Historic Roads

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and eligible. The wave is just beginning to hit.

That wave is a warning that changes must be made to provide us with a more sophisticated evaluation process. One critical change is to define the broad patterns of history against which we evaluate property significance. Although they form the basis for evaluations, these patterns have never been defined. As a result, anything can, and often is, seen as a broad pattern of history. It would be very useful if the Keeper, and perhaps NCSHPO, formed a working group to do this. Once patterns are identified all properties could be evaluated to see if they have national, state, or local significance to a pattern. A number of properties would not be part of these national patterns but rather a part of state or local patterns. These would not be considered eligible for the National Register but would be dealt with under state or local registers and ordinances.

However, changes must not be contemplated with the goal of limiting the number of eligible properties. Do we really want to get into the position of saying an aspect of history is not significant because the properties associated with it are too numerous or large? The job must be done without fear that the outcome will be overwhelming.

Consultation with American Indian Tribal Governments and the Transportation Process

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American Indian tribes are sovereign governments recognized as self-governing communities under federal law. American Indians are also citizens of the United States. Because of this unique legal status of American Indian tribes, many federal statutes and directives specifically recognize the obligation of the federal government to consult with tribal officials on a government-to-government basis. For example, on November 16, 1999, Secretary of Transportation Rodney Slater issued a directive calling for all agencies within the U.S. Department of Transportation to ensure that their programs are responsive to the concerns of American Indians, Alaska Natives, and tribes. The order (DOT 5301.1) calls on agencies to build more effective working relationships with American Indian tribal governments and to increase opportunities for Native Americans to participate in transportation programs.

Similarly, other federal statutes and their implementing regulations (e.g., National Environmental Policy Act, Native American Graves Protection and Repatriation Act, National Historic Preservation Act, American Indian Religious Freedom Act, et al.) lay the basis for recognizing tribal sovereignty through a consultation process. In each federal statute and their implementing regulations certain basic guiding principles should be followed: (1) Tribal governments should be involved in the actual decision making process at the earliest practicable moment; (2) Each agency should institutionalize its own consultation procedures for Indian governments; (3) Federal agencies should train their staff on how to consult with Indian governments; (4) Respect and integrity should be regarded as extremely important in any tribal consultation process.

So what does tribal consultation mean? It means more than simply providing information to the tribes about what an agency is planning to do and allow concerned tribes to comment. In the guidelines for federal agency historic preservation programs, the National Park Service provides one definition of “consultation”:

“Consultation means the process of seeking, discussing, and considering the views of others, and, where feasible, seeking agreement with them on how historic properties should be identified, considered, and managed. Consultation is built upon the exchange of ideas, not simply providing information”.

This definition is also incorporated in the regulations of the Advisory Council on Historic Preservation involving tribal consultation under Section 106 of the National Historic Preservation Act (NHPA).

In general, American Indians believe that the word “consultation” is more closely aligned with the process of negotiation. Consultation implies a “give and take” dialogue, not just listening to or recording their concerns. Therefore it is important to the tribes that they be involved in the process of decision making for an acceptable outcome.

The Environmental Section of the New Mexico State Highway and Transportation Department and the New Mexico Federal Highway Administration have responded to Secretary Slater’s directive to build more effective working relationships with American Indian tribal governments in the transportation process by developing an intergovernmental consultation process for the NHPA Section 106 regulations and by designating a Native American Coordinator to facilitate effective implementation of tribal consultation. The Native American Coordinator evaluates all New Mexico State Highway and Transportation projects for possible tribal consultation issues that may relate to the National Historic Preservation Act or the National Environmental Protection Act.