

Traditional Cultural Districts

An Opportunity for Alaska Tribes to Protect Subsistence and Traditional Lands

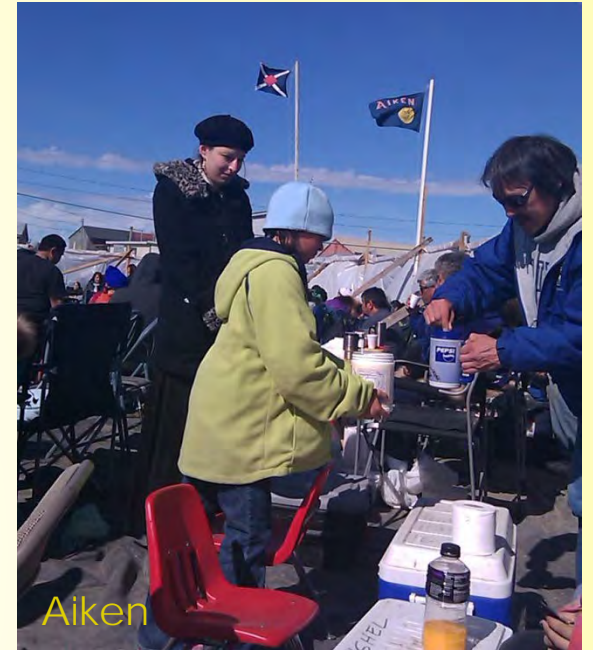
Alaska Native Participation in the Territorial Governance of the North
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My Background

- B.S., Environmental Science; Master's, Regional and City Planning; J.D.
- Currently pursuing Ph.D. in climate change adaptation planning
- Worked as attorney for 10 years
- Worked for North Slope Borough for 3.5 years on O&G land use planning, permitting, coastal management, and various legal issues
- Worked for conservation groups and on indigenous rights issues for 2 years



Barriers to Tribal Control

- No Alaska treaties to protect subsistence rights
- Since ANCSA, most Alaska tribes don't own their traditional lands
- Alaska Native Corporations do not have government powers and not all tribe members are shareholders
- ANILCA established subsistence priority but not Native priority, doesn't apply to non-federal lands



Tools to Increase Tribal Control

- International Issues: Follow Arctic Council and ensure adequate representation
- Non-profit: Form a non-profit organization that could participate in international bodies and apply for grants
- Consultation: Enter MOU with federal and state agencies for government-to-government consultation
- Specific Projects: Serve as cooperating agency or establish an oversight committee
- Advisory Councils: Participate in borough, state, and federal advisory councils, establish new council with strong voice for tribal representatives
- Co-management: Enter co-management agreements with federal and state agencies

More Tools to Increase Tribal Control

- Congress: Lobby on bills with tribal implications
- Municipal Codes: Participate in local zoning commissions and pursue code changes
- Industry Agreements: Enter agreements with industry on development timing, etc.
- Tribal Guidelines: Draft guidelines and encourage regulatory agencies to adopt them
- Tribal Code: Enact a code or ordinances to address land within tribe's jurisdiction
- Trust Land: Ask Interior Secretary to take land into trust status for tribe's benefit
- Aboriginal Title: Consider whether tribe would be in a good position to pursue an aboriginal title claim

Traditional Cultural Districts

- Collection of traditional cultural properties with cultural and historic significance
- Eligible for National Historic Register even if not nominated
- Provides for tribal consultation re federal activities affecting TCD
- Tribe need not own the land for consultation
- Development not prohibited, but eligibility can help justify federal decision limiting development



Part of the Badger-Two Medicine Area is a TCD important to the Blackfeet—
Thom Bridge/Independent Record

NPS's Criteria for TCD eligibility (36 C.F.R. § 60.4)

- Threshold requirements: physical place or object + integrity
 - Potential for TCD made from habitat of traditionally important animal such as caribou
- Other requirements:
 - Criterion A: Association with Events that Have Made A Significant Contribution to the Broad Patterns of Our History
 - Criterion B: Association with the Lives of Persons Significant in Our Past
 - Criterion C: (probably not applicable, related to something built)
 - Criterion D: History of Yielding, or Potential to Yield, Information Important in Prehistory or History

Bulletin 38 Update

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- NPS's Bulletin 38 (1998 Guidelines for Evaluating and Documenting Traditional Cultural Properties) interprets 36 C.F.R. § 60.4
- NPS is updating Bulletin 38
- May lead to recommendations for revising 36 C.F.R. § 60.4

NATIONAL REGISTER BULLETIN

Technical information on the the National Register of Historic Places:
survey, evaluation, registration, and preservation of cultural resources



U.S. Department of the Interior
National Park Service
Cultural Resources
National Register, History and Education

Guidelines for Evaluating and Documenting Traditional Cultural Properties



Benefits of TCDs

Preservation: TCD preserved to maintain historic and cultural values

NHPA 106 Consultation:

- Process similar to NEPA when federal undertaking could affect an eligible property
- Requires consultation, consideration of alternatives, and identification of mitigation measures
- Right to consultation exists regardless of land ownership
- Right may be stronger than Executive Order 13,175



No Need for Formal Nomination

- Does not give a tribe any additional right to consultation, only needs to be eligible
- Requires some extra time and resources
- Could attract outside attention, though exact location can remain confidential



NPHA 106 in Court

- *Navajo Nation v. U.S. Forest Service*, 535 F.3d 1058, 1063 (9th Cir. 2008): TCD eligibility did not prohibit development, court found adequate consultation
- *Pueblo of Sandia v. U.S.*, 50 F.3d 856 (10th Cir. 1995): Forest Service should have considered potential TCD eligibility in its management strategy
- *Fortune v. Thompson*, No. 09–98, 2011 WL 206164 (D. Mont. Jan. 20, 2011): TCD eligibility provided justification for a Forest Service plan that limited motorized travel in the Badger–Two Medicine TCD

Take-Away Message

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- TCDs can give tribes a stronger role in making decisions regarding development
- A TCD could be quite large if based on habitat of species important to culture and subsistence
- Determining the eligibility of property can involve significant time and resources
- Significant benefits of eligibility—consultation and influence on federally approved development—regardless of formal nomination

