



THE NAVAJO NATION HISTORIC PRESERVATION DEPARTMENT Cultural Resource Compliance Section

POLICY TO PROTECT TRADITIONAL CULTURAL PROPERTIES

Introduction

As economic development proceeds in the Navajo Nation, a growing number of places of significance to the Navajo people may be damaged by the land disturbance that accompanies development. In June of 1999, the Navajo National Park Service issued National Register Bulletin 38, titled "Guidelines for Evaluating and Documenting Traditional Cultural Properties." The bulletin defines a "traditional cultural property" 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."

Most traditional cultural properties significant to Navajos are of the type commonly called "sacred places." Others are locations of other traditional activities, such as home sites and places where weavers gather plants for dyes.

We use the term "traditional cultural property" in this document to make apparent that we talking about the same kinds of places as Bulletin 38, and because this document is geared toward cultural resource managers and related professionals. The term, however, offends many Navajo traditionalists. One reason is that, by containing the word "property," it suggests that such places can be treated as mere commodities, like real estate. Another reason is that the term seems like a long and lackluster euphemism for "sacred places," which corresponds more closely to the Navajo term for such places (hodiyyin). "Traditional cultural property" is, indeed, partly a euphemism intended to obscure the "religious" qualities that these places have for people who do not separate the sacred from the secular. Within the present federal legal framework for historic and cultural preservation, such obscurantism seems necessary to keep such places from being found ineligible for protection under federal preservation law because of the doctrine of separation of church and state. We would prefer that, instead of avoiding the term "sacred places," all concerned recognize that the root of what makes a place sacred is its association with aspects of the past that people connect with their present concerns of living. We apologize to traditionalists for perpetuating the use of the term "traditional cultural properties," which we find a practical necessity in certain contexts.

Traditional Cultural Properties Covered by this Policy

This policy covers traditional cultural properties that lack the evidence of human use that qualify them as archaeological sites, historic properties ~~or graves~~. The main emphasis here is on traditional cultural properties significant to the Navajo people. The last section of this policy statement, in addition, addresses such properties significant to other Native American groups that may be located on lands of the Navajo Nation. This policy supersedes the "Draft Proposed Nation Policy to Protect Navajo Sacred Places" (1986). Existing federal, state and tribal laws and rules protect archaeological sites, historic properties and ~~graves~~. These laws and rules include the *Federal Antiquities Act of 1906* (P.L. 59-209); the *National Historic Preservation Act* (P.L. 89-665); the *National Environmental Protection Act of 1969 Executive Order 11953*; "Protection and Enhancement of the Cultural Environment," May 13, 1971 (36 C.F.R. 8921); the *Archaeological Resources Protection Act of 1978* (P.L. 95-96); the *American Indian Religious Freedom Act of 1978* (P.L. 95-341); the *Native American Graves Protection and Repatriation Act (NAGPRA)*; *New Mexico and Arizona laws protecting human remains on private lands*; the *Navajo Nation Policies and Procedures Concerning Protection of Cemeteries, Gravesites and Human Remains of 1986* (ACMA-39-86); and the *Navajo Nation Cultural Resources Protection Act (CMY-19-88)*, which supersedes all previously existing Navajo Nation cultural resource preservation legislation.

Cultural resource surveys required by these laws and policies are very likely to detect sites with material evidence of human use (mainly archaeological sites) so that they can be protected. Certain types of Navajo traditional cultural properties are likely to have such evidence. These types include, but are not limited to, sites that may have been blessed such as those with hogans, houses, sweathouses, game corrals (needzii'), eagle traps and so forth; and other sites where ceremonies may have occurred (if evidence of such use, such as the remains of ceremonial structures, is visible); trail shrines; rock art; and both marked and unmarked graves.

Because traditional cultural properties are considered eligible for inclusion in the National Register, such properties are protected by Section 106 of the National Historic Preservation Act, even when they lack clear evidence of human use. Such places are not likely to be detected by conventional surveys, however, and no other way of detecting such places has been used systematically up to now. Navajo traditional cultural properties without clear evidence of human use include, but are not limited to, the following types: places for gathering plants for use in ceremonies and other traditional purposes; places for gathering minerals for ceremonial and other traditional uses; places for gathering contents of sacred bundles; places for gathering other materials for ceremonial and other traditional purposes; ~~unmarked graves (contain material remains but these are not necessarily visible on the surface)~~; prayer offering places; places associated with the origin stories of particular ceremonials; places associated with the general Navajo origin story; places associated with origin stories of particular ceremonials; places associated with the origin of a clan; places associated with the origin of a Navajo custom; places identified as the home of a Holy Being such as Wind, Lightning, Big Snake; location of echoes (Talking Rocks, which convey human words to the Holy People); natural discoloration of rock that has some kind of supernatural power; places where an apparition or other supernatural event occurred; and places that have played a part in the life cycle rituals of individuals (such as the spot where a newborn baby's umbilical cord is placed. Many of these sorts of places are features of the natural landscape, such as mountains, hills, rocky outcrops, springs and individual trees.

This policy outlines procedures for identifying such places, for determining how concerned Navajo people think particular development projects will affect those places, and for learning about the protection measures that concerned Navajo people think should be used. This outline is intended to be used along with National Register Bulletin 38, which offers general guidelines to document and evaluate such properties.

Traditional cultural properties covered by this policy statement may be on land under Tribal, BIA, other Federal (public land) and State jurisdiction. With land owner consent and cooperation, this policy statement will apply to private lands as well.

Identification of Traditional Cultural Properties on Lands Administered by the Navajo Nation for the BIA in Trust for Navajos

To identify Navajo traditional cultural properties, the developer of a proposed project on tribally or BIA administered land must observe the following procedures:

- A. The developer shall employ an archaeological contractor or consulting anthropologist who meets the professional standards of the Navajo Nation (or the land manager). That contractor or consultant shall conduct a cultural resources literature search that will include at least the following references for information on places of traditional cultural significance.

SUGGESTED READING LIST

- Parker, Patricia L., and Thomas F. King
1990 Guidelines for Evaluating and Documenting Traditional Cultural Properties. National Register Bulletin 38. U.S. Department of the Interior, National Park Service, Interagency Resources Division, Washington, D.C.
- Van Valkenburgh, Richard F.
1974 Navajo Sacred Places, ed. Clyde Kluckhohn. In Navajo Indians III, pp. 9 -199. Garland Publishing, New York
- 1941 Dine Bikeyah. U.S. Department of the Interior, U.S. Indian Service, Navajo Agency, Window Rock, AZ

* *this work may be hard to find. But we suggest using Linford, Navajo Places, History, Legend, Landscape*

Kelley, Klara B.

1994 Navajo Sacred Places. Bloomington: Indiana University Press

Linford, Lawrence D.

2000 Navajo Places, History, Legend, Landscape. University of Utah Press

McPherson, Robert S.

1992 Sacred Land, Sacred View: Navajo Perceptions of the Four Corners. Signature Books

2009 Comb Ridge and Its People. The Ethnohistory of the Rock. United States University Press

****Also the following, if the proposed project is in the Eastern Navajo Nation:**

Carroll, Charles H.

1982 An Ethnographic Investigation of Sites and Locations of Cultural Significance to The Navajo People to be Affected by PNM's Four Corners to Ambrosia to Pajarito 500 kV Transmission Project. Public Service Company of New Mexico, Albuquerque

1983 The Ute Mountain Ethnographic Study. Public Service Company of New Mexico, Albuquerque

Fransted, Dennis

1979 An Introduction to the Navajo Oral History of Anasazi Sites in the San Juan Basin Area. Navajo Aging Services, Fort Defiance, AZ

Roessel, Robert, Jr.

1983 Dinetah: Navajo History. Rough Rock Demonstration School, Rough Rock, AZ

York, Frederick F.

1981 An Ethnographic Study of the Public Service Company of New Mexico's Proposed New Town Site and Its Environs. Human Environmental Resource Services Corporation, Anthropological Series 1, Albuquerque.

York, Frederick F., and Joseph C. Winter

1988 Report of an Ethnographic Study and Archeological Review of Proposed Coal Lease Tracts in Northwestern New Mexico. Office of Contract Archeology, University of New Mexico, Albuquerque

****In addition, the following background readings are strongly recommended for those consultants not thoroughly familiar with them:**

Downer, Alan S.

1989 Anthropology, Historic Preservation and the Navajo: A Case Study in Cultural Resource Management on Indian Lands. Ph.D. Dissertation, Department of Anthropology, University of Missouri, Columbia

Frisbie, Charlotte J.

1987 Navajo Medicine Bundles or Jish: Acquisition, Transmission and Disposition the Past and Present. University of New Mexico Press, Albuquerque.

Gill, Sam D.

1981 Sacred Words: A Study of Navajo Religion and Prayer. Greenwood Press, Westport, Conn

Kelley, Klara B.

1988 San Augustine Coal Area, Archaeological Investigations in West- Central New Mexico, Vol. 2, Historic Cultural Resources. Cultural Resources Series No. 4, U.S. Bureau of Land Management, New Mexico State Office, Santa Fe

Kelley, Roger I., R. W. Lang and Harry Walters.

1972 Navajo Figurines Called Dolls. Museum of Navajo Ceremonial Art, Inc., Santa Fe, NM

Kluckhohn, Clyde and Leland C. Wyman

1940 An Introduction to Navajo Chant Practice. *Memoirs of the American Anthropological Association* 53

Spencer, Katherine

1957 *Mythology and Values, An Analysis of Navajo Chantway Myths.* *Memoirs of the American Folklore Society* 48

Wyman, Leland C.

1970 *Blessingway: With Three Versions of the Myth Recorded and Translated from the Navajo by Father Berard Haile, O.F.M.* University of Arizona Press, Tucson.

- B. For all projects that require more than 1 acre, consultations with Navajo people are also required, (Projects of one acre or less are likely to include, but are not limited to, single home sites, single-business site leases, and isolated utilities installations for single home sites or single business sites.) In addition, consultations with Navajo people are also required for projects of 1 acre or less in certain localities and natural settings with a high probability of having traditional cultural properties. If the developer or anthropological consultant is in doubt about the need for such consultations, they should contact NNHPD. The project developer must demonstrate that a qualified professional anthropologist made a good-faith effort to consult:
1. Present surface user(s): grazing-permit holder(s) (individuals whose consents for right-of-way have been sought by developer); any other residents in or within view of the proposed project area.
 2. Chapter(s) within which the proposed project is located: chapter officers and/or delegate(s) to Navajo Nation Council; at the request of any of these individuals, the developer's consulting anthropologist will also make a presentation at a meeting of general chapter membership.
 3. Other knowledgeable people recommended by the present surface user(s), chapter officials, and chapter members.
- C. Documentation of the concerns of people consulted will normally take the form of a questionnaire or interview schedule administered by the developer's consulting anthropologist and his or her interpreter/field assistant, if any. Documentation of each consultation will normally include the following information (documentation shall include a detailed explanation as why any of this information was not provided):
1. Source of information on traditional cultural properties: names of interviewer and interpreter, date and location of interview, language or interview.
 2. Identification of each place by Navajo and English names (English translation of Navajo name if there is no English name) and USGS 1:24,000 or 1:62,500 scale map location;
 3. What type of place is it: description of its physical attributes or appearance and its traditional associations or functions (attributes that make it a traditional cultural property)?
 4. What impacts, if any does the interviewee expect the proposed project to have on each place?
 5. What modification or redesign of the proposed project would the interviewee recommend?
 6. If impacts cannot be avoided, what measures to mitigate adverse impacts would the interviewee recommend?

The Navajo Nation Historic Preservation Department Sacred and Traditional Places Documentation Form and guidelines for its use are appended to this policy statement and are recommended for this purpose.

Further documentation of concerns such as general chapter resolution or other written form that the chapter considers appropriate are required.

- D. Discoveries of Navajo traditional cultural properties during project development. The procedures set forth above in this section are likely to identify significant Navajo traditional cultural properties before development. No feasible procedure, however, can guarantee the identification of all such properties. There is always the possibility that during project development someone may report that the project area contains a previously unidentified property. This situation is considered analogous to an archaeological "emergency discovery situation" in which the developer encounters previously unreported subsurface archaeological remains. As soon as the developer learns

of the presence of a previously unreported traditional cultural property, the developer will cease operations and notify the NNHPD. Normally operations will not resume until the NNHPD has obtained, on its own or through the developer, information adequate to identify and evaluate the reported traditional cultural property and devise a plan for its subsequent treatment, and has notified the developer to resume operations.

Identification of Navajo Traditional Cultural Properties on Lands NOT Administered by the Navajo Nation or BIA in Trust for Navajos

- A. In general. If these lands are surrounded by or are near lands used by Navajos, the developer, through a consulting anthropologist who meets the professional requirements of the Navajo Nation and the land manager, must consult the neighboring Navajo chapters and any knowledgeable individuals recommended by the chapters, and document those consultations according to guidelines set forth in the preceding section. If the lands are used by Navajos (for example, BLM-administered lands in the eastern part of the Navajo country), the developer's consulting anthropologist must make a good-faith effort to consult these Navajo users according to the procedures in Section C. above.
- B. Dinetah. Dinetah is a special case involving land in eastern San Juan County and western Rio Arriba and Sandoval Counties, New Mexico, much of which is not now used by Navajos. It needs special consideration because it contains so many recorded (and therefore probably many unrecorded) Navajo archaeological sites, sacred places, and other traditional cultural properties; because parts of it are not near any Chapter area; and because parts of it are not near any Chapter area; and because so many of its traditional cultural properties are of potential concern to Navajos all over Navajo land. Most of this land is under BLM jurisdiction, and BLM is required in accordance with the American Religious Freedom Act and Section 106 of the National Historic Preservation Act (and its implementing regulations 36 CFR Part 800) to consult with interested Native American communities about management of cultural resources to be affected by its decisions. The developer's consulting anthropologist therefore must make a good-faith effort to consult neighboring chapters, any Navajo users, and document these consultations according to the guidelines set forth in Section C. above. In addition, the developer's consulting anthropologist must consult with NNHPD.
- C. Discoveries of Navajo traditional cultural properties during project development. Procedures set forth in Section C., Item 4. above will be applied here with the following modifications. The developer will normally notify the land manager as well as NNHPD, and the notification to the developer to continue operations will normally come from the land manager with NNHPD concurrence.

Possible Traditional Cultural Properties of Other Native American Groups on Lands Administered by the Navajo Nation or BIA in Trust for Navajos

The NNHPD is committed to protecting traditional cultural properties of other Native American groups on lands under its jurisdiction, with the expectation that other tribes on whose lands Navajo traditional cultural properties are located will make a reciprocal commitment. Therefore, the developer of a proposed project is responsible for consulting other Native American groups when such groups may have traditional cultural properties in the area affected by the developer's project. To determine which other groups, if any, are to be consulted, the developer's anthropological consultant normally will look at material showing the extent of the aboriginal land claims (and subsequent land claims, if appropriate) Before the Indian Claims Commission or U.S. Court of Claims made by those tribes nearest the part of Navajo land where the proposed project is to be located. The developer's consultant anthropologist will then make a good faith effort to consult any other groups in whose land claim(s) the proposed project area lies. NNHPD considers the land claims areas of other Native American groups to be the maximum areas within which traditional cultural properties of these groups may be identified.

NNHPD does not believe that the land claims neither areas were necessarily used exclusively by these groups nor that they are covered by any particular types of property rights use rights, etc. Nothing in this policy shall be construed as a concession by the Navajo Nation as to the validity of any claim of any other tribe concerning Navajo land. The Navajo Nation is attempting to foster cooperation between tribes on matters of general concern, such as traditional cultural properties, but this spirit of cooperation must not be misinterpreted as any sort of legally binding statement by the Navajo Nation.

The developer's anthropological consultant will be required to contact the appropriate tribal government and/or

community representatives and proceed with identification efforts as directed by those entities. The developer's anthropological consultant should first contact NNHPD for referrals to appropriate contact people in the appropriate tribe or community.

Instructions for Using “Navajo Nation Historic Preservation Department’s Sacred and Traditional Cultural Places Documentation Form”

This form is intended as a checklist of information required to document consultations with knowledgeable Navajo people about traditional cultural properties that may be impacted by a particular development undertaking. It is not intended to be administered as a questionnaire, although the interviewer may use it that way. The form should be used to present information gained in each interview, with continuation sheets attached for items where the form does not provide enough space. The interviewer will document each interview on a copy of the attached form. Interviewees are NOT to be asked to sign the form. For people contacted who refuse to be interviewed, the interviewer will fill out the top section of the form and indicate that the person refused to be interviewed, It is also important to make clear to the interviewee that the interviewee is under no obligation to be interviewed. If he or she refuses, however, any resources in the area may go unprotected since the people with the authority to protect them won't know about them. Also, during the interview, the interviewee may refuse to provide certain information such as name of a particular medicinal plant. The interviewer should not press the person to reveal such information, but should note on the form that the person did not want to reveal it. Because these inquiries are so sensitive, the staff of NNHPD will be available to help your staff get oriented to conducting these interviews. If you wish, they will meet with the members of your staff who may be conducting these interviews to go over the process and answer any questions. Please call (928)-871-7147 if you have any questions.