

# Traditional Cultural Properties

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## 1980 amend NHPA, 470a

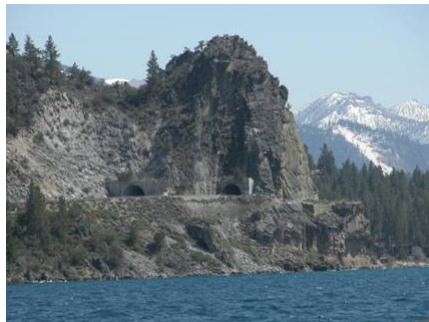
- Preserve & conserve the intangible elements of our cultural heritage such as arts, skills, folklife, and folkways...
- And encourage the continuation of the diverse traditional prehistoric, historic, ethnic and folk cultural traditions that underlie and are a living expression of our American heritage,

## 1992 amendment NHPA

- Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register. 470a(d)(6)(A)

## Stewardship Includes:

- Beyond buildings and properties to context intellectual and tangible
- A location associated with traditional beliefs of a Native American tribe
- A rural community with buildings and patterns of land use which reflect long standing cultural traditions
- Urban neighborhood, traditional home to a group that reflects its beliefs and practices
- A location of ceremonies of a Native American tribe
- A location where a community has traditionally carried out economic, artistic, or other cultural practices important in maintaining historical identity



## Identification and Evaluation

- Eligible for National Register
- Meets Secretaries standards



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

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- Culture defined as:
  - A system of behaviors, values, ideologies, and social arrangements. These features, in addition to tools and expressive elements such as graphic arts, help humans interpret their universe as well as deal with features of the environments, natural and social.

» NPS Director's Order no. 28

- Traditional Cultural Property-

- Can be defined generally as one that is eligible for inclusion on the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community.

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## Planning

- Consider historic context of entire area
- The broad patterns of development in an area
- Know what is there in terms of historic use of the area



## Consultation

- What is historical and what is significant
- Look at layers of use over time
- Consider living cultures
  - Those still on the land, and
  - Those for whom the site has meaning



## Traditional Cultural Property as a Sacred Site

- 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.

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## First Amendment Considerations

- The government may accommodate religious practice without violating the establishment clause.
  - » *Natural Arch and Bridge Society v. Alston*
  - » Tenth Circuit, 2004

## Brief History of TCP and Sacred Sites in the Courts (& Congress)

- *Wisconsin v. Yoder*, (1972)
- AIRFA, 42 U.S.C. 1996 (1978)
- *Badoni v. Higginson* (1980)
- *Lyng v. Northwest Cemetary Protective Association*, 1988
- 1992 Amendments to NHPA
- Religious Freedom Restoration Act (1992)

## History continues

- Executive Order 13007, May 24, 1996
  - 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 or its established religious significance to, or ceremonial use by, an Indian religion.

## And history moves forward.....

- *Bear Lodge Multiple Use Association v. Babbitt* (1998)
- *Natural Arch and Bridge Society v. Alston* (2004)
- *Cholla Ready Mix v. Civish* (2004)

## Future Issues for Research

- Capacity Building
- Consultation
- Training
- Site Reports
- Forums for cultural understanding
- Use of technology in decision making