

# Traditional Cultural Properties

*Putting Concept into Practice*



George Melendez Wright's Lasting Significance  
Quantifying Fire Suppression

## The George Wright Forum

The GWS Journal of Parks, Protected Areas & Cultural Sites

volume 26 number 1 • 2009



### Origins

Founded in 1980, the George Wright Society is organized for the purposes of promoting the application of knowledge, fostering communication, improving resource management, and providing information to improve public understanding and appreciation of the basic purposes of natural and cultural parks and equivalent reserves. The Society is dedicated to the protection, preservation, and management of cultural and natural parks and reserves through research and education.

### Mission

The George Wright Society advances the scientific and heritage values of parks and protected areas. The Society promotes professional research and resource stewardship across natural and cultural disciplines, provides avenues of communication, and encourages public policies that embrace these values.

### Our Goal

The Society strives to be the premier organization connecting people, places, knowledge, and ideas to foster excellence in natural and cultural resource management, research, protection, and interpretation in parks and equivalent reserves.

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### The George Wright Forum

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ISSN 0732-4715

Editorial and manuscript submission guidelines may be found on our website at [www.georgewright.org/forum.html](http://www.georgewright.org/forum.html). Text paper is made of 50% recycled fibers. Printed by Book Concern Printers, Hancock, Michigan.

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View of Indian Point, Indian Island (center), and Pillar Rock (lower right), site of a proposed traditional cultural property of the Tlingit Auk tribe in Juneau, Alaska (with the Auke Bay Ferry terminal in background). Photo courtesy of Beverly Demientieff.

# SOCIETY NEWS, NOTES & MAIL

## Record attendance at GWS2009 conference

The 2009 George Wright Society Conference on Parks, Protected Areas, and Cultural Sites set a new record for attendance, with 1,049 paid attendees—the first time in the history of the conference, which dates back to 1982, that more than a thousand people attended. Held in Portland, Oregon, during the period March 2–6, the conference featured 5 plenary sessions, over 140 concurrent sessions, and an expanded poster session of 200 presentations. Responses to the conference evaluation questionnaire were very positive. The conference also featured successful installments of the George Melendez Wright Student Travel Scholarships and the Native Participant Travel Grants. We hope to publish a selection of photos in the next issue of the *Forum*.

## Five honored with GWS Awards in Portland

The 2009 GWS Award winners were honored at a joint GWS/NPS Awards Banquet at the historic Governor Hotel in downtown Portland on Thursday evening, March 5, as part of the GWS2009 conference. This year, a new award was added to our roster. Recognizing the increasing importance of the social sciences to park research, management, and education, the GWS Board has created a Social Science Achievement Award. The 2009 winners are:

- The George Melendez Wright Award for Excellence, the Society's highest honor, went to *Michael Soukup*. He was cited for his distinguished and sustained achievements in bolstering science within NPS, including his leadership in resource inventories and monitoring, exotic plant management, Research Learning Centers, CESUs, and the Natural Resource Challenge.
- The GWS Cultural Resource Achievement Award was given to *Edwin Colón*, who leads the preservation/masonry crew at San Juan National Historic Site's Lime Laboratory and Workshop. Colón was recognized for helping make the crew the leaders in the field of traditional lime masonry, whose knowledge and skills are requested locally, nationally, and internationally.
- The GWS Natural Resource Achievement Award went to *Kate Roney Faulkner* of Channel Islands National Park. Faulkner was cited for her leadership, in partnership with The Nature Conservancy, to ecologically restore Santa Cruz Island at Channel Islands National Park.
- The inaugural GWS Social Science Achievement Award was presented to the University of Vermont's *Robert Manning*. Manning was recognized for his pathbreaking efforts to raise the profile of social science within the national park system and other protected areas, and for his excellence in teaching.
- The GWS Communication Award will be received by Channel Islands' chief of interpretation, *Yvonne Menard*. She was recognized for her leadership in designing a public communications strategy to explain the complex issues surrounding ecological restoration within Channel Islands National Park.

## 2009 GWS Board election: Call for nominations

This year, two Board seats are up for election, both of which are held by incumbents eligible for re-election: Brad Barr and David Graber. Both have indicated that they will run for a second term. We are now accepting nominations from GWS members who would like to join them as candidates in this year's election. The term of office runs from January 1, 2010, through December 31, 2012. Nominations are open through July 1, 2009.

To be eligible, both the nominator and the potential candidate must be GWS members in good standing (it is permissible to nominate one's self). The potential candidates must be willing to travel to in-person Board meetings, which usually occur once a year; take part in Board conference calls, which occur several times per year; help prepare for and carry out the biennial conferences; and serve on Board committees and do other work associated with the Society. Travel costs and per diem for Board meetings are paid for by the Society; otherwise there is no remuneration. Federal government employees who wish to serve on the Board must be prepared to comply with all applicable ethics requirements and laws; this may include, for example, obtaining permission from one's supervisor, receiving ethics-related training, and/or obtaining a conflict of interest waiver.

The nomination procedure is as follows: members nominate candidates for possible inclusion on the ballot by sending the candidate's name to the Board's nominating committee. The committee then, in its discretion, determines the composition of the ballot from the field of potential candidates. Among the criteria the nominating committee considers when determining which potential candidates to include on the ballot are his/her skills and experience (and how those might complement the skills and experience of current Board members), the goal of adding and/or maintaining diverse viewpoints on the Board, and the goal of maintaining a balance between various resource perspectives on the Board. (It also is possible for members to place candidates directly on the ballot through petition; for details, contact the GWS office.) To propose someone for possible candidacy, send his or her name and complete contact details to: Nominating Committee, George Wright Society, P.O. Box 65, Hancock, MI 49930-0065 USA, or via email to [info@georgewright.org](mailto:info@georgewright.org). All potential candidates will be contacted by the nominating committee to get background information before the final ballot is determined. Again, the deadline for nominations is July 1, 2009.

## Conard to co-edit *Forum*

Rebecca Conard, professor of history and director of public history graduate studies at Middle Tennessee State University, has been appointed co-editor of *The George Wright Forum*. Conard is currently in the last year of her second and final term on the GWS Board of Directors, where she serves as treasurer. She also chairs the Board's publications committee. She joins Dave Harmon, the GWS executive director, as co-editor. Harmon has edited the journal since 1990. "I am very pleased that Rebecca accepted our invitation to become co-editor of the *Forum*," Harmon said. "She has done a great job of leading the publications committee, and she'll bring a fresh perspective and top-notch editorial skills to the journal." Among her major publications are *Places of Quiet Beauty: Parks, Preserves, and Environmentalism* and *Benjamin Shambaugh and the Intellectual Foundations of Public History*. Conard's appointment begins immediately.

### George Melendez Wright and the National Park Idea

*Dayton Duncan*

TEN YEARS AGO, WHEN I BEGAN THE RESEARCH FOR A DOCUMENTARY FILM about the history of the national parks for PBS, I faced the biggest challenge of my writing and filmmaking career with my colleague Ken Burns. Our ambition was to tell the story of a uniquely American idea—that the nation’s most sacred landscapes be preserved, for all people and for all time—spanning more than a century in time and more than a continent in geographic space.

We wanted to trace the origins of the idea in the middle of the 19th century and then follow its evolution to the verge of the 21st century. We wanted to incorporate the big issues and the broad scope of this sprawling narrative: how the definition of what a park should be has been challenged and changed over time; how different generations of Americans have experienced their parks in shifting social contexts; and how some threats to the park idea have existed and persevered from the very beginning, just as surely as the special connection Americans have forged with the land has equally endured. We wanted to tell the stories of as many of the 58 individual national parks as possible, as well as make clear that the larger park system has grown to include national monuments, historic sites, seashores, trails and much more.

And, because Ken and I believe, as Emerson said, that “there is no history, only biography,” most importantly we wanted to populate our series with an unforgettable cast of historical characters, some famous but many more of them relatively unknown, who were responsible for a park being created or for the park idea being defended and broadened. We were not interested in making a travelogue or nature film, although our series is filled with footage of some of nature’s most spectacular locales. For us, the story of the national parks is a story of people; people who were willing to devote themselves to saving some precious portion of the land they loved, and in doing so reminded their fellow citizens of the fuller meaning of democracy. Our goal was not merely to mention these people in passing. We hoped to bring them alive on film—with photographs, to be sure, but also through their own words (read off-camera by an accomplished crew of actors)—so that viewers would understand them as living, breathing human beings rather than names from the dusty pages of history.



It was a tall order. I began by reading everything I could about the parks, from the few broad-stroke histories that exist to hundreds of books about specific parks or particular park issues. I visited as many parks as possible (one of the most pleasurable research assignments imaginable) and talked to park historians and superintendents. Through a variety of venues, including the National Park Service's intranet, I solicited suggestions from a wide array of people. Over the course of several years, we conducted more than four dozen filmed interviews.

Slowly, the thematic outlines of a narrative began to emerge, and the list of historical stories I wanted to include started to lengthen—too many of them, it quickly became clear, than we could possibly tell, even in a six-episode, twelve-hour series. Some would eventually be winnowed out, victims of the necessary yet often painful process through which all of our projects must pass. But other stories cried out for more investigation and fuller development, like those brief encounters with a stranger that somehow pique your interest and encourage you to find any excuse to meet again.

**THAT'S HOW I GOT TO KNOW GEORGE MELENDEZ WRIGHT.** He hasn't exactly been ignored in the history of national parks. Richard West Sellars' *Preserving Nature in the National Parks: A History* and Alfred Runte's *National Parks: The American Experience* both credit him with trying to point the Park Service in important new directions concerning the management of wildlife and plant life. And the fact that Wright has an organization of park defenders named in his honor testifies to the esteem in which he's held by insiders. That said, Wright remains a cipher to a large majority of NPS employees, let alone to a vast American public for whom Stephen Mather and Horace Albright are complete unknowns, and John Muir or even Theodore Roosevelt are vaguely recognizable names from our past.

It was Sellars' description of Wright and the cadre of biologists he gathered around him in the 1930s as a minority "opposition party" within the NPS that first caught my eye. A writer is always on the lookout for the yeasty tensions that comprise history in the making. My curiosity was heightened when I read of Wright's tragic death at the age of 31 and its devastating impact on the movement he had started. I wrote down his name on a list of characters we should pursue in greater depth and passed it on to Susan Shumaker, a skilled researcher we had been fortunate to hire, thanks to the generosity of a grant from the Evelyn and Walter Haas, Jr., Fund. I was hoping she could compile what Ken and I call the "critical mass" of material we need to fully flesh out a character on the screen: more biographical details, enough photographs, and, hopefully, a healthy selection of first-person quotes.

What Susan brought back exceeded my greatest expectations. Luckily for us all, one of Wright's two daughters, Pamela Wright Lloyd, and her son-in-law, Jerry Emory, had already done much of the spade work and were happy to share their results. They had written an excellent biographical article for *The George Wright Forum* in 2000, organized Wright's field notes and correspondence, and collected a treasure trove of personal photographs. Susan also turned in articles Wright had written and, of course, his landmark *Fauna* reports, the fruit of his and his colleagues' groundbreaking three-year survey of conditions in the parks in the early 1930s.

Poring through the material (enough, I would suggest to any ambitious environmental historian reading this, to sustain a lively, full-fledged, and much-needed biography), I knew immediately that Wright would become one of the “stars” of our film series. In him we had a fascinating personality with a dramatic and memorable life story who not only had an important impact on the history of the national park idea but in many ways personally embodied a multitude of the larger themes we wanted to illuminate:

**Individual Americans can make a difference and bend the course of history.**

The national parks are a federal institution, now administered by a large government agency, but running throughout our series is one inspiring example after another proving that the energy propelling the park idea has most often come from the bottom up, not the top down. Look at any national park and how it came to be, and you quickly discover a single person—or sometimes a small group of them—who set out to save a special place for posterity. Enos Mills at Rocky Mountain. Charles Sheldon at Denali. The Wetherills and Virginia McClurg and Lucy Peabody at Mesa Verde. Horace Kephart and George Masa at Great Smoky Mountains. Lancelot Jones and Lloyd Miller and Juanita Greene at Biscayne. Without them, and scores of others like them, many places we now consider sacred and permanently protected would have gone the way of development and desecration. “To me, that’s what national parks mean,” Greene told us in an interview. “It’s a symbol of democracy, democracy when it works well, at its best.”

In this pantheon of park heroes, George Melendez Wright deserves a larger niche than most. His fingerprints can be found in a number of parks. Ernest Coe and Marjory Stoneman Douglas rightly deserve top billing for Everglades National Park, but Wright gave the movement a crucial boost by urgently reporting, “Unless this area is quickly established as a national park, the wildlife there will become extinct.” Laurance Rockefeller may have personally made Virgin Islands National Park possible in 1956, but Wright had called for its creation twenty years earlier. Without Wright, the trumpeter swans might not have found refuge at Red Rock Lakes and instead joined the passenger pigeon in the mournful list of vanished species. If Big Bend ever becomes part of an international park, extending across both sides of the Rio Grande, we’ll have Wright to thank for initiating the idea.

But his major contribution was showing that, in order to thrive and evolve, the park idea has relied on the commitment of individuals even within the agency specifically created to preserve it. Like Martin Luther King, Jr., challenging the nation to apply the tenets of the Declaration of Independence and finally admit that “all men are created equal,” Wright challenged the Park Service to live up to its founding document and apply the injunction of “unimpaired” preservation to animals within park borders, whether they had previously been treated as pets to be pampered or pests to be eliminated. We take both men’s views for granted now, sometimes forgetting how courageously revolutionary they were—and how long it took for their dreams to take hold. As former park superintendent Ernest Ortega told us, Wright “was the savior of wildlife in America’s national parks, but more importantly, George Melendez Wright is the savior of the national park ideal.”





In February 1936, Wright, along with Roger Toll, superintendent of Yellowstone, participated in an international park boundary survey in the vicinity of what would become Big Bend National Park. Toll was the Park Service's chief investigator of proposed new national parks, and Big Bend had been authorized the year before. This group shot was taken near Boquillas, Texas. Wright is at the center of the back row (sixth from left). Toll is in the front row, fifth from the left; Conrad L. Wirth, who later would become the director of NPS, is second from left.

**Within the story of the national parks, science and spirituality are not antagonists; they co-exist and often augment each other.**

John Muir, perhaps the park idea's greatest champion, was an inventive genius who could have taken the path of Thomas Edison had he not decided to walk to Florida, studying plants; likewise his theories on how glacial action carved and polished Yosemite Valley were ahead of his time. And yet no one has ever equaled his rapturous prose, steeped in the cadences of the King James Bible, about the transcendence to be found in an "unconditional surrender" to nature. Waterfalls sang to him. "The whole wilderness," he exclaimed, "in unity and interrelation is alive and familiar . . . the very stones seem talkative, sympathetic, brotherly." When he told people that "this is still the morning of creation," he was not attempting to describe the natural processes of the universe with cool detachment. Equal parts scientist and prophet, Muir saw no contradiction between the two powerful impulses that drew him into the wild places he called laboratories and temples. "Heaven knows," he wrote, "that John [the] Baptist was not more eager to get all his fellow sinners into the Jordan than I to baptize all of mine in the beauty of God's mountains."

Wright could be equally eloquent, combining the precision of a scientist's observation with what seems to me at least to be the passion of a belief in something larger. "If we destroy nature blindly, it is a boomerang which will be our undoing," he wrote. "Consecration to the task of adjusting ourselves to [the] natural environment so that we secure the best values from nature without destroying it is not useless idealism; it is good hygiene for civilization."

Whether he was describing the thrill of encountering a bear in the wild, the song of a Mearns quail (“the voice of eternity in the wind on the desert”), or the reverie he felt in watching thousands of water birds and feeling that “the illusion of the untouchability of this wilderness becomes so strong that it is stronger than reality, and the polished roadway becomes the illusion, the mirage that has no substance,” Wright brought soulfulness to his science—and in doing so, like Muir, made it accessible to our hearts as well as our minds. The same can be said of the crusading ornithologist and paleontologist George Bird Grinnell, the naturalist Charles Sheldon, and the biologist Adolph Murie, another of my personal favorites. Together, they make mockery of the current, yet tired, dialectic that pits science against religion, facts against feelings. “Oddly enough,” Paul Schullery told us on camera, “it’s the scientists who had the most to do with redefining beauty.”

**The park idea has not only depended upon individuals’ passion and commitment, it has often relied on their private philanthropy to survive.**

Perhaps the single-most recurring refrain in our narrative is a reluctant Congress finally being persuaded, after years of struggle on the grassroots level, to create a new park—and then not appropriating adequate money for its management and protection. The habit of inadequate funding began in 1872 with the creation of the world’s first national park at Yellowstone, with no provisions whatsoever for taking care of it. Congress has never really shaken this habit. In 1916, when Hawaii National Park was added, no money was appropriated for it, either, on the belief, as one senator explained, that “it should not cost anything to run a volcano.” Astonishingly, not until the creation of Great Smoky Mountains National Park in 1933, more than half a century after Yellowstone, were the first federal funds ever spent to purchase land for a new park.

Luckily for the nation, individuals have often stepped forward to plug the holes. No single American donated more than John D. Rockefeller, Jr., whose gifts of land and money—nearly \$45 million by some accounts—helped create Acadia, Great Smoky Mountains, and Grand Teton, and established museums and supported worthy projects in many other parks. His family—his son, Laurance, in particular—carried on the tradition (Virgin Islands, Marsh-Billings-Rockefeller National Historical Park, the JY Ranch addition to Grand Teton), and even helped launch the National Park Foundation to encourage broader park philanthropy from individuals and corporations. Stephen

Wright in Yosemite Valley (undated).



The George Wright Forum

Mather, the dynamic first director of the Park Service, was just as quick with his checkbook. From his own funds he doubled Horace Albright's salary; hired Robert Sterling Yard as a park publicist; bought land for a new headquarters at Glacier; saved a grove of threatened trees at Sequoia; purchased the privately owned Tioga Road in the heart of Yosemite and donated it to the nation; paid for construction of the Rangers' Club House—and cajoled his wealthy friends to be equally generous.

Rockefeller and Mather are merely at the top of a long list of Americans who have pitched in when the parks needed it—a list, it should be noted, that extends all the way down to school children, black and white, in Asheville, North Carolina, who raided their piggy banks of pennies and nickels to help the drive for Great Smoky Mountains National Park. But George Melendez Wright deserves being remembered in this regard, as well. The second-most important element of his proposal to conduct the first wildlife survey of the parks (after the idea itself), was his offer to underwrite it with his own money. It's impossible to say what would have happened without Wright's willingness to pay for the study himself, but it's not hard to guess. Look at the evidence of what happened to the wildlife division after his death; without his energy—and his philanthropy—it atrophied until others, like Adolph Murie, finally came along to breathe new life into the effort.

**Just as the national parks have been set aside for all Americans, from the very start, Americans from all backgrounds have been involved in their story.**

Among the earliest protectors of Yosemite, General Grant, and Sequoia national parks were the cavalry and infantry troops known as Buffalo Soldiers; sad to say that a hundred years ago, their presence probably meant a higher number of African Americans in those parks than might be found there on any given day this summer. Within those facts, a broader sweep of the park idea's story is told.

It is indisputable that for generations, the national parks have been viewed as the bastion of predominantly white, upper middle-class Americans. But while the preponderance of park visitors may have come from that segment of the population, the parks belong to *everyone*, regardless of income, race, or ethnicity. That's the genius of the park idea, the central tenet of its democratic promise. The challenge is convincing an increasingly diverse American population of that fact and encouraging them to exert the rights of their ownership.

Showing them a fuller history may help this effort, because in those stories they will invariably meet people like themselves: The Buffalo Soldiers and their dynamic leader, Captain Charles Young, who rose from slavery to be the third black man to graduate from West Point, and the first to be put in charge of a national park. A Japanese immigrant named George Masa, who devoted his life to saving the Great Smokies. Federico Sisneros, who protected the ruins of New Mexico's San Gregorio de Abó until the day he died in 1988, four days shy of his 94th birthday—the nation's oldest park ranger. Sue Kunitomi Embrey, who crusaded to preserve the Manzanar internment camp as a reminder of a shameful mistake in our past; and Adina De Zavala, who helped preserve the San Antonio Missions and therefore a more complete memory of American history. Lancelot Jones, the son of a former slave, who resisted the temptations of quick money and in doing so rescued the last undeveloped

islands between Miami and Key West from commercialization. Chiura Obata, who found inspiration in Yosemite and passed it along through his exquisite paintings. Gerard Baker, the descendant of Indian people informed by Lewis and Clark in 1804 that their homeland now belonged to someone else, who was put in charge of the Park Service's commemoration of the expedition's bicentennial and then became the first Native American superintendent of Mount Rushmore National Memorial. Robert Stanton, the *second* African-American to become a park superintendent, who then went on to lead the entire Park Service.

Once we started looking, stories like these jumped out at us—more stories than our film series could ultimately tell, but enough to prove without question that Americans from every background and every walk of life have been part of park history. The son of a sea captain and a mother from El Salvador, George Melendez Wright is one more thread—and a critically important one—in that diverse tapestry. His greatest contribution, of course, sprang from his devotion to science, but his fluency in Spanish was essential in 1929, when Totuya, the granddaughter of Chief Tenaya, returned to Yosemite Valley and an interpreter was needed to translate her vivid memories of what life had been like when the valley had been occupied only by the Ahwahneeches. And who better to represent the United States in discussions with Mexico about an international park straddling the Rio Grande at Big Bend than someone who was not only the head of the wildlife division but a Hispanic American who came to be called “Chapo” by his Mexican counterparts, because they liked him so much. It was

an endearing term for a small person, but as Pamela Wright Lloyd told us, “he was small, even by Hispanic standards, but he was a small person with a big heart, mind, and presence.”

**At critical moments, true visionaries have infused the park idea with new notions—often counter to prevailing attitudes—that pushed it forward to a better future.**

Near the end of the nineteenth century, the U.S. Census Bureau's official phrase for land that had been homesteaded, logged, or mined was “redeemed from wilderness by the hand of man”—a telling phrase, encapsulating the



Wright and his wife, Bernice (“Bee”), at Yosemite (undated).

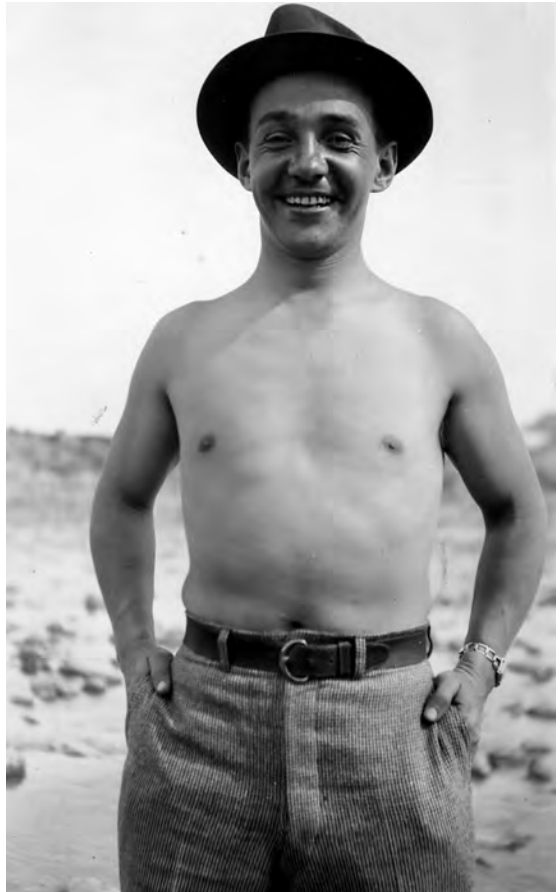
nation's attitude toward pristine nature in its headlong rush across the continent. At precisely the same time, in the midst of an era of greed and grab, John Muir stepped forward to argue just the opposite: wilderness is not redeemed by man; man is redeemed by wilderness. It took generations before Muir's vision was taken seriously, let alone embraced by large numbers of Americans.

Upon his first peek at the Grand Canyon in 1903, President Theodore Roosevelt advised the people of Arizona to "leave it as it is. You can not improve it. The ages have been at work on it, and man can only mar it." By this point, proposals to make the Grand Canyon a national park were already 20 years old and had been consistently defeated. Roosevelt's plans for a park fared no better, but in 1908, using the new tool of the Antiquities Act—and over the howlings of local politicians and Congress—he unilaterally set 800,000 acres aside as a National Monument, paving the way for the Grand Canyon to become a National Park ten years later. In that, and in so much else when it came to conservation, as former Interior Secretary Stewart Udall said in an interview, Roosevelt had "distance in his eyes." He could see things over the horizon that others could not.

Interestingly, among the collection of favorite quotations George Melendez Wright kept in a binder of handwritten pages was one from Roosevelt: "There is nothing more practical in the end than the preservation of beauty, than the preservation of anything that appeals to the higher emotions of mankind." (Also worth noting: Roosevelt spoke those words after camping for three nights in Yosemite with Muir.) Wright himself was no less a visionary.

However self-evident they may seem to us now, Wright's proposals for wildlife in the parks were nothing less than revolutionary for their time. During his survey, park managers were not only routinely killing predators of all kinds, rangers in Yellowstone were even

"Chapo" (or "Chapper," as Toll wrote it), Rio Grande, Texas, 22 February 1936. This is the last known photograph of Wright. The automobile accident that claimed his life, Toll's, and that of a teenage driver in another car occurred three days later in New Mexico. Photo by Roger Toll.





stomping pelican eggs to reduce the number of birds, which they considered competitors with fishermen; despite “paper” regulations against feeding bears, even park leaders such as Albright and Mather loved nothing better than to have their picture taken giving scraps to black bears, and grizzlies were a major attraction at park dumps; hay wagons routinely doled out winter forage to elk, deer, and bison. Wright sensed that “the very heart of the national park system” was imperiled by an attitude that narrowly defined the park ideal to preserving pretty views for tourists in automobiles. “Our national heritage is richer than just scenic features,” he prophesized. “The realization is coming that perhaps our greatest national heritage is nature itself, with all its complexity and its abundance of life, which, when combined with great scenic beauty as it is in the national parks, becomes of unlimited value.” Like Muir, like Roosevelt, he could peer into the future, then prod us forward by appealing to “the higher emotions of mankind.”

And at a moment in history when some of the park idea’s biggest supporters were opposing an expansion of the system, on the grounds that too many proposed additions were not up to “national park standards,” Wright saw the danger of doing nothing. Adding a “sub-standard area . . . would not be calamitous,” he warned. “The failure to save Mount Olympus’ forests, the Kings River Canyon . . . and a host of others just as valuable would be the real calamity. Shame upon any standard bearer so narrowly dogmatic as to stand in the way of the perpetuation of any one of these last precious bits of our primeval American heritage. The logical answer is more, not less, park area.” With distance in his eyes and urgency in his heart, he saw the rush of development that was about to consume the last half of the twentieth century and told us to save what you can, then protect what you save.

**WHILE HE EMBODIES SO MANY ELEMENTS** of the larger history of the national park idea, I must admit that what most attracted me to Wright was his humanity. That’s why I’m so happy he became one of the heroes of our documentary. I understood his contribution to history, but truth be told, like everyone else who met him in real life, I simply enjoyed getting to know him and being in his presence.

Look at the photographs of him engaged in conversation with Totuya, and you see a young man enthralled with learning something from another human being. Read any of his writings, and you enter a vibrant mind, pulsing with ideas. Examine other pictures—Wright with his fellow biologists in the field, Wright with his wife among the trumpeter swans, Wright with his family—and you recognize a man who embraced life and lived it fully; luckily so, since his was so brief. Even from a distance of more than 70 years, I felt myself pulled into the powerful gravitational field of his personality, which made me appreciate his visionary ideas all the more.

“Am I visionary or just crazy?” he wrote a colleague at the start of his wildlife survey, a seemingly uncharacteristic expression of self-doubt from someone who exuded such outward self-confidence. But that question humanizes him even more—a reminder that the people who make history are, like the rest of us, never sure how things will turn out. Such uncertainty is found in another of Wright’s favorite quotations in his notebooks. This one came from Supreme Court Justice Oliver Wendell Holmes, and I like to think Wright included it to provide himself with courage in moments when he needed it: “To think great thoughts





Wright in conversation with Totuya (later known as Maria Lebrado), a granddaughter of Chief Tenaya and possibly the last person to have known Yosemite Valley before European contact. Yosemite National Park, July 1929. Photo by Joseph S. Dixon.

you must be heroes as well as idealists. Only when you have worked alone—when you have felt around a black gulf of solitude more isolating than that which surrounds the dying man, and in hope and in despair have trusted to your own unshaken will—then only will you have achieved. Thus only can you gain the secret isolated joy of the thinker, who knows that, a hundred years after he is dead and forgotten, men who never heard of him will be moving to the measure of his thought.”

George Melendez Wright was a hero and an idealist. A hundred years after his death, the national parks will still be moving to the measure of his thought. But, if Ken Burns and I have anything to say about it, he will not be forgotten.

**Dayton Duncan** is an award-winning writer and documentary filmmaker who has been involved for many years with the work of his colleague Ken Burns. Among their collaborations, for which Duncan has variously served as consultant, writer, and producer, are *The Civil War*, *Baseball*, *Jazz*, and *Lewis & Clark: The Journey of the Corps of Discovery*. Their much-anticipated series *The National Parks: America's Best Idea* will air on PBS starting in September. You can learn more about the documentary at [www.pbs.org/nationalparks/](http://www.pbs.org/nationalparks/).

# TRADITIONAL CULTURAL PROPERTIES: PUTTING CONCEPT INTO PRACTICE

Charles W. Smythe and Frederick F. York, guest editors

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## The National Register Framework for Protecting Cultural Heritage Places

*Charles W. Smythe*

NEARLY 20 YEARS AGO, the National Park Service (NPS) published National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*, which spoke broadly to the area of cultural significance relating to all properties that may be found eligible for inclusion in the National Register of Historic Places, and explicitly defined a type of significance, *traditional cultural significance*, founded in the cultural traditions and ongoing practices of the community or group for which the property is important (Parker and King 1990). What distinguishes this type of significance is the historical and ongoing relationship between the property and the cultural practices, values, and beliefs of the people for whom the property has importance. In this collection of papers, we begin to take a look back at the concept of the traditional cultural property (TCP) and how it has worked as a means to identify and preserve properties of historical and cultural importance to communities in this country. Has the implementation of the guidelines been successful in identifying and protecting historic properties of traditional cultural importance? Have any elements worked better than others, or are there issues that need to be adjusted? Do we need to incorporate greater flexibility in the guidelines' application? Has the process been of value to local communities seeking to preserve their cultural resources? *The George Wright Forum* provides an opportunity to review the lessons learned from applying the guidelines and to present discussions about issues that have arisen for a wide audience. These essays are the first of what will hopefully be two sets of commentaries on and responses to the concept and process of finding properties eligible for inclusion in the National Register for their traditional cultural significance since the appearance of Bulletin 38.

### **NHPA: The legal framework for traditional cultural significance**

The National Historic Preservation Act of 1966 (NHPA), as amended, formulated the responsibilities of federal agencies to preserve and protect historic and cultural properties important to the American people through the vehicle of the National Register of Historic

Places. NHPA authorized the secretary of the interior to expand and maintain a National Register of Historic Places composed of historic properties significant in American history, architecture, archaeology, engineering and culture. The act defines the responsibilities of federal agencies to protect and preserve historic properties found eligible for or listed in the National Register. Sections 106 and 110 include specific provisions for the identification and evaluation of these properties for inclusion in the National Register.

Section 106 requires that for any federal undertaking (a project funded or licensed by a federal agency) the agency must consult with the public and consider the effects of the undertaking on historic properties prior to the start of the project. To begin with, the agency identifies, evaluates, and determines whether any properties involved meet National Register criteria. This process includes consulting with (as appropriate) the state historic preservation officer (SHPO), tribal historic preservation officer (THPO), local governments, Indian tribes, Native Hawaiians, and members of the public who may be knowledgeable about and associated with any properties. The agency must consult with parties that have an interest in the properties as part of the identification procedure, and seek the concurrence of the SHPO/THPO in the determination. If the agency official determines that any of the National Register criteria are met, and the SHPO/THPO agrees, the property shall be considered Register-eligible for Section 106 purposes. An agency's determination that a property meets eligibility criteria means that the agency must treat it as if it were already listed, even though the property has not been formally nominated to or included in the National Register. Further, if it is determined that such properties may be affected by the proposed undertaking, the agency must consider the effects of the undertaking on them, make a determination of effect, and consult about ways to "resolve" adverse effects with interested parties, including the SHPO/THPO. If adverse effects are expected, the process will involve the development of a memorandum of agreement in consultation with the SHPO/THPO, local governments, Indian tribes, Native Hawaiians, and members of the interested public, regarding the means that will be employed to consider and to resolve them. However, the agency is not required to mitigate adverse effects, and it may simply seek comments from the Advisory Council on Historic Preservation and proceed with the action.

Under Section 110, federal agencies are responsible for preserving and protecting historic properties owned or controlled by them by means of historic preservation programs. Each program shall include a process for the identification, evaluation, and nomination to the National Register of properties under the agency's jurisdiction, although proceeding with actual nominations is subject to each agency's priorities related to its mission and mandates. Further, Section 110 reinforces that the properties listed or eligible for the National Register are to be managed and maintained in a way that considers the preservation of their historical, architectural, archaeological, and cultural values in compliance with Section 106, including a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with SHPOs, local governments, Indian tribes, Native Hawaiian organizations and the interested public, regarding the means by which adverse effects on such properties will be considered.

Through amendments made to the NHPA in 1992, along with their implementing reg-

ulations, federal responsibilities for consultations with interested parties, and especially Indian tribes, during the Section 106 process were expanded. Detailed guidance developed by the Advisory Council on Historic Preservation has been another positive influence in this direction. The result has been a more focused effort by federal agencies to involve SHPOs and THPOs, local governments, Indian tribes, Native Hawaiian organizations, and interested members of the public in identifying historic properties of cultural significance and, if warranted, in considering effects that may result from a federal undertaking. While the process does not mean that potential adverse effects on a property will necessarily cause the agency to stop, relocate, or otherwise modify a project, it does ensure that such effects must be taken into consideration by the agency before the project is initiated. As Paul Lusignan discusses in his paper in this volume, an obligation to identify potentially affected properties as part of the 106 process has resulted in an increased level of identification and evaluation of TCPs in relation to specific development projects, which would not have occurred otherwise. The 106 process is not an alternative approach to the programmatic process carried out under Section 110, however, and whether a project-specific framework works better than a more comprehensive program to identify and evaluate TCPs within the agency's historic preservation program is a topic for more discussion. How many agencies have in place an effective, proactive program for identifying and evaluating historic properties (including TCPs) on lands within their jurisdiction, and for managing Register-eligible or listed properties for purposes of preservation and protection? Perhaps TCPs, which by definition are important to known communities and cultural groups, can provide a useful means for monitoring the efficacy of agency preservation programs on a local or regional level by involving the associated people in such assessments.

### **Traditional cultural properties**

In 1990, National Register Bulletin 38 presented guidelines for evaluating traditional cultural significance as a kind of cultural significance for which historic properties can be found eligible for inclusion in the National Register using established criteria (Parker and King 1990; revised in 1992 and 1998). These TCP guidelines were developed in response to narrow interpretations of the NHPA by federal and state agencies, which put a primary emphasis on the "built" environment and did not adequately meet the need for documenting and considering the cultural significance of places in planning documents and administrative manuals. The need to prepare the guidelines was first articulated in a 1983 Department of the Interior (DOI) report entitled *Cultural Conservation*, which in turn was developed in response to 1980 amendments to the NHPA directing the DOI to study and recommend ways to "preserve, conserve and encourage the continuation of the diverse traditional prehistoric, historic, ethnic and folk cultural traditions that underlie and are a living expression of our American heritage" (Parker and King 1990:2, also see King 2003:21–44). The guidelines did not focus on the preservation of intangible cultural customs and traditions themselves, but instead situated the process within the framework of the National Register as the preservation of tangible cultural properties that have historical and ongoing significance to living

communities, as evidenced in their traditional cultural practices, values, beliefs, and identity. In this way, a more inclusive and localized procedure to protect the diverse cultural resources of the country, extending beyond the nationally significant Euroamerican historic structures and landscapes that had been the focus of the National Register, was integrated into the process.

The guidelines describe a type of cultural significance for which properties may be eligible for inclusion in the National Register. A property with *traditional cultural significance* will be found eligible for the National Register because it is associated 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 continuity of the cultural identity of the community. This type of significance is grounded in the cultural patterns of thought and behavior of a living community, and refers specifically to the association between their cultural traditions and a historic property.

Bulletin 38 utilizes an abbreviated definition of culture as "the traditions, beliefs, practices, lifeways, arts, crafts and social institutions of any community." Although readers are cautioned that this is a "shorthand" definition, and are referred to a more in-depth definition provided in Appendix I, the bulletin unintentionally and through continued use gives the impression that culture can be equated to a list of traits (customs, practices, beliefs, etc.). Culture is more than this, however. As presented in Appendix I,

Culture [is] a system of behavior, values, ideologies, and social arrangements. These features, in addition to tools and expressive elements such as graphic arts, help human interpret their universe as well as deal with features of their environments, natural and social. Culture is learned, transmitted in a social context, and modifiable.

This more complex definition is important to understand and apply in relation to TCPs, since the people themselves, the community members, determine the cultural significance of the property in their own terms; they are the "definers" of significance. Furthermore, their expert knowledge about the site is the reason they are, by definition, consulting parties in relation to the identification and consideration of potential effects on the property. To identify whether a property may have traditional cultural significance, the agency will most likely need to conduct a detailed field study. A cultural anthropologist or other specialist with expertise in conducting ethnographic and ethnohistorical research, and preferably with knowledge of and experience with the cultural community or ethnic group for which the property is significant, would in most cases be the best qualified expert to carry out documentation research for TCPs.

Traditional cultural significance is simultaneously historical and contemporary, and continuing significance is critical, whether or not the place has gone unused for a period of time. Bulletin 38 provides additional guidance on the meaning of the term:

"Traditional" in this context refers to those beliefs, customs, and practices of a living community of people that have been passed down through the generations, usually orally or through

practice. The traditional cultural significance of a historic property, then, is significance derived from the role the property plays in the community's historically rooted beliefs, customs and practices.

The concept of tradition refers to aspects of culture—values, beliefs, customs, and practices—that have been passed down from previous generations, and thus are grounded in past (historical) patterns of thought and behavior of the community. These traditions are also evident in current behavior patterns of a living community—there is continuity between earlier and contemporary beliefs, customs, and practices of the living community. Anthropologists refer to this quality of cultural systems as “cultural continuity.” Tradition encompasses both the past and the present: cultural patterns of thought and behavior, inherited from earlier generations and transmitted largely informally (“orally and through practice”) to living generations, continue to shape the contemporary community's lifeways, values, and beliefs and to have importance in the ongoing cultural identity of the community.

Bulletin 38, the guidance for evaluating TCPs, frequently speaks of a “community” or “group” without providing a definition for these terms. It introduces the following examples as illustrative of the intended meaning: “an Indian Tribe,” “a local ethnic group,” “a living community,” “a Native American group,” “a rural community,” “an urban neighborhood,” “Native American religious practitioners,” “ethnic minority groups,” “a social group,” and even “the people of the nation as a whole.” With the exception of the last, these terms describe traditional communities and groups that may be characterized as cohesive sociocultural groups sharing cultural patterns of behavior, values and beliefs, and a unique sense of history and identity that distinguishes them from other communities and groups. The community or group will have maintained traditional cultural practices and beliefs through time, over multiple generations, and thus its membership will display historical continuity. This description of community as a traditional community seems particularly well-suited for some kinds of social groupings, including Indian tribes and ethnic neighborhood groups, while other people and groups may not be characterized in this way although they may feel important associations with certain cultural resources.

Another topic that has arisen is the nature of “boundary” around sacred spaces. In order to be identified and listed in the National Register, a property has to have a specified boundary. This has posed difficulties for Indian tribes, in particular, for which boundary lines around domains of thought and behavior, particularly with regard to spiritual matters (sacred sites), are not defined in Euroamerican terms. As Rosita Worl describes in her paper in this volume, it was curious to her how the notion of a fence (a tangible boundary) conveys a belief that spirits can be enclosed or confined to a certain area, the designation of which somehow provides protection from those who are doing things outside this boundary (and vice versa). In the case of Mount Graham (*Dzil nchaa si'an*) in Arizona, Western Apache elders accepted the U.S. Forest Service administrative boundary for the Pinaleno Mountains unit as the boundary of their sacred site, even though in actuality there is a larger area which they consider to be associated with the religious beliefs and practices. In this case, it is the entire mountain, not just isolated places on the mountain, that holds special significance to the tribes.



As groups such as Indian tribes seek the protections afforded through the National Register, the issue of making public what they regard as culturally privileged knowledge is a crucial one. Quite often the religious and spiritual practices of a tribe are maintained through the activities of specialists who hold, sustain, and preserve extensive and specialized information about the tribe's religious practices and beliefs. Documentation of such cultural domains requires the release of confidential and culturally sensitive information to outsiders, and also might mean that the information is subject to the Freedom of Information Act. While there are certain protections available to the National Register, this topic continues to be a concern to tribal groups.

Another fundamental question has to do with the actual benefits of including a site in the National Register—are the protections that result from being found eligible for, or listed in, the National Register actually beneficial to the group seeking to preserve their cultural properties, particularly when considered in relation to the issues discussed in the previous paragraph? Under Section 106, the benefits to a living community arise only when there is a proposed federal undertaking that may affect a property, and are associated with the privileges of consultation as a consulting party (as contrasted with the role that is available to members of the public). Consulting-party status means that the group has an enhanced opportunity to consult with the federal agency, and to be a party to an agreement regarding the resolution of adverse effects on the property. Since a federal agency is only required to take such concerns into consideration, this process may or may not ultimately result in adequate site protection, from the perspective of the community. Properties not on federal land or subject to a federal license will not be eligible for such consideration under the NHPA, so communities must weigh the actual benefits to cultural sites that may ensue through the National Register process. On the other hand, for a community that is associated with sites of traditional cultural importance that are under the jurisdiction of federal agencies, there could be substantive benefits.

### **Recent guidance**

In a case decided in 2007, the National Register provided a summary of the elements of a TCP that were taken into consideration during an evaluation of eligibility. The formal evaluation was made in response to a request from the Northeast Region of the National Park Service (NPS) to make a determination of whether a property met the National Register criteria for recognition as a TCP. The case generated a statement about what factors are taken into consideration by the National Register during a TCP evaluation. Although this is not formal guidance such as given in National Register technical bulletins, it is instructive since it is a recent statement about the elements that are evaluated in determining a property is a TCP. These characteristics of a TCP, derived from Bulletin 38, represent the decision-making process by which National Register conducts evaluations.

In the formal opinion, the National Register notes that Bulletin 38 provides flexible guidance for evaluation and documentation of TCPs, and that the issues are discussed more fully in that document. The opinion goes on to state that a TCP has the following characteristics:

- A living, traditional group or community;
- The group/community must have existed historically and the same group/community continues to the present;
- The group/community must share cultural practices, customs, or beliefs that are rooted in the group/community's history;
- These shared cultural practices, customs, or beliefs must continue to be held or practiced today;
- These shared cultural practices, customs, or beliefs must be important in maintaining the continuing cultural identity and values of the group/community;
- The group must transmit or pass down these shared cultural practices, customs, or beliefs through the generations, usually orally or through practice; and
- These shared cultural practices, customs, or beliefs must be associated with a tangible place, and the place must be directly associated with the identified cultural practices.

This discussion appears in a memorandum dated May 24, 2007, presenting the keeper of the National Register's conclusion regarding whether the Dune Shacks of the Peaked Hill Bars Historic District in Cape Cod National Seashore meets National Register criteria as a TCP (Figure 1).

**Figure 1** One of the cottages in the Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod, Massachusetts. Photo courtesy of the author.



This case, what I here refer to as the “dune shacks case,” was my first foray into the realm of TCPs. I was familiar with the concept but had never been intimately involved with documentation and evaluation efforts and the details of considering the factors that make sites of traditional cultural importance eligible for the National Register. Besides the standard criteria for National Register eligibility (see text box), there are certain additional hurdles that are encountered with TCPs. One of these is the nature of the boundary around such sites, and how to fit a culturally constituted sense of place into the box established by the National Register. Another critical element of TCPs is the nature of “the community” and how to draw a boundary, if you will, around the entity which ascribes traditional cultural significance to a place. The dune shacks case represents an atypical example, and merits a brief discussion to illustrate the complexities that may be encountered in TCP evaluations, particularly as more diverse kinds of communities become aware of and interested in the National Register process.

The nature of the associated community was the crucial issue in this case, which included long- and short-term users of small cottages, known locally as dune shacks, located on the sand dunes of Cape Cod National Seashore outside of Provincetown, Massachusetts. These shacks and the associated landscape were incorporated into Cape Cod National Seashore after it was established in 1961, and the occupants were given reservations of use for various terms (some lasted 40 years, while others were for the lifetime of the user). The case emerged after 2000 as increasing numbers of these reservations were expiring, and the occupants, in association with the town of Provincetown, wondered whether the shacks were TCPs and, if so, if this status would assist them to maintain their patterns of use beyond the expiration of their reservations. After consulting with a range of experts, including the SHPO, park management decided that an ethnographic study needed to be conducted to develop adequate information about traditional patterns of use and occupancy, so that consideration of the district’s traditional cultural significance could be accomplished prior to developing a management plan. The National Register had already determined the historical significance of the property in 1989, at which time the cottages and the surrounding landscape were determined Register-eligible as a historic district (the Dune Shacks of the Peaked Hill Bars Historic District). They were recognized for their significance in American art, association with the poet Harry Kemp, and design, which, in the opinion of the National Register, represents a historic cultural landscape used as a summer retreat for the Provincetown colony of artists, writers, poets, actors, and others, and for the shacks’ collective use by the artistic community during the early and mid-twentieth century (the “period of significance” ended with the establishment of the park).

In 2004, a consultant hired by the Northeast Region of the NPS conducted ethnographic research into the cultural traditions and patterns of the occupants of 19 shacks, 15 of which were occupied by “long-term dune dwellers” and four others by more transient, short-term users whose occupancy was made possible through lottery or juried selection procedures under historic property leases (see Wolfe 2005). After the study was completed, he and another consultant assessed the eligibility of the district as a TCP under the guidelines in Bulletin 38. The consultants reported that, in their opinion, the district was eligible as a TCP because there is a dune shack “society”—comprising a set of extended families, each linked

## Standard criteria for National Register eligibility

As with any historic property that is considered eligible for or listed in the National Register, TCPs must be classified as a historic property which possesses integrity and is historically or culturally significant according to at least one of four criteria of significance set forth in the National Register regulations (36 CFR Part 60). These requirements are summarized below.

**Property type** A TCP must be a tangible property—a district, site, building, structure or object—that is related to traditional cultural values, beliefs, and practices of the community. Bulletin 38 provides specific guidance on this issue: “[T]he beliefs or practices associated with a TCP are of central importance in defining its significance. However, it should be clearly recognized at the outset that the National Register does not include intangible resources themselves.” Furthermore, eligible TCPs do not have to show, or contain, physical attributes of human activity or construction such as buildings, structures or their remains. A culturally significant “natural” landscape or a “natural” object such as a rock outcrop may be eligible if it is associated with a significant tradition or use. However, in considering the eligibility of properties that contain no observable evidence of human activity, “the documentary or oral evidence for the association of the property with traditional events must be carefully weighed and assessed.”

**Integrity** Eligible properties must also have “integrity of location, design, setting, materials workmanship, feeling, and association” (36 CFR Part 60). For TCPs, the integrity of association with the community’s cultural practices and beliefs is a critical consideration. Does the property have an integral relationship to the traditional cultural practices or beliefs that give it its significance? Bulletin 38 provides a very useful example of this criterion in the form of baptism. Consider that two groups practice baptism in a body of water for the same purpose: to mark a person’s integration into the group. For one group, it is immersion in water that is the critical feature of this practice, while for the other it is immersion in a particular lake that is essential for its acceptance of a new member. “Clearly the lake is integral related to the second group’s practice, but not to that of the first.” Consideration of a TCP’s integrity involves developing an appropriate degree of culture-specific information (knowledge and understanding) about how the group that holds the beliefs and carries out the associated practices views the property.

**National Register criteria of significance** Aside from being classified as a historic property that has integrity, the TCP must also be historically and culturally significant according to at least one of four criteria of significance set forth in the National Register regulations (36 CFR Part 60). Significance is present in properties that:

1. Are associated with events that have made a significant contribution to the broad patterns of our history; or
2. Are associated with the lives of persons significant in our past; or
3. Embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
4. Have yielded, or may be likely to yield, information important in prehistory or history.

In considering which of these criteria may apply to a TCP, it is crucial to interpret them from the cultural perspective and point of view of the group to which the property may have traditional cultural significance. That is, the phrases “our history” and “our past” must be understood to refer to the group’s own view of themselves, their history, and their culture, which provides the context within which the traditional cultural significance will be evaluated. Bulletin 38 provides additional discussion of each of these criteria.

to a particular shack, along with their networks of friends (called “coteries”) who visited occasionally—that carries on cultural practices and customs associated with living in the historic district (Figure 2). Moreover, these traditions are embedded in a wider community. The consultants reported that three traditions associated with subgroups in the local communities of Provincetown, Truro, and Orleans find expression in the cultural patterns of various dune dwellers, and that therefore the community with traditional cultural practices associated with the district is the Provincetown–Lower Cape Community. One set of practices relates to traditional uses of the sand dunes associated with long-time residents with connections to “Old Provincetown,” another relates to uses of the dunes and the shacks by artists and writers associated with the Provincetown art colony, and the third is an association with a broad tradition of environmentalism and “living close to Nature” as represented in the dune dweller lifestyle (Wolfe 2005). According to the research, these different traditions are not associated uniformly with all the shacks (and shack occupants) in the district, but represent general associations with the district.

In the review by the NPS Northeast Region, and later by the keeper of the National Register, the issue of the community was problematic. The Northeast Region found that, due to patterns of dispersal during the off season when the majority of the long-term dune dwellers and their coteries left Cape Cod, it could not be claimed that they, the people who maintained the shack traditions, were a segment of the associated community and the historic context. It was also reasoned that the associated families and their individualized networks,

**Figure 2** Two families and three generations of seasonal dune residents at the Champlin dune shack, Cape Cod, 2004. Source: Wolfe 2005.





which customarily did not associate with each other, were more properly described as a collectivity of self-selected people sharing a similar lifestyle while in the district, rather than a community that maintains a group identity across generations through regular social interaction. The Northeast Region of the NPS, after consulting with the SHPO (who disagreed with this finding), submitted a request to the keeper of the National Register to consider whether the district had traditional cultural significance and qualified as a TCP according to Bulletin 38.

The keeper opened the review process to a 45-day public comment period, during which a substantial number of letters were received including material from a local non-profit organization that leases some of the shacks from the Cape Cod National Seashore. After considering this information, the keeper found that the district does not meet one of the most important characteristics of a TCP: that “the group/community must have existed historically and the same group/community continues to the present.” The keeper noted that groups which claim traditional associations with the district include long-term occupants of the shacks, transient visitors and tenants, residents of the Provincetown–Lower Cape Community, and likely other groups beyond the immediate locality. “The groups that are culturally identified with the District were historically (and continue to be) fluid, evolving, and different from one year to the next.” The determination acknowledged that the comments received during the public comment period called attention to a significant number of transient users that constitute an important component of shack culture. In the opinion of the National Register, the consultants’ studies, while encompassing all user groups, were focused primarily on the long-term shack residents and did not adequately take into account the other, more transient users of the shacks.

After the determination was made public, there was widespread and vocal protest from long term-residents and others, including the town of Provincetown, the SHPO, and even US Senator John Kerry. Tom King (see his paper in this volume) also objected strongly. This case highlights issues related to the definition of community for purposes of determining the eligibility of TCPs for inclusion in the National Register. In its discussion of community, Bulletin 38 describes a traditional community, that is, a living community that maintains traditional cultural practices, customs, beliefs, and patterns of thought that are important to its continuing cultural identity. It is ironic that an approach to preserving heritage that was developed to be more inclusive is now seen by some to be exclusionary and a problem perpetuated by heritage institutions and professionals. To the extent that TCPs have been listed or found eligible for inclusion, the process has succeeded in the preservation of heritage significant to local communities, and contributed to greater diversity and inclusiveness within the National Register. If we look closely at Bulletin 38, an expansion of National Register criteria with regard to the nature of tradition, community, and identity would be needed for consideration of places significant to self-selected groups such as seasonal residents of Stiltsville and the Dune Shacks of the Peaked Hill Bars Historic District, or to other kinds of groupings of people who identify themselves with certain practices, such as living historians and re-enactors, that feel a strong relationship to places important to them (for a description of living historians at a national historic site, see Stanton 2007). If the definition of a community was such that any group that identifies itself as a community would be so defined for



National Register purposes, that would bring a different concept of community to the National Register. Indeed, for the long-term dune shack occupants, the potential for new and interested individuals from outside their community to become accepted members of the community was itself seen as a tradition. What may be needed is another framework, outside of NHPA, for encouraging expressions of localized, community-based heritage and heritage-making, based on increased ethnographic knowledge of the community's "personal inheritances" (for example, see Chambers 2006). This approach would acknowledge that there are important expressions of self- and group-identity that do not rise to the level of national significance appropriate for inclusion in the National Register.

Returning for a moment to the consideration of National Register eligibility of the dune shacks district as a TCP, the Cape Cod case held the potential for exploring a Section 106 issue specific to TCPs relating to potential adverse effects to the property resulting from a reduction of access. The park would presumably manage the district as a historic property to preserve its significance, and would be interested in making the shacks available to the public under federal provisions for leasing historic properties to accomplish these objectives. Indeed, several of the shacks are already made available to the public through this mechanism. As historic properties, individual users, in this case the long-term occupants, do not have private property claims to the shacks and would only be able to acquire leases through a competitive public process. If the district had been found to be eligible for the National Register as a TCP, and historic property leasing is a component of a proposed management plan, an unanswered question is whether it would constitute an adverse effect on the property if the long-term occupants—the people most directly maintaining the traditional cultural practices associated with the shacks—no longer had access in the manner they had in the past. In this instance, it might be argued that the proposed management plan reduces an aspect of the integrity of association, which is an important criterion in the property's traditional cultural significance (see text box).

The definition of a living community will continue to be an issue with applying the guidelines in Bulletin 38. The concept of a traditional community, a component of which is having continuity of membership over time, may come into conflict with the manner in which certain contemporary communities define themselves, particularly as they may be more fluid in recruitment and membership, in who identifies themselves with the community. Such considerations are a critical element in the evaluations of traditional cultural significance as presently structured under the National Register. This is one of several topics that emerge in a retrospective consideration of the guidelines for documenting and evaluating TCPs over the past 19 years. It is hoped that these essays will contribute to a broad dialogue about the strengths and weaknesses of the guidelines and of their continuing value to the National Register process, as well as about more fundamental questions such as the extent to which traditional cultural practices in America have been protected and preserved through their connection to tangible properties under the rubric of the National Register.

### **A note on the articles in this volume**

We are fortunate to have a lead-off essay by Tom King, co-author of Bulletin 38 and veteran

of many TCP documentation efforts. He has written extensively on many aspects of the NHPA, including Section 106, Section 110, and TCPs, and other cultural resource laws and management regimes. In 1994, he proposed that the entire Klamath River drainage should be Register-eligible as a TCP, which he termed a “cultural riverscape.” King’s description of the deep feelings of significance that people have for their places cannot be overstated.

Paul Lusignan, historian, is the technical expert most directly involved with TCP evaluations at the National Register of Historic Places. He provides a national perspective on recent trends in TCP evaluations, including both Register listings and determinations of eligibility, and speaks to areas of the country where TCP identification and documentation has progressed the most. Lusignan discusses efforts of Indian tribes to identify and document TCPs in their own programs, which is welcome, and in a subsequent set of essays I hope to have more discussion of this topic.

Sherry Hutt brings her extensive knowledge and experience with legal analysis of cultural resource and property laws to this issue with her discussion of the federal laws, policies, and court cases relating to TCPs and Indian sacred sites. She clarifies what preservation means for TCPs and what is protected under the NHPA in relation to private property interests, cultural practices, and access. The tortured history of Indian sacred sites protection and the fallibility of the same in the courts receive a detailed and informed exegesis.

The final two papers document the experiences of two professionals with one TCP documentation and evaluation effort, that of Indian Point/Auke Cape in Juneau, Alaska. Rosita Worl describes her active involvement in the protection of this site which, for her, started in the 1960s. She begins her story with a description in memory of her Tlingit mother, who not only was foundational to Worl’s activism but is associated with the site because, after her death, Worl went there to burn some of her effects (the spiritual essence of which is believed to transfer to the spirit of the deceased). I asked Worl to write this essay as a personal reflection, in an Indian voice, and expressing the local perspective for which the property has extremely high significance.

Tom Thornton, formerly of the University of Alaska–Juneau and now at Portland State University, writes about this case from the perspective of a heritage professional who conducted the site documentation and evaluation on behalf of the federal agency. This case is an example of the trend identified by Lusignan that more TCPs are identified through the NHPA Section 106 process than are brought as nominations to the National Register. This case stands out because it was held up for many years by the Alaska State Historic Preservation Office, and it was only as of March 3, 2009, that we learned the state has approved the nomination to be sent to the National Register for consideration, although it is not yet known when this will occur.

## **Acknowledgments**

I would like to thank Doug Deur, Elizabeth Igleheart, Tom King, Paul Weinbaum, and Fred York for their review and constructive comments on this essay.

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# Rethinking Traditional Cultural Properties?

*Thomas F. King*

Those who treasure a building for its pleasing appearance or local sentiment do not find it less important because it lacks “proper” historic credentials.

*US Conference of Mayors, With Heritage So Rich*<sup>1</sup>

ALMOST EVERY TIME A HISTORIC PRESERVATION PRACTITIONER TALKS WITH ME about traditional cultural properties (TCPs), one of the questions asked is: “Is it time to rethink the concept?” I take this to mean the “concept” of TCPs as eligible for the National Register of Historic Places.

My answer is a simple one: *No*, it is not time to rethink the concept of TCPs, but *yes*, it is time to rethink the concept of the National Register.

Maybe that’s only a superficially simple answer, so I’ll elaborate.

## The term

Pat Parker and I coined the term “traditional cultural property” in the National Register Bulletin 38, published in 1990. We used it as a label for places that living groups of people value as reflecting their—the people’s—traditional identities. These places—and hence the people—were getting short shrift in federal agency planning and environmental impact assessment because they weren’t routinely recognized as eligible for the Register, and therefore were not being considered under Section 106 of the National Historic Preservation Act (NHPA). They were not being regarded as eligible because the National Park Service (NPS), in one of its periodic political panic attacks, had elected to justify its eligibility decisions to critics in Congress and the White House on the basis of “professionalism.” NPS assured its critics that its decisions were made by highly qualified professionals on its own staff and in the state historic preservation offices, based on well-developed professional standards. The effect of this excuse was to hold Register eligibility hostage to evaluation by architectural historians, historians, archaeologists, and a few others holding semi-advanced academic degrees. If a place wasn’t something a “professional” could appreciate, it wasn’t eligible.

Matters came to a head with two Section 106 cases: one involving the San Francisco Peaks in Arizona<sup>2</sup> (Figure 1); the other, Poletown in Detroit, Michigan.<sup>3</sup> In both cases properties of deep traditional significance to living communities—Navajo and Hopi people in one case, Polish-Americans in the other—were treated as not eligible for the Register because they were not places that preservation professionals appreciated. Poletown was demolished as a result, and the San Francisco Peaks were injured by a ski facility.



**Figure 1** San Francisco Peaks, Arizona. Photo courtesy of Tom Bean, Tom Bean Photography.

I've detailed elsewhere how our concern about these cases led to publication of National Register Bulletin 38.<sup>4</sup> What's important here is that we had a simple purpose in writing the thing: to get the federal government to attend as carefully to the cultural values of ordinary people as it did to the interests of historians, architects, and archaeologists.

This was not a new idea. As the quote that begins this piece suggests, the interests of ordinary citizens in their history and culture were very much on the minds of those who thought up the National Historic Preservation Act in the middle of the last century. And it must be assumed that such interests motivated Congress, too. Old buildings and archaeological sites do not vote, and the percentage of the electorate represented by historians, architects, and archaeologists is hardly sufficient to justify legislation as sweeping as NHPA. But addressing the cultural interests of mere citizens has generated a good deal of fretfulness on the part of preservation practitioners. Such interests are not always easily expressed in terms to which archaeologists and architectural historians naturally relate. Cultural significance is not easily measured, or even observed; it exists in people's heads, and learning about it usually requires talking with them, sometimes in ways with which outsiders are not entirely conversant or comfortable. Indeed it may not even be possible to talk about such significance; it may simply have to be felt by those who are able, and taken on faith by everyone else.

So, does this continuing discomfort on the part of mainstream preservation people mean we need to "rethink the concept?" To rephrase the flip distinction with which I began this piece, I'd say the answer to that question depends on what "concept" we're talking about.

## The concept of TCPs

Traditional cultural properties are deeply significant to those who view them as parts of their cultural heritage. That's a statement of self-evident fact, which we are in no position to rethink. This sort of significance—commonly referred to as the “power of place”—has been recognized for thousands of years, by philosophers from at least Plato onward, and in cultures all over the world.<sup>5</sup> The significance of such places continues to drive social and political change. Consider the case of Dongzhou.

In December 2005, the people of Dongzhou village in China's Guangdong Province demonstrated—or rioted, depending on which reports you read—in protest over government seizure of a nearby inlet, which it filled to create land for power plant construction. The Chinese government handled the matter in what one can hope is its own inimitable fashion, arresting and jailing the villagers, gunning down at least a few and possibly scores.

Why did the people of Dongzhou risk arrest, injury, and even death to protest what the government was doing? Partly because the inlet had been an important fishing area, but as reported in the *Washington Post* on December 21, 2005,

For the villagers of Dongzhou, the inlet was not only a source of fish. It was a source of good fortune. They said legendary creatures rose from its waters in ancient times. In more recent times, villagers said—during the Japanese occupation in World War II and the chaos during the Cultural Revolution—algae at the bottom saved the village from starvation. Filling it in, they complained, ruined Dongzhou's feng shui, the harmony of its environment.<sup>6</sup>

Government may ignore and undervalue such places, as the Chinese government apparently did at Dongzhou, and often police power will permit a government to get away with it. But over the long haul, I think, government does this at its peril. And whether it gets away with it or not, government's decision to run roughshod over a TCP and the people who value it does not change the fact that the place is, or was, deeply significant to people. If anything, such treatment may amplify the perceived significance of the place. Consider Jerusalem's Western (“Wailing”) Wall.

What this all means is that there is nothing for us to rethink about the significance of TCPs themselves; such places simply are significant, period. They are significant regardless of what government or technical experts say and do about them. They are significant because people regard them as such.

## The concept of TCPs as Register-eligible

We could, however—that is, NPS could—rethink the eligibility of TCPs for the National Register. It could go back to the premise that a place cannot be eligible unless a professional can appreciate it. Short of such cocoon construction—requiring an explicit admission that Parker and I led the Register down the garden path—the Register could so minutely nit-pick TCP eligibility determinations as to accomplish the same thing without ever quite saying so. This, in fact, is what seems currently to be going on, as evidenced by the keeper of the Reg-



ister's decisions in such cases as the Kiks.ádi Survival March route<sup>7</sup> in the 1990s and the Cape Cod Dune Shacks<sup>8</sup> in 2007 (Figures 2 and 3). In the former case, the keeper opined that the area could not be eligible unless it was continuously used—a standard that could be met only if the Russians were induced from time to time to bombard the Tlingit village whose ancestors had fled along the route. In the Cape Cod case, the keeper invented a standard under which she was able to deny the very culture of the associated community, based on its members' inconsiderate mortality and recruitment practices.

If NPS wishes to do this sort of re-“thinking,” it is certainly free to do so; far be it from mere citizens to seek influence in the decisions of federal officials. But I suggest that it would be a bad tactic in terms of the Register's long-term bureaucratic survival—which the Register has repeatedly shown to be its prime consideration. It is simply not rational to think that Congress created the national historic preservation program for the enjoyment of archaeologists, historians, and architects. The program must have public service at its core, and if that's the case, then failing to value the beliefs of the public has to be a risky strategy.

### **The concept of the Register**

I said at the beginning of this paper that while the “TCP concept” does not need rethinking, the National Register concept certainly does. In such reconsideration may lie the

**Figure 2** One of the dune shacks located outside of Provincetown, Massachusetts, within Cape Cod National Seashore. Photo courtesy of Chuck Smythe.





**Figure 3** The Tasha Shack, in the Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod, Massachusetts. Photo courtesy of Chuck Smythe.

means of simplifying and improving the way TCPs are identified and evaluated.

Why do we have a National Register? Historically, of course, we have one because when it enacted the NHPA in 1966 Congress directed NPS to “expand and maintain” one. But why did Congress think this was a good idea? What is the Register supposed to be for?

Historically again, the first “national register” we know of, in which all others find their intellectual roots, was set up by the French in the wake of their revolution.<sup>9</sup> The mob was clamoring to demolish the deposed aristocracy’s architectural monuments, but the revolution’s guiding lights thought this a little much. The guillotine, *oui*; knock down Versailles, *non*. So the original purpose of registration was to list structures that those in authority thought should be preserved in something like perpetuity.

Most nations’ national registers or register-equivalents (schedules, lists, etc.) either explicitly or implicitly have preservation in perpetuity as at least one *raison d’être*. But obviously not all historic properties can be preserved in perpetuity, and sometimes there is little reason to do so. An obsolete missile launch site rusting away on the coast of Florida may be beyond preservation and have no public use worth spending money on, but still be very significant in the history of space exploration or military technology. We characteristically document such properties and let them go. Sometimes strict preservation is not even desirable from the standpoint of the historic property—think of adaptive use that requires substantial

rehabilitation of a building or structure. So another purpose of a register may be simply to identify properties that shouldn't be blown away willy-nilly—that ought to be flagged for consideration in planning.

These purposes are not very compatible with one another; they generate contradictory expectations.

A list of places to be protected in perpetuity must be a relatively short list; otherwise our land use would become fossilized. Properties listed for permanent preservation must be documented in some detail, both to justify their preservation and to define where they start and stop: the boundaries beyond which changes *can* occur and within which they *cannot*. Listing a property for this purpose has substantial implications for the place's owner; it likely restricts severely what the owner can do with the place. For some owners (and others) this is a desirable state; for others it very definitely is not, so listing is often a contentious affair. To balance the economic and other impacts of listing, governments and non-governmental organizations often treat listing as an honorific practice, carrying with it impressive documents and brass plaques. Sometimes there are financial rewards for listing, in the form of government grants and tax benefits.

A list of places to be considered in planning can be—indeed must be—a less formal, more flexible affair. We may or may not wind up protecting such places in something like perpetuity; we may also protect them in part, or for a limited time, change them in various ways, or document them and let them go. The amount and kind of information we need on a place that is to be considered in planning depends on the kind of planning we're doing. At some stages of planning it's enough just to know that there may be something out there in the area to which our planning applies. At others, more data, or specific kinds of data, may be needed, and since planning *is* a process, we can get the data as we go along and adjust plans to accommodate them. Because we are not necessarily going to preserve the place, there are fewer implications for its owner, either positive or negative. The act of listing (or its equivalent) is a less political act than it is when permanent preservation is envisioned, and can be based on a wider range of considerations.

Some countries have multiple registers or their equivalents, serving different purposes. The United Kingdom, for example, has “Scheduled Monuments” that are preserved in perpetuity, and “Listed Buildings” for which changes are strictly controlled. A larger population of archaeological sites and landscape features that should be respected but not necessarily preserved at the expense of other interests are dealt with more flexibly under national and local planning laws without entry into a formal, permanent list (except insofar as is necessary for a given set of planning or research purposes).

In the US, we try to use the National Register for both permanent preservation and flexible planning purposes. This creates confusion and conflict. Are we honoring a place by listing it, or merely alerting planners to its existence? Are we qualifying it for grants and tax benefits, or not? What implications does listing have for the property's owner? With a single, all-purpose register, it's impossible to tell.

Our National Register also tries to embrace a wide range of property types, valued by different constituencies for different reasons. Architectural historians, archaeologists, community interests, and Indian tribes may assign drastically varying kinds of significance to

places of very different types—or, for that matter, to the same types and same places.

And the National Register purports to include properties of “national, state, and local levels of significance” —which, when you think about it, is a rather odd thing for a “national” register to do. In theory this inclusiveness reflects the federal government’s thoughtful respect for places reflecting the nation’s diversity, its many local social groups and their diverse interests. But if that theory is correct, why does the Register have a *federal* official—the keeper—whose decision about Register eligibility is (supposedly) final? What earthly right has the keeper to decide what’s important to, say, a Lithuanian-American community in southeastern Nevada?

The Register’s own history further complicates its character. The NHPA’s foundational literature—notably *With Heritage So Rich*<sup>10</sup>—is redolent with statements suggesting broad concern for places important to ordinary people in ordinary urban and rural communities. But the Register ended up being lodged in the National Park Service under the direction of architectural historians—the legendary hero twins Ernest Connally and William Murtagh. I mean no disrespect to Bill Murtagh or to Connally’s memory when I say that their notions of significance were colored by their academic training; this is simply a fact. It is also a fact that NPS has among its core missions the commemoration and illustration of the nation’s past; it is *not* charged with sustaining local community identity. The Register was the creation of architectural historians and historians, with occasional input from archaeologists, in a corporate culture devoted to telling and celebrating our national story. There’s nothing wrong with any of this, but it has created an institution with an attitude. The Register is biased toward places where events took place that a historian or archaeologist can recount and interpret, or that represent architectural styles and methods of building. A place that is simply a place, valued just because people identify with it, does not find a comfortable home in the Register.

All this—and many disappointing experiences with the Register over the decades—leaves me wondering whether we actually need a National Register, or at least a National Register like the one we have.

- If we continue to give federal grants and tax benefits to people who own, maintain, and rehabilitate historic buildings, we presumably need some kind of list of buildings that qualify, but wouldn’t state, tribal, and local lists work just as well for this purpose?
- Agencies that manage land doubtless need lists of important places under their jurisdiction and control, but the National Register has never served the purposes of such agencies very well, and most now have effective geographic information systems that can maintain place-data much more efficiently and flexibly than the Register can.
- Researchers in archaeology, architectural history, and some other academic fields construct and use lists of places in their work, but most such research takes place in a local or regional context, not a national one. The Register likes to think it’s a research tool, but this is, I think, little more than pretension.
- The Register also likes to call itself an educational tool, but is it really sufficiently more useful for this purpose than local and state lists to make it worth the cost of maintaining it?

- And when it comes to the Register's role in Section 106 review, does it really make sense to have the National Park Service decide what ought to be considered by federal agencies in their planning? Wouldn't it be more just, more democratic, for agencies to consider whatever affected people think ought to be considered? Among "affected people," of course, are preservation agencies like NPS and professional interest groups like archaeologists and architectural historians, but also ordinary citizens who connect with places for their own idiosyncratic reasons—that is, people who value the kinds of places that Pat Parker and I called traditional cultural properties. These people quite resoundingly do not need NPS to tell them whether their special places are "really" special.

We wrote National Register Bulletin 38 to level the playing field of Section 106 review—to give ordinary citizens and communities access to the same protective tools enjoyed by architectural historians, archaeologists, and other preservation professionals. What we failed to consider was how deeply compromised the Register was by its penchant for "professionalism" and its own institutional history. By exposing TCPs to the Register's technical standards and biases, we opened the door to outrageous abuses and ridiculous waste. Abuses like failing to trust communities to decide what's important to them, insisting on "professional" evaluations instead. Wasteful practices like demanding boundary definition even where boundaries are irrelevant to management and inconsistent with the way local people conceptualize their world. Abuses like denying the very existence of a self-defined community, as happened on Cape Cod, or like dreaming up fictive criteria in order to denigrate the significance of places like the Kiks.ádi survival march route.

To those whose identities are wrapped up in them, traditional cultural properties are the most significant of properties. Such people need neither professional consultants nor the keeper to certify the significance of their TCPs. The things that trouble the identification and management of TCPs—and many other kinds of historic places—all too often are the products only of the Register's arbitrary standards and unconsidered assumptions. The solution to these problems is not to rethink TCPs, but to rethink the Register.

## Endnotes

1. US Conference of Mayors 1966, 207.
2. See [www.sacredland.org/angered\\_sites\\_pages/sfpeaks.html](http://www.sacredland.org/angered_sites_pages/sfpeaks.html).
3. A good recent discussion of the Poletown case, though without reference to its alleged ineligibility for the National Register, is by George Cosetti at [www.counterpunch.org/corsetti09182004.html](http://www.counterpunch.org/corsetti09182004.html).
4. King 2003, 24–35.
5. See King 2003, 45–98.
6. *Washington Post*, December 21, 2005.
7. See King 2003, 164–166.
8. King 2008.
9. Herman 2004.
10. US Conference of Mayors 1966.

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# Traditional Cultural Places and the National Register

*Paul R. Lusignan*

FROM ANCIENT PREHISTORIC ROCK ART SITES in Texas to an Abenaki Indian craft shop in rural New Hampshire, the National Register of Historic Places has consistently sought to recognize the diversity of our shared American legacy. As the study of historic properties associated with the traditional cultural practices and beliefs of living communities continues to gain prominence in the field of historic preservation, the National Park Service has sought to provide continuing guidance on how to address specific issues related to the identification, documentation, and preservation of these unique sites. As the former keeper of the National Register, Carol Shull, noted in 1993, “Americans are woefully uninformed about the history and the contributions of many cultural groups in the United States. Often they do not even know that contemporary traditional cultures exist. Without this knowledge we cannot expect people to respect, honor, and assist in preserving the traditions and places that reflect the proud achievements and cultural heritage of all of us.”<sup>1</sup>

While the official designation of places associated with traditional cultural practices has been a part of the National Register of Historic Places program since its inception in 1966, with listings for such recognizable Native American cultural sites as Bear Butte in Meade County, South Dakota (NR 1973), and Medicine Bluffs in Comanche County, Oklahoma (NR 1974), few preservationists were totally comfortable with exactly how to deal with such resources. With the release of National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*<sup>2</sup> in 1990, the National Park Service sought to both broaden the scope of properties that could be considered eligible for listing in the National Register of Historic Places and provide more direct guidance regarding the types of questions that might need to be addressed when working with such sites. Bulletin 38 also provided a common vocabulary for the concepts associated with recognizing these properties. It was in Bulletin 38 that the term “traditional cultural property” (TCP) was first formally established.<sup>3</sup>

From the start, the idea of TCPs was not seen as a separate criterion apart from the definitions provided in the National Register program’s original guiding regulations. It was intended simply to open up the range of property types that could be considered, affirming the potential eligibility of places that might have been previously overlooked by preservationists and/or the government in spite of their significance to contemporary peoples. Properties such as Native American spiritual places, culturally valued landscapes, and traditional neighborhoods were often given short shrift because of their perceived incompatibility with established methodologies for identifying, surveying, and nominating more common “historic” properties such as houses, bridges, dams, and archaeological sites. It was never intended that the National Register change into a vehicle for recognizing cultural values that were purely intangible, but rather to provide mechanisms for identifying and documenting those physical places that might be associated with less tangible aspects of cultural identity. In some

cases these sites might be entirely natural, while others might reveal varying degrees of human “workmanship.” Such efforts seek to demystify the concept of recognizing places whose value might lie equally in the past and the present.

### **National Register listing or determinations of eligibility**

The concept of TCPs as a viable property type worthy of listing in the National Register of Historic Places has actually had little appreciable impact to date on the official rolls of the National Register. For a host of reasons, less than a handful of TCPs have actually come before the keeper of the National Register for formal consideration and listing. Chief among the reasons for this relative dearth of listings has been the reluctance of many traditional communities, particularly Native American groups, to release information pertaining to specific traditional places or practices for fear of damage to or inappropriate use of these special sites. The “publicity” generated by listing is often seen as more of a hindrance to the preservation of important cultural practices than an opportunity to share cultural insights with a broader public.

In some cases the release of information regarding places of traditional cultural activity is restricted by the cultural practices themselves. Information on specific locations or cultural practices may represent esoteric information not readily divulged to anyone inside or outside of the particular traditional community. To the traditional community, release of such information could be more destructive than any planned activities associated with the location. In other cases, the fear is that public identification of sites where traditional activities take place might lead to unwanted visitation or use by outsiders. In much the same way that some in the archaeological community (and property managers) fear that the identification of the location of archaeological sites can lead to increased vandalism, members of traditional communities often see unwarranted exposure of the sites associated with their activities as equally harmful. The result has been a general reluctance to nominate these places for listing in the National Register.

Despite the provisions of Section 304 of the National Historic Preservation Act (NHPA), which allows the restriction of certain sensitive information from public release, the trade offs between increased public awareness of unique aspects of our heritage and the potential damages such broader awareness may engender are not worth the effort. This is often most acute in the case of isolated TCPs located in largely unprotected natural areas. In situations where land managers have been available to work directly with traditional communities in providing arrangements and strategies for the protection of specific TCP sites under their control, National Register listing has been seen as more benign, or even beneficial. The 1994 listing of the *Pitoh Mo’o* and *‘Oks Daha* site in Pima County, Arizona, involved the National Park Service—administrators of the surrounding Organ Pipe Cactus National Monument—working directly with the Tohono O’odham nation to document the importance of the cultural features associated with this traditional cultural place, and to develop a management plan that not only provided protection of the fragile natural resources in the area but assured continued traditional access. In other cases, where the TCP is an already recognized “public” site, National Register listing has been seen by the traditional community as a potentially positive educational and preservation tool. Examples include the recently designated White Eagle Park in Kay County, Oklahoma (NR 2007), and the Black Hawk Powwow Grounds in Jackson County, Wisconsin (NR 2007). Both sites have served, and

continue to serve, not only as important social event centers, but each represents a traditional ceremonial site of critical importance to continued tribal identity. In the case of the Ponca nation in Oklahoma, the White Eagle Park site incorporates not only dance ring and pow-wow grounds, but it is the location associated with the earliest resettlement and encampment of tribal members in their new Oklahoma home after forced relocation by the government in the nineteenth century. As such it remains a vital link to maintaining the group's sense of identity.

There is also the perception that the National Register program's current requirements for full narrative descriptions, contextual discussions, photographs, maps, and physical boundaries are too onerous and present too many potential hurdles for attaining what is little more than honorary recognition for these sites. There is no arguing the sometimes bureaucratic nature of the current National Register program, but experience has shown that perceptions may paint too difficult a picture regarding the nomination process. With additional approved listings and the promotion by the National Park Service of success stories related to the efforts undertaken to attain these listings, the value of National Register documentation efforts for TCPs may increase.

Where the concept of a TCP has seen its most practical application is under the provision of Section 106 of the NHPA, where federal agencies must take into consideration the impact of their policies and actions on historic properties listed in or *eligible for listing* in the National Register. Without the perceived "publicity" accompanying National Register listing, Section 106 determinations of eligibility for TCPs have radically altered environmental planning and protection activities across the country. From Georgia to Alaska, TCPs have been evaluated for their eligibility for the National Register and thus have played a substantial role in natural and cultural resources management efforts.

The keeper's office regularly reviews such determination of eligibility requests as part of the National Register's regulatory responsibilities. Under current practices, however, the keeper is involved in only a very small number of these cases each year, most often when disagreements arise between federal agencies and the state historic preservation offices or other consulting parties as to the eligibility of a particular TCP. The great majority of decisions made regarding the eligibility of TCPs are made outside the keeper's purview. While this system clearly represents an efficient method for completing the thousands of Section 106 compliance reviews initiated each year, it does at times lead to the development of inconsistent interpretations of the National Park Service guidance, creating difficulties for managing agencies, consultants, project reviewers, and the traditional communities themselves. Calls for the periodic issuance of new or revised guidance remain a constant topic of debate.

A third category of designation for TCPs that has grown to significant proportions is that of inclusion in tribal historic registers. With the passage of the 1992 amendments to the NHPA, the development of tribal historic preservation offices was given tremendous impetus. These offices—some carrying on the work of longstanding tribal programs while others were newly formed under the provisions of the NHPA—began assuming direct responsibility for the identification and documentation of cultural sites, including TCPs, on reservation lands and in ancestral territories. The ability of tribes to work within the confines of their own cultural sensitivities, and to better protect the release of information under their own terms, has given rise to substantial research and documentation efforts aimed at increasing the roles of tribally maintained historic registers. Maintenance of these registers also provides many tribes and tribal preservation offices with enhanced roles in the consultation process

with regard to land management issues and Section 106 reviews. One small glimpse into the level of interest in such efforts can be seen in the number of grant applications for TCP surveys received by the National Park Service from tribes in recent years, both on and off reservation lands.

### **East versus West**

The identification and documentation of TCPs to date has been focused almost exclusively on areas west of the Mississippi River. Owing in no small part to the vast areas of federally controlled land in the West subject to Section 106 consideration, the TCP listings and determinations of eligibility seen by the keeper's office have largely represented sites associated with western states. As a consequence, western state historic preservation officers (SHPOs), cultural resource management (CRM) specialists, federal land managers, and tribes have developed an increasingly stronger understanding of TCP identification and documentation strategies.

In just the past 18 years since the introduction of Bulletin 38, consideration of TCPs as a legitimate resource type has progressed greatly. Whereas many federal agencies, including the National Park Service, were often reluctant to embrace or were confused by the entire concept of TCPs at the beginning, much progress has been made and most (if not all) parties now share an increasing familiarity with the concepts and approaches necessary to deal with TCPs as a property type. Arguments still arise as consideration of new and different cultural resource types are contemplated, but increasingly standard methodologies are being developed.

Chief among these is an understanding of what constitutes adequate research or consultation to identify these properties. The era when TCP consultation relied on a single letter sent by a federal agency to a tribe asking that tribe to write down any and all sacred sites of interest to them within a proposed project area for public scrutiny has for the most part disappeared. The revisions to the NHPA, along with the Advisory Council on Historic Preservation's regulations and its development of consultation guidance, have further encouraged the development of working dialogues between traditional communities and federal agencies and CRM professionals in the identification of TCPs and other sites of interest to traditional groups. In the best of all worlds, TCP identification is no longer an afterthought conducted once the building and archaeological surveys are completed, but an ongoing aspect of a comprehensive identification and evaluation process.

Another aspect of the TCP identification and documentation work that has undergone an evolution is the broadening of the professional fields now brought into these efforts. Whereas architectural historians and archaeologists may have once dominated most CRM field work, even when it focused predominantly on the identification and evaluation of potential TCPs, a better understanding of the unique character of these sites has now led to the involvement of a much broader group of professionals, including ethnographers, cultural anthropologists, ethnohistorians, folklorists, and oral historians, as well as the members of the traditional communities themselves. Survey studies that once reported negative findings for TCPs simply based upon lack of concrete archaeological evidence are no longer considered sufficient without adequate reference to ethnographic research, oral history studies, or direct consultation with potential traditionally associated groups. The vital role of oral his-

tory, listening and gathering information from the traditional community—those best situated to know about the particular values and practices that may be associated with a particular place—has taken it rightful, central place in most good efforts.

TCP studies remain a balancing act, trying to knit together all of the potential lines of evidence to convey a single story regarding the potential significance of a particular location or site. The best efforts bring as many of these multidisciplinary lines together as possible to convey the historic and contemporary story of a place.

The emphasis on western TCP documentation efforts is not meant to say that eastern regions have no interest in TCP identification, but federal agencies, SHPOs, and tribes operating in those areas seem less disposed to the identification of properties that fit into the TCP mold, at least so far. While most agencies and SHPOs have developed guidelines for cultural resource surveys in their areas, fewer eastern states have formulated specific guidelines directed at TCP consultation or identification efforts as part of those broader strategies. The 1999 determination of eligibility for the Ocmulgee Old Fields in Georgia was the first TCP designation made east of the Mississippi. Associated with the Muscogee (Creek) people, and threatened by highway expansion, the Ocmulgee TCP expanded on the previously documented Ocmulgee National Monument and its impressive ceremonial mounds to encompass surrounding land areas containing archaeological and natural features retaining the imprint of traditional Muscogee culture. Direct consultation with tribal authorities and considerable ethnographic and archaeological research documented the area's long association with the traditional beliefs of the Muscogean people as a place of origin. To date, very few additional TCPs from east of the Mississippi have been formally presented to the keeper for listing or a determination of eligibility. Recent efforts in New York and Massachusetts, most notably in association with traditional rock formations, appear to represent signs of growing awareness and involvement on the part of Native American groups and other cultural communities.

### **Native American TCPs versus Euroamerican sites**

By far the most active traditional cultural group to acknowledge the value of TCP documentation has been the Native American community. Even though Bulletin 38 clearly stated that any cultural group can have special connections to a place that might make it a TCP, it has been the Native American community that has made the most significant use of the concept in attempting to secure protection of its valued sites. Native American cultural and spiritual sites often fit more easily within the parameters of the current guidance on TCPs and the preservation community has widely accepted their association with Native American culture. Many professionals are even now surprised when told that TCPs are not the sole realm of Native American investigations and study.<sup>4</sup>

While this trend is a clear illustration of the Native American community's efforts to better assert a direct role in the evaluation and protection of properties most significant to them, it also reflects the fact that many of the sites most highly valued in the eyes of Native Americans are a poor fit for the conventional National Register documentation procedures. Sites with little or no physical remains, sites associated with intangible elements or belief systems, sites of spiritual importance, or natural sites where the character of the location itself is primary were often difficult to document with the routine methods used to address historic buildings or archaeological sites. The TCP perspective broadened the way we could think

of historic resources, and thus found a level of acceptance within the Native American community as an approach best able to present those sites of intrinsic value to their traditional communities.

Historic sites associated with Euroamerican and other non-native cultural groups have historically been able to rely on more conventional methodologies for documentation and evaluation. Historic sites from Hibernian meeting halls in Montana to Chinese-American communities in California, for example, have been listed in the National Register based largely on their historic ethnic associations, regardless of any continuing potential value or significance to living members of those traditional groups. In recent years a few different non-native American groups have sought to use the TCP concept to protect sites of interest. Among the difficulties faced by these efforts is reconciling the nature of the represented “traditional community” or cultural group, which remains an as yet undefined term. Where familiarity with the longstanding cultural communities formed by Native American traditionalists poses little debate, the nature of more modern or fluid communities raises intriguing questions. Work on developing better guidance on how non-Native American groups can also make use of the TCP concept appears to be a priority.

### **Continuing issues**

If anything, working with TCPs in the years since Bulletin 38 was published has revealed the need for continuing dialogue and guidance on the concepts and methodologies for the identification, documentation, and registration of these important sites. Among the ongoing issues where continued disagreements or confusion can be found are: establishing appropriate boundaries, defining who is best suited to undertake identification and evaluations work, agreeing on what constitutes sufficient documentation, deciding how integrity should properly be considered, and determining how traditional cultural groups can best be defined. Each topic could be expanded into an independent essay or briefing paper well beyond the scope of this overview.

In looking briefly at just one of these issues we can see exactly how much work is still necessary to help establish consistent approaches to dealing with TCP sites. There is perhaps no more problematic issue than the identification of appropriate boundaries for TCPs. Drawing lines around a TCP, attempting to mark where a site begins and where it ends, is often seen as totally inconsistent with the value or unique cultural characteristics of the place. TCPs represented by natural formations or features are often the most problematic. The top of a mountain or the location of a specific ceremonial activity as evidenced by a documented archaeological feature might be obvious, but where is the bottom of the mountain, and what about the traditional pathway used to access the ceremonial site? What about the locations along those paths used for ritualistic preparations in anticipation of the final activities? And what of those areas and broad vistas that comprise the essential character of setting for these sites? What is properly left in and what gets left out? Trying to make such determinations, as required by the National Register program standards, can often lead to artificial constructs in conflict with traditional perspectives. To some, this represents the ultimate example of trying to fit a round peg into the square bureaucratic hole that is the National Register program, and represents yet another reason to forego listing in favor of a perceived less-rigorous determination of eligibility.



When dealing with houses, bridges, or other similar fixed permanent resources, the identification of historic lots and plat maps makes boundary justification a straightforward task. Few such aids are available when dealing with the less tangible aspects of a TCP site, where the requirements that a finite boundary be placed around nominated properties is often in direct conflict with traditional cosmology and worldviews. Nevertheless consideration of all appropriate factors is essential. Such consideration must first rely on a basic grounding in the National Register perspective that boundaries should be derived directly from the documented significance of the resource, taking into consideration all of the various lines of evidence (archaeology, ethnography, oral history, written records) used to establish the significant historic nature of the site. Such determinations will always be tempered by a pragmatic understanding of the limitations of a resource-based documentation program, but will provide a strong foundation for such decisions.

Direct consultation with those placing significant traditional value on the site is essential to any discussion of boundaries for a TCP. Boundary documentation cannot be completed without some form of direct consultation with the traditional group that values the place in order to define the nature of that property. Knowledgeable members of the traditional community should always be consulted for guidance about what criteria are important in deciding what constitutes the physical place and what elements of the setting are essential to maintaining its character. From this basis of understanding regarding the essential nature of the site, decisions based on land management issues and other outside concerns will play potentially less important roles in the final boundary determinations.

## Conclusion

Seeing the distances traveled to date in our evolving understanding of these resources, the National Park Service remains optimistic of the ability of our programs to bridge the gap between established, long-standing cultural resource management processes and the hundreds, if not thousands, of unrecognized traditional cultural places awaiting protection. Such sites remain as key to understanding ourselves as a nation as do Mount Vernon and Monticello.

## Endnotes

1. Carol D. Shull, "Traditional Cultural Places in the National Register of Historic Places: Educating the Public About Cultural Heritage," *CRM*, vol. 16, 1993. (U.S. Department of the Interior.)
2. Patricia L. Parker and Thomas F. King, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*, National Register Bulletin 38 (Washington, D.C.: National Register of Historic Places, National Park Service, 1990).
3. The National Park Service currently prefers the use of the term traditional cultural places instead of properties, in deference to concerns voiced by traditional communities regarding the perceived association between property and ownership. The common shorthand for either term remains TCP.
4. One of the earliest Register-listed TCP sites was El Tiradito in the Old Barrio area of

downtown Tucson, Arizona (NR 1971), a site associated with the local traditional Hispanic community.

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# The Evolution of Federal Agency Authority to Manage Native American Cultural Sites

*Sherry Hutt*

IN THE LAST TWENTY-FIVE YEARS, LAW AND POLICY HAVE EVOLVED to provide authority for federal resource managers to identify and manage sites of cultural significance to Native Americans. Native American cultural sites on federal lands may be managed as traditional cultural properties (TCPs) and/or as sacred sites. While the two modalities of site protection and management are often thought of as interchangeable, they are different as matters of law, process, and effect. Not all TCPs are Indian sacred sites, although most sacred sites can also be TCPs. TCPs emanate from the National Historic Preservation Act (NHPA), and the standards for the identification process, that put it into effect, while sacred sites is a creation of policy directives in an executive order. TCPs are identified as properties eligible for inclusion on the National Register of Historic Places, so that harmful impacts to these properties in use and development are “mitigated,” that is, avoided or reduced. The sacred sites policy directs federal land managers to grant access and use to tribes for traditional ceremonial practices. There are further considerations, depending on which federal circuit court controls the land. This article will distinguish Indian sacred sites from traditional cultural properties. It will provide a legal history of Native American cultural site protection in three phases: from the low point of the Supreme Court decision in *Lyng* (also known as the “G–O Road” case), through the transitory period in which laws were added and others amended, to the present era of judicial directives. This article is an analysis of court decisions as guidance for informed decision-making with regard to TCPs. As such, it does not advocate for a certain result. Rather it seeks to distill judicial rules of law to find guidance for land managers in Native American cultural site management, where possible.

## Placing traditional cultural properties and Indian sacred sites in legal context

**Traditional cultural properties** Among other changes in 1980, the NHPA was amended to direct the secretary of the interior to study an extension of the scope of National Register-eligible properties to include places of ethnic heritage and community history. The result was a report recommending that traditional cultural places be systematically addressed.<sup>1</sup> Section 106, which requires federal agency officials to “take into account the effect” of a project using federal funds, permits, or assistance, thus evolved from consideration of buildings, sites, districts, and structures to include landscapes that are traditional cultural places. The intent was

to preserve and conserve the intangible elements of our cultural heritage such as arts, skills, folklife, and folkways, and encourage the continuation of the diverse traditional prehistoric, historic, ethnic, and folk cultural traditions that underlie and are a living expression of our American heritage.<sup>2</sup>

As noted in National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*,<sup>3</sup> this opened the way to designation of diverse areas for National Register listing, such as Chinatowns and fishing industry areas, based upon the story of historic community life as represented and preserved in the landscape and physical embodiments of historic use. It should be noted that amendment of the NHPA was not the first time cultural landscapes were identified as significant places worthy of protection. In 1896, the United States Supreme Court recognized the battlefield at Gettysburg as a cultural landscape subject to preservation.<sup>4</sup>

Historic landscapes have been consistently viewed in the context of community life, past and ongoing, rather than the embodiment of individual practices or those of immediate family. The designation of a landscape as a TCP does not confer a personal private property interest in the people whose ancestors were part of the actions in an area that contribute to historic significance. For example, bathers who enjoyed a long-time practice of nude swimming in an area later designated as a natural seashore, did not have the ability to compromise the congressionally assigned mission of the park to protect their personal interests.<sup>5</sup> In similar fashion, during the 1930s individuals were granted special use permits entitling them to build cabins on public lands of the U.S. Department of Agriculture–Forest Service. Upon expiration of the permits the permit holders were responsible for removal of their improvements. The cabin owners sought to invoke National Register nomination of the cabins as a means to stop the removal of the structures. The court found that although the cabins were historic, the special use permits did not convey to the occupants a property right or an entitlement to continued use and enjoyment. The Forest Service could maintain or remove the cabins, and if they were maintained, the cabins could be made available for public use under public management.<sup>6</sup>

It took another amendment of the NHPA in 1992 to extend preservation identification to “properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization,” that is, to have such places determined to be eligible for inclusion on the National Register.<sup>7</sup> TCPs of significance to tribes could have been part of the regular Section 106 process, applied to non-Native American sites. However, the application of the process to tribal sites seemed to need the statutory boost in the group of NHPA amendments, which gave tribes additional status, including the ability to have tribal historic preservation officers, who could assume the authority of state historic preservation officers (SHPOs) on tribal land.<sup>8</sup> Just how to work with tribes, to determine the places representing practices of significance, was not specified in the law. Bringing places of customary and traditional use by tribes into the rubric of public lands management, including those which may not be on tribal land, was left to the development of consultation practices and guidance from the courts.

When considering the identification of TCPs, the entirety of the NHPA process is still relevant. It is not the tribal ceremonial practice, or any religious practice, itself that is protect-

ed, and knowledge of the contents of a ceremony is not part of land management assessment for National Register eligibility. Rather, it is the properties, which have a connection to the practices, which are identified and reviewed for eligibility. Of key importance to a discussion of decision-making in the legal environment involving land use for ceremonial purposes is that it is the habitat of historic ceremonial practice determination, which both protects TCPs from constitutional infirmity and highlights the connection of ceremonial practice to specific sites. While the First Amendment of the Constitution protects religious freedom and bars government from advocating religion, protecting a site of traditional use on a historic preservation basis is not the advocacy of religion. Identification of a specific site for its use requires evaluation of the connection between the site and the ceremony. Testing the bounds of TCPs has been a basis of court action, based on the First Amendment, and misinterpretation of NHPA by the courts has repeatedly been seen in the failure of courts to recognize site specificity. This will be discussed further in the next section, using court action as case studies.

Consideration of eligibility for National Register listing requires a look at historic significance, integrity, and context. Significance is still found in: (A) association with events and activities; (B) association with important persons; (C) distinctive design or form; and (D) the potential to yield information, such as is the case with archaeological sites. Evaluation of an Indian TCP begs the question of when a “D” is also an “A,” “B,” or “C.” A site that has been used by tribes for a millennium may hold archaeological data of significance, but excavating the site may cause loss of its integrity, given its current and ongoing use, which also may be significant. Evaluation of a site as a TCP should occur prior to disruption of site context.

In the vocabulary of historic preservation, identification and mitigation of harm to sites is referred to as “protection.” To some extent, a site can be protected by taking into account the impacts on historic properties prior to infrastructure development or other site-impacting activities, referred to in NHPA as “undertakings.” However, once a site is identified, the impacts on it may be avoided, or it may be recorded and excavated. Protection of historic knowledge is not always physical protection of a certain site. Recording academic knowledge is also a form of preservation. This reality of the NHPA compliance mechanism stands in sharp contrast to the management of Indian sacred sites.

**Sacred sites** The term “sacred sites” was developed by Executive Order no. 13007<sup>9</sup> in order to mandate that

... the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.

To properly manage a land mass, it is necessary to know the bounds of sacred sites, accommodate access, and avoid adverse impacts, but these sites need not also meet a level of significance to be evaluated as eligible for listing in the National Register of Historic Places. The Indian sacred sites analysis is one of current and ongoing use, not merely historic practice, as in the identification of a TCP. To avoid adverse impacts on an Indian sacred site, the specific site must retain the characteristics which render it a place of ceremonial use.

A sacred site is defined in the executive order as:

Any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion.

In this manner an Indian sacred site is also a TCP when it is “a place where Native American religious practitioners have historically gone, and are known or thought to go today, to perform ceremonial activities in accordance with traditional cultural rules of practice.”<sup>10</sup>

Definitions of TCPs and Indian sacred sites can overlap to the extent that all Indian sacred sites may also be considered as TCPs, but only some TCPs are Indian sacred sites. It is helpful to keep separate the analysis required for each; the protection modality available, or required; and the practical results of each designation in a management area. Accounting for Indian sacred sites is not dependent upon planning for an “undertaking,” as in the case of a TCP. It is an affirmative obligation of the land manager. Access and accommodation for tribes under the executive order is not merely a TCP mitigation treatment, which may include study and removal. Identifying sites for protection by avoiding impacts under the NHPA is different from an affirmative duty to accommodate ongoing cultural use at an Indian sacred site. The varied ways in which the federal courts have viewed and confused federal land management of TCPs and Indian sacred sites adds a complex tangle of considerations to the statutory and executive mandates.

### Early days of judicial decisions on Native American cultural sites

The 1960s Civil Rights era in the United States concluded with a late-to-the-table consideration of the rights of Native Americans. The American Indian Religious Freedom Act of 1978 (AIRFA)<sup>11</sup> set forth the policy of the United States to “protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.” As the court cases that followed made clear, this act only established an unenforceable policy.

Even as Congress was working toward amendments to the NHPA in 1980 in order to provide a mechanism to acknowledge traditional places of cultural use by diverse ethnic groups, the courts were not impressed with traditional cultural use by tribes of places on federal land. The opinion of the Tenth Circuit Court of Appeals in *Badoni v. Higginson*<sup>12</sup> makes this clear. The case was brought by members and chapter houses of the Navajo nation against the commissioner of the Bureau of Reclamation, the National Park Service (NPS), and the Department of the Interior, who were responsible for, respectively, creating a reservoir, on park land, when there were interests of tribes to be considered. For purposes of this discussion, the court case will be identified as “Rainbow Bridge I.”

As the court opinion acknowledges, before Lake Powell was created Rainbow Bridge



National Monument was inaccessible to most tourists. After the lake was created, NPS and Bureau of Reclamation boats provided easy public access. For hundreds of years prior to federal management, Navajo practiced traditional cultural ceremonies in an area beneath the bridge that was submerged under 20 feet of water at the time the court case began, with an estimated depth of 46 feet upon the maximum capacity of the reservoir being reached. The plaintiffs' claimed that impounding water to form Lake Powell violated their First Amendment guarantees to free exercise of religion, and the presence of tourists desecrated the sacred nature of the area, all of which denied them the ability to conduct religious ceremonies. The claim was one for access and quiet use, not land ownership.

The court first looked at the request that the government refrain from destructive use of the site and employ "some measured accommodation to their religious interest, not a wholesale bar to use of Rainbow Bridge by others." The court reasoned that the First Amendment requires that the government not compel or prohibit religious practice, and that "noise, litter and defacement of the Bridge," does not prohibit practice in the area of the bridge, which tribal people can enter "on the same basis as other people." It was noted that tribes could apply for a special assembly permit, but had not done so. The court then determined that the plaintiffs did not have "a constitutional right to have tourists visiting the Bridge act 'in a respectful and appreciative manner.'"

The next notable court decision was that of *Wilson v. Block*, which this discussion will refer to as "Snow Bowl I."<sup>13</sup> Factually the case considered the expansion and development of the Snow Bowl ski area on Forest Service land, which encompasses the San Francisco Peaks, home to Navajo deities and the place where Hopis believe the creator communicates with those on Earth. Once again, the legal issue was the free exercise of religion. There was no question that the Navajo and Hopi practiced ceremony "rooted in religion." The issue was whether government action placed a burden on religious practice and whether there was a compelling government interest that could not be achieved in a less restrictive manner.

The Supreme Court established a test for First Amendment guarantees, such that the "government burdens free exercise when it forces an individual to choose between a government benefit and fidelity to religious belief."<sup>14</sup> This test, developed for requirements in a workplace that violated religious practice, did not seem to have relevance for such a basic right as protection of a place of worship. The Supreme Court only recognized burden when practicing religion was punished, or required giving up a benefit, or was completely withheld, and not merely limited by lack of access to a place needed for ceremony. Having found no burden on religion, the court relieved itself of going the next step to analyze a compelling government interest in a ski resort, or the least restrictive means to achieve that interest. The court in Snow Bowl I dismissed AIRFA as not applicable to the situation, as the "language does not indicate the extent to which Congress intended that policy to override other land use considerations," such as recreation.

The Wilson trial court had found three violations of NHPA: failure to survey the area for National Register-eligible properties,<sup>15</sup> failure to consult with the SHPO on the effect of the plan on the private land of the Wilsons,<sup>16</sup> and failure to consult with the SHPO on the eligibility of the San Francisco Peaks for nomination to the National Register.<sup>17</sup> All of these issues were resolved prior to the appeal, when the Forest Service conducted an archaeolog-

ical survey and found no National Register-eligible properties, a finding with which the SHPO concurred. The tribes argued to the appeals court that failure to survey all of the land affected by the ski area, not just the area which might affect the private land owner, was insufficient, but the court disagreed. The tribes were simply not treated as an interested party, not being a private land owner, or as entities having a protected right. The nature of the mountain as a TCP was not considered, to the extent use included Indians. The court did not understand the NHPA concept of “area of potential effect.”

This period of legal development ends, at its lowest point, with the much-discussed Supreme Court case of *Lyng v. Northwest Indian Cemetery Protective Association*,<sup>18</sup> also known as the “G–O Road” case.<sup>19</sup> In brief, the Forest Service sought to extend a paved road through the Chimney Rock area of Six Rivers National Forest in order to harvest timber in a pristine area used historically by American Indians for religious ritual. Once again, the litigation issue was First Amendment guarantees to religious practice. The Supreme Court held that incidental impact to religious practice did not rise to the level of a limitation on religious freedom when it did not coerce individuals to act contrary to their beliefs. Therefore, examination of a compelling government interest was not required. Once again the court examination rested narrowly upon restrictive requirements on religious practice to obtain a government benefit, such as a job, rather than use of government property to abridge a long standing cultural practice. The NHPA and TCP identification were not considered.

In *Lyng* two underlying assumptions persist: (1) that needs of the majority for natural resources overcome interests of Native Americans, and (2) that religious practices are not place-specific. The Supreme Court opinion discusses the significance of the area and acknowledges that “too much disturbance of the area’s natural state would clearly render any meaningful continuation of traditional practices impossible.” However, even if the court assumes that religious practice at the site will be impossible, “government simply could not operate if it were required to satisfy every citizen’s religious needs and desires.” The court assumes the Native Americans can go to another church site, one not needed for its natural resources. The court does note with favor the actions of the Forest Service to choose a route for the road, which would lessen audible interference with the site.

### **Transition and legislative response period**

The history of civil rights in the United States came to a high point in the 1960s, when Congress was frozen in its ability to overcome racial prejudice with legislation and the courts stepped into the void with what has become known as judicial activism, or judicial legislation. There was a series of court decisions applying the Constitution to create affirmative action as a matter of law. Since then, when it comes to the cultural property rights of Native Americans just the opposite has been true. When the courts have refused to apply basic constitutional guarantees to tribes, Congress responded with a succession of legislation. The decade of the 1990s was one of Native American rights furthered by congressional action.

The first legislation of the decade was the Native American Graves Protection and Repatriation Act of 1990.<sup>20</sup> NAGPRA is human rights legislation, as it merely takes the constitutional Fifth Amendment guarantees of property rights and applies them to the cultural prop-

erty of Native Americans and tribes.<sup>21</sup> NAGPRA is Indian law.<sup>22</sup> The law does not restrict development action on federal land, but it does require that human remains and cultural items exhumed on the land be assessed in the first instance to determine Native American owners, rather than assume everything on federal land is federal property.<sup>23</sup> Federal collections of Native American human remains, in federal and non-federal repositories, are to be itemized on an inventory, identified for cultural affiliation, and published in notices to establish repatriation rights in tribes. Collections of Native American cultural items are to be summarized in order to give notice to tribes of what the collection contains, so that tribes may determine whether they have an interest in specific items and desire to make a claim.

The 1992 amendment to the NHPA, which explicitly addresses identification and protection of traditional cultural properties of significance to tribes, and the Indian sacred sites executive order in 1996, which mandates that the government “shall” accommodate use and provide access to Native American sites, are discussed above. Placed in the context of 1990s congressional and administrative action, they provide a clear message that federal land managers are to consult with tribes and evaluate land management decisions in a manner that is fully cognizant of land use by tribes.

The Religious Freedom Restoration Act of 1993 (RFRA),<sup>24</sup> is considered the congressional response to *Lyng*. In RFRA, if there is a substantial burden on religion, then it must be overcome by an identified compelling government interest, and, if so, then by the least restrictive means on the religious practice. The difference between an analysis based upon the First Amendment free exercise clause, such as occurred in *Snow Bowl I* and *Rainbow I*, from one based on RFRA, is one of degree. When applying the First Amendment, the courts consistently found against tribes by defining “substantial burden” as a complete inability to practice religion in any location. The RFRA burden analysis is one of undue impact, not absolute inability. Burden may be found in a case-by-case factual assessment of substantial impact, such as the loss of a site of central importance to a tribe, or inability to conduct a ceremony because of noise or conflicting use during the ceremonial period, and not in merely any impact. There is still considerable discretion in federal agency action to manage resources, but it must account for cultural conservation.

### The recent decade, 1998–2008

The decade began with *Bear Lodge Multiple Use Association v. Babbitt*.<sup>25</sup> The facts of the case surround NPS management of rock climbing at Devils Tower National Monument. Rather than a case brought by Native Americans seeking *free exercise of religion* under the First Amendment, the flip side of the First Amendment’s *establishment clause* was the basis of a claim by rock climbers. They argued based on their dissatisfaction with a land manager’s decision to request a voluntary climbing ban during times of Native American religious use of the site.

In the *Bear Lodge* case, as in the preceding cases, the sincerity of Lakota people, and their religious use of the site for 1,000 years, was not in question. The issue was whether a voluntary commercial climbing ban in the month of June, out of respect for tribal use of the area for religious practice, amounts to government imposition of Native American religion on

others. The court decided this case on a narrow procedural basis. That is, that the climbers bringing the case could not establish harm and therefore they did not have standing to bring a claim. They could not show injury in fact, as the ban was voluntary and individual climbers who chose to climb were able to do so.

The *Bear Lodge* case stands for the principle that a voluntary ban on an activity, to accommodate respect for Native American religious practice, is not unconstitutional. This is a small legal step, but it tied cultural practice to a specific site of required use.

The next court case to address Native American cultural sites management takes this discussion back to Rainbow Bridge, in the case of *Natural Arch and Bridge Society v. Alston* (“Rainbow II”).<sup>26</sup> The facts of the case exemplify twenty-four years in the evolution of treatment of Native American cultural sites by federal land managers, as well as the lengths some members of the public will go to in order to resist such decisions. This chapter in the Rainbow Bridge story begins with NPS protection in a way fully responsive to the nature of the site. The area, as a site of historic ceremonial practice by several tribes, is protected by a fence and signage from visitor access to climbing or inscribing graffiti on the sandstone structure, to protect the TCP. Interpretation of the bridge in signage reflects consultation with tribes, in an effort to educate the public. Quiet use of the Indian sacred site is afforded to tribes during ceremonial periods. In an effort to test management policies, two visitors urged their children to breach the fence, and draw attention of park rangers. They then filed a court action claiming violation of the establishment clause of the First Amendment due to forced acquiescence to Native American religion.

The Tenth Circuit Court of Appeals decided the case by looking at harm to the children, much as the court did in the *Bear Lodge* case. The court found that educating the public on Native American historic use of the site and protecting the arch from degradation from traffic and harm from graffiti, as well as allowing for quiet use by tribes during certain limited periods, did not force religious practice on non-Native Americans. The court went a small step beyond *Bear Lodge* to hold that the mandatory protective measures were constitutional. In so doing, the Tenth Circuit moved from the 1980 holding in *Badoni v. Higginson* that “affirmative action by the government to accommodate religious practice violates the Establishment Clause” to holding (in 2004) that “the government may accommodate religious practice without violating the Establishment Clause.”

An additional case provides guidance on identification of TCPs and management of Native American cultural properties. In *Pit River Tribe v. U.S. Forest Service*,<sup>27</sup> the appeals court reversed the trial court and found the federal agency violated the NHPA, among other laws, for failure to identify TCPs on leaseholds prior to extending a lease. The case involves a complicated set of facts, but for the purposes of this discussion it can be simplified to recognize that an earlier management plan, which supported the first lease and did not include consultation with tribes in an effort to identify possibly affected Native American cultural sites, could not support a lease renewal. The federal agency was required to step back and correct the situation by consulting with tribes and doing a survey of the area of potential impact, in full compliance with Section 106, as should have occurred in the first instance.

The decade comes to a logical and helpful conclusion in the consideration of *Navajo Nation v. U.S. Forest Service* (“Snow Bowl II”).<sup>28</sup> Once again there was no dispute that the

San Francisco Peaks are an area of religious significance to tribes. The issue involved the continued viability of the ski area through the use of treated effluent to make artificial snow. The trial court picked through the facts to find that there was not a burden on religion and therefore no need to continue through the compelling need analysis.<sup>29</sup> On appeal, the Ninth Circuit Court wrote an opinion that may be considered a clear RFRA analysis. The court acknowledged that RFRA added to a First Amendment consideration, with the RFRA requiring a finding of burden in this instance, given the undisputed facts. The court focused upon the unhealthy nature of recreation in treated effluent. The court went on to perform a compelling-need analysis and determined that there is no compelling government need to guarantee concessionaire viability, especially in maintaining a ski resort in a semi-desert. There were also comments on the significance of the area, drawing an analogy to washing a church in effluent, but the court did not find the NHPA considerations controlling, or that there was a failure to complete the Section 106 process.

There is a difference in the TCP analysis between the Ninth and Tenth judicial districts, which require land managers to be cognizant of the jurisdiction of their land mass. In the Tenth Circuit, federal land management decisions to preserve Indian TCPs do not need to also have a secular (non-Indian) basis for historic significance to gain court approval. An example of this is *Rainbow II*. In the Ninth Circuit, as seen in the *Cave Rock* case,<sup>30</sup> a finding of Native American cultural significance by a federal land manager is still an insufficient basis for preservation. In the Ninth Circuit there must also be a secular basis for preservation of a site, consistent with the religious analysis, upon which to sustain federal agency decision-making that a site is significant and will not be further developed. *Cave Rock* (Figure 1) is sacred to the Washoe people of Lake Tahoe, and the Forest Service decided to ban rock climbing, which was causing structural damage and loss of site integrity. The Access Fund sued, using the establishment clause of the First Amendment as a basis to argue preferential treatment on the basis of religion. The court examined the facts surrounding historic use of the area, including the presence of a road around the lake, and found a “secular purpose—the preservation of a historic cultural area”—to sustain the ban on climbing, with a notation of the incidental effects of preserving Washoe culture.

### **Epilogue: Spinning, not evolving**

The discussion could easily conclude at this point, were it not for the rehearing of the Snow Bowl case, resulting in “Snow Bowl III.”<sup>31</sup> Rehearing is not often granted, and in the Ninth Circuit this requires a panel chosen from its large membership to consider the matter anew. In this instance, the Court of Appeals vacated its earlier analysis of the law and upheld the trial court in its factual analysis that there was no burden on religion under RFRA. Snow Bowl III also upheld Snow Bowl II on the judgment against the tribes on the NHPA claims, consistent with the *Cave Rock* result. Now the legal progression of the recent decade, exemplified in the Tenth Circuit, is at odds with the fact-dependent determination of the Ninth Circuit. The Tenth Circuit rule of law is that accommodation of traditional cultural use is not a violation of the establishment clause, and burden is defined as substantial impact on a site, while in the Ninth Circuit the bar is set considerably higher: to a more pervasive inability to



**Figure 1** Cave Rock, Lake Tahoe. Photo courtesy of the author.

practice religion beyond a site-specific ceremony. The Tenth Circuit will accept Native American TCP designation based on cultural use, which would be upheld in the Ninth Circuit only when there is a non-Indian basis for site significance. This split between judicial circuits will be resolved upon appeal to the Supreme Court. Additional cases, applying the Ninth or Tenth Circuit analysis through the rest of the federal circuits, would heighten the need for Supreme Court resolution.

It is the goal of this discussion to cull guidance for federal land management decision-making from court cases pertinent to Indian sacred sites and TCPs. However, it is difficult to grasp a test for protection and management of these sites from among the various laws, when an appeals court begins its discussion, as it did in *Snow Bowl III*, with weighing the facts like a trial court, rather than with a statement of the narrow legal issue before it to which it can apply the given facts. Courts are to give deference to land management decisions based upon full consideration of the available facts and consultation with tribes and interested parties.<sup>32</sup> When a court of appeals weighs facts, particularly those not in dispute, such as the significance of a site to Native Americans, they fail to give deference to land managers.

## **Conclusion**

In the absence of unified guidance from the courts, land managers can either follow the legal tests of the Tenth Circuit in applying RFRA, the Indian sacred sites executive order and



NHPA, or the fact-driven approach of the Ninth, which holds to a pre-RFRA analysis and requires a secular, non-Indian cultural basis for identifying site significance in a TCP. The Ninth Circuit relies on a strict First Amendment construction regardless of congressional attempts to set forth additional processes.

Given all of the attention to Native American cultural sites in the courts, this is no longer an issue of first impression. The area of legal inquiry is certain to grow. Hopefully, the availability of clear guidance from the courts will increase. Federal land managers can aid in obtaining better guidance from the courts by making clear distinctions in decisions between Indian sacred sites, RFRA, and TCP determinations. Understanding, expressly stating, and acting upon Indian sacred sites as a matter of ongoing access, use, and preservation of sites for tribes—as distinguished from TCPs, which may encompass Indian sacred sites, but which are a means to identify sites of cultural historic significance and evaluate government actions based on impacts on those sites—will aid education of the courts. When the courts evidence an understanding of the NHPA process and that the Indian sacred sites executive order acknowledges a tie between access and use of a specific site integral to a cultural practice, then consistency in court opinions and a logical progression in analysis may follow. Until then, the best guidance that can be offered in managing lands containing cultural sites is to consult with all interested parties, be respectful of a need for traditional ceremony in a traditional place, and document decision analysis.

## Endnotes

1. NHPA, Section 106, 16 U.S.C. 470f.
2. 16 U.S.C. 470a.
3. NPS 1990; rev. 1992, 1998.
4. *United States v. Gettysburg Elec. Ry. Co.*, 160 U.S. 668 (1896).
5. *Williams v. Kleppe*, 539 F.2d 803 (1st Cir. 1976).
6. *Paulina Lake Historic Cabin Owner's Association v. USDA Forest Service*, 577 F. Supp. 1188 (D. Ore. 1983).
7. 470a(d)(6)(A).
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11. 42 U.S.C. 1996.
12. 638 F.2d 172 (1980).
13. 708 F.2d 735 (D.C. Cir., 1983).
14. *Sherbert v. Verner*, 450 U.S. 398 (1963).
15. 16 U.S. C. 470f.
16. 36 C.F.R. § 800.4(b).
17. § 800.4(a)(1).
18. 485 U.S. 439 (1988).
19. King 1998, 161–162.
20. NAGPRA, 25 U.S.C. 3001 et seq.

21. Hutt and McKeown 1999.
22. Title 25 U.S.C., Indians.
23. 25 U.S.C. 3003.
24. 42 U.S.C. § 2000bb et seq.
25. 175 F.3d 814 (10th Cir., 1998).
26. 98 Fed. Appx. 711 (10th Cir., 2004).
27. 469 F.3d 768 (9th Cir., 2006).
28. 479F.3d 1024 (9th Cir., 2007).
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30. *The Access Fund v. USDAFS*, 499 F.3d1036 (9th Cir., 2007).
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# Indian Point Not for Sale; Or, Reflections on Indian Point

*Rosita Worl*

IN THE 1960S, I PARTICIPATED IN AN ALASKA NATIVE SISTERHOOD (ANS) CEREMONY that announced to the Tlingit world that I was to assume my mother's role after her death. I hadn't thought my responsibilities would begin so soon. The protection of Indian Point was to be my first public challenge.

I had received my mother's *kookéinaa*, which is a ceremonial banner, worn by members of the ANS and Alaska Native Brotherhood (ANB). Shortly after my mother's death, the ANS held a ceremony in which her ANS hat and banner were transferred to me. I had been selected because I had been under her formal training since the age of ten. My mother was a demanding teacher who observed my every action, even to the point of ensuring that I stood, sat, and held my head in the proper Tlingit manner. Her teaching also involved bringing me to her meetings.

After I received her *kookéinaa*, I returned home and sat on the beach in the front of our house reflecting on her contributions to the Tlingit people. She had worked tirelessly to secure political and economic equity for our people on multiple fronts. She worked as a union organizer for the salmon cannery workers and attended a continuous round of political meetings. She challenged the openly discriminatory practices towards the Tlingit that were prevalent throughout the 1940s and 1950s. Through her work and noble deeds, she had given my brothers and sisters a great gift. I wondered to myself what would I leave behind for my children.

I had grown up knowing that Indian Point was a Tlingit sacred site. At the time, I don't think I understood what the term "sacred" meant. However, I knew that it was a significant site and special to the Tlingit People. I was quite aware that I didn't have formal ties to Indian Point. My family was always reminded that we were "Chilkats" or Tlingits from the Haines and Klukwan area. I recall a prominent Auk Elder, Cecilia Kuntz, repeatedly telling us that we were not "Juneau people" or Auks, and that Juneau belonged to them. However, the Auk people were gracious in allowing us to use their land for subsistence hunting, fishing, and gathering. One of our favorite activities was gathering herring eggs at Indian Point (Figure 1).

Indian Point is significant to the Tlingit community (Figure 2). It is important to the Tlingit of the past, the Tlingit of the present, and the Tlingit of the future. It is a place where Tlingit people worked, played, laughed, and sang. It is a place where the Auk greeted their visiting neighbors. It is a place where our warriors and shamans conducted their purification



**Figure 1** Auk Indians preparing herring oil, Indian Point, ca. 1895. Photo courtesy of the Alaska State Library (P87-0081 Winter and Pond Photograph Collection).

and spiritual rites. It is a place that contains healing medicinal plants and powers. It is a place where our brothers and sisters, the raven and eagle, abound. It is a place where we buried our dead. It is a place where some day soon the Auk may re-enter the remains of ancestors who were taken away in the name of science and now may be reclaimed under the Native American Graves Protection and Repatriation Act. It is the place where the spirits of the ancestors of the Áak'w Kwáan inhabit. It is a place where we sing our songs to our ancestors and call for spiritual assistance. It once was an important subsistence area until it was polluted after the non-Tlingit began to develop the northern shores of Indian Point. It is also a place that is highly coveted by others, but Indian Point is a sacred site to the Tlingit.

While we may dress as white people and speak the language of the white man, our hearts remain true to our old ways. Tlingit people have been reluctant to speak openly about our beliefs and our spiritual relationships to our ancestors lest they unleash the wrath of the proselytizing agents who sought to eradicate Native spiritual beliefs. We, who grew up during a period when Tlingit culture was repressed and were punished for speaking our language, are hesitant to openly discuss our beliefs lest we subject ourselves and our children to ridicule. However, we came to realize that we had to explain our spiritual beliefs so that non-Natives would understand our opposition to the construction of a governmental facility at Indian Point.

Tlingit people are culturally different from the larger society not simply because we have different cultural beliefs and practices. We conceive of space, time, life, and death in a different way than non-Tlingit.



**Figure 2** View of Indian Point and Indian Island from Auke Bay. Photo courtesy of Rico Worl.

Indian Point is a burial site, but it is unlike a Western cemetery. As I understand it, when Westerners and those who adhere to their beliefs bury their dead, they believe that their souls go to a place called heaven or hell. They do not seem to mind if their graves have to be moved to make way for progress and development. I respect the rights of those who espouse such beliefs, but they are unlike traditional Tlingit ideologies.

Traditional Tlingit people believe that when we die, our spiritual being divides, with one part going to a supernatural abode and the other remaining at the site where our physical remains are interred. We respect the burial grounds inhabited by the spirits of our ancestors. Sacred grounds, such as Indian Point, bond us to the land, they unite us with our ancestors, they unify us with our living Tlingit brethren, and they ensure our survival as Tlingit people through future generations. The spirits of shamans remain powerful even after their death and can also bring both harm and good will and fortune depending on whom and the manner in which his or her spirit is approached. Burial sites embody the Tlingit cycle of life–death–life. Even to this day as I fly into Juneau and pass Indian Point, I call for spiritual assistance, and I reach to my heart to throw out any illnesses I may have. This site is sacred to the Áak'w Kwáan. Indian Point is sacred to the Tlingit.

We Tlingit who are from other areas outside of Juneau acknowledge the aboriginal tie of the Auk to Juneau and Indian Point irrespective of the fact that the Auk no longer hold legal title to the land. We stood unified with the Auk people because of this recognition and because we share the same beliefs and concerns. We knew that if the desecration and destruction of this sacred site can occur, they will occur elsewhere.

Shortly after receiving my mother's *kookéínaa*, I learned that the city of Juneau intended to rezone and subdivide Indian Point and to sell residential lots. The Native community was extremely upset. We all knew the significance of Indian Point. I called my fellow brothers and sisters from ANB and ANS to testify at the city council meeting in opposition to the proposed action. [Ed. note: for a discussion of this meeting, including Worl's testimony, see Tom Thornton's paper in this volume.] I was joined by several other Tlingit people. I thought we should have a greater representation, and I ran out of the meeting onto the street and asked those Tlingit people whom I saw to join us and to testify against the action. I also called my friend, Tommy Richards, who was a reporter with the *Tundra Times*, the statewide Native newspaper, to help us by bringing attention to our plight.

We were successful in persuading the city council of the importance of Indian Point to the Tlingit, and they tabled their action to sell the residential lots. In retrospect, I can see that we were quite naïve in thinking that Indian Point would be forever protected.

In the summer of 1996, when I assumed the position of interim president of the Sealaska Heritage Foundation (now renamed the Sealaska Heritage Institute, or SHI), I was startled to find, amidst the mounds of paper left on my desk by my predecessor, a letter to a former SHI president about the draft report on historic and prehistoric heritage associated with a proposed development of Indian Point. Nearly 30 years after my first episode with Indian Point, the federal government proposed to build an office complex and research center there. I immediately held a meeting with our SHI board of trustees. I briefed them on the proposed action and one trustee, who was also a clan leader, told me in no uncertain terms that we would die to protect the burial sites of our shamans. I quickly responded to the author of the letter (and the study) and noted that the legally required "consultation" with the Native community had not occurred. I instantly wrote a letter to that effect to the agency and asked for the status of the project. The Native community quickly responded, expressing opposition to the facility and insisting on formal consultations.

An archaeologist who had been under contract to assess Indian Point visited me. He advised me that he had met and consulted with a number of Tlingit elders to discuss the project. I reminded him that discussions with individual elders did not constitute consultation.

A few months after this discussion, the responsible federal agency, the National Oceanic and Atmospheric Administration (NOAA), organized a series of meetings with me and with the community. One meeting in particular stands out in my memory. We met in the Centennial Hall, and a number of Tlingit people testified to the agency representatives about the importance of Indian Point. We cried as a young Tlingit woman and man tried to hold back their tears as they spoke about the significance of Indian Point and their concern about the potential desecration of the site. The young man, who was from Angoon (a nearby Native village), told of burning food there to transfer the food to his deceased relatives.

During one of these meetings, I noted the non-compliance with Section 106 consultation, and that the cultural resource study did not assess the site as a traditional cultural property (TCP) and did not investigate the dynamic relationship between the tangible and intangible cultural resources and the Tlingit beliefs and practices and values associated with Indian Point. I also said that Native people would pursue all administrative and legal options



for the protection of Indian Point, which could delay the project. We also asked NOAA to consider the other two sites that had been identified in the Juneau area as possible sites for the facility. We understood that some within their ranks viewed one of the sites as acceptable.

One of the federal agency officials asked me what could be done to “mitigate the adverse impacts.” I recall thinking to myself for a moment, and then offered that I didn’t know if spirits could be contained to a specific area if a fence were to be constructed to keep the spirit enclosed and the public away. I also emphasized that our sacred sites were unlike those of non-Natives, which could be deconsecrated, such as a church that is transformed into a meeting hall. I told them, however, that I would think about their question.

I recommended that a TCP evaluation be conducted. I had recently attended a Keepers of the Treasures meeting sponsored by the National Park Service in the Southwest and learned about TCPs. I thought that Indian Point was a perfect candidate for a TCP. I suggested that they contract with a Native entity.

Although I am an anthropologist and was thoroughly familiar with the history of Indian Point, I knew full well that the government would not ask me to conduct the study. I suggested a number of possible anthropologists who were familiar with the Tlingit culture. To do the study, a colleague at the University of Alaska was contracted with (see Tom Thornton’s paper in this volume). Additionally, NOAA also contracted with a traditional Tlingit leader to meet with the Auk people. I interpreted this effort as a measure to divide the Tlingit community.

In early 1997, before the TCP study was started, I learned that NOAA was offering us \$1 million and 50 acres of land in the Auke Village Recreation Area if we would drop our opposition to the construction project at Indian Point. They suggested that we could use the funds to build a village at another site. We were indignant with the offer. At the same time, we sadly recognized that some of our people might not hold Indian Point in the same regard as we, and could well be tempted by the million-dollar offer. The powerful governmental entity wanted the Auk and the Tlingit to redefine and restructure their culture and ideologies to meet its need. The clan mother of the Auk, Rosa Miller, adamantly opposed the destruction and desecration of their sacred site. She did not believe that the sanctity and spiritual attributes of Indian Point could be transferred to another site to satisfy the federal agency. The Auk immediately rejected the offer.

The Tlingit community stood solidly behind their decision. The Native community, including the Áak’w Kwáan, Douglas Indian Association, ANB, ANS, Central Council of Tlingit and Haida Indians of Alaska, Sealaska Corporation, and SHI opposed the construction of a building at Indian Point. However, one Tlingit individual, who had lived away from home for decades, urged her fellow Auk to accept the offer and warned that they would probably lose anyway, and the powerful government would eventually build on the sacred site.

The clan mother knew that if her people accepted the money, they stood to lose intangible treasures of their heritage that no amount of money could buy—least of all their honor. This clan mother, who was trained through her lifetime in the ways of her ancestors, stood her ground against the federal government.

At one point, I was called into the office of the chief executive officer (CEO) of Sealaska Corporation. Sealaska Corporation is the regional Native corporation established under the

Alaska Native Claims Settlement Act (ANCSA) of 1971, which resolved our aboriginal land claims with the government. After its formation, Sealaska Corporation created an affiliate organization, SHI, whose mission was to protect and perpetuate the Tlingit, Haida, and Tsimshian cultures of Southeast Alaska. The CEO advised me that the powerful senior US senator of Alaska, Ted Stevens, had called him and asked why the Tlingit were opposing the construction of the NOAA facility. The senator conveyed that he was trying to help the economy of Juneau. Our CEO responded that when it came to cultural matters, he was required to yield to the traditional leaders and elders. I also reminded our CEO that very few of our tribal members had jobs with NOAA. I was also to learn later that the new facility would be named after our Senator Stevens.

Those who supported the construction of the NOAA facility at Indian Point blamed the Native community for the delay of the construction project. They claimed that we would be responsible if the funds for the NOAA facility were lost. From my perspective, the delay in construction could not be attributed to the Native community. Had NOAA met the federal requirements of consultation, they would have learned that Indian Point is a sacred site. They would have known that the Tlingit community would oppose the development on these grounds, and perhaps they would have known that they should have selected an alternative site for their facility.

I was at a loss to understand why it was expected that Indians must allow one of their sacred sites to be put in jeopardy and to sacrifice our beliefs because a governmental entity wanted to build an office facility on our sacred lands. I was exasperated that the federal employees rejected another possible site for the facility as “not acceptable” because the 45-minute drive was too far for them to commute.

At this point in my life, I was somewhat more knowledgeable of the laws that might offer us some protections. However, I also fully understood that we could go through the required legal process and ultimately, a decision could be made that was adverse to our Tlingit interests. I met privately with the NOAA officials and conveyed to them that we would use all the resources available to us to halt and delay the construction of the facility at Indian Point, even if it meant going to court. We recognized that we could lose Indian Point to a powerful government agency; however, we were determined, as our trustees had directed, “to die to protect a shaman’s burial site.”

The Auke have lost all of their traditional territory to those of us who have moved into Juneau. Today all of us enjoy the beauty and bounty of this land. We felt that it was imperative that the Auk and the Tlingit people be allowed to maintain this sacred site.

In 2002, we nominated Indian Point for inclusion in the National Register and submitted the nomination to the Alaska State Historic Preservation Office for concurrence. In the subsequent months and years, we continued to respond to the seemingly unending questions posed by the office. I attended a Historical Commission meeting in Anchorage to request the status of our nomination and was advised that approval was imminent. However, when I attended a follow-up meeting in Juneau in 2006, we were again asked for additional information, which again we provided. We have since contacted the office several times asking about the status of the nomination. The federal agency, NOAA, determined Indian Point to be eligible as a TCP for inclusion in the National Register of Historic Places in 1997.

However, we continue to await the State Historic Preservation Office's decision. For many years, Native people have had a strained relationship with the state of Alaska over the protection of our subsistence rights under federal law. Early this year, I wrote yet another letter to the State Historic Preservation Office asking for its decision.

This experience prompted us to add the selection of sacred sites to our legislative initiative. As a member of the board of directors of Sealaska Corporation, I reported to the board that we had been actively working on this TCP nomination for ten years (since 1997). I conveyed that we needed another mechanism to protect our historic and sacred sites in view of the time and energy we had expended to try to protect just *one* sacred site. I reported to the board that we were preparing to publish a cultural atlas which included over 3,000 place names in the Tlingit and Haida languages, and I felt that we had to do something different to protect our sacred sites. I also proposed that we look at the possibility of creating a Tongass Heritage Area in southeast Alaska. At this time, we were working to finalize Sealaska Corporation's land entitlement in Congress to ensure the conveyance of all lands due to us, which would require an amendment to ANCSA. The board of directors decided that we would include in the proposed legislation 4,000 acres for sacred and historic sites. Corporations do not generally own or seek the ownership of non-productive or non-economic lands. However, as a Native corporation, we view our cultural survival and the protection of our sacred sites as major objectives along with our financial enterprises. At this time, we have introduced legislation in Congress to amend ANCSA to allow us to select and maintain ownership of a significant number of our sacred sites. We also continue to advance the notion of heritage areas as another mechanism to protect our historical and sacred sites.

Indian Point offers a clear lesson that can be learned or affirmed: that we as Native Americans view the protection of our sacred sites as essential, and we will avail ourselves of every mechanism to do so. We are not apologetic that our cultural beliefs may conflict with Western values or stand in the way of progress or the construction of a new facility. Our cultural values must be interpreted and applied on their own merit and not defined or structured in the context of national laws or needs.

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# Anatomy of a Traditional Cultural Property: The Saga of Auke Cape

*Thomas F. Thornton*

IN AN ERA WHEN INDIGENOUS PEOPLE FACE LIMITED SOVEREIGNTY, MINORITY STATUS, and continuing pressure on traditional lands and resources, how can important cultural landscapes best be conserved as living landscapes? For Native Americans, the process for evaluating and conserving traditional cultural properties (TCPs), first introduced twenty years ago, constituted a small but important governmental response to the accelerating problem of erosion of their communal lands and historical and sacred sites. Bulletin 38 offered a set of guidelines for evaluating these places as “living landscapes” of national historical significance due to their association with “cultural practices or beliefs of a living community that (a) are rooted in the community’s history, and (b) are important in maintaining the continuing cultural identity of a community.” If a cultural property receives a positive evaluation, it can then be nominated for inclusion in the National Register of Historic Places. To mitigate a property’s vulnerability in the interim between a positive eligibility determination and the completion of the nomination process, the property can be treated “as if” it had been successfully nominated and placed on the Register by the keeper. This procedure is followed because often agencies do not have the time and resources necessary to complete the formal nomination process; the interim listing provides protection until the formal nomination process is completed.

Traditionally, the Register had been biased toward non-Native landscapes of significance—battlefields, architectural marvels, pioneer trails, etc.—based primarily on the antiquity of material remains and a rather singular interpretive framework for how these sites fit into the master narrative of the nation’s or region’s development and character. Although sites on the Register can be of local, regional, or national significance, the bias was nearly always toward the physical and material objectification of history in a “built” environment (i.e., structures, landscapes, etc.) This framework held little regard for places of continuing symbolic and material significance to Native American communities, and so they remained either unprotected or invisible, or both. Hence, there was a need for new guidelines to address these kinds of cultural properties.

There is no question that the TCP process and criteria are more inclusive than those of the conventional Register, but the critical political-ecological questions remain: what is being conserved and for whom under the guise of historic sites conservation in the United States? Has the TCP process helped conserve cultural landscapes of significance to Native American communities? In Alaska, where not a single Alaska Native TCP has been formal-

ly recommended for inclusion in the National Register by the State Historic Preservation Office, despite positive eligibility determinations and nominations, the answer is unequivocally “not yet.” To understand why not yet, it is useful to examine the saga of Auke Cape (also known as Indian Point), a Tlingit TCP found eligible for inclusion, with concurrence from the Alaska State Historic Preservation Office, and first nominated for the Register more than a decade ago based on an investigation I conducted in 1997 (Thornton 1997), but which continues to languish in the Register “approval” process for a variety of reasons not altogether clear.

In this essay, I examine the Auke Cape TCP case as a means for evaluating the efficacy of the TCP process itself. In doing so, I draw on what I term a political ecology of cultural models framework. Political ecology examines how humans compete for, manage, and impact “scarce” environmental resources, such as land, trees, fish, and wildlife, from a political-economy and ecological perspective. Cultural models (cf. Holland and Quinn 1987; Shore 1998) theory posits that human groups possess shared and distributed cognitive frames which play a critical role in coordinating their thoughts and actions in response to environmental phenomena, including landscapes such as Auke Cape. Combining the two theoretical strains, a *political ecology of cultural models* examines how differing cultural models of environmental phenomena compete—often unequally—in shaping collective perceptions and actions towards particular landscapes, including historic sites and traditional cultural properties.

### Negotiating cultural models of Auke Cape in the 1960s

The dominant cultural model of Auke Cape, among non-Natives especially, is that of a prime waterfront landscape. The property defines one side of Auke Bay, the premier harbor in Alaska’s capital city of Juneau and a favored settlement site for its access, views, sun, and shelter among the city’s 30,000 residents. By the end of the 20th century, Auke Cape stood out as an oasis of undeveloped public land along the otherwise highly developed waterfront corridor between Juneau’s downtown and greater Mendenhall Valley. The waterfront peninsula was divided into separate lots managed by the National Park Service (NPS), which developed a portion as employee housing and a dock serving Glacier Bay National Park, and the city and borough of Juneau. Pro-development forces in the city viewed the property as ripe for commercial development and a residential subdivision, while others saw it as an important habitat and scenic recreation area to be maintained in its present state. Efforts to develop the non-federal portion of the property for waterfront housing and other facilities in the late 1960s were defeated by a coalition of Native and non-Native groups seeking to protect the forested peninsula in its present condition. Though politically on the same side, the Natives and non-Natives argued from different cultural models of the landscape. Non-Natives stressed the peninsular landscape’s beauty and pristine character and its potential for recreation. Natives, in contrast, primarily stressed the peninsula’s significance as Áak’w K̓wáan (Auke Tlingits’) *at.óow* (sacred property), including its status as a historic settlement, fort, subsistence, and burial site. These two cultural models coalesced into a successful united front against the cultural model of “development” for Auke Cape because, despite their

different primary conceptualizations of the landscape, they were in consensus in opposing any significant alteration of the site's character.

The Juneau-based *Southeast Alaska Empire* newspaper reported on the pivotal testimony at a May 10, 1969, public hearing which helped convey Tlingit conceptualizations of the property to non-Natives and seal the defeat of efforts to rezone Auke Cape for residential development.

Eight members of the Tlingit and Haida tribes spoke at the Wednesday Borough Assembly hearing to decide whether Indian Point should become a private residential area or be turned to public use.

Rosetta [Rosita] Rodriguez [now Worl, see her companion essay in this volume], Amos Wallace, Mrs. Edward [Cecilia] Kunz, Nellie Bennett, Hank Cropley, Mrs. Nora Florendo [now Dauenhauer], and Mrs. Anita Engeberg.

Mrs. Rodriguez, who is Chairman of the A.N.B Heritage Committee and Secretary of Tlingit and Haidas, said in a prepared statement:

"Indian Point is more than an issue of land or a possible source of revenue. It represents to us a link to our past, our forefathers, and our way of life. Perhaps you may understand this feeling if you think of the many historical sites and monuments, such as Plymouth Rock where the pilgrims first landed, or Abraham Lincoln's humble one-room log cabin, or of the Statue of Liberty. The Federal government has seen fit to designate these and many other areas historical sites. Indian Point is all this to us. . . ."

She concluded by expressing the hope that the Assembly would "see that Indian Point would better serve its citizens by becoming an area where all may go to enjoy its natural grandeur, where Tlingits may continue in their traditional activities."

Others affirmed the historical nature of the sites because of Indians buried there and because of the herring spawn fishery conducted on the shore.

Without this cross-cultural appeal to non-indigenous cultural models of landscape conservation, it is unlikely the Tlingit *at.óow* paradigm of historic preservation would have prevailed on its own in protecting Auke Cape, at least not beyond the burial sites. Tlingits were already a minority in Juneau and their "property rights" were theoretically being "settled" through separate federal claims process (consummating, ultimately, in the Alaska Native Claims Settlement Act of 1971). What is more, few material traces of their long historical presence on the land had been documented in the archaeological record, and there was no process in place for recognizing the multitude of material and non-material cultural associations with the land as a "link to our past, our forefathers, and our way of life," or what Tlingits term their *shagóon*, "heritage and destiny" (see de Laguna 1972; Dauenhauer and Dauenhauer 1989; Thornton 2008). The National Historic Preservation Act (NHPA) of 1966 itself was only a few years old. Thus, Tlingits had to argue by analogy (to non-Native monuments) and appeal to the dominant non-Native historical and recreational values in order to make their case for protecting their historic landscape. Such was the political ecology of cultural models in the late 1960s; Native models had little valence.

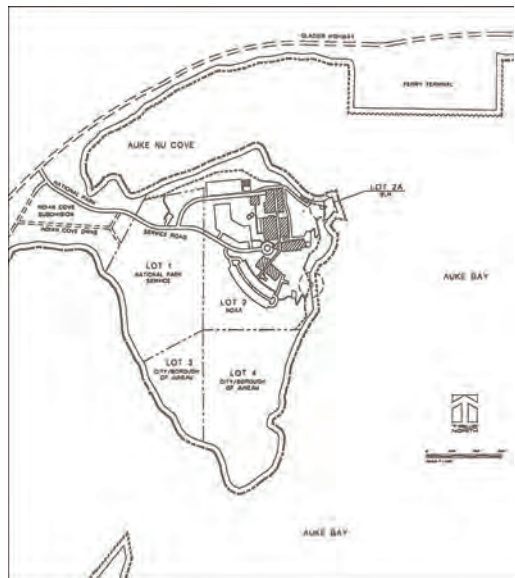


With this victory, the bulk of the 78-acre Auke Cape property remained undeveloped for the next three decades. However, the fate of the peninsula came to a head again in September 1996, when the National Oceanic and Atmospheric Administration (NOAA) selected Auke Cape as its preferred site for constructing a new consolidated office and research laboratory facility in Juneau. As they had 30 years previously, local and regional Native organizations opposed this alternative due to concerns for cultural and historic values associated with the site. By this time Auke Cape had become divided into four large lots (see Figure 1) controlled by several different entities. The two southern and outermost lots (Lot 3 and 4, which had been tagged for development in the 1960s) continued to be property of the city and borough of Juneau. Lot 1 at Indian Cove is federal land managed by the National Park Service as a support facility for Glacier Bay National Park. Lot 2, the largest undeveloped lot, was conveyed to NOAA by the Bureau of Land Management for potential development of the consolidated facility. However, part of this original lot, now known as Lot 2A, remained under the control of the Bureau of Land Management, and was not included in the transfer of land to NOAA because of evidence of Indian graves on the site. A recreational trail, maintained by the city and borough of Juneau, the Park Service, and volunteers, wends its way through parts of all four lots before terminating at Indian Point on the end of the peninsula. Beyond this, the tidelands surrounding the cape are owned by the state of Alaska.

Through provisions set out in the Alaska Native Claims Settlement Act (ANCSA), Section 14(h)1, for protecting Native cemetery and historic sites, Juneau-area Natives, now organized into regional (Sealaska) and village (Goldbelt) corporations, identified Auke Cape as a historic settlement and grave site in their survey (Sealaska 1975:824). However the site was not thoroughly surveyed, in part due to the split federal–state jurisdiction (state lands could not be selected) and potentially competing allotment and other claims on the land. Undoubtedly, additional historic sites could have been confirmed had there been more time and resources available for assessment of sites. Without protection under 14(h)1 or other provisions, the bulk of Auke Cape remained open to development.

### **The 1996 TCP evaluation and nomination**

Fortunately, by 1996, the process of assessing environmental and cultural impacts of development projects on federal lands had been significantly



**Figure 1** Lot map of Auke Cape with the footprint of the proposed NOAA/NMFS Consolidated Facility. The boundaries of the proposed TCP include Lots 1–4 and offshore islands (Indian Island, Pillar Rock). Source: NOAA 1998.

enhanced, thanks to the National Environmental Policy Act (NEPA; 1969) and the NHPA. Under Section 106 of NHPA, federal agencies were required to take into account the effect of their projects (“federal or federal-assisted undertakings”) on sites that are included in or eligible for inclusion in the National Register of Historic Places. Amendments to NHPA in 1992 provided a greater role for Indian tribes in federal and state preservation programs and added greater federal responsibility for the identification, evaluation, and nomination of historic properties to the National Register of Historic Places, and for consideration of historic properties during agency decision-making. The 1996 regulations provided greatly expanded guidance and requirements for consultation with Indian tribes in the process of taking into account the effects of the agency’s undertaking on historic properties. This provision triggered the need for a cultural resource survey of Indian Point, the need to document and evaluate whether any properties might be eligible for inclusion in the National Register, and the need for consultation with Indian tribes in these efforts. In addition, Bulletin 38 had been issued in 1990, defining procedures for assessing and protecting TCPs, including landscapes with significant non-tangible attributes, such as religious beliefs and ancestral traditions.

With all of these changes, it seemed that the Tlingit *at.óow* model of sacred possession could be more fully recognized in the process of assessing NOAA’s proposed facility. Indeed, the draft environmental impact statement (required under NEPA) on the consolidated facility noted up front that “the site’s location, near Auke Bay, Auke Creek, and Auke Lake, and a short distance from the traditional winter Auke Village, makes it likely that Native resources are located on the site.” Cultural resource surveys of the proposed building tract were conducted in 1992 and 1996 by Charles M. Mobley. Through archaeological surveying on the building site (Lot 2) and limited interviews and archival research, Mobley was able to develop a picture of past occupancy and land use of the area. Historic human activities and sites included salmon and herring egg fisheries; cockle, clam, and other marine invertebrate harvesting; some 31 culturally modified hemlock trees (modified, among other reasons, for the inner bark which is a prized Native food); four canoe runs; smokehouses; camping sites; and burial grounds. Mobley (1996:46–47) concluded that portions of the building tract, namely the canoe runs and the midden upslope from those runs (together given Alaska Heritage Resources Survey number JUN-701) are eligible for the National Register of Historic Places based on criterion D, their potential to yield information important to our understanding of prehistory or history. Among his mitigation considerations, Mobley (1996:48) suggested that this area be avoided in development of the facility, as construction would “likely obliterate any cultural resources in its footprint.” His conclusions bolstered the public testimony on the part of local Tlingits, and the initial findings of the 1975 Sealaska historic sites survey.

As a consequence, federal and Native leaders agreed that a TCP evaluation should be conducted on Auke Cape to determine if all or parts of the area might be eligible for nomination to the National Register of Historic Places. My TCP investigation was initiated in late April 1997. Between April and June 1997, I reviewed documentary and oral sources of information pertaining to Auke Cape and conducted more than 40 interviews with local Tlingits and others familiar with the history and uses of the property (Thornton 1997). Results of the investigation revealed that Auk Tlingits conceive of Auke Cape as a single property, that the

boundaries of the site, called *X'unáxi* Tlingit (referring to its earliest use as a stopover and camping place), encompass not only Auke Cape but the nearshore areas of Auke Nu Cove and Indian Cove and the immediate offshore islands (Indian Island and "Pillar Rock"; Figure 2), and that Auk Tlingits repeatedly have fought to maintain both the integrity of condition of Indian Point and their relationship and rights to the site in the face of increasing encroachments.

Further, the property was found to be historically significant in four major respects. First, the Indian Cove side of Auke Cape, also known as Fairhaven, is the original habitation site of the Áak'w K'wáan in the Juneau area. Members of the Yaxtetaan (Dipper House) of the L'eineidí (Dog Salmon) clan moved with their leader from Young Bay, ultimately landing at Auke Cape/Indian Cove (*X'unáxi*). Here the group erected the first Dipper House (matrilineal clan house) in Juneau and lived prosperously for some time; eventually, the village was moved a short distance northward to what is now the site of Auke Recreation area where the name *Anchaltsoow* ("Town that Moved") was applied to the new settlement. Second, *X'unáxi* was—until the decline of the herring run—a hallowed subsistence site for fishing and gathering activities. Third, Auke Cape and its nearshore islands are the site of historic Native graves, including shaman graves. Shaman graves constitute particularly powerful landscapes that extend some distance beyond the actual above-ground burial sites and generally are avoided out of respect for the power of the spirit(s) that continue to dwell in their midst. Fourth, Auke Cape is a historic lookout, refuge site, and meeting place for major events in Áak'w K'wáan history, including battles and encounters with other groups in which key Yaxtetaan leaders, in typical Northwest Coast Indian fashion, earned their prestigious titles and through which the clan established its preeminent status as owners of Auke Bay and the surrounding territory. Collectively, these characteristics defined Auke Cape as a cultural property of deep and abiding cultural significance, a critical component of the Áak'w K'wáan history, *at.óow*, and *shagóon*.

**Figure 2** Pillar Rock, part of the Indian Point/Auke Cape Traditional Cultural Property. Photo courtesy of the author.



The report concluded that the cultural beliefs and practices associated with Auke Cape meet the guidelines established in National Register Bulletin 38 for evaluating Register-eligible traditional cultural properties. Auke Cape is *deeply rooted in the community's history*, and the tangible resources associated with the site *are important in maintaining the continuity and identity of the community*. The report also found that the site meets criteria for eligibility to the National Register because it is (a) associated with key events of the Áak'w Kwáan, (b) associated with key persons of significance, and (c) likely to yield more significant findings concerning the history and prehistory of Southeast Alaska. I found no obvious conditions that would make the property ineligible for the National Register. The landscape still held its integrity as a historic site, vital to the contemporary Auke Tlingit community. Similarly, the shamans' burial ground remained a potent influence on Tlingits from other communities, such as Hoonah, who observe the culturally prescribed avoidances and gestures of respect when passing the site when coming in and out of Auke Bay.

Federal officials were, at first, dubious about the cultural values of the property. In particular, they misunderstood the Tlingit model of claiming the property by revealing oral histories about how it came to be possessed as *at.óow*. One of these oral histories, the story of how *Yeeskanaalx̱* ("Newly Rich Man") got his name, was told by Áak'w Kwáan leader Rosa Miller at meeting concerning the proposed consolidated facility in 1997. Her mother, Bessie Visaya (Visaya 1972), Cecilia Kunz (Kunz 1997) and Forrest DeWitt (DeWitt 1985) also have recorded versions of this story, part of which is also recounted in John R. Swanton's well-known *Tlingit Myths and Texts* (1909:58ff). The basic details of the story are as follows:

At Auke Cape, a Áak'w Kwáan leader (*Kuwudakaa*) meets, challenges, and ultimately defeats a Yakutat (Tlingit community to the north) rival in a display of wealth—thus earning the name *Yeeskanaalx̱* ("Newly Rich Man"). The conflict was precipitated by the Yakutat leader's failure to pay a visit to the Auk leader during a trip down to the Taku River. On the way back north from Taku River, a messenger was sent out to the point (Indian Point at the tip of Auke Cape, in most versions of the story) to invite the Yakutat group (the L'oox̱'eidí clan) ashore at *X'unáx̱i* (Auke Cape) for a feast at which the Auk leader proceeded to insult the Yakutat leader by burning the decorated prow of his canoe in the fire.

Angry, the Yakutat chief left, but returned to *X'unáx̱i* the following spring to settle the score. A quarrel began and soon the Yakutat leader started throwing copper shields (*tináa*)—symbols of wealth—into the water to show his superior status. The Auk chief responded in kind by bringing out his own coppers and disposing of them in the water. The Auks also brought forth a young woman who imitated her crest, the dog salmon, in a spawning dance, except that instead of laying eggs she deposited valuable things like copper bracelets and abalone into the water, another symbolic gesture to demonstrate the superior wealth and status of the Auk group. Soon the Yakutat leader ran out of coppers and his group resorted to substituting spruce bark. Although they weighted the spruce bark with rocks so it would sink like the coppers, somehow it re-floated and their ruse was exposed.

Victorious, the Auks then sang an insulting song, prompting the Yakutat group to give up in shame.

From this event, *Kwáadaka* earned his new title, *Yeeskanaalx* ("Newly Rich Man"). The L'oox'eidí, it is said, have never been seen since.

NOAA officials were baffled as to why Miller would tell this story, as the events themselves—involving conflict, rivalry, and deception—seemed, as one official put it to me privately, "pitiful." But in Tlingit cultural logic, it was a kind of "title search" to show how the Áak'w *Kwáan* had come to own Auke Cape legitimately, and had their claims to it as cultural property validated publicly. However, rather than culminating in a written legal document, the Tlingit model of property ownership concentrates on the *event* of title purchase, which becomes a constituent part of their own identity and status as a community, as embodied in the very names of their leaders, like *Yeeskanaalx*, as well as the story and the song, all of which are carried still today. In the Tlingit cultural model, the surrender and retreat of the Yakutat L'oox'eidí in the face of the Auk song is also important, for it established that the Auk claim was accepted by competing groups. The public performance and ritual validation of the story of *Yeeskanaalx* is thus the legal starting point for defending Auke Cape as Áak'w *Kwáan* cultural property.

### **Denouement or irresolution?**

My report and positive findings concerning the eligibility of Auke Cape as a TCP were accepted by the lead federal agency, NOAA, and reported in the final environmental impact statement on the Auke Cape facility (NOAA 1998). The site was determined officially to be eligible for inclusion in the National Register of Historic Places as a TCP. As a result, an alternative site (Lena Point) was chosen for development of what would become the Ted Stevens Marine Research Institute, named for the state's influential US senator, who had helped originally to secure federal money to build the facility. Significantly, from a cultural models standpoint, in explaining the decision to move the facility from Auke Cape to Lena Point, Juneau's vice mayor did not explicitly recognize the value of Auke Cape as a Tlingit TCP worthy of protection, but simply stated that the site had "cultural problems." The new \$51 million institute finally opened in the spring of 2007, and to this day Natives are blamed for the delay.

Meanwhile, the fate of Auke Cape as a cultural property has languished in the state's historic preservation bureaucracy. Shortly after the 1998 eligibility determination, Sealaska Heritage Foundation (now Institute), the non-profit arm of the Sealaska regional Native corporation, acting on behalf of the Áak'w *Kwáan*, initiated the process of nominating the site for inclusion in the National Register. In 2002 the nomination form and supporting material were formally submitted to the Alaska state historic preservation officer (SHPO). Between 2002 and 2005 the SHPO's office requested more information from Sealaska Heritage Institute concerning the boundaries and integrity of the site. Sealaska responded to these requests with additional documentation, which was accepted by the SHPO. Then, sudden-

ly, in 2006, the SHPO asserted that TCP form had “changed so much” that it was necessary for the Alaska Historical Commission to re-review the nomination of Auke Cape. More pictures, clearer demarcation of boundaries, and additional data in support of criterion D (that “the property has yielded, or is likely to yield information important in prehistory or history”) were needed. Again, Sealaska Heritage Institute, through staff anthropologist Kathy Miller, obliged this request. Significantly, the state has submitted the nomination materials to the National Register in Washington, D.C., for an informal review, and the Register office has found the documentation sufficient to go forward. Yet, as of this writing, the Auke Cape is still awaiting approval as the state of Alaska’s first historic site recognized under the TCP nomination process.

Is the state stalling? There does seem to be a concern among government officials, particularly at the state level, that a granting TCP status to Auke Cape could open up the “flood-gates” to innumerable other TCP claims and nominations, which, in turn, could “lock up” significant amounts of land to development (always a concern in Alaska, which boasts more acreage in parks and preserves than any other state, by far). However, as Bulletin 38 makes clear, TCP status itself does not preclude development; rather it requires that in federal or federally assisted undertakings, the federal agency must take into account the effect of the undertaking on the historic property, in association with the SHPO, and in consultation with people and groups for which the site has cultural and religious significance. Certainly another brake slowing the process is the fact that TCP nomination procedures are themselves still fairly new, and necessarily involve a cross-cultural grasp of landscapes, if not of models of valuing and maintaining ties to property. Thirdly, in a major Alaska city such as Juneau, where Natives are a minority (less than 20% of the population) who until recently have been cowed by racial discrimination and strict acculturation policies into practicing their culture almost invisibly, the contemporary assertion of strong cultural ties to property strikes some as surprising, at best, and a strategic “(re)invention of tradition” at worst; therefore, there is a need to proceed with caution. As the Auke Cape investigation clearly shows, however, the Tlingit claims are not merely an act of strategic essentialism (Sheridan 2005). As much as any other North American Indian group, Tlingits have maintained strong ties to historical properties through both material and symbolic means, despite discrimination and acculturation. And their record of defending properties from encroachment and dispossession, including Auke Cape, spans hundreds of years (Thornton 1997).

At base, the irresolution of the Auke Cape TCP nomination reveals some critical problems with the TCP evaluation process as it stands today. The most important of these is the political ecology of cultural models problem. Even while the TCP evaluation process itself, especially when carried out by investigators sensitive to diverse models of cultural property, becomes increasingly inclusive of cultural landscapes not previously protected under the NHPA, the state historic preservation offices and historical commissions ultimately evaluating these properties often do not include anthropologists or minorities in significant numbers. Thus, there is no way to ensure that these officials will be inclusive, and no guarantee that they will not continue to measure cultural properties against their own (or their largest constituency’s) dominant cultural models, professional standards, and prototypes of what such sites consist of, rather than the TCP criteria themselves, and find them wanting. This is



the essence of the political ecology of cultural models problem. This is why the Alaska SHPO wants more *written* documentation, photographs, and clearer *boundaries* for Auke Cape. A similar set of time-space boundary issues prompted the Alaska SHPO to torpedo another Tlingit TCP nomination, the Kiks.ádi Survival March Trail, in 1997 (see Thomas King's paper in this volume). In the end, it appears it will be this kind of documentation, and not the story of *Yeeskanaalx*, that will secure Auke Cape's entry into the National Register. Similarly, it will be this kind of documentation that leads to successful management of Auke Cape as a TCP, not merely a "cultural park with long houses, [a] few totem poles, etc.," as has been suggested by the Juneau Parks and Recreation Advisory Committee (2005).

### Conclusion: TCPs and biocultural diversity

How do you solve the political ecology of cultural models problem that hampers the successful nomination of TCPs such as Auke Cape into the National Register? Further, can the TCP process succeed in legitimizing Native American and other non-mainstream models of cultural property against the dominant cultural models that have shaped historic preservation in the United States? Clearly, it will not be easy. To begin with, it is important to note that for Native Americans the TCP model of landscape preservation is only the latest in a series of efforts to conserve their important historical sites, the vast majority of which have not succeeded. The most spectacular failure, of course, was the 1978 Native American Religious Freedom Act which was rendered virtually impotent by the Supreme Court in its 1987 *Lyng v. Indian Cemetery Protective Association* decision (United States GPO 1991; also see Sherry Hutt's paper in this volume). The court found that construction of a major logging road and clearcut logging operation on national forest lands, held sacred by the Yurok and Karuk Indians of northern California, did not constitute a violation of the Indians' religious freedom. Justice Sandra Day O'Connor, writing for the 5-3 majority, argued that construction of the road did not expressly prohibit the practice of the religion because the Forest Service was not proposing to prevent Indian access to their sacred sites. She failed to grasp that the logging development would have degraded the sites, and, unlike churches, these sacred landscapes could not be moved or rebuilt elsewhere. While the justices might have been sympathetic to the Indian case, overall they were bound by the dominant cultural models of both property rights and of religious practices, which in Euroamerican culture typically are tied to structures (churches) rather than geographic places. Ironically, completion of the logging road (known as the Gasquet-Orleans, or G-O, road) was prevented by environmentalists for biological (not cultural) conservation reasons, and the area was declared a "wilderness," a cultural model of landscape alien to northern California Indians.

These failures have led to more pointed efforts to protect Indian sacred landscapes, including the TCP process and President Bill Clinton's 1994 Executive Order 13007. The latter specifically directs federal land managers to "(1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites." Neither of these processes has been tested in the Supreme Court, but if they were challenged, they would very likely face similar biases to those that crippled the American Indian Religious Freedom Act. The political ecology of

cultural models of cultural property likely will not shift very much under the present Supreme Court, without legislative changes.

A better approach might be to begin a broad campaign to educate contemporary land managers and environmentalists about the virtues of recognizing Native American TCPs in particular as part of a large-scale plan to maintain not just biological diversity, but *biocultural diversity*. It goes without saying that a TCP, by virtue of having traditional cultural value in the eyes of a distinct community, may be central to maintaining diverse cultural traditions and resource bases. Furthermore, it has been shown that there is a strong correlation between indigenous linguistic, cultural, and biological diversity in many parts of the world (Maffi 2005). To the extent that TCPs, like Auke Cape, represent diverse indigenous cultural landscapes, they can become a tool in the effort to maintain a healthy level of biocultural diversity on the land, and to expand the narrow political-ecological framework that still governs cultural property and resource evaluations in United States. Auke Cape and Áak'w K̄wáan need each other to thrive in the future, just as they have in the past. Hopefully, the National Register nomination process will recognize this fact and act accordingly to make Auke Cape Alaska's first official traditional cultural property.

[Guest editor's note: in early March 2009, a representative of the SHPO informed the author that the nomination was recently approved by the state review board and will be forwarded to the National Register at an unspecified date in the future.]

## Acknowledgments

I would like to thank Kathy Miller, Chuck Smythe, and Rosita Worl for their input and constructive comments on this essay. Also, I acknowledge all the many Áak'w K̄wáan and other Tlingits who contributed to the study, especially Rosa Miller, Cecilia Kunz, Nora Dauenhauer, Marion Ezre, Ernie Hillman, George Jim, Charlie Johnson, David Katzeek, Robert Loescher, Harold Martin, Herbert Mercer, Florence Sheakley, Walter Soboleff, Amos Wallace, and Rosita Worl.

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# Quantifying the Consequences of Fire Suppression in Two California National Parks

*Carol Miller and Brett Davis*

**EXCLUDING FIRE CAN HAVE UNTOLD ECOLOGICAL EFFECTS.** Decades of fire suppression in national parks and other protected areas have altered natural fire regimes, vegetation, and wildlife habitat (Chang 1996; Keane et al. 2002). Management actions to suppress lightning-ignited wildfires removes one of the most important natural processes from fire-dependent ecosystems, and yet resource specialists currently have no way of measuring or monitoring the effects of these actions.

Yosemite and Sequoia-Kings Canyon National Parks in California have been leaders in the restoration of fire as a natural process. By 1970, both parks had instituted a policy whereby lightning-caused fires could be allowed to burn in certain areas of the park, a strategy that is now known as “wildland fire use” (van Wagtendonk, in press; Kilgore 2007). Despite these efforts, the parks continue to struggle with restoring natural fire regimes, and the majority of lightning-caused ignitions are suppressed for a myriad of biophysical and social reasons. Concerns with allowing fires to burn include the risk of fire leaving jurisdictional boundaries, the potential that unnaturally high fuel accumulations and tree densities could cause unnatural and undesirable fire effects, and the impact of smoke emissions on surrounding communities. Management-ignited prescribed fire has been used both as a restoration tool and a means to mitigate the risk of severe fire (Keifer et al. 2000a).

To help prioritize prescribed fire and other restoration activities, Yosemite and Sequoia-Kings Canyon National Parks use the Fire Return Interval Departure (FRID) Index to quantify departure from the fire return interval that existed prior to Euroamerican settlement (Caprio et al. 2002; van Wagtendonk et al. 2002). FRID is computed as the amount of time since the last fire (time-since-last-fire ) divided by the characteristic fire return interval for the vegetation type. The characteristic fire return interval can be determined from published literature (Fischer et al. 1996) and/or fire history chronologies reconstructed from the tree rings of fire-scarred trees (Caprio and Lineback 2002). Through the use of geographic information system (GIS) software, FRID has been spatially mapped, and areas with the highest values, or “ecological need,” are typically prioritized for fuel management and restoration activities (Caprio et al. 2002). FRID is also useful as a coarse filter for measuring progress and setting maintenance priorities in ecological restoration, with a decrease in FRID values reflecting improved ecosystem condition (Caprio and Graber 2000). Median or mean fire return intervals are typically used to calculate FRID, although “average” maximum fire return intervals have been used to generate conservative estimates of FRID (Keifer et al. 2000b).

A plethora of computerized models and tools are available to support fire management planning (Stratton 2006). One of those is FARSITE, a model that uses spatial information on topography and fuels along with weather and wind data to simulate the spread and behavior of wildland fire (Finney 1998). Although FARSITE's predictions are most commonly used to support fire incident management, it can also be used to investigate where fires in the past *might* have spread had they not been suppressed. This retrospective application is particularly appealing because it avoids the uncertainty inherent in weather forecasts. When applied to past events, actual weather observations can be used as input to FARSITE.

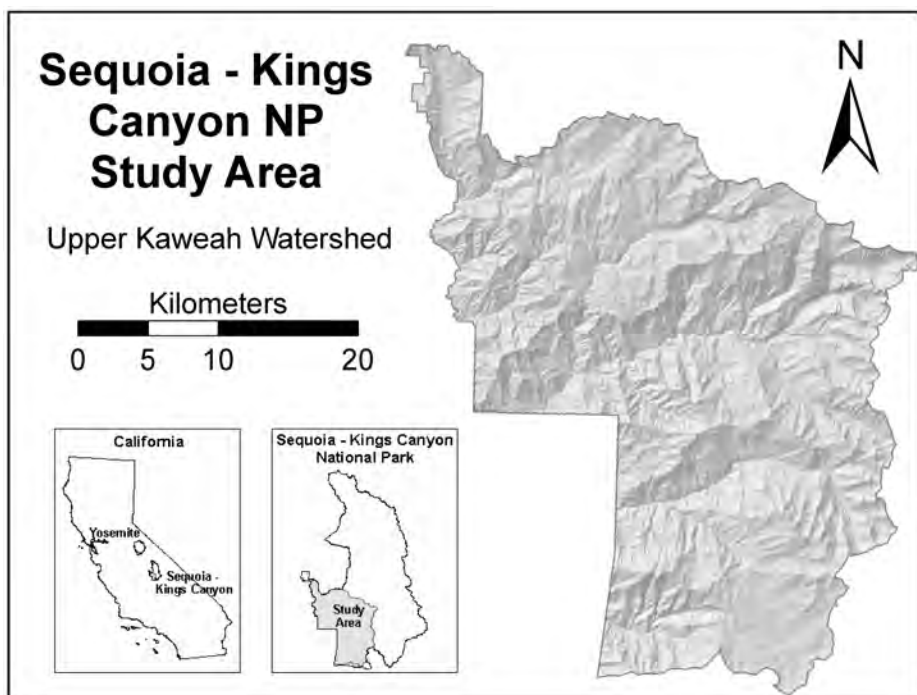
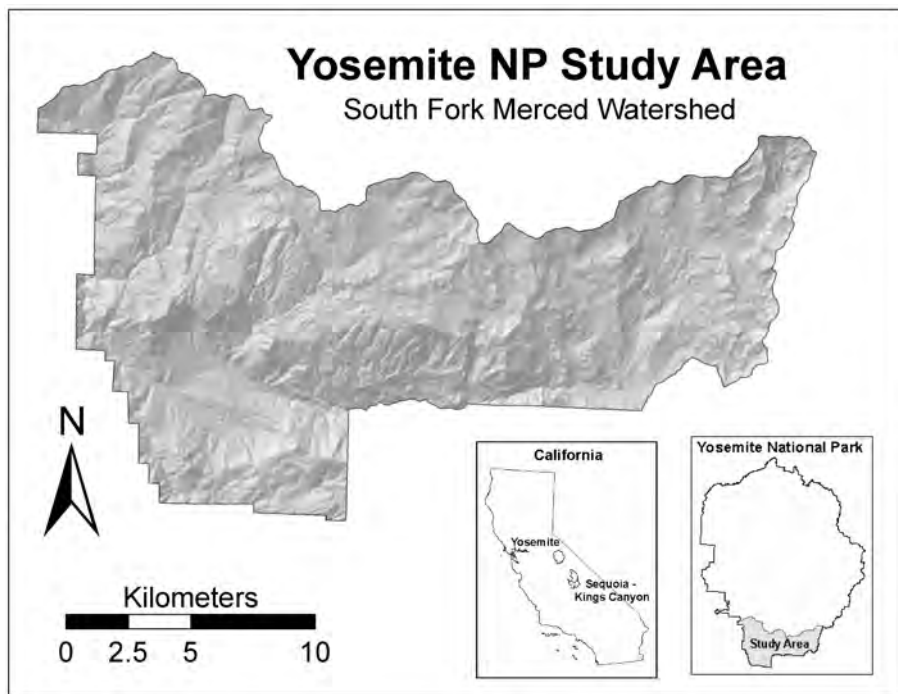
We used retrospective fire behavior modeling and the FRID index to quantify the consequences of suppression. We conducted analyses for case study watersheds in Yosemite and Sequoia-Kings Canyon National Parks. To our knowledge, this is the first time case studies have been used to systematically evaluate the consequences of suppression decisions. We believe the approach could be adapted for application elsewhere. A forthcoming report describes methods in detail (Davis and Miller, in preparation).

## Methods

**Study areas** Historically, at least 6,500 ha in Yosemite National Park (Yosemite National Park 2003) and 10,000 ha in Sequoia-Kings Canyon National Parks probably burned each year (Caprio and Graber 2000). Burning by Native Americans contributed to the historical fire frequency in both parks, but probably only in certain areas (Vale 1998). From 1930–2000, wildland and prescribed fires only burned an average of less than 1,250 ha per year in Yosemite (van Wagendonk et al. 2002) and 855 ha per year in Sequoia-Kings Canyon (Caprio and Graber 2000). Changes resulting from the lack of fire are most pronounced in the lower elevations of both parks' frontcountry with oak woodlands, ponderosa pine, and mixed conifer forests. Twenty-five percent of the vegetation in Yosemite and 22% in Sequoia-Kings Canyon is considered to be in a state of high departure from natural conditions, as defined by high FRID values. Most of this area occurs in the lower-to-mid-elevation conifer forests.

We selected the 31,400-ha South Fork Merced (SFM) watershed in Yosemite and the 90,700-ha Kaweah watershed in Sequoia-Kings Canyon for our retrospective analyses (Figure 1). Most of the SFM watershed last burned prior to the 1930s. Areas of special concern include the townsite of Wawona and the Mariposa grove of giant sequoia trees (*Sequoia-dendron giganteum*). Fires are typically suppressed in this area, which has led to unnaturally high fuel accumulations. The Kaweah watershed in Sequoia-Kings Canyon contains most of the park's infrastructure, most of its giant sequoia groves, and has a diversity of boundary interface issues. Due to its proximity to developed areas and topography that drains into the San Joaquin Valley, smoke and its impacts on air quality are a primary concern. About half of the lightning ignitions in the watershed are suppressed.

**Data** Retrospective fire behavior modeling requires high-quality ignition, weather, and fuels data. A combination of improved record-keeping on fires by the parks, the implementation of national fire planning and budgeting analyses, and the use of remote-sensing data have provided datasets of adequate quality starting in 1994. The study period for our retrospective analyses was 1994–2004.



**Figure 1** The 31,400-ha South Fork Merced (SFM) watershed in Yosemite National Park and the 90,700-ha Kaweah watershed in Sequoia-Kings Canyon National Parks.



We used historical wildland fire ignition data from the parks to identify lightning ignitions that were suppressed during the study period. Data attributes included location, start date, cause, management response, and final fire size.

Weather data recorded by representative meteorological stations in or near the study area were used to select ignitions with the potential for significant growth and to reconstruct the conditions under which we modeled the spread of the selected ignitions. Hourly data from Remote Automated Weather Stations (RAWS) spanning the 11-year study period were obtained from the Western Regional Climate Center (WRCC 2007) and used as input to the fire spread simulations. Daily RAWS data over a period of 17 years (1991–2006) for the SFM watershed and 31 years (1973–2004) for the Kaweah watershed were correlated with actual fire activity to identify conditions that support active fire spread. These correlations were used to develop rules for selecting which ignitions to model, and for identifying simulation days for the fire behavior simulations.

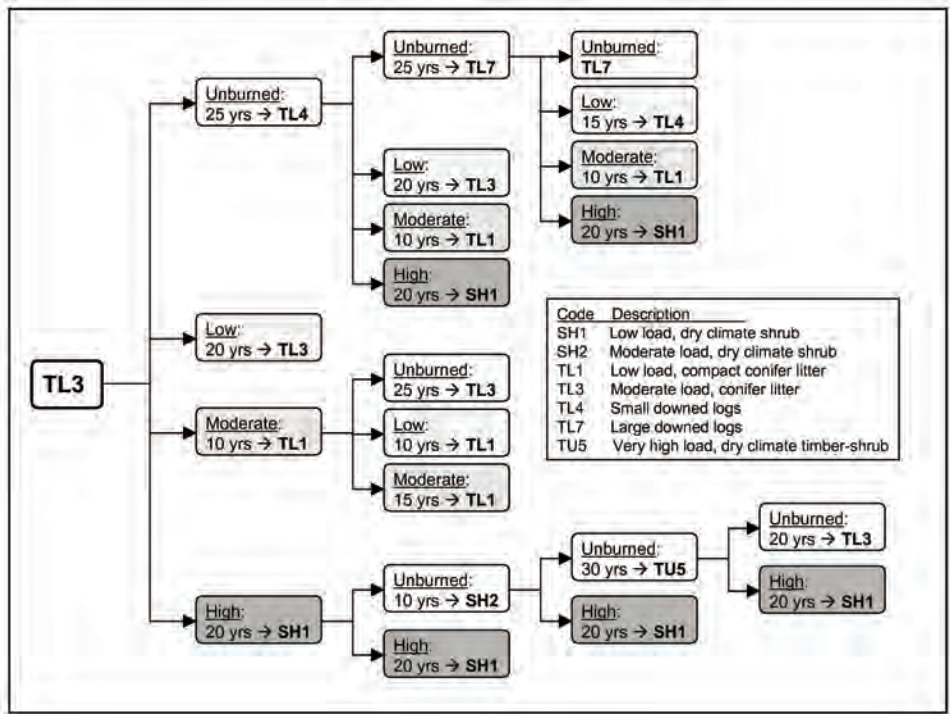
Vegetation data were previously derived by each of the parks from satellite and aerial imagery. To generate necessary spatial input data for fire spread modeling, the vegetation data were “crosswalked” to 22 distinct fuel types represented by surface-fire behavior fuel models (Scott and Burgan 2005). Fire behavior fuel models serve as composite descriptions of several fuelbed inputs needed for surface-fire behavior modeling by FARSITE (Stratton 2006).

Topographic data were required for the fire behavior simulation. Elevation, slope, and aspect data were obtained from the parks at 30-m spatial resolution.

Historical fire perimeters were available as digital fire atlases for the period 1930–2004 for the SFM watershed, and for 1921–2004 for the Kaweah watershed. These fire atlas data were used in retrospective modeling to update spatial fuel data between simulation years and to modify the fuels data during a fire simulation. These data were also used to map the time-since-last-fire for the computation of FRID. Burn severity data derived from satellite imagery were available for eight of the real fires in the SFM watershed and two in the Kaweah watershed during the period of the study, and were used to update the fuels during the course of the analysis (Thode 2005; Miller and Thode 2007).

**Models** We used a dynamic model of fuel succession to represent fuel accumulation and post-fire effects during the 11-year study period. This expert-opinion-based fuel succession model was developed in collaboration with scientists and managers from the parks and the US Geological Survey (USGS). It is a deterministic model that predicts how fuels—represented by one of 22 fire behavior fuel models—can be expected to change over time. Transitions from one fuel model to another and the rates of these transitions were based on expert knowledge of how quickly fuels accumulate in the associated vegetation types and how that vegetation would be expected to react to fires of low, moderate, or high burn severities. We defined burn severity according to the degree of fuel consumption that would be seen from a remotely sensed (aerial) perspective. Twenty-two diagrams were created to describe fuel succession for each of the fuel models present in the parks (Figure 2).

We used the computer simulation model FARSITE (Finney 1998) to determine where fires might have spread had they not been suppressed. Spatial data input to FARSITE were topography (elevation, slope, aspect), fire behavior fuel models, canopy cover, canopy



**Figure 2** Sample diagram of dynamic fuel succession for the Timber-Litter 3 (TL3) fuel model. Transitions and their timing are described as a function of fire severity (low, moderate, high, or unburned).

height, canopy base height, and canopy bulk density. Weather data input to FARSITE included hourly wind speed and wind direction and daily minimum and maximum values for temperature and relative humidity. Outputs from FARSITE included fire perimeters at user-specified time intervals as well as fire behavior characteristics such as rate of spread, fireline intensity, and flame length. In addition to simulating surface fire spread, we used FARSITE to estimate crown fire activity for each of the modeled fires, which we then used as a proxy for burn severity.

We summarized historical weather data and computed fire danger indices with the analysis tool FireFamilyPlus (Bradshaw and McCormick 2000). We calculated daily percentile values for a fire danger index (energy release component, or ERC) and used these to inform our selection of ignitions and to identify days of active fire spread. Additionally, we used FireFamilyPlus to identify fire-ending events (i.e., precipitation exceeding a threshold within a certain time period) and to export the formatted weather and wind input data files required for FARSITE simulations.

**Analysis** We were interested in modeling suppressed ignitions during 1994–2004 that would have had the potential for significant spread. Even without suppression, many ignitions recorded in the fire occurrence database may never have spread from their ignition point due to fuel discontinuities, high fuel moistures, or subsequent weather conditions

(e.g., rain). We used a combination of fire danger and fuel model to estimate each ignition's potential for spread, and ignored those with low potential. We identified two types of fuel models—"fast" and "slow"—in terms of a characteristic rate of fire spread. For example, we considered a fully cured tallgrass fuel model as "fast," whereas we considered a low-load conifer litter fuel model as "slow." Some fuel models were considered "slow" early in the fire season and "fast" later in the fire season after curing. If an ignition occurred in a "fast" fuel model, and the fire danger on the ignition date exceeded its 15th percentile value, we included the ignition in the retrospective analysis. If an ignition occurred in a "slow" fuel model, we included it if the fire danger exceeded the 50th percentile value. In a few cases, we subjectively relaxed these fire danger thresholds if an ignition didn't exceed the threshold but had other attributes indicating a potential for significant spread (e.g., when fire records indicated that the actual historic fire grew to >1 ha before containment).

The retrospective analyses included accounting for real fires that occurred during the study period as well as the simulation of the spread of the selected ignitions. For each year from 1994 through 2004, we constructed a timeline of fire danger values, ignition dates, significant weather events, and occurrence of real fires (wildfires, wildland fire use, and prescribed fires) that could have affected, or been affected by, the behavior of the fires we modeled. In chronological order, we used this information and the model FARSITE to simulate the spread and consequences of each of the selected ignitions. For example, if a real prescribed fire occurred in the study area before one of our selected ignitions occurred, we adjusted the fuels data to reflect the prescribed fire's effects before modeling the ignition. Other information in the timeline had the potential to further refine our ignition selection. For example, we eliminated an ignition from our analysis if fuels had not yet recovered from an earlier modeled fire that burned over the same location. Real fires were eliminated in the same fashion.

Fire spread and behavior were simulated by FARSITE using the actual weather and wind observations from the time period during which the fire would have burned. FARSITE tends to over-predict spread rates (Finney 1994) and these errors can accumulate over very long simulations. Furthermore, very long simulations can be computer intensive. To help mitigate these problems, we made two key simplifying assumptions. First, we assumed that the vast majority of fire spread occurs on those days with the most extreme fire weather conditions. Therefore, we only simulated fire spread on days when the fire danger exceeded the 90th percentile. We felt that using this threshold would capture the significant fire spread while balancing FARSITE's tendency to over-predict spread rate. Second, we assumed that fires would be extinguished if 0.5 inches of precipitation occurred within a three-day period, or if the end of the fire season was reached.

We determined burn severity from the fuel model and FARSITE's categorical estimate for crown fire activity. For non-timber fuel models such as grasses and shrubs, we assumed that fires always result in high fuel consumption, and, therefore, high burn severity. For timber fuel models, we determined burn severity from crown fire activity. Crown fire activity takes one of three values: surface fire, passive crown fire (torching), and active crown fire. We assumed surface fires would result in low severity, passive crown fires would result in moderate severity, and active crown fires would result in high severity. After each analysis year, we

used the fuel succession model to update the fuels data according to the estimated burn severity within the simulated fire perimeters. We also updated fuels data for any real fires that may have burned using burn severity data that were available (Thode 2005). In cases where these data were unavailable, we assumed a uniform burn severity.

We summarized the cumulative effects of suppression by comparing the FRID map that would have existed at the end of the study period (2004) had our modeled fires been allowed to burn with the FRID map that existed without our modeled fires. To derive the FRID map with our modeled fires, we rebuilt the digital fire atlas using a GIS to incorporate the modeled fire perimeters, as well as any real fires that weren't eliminated by the modeled fires (Figure 3a). This rebuilt atlas was used in conjunction with fire return interval data to create the FRID map that would have existed in 2004 with our modeled fires. We used the same procedure, but using the original fire atlas with only the real fires that occurred, to derive the FRID map without the modeled fire (Figure 3b).

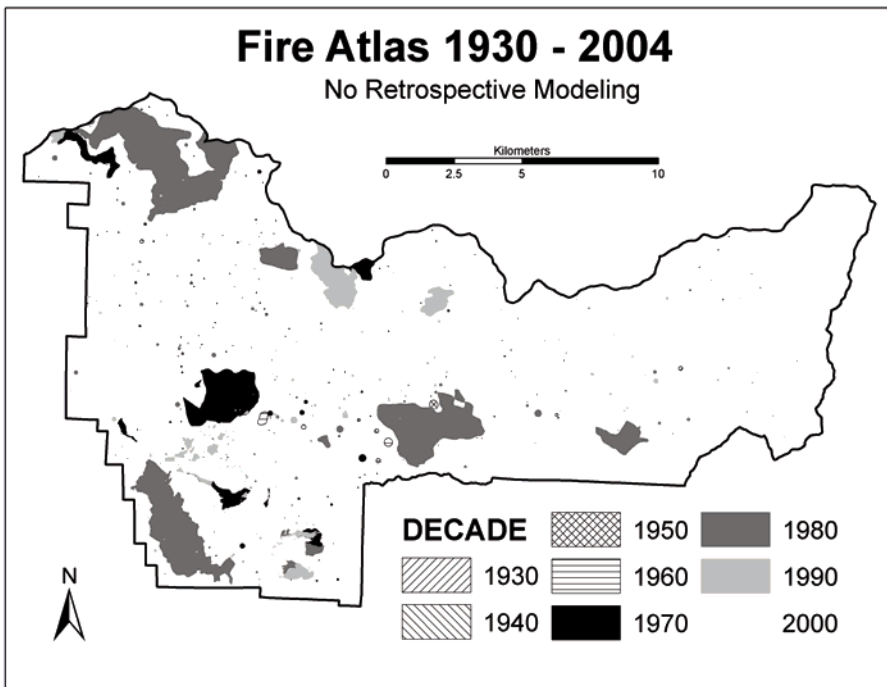
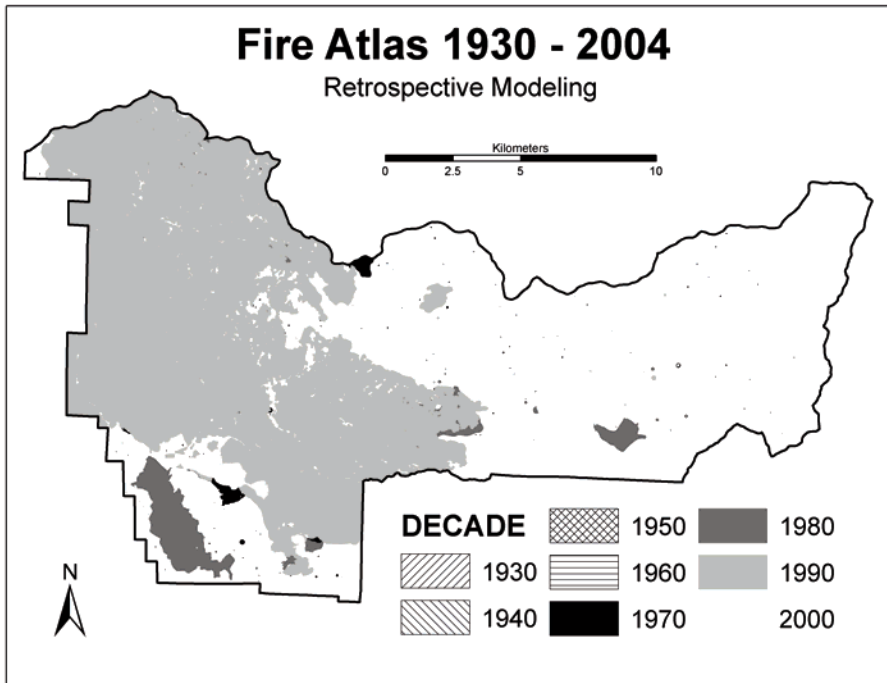
## Results

Park records indicate that 34 lightning ignitions in the SFM watershed and 71 in the Kaweah watershed were suppressed during the period 1994–2004. Through ignition selection procedures, we identified 10 in the SFM watershed and 32 in the Kaweah watershed as having potential to spread significantly. Several of these were subsequently eliminated from our analyses because of effects from previously modeled fires. Ultimately, we modeled the spread of five ignitions in the SFM watershed and 23 in the Kaweah watershed. According to the model outputs, the five ignitions in the SFM watershed would have burned a total of 13,661 ha (43.5% of the watershed) and the 23 ignitions in the Kaweah watershed would have burned a total of 55,765 ha (61.5% of the watershed; Table 1).

Retrospective modeling indicates that the five ignitions from the SFM watershed and the 23 from Kaweah would have resulted in substantially lower values for FRID in 2004 compared with the FRID that resulted in their absence (Figure 4). For the SFM watershed, the average FRID would have decreased from 4.5 to 1.8, while in Kaweah it would have decreased from 4.3 to 0.3.

## Discussion

The effects of the modeled fires on FRID were dramatic. Some of the modeled fires were much larger than what would ever be acceptable (Table 1). The simulation results suggest that the ignitions from 1994 and 1999 in the SFM watershed would have burned approximately 20% of the watershed in each year and would have escaped the park boundary. In the Kaweah watershed, the ignitions in 2001 would have burned almost a third of the watershed. Although fires of this size are not unprecedented (Caprio 1999), in reality, many of the modeled ignitions would have required management actions to confine them. We did not simulate confinement strategies in this study. A fruitful extension of this study would be to apply a more realistic “appropriate management response” scenario and examine the effect on FRID.



**Figure 3** Digital fire atlases used to create the Fire Return Interval Departure (FRID) Index for the South Fork Merced (SFM) watershed. Figure 3a (above): Atlas built using the five simulated fire perimeters. Figure 3b (below): Atlas built without the simulated fires.

	South Fork Merced		Kaweah	
	<i>Number of ignitions simulated</i>	<i>Area burned (ha)</i>	<i>Number of ignitions simulated</i>	<i>Area burned (ha)</i>
<i>Year</i>				
1994	3	6,203	2	471
1995	0	0	4	3,120
1996	0	0	1	421
1997	0	0	0	0
1998	0	0	1	11
1999	1	6,809	1	1,336
2000	1	649	0	0
2001	0	0	3	28,862
2002	0	0	2	713
2003	0	0	6	9,071
2004	0	0	3	11,759
<b>Total</b>	<b>5</b>	<b>13,661</b>	<b>23</b>	<b>55,765</b>

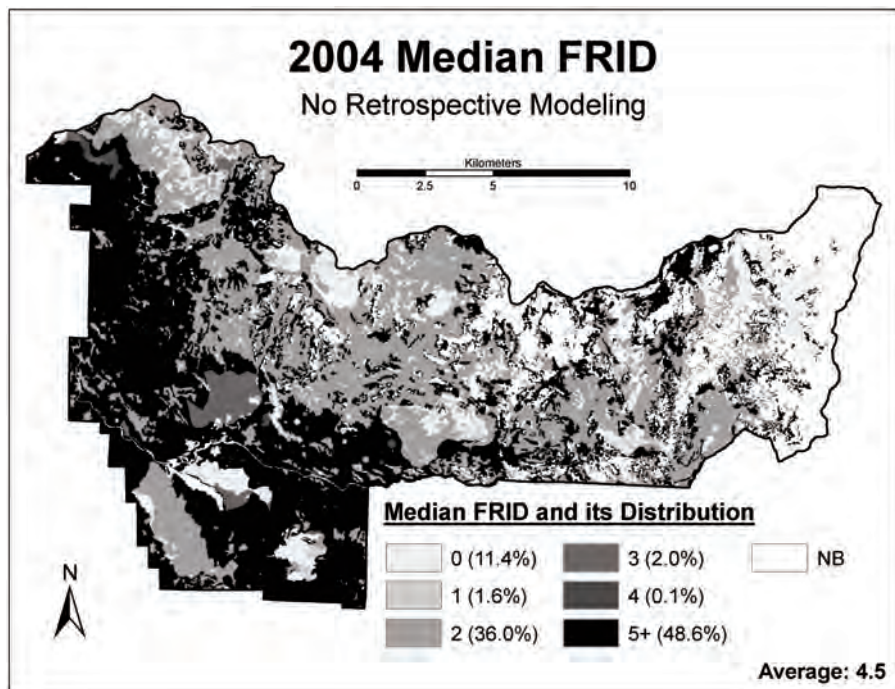
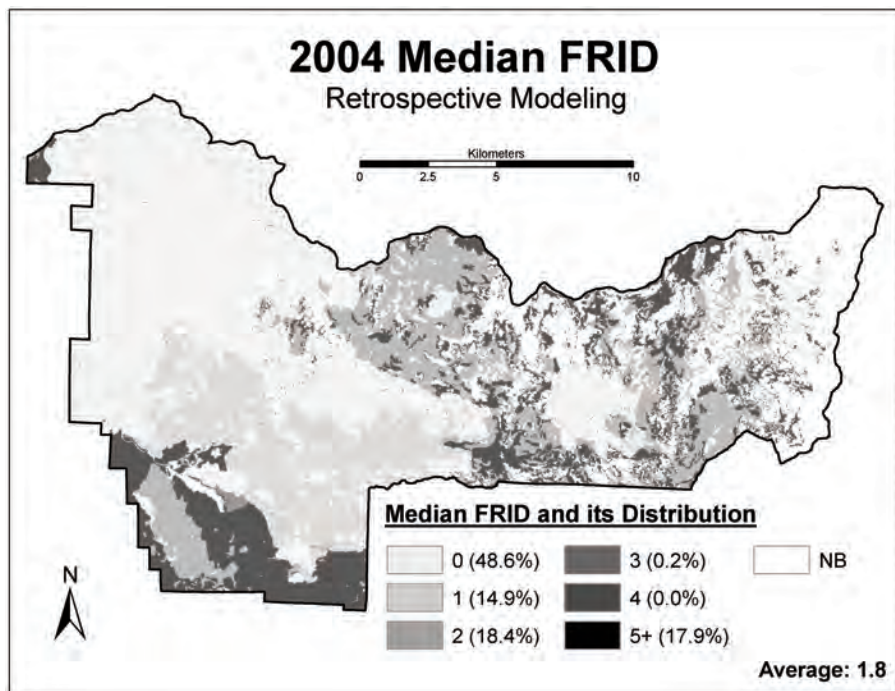
**Table 1** Area burned in retrospective simulations of suppressed lightning-caused ignitions in the two case study watersheds.

Our results hinge upon several assumptions, and at a minimum, sensitivity testing should be done for the simulation thresholds and fuel-model succession transition times we used. A lower ERC threshold for simulating days of active fire spread could dramatically increase the size of the modeled fires. The thresholds we used to select ignitions can also greatly affect the analysis because the removal or selection of any particular ignition can affect the selection or spread of subsequent ignitions. We recommend that information from initial size-up and scouting activities be used to improve the ignition selection. The transition times assumed in the fuel succession model may need refinement. If fuels recover more quickly than assumed, modeled fires could be even larger.

Both parks have fire management plans with extensive zones where the option of using natural ignitions to return fire to the landscape exists. Ideally, the decision to suppress a fire (or not) considers the possible consequences of allowing a fire to burn *as well as* the consequences of suppression. The analyses we conducted provide information about the consequences of suppression that could help inform decisions about future ignitions. Furthermore, knowledge of where fires would have burned naturally can help managers set priorities for fuel projects and, possibly, analyze opportunities for restoring “lost” ignitions with prescribed burns.

While parks and other protected areas strive to restore the natural role of fire, they must also protect a variety of other societal values such as air quality and public safety. Retrospective analyses can be applied to assess other consequences of suppression. The cumulative effects of suppression could be quantified in terms of smoke emissions over time, potential fire intensities, or even numbers of initial attack efforts that wouldn’t have been necessary if earlier ignitions had been allowed to burn. An understanding of what was gained and what





**Figure 4** The Fire Return Interval Departure (FRID) Index for the South Fork Merced (SFM) watershed. Figure 4a (above): FRID derived with the five simulated fire perimeters. Figure 4b (below): FRID derived without the simulated fires.

was lost when each ignition was suppressed in the past is needed before managers can effectively communicate these tradeoffs to the affected public and neighboring governmental entities.

## Conclusion

To accurately assess progress toward management objectives, park managers need an understanding of what was gained and what was lost when each ignition was suppressed in the past. When fires are suppressed, opportunities are foregone to create fuel breaks, reduce fire regime departures, and decrease future extreme fire behavior by modifying fuels. To our knowledge, no one has attempted to quantify these foregone opportunities. We developed a set of analysis steps to model suppressed ignitions in order to examine where these historic fires might have spread and to determine what effects they might have had on the landscape had they not been suppressed. This retrospective modeling approach is a quantitative method that park managers can use to better understand, measure, and track the cumulative effects of their decisions from year to year.

## Acknowledgments

We acknowledge funding from the Joint Fire Science Program under Project JFSP 04-2-1-110. For technical assistance and advice we thank Dave Bartlett, Mike Beasley, Monica Buhler, Tony Caprio, Corky Conover, Karen Folger, Jen Hooke, Ben Jacobs, Joe Scott, Pat Stephen, Jan van Wagtendonk, and Kent van Wagtendonk. Mitch Burgard, Tony Caprio, and Rob Seli provided thoughtful reviews of the manuscript.

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