Overcoming Institutional Resistance to Traditional Cultural Properties

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TCPs
- 1990’s Term
- aid in determining whether properties with traditional cultural significance are eligible for the National Register of Historic Places
National Register Bulletin No. 38 defines a TCP as a property

“... that is eligible for inclusion in the National 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 identity of the community.”
Landscape TCPs

- ACHP Guidance on Landscape TCPs and the Section 106 Process (July 11, 2012)

- Landscape TCPs are a property type identified the same as historic properties

- Not yet defined by NPS responsible for maintaining the National Register

- Bulletin No. 38 revisions planned for 2014...
National Register Criteria for Evaluation (36 CFR 60.4)

(a) associated with events that made a significant contribution to broad patterns of our history; or

(b) associated with the lives of persons significant in our past; or

(c) embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(d) yielded, or may be likely to yield, information important in prehistory or history.
Designation of Landscape TCPs

Before:
Archeological District
- 823 acres in 1983
- 4000 acres with 163 “loci” in 2000

Narrow and Isolated TCPs determined eligible in 2000
Designation of Landscape TCPs

After:

In 2016, seven TCP Landscapes encompassing and connecting sacred sites determined eligible under criteria (a) and (d).
Consultation Success Story
In 2016, BLM determined that additional information showed that “existing TCP boundaries are inadequate and new areas should be considered as TCPs.”

But why did it take so long?
1992 Study for BLM determined:
The findings of this study support the conclusion that the Tosawihi Quarry area is a culturally and religiously significant area in the traditional homeland of Western Shoshone people. It thus meets the criterion for eligibility on the National Register as a Traditional Cultural Property (36 CFR 60.4) following guidelines set forth in the National Register Bulletin 38 (Parker and King 1990).
Why did it take so long?

• Overcoming Institutional Resistance

• Decades of Study and Decades of Ignoring Tribal Perspectives

• BLM/Contractor comments to tribal monitors: “private lands” “isolated artifacts” “previously disturbed”

• Refusal of BLM to Share Information

• Required Dispute Resolution before the ACHP to get BLM to Assess Information Provided.
Resistance within BLM Layers of Bureaucracy

In addition to...

- National Historic Preservation Act (NHPA)
- Section 106 Regulations (36 C.F.R. Part 800)

BLM follows...

- BLM National Programmatic Agreement for Implementation of NHPA (Feb. 9, 2012)
- BLM NV State Office Guidelines and Standards for Archeological Inventory (Jan. 2012)
BLM National Programmatic Agreement for Implementation of NHPA

- Requires updating BLM-SHPO State Protocol Agreements
- Allows agreement on ineligible properties
- TCPs still require consultation
Categorical Determinations

On Eligibility

- BLM-SHPO jointly determined classes of properties are not eligible
- Isolated Artifacts, Isolated or Unassociated Features
- Unassociated Prehistoric and Historic Artifact Scatters
- See “the latest edition of the Guidelines for recording and reporting standards.”
BLM NV State Office Guidelines and Standards for Archeological Inventory

- January 2012 – 5th Edition
- Does not mention TCPs
- Allows surveys from 10 years ago w/o consultation
- Definition for isolated artifacts, features, and artifact scatters
- 30 meters separation and no other features
Resistance at BLM Staff Level

Internal BLM Deliberations

• “trigger enormous mitigation costs”
• “loose a media war”
• “would be a taking”

BLM Responses during ACHP Dispute Resolution...

then whether the project will have an adverse effect on sites or TCPs determined eligible. If all resources are determined eligible by the BLM, then every place there is a stone flake will preclude any land-disturbing activity until adverse effects are taken into account, including the execution of a Historic Properties Treatment Plan every time a drill pad is proposed. This, in fact, would be in conflict with the ROD, which states that the mining company can proceed with exploration drilling provided they avoid all archaeological sites/loci determined eligible, as well as existing TCPs.

At issue is a differing world view, in that the Tribe believes the entire area and any and all of the resources in and on the ground, including basic lithic debitage are sacred. BLM continues to consult with the tribes to collect additional information and to better understand the landscape to help define TCP values, including burials, spiritual dance areas, etc., not currently identified as part of the TCP. The new values were not revealed to BLM in the 1992 ethnography, subsequent
Designation of Landscape TCPs

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Overcoming Institutional Resistance to Traditional Cultural Properties Discussion

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