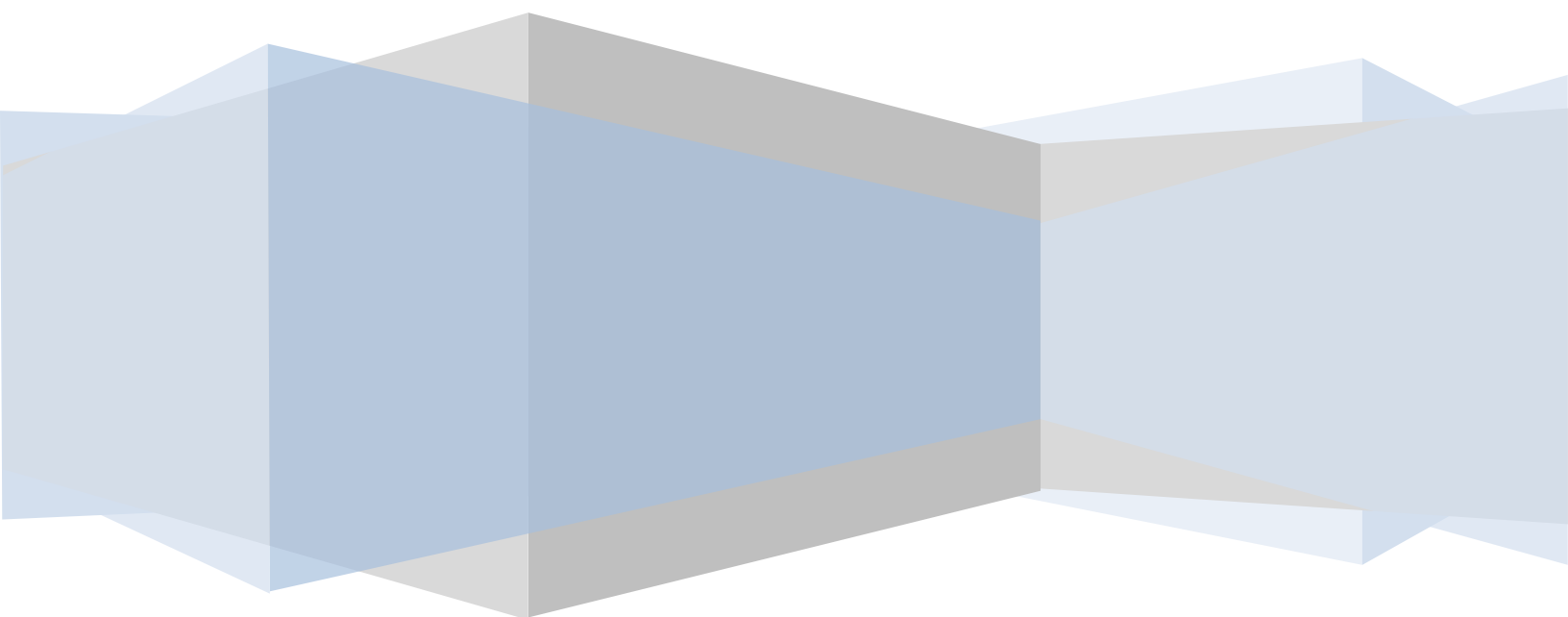


Fundamentals for Managing the Cultural Heritage Program

Traditional Cultural Places & Indian Sacred Sites



Traditional Cultural Places and Indian Sacred Sites

What are places of traditional religious and cultural importance?

The National Historic Preservation Act and the 36 CFR 800 regulations implementing it refer to “properties of traditional religious and cultural significance” and “properties of traditional religious and cultural importance.” These two terms mean the same thing. They are geographic places prominent in a particular group’s cultural practices, beliefs, or values, when those practices, beliefs or values:

- (i) are widely shared within the group,
- (ii) have been passed down through the generations, and
- (iii) have served a recognized role in maintaining the group’s cultural identity for at least 50 years.

Chapter 6 of the BLM Handbook H-1790-1 implementing the National Environmental Protection Act (NEPA) identifies the need to assess effects on the social and economic elements of the environment and those elements should include areas and locations of socio-cultural importance to tribes and others, including sacred sites. The Council on Environmental Quality regulations implementing NEPA states that the human environment “shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.” It goes on to state that, “When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment” (40 CFR 1508.14).

The term “traditional cultural property” is not found in law or regulation. It is a vernacular term coined by National Park Service staff and described in a NPS guidance document called National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. Because the term does not appear in law or regulation, BLM prefers not to use it as part of its cultural program lexicon, particularly in formal documents.

However, the term “traditional cultural property” has come to be widely used within the historic preservation community as synonymous with the term “properties of traditional religious and cultural importance” referred to in the National Historic Preservation Act [section 101(d)(6)(A) and (B)] and the regulations implementing that act [cited in 36 CFR 800.2(c)(2)(ii) and 21 subsequent places in those regulations]. The term “traditional cultural property” has also been used in court decisions pertaining to Section 106 compliance. For those reasons, in this handout the two terms are used synonymously. When you see the term traditional cultural property, traditional cultural place, or the acronym TCP here, it means properties of traditional religious and cultural importance -- places important to modern-day living communities for sustaining a shared cultural legacy.

These modern-day living communities include Indian tribes but are not limited to tribes. Examples of TCPs include urban neighborhoods like Honolulu’s Chinatown, and locations where communities have traditionally carried out economic, artistic, or other cultural practices important in maintaining their historic identities. There is even a parking lot in New Mexico that

was considered to be a TCP and determined eligible for the National Register of Historic Places (NRHP) because the local Hispanic community used it for generations for traditional dances that served as a focal point for maintaining the cultural identity and heritage of that community. So TCPs can be religious or secular.

Because the communities and groups to which TCPs can be important are not limited to Indian tribes, our outreach to identify these special places should not be limited to tribes. This is true for compliance with NEPA as well as the NHPA. But consultation requirements are identified specifically for Indian tribes in NEPA, the NHPA, and the 36 CFR 800 regulations. They are given special emphasis due to the special Federal-Tribal relationship. To identify and evaluate TCPs important to Indian tribes that may be affected by our actions we have to consult with tribes when we are complying with NEPA and Sec 106 of the NHPA. The regulations for both, when applied in the context of government-to-government consultation aided by cultural landscape assessments, require us to give tribes opportunities to:

- identify their concerns about historic properties, including those of traditional religious and cultural importance,
- advise us on identifying and evaluating those properties
- provide their views on how our actions might affect those properties, and
- participate in resolving adverse effects.

A common misconception is that if a place is called a TCP it is automatically eligible for the NRHP. Not true. A property of religious or cultural importance, or TCP, may or may not be eligible for the NRHP. To be eligible, such places have to meet one or more of the NRHP eligibility criteria just like any other kind of property. If a TCP is determined not to be eligible for the NRHP, it doesn't need to be considered further during Section 106 compliance but still must be addressed through the NEPA analysis including cultural landscape assessments, and government-to-government consultation.

What are Indian sacred sites?

Indian sacred sites are defined in EO 13007 as “specific, discrete, narrowly delineated locations on Federal land that are identified by an Indian tribe, or . . . authoritative representative of an Indian religion, as sacred by virtue of their established religious significance to, or ceremonial use by, an Indian religion . . .”

- We should recognize that this definition is at odds with the Indian traditional view that the sacred is embedded in all natural phenomena, and that sacred sites are often not confined or precisely delineated. The Executive Order doesn't deny this more all-encompassing view of sacredness, but its definition of sacred site clearly focuses on the places that are *more important than others* for worshipping the sacred or conducting religious ceremonies, and it is those *special* places that federal agencies are directed to consider under the EO. Broader cultural landscapes and values in addition to the more specifically defined locations should be addressed as human environment elements through the NEPA analysis.

- Notice this definition deals only with religion, not secular concerns, unlike the NHPA’s “properties of traditional religious and cultural importance” which can include a wide range of places that matter to people for both religious and secular reasons.
- Like TCPs, sacred sites are identified by consulting with the tribes that ascribe value to them, not through field survey, though it may well entail field visits. To do this, we have to consult with tribes about proposed actions or policies that could restrict access to sacred sites, ceremonial use of those sites, or that would physically harm those sites.
- Age is neither a part of the definition of sacred site in the Executive Order nor for NEPA. Sacred sites can be relatively new. This contrasts with traditional cultural places in the context of which must be at least 50 years old to require consideration under that authority.
- EO 13007 directs us to avoid harming sacred sites “to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions.” This is a reasonably strong standard. And it seems to be stronger than the standard for protecting places of traditional religious and cultural importance under Section 106 and NEPA, which only requires agencies to “take into account” the effects of their actions on such places.
- But the process for consulting tribes to identify and evaluate places under Section 106 is more complex than the process for consulting tribes about sacred sites to comply with EO 13007 and AIRFA. Consulting tribes under Section 106 requires a detailed series of steps involving not only the tribes themselves but also the State Historic Preservation Officer, sometimes the Advisory Council on Historic Preservation, and interested members of the public. Unlike sacred sites, those TCPs considered eligible to the NRHP are protected mostly by the time-consuming process we must follow to comply with Section 106 if we are going to affect such places.

What do TCPs and sacred sites have in common?

TCPs are different from sacred sites. TCPs are considered under Section 106 of the NHPA, while sacred sites are considered under EO 13007 and AIRFA. Both should be considered as components of the human environment through NEPA analysis. TCPs can be secular, while sacred sites cannot. TCPs have to be at least 50 years old to be eligible to the NRHP, while sacred sites do not. What are some things common to both kinds of places?

- Only tribes can identify the TCPs or sacred sites important to them. Information about traditional values and religious use is knowledge we can get only from the tribes through government-to-government consultation aided for large efforts by cultural landscape assessments.
- We need to satisfy the intent of the laws to engage tribes in BLM’s decision making process. If a place matters to a tribe, we need to factor that information into our analysis and decisions on proposed actions.

- We must ask tribes to inform us about TCPs and sacred sites; and it is up to the tribes to choose whether and how completely to respond. This can be greatly aided for big projects or planning efforts through cultural landscape assessments.
- Not all TCPs are sacred sites, but many are, and vice-versa. A relatively recent sacred site would not meet the “traditional” criterion for TCPs under NHPA but would still warrant assessment under NEPA. Some places sacred to Indian tribes would probably also be considered places of traditional cultural and religious importance, or TCPs, under Section 106. But keep in mind:
- A sacred site meeting the definition of a TCP does not need to be considered under Section 106 unless it also meets the NRHP eligibility criteria. If the site does not meet the NRHP eligibility criteria, it would still need to be considered under EO 13007 and AIRFA through the NEPA analysis, but not under the NHPA.
- A TCP that meets the NRHP eligibility criteria, and also meets the definition of Indian sacred site, would need to be considered under all four authorities: NHPA, NEPA, EO 13007, and AIRFA through two processes – Section 106 and NEPA analysis.
- A common misconception is that if a property of religious and cultural importance would be adversely affected by a proposed action, BLM would not be able to approve that action. Not true. Even if the place is determined eligible for the NRHP, BLM would not necessarily be blocked from approving a proposed action that would affect it, any more than BLM would be if it were any other kind of National Register-eligible property. We have to take effects into account but we don’t necessarily have to reject the proposed action.
- The same is true with sacred sites. BLM would not necessarily be blocked from approving a proposed action affecting a sacred site, any more than it would be blocked from approving a proposed action affecting a National Register-eligible TCP.

Examples of National Register-listed TCPs.

Following are examples of TCPs listed on the National Register:

- Bear Butte, South Dakota. This butte is sacred to the Cheyenne and other Indian tribes in the region. An important prophet gathered knowledge at this place that tells the Cheyenne how they should live and act.
- Tecate Peak, California. This mountain is a sacred place for Kumeyaay Indians whose shamans, or priests, acquire knowledge and power here, and it is a site of sacred dances and ceremonies important to this tribe.
- Medicine Lake Highlands, California. This area is associated with the spiritual beliefs and practices of several Northern California tribes, including the Modoc and Pit River Tribes.

- Spirit Mountain, Nevada. This mountain is considered to be one of the most sacred places for the Yuman-speaking tribes along the lower Colorado River. It is connected with events and beings in the creation stories of Yuman people, and it continues to play an important role in the cultural practices and beliefs of those people.
- Topock Maze, California. This 33-acre geoglyph, or intaglio, was made by scraping off the darker surface gravels in rows to expose the lighter soil underneath. It's important to the tribes along the Colorado River who believe the spirits of the dead must travel through the pathway of the Topock Maze on their journey to the other world.
- Medicine Wheel, Wyoming. This rock feature is linked to important traditional stories and practices of the Crow Tribe whose members continue to place offerings at this site today.
- Colorado River Earth Figures, in Arizona and California. These geoglyphs, or intaglios, represent spiritual beings, animals and other designs that are part of the oral histories of the tribes along the Colorado River. This particular photo is of the Blythe Intaglio on BLM land.
- Montezuma's Head, Arizona. This rock formation is sacred to the Tohono-O'odham people of southern Arizona who believe it is one of two places where their deity I'itoi resides. I'itoi provides guidance to the O'odham to help them live and survive in the desert.
- Devil's Tower, Wyoming. This was the first national monument designated in the U.S. (by President Theodore Roosevelt, 1906). It's sacred to several Plains tribes, including the Lakota, Cheyenne and Kiowa. The NPS adopted a voluntary ban on rock climbing here in June each year to provide privacy for tribal members who practice religious ceremonies there at that time of year.
- San Francisco Peaks, Arizona. These peaks are not yet listed on the NRHP but they have been determined eligible and are in the process of being nominated to it. The mountain is sacred to the Navajo, for whom it is a key boundary marker and a place where medicine men collect herbs used in healing ceremonies. It is sacred also to the Hopi as the home of ancestral kachina spirits who bring rain that has sustained the tribe for millennia
- Nantucket Sound, Massachusetts. This is another place that is not yet listed on the NRHP but was recently determined eligible for the NRHP as a traditional cultural property. The Sound is a culturally significant landscape associated with the history and traditional cultural practices of two Wampanoag tribes. Tribal members share customs and beliefs that are associated with the Sound including oral histories about the relationship between the Sound and spiritual beings that are important in maintaining the cultural identity of the Wampanoag people.

TCP issues.

Two issues with TCPs come up often. They can make your tribal consultation efforts more difficult or even bring them to a halt.

Don't let the label become a lightning rod. The first issue is that the TCP label itself can needlessly cause problems. Calling something a TCP is like saying it is an old house or a ruin. The label itself doesn't really imply how the place should be managed. An important question is, "Does this place meet the NRHP eligibility criteria?" *That* has implications for management.

If it *does* meet the eligibility criteria, it needs to be considered further during Section 106 compliance. If it *doesn't* meet the eligibility criteria, it still needs to be considered as a human environment element through the NEPA analysis, regardless of whether you call it a TCP or some other kind of property. Agreeing that something meets the definition of TCP is not the *end* of the evaluation process, it is the *beginning* regardless of eligibility.

Arguing with a tribe about whether a place is or is not a TCP can turn the label itself into a lightning rod, and it can needlessly escalate tensions for BLM and the tribes involved. If the tribe says the place is important to them in maintaining their heritage, arguing over what label to attach to the place misses the point. The point is whether or not the place meets the NRHP eligibility criteria, just as it is with every other kind of property and thus which authority to assess impacts under – NHPA or NEPA.

Also, keep in mind that the law does not like the government deciding questions of religious orthodoxy or heresy. Case law says that courts may not "dictate which practices are or are not required in a particular religion." If a tribe says a place is important because of certain religious values that it has held for generations, we should be careful not to put ourselves in the position of judging whether those religious values are legitimate.

If you can avoid letting the TCP label become a contentious issue, you should do so. Instead of trying to resist calling something a TCP at the expense of derailing your consultation process, focus instead on gathering the evidence needed to determine which authorities apply and to demonstrate how the place does, or does not, meet the NRHP eligibility criteria. That is really what counts in the end.

TCPs must be known to the community. The second issue is that many tribes don't agree that all TCPs must be known to them. BLM's position has commonly been that in order for a place to be of traditional cultural or religious importance, it must be known to present-day tribal members. But tribes often have a different perspective on this. When you consult with tribes, you will often hear them identifying four kinds of places as TCPs:

- 1) Places that are still used and important to the tribe
- 2) Places that are no longer used but are still remembered and remain important to the tribe
- 3) Places lost from memory but are later discovered in the field and recognized as important places that are described in the tribes' oral histories

4) Places lost from memory but later discovered in the field and identified as important to the tribe even though they are described in the tribes' oral histories

BLM policy recognizes the first two kinds of places as falling within the sideboards of a TCP potentially eligible to the NRHP but not the third and fourth kinds of places. In practice, though, federal agencies sometimes recognize the third kind of place as a TCP, even though the guidance we have makes it clear that TCPs must be known to the community today. The fourth kind of place is very problematic in the context of NHPA because there is no evidence documenting its importance. The third and fourth kinds are still subject to NEPA analysis and government-to-government consultation.

It has been frequently expressed that it is difficult to argue that the fourth kind of place, and even the third kind, is important in maintaining the continuing cultural identity of the community if the community doesn't even know they exist. But let's just push the boundaries a bit here in an effort to see this issue from a tribal perspective. Consider for a moment that tribes have lost a great deal of their traditional language and culture and they're actively trying to revive their lost heritage.

Tribal members are interviewing their elders and discovering oral history that was unknown to many or most members of their tribes. They are establishing educational programs on their reservations to teach their tribal languages to their children before those languages die out. They are seeking out the remnants of their traditions and trying to piece them together into a whole.

Much traditional and religious knowledge in Indian cultures is considered secret, passed down through generations only to relatively few members of clans and societies who should have such knowledge. But now, we are seeing elders and members of those clans and societies revealing this knowledge to other tribal members to ensure that this information isn't lost.

They are taking people out onto the land and identifying sacred places that were previously kept secret. Some of these places may not have been known to the tribal members BLM consults. So when tribes identify places they call TCPs that don't seem to us to fall securely within the first two categories here, they may see this as trying to rescue a piece of their heritage that was until then lost to all but a few elders or religious practitioners.

This does not necessarily mean that for purposes of determining NRHP eligibility BLM should agree a place can be important to maintaining the heritage and cultural identity of a group when the group doesn't know the place exists. But it is likely still important for inclusion in the NEPA analysis through government-to-government consultation. Because this issue comes up frequently when consulting with tribes, it may help you to consider how tribal members may perceive their role in the compliance process when they discover a place in the field and identify it as a TCP. From the agency standpoint, places of cultural importance should be foremost addressed through government-to-government consultation very early in a project review process aided by cultural landscape assessments, then determine from that point which authorities, NHPA and/or NEPA, apply.