

Managing Cultural Resources with Other Land Uses

Module 1 – Lesson 2

Why do we care about these sites and places on the public lands?

For one thing, we should care about them because the public wants us to care about them and has entrusted us, as public employees, with their protection. There is a large body of laws, regulations and policies that express the intent of Congress and Presidents, beginning with Theodore Roosevelt, that the nation's historic and archaeological sites should be conserved for future generations. We'll talk about some of those laws in a few minutes.

Aside from the legal mandate we have as a federal agency, we should care about cultural resources because they are important parts of our heritage. They give us a sense of where we came from; they connect us to the land; they have scientific, educational, recreational, and spiritual values. The cultural resources we manage offer the only hope we will ever have of unraveling the last 13,000 years of human life on the public lands before the advent of written records – how humans have adapted to and even changed the public lands – successful adaptations that can be emulated, and unsuccessful ones that we can avoid repeating if we understand what they are. It's said that those who don't learn from the past are condemned to repeat it, and that's a pretty good reason for conserving and studying the cultural resources on the public lands.

Why else should we care about these resources? Because they are irreplaceable. Once they are gone, they are gone forever. Thousand year-old archaeological sites just aren't being made anymore. Or hundred year-old historic sites, for that matter.

And finally, cultural resources should matter to us because if we fail to consider them before we authorize land uses, they can be damaged or destroyed. That's something none of us want, and it is preventable if we just follow a few steps that are designed to ensure these resources are factored into the decision making process.

Now that we have talked about the kinds of cultural resources BLM manages, let's take a brief tour through the major historic preservation laws and other authorities pertaining to them. My purpose in doing this is to help you understand what the cultural resource specialists in your offices need to do in order to ensure that your projects comply with laws, regulations and BLM policy.

The Federal Land Policy and Management Act directs the BLM to manage public lands in a manner that will "protect the quality of...archaeological values." What are these values? Archaeological sites have value for scientific and historical research. They have value for recreational and educational activities, such as visiting historical sites and participating in scientific studies. And as we have discussed, they also have values that may contribute to maintaining the traditional beliefs or cultural identity of Indian tribes or other groups.

The National Historic Preservation Act established a national policy of historic preservation for the protection of structures, buildings, districts, and sites significant in American history,

archaeology, and architecture. It also expanded the National Register of Historic Places, a listing of significant prehistoric and historic sites, to include sites of state and local, as well as national importance.

The most relevant section of the Act for compliance purposes is Section 106. If you have been with the Bureau for any length of time, you have probably heard of Section 106. It directs federal agencies to consider the effects of their actions on properties listed on or eligible for the National Register. We will talk more in detail about Section 106 in Module 2.

The Antiquities Act is the earliest and most basic legislation for the protection and preservation of cultural properties. The Act establishes criminal penalties for unauthorized destruction or collection of antiquities, and it requires permits to conduct scientific studies of archaeological and historic sites on federal lands.

The Archaeological Resources Protection Act, or ARPA, provides felony-level penalties for the unauthorized excavation, removal, damage or defacement of archaeological resources more than 100 years old on federal land.

ARPA establishes procedures for issuing permits to authorize scientific excavations and the removal of archaeological resources. The permitting provisions of ARPA are the basis for BLM's Cultural Resource Use Permit process. Timeframes for issuing Cultural Resource Use Permits may affect your project schedules so you will want to discuss the possible need for such permits with your cultural resource staffs.

The Native American Graves Protection and Repatriation Act, known as NAGPRA, establishes rights of Indian tribes to claim ownership of Native American human remains and associated objects buried in graves, as well as sacred objects and objects of cultural patrimony.

The law addresses procedures for determining the treatment of such items when they are discovered on federal land, including procedures for consulting with Indian tribes.

The National Environmental Policy Act establishes national policy to "preserve important historic, cultural, and natural aspects of our national heritage." Potential impacts on cultural resources are included in the analyses of project impacts when environmental assessments and environmental impact statements are prepared. Your cultural resource specialists can help you with this compliance requirement when you are preparing NEPA documents, and they can also assist you in gathering and considering public comments.

The American Indian Religious Freedom Act's primary purpose is to establish a policy of federal protection for traditional American Indian religious freedoms. Under the Establishment Clause of the First Amendment to the Constitution, the Federal Government should do nothing to prohibit the free exercise of religion. AIRFA reminds federal agencies that American Indians enjoy the same First Amendment guarantees as all other people.

AIRFA intends that federal policies and practices do not (a) deny access to sacred sites needed in traditional religions, (b) prohibit use and possession of sacred objects necessary for religious

ceremonies, or (c) intrude upon or interfere with religious ceremonies. It focuses not just on religious places, but also on religious practices, directing agencies to consider both before doing things that could interfere with them. The Act requires agencies to obtain and consider the views of Indian religious practitioners when a proposed land use might conflict with Indian religious beliefs or practices.

Executive Order 13007 provides the definition of sacred site that I mentioned earlier. This Executive Order doesn't create any new right or benefit for Indian tribes, but it does direct federal agencies to accommodate access to Indian sacred sites and ceremonial use of those sites by Indian religious practitioners. It also directs agencies to avoid adversely affecting the physical integrity of sacred sites to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions. EO 13007 reinforces the purposes of the American Indian Religious Freedom Act with regard to sacred sites.

There are several more laws, executive orders and secretarial orders that pertain to cultural resources, but the ones I have discussed here are the most relevant to you in terms of compliance requirements for the actions with which you are involved. These are the authorities your cultural resource specialists will be helping your office comply with on a regular basis.

How are cultural resources managed? Are they all managed in the same way? The short answer to that is no. When you consider the remarkable diversity of the cultural resources on the public lands, it isn't surprising that they are not all valuable or useful in the same way. Some are more valuable for the scientific information they contain, some have traditional religious or cultural values ascribed to them by Indian tribes or other groups, and some may be valuable as interpretive exhibits for the visiting public. Some may have so little remaining value that they don't need to be managed for any use.

BLM allocates cultural properties to categories, called "use categories," so that Field Managers will know how those properties should be treated, i.e., what needs to be protected and when or how their use should be authorized. This is especially important when cultural properties may be impacted by a conflicting land use because it allows managers to know in advance how to respond to those conflicts.

Cultural resources are allocated to use categories in land use plans. The six categories to which cultural resources are assigned are (1) scientific use, (2) conservation for future use, (3) traditional use, (4) public use, (5) experimental use, and (6) discharged from management. A cultural property may be allocated to more than one use category, and allocations may change as circumstances change.

- (1) Scientific use. Cultural properties allocated to this category are valuable for the information they contain -- for their potential to help answer research questions. Most properties in this category are archaeological sites. Studying them by excavating or collecting their artifacts would be an appropriate way to use them, and this is the most common form of mitigation your cultural resource specialist will recommend if the sites will be impacted by a competing land use.

- (2) Conservation for future use. This category is reserved for cultural resources that are particularly scarce that are unusually important for their historic, cultural or architectural characteristics, or that contain important information that cannot be recorded with currently available methods of study. The purpose of allocating cultural properties to this category is to segregate them from other land uses that would threaten them.
- (3) Traditional use. This category is applied to cultural resources that are important in maintaining the cultural identity, heritage or well-being of an Indian tribe or other social or cultural group. The traditional cultural properties and sacred sites we talked about earlier would fall into this category. Properties like this are managed in ways that recognize the religious or cultural values that people ascribe to them and that try to accommodate the manner in which these places have traditionally been used.
- (4) Public use. Cultural properties in this category are useful as interpretive exhibits in place, or for similar educational and recreational uses by the general public. Easily accessible archaeological sites with visual interest such as rock art sites, and historic sites with standing structures such as ghost towns, are most often allocated to this category.
- (5) Experimental use. This category may be applied to a cultural property that is best suited for use in experimental studies that will help BLM manage other kinds of cultural properties. For example, a property in this category might be used to study the effects of erosion on archaeological sites, or the effectiveness of certain protection measures like fencing and signs, or the relationship between increased visitor use and vandalism. Because properties in this category would usually be allowed to deteriorate, cultural properties with strong research potential, traditional cultural importance, or good public use potential would not be allocated to experimental use.
- (6) Discharged from management. Cultural properties are assigned to this category if they have no remaining use. Most often, these are archaeological sites such as small surface scatters of artifacts that have been adequately documented and have no further information value. They may also be more complex cultural properties whose values have been preserved through data recovery or other forms of mitigation. Cultural properties destroyed by natural events or human activities would also be assigned to this category.

We have talked about sites being impacted by other land uses, but exactly how does this happen? Well, it can happen more easily than you might think. Most cultural resources are very fragile, and it doesn't take much to damage or destroy them.

Ground disturbance is the most common way that cultural resources are impacted. If we look at a lithic scatter, or a scatter of pottery sherds, it's easy to imagine how artifacts sitting on the surface can be displaced or broken by digging holes or grading contours, by natural or human-caused erosion, or even by driving vehicles over them. Displacing artifacts horizontally over the surface of the ground, or vertically by mixing surface and subsurface materials, impacts the site because archaeologists' ability to understand what went on at the site depends a lot on studying

the positions of artifacts relative to one another.

Different kinds of artifacts at an archaeological site are not distributed evenly or randomly throughout the site. Artifacts representing butchering activities may be located in one part of the site, while artifacts representing cooking activities may be located in another part. Artifacts and features representing houses or temporary shelters may be located in yet another area of the site. By carefully recording and studying the patterning of where artifacts and features occur at a site, archaeologists can re-create the activities that went on there. If those artifacts and features are displaced and mixed together by ground disturbance, the information the site could have yielded is lost forever.

Imagining how cultural resources might be directly impacted is easier than thinking more broadly about how they might be indirectly impacted. Theft and vandalism of cultural resources can occur anywhere at any time but we know that increased visitation can lead to indirect impacts of theft and vandalism on sites far removed from an immediate project area.

Authorizing a land use that increases access to an area containing cultural resources may have the unintended consequence of increasing visitor use that results in theft of artifacts or vandalism of features as we see in this photo where part of a petroglyph panel was broken off with a pry bar and in this photo of spray painted petroglyphs. This is especially likely to happen at sites that were occupied over a long period of time and therefore have higher concentrations of artifacts, sites that contain pottery that can be sold for high prices on the black market, and rock art sites that are visible targets for theft, spray painting and other kinds of defacement. Indian burial places are unfortunately also prime targets for looters hunting for pottery, tools or other objects in the graves.

Another way that a land use can impact a cultural resource is by altering its setting. This is especially relevant to cultural properties allocated to traditional use or public use. For example, if a land use introduces visual or audible elements that are out of character with a cultural property, those elements might diminish the values of that site and reduce its appreciation by visitors. Authorizing a wind farm immediately adjacent to an historic ghost town that is being managed as a heritage tourism destination would alter the historic setting of the site even if the buildings themselves were not damaged or displaced. Similarly, authorizing a gravel pit near a sacred site used by Indian religious practitioners could create visual and audible impacts even if the sacred site itself were not damaged.

An example is what happened with the Blythe Intaglios in the California Desert. Here is a photo of one of the Blythe Intaglios taken by National Geographic in 1952. Years later, after the intaglios had become better known, this figure was suffering damage from vandalism and Off Highway Vehicles. A chain link fence was built around the figure to protect it. This photo taken in the 1970s shows the result. The figure itself was protected, but the surrounding area was damaged by vehicles,

severely altering its setting. Sometimes, even when we think we have protected a site, we realize later that impacts are occurring to its setting that are almost as serious as the direct impacts we have protected against. I'm pleased to tell you that the scarred desert pavement around this figure has since been restored by BLM, proper post and cable barriers have been installed along the access road to prevent vehicles from approaching the figures, and this National Register-listed property is now a heritage tourism site, well protected from impacts to the figures and their settings.

We commonly think that one of the best ways to protect sacred sites and other places of traditional religious or cultural importance is to restrict access to them. We know that restricting access reduces the risk of theft and vandalism, and it also reduces the likelihood that people will intrude upon the privacy of religious practitioners who are using sacred places for ceremonies and other religious purposes. But sometimes we are surprised to find that restricting access can cause, as well as reduce, impacts to places like this.

For example, one of the Field Offices I worked with was going through its Off Highway Vehicle route designation process, determining routes that should be open, limited or closed. One of the routes the Field Office initially thought should be closed was one that happened to lead to a place that was traditionally important to one of the local Indian tribes. Members of the tribe, including several elders, visited the place from time to time and wanted to continue being able to do so. The elders, in particular, were unable to walk long distances and were concerned that closing the route would prevent them from visiting their traditional use area. In this case, a land use decision that would ordinarily seem protective would have instead hindered people from experiencing the value of a place to which they ascribed traditional cultural importance.

When we first started managing cultural resources in the 1970's, we didn't think much about cumulative impacts. Significant archaeological sites that could not be avoided by land uses were ordinarily recorded, studied, and then allowed to be destroyed. But gradually, we began to realize that entire kinds, or classes, of rare and unique sites were being lost little by little through attrition as state, federal and private lands were developed and used for various purposes.

An example of these kinds of sites is the stone fish traps that were built along the shoreline of ancient Lake Cahuilla in the California Desert. The lake was created when the Colorado River broke from its channel and flooded the Coachella Valley at various times in the past, forming the largest freshwater lake in California. Radiocarbon dates from marsh deposits and archaeological sites around the lake indicate from three to four major infillings over the last 1,300 years, each lasting for up to several hundred years. After each infilling, the lake receded through evaporation until the next time the river flooded and filled it again. Cahuilla Indians occupied the lakeshore at various times from about 900 to 1500 A.D. One of the ways they adapted to these major flood events was to build rocky enclosures about 10 feet wide and three feet deep in the gravels along the lake shoreline to trap fish that used the gravels for spawning.

Successive rows of traps were built as the lake evaporated and the shoreline receded. Each row of traps was probably only usable for a few seasons before it was replaced with another row at a

lower elevation. By the mid-16th century, the lake dried up to the point where water salinity reached intolerable levels, and the Cahuilla moved on.

With the spread of agriculture and other land uses in the Coachella Valley, the ancient fish traps along the former lake shoreline were destroyed. Little by little, what was once a widespread resource was diminished by cumulative impacts, until now only a few of these stone traps remain. A unique and intriguing class of cultural resources has nearly been extinguished. The remaining traps are now listed on the National Register of Historic Places.

This example illustrates the importance of not losing sight of the finite and non-renewable nature of cultural resources. If we don't keep cumulative effects in mind when we are proposing mitigation for the land uses we authorize, we run the risk of losing entire classes of sites that are rare or unique.

This concludes the first module of Managing Cultural Resources with Other Land Uses. This module explained what cultural resources are, described the diversity of the cultural resources managed by BLM, considered why these resources should matter to you, summarized the basic requirements of various historic preservation laws, discussed the different ways cultural resources are managed, and talked about how land uses can impact cultural resources.

The second module will discuss the primary steps of the Section 106 compliance process and BLM's alternative procedures for complying with Section 106. It will also explain how BLM consults with Indian tribes, the extent to which BLM is responsible for considering effects on non-federal cultural resources, what your cultural resource specialists need to know from you to help you with compliance work on your projects, and what you need to know from your cultural resource specialists about the processes they will follow to ensure your projects comply with historic preservation laws. Thank you for attending.