

Overcoming Institutional Resistance to Traditional Cultural Properties

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TCPs

- 1990's Term

- National Register
Bulletin No. 38, (1990,
rev. 1992 and 1998)
by Parker and King

- aid in determining
whether properties
with traditional
cultural significance
are eligible for the
National Register of
Historic Places

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|

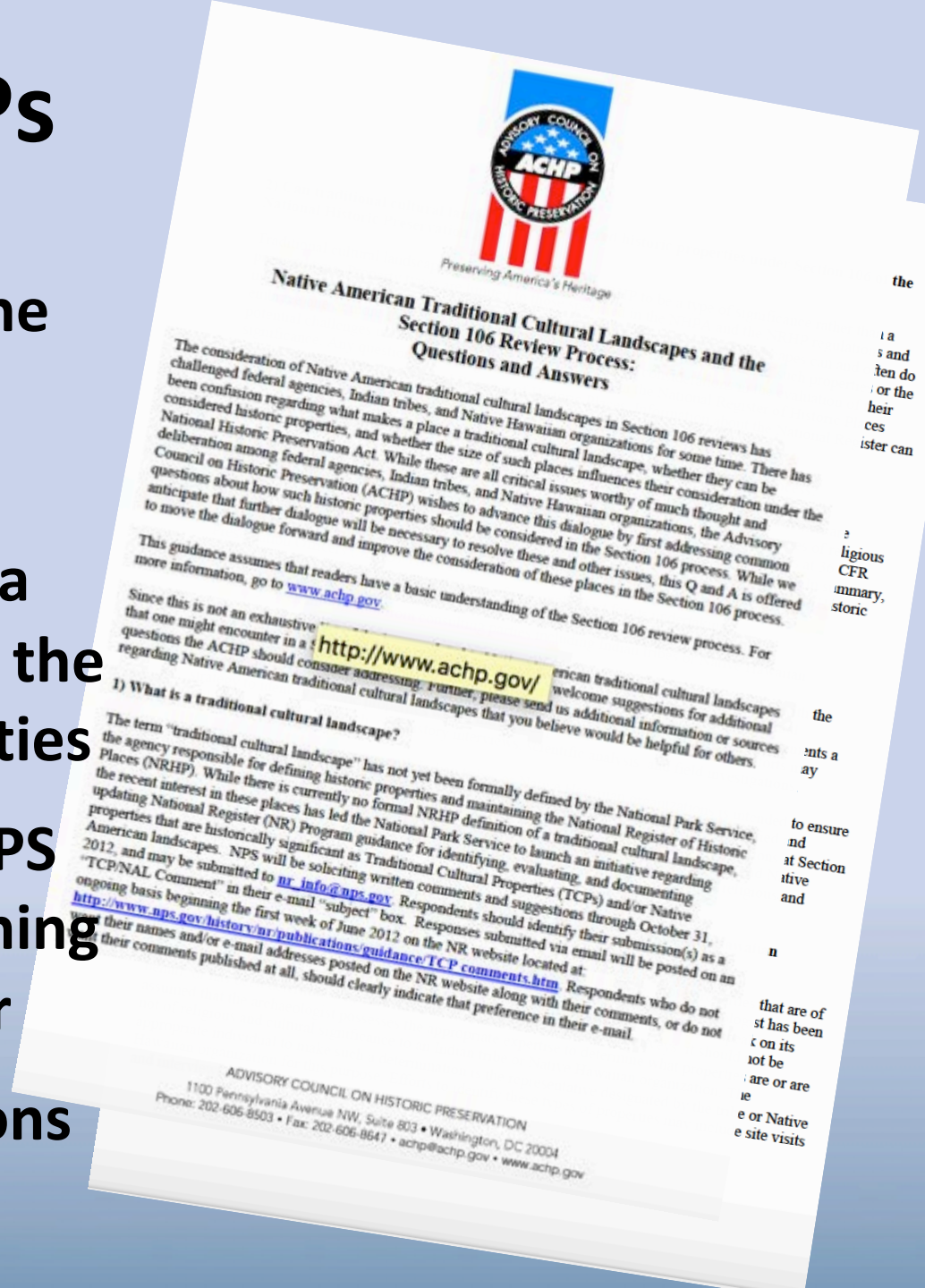


National Register Bulletin No. 38 defines a TCP as a property

“... that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community.”

Landscape TCPs

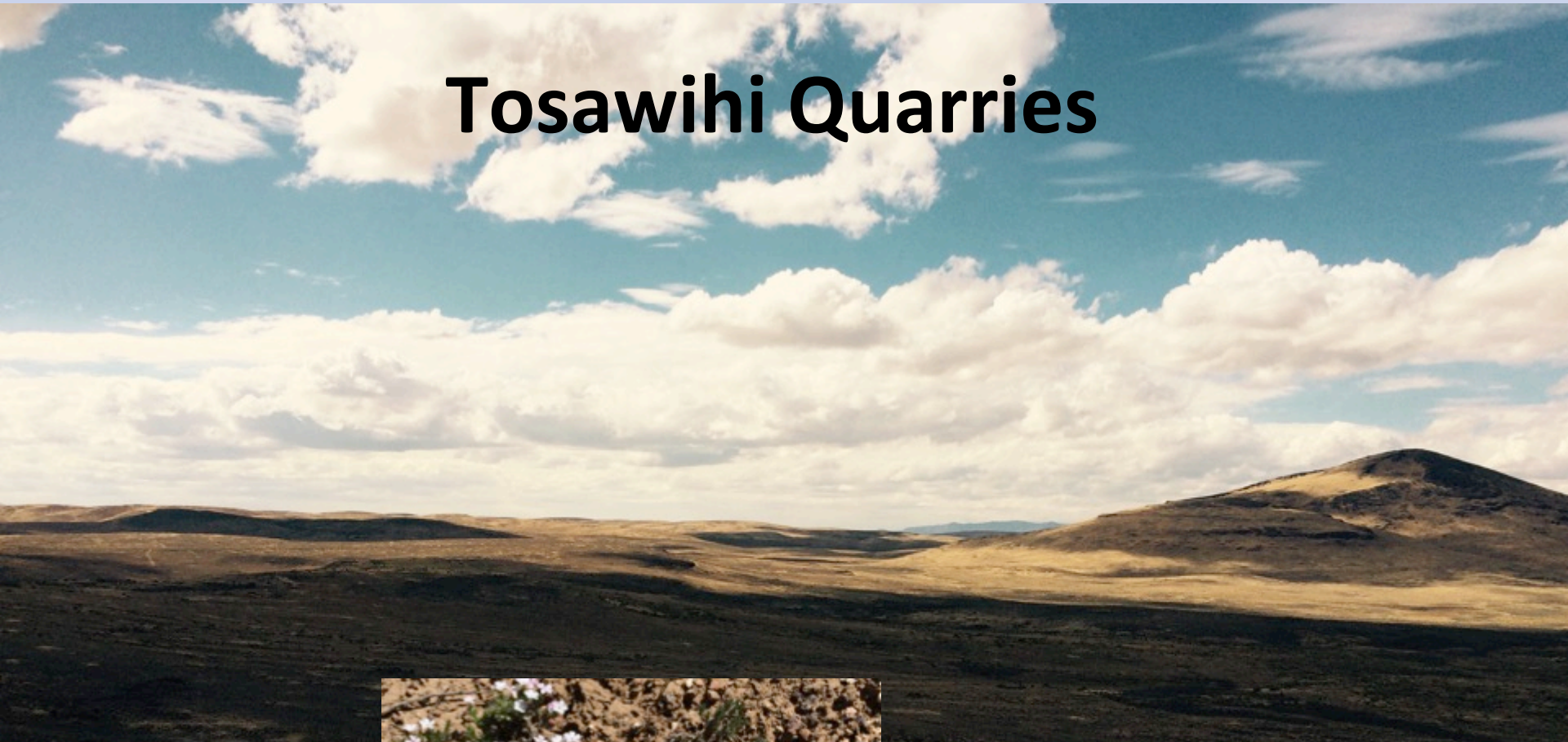
- ACHP Guidance on Landscape TCPs and the Section 106 Process (July 11, 2012)
- Landscape TCPs are a property type identified the same as historic properties
- Not yet defined by NPS responsible for maintaining the National Register
- Bulletin No. 38 revisions planned for 2014...



National Register Criteria for Evaluation (36 CFR 60.4)

- (a) associated with events that made a significant contribution to broad patterns of our history; or**
- (b) associated with the lives of persons significant in our past; or**
- (c) 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**
- (d) yielded, or may be likely to yield, information important in prehistory or history.**

Tosawihi Quarries



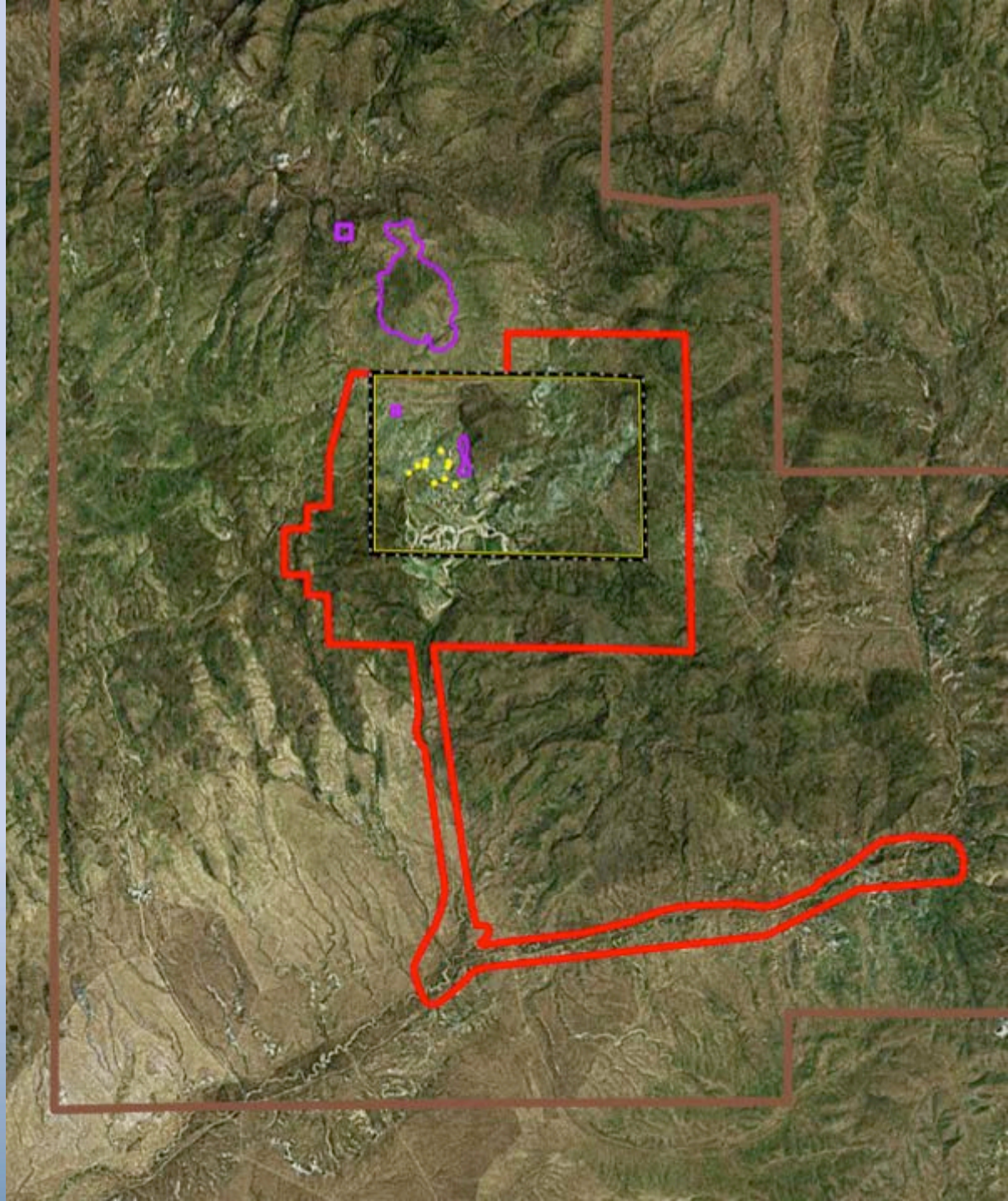
Designation of Landscape TCPs

Before:

**Archeological
District**

- 823 acres in 1983**
- 4000 acres with
163 “loci” in 2000**

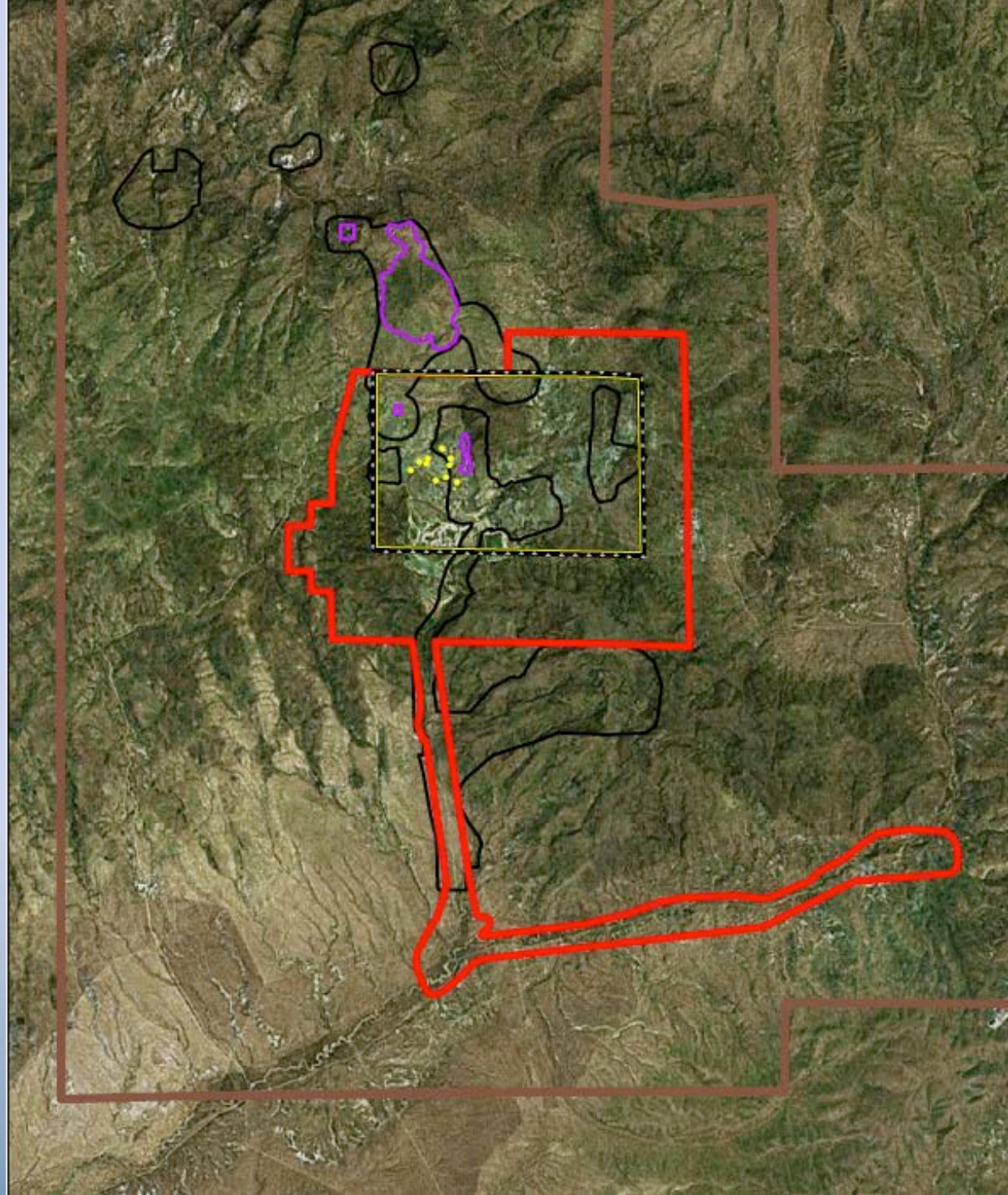
**Narrow and
Isolated TCPs
determined
eligible in 2000**



Designation of Landscape TCPs

After:

**In 2016, seven
TCP Landscapes
encompassing and
connecting sacred
sites determined
eligible under
criteria (a) and (d).**



Consultation Success Story

In 2016, BLM determined that additional information showed that “existing TCP boundaries are inadequate and new areas should be considered as TCPs.”

But why did it take so long?

1992 Study for BLM determined:

The findings of this study support the conclusion that the *Tosawihi* Quarry area is a culturally and religiously significant area in the traditional homeland of Western Shoshone people. It thus meets the criterion for eligibility on the National Register as a Traditional Cultural Property (36 CFR 60.4) following guidelines set forth in the National Register Bulletin 38 (Parker and King 1990).



← MINES

RANCHES →



Why did it take so long?

- **Overcoming Institutional Resistance**
- **Decades of Study and Decades of Ignoring Tribal Perspectives**
- **BLM/Contractor comments to tribal monitors:**
 - “private lands”**
 - “isolated artifacts”**
 - “previously disturbed”**
- **Refusal of BLM to Share Information**
- **Required Dispute Resolution before the ACHP to get BLM to Assess Information Provided.**

Resistance within

BLM Layers of Bureaucracy

In addition to...

- **National Historic Preservation Act (NHPA)**
- **Section 106 Regulations (36 C.F.R. Part 800)**

BLM follows...

- **BLM National Programmatic Agreement for Implementation of NHPA (Feb. 9, 2012)**
- **NV BLM-SHPO State Protocol Agreement (Dec. 22, 2014)**
- **BLM NV State Office Guidelines and Standards for Archeological Inventory (Jan. 2012)**

BLM National Programmatic Agreement for Implementation of NHPA

PROGRAMMATIC AGREEMENT
AMONG
THE BUREAU OF LAND MANAGEMENT,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS
REGARDING
THE MANNER IN WHICH THE BLM WILL MEET ITS RESPONSIBILITIES
UNDER THE NATIONAL HISTORIC PRESERVATION ACT

Preamble

Bureau of Land Management. The Bureau of Land Management (BLM), consistent with its authorities and responsibilities under the Federal Land Policy and Management Act of 1976 (FLPMA), is charged with managing public lands principally located in the states of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming in a manner that will "protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values," and "that will provide for outdoor recreation and human occupancy and use."

The BLM also has specific responsibilities and authorities to consider, plan for, protect, and enhance historic properties and other resources that may be affected by its actions, in compliance with the National Environmental Policy Act (NEPA), the National Historic Preservation Act of 1966 (NHPA) and implementing regulations of Section 106 of the NHPA at 36 CFR part 800, the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, the Historic Sites Act of 1935, the Antiquities Act, the American Indian Religious Freedom Act, the Religious Freedom Restoration Act, Executive Order (EO) 13007 ("Indian Sacred Sites"), EO 13287 ("Preserve America"), EO 13175 ("Consultation and Coordination with Indian Tribal Governments"), and related authorities.

In carrying out its responsibilities specific to the NHPA, the BLM has: (1) developed policies and procedures through its directives system (BLM Manual Sections 8100-8170); (2) executed a national programmatic agreement (PA) in 1997 to help guide the BLM's planning and decision making as it affects historic properties as defined in the NHPA; and (3) assembled a cadre of cultural heritage specialists to advise the BLM's managers and to implement cultural heritage policies consistent with the BLM's statutory authorities.

State Historic Preservation Officers. State Historic Preservation Officers (SHPO) are represented by the National Conference of State Historic Preservation Officers (NCSHPO) for the purpose of negotiating and executing this agreement, and have responsibilities under state law as well as under Section 101(b) of the NHPA that include:

- "advise and assist as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;"
- "maintain inventories" of historic properties in cooperation with Federal and state agencies; and

- Requires updating BLM-SHPO State Protocol Agreements
- Allows agreement on ineligible properties
- TCPs still require consultation

NV BLM-SHPO State Protocol Agreement

Categorical Determinations On Eligibility

- BLM-SHPO jointly determined classes of properties are not eligible
- Isolated Artifacts, Isolated or Unassociated Features
- Unassociated Prehistoric and Historic Artifact Scatters
- See “the latest edition of the *Guidelines* for recording and reporting standards.”

B. Evaluation for National Register Eligibility

When evaluating cultural resources, BLM will apply the criteria for evaluation found in 36 CFR § 60.4 and National Register Bulletin 15 to all cultural resources that may be affected, including Traditional Cultural Properties (TCPs) and properties of religious and cultural significance (National Register Bulletin 38). As appropriate, BLM will invite consulting parties to consult. BLM also acknowledges that tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them. All resources, including archaeological sites, shall be evaluated under all four National Register criteria in accordance with 36 CFR § 800.4(c)(1). Additional guidance for evaluating resources can be found in the Secretary of Interior's Standards and Guidelines for Evaluation. In order to determine the effect of an undertaking on historic properties, BLM must document which aspects are important in defining the integrity of the property.

1. Categorical Determinations:

a. Classes of Properties Not Eligible for the NRHP: BLM and SHPO have jointly determined that the following class or classes of properties are not eligible for listing on the NRHP:

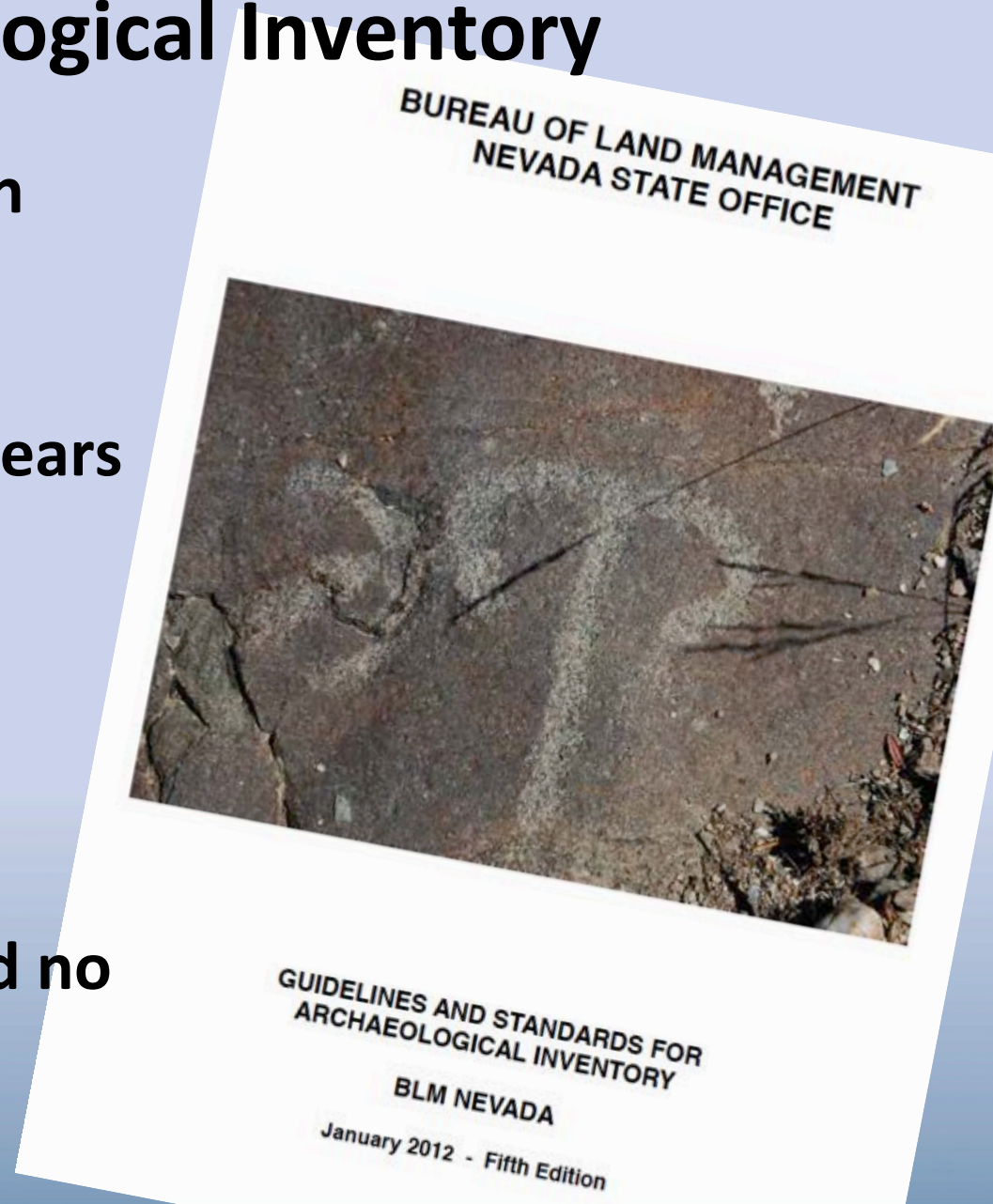
(1) Isolated artifacts: See the latest edition of the *Guidelines* for recording and reporting standards.

(2) Isolated or Unassociated features: See the latest edition of the *Guidelines* for recording and reporting standards.

(3) Unassociated Prehistoric and Historic Artifact Scatters: *Prehistoric sites* of this type are categorically not eligible if they contain twenty or less unmodified flakes and no tools found within a microenvironment in which there is no potential or low potential for the presence of buried artifacts and features; they also must not contain more than 10 obsidian flakes that may be used through further research to obtain chronological information through obsidian hydration analysis and/or mobility/trade information through sourcing analysis. These resources must not be associated with other historic properties within an identified Archaeological District. *Historic sites* of this type are categorically not eligible if they cannot be definitively associated with a specific historic theme as defined in the *Nevada Comprehensive Preservation Plan* (1991). In addition, Unassociated Historic Artifact Scatters may not be depicted on the following documents: General Land Office (GLO) map; land status map; mineral survey records; Nevada State Museum records; State Water Engineer's records; 15 minute Quadrangle; or local city and county records.

BLM NV State Office Guidelines and Standards for Archeological Inventory

- January 2012 – 5th Edition
- Does not mention TCPs
- Allows surveys from 10 years ago w/o consultation
- Definition for isolated artifacts, features, and artifact scatters
- 30 meters separation and no other features



Resistance at BLM Staff Level

Internal BLM Deliberations

- “trigger enormous mitigation costs”
- “loose a media war”
- “would be a taking”

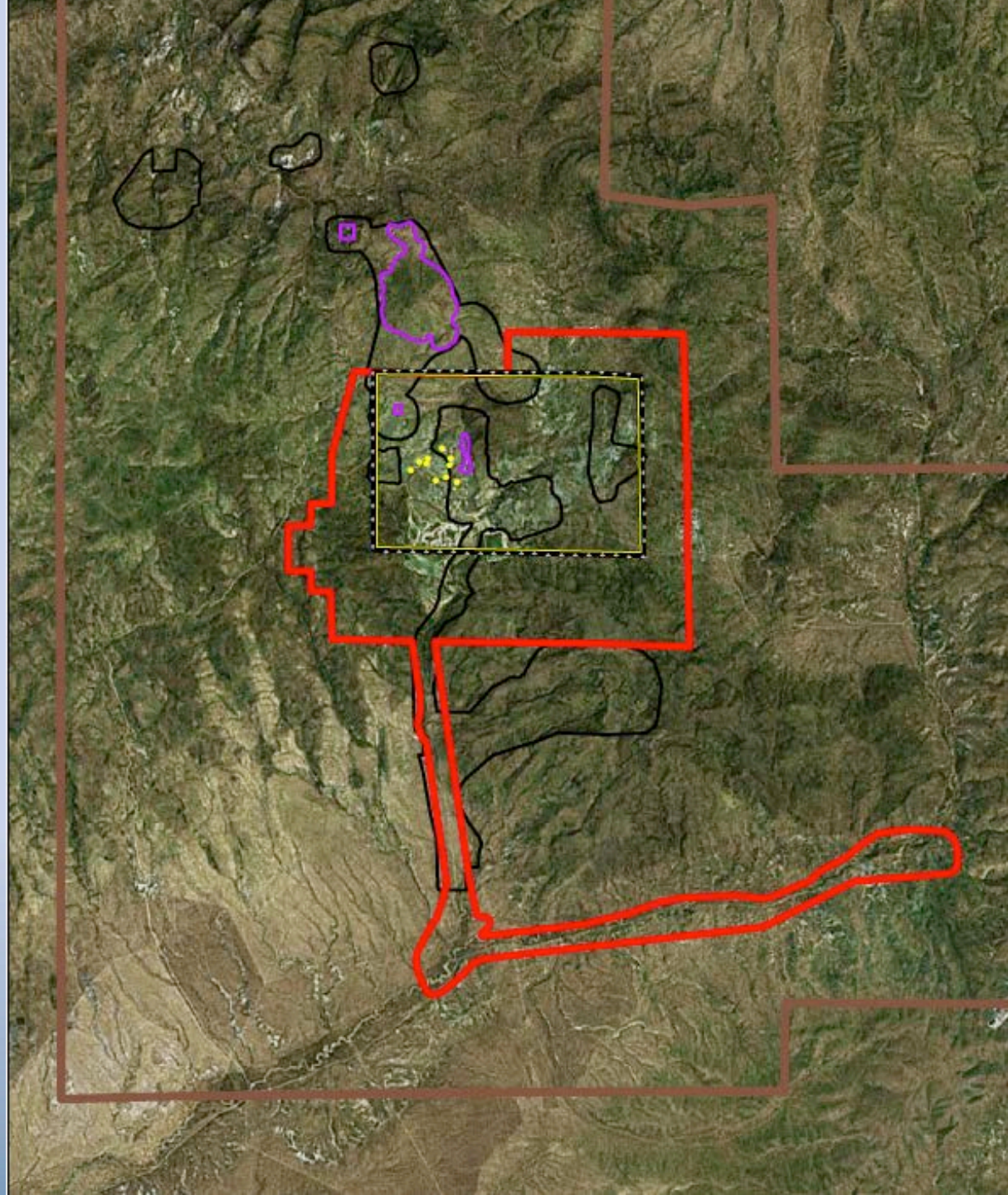
BLM Responses during ACHP Dispute Resolution...

then whether the project will have an adverse effect on sites or TCPs determined eligible. If all resources are determined eligible by the BLM, then every place there is a stone flake will preclude any land-disturbing activity until adverse effects are taken into account, including the execution of a Historic Properties Treatment Plan every time a drill pad is proposed. This, in fact, would be in conflict with the ROD, which states that the mining company can proceed with exploration drilling provided they avoid all archaeological sites/loci determined eligible, as well as existing TCPs.

At issue is a differing world view, in that the Tribe believes the entire area and any and all of the resources in and on the ground, including basic lithic debitage are sacred. BLM continues to consult with the tribes to collect additional information and to better understand the landscape to help define TCP values, including burials, spiritual dance areas, etc., not currently identified as part of the TCP. The new values were not revealed to BLM in the 1992 ethnography, subsequent

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