

## Traditional Cultural Properties and Indian Sacred Sites Transcript

Hello, I'm Gary Stumpf. Welcome to another module in the "Fundamentals for Managing the Cultural Heritage Program" series. In this module, we will discuss two kinds of places that are most often the focus of BLM's consultation with Indian tribes. These are places of traditional religious and cultural importance, commonly called traditional cultural properties or traditional cultural places, and Indian sacred sites.

Places of traditional cultural and religious importance are considered under the National Historic Preservation Act. Indian sacred sites are considered under the American Indian Religious Freedom Act and Executive Order 13007.

We are going to look at these two kinds of places, explore the similarities and differences between them, and discuss their implications for management. We are also going to look at two actual examples of tribal consultation efforts focusing on traditional cultural places and sacred sites.

The objectives of this session are for you to be able to explain the differences and similarities between places of traditional cultural and religious importance, and Indian sacred sites; explain how compliance processes and management might differ for each kind of place, and determine lessons learned from the consultation examples we discuss.

The National Historic Preservation Act and the 36 CFR Part 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 places that are prominent in a particular group's cultural practices, beliefs, or values, when those practices, beliefs or values:

1. are widely shared within the group,
2. have been passed down through the generations, and
3. have served a recognized role in maintaining the group's cultural identity for at least 50 years.

The term "traditional cultural property" is not found in law or regulation. It is a 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 "traditional cultural property" does not appear in law or regulation, BLM prefers not to use it as part of its cultural program lexicon. But it 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 and the regulations implementing that act. The term has also been used by judges in court decisions pertaining to Section 106 compliance.

For those reasons, I will use the two terms as synonymous in my discussion here. So when you hear the term traditional cultural property, traditional cultural place, or the acronym TCP, 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 was determined eligible for the National Register 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 requirements to consult Indian tribes are specifically identified in NEPA, the NHPA and the 36 CFR Part 800 regulations. They are given special emphasis. 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 Sec 106 of the NHPA.

The 36 CFR Part 800 regulations require us to give tribes opportunities to:

1. identify their concerns about historic properties, including those of traditional religious and cultural importance,
2. advise us on how we should identify and evaluate those properties
3. provide their views on how our actions might affect those properties, and
4. participate in resolving adverse effects.

A common misconception is that if something is a TCP it is automatically eligible for the NR. That isn't true. A property of religious or cultural importance, or TCP, may or may not be eligible for the NR.

To be eligible, such places have to meet one or more of the NR eligibility criteria just like any other kind of property. If a TCP is determined not to be eligible for the NR, it doesn't need to be considered further during Section 106 compliance.

Now let's look at Indian sacred sites, which 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.

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. 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 not part of the definition of sacred site in the Executive Order. Sacred sites can be relatively new. This contrasts with traditional cultural places which must be at least 50 years old to require consideration under Section 106.

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, 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, TCPs are protected mostly by the time-consuming process you have to follow to comply with Section 106 if you are going to affect such places.

We can see from this discussion that 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. TCPs can be secular, while sacred sites cannot. TCPs have to be at least 50 years old, 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.

We need to satisfy the intent of the laws to engage tribes in BLM's decision making process for both kinds of places. 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.

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. But most 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 Sec 106 unless it also meets the NR eligibility criteria. If the site does not meet the NR eligibility criteria, it would still need to be considered under EO 13007 and AIRFA but not under the NHPA.

A TCP that meets the National Register eligibility criteria, and also meets the definition of Indian sacred site, would need to be considered under all three authorities: Sec 106, EO 13007 and AIRFA.

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. That isn't true.

Even if the place is determined eligible for the National Register, 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.

Here are some examples of TCPs that are 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 is 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 shows an intaglio called the Blythe Giant, and it's 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 NR but they have been determined eligible and are in the process of being nominated to it. The Peaks are sacred to the Navajo, for whom they are a key boundary marker and a place where medicine men collect herbs used in healing ceremonies.

They are sacred also to the Hopi as the home of ancestral kachina spirits who bring rain that has sustained the tribe for millennia. The peaks have been involved in lawsuits brought by the tribes against the USFS to stop the expansion of a ski resort and use of artificial snow made with treated wastewater.

Nantucket Sound. This is another place that is not yet listed on the NR but was recently determined eligible for the NR as a traditional cultural property, as well as an archaeological property. The Sound is a culturally significant landscape associated with the history and traditional cultural practices of two Wampanoag tribes.

The Wampanoag were able to document that these cultural practices have been passed down through the generations since at least the 1600s, and that they contribute to maintaining the Wampanoag's identity as a people.

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

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. The important question is, "Does this place meet the NR 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 doesn't need to be considered further, 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*.

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, and if we can see that the values ascribed to the place have been held by the tribe for generations before the present one (at least 50 years), arguing over what label to attach to the place misses the point.

The point is whether or not the place meets the NR eligibility criteria, just as it is with every other kind of property.

Also, we should 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, I would recommend your doing 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 demonstrate how the place does, or does not, meet the NR eligibility criteria. Because that is really what counts in the end.

The second issue is that many tribes don't agree that all TCPs must be known to them. BLM's position is 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 are important to the tribe

3) Places that are 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 that lost from memory but are later discovered in the field and identified as important to the tribe even though they are not described in the tribes' oral histories

BLM policy recognizes the first two kinds of places as falling within the sideboards of a TCP 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 because there is no evidence documenting its importance.

It is difficult to argue that the fourth kind of place, and even the third kind, are important in maintaining the continuing cultural identity of the community if the community doesn't even know they exist. But let me 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're establishing educational programs on their reservations to teach their tribal languages to their children before those languages die out.

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're 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.

I am not suggesting that 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. And of course, there will always be the question of whether the place, whatever it's called, meets the National Register eligibility criteria.

But 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.

We have explored the differences and similarities between TCPs and sacred sites, and aspects common to both. Now let's look at two actual examples of tribal consultation efforts focusing

on TCPs and sacred sites to see what lessons we can learn from them. The first example is the Topock Wastewater Treatment Plant project in southern California.

Pacific Gas & Electric Company, PG&E, has operated a compressor station for natural gas near Needles, California, since 1951. The facility is on private land less than a mile from the Colorado River. It is also adjacent to the Topock Maze, a 33-acre geoglyph. Part of the Topock Maze is on land administered by BLM.

The Topock Maze is of great cultural and religious importance to the tribes along the Colorado River. According to those tribes, the spirits of the dead must travel through the pathway of the Maze on their journey to the other world. If the area is spiritually disturbed, the spirits cannot pass from this world, and they will be condemned to roam this world forever.

Natural gas is cooled at the compressor station before it is transported through pipelines, and hexavalent chromium was used in the past to prevent corrosion of the cooling equipment. Until the mid-1960s, untreated wastewater containing chromium was discharged into an adjacent dry wash leading to the Colorado River. Hexavalent chromium is now known to be a carcinogen.

In 2000, PG&E found evidence that chromium-contaminated groundwater was migrating toward the River. PG&E began pumping the toxic groundwater out of the ground before it could reach the river, and treating it at small, temporary treatment facilities on BLM land.

In June 2004, PG&E requested approval from the California Department of Toxic Substances Control, known as DTSC, to build a wastewater treatment plant on private land adjacent to the BLM land. PG&E said that greater pumping rates were necessary to keep the toxic groundwater from entering the river, and that an on-site treatment plant was needed to handle the wastewater.

PG&E was aware that the Topock Maze was highly important to one of the tribes, in particular, and gave assurances that the Tribe would be consulted about the proposed treatment plant. DTSC and PG&E conducted a number of workshops, attended by some tribal members, to provide information about the project.

To bring the groundwater from the wells to the treatment plant, pipelines needed to be laid across BLM land. Because this required authorization from BLM, BLM initiated consultation with tribes to comply with NHPA, AIRFA, and EO 13007.

The responsible BLM Field Office followed the correct procedure by sending a letter to the tribal chairpersons of the nine tribes along the River describing the proposed treatment facilities. The letter requested government-to-government consultation, and offered to meet with the tribes and to provide tours of the project location. None of the tribal chairpersons responded personally to BLM's letter or requested a meeting with BLM.

PG&E had contracted to have a Class III cultural resources survey done of the area affected by the proposed treatment facilities. The survey report was provided to the tribes, along with a computer simulation of the proposed treatment plant at the intended location, so they could see how it would look when constructed.

Subsequent meetings were also held with the tribes to provide information and elicit any concerns they might have. The only concern expressed by the tribes was that they did not want the chromium to enter the River.

A series of mitigating measures was developed for the proposed treatment facilities including painting them to blend with the surrounding desert colors, fencing the Maze, updating the recording and mapping of the Maze, preparing an ethnographic study focusing on the Maze employing traditional cultural practitioners as consultants, archaeological monitoring of all construction activities, and cultural resources sensitivity training for all construction personnel.

To comply with Section 106 of the NHPA, BLM developed a Memorandum of Agreement incorporating the proposed mitigation measures. The Memorandum of Agreement was signed by BLM and the State Historic Preservation Officer. At this point, BLM had been consulting with tribal staffs for more than a month, and the tribes had expressed no concerns to BLM about the proposed treatment plant or the facilities associated with it.

In late 2004, PG&E began constructing the wastewater treatment plant on the private land adjacent to the Maze. At a meeting in October of that year with PG&E and DTSC, staff and elders from one of the tribes objected to the construction of the new treatment plant at that location. At another meeting the following month with DTSC, the Chairperson of the Tribe requested that a hold be placed on construction of the treatment plant.

In March 2005, attorneys representing the Tribe expressed their view that the tribes had not been adequately consulted on the new treatment plant under construction. They stressed that tribal members' participation at meetings and work groups up until that time did not constitute the government-to-government consultation they felt DTSC was required to do, and that communication with tribes must take place on both working staff levels *and* government-to-government levels. The attorneys also said they felt BLM had not adequately consulted the tribes at a government-to-government level during BLM's compliance with Section 106.

In April 2005, the Tribe filed suit against DTSC and PG&E, requesting an injunction to stop construction and operation of the treatment plant and associated pipelines and other facilities. The Tribe wanted the new treatment plant, piping, wells and all other associated development removed from the area of the Topock Maze and the private land restored to its original condition.

The Tribe did not include BLM in its lawsuit. Although the Tribe felt that BLM's government-to-government consultation on cultural resource impacts was incomplete, BLM did meet the requirements of Section 106 and other relevant authorities.

While the lawsuit was pending, construction of the treatment plant continued, and the plant began operating in July 2005, treating the contaminated wastewater on-site. During this time, PG&E's attorneys were working with the Tribe's attorneys to seek a settlement out of court.

In November 2006, a year and seven months after it filed its lawsuit, the Tribe reached a settlement with PG&E. The settlement required the CEO of PG&E to publicly apologize to the tribe, which he did. In what was described as an historic apology, PG&E said it regretted the

spiritual consequences to the tribe of building the treatment plant next to the Maze and said it should have paid closer attention to the Indian's spiritual beliefs before building the plant.

The settlement requires PG&E to remove the treatment plant after a replacement plant has been built at another location away from the Maze. After the treatment plant is removed, the tribe will receive ownership of the private land upon which the plant was built.

What can we learn from this case to help us improve our government-to-government consultation efforts?

1. BLM complied with the relevant authorities in carrying out its role in this project and consulted with the tribes as it had done successfully in the past. Nevertheless, the project illustrates some pitfalls that can occur unexpectedly when sacred sites are involved and BLM managers and tribal chairpersons are not communicating directly with each other on a government-to-government level.
2. When a project has the potential to be controversial, we cannot rely on sending letters to tribal chairpersons, getting no response, and then simply following up by meeting and corresponding with tribal staffs, as we normally do. In this case, none of the tribal chairpersons responded to BLM's letters, and the tribal staff persons who participated in discussions with BLM personnel expressed no concerns about the proposed construction of the treatment plant.
3. We cannot always assume that tribal staffs are communicating adequately with tribal elected officials. When sensitive issues arise, BLM managers must find a way to make formal, government-to-government contact with tribal chairpersons to ensure that tribal concerns are known.
4. We cannot assume that other agencies we are working with on a project are adequately communicating tribal concerns to us. Although the Chairperson of one of the tribes requested that a moratorium be placed on construction of the treatment plant, this information was not shared with BLM. Had BLM known of the tribe's strong opposition to the plant, BLM would have played a more direct role in communicating with the tribal chairperson.
5. As an outgrowth of this project, a tribal liaison position was established at the BLM Field Office to help improve communication and working relationships with all the tribes with which that office works.

Now let's turn to another example of tribal consultation, this one from northern California. In the 1980s, BLM sold leases for geothermal exploration and development within the Modoc National Forest in California.

The leased area included Medicine Lake Highlands, a place of spiritual importance to several Indian tribes.

In 1996, BLM and the U.S. Forest Service received an application to construct and operate a power plant and associated wells, pipelines and power lines. The plant would be built within the

Medicine Lake Traditional Cultural Places District, which is located on the Modoc, Klamath and Shasta-Trinity National Forests and was determined eligible for the National Register.

The USFS was responsible for authorizing construction of the power plant on USFS lands. The BLM was responsible for authorizing construction of the transmission lines across BLM land. After receiving the application, BLM and the USFS began consulting the concerned tribes to find ways to avoid or mitigate the adverse effects of the project.

Based on the results of the tribal consultation, the BLM and USFS determined that they could not resolve the adverse visual and audible effects the proposed development would have on the values that the tribes ascribed to Medicine Lake Highlands. At that time, BLM and USFS notified the Advisory Council on Historic Preservation and invited them to participate in the consultation.

In May 2000, BLM and the USFS decided not to authorize the proposed development after determining that it would adversely affect the spiritual qualities the tribes ascribed to Medicine Lake and would introduce visual and audible impacts that would significantly degrade the value of the site to Indian religious practitioners.

Calpine, the lease holder, sued BLM and the USFS to obtain the right to develop its lease. The Department of Justice reached a settlement with Calpine requiring BLM and USFS to reconsider their decision to deny the project. The agreement imposed a November 2002 deadline for BLM and USFS to make a final decision on the project.

In April 2002, BLM and USFS re-initiated consultation with the Advisory Council and tribes in response to the settlement agreement. No resolution was reached during the next four months. Despite requests by the three tribes to continue consultation to resolve the adverse effects, BLM and USFS terminated consultation with the tribes and Advisory Council and requested the Council's comments in August 2002.

In September 2002, Advisory Council members toured the site with BLM, USFS, the affected tribes, and Calpine officials. The Council conducted a public meeting and received testimony from tribes, organizations and individuals.

The Council provided its comments to the Secretary of the Interior expressing strong opposition to the project based on the anticipated impacts to traditional cultural values associated with Medicine Lake Highlands.

The BLM Director and the Chief of the USFS jointly signed a letter responding to the Council's comments. The letter said the agencies had decided to approve the project despite the adverse effects it would have on Medicine Lake Highlands.

The letter provided a rationale for the decision citing the need for energy, explained how the Council's comments were considered, and described mitigation measures that would be implemented to lessen the impacts on the traditional cultural values.

The Pit River Tribe and others in a coalition filed suit in District Court, alleging that BLM and the USFS violated the NHPA, among other laws. The Tribe said the NHPA was violated because BLM did not require an intensive field inventory to identify historic properties, including places of traditional cultural or religious importance, along each of the alternative power line routes that were being considered.

The District Court ruled that the NHPA was not violated because the regulations permit a phased approach to identifying historic properties when alternative corridors are being considered, allowing agencies to postpone complete identification efforts until the agency chooses among the alternatives.

The Pit River Tribe and the same coalition then appealed the District Court's decision to the Ninth Circuit Court of Appeals. The Appeals Court reversed the District Court's ruling.

The Appeals Court ruled that the agencies violated NHPA because even though BLM and the USFS consulted tribes before authorizing the power plant to identify impacts on traditional cultural places, they failed to identify such places on the leaseholds when the leases were first issued in 1984 and when the leases were extended in 1988 and 1998.

What can we learn from this case to help us improve our tribal consultation efforts?

1. The Appeals Court did *not* determine that the federal agencies should have disapproved construction of the power plant and associated facilities. The court did *not* say the agencies should have decided in favor of the tribes to avoid impacting a place of traditional cultural and religious importance.

The court *did* say, however, that tribal consultation should have begun earlier in the decision making process. In this case, the tribes should have been consulted before the mineral leases were issued and subsequently extended.

This court ruling tells us that we cannot defer all consultation with tribes to the leasing development stage as we have in the past. We must consult with tribes before we issue the leases to give them the opportunity to identify sacred sites and other places of traditional importance that might be affected if and when the leases are developed in the future.

2. During land use planning, we make decisions about which areas are open or closed to leasing and what stipulations will be applied to leases when they are issued. Therefore, land use planning is the best time to begin consulting with tribes about sacred sites and other places of traditional cultural or religious importance that may be affected by lease development.

The responsible BLM manager should do this by initiating government-to-government consultation with potentially affected tribes, inviting them to identify places of traditional cultural or religious importance, and needs for access to such places, that should be considered in the planning effort.

3. If our tribal consultation during land use planning or afterward was not sufficient, as was the case with Medicine Lake Highlands, we are now attaching stipulations to new leases stating that development activities may have to be modified, or may be disapproved, if places of traditional importance are identified and adverse effects cannot be successfully avoided or mitigated.

This concludes our module on properties of traditional cultural and religious importance and Indian sacred sites. We discussed the nature of these places, explored the similarities and differences between them, aspects common to both, and some implications for management.

We discussed issues that arise when applying the label TCP to places identified by tribes as important. Finally, we looked at two examples of tribal consultation efforts and drew some lessons from them.

Thank you for attending. If you would like more information about BLM's compliance responsibilities pertaining to sacred sites and places of traditional religious and cultural importance, please contact your Deputy Preservation Officer.

Links:

[NPS Bulletin 38](#)

[EO 13007](#)