of feast day observances. in this photo residents of Tecolote, NM carry the image of their patron saint, Our Lady of Sorrows. Photo by Nancy Hunter Warren.**

2. Schools--teachers and students in local schools might have an interest in the ways in which they can use the park for the study of local history. In our experience, junior high and high school history teachers are often familiar with the local ceremonial calendar of their communities and with key participants. They may serve well as guides to the community. They can certainly alert you to the local etiquette, essential to working in the community.
3. Local Businesses--these are people who own or operate local businesses, who may see their enterprises helped or hindered by park operations. Some of the local businesses impacted by the park might includes the grocery stores and gas stations, restaurants, and R.V. and campground owners.
4. Local Historians/Preservationists--local preservation groups, historical societies and environmental groups often serve as advocates of the preservation of natural or cultural resources of importance to the community. They may be the people in the community who are most comfortable talking to outsiders about the cultural requirements of the community.
5. Political Bodies--the village trustees and the county commissioners may have official positions that reflect local concerns. In the Pecos area, the county commission has passed an ordinance that calls for the preservation of "customs and traditions." The ordinance is aimed at protecting the established economy, but it will be important to interview the commissioners to determine if they intend to use the ordinance to protect cultural practices as well.
6. Cultural Brokers--this is an important group of people who have ties to the community but who live outside the community. They may assist researchers by shedding light on local alliances and issues that affect the current political and social climate in the community but that people living in the community may not readily discuss with an outsider.
7. Traditional Community Leaders--many traditional cultural properties are maintained by persons holding special positions in the community. They are in many cases the keepers of the ritual artifacts or are recognized by the community for their cultural knowledge. In some cases, the positions may be hereditary.

   Obviously, traditional community leaders may have the most knowledge about the traditional cultural properties that you are interested in documenting. In New Mexico communities, the *mayordomo* of the church is often responsible for housing the ritual artifacts used in community celebrations. This position may be held, as a matter of convenience, by the family living nearest the church. In another example relating to the church, the priest may be the most knowledgeable person to talk to about the liturgy, but not the best person to talk to about the importance of a traditional property to the community. Likewise, the *mayordomo* of the irrigation system is the record keeper as well as the person responsible for the maintenance of the system. The person who occupies this position may, however, not be a person with extensive historical or cultural knowledge about the ditch system. [12]

It does not necessarily follow, then, that the person who keeps the physical records or objects of the rituals will be the same person who has the authority to speak about the cultural importance of the events. You may conduct many interviews before you find the person who can help you understand where and what the traditional cultural properties important to the community are.

### Recording Traditional Cultural Properties

Identifying knowledgeable people in the community is just the beginning of the process of documenting tradi-

tional cultural properties. Conducting successful interviews—that is, interviews in which you obtain the information you need to record the significance of the property while respecting community sensibilities—is an involved process. Your interviews themselves may be at odds with the culturally prescribed behavior of the community. Learning to ask questions—learning to communicate in a discourse style that is culturally sensitive, and yet yields the information needed to meet the requirements of your project—is as individual as the community in which you are working.[13]

In our experience, genuine collaboration between the field researcher and participants in the traditional practice assures greater success in appropriately recording a traditional cultural property. When the documentation of the property can be shown to benefit the community, and when recording procedures are compatible with the etiquette of the traditional community, it is much more likely that the practitioners will be active participants in the documentation process. The more closely your goal for recording a traditional property corresponds to the community's need for site protection and the preservation of cultural information, the greater the chance that the documentation process will be acceptable to the community.

In the past, anthropologists and archeologists assumed that they were writing for an audience of professional peers. Now, we must never forget that what we write about a community will be read by members of that community. Contract reports and publications may also be used by others whose purposes differ markedly from those under which the research was performed. Traditional communities must have a voice in deciding what information is disclosed about their community and their cultural practices. The community may even request ultimate control over the information recorded and the disposition of that information.

Issues of confidentiality arose early in the Pecos project. We made specific agreements with the participating communities to protect the identity and anonymity of persons interviewed. We agreed to abide by any voiced restrictions to ensure that culturally sensitive material would not be included in any NPS or professional publications. We also agreed to give the participating communities copies of research materials that we located throughout the process. We have tried to make this a truly collaborative process in which we share in the repatriation of cultural information, and the community has a strong voice in how that information is used in the future.

It is clear that the process of documenting traditional cultural properties is changing the conduct of anthropological research. It is also changing the relationship between traditional peoples and anthropological professionals. It is a process in which traditional peoples are active participants, changing the way in which their communities are recorded and their history is told.[14]

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**Notes**

1 In some cases, communities may have events and rituals that do not meet the TCP criteria, but which are vital to the cultural identity of the community. Project managers need to be attuned to those community practices that may not meet the strict criteria of eligibility to the National Register, but which may need to be considered in light of broader public policy concerns for the human environment that can be raised under the National Environmental Policy Act [NEPA].

2 National Register Bulletin 38, "Guidelines for Evaluating and Documenting Traditional Cultural Properties," pp. 1.

3 In New Mexico cultural survival is a topic of importance for social action and scholarly pursuit. See for example, Paul Kutsche, editor, "The Survival of Spanish American Villages," *The Colorado College Studies, No. 15* (Colorado Springs: The Research Committee, The Colorado College, 1979) and Sylvia Rodriguez "Land, Water, and Ethnic Identity in Taos," in Charles L. Briggs and John Van Ness's edited edition, *Land, Water and Culture; New Perspectives on Hispanic Land Grants,* (Albuquerque: University of New Mexico Press, 1987).

4 National Register Bulletin, No. 38, pp. 15-16.

5 See for example, Richard Handler and Jocelyn Linnekin, "Tradition: Genuine or Spurious," Journal of American Folklore 97:385:273-290, 1984.

6 Conformity and innovation are themes that are discussed in the anthropological literature of culture change. Many anthropological text books examine theses forces that are at play in traditional communities. See for example, Philip K. Bock, *Modern Cultural Anthropology: An Introduction,* (New York: Knopf, 1974), pp. 202-235, for a review of the anthropological literature on stability and change in traditional cultures.

7 Terms used to denote the ethnic composition of New Mexico communities are the subject of considerable debate. Adrian Bustamante recently examined the range of terms used throughout New Mexico's colonial history in "'The Matter Was Never Resolved': The *Casta* System in Colonial New Mexico, 1693-1823." *New Mexico Historical Review* 66:(2):142-163, 1991. Bustamante's unpublished doctoral dissertation examines the contemporary issue of ethnic classifications in New Mexico.

8 The literature addressing land tenure and land use in New Mexico's traditional communities is voluminous. Charles L. Briggs and John Van Ness's edited edition, *Land, Water and Culture; New Perspectives on Hispanic Land Grants,* (Albuquerque: University of New Mexico Press, 1987) provides an excellent review of historical and contemporary issues relating to land as the basis for preservation of traditional values in New Mexico. An earlier examination of land and traditions is Olen E. Leonard, *The Role of the Land Grant in the Social Organization and Social Process of A Spanish-American Village in New Mexico,* (Albuquerque: Calvin Horn Publishers, 1970).

9 For most archeologists mapping is a standard technique for recording archeological sites. Those skills are equally important in recording the cultural context of a TCP. Some guidance on mapping cultural landscapes can be found in Julia G. Crane and Michael V. Angrosino, *Field Projects in Anthropology: A Student Handbook* (Morristown: General Learning Press, 1974); David Meinig, editor, *The Interpretation of Ordinary Landscapes: Geographical Essays,* (New York: Oxford University Press, 1979).

10 Modeling techniques are widely used by cultural anthropologists to diagram their understandings of belief systems of the communities in which they are working. Modeling techniques might be used to illustrate the social organization of a community, or at a more cognitive level to illustrate the symbolism in a cultural landscape. For examples of the use of models in

*(**Levine**—continued on page 64)*

# Beyond Bulletin 38

## Comments on the Traditional Cultural Properties Symposium

**Thomas F. King**

As co-author, with Patricia L. Parker, of National Register Bulletin 38 (Parker and King 1990), I am much cheered by the preceding papers. As did the symposia that produced them, they show that traditional cultural properties have become the focus of intellectual ferment in and around historic preservation. Moreover, they illustrate a kind of cross-cultural ferment that should be healthy for preservation and intercultural communication alike. In commenting on them, I do not propose to pick nits. Instead, I will focus on a few of the major issues that they raise, and offer some observations on them from my peculiar perspective.

Many of the papers point to the issuance of Bulletin 38 as a pivotal event, before which traditional cultural properties were widely ignored, after which agencies began to take them seriously. We intended for Bulletin 38 to have an impact, so it is good to learn that it apparently has caused people to sit up and take notice.

It may be worth stressing, however, that Bulletin 38 did not in any way expand or otherwise change the National Register or its criteria for inclusion. Nor did Congress, when in 1992 it added Section 101(d)(6) to the National Historic Preservation Act, explicitly stating that Native American sacred sites (a particular kind of traditional cultural property) may be determined eligible for the Register. Traditional cultural properties have been included in the Register, and determined eligible for inclusion, since the Register's earliest days. My first Section 106 case, back in 1971, involved a traditional cultural property that was included in the Register—Tahquitz Canyon in Palm Springs, California. Tahquitz happened to have archeological sites in it, but it was the canyon's role in the cultural traditions of the Cahuilla Indian people—as their origin place and as home to the spirit Tahquitz—that impressed the Advisory Council when the Corps of Engineers' plan to throw a dam across the canyon came up for review.

In the mid-1980s we observed that agencies, SHPOs, and others were becoming confused about whether and how traditional cultural properties were eligible for the Register, particularly where such properties were significant "only" to Native American groups, lacked architectural or archeological signatures, and had religious connotations. The infamous case of the San Francisco Peaks (c.f. ACHP 1985:65) was particularly persuasive in demonstrating that something had to be done. After some political pushing and pulling, Bulletin 38 was what we ended up with. Its purpose was not to make a "new" class of property eligible for the Register, but to clarify how to recognize and evaluate a class of property that always had been eligible.

Section 101(d)(6) of NHPA has exactly the same purpose. It was included in the 1992 amendments when several agencies issued guidance effectively telling the field to continue with business as usual because Bulletin 38 was merely an internal National Park Service document. I really don't understand what Charles Carroll means in his paper when he says that Section 101(d)(6)(b)'s requirement to consult with tribes is "decidedly different from guidance provided in...Bulletin 38." As I see it, Section 101(d)(6) now clearly requires consultation, and Bulletin 38 provides advice about how to do it.

Bulletin 38 does go beyond Section 101(d)(6), though, in that it deals not only with Native American religious properties but with properties of traditional cultural value to all kinds of people, and therefore promotes consultation with far more groups than just Indian tribes. I am particularly glad that Lynne Sebastian's paper stresses the fact that tribes aren't the only groups that can treasure traditional cultural properties, and that Fran Levine and Tom Merlan explicitly address consultation with Hispanic communities. In a videotape on traditional cultural properties that I recently produced for the Soil Conservation Service (King 1993), I illustrated plant-gathering areas used by South Carolina African-American basketmakers, a creek baptism site used by Anglo-American Southern Baptists, and the Sacred Grove in New York State, where Joseph Smith reputedly received the vision that led to the creation of the Latter Day Saints churches, as well as a variety of Native American properties. Although this group of papers focuses primarily on tribal properties and issues, we should always remember that traditional cultural properties are for everyone.

A number of the papers in this issue discuss the difficulties traditional groups have in responding to Euro-American systems of communication—commenting in writing, operating within particular timeframes, dealing with correspondence, addressing cultural matters in public, and so on. Tribes like the Zuni and Hopi are certainly to be commended for trying to organize institutional ways of working across the boundaries of cultural difference. The Hopi Cultural Resources Advisory Task Team and the Zuni Cultural Resources Advisory Team are fine examples of good-faith efforts by tribes to relate positively to federal agency planning.

Such tribal efforts don't relieve agencies of the responsibility to make their consultation processes relate intelligently to the cultural systems of those with whom they consult—whether those consulted are Zuni, Hopi, or anybody else. If one's consultation system doesn't allow those consulted to consult, it can hardly be characterized as a consultation system.

The tendency of agencies to treat consultation as a rote exercise in notification-and-response was one of the factors that motivated us to write Bulletin 38. As one of many examples: a National Forest I visited during the drafting process lay along a river where a local Indian tribe carries out annual rituals designed to renew the world and hold it together—rituals that demand natural conditions for their performance. The Forest's managers insisted that they were performing their duty to consult the tribe by sending postcards to the Tribal Council notifying them of impending timber sales. The same officials were frustrated by the fact that after failing to respond to these postcards, the tribe got upset when logging opera-

tions interfered with their ritual sites and activities. In Bulletin 38 we tried to make the point that agencies need to make good-faith efforts to work with tribes—with their world-views, time-frames, and modes of communication—rather than to try to impose their own systems on the tribes. The detailed, carefully organized consultation carried out around the Fence Lake Mine project, discussed in detail by Judy Brunson Hadley and Richard Hart in this issue, is a fine example of such consultation.

On the other hand, there are limits to how far tribes—and others—can expect agencies to go in adjusting their consultation systems to local modes of communication. The anger that oozes out of Judy Brunson's paper reflects the legitimate frustration of a project proponent who simply cannot figure out, from one moment to the next, what the rules of the consultation process are.

I recently found myself with my foot at least half-shoved into Brunson's shoe, trying to help the General Services Administration deal with a traditional cultural property issue of truly monumental proportions—the case of the African Burial Ground in New York City (c.f. Harrington 1993). One of the issues in this case, involving a colonial-era burial ground of enslaved African-Americans on the site of an under-construction federal office building, was the extent to which the City's—and country's—African-American community had been consulted during the planning process. At the time I became involved, after the burial ground's discovery, GSA had begun meeting with local preservation officials and the office of the Mayor to figure out what to do. The Mayor himself was and is African-American; his representative in the meetings was African-American, and GSA's understanding at the time was that the Mayor's office represented the African-American community. I tried to articulate this position in a meeting with the Advisory Council—represented by Charlene Dwin Vaughn, the Council's one and only African-American preservation professional, a respected colleague and friend—and found myself riveted with one of Charlene's best "oh, you idiot" looks.

"Tom," she said succinctly; "you would never take that position if this were an Indian tribe."

Luckily for me, the political process soon overtook the consultation process on the African Burial Ground, and I didn't have to confront the issue, but it still troubles me. It is certainly true that in an Indian tribe, an agency cannot assume that the Tribal Council represents the concerns of its traditional people. One of the cases that influenced us in writing Bulletin 38 was one in which a Tribal Council itself, on the northern Plains, was sued by a group of traditionalists for permitting oil and gas exploration in an area used by the traditionalists for medicine gathering. It certainly followed that GSA should not assume that the Mayor's office spoke for New York's African-American community.

Yet if New York City were an Indian tribe, and if GSA were meeting with the tribal government about the burial ground it had encountered, and had no reason to think that the tribal government did not represent the community's traditionalists, how much more in-depth seeking out and consulting with traditionalists should one—would I—expect the agency to carry out? Indeed, given the principle of tribal sovereignty (or, in the case of New York City, the principle of local home rule), how much second-guessing of the tribal (or local) government would it be legitimate for the federal agency to do? In the African Burial Ground case, the African-American community reached a pretty clear consensus that GSA's consultation had been inadequate, and had the political clout to force a change of direction. There's something important to be learned from this experience, but I continue to grapple with exactly what it is.

This puzzlement leads me to smile—a bit wanly—at Brunson's criticism of Bulletin 38's failure to "set forth well-defined methodologies for how to proceed," and of the Advisory Council for providing "almost no consistent guidance" about traditional cultural properties. I can understand her frustration, and even share it, but I think the shadowland quality of consultation about traditional cultural properties reflects the nature of the beast, and our relative inexperience in dealing with it. We didn't include "well-defined methodologies" in Bulletin 38 because we didn't know what they might be, because we strongly suspected that they would vary widely from area to area and group to group, and because we didn't feel that it was appropriate (even if it had been possible) for Washington to try to dictate what such methodologies might be. As the African Burial Ground case illustrates, a lot of people and agencies are groping toward definition of such methodologies. The papers in this issue show that progress is being made.

Several of the papers allude to a procedural and conceptual disconnect between Section 106 review and compliance with the National Environmental Policy Act (NEPA). Alan Downer and Alexandra Roberts identify this disconnect as a major impediment to dealing effectively with traditional cultural properties under Section 106. Under NEPA, agencies analyze a range of alternative approaches to a given undertaking, early in project planning. Downer and Roberts accurately identify this stage of planning as the best time for consultation about effects on traditional cultural properties. Section 106, it seems, tends to be dealt with later in planning, when the agency is pretty well fixed on a preferred alternative. At this point there may be nothing left to consult about but whether to go forward with the project at all, and if so, how to "mitigate" effects.

Charles Carroll is correct in saying that I promote initiating compliance with Section 106 early in the NEPA process, and carrying the two review processes to completion in unison. This would seemingly obviate the problem that Downer and Roberts highlight. Carroll also points out, however, that to consummate Section 106 review before NEPA compliance is completed could easily be taken to prejudice the NEPA decision.

How can we resolve this conundrum? We should resolve it, not only for the benefit of traditional cultural properties, but because only by resolving it can we get historic properties of all kinds considered early in planning, when a wide range of alternatives are still open.

I believe that the NEPA-106 disconnect is largely an artifact of the Section 106 regulations. 36 CFR Part 800 prescribes a rather rigid, step-by-step procedure in which one first identifies properties that may be historic, then evaluates them against the National Register Criteria to determine whether they ARE historic, then determines

*(**King**—continued on page 62)*

*(King—continued from page 61)*

effects, then determines if the effects are adverse, and finally consults to resolve those that are adverse. Some of these steps can be compressed, but one way or another they all have to be addressed. They are perfectly logical steps to go through, but the requirement to go through them in sequence—and specifically to go through property-by-property evaluation before assessing effects—is, I believe, what creates the disconnect with NEPA.

In order to complete Section 106 review—indeed in order even to move very far along in the process—an agency has to identify specific properties that may be historic, and then apply the National Register Criteria to each to determine whether it really is historic. This is generally understood to require on-the-ground surveys of various kinds, as well as background research and consultation with the SHPO and others. This can be expensive work, and of course it requires access to lands within the area of potential effect (APE). An agency is unlikely to be willing—if it is even able—to do such fieldwork at the early stages of planning, with respect to a wide range of optional sites or project designs. As a result, they put it off, and hence put off Section 106 review, until a preferred alternative is selected and access to the APE has been arranged.

I hasten to add that sometimes it's perfectly feasible to do surveys early on, particularly where what's being considered is a relatively small, simple project with a few alternative configurations. I should also say that we did, to some extent, anticipate the early survey problem in writing the 1986 regulations, and included some words designed to give agencies flexibility. For example, the regulations don't require that ALL historic properties subject to effect be identified; they don't include this requirement because we anticipated that some agencies might use predictive modeling and sample surveys as their bases for identifying historic properties. The regulations also don't define a standard for documenting the basis for judging something to be eligible for the National Register; if the agency and SHPO want to decide that a property is eligible based on faith alone, with little or no field inspection, the regulations don't prohibit this. But in practice, the tendency has been for SHPOs to promote, and for agencies to conduct, detailed field surveys and detailed documentation of properties before determining eligibility and moving on with the process. There are logical reasons for this tendency, but one of its effects has been to create a situation in which agencies wait until late in the NEPA process—when options have been significantly narrowed, even down to a single preferred alternative—before beginning consultation under Section 106. As Downer and Roberts suggest, this is often too late for consultation to be effective.

Can we rewire Section 106 and NEPA across the disconnect? I think so, and now is a good time to try, since the Advisory Council will be rewriting the regulations in response to the 1992 NHPA amendments. I think the Council should seriously consider creating a Section 106 process that is explicitly linked to NEPA review. Such a process should provide for consultation about the effects of multiple alternatives, early in planning an undertaking. This consultation would be a part of the process of identifying both properties and effects, coupled with background research and perhaps sample field survey where feasible. It might result in a Memorandum of Agreement or its equivalent about how to proceed with selecting a preferred alternative, and how then to complete identification, effect determination, and resolution of adverse effects.

The trick in writing regulations embodying such a process would be to make the really important parts of the 106 process—negotiation and execution of binding agreements—work early enough in the planning process to enable the consulting parties to address a reasonably wide range of alternatives, while later in the process retaining for them the ability to identify and negotiate specific solutions to particular adverse effects. I think it could be done, and that it would not only make it easier to consult about traditional cultural properties, but facilitate and otherwise improve the way we deal with all kinds of historic properties.

The issue of whether ancestral archeological sites are or are not ipso facto traditional cultural properties was addressed by a number of the papers when they were presented, and looms as an even larger issue in the published papers. In some papers, in fact—for example, Richard Hart's—it looms so large that I have to worry a bit about whether traditional cultural properties that are not archeological sites, or associated with such sites, are being fully attended to.

Be this as it may, the two points of view are defined succinctly by Lynne Sebastian on the one hand and the Hopi team on the other. Sebastian's position, articulated in her paper and noted in a number of editor's footnotes, is that "if there are no practices involving a place, no beliefs concerning that place, and no mention of the place in the oral history of the community, it is not a traditional cultural property." The Hopi position, shared by the Zuni, is that "every ancestral archeological site is also a traditional cultural property," whether it figures explicitly in the community's oral history or not.

In reading the papers, my initial tendency was to lean in Sebastian's direction. After all, what makes a traditional cultural property a traditional cultural property is its function in the continuing cultural life of a community. Sebastian's position, as I understand it, is that if the existence of a property isn't at least vaguely known by traditionalists, it can't possibly have a function. This seems sensible, at first blush.

Reading Andrew Othole's and Roger Anyon's paper, however, I found myself persuaded that Sebastian—and I—have conceived of "function" too narrowly.

Expressing their "dismay" at the position that fieldwork to identify traditional cultural properties is not necessary "if the tribe does not know of any existing traditional cultural properties in a project area," Othole and Anyon go on to describe a situation in which the tribe has only general knowledge of traditional cultural properties in an area but can, they imply, recognize one when they see one on the ground. Sebastian comments in a footnote that in this case, the general knowledge would be sufficient to trigger fieldwork. This seems to resolve the immediate case in point, but not the larger issue. I presume that the Zuni would take the position that even if the oral history says nothing at all about an area, it is still necessary for knowledgeable people who can recognize traditional cultural properties—or identify the traditional

values that may be present in an archeological site—to visit the area and see what can be seen.

Why? Because, I surmise, Othole and Anyon would define a property as having a function in a community's cultural life if its simple existence, known or unknown, is important to the community. Upon reflection, this position seems at least as plausible as Sebastian's.

One can imagine—and most of us who have worked with traditional knowledge holders have probably experienced—cases in which the knowledge-bearer, viewing a rock or a spring, a hill or a ruined structure, makes a previously unmade connection, recognizes a characteristic that matches some template in the mind, that enables him or her to connect the place with a tradition, a practice, a belief, a piece of the group's cultural history. At this point the knowledge holder recognizes the property as one that is important in the cultural life of the community, just as an archeologist, coming on a previously unidentified site, can recognize it as having research value.

The contrast between Sebastian's perception and that of the Zuni reminded me of an experience I had early in the national struggle over reburial and repatriation of human remains. I was talking with Jan Hammil, leader of American Indians Against Desecration. I piously told her how we at the Advisory Council felt that in figuring out what to do with human remains, a balance had to be struck between the interests of science and the interests of descendants, if descendants could be identified.

"What about the interests of the dead?" Jan asked.

"Huh?" I replied, or words to that effect.

In the next few minutes, Jan explained—with the eloquence of a patient teacher trying to help a particularly slow student—that the issue in treatment of the ancestral dead was not the rights of the descendants, but the rights of the dead themselves, toward whom the living bear responsibility. Thus the question of whether a group can trace genetic or cultural descent from a dead person whose remains must be dealt with is in the eyes of many tribes quite irrelevant. The living are responsible for the dead, and the dead—often seen not as being really "dead" but as transformed, and still powerful—must be treated with respect.

In just the same way, it seems to me that what the Zuni and Hopi are saying is that traditional cultural properties must be respected for their own sakes—regardless of whether they are referred to specifically in oral history. It follows that legitimate traditional cultural properties can legitimately be identified through field inspection by knowledgeable people in the absence of specific association with known traditions, and that whole classes of properties—such as ancestral archeological sites—can be categorically identified as traditional cultural properties.

How do we square this with Bulletin 38 and the National Register Criteria? Without great difficulty, actually.

Bulletin 38 defines a traditional cultural property as one that is eligible for the Register "because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identify of the community" (Parker and King 1990:1). It doesn't say how property-specific that association must be. If a community traditionally believes that rocks pointed toward the sky are places of communication between this world and the spirit world, and if belief in communication between these worlds is important in maintaining the community's identity, the fact that its members may not know of any pointed rocks in a given area doesn't make such rocks, when discovered in the area, any less recognizable to the community's elders as places of interworld communication, which automatically have cultural significance. In the same way, if a community believes that the places where its ancestors lived must be respected in order to respect the ancestors—or perhaps because such places retain the power of the ancestors—and if this belief is important to the community's cultural integrity, then the archeological remains of any ancestral living place surely comprise a traditional cultural property for that community, regardless of whether the community's oral history specifically mentions that particular site.

But can a property that has not specifically figured in anybody's traditional history meet any of the National Register Criteria? I don't see why not. If the community believes that its ancestors came down to this world from another along the spires of pointed rocks, surely a newly discovered pointed rock may be taken to be associated with this traditionally important event, and thus be eligible under Criterion A. If the community reveres its traditional ancestors, surely their living sites can be eligible under Criterion B—and so on.

Finally, it seems to me that arguing against recognizing things like ancestral archeological sites as traditional cultural properties, like many arguments about eligibility for the Register, is kind of beside the point. If the Zuni and Hopi ascribe cultural value to all ancestral archeological sites, they are going to insist that this value be recognized and respected, whether agencies want to call the sites traditional cultural properties or not. Agencies don't have to preserve all traditional cultural properties any more than they have to preserve all examples of any other kind of historic property; all that recognizing something as a traditional cultural property causes to happen is consultation with the group that ascribes value to it, which as Sebastian points out, would happen in the Section 106 process anyway.

Some people argue, and doubtless legitimately believe, that impacts on traditional cultural properties cannot be mitigated, and this argument is doubtless pretty scary to agencies and SHPOs, but it has little or nothing to do with eligibility for the National Register and treatment under Section 106. Recognizing a place as eligible for the National Register, as a traditional cultural property or as anything else, does not in any way change its significance, or the fervor with which people will fight for its protection. It merely gives everyone a fairly orderly arena—the Section 106 process—in which to fight. Section 106 does not and should not confer absolute protection on any kind of property. It merely requires that the significance and value of a property be systematically considered in planning, in consultation with those who value it. A group that believes that impacts on a traditional cultural property, like the Department of the Interior in its fervent beliefs about battlefields and National Historic Landmarks, may prevail in the Section 106 process and achieve perfect protection, or it may not.

*(**King**—continued on page 64)*

(*King—continued from page 63*)

Success depends on negotiating skills, the character of the case, and luck. Or perhaps—who knows?—on the power of the place.

When Pat Parker and I were drafting National Register Bulletin 38, I remember a conversation in which one of us said: "Boy, this is either going to drive people absolutely crazy, or stimulate some really good thinking."

The first proposition has been repeatedly verified over the years. It is a pleasure, reviewing the papers included in this issue, to see the second coming true as well. There is a great deal about how to handle traditional cultural properties that remains to be figured out, but the papers in this issue are evidence that intelligent people, from a diversity of cultural backgrounds, are working diligently and in good faith to do just that.

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Thomas King is a consultant in historic preservation, and previously oversaw Section 106 review for the Advisory Council on Historic Preservation.

(*Levine—continued from page 59*)

anthropology, see Daniel R. Gross, *Discovering Anthropology*, (Mountainview: Mayfield Publishing, 1992), pp. 68-71.

[11] An annual Catholic Ritual Calendar is published each year by the Archdiocese of Chicago. The calendar is available through Liturgy Training Publications, 1800 North Hermitage Avenue, Chicago, IL 60622-1101. It is a fascinating "emic" view of the ritual cycle of the church and the instructions for community and individual behavior throughout the year.

[12] Stanley Crawford, author of a eloquent chronicle of his year as *mayordomo* of a northern New Mexico ditch, clearly recognized that he was chosen to be the ditch boss precisely because he had not been in the community long enough to have kinship ties, or other social obligations, that might interfere with his ability to collect annual fees from delinquent members. See, Crawford's *Mayordomo; Chronicle of a Northern New Mexico Acequia*. (Albuquerque: University of New Mexico Press, 1988).

[13] Charles L. Briggs, Learning how to ask; A sociolinguistic appraisal of the role of the interview in social science research, *Studies in the Social and Cultural Foundations of Language, No. 1*. (Cambridge: Cambridge University Press, 1986), examines the complex social relationship and communicative processes that underlie interviews in cross-cultural social science research.

[14] The publication of traditional histories based on archeology, oral traditions and oral history is becoming more common in American Indian communities, black communities and Hispanic communities. See for example, Kurt Dongoske, Leigh Jenkins and T.J. Ferguson, "Understanding the Past Through Hopi Oral History," *Native Peoples: The Arts and Lifeways*, pp. 24-31 (Winter, 1993).

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