

**STATE OF NEW MEXICO
CULTURAL PROPERTIES REVIEW COMMITTEE**

**IN THE MATTER OF THE:
Mt. Taylor Traditional Cultural Property**

**PUEBLO OF ACOMA,
PUEBLO OF LAGUNA,
PUEBLO OF ZUNI,
NAVAJO NATION,
HOPI TRIBE
Nominators.**

**FINAL ORDER APPROVING NOMINATION FOR LISTING ON NEW MEXICO
REGISTER OF CULTURAL PROPERTIES**

THIS MATTER comes before the New Mexico Cultural Properties Review Committee (“Committee” or “CPRC”) upon a nomination by the Pueblo of Acoma, Pueblo of Laguna, Pueblo of Zuni, Navajo Nation and Hopi Tribe (“Nominators”) to list Mt. Taylor Traditional Cultural Property (“TCP Property”) on the New Mexico Register of Cultural Properties pursuant to NMSA 1978, Section 18-6-5. The Committee reviewed the record proper in Santa Fe, New Mexico on June 5, 2009, with a quorum of the Committee being present. The Committee reviewed all evidence, deliberated, and approved the listing for the reasons set forth below:

Findings of Fact:

Organization Background

1. The Committee is a state committee created pursuant to NMSA 1978, Section 18-6-4 and comprised of the following members: (a) the state historian; (b) six persons professionally recognized in the fields of architectural history, history, architecture, pre-historic archaeology and historic archaeology; (c) one person who is a member of a New Mexico Indian Nation, tribe or pueblo and (d) one person who is a resident of New

Mexico and represents the general public. Except for the state historian, the members are appointed by the governor.

2. The primary function of the Committee pursuant to NMSA 1978, Section 18-6-5 is to review proposals for the preservation of cultural properties and to take actions to identify and advise on the protection and preservation of cultural properties.
3. The State Historic Preservation Officer pursuant to NMSA 1978, Section 18-6-8(D)(1) is the director of Historic Preservation Division of the New Mexico Department of Cultural Affairs and “shall provide staff to the committee.”
4. The State Historic Preservation Officer “shall coordinate all duties performed by, and cooperate with, the committee...[and] shall review state undertakings to determine their effect upon significant historic properties.” NMSA 1978, § 18-6-5(C), (D)(5).

One-Year Temporary Listing

5. On or about February 2008, the Nominators pursuant to NMSA 1978, Section 18-6-12 submitted a written nomination to the Historic Preservation Division for a one-year temporary listing of the TCP Property on the New Mexico Register of Cultural Properties.
6. On February 22, 2008, the Committee held a special meeting in Albuquerque, New Mexico and approved the nomination for a one-year temporary listing.
7. On May 6, 2008, the New Mexico Attorney General’s Office issued an Open Meetings Act determination that the Committee’s vote was invalid because its staff had provided inadequate notice of the special meeting to property owners within the boundaries or near the TCP Property.

8. On June 14, 2008, the Committee held a regular meeting in Grants to again consider the nomination for a temporary listing. The Committee received oral and written statements from the nominators, government officials and the public. The Committee reviewed all evidence, deliberated, and approved the one-year temporary listing.

Permanent Listing-Notice to Property Owners

9. On April 22, 2009, the Nominators submitted a written nomination for permanent listing of the TCP Property on the New Mexico Register of Cultural Properties to the Historic Preservation Division.
10. Given the guidance in the Attorney General's 2008 Open Meetings Act Determination Letter that persons whose property might be affected by the designation needed notice, the Nominating Tribes took action to obtain the names and addresses of all private owners of the surface estate of land within the exterior boundaries of the Mount Taylor Cultural Landscape TCP. See Letter to Katherine Slick, State Historic Preservation Office from Peter Chestnut, counsel for Pueblo of Acoma (April 22, 2009).
11. The Nominating Tribes considered several different alternatives for locating the names of all owners of the surface estate within the Mount Taylor TCP. The approach selected was to divide the TCP into four quadrants. Acoma Pueblo hired Ed Durbek, a consultant with land title experience to go through the records of Cibola County to retrieve private ownership information. Laguna Pueblo also hired an outside entity--a title company located in Grants--to collect the information. The Navajo Nation did not hire a non-Indian consultant and instead a meeting was scheduled with the Vice-President of the Navajo Nation and the McKinley County Treasurer which resulted in information being provided to the Navajo Nation on April 8, 2009. See id.

12. The title company hired by the Pueblo of Laguna did alert Laguna to a problem that affects the information obtained by both the Acoma and Laguna Pueblos. Some of the Cibola County Assessor's files for land parcels did not have deeds, only cards with information on the cards. The title company informed Laguna Pueblo that there are private properties that are not being taxed so there are no records in the Assessor's office. See id.
13. The nomination included a written attachment titled: "List of Owners of Excluded Non-Contributing Properties." See Nomination, Attachment 7.
14. On April 24, 2009, the Historic Preservation Division placed the nomination on its website.
15. On April 24, 2009, the Historic Preservation Division emailed a notice of the May 15, 2009 meeting to known property owners, citizens, businesses and elected officials who had commented or expressed interest in the nomination throughout the process and had provided an email address.
16. On April 25, 2009, the Historic Preservation Division mailed a notice of the May 15, 2009 meeting to known property owners, citizens, businesses and elected officials who had commented or expressed interest in the nomination throughout the process.
17. On May 1, 2009, the Historic Preservation Division sent a letter stating there would be meetings on May 15, 2009 and June 5, 2009, with an attachment of the May 15, 2009 meeting agenda, to known private property owners. Nominators provided this list of private property owners to the Division.
18. On May 15, 2009, the Committee held a regular meeting in Santa Fe, New Mexico and held a public hearing on the matter.

19. The portion of the meeting regarding the nomination went from approximately 10:00 am to 5:00 pm.

Permanent Listing- Criteria of Eligibility

20. The Historic Preservation Division and Committee look to the National Park Service, a bureau of the Department of Interior, for technical guidance. See May 15, 2009 Meeting Minutes (“Meeting Minutes”), p. 6, ¶ 2.

21. The nomination needed to establish at least one of four possible criteria in order to be eligible for state listing. See Meeting Minutes, p. 7, ¶ 3.

22. This standard has been taken from guidance from National Park Service’s Bulletin titled: “How to Apply National Register Criteria for Evaluation.”

23. This standard is consistent with the Committee’s long-standing practice for reviewing nominations for listing on the state register.

24. The State Historic Preservation Officer advised the Committee that the TCP Property may be eligible under any of three possible criteria. See Meeting Minutes, p. 7, ¶ 3.

25. Criterion A is associated with events that have made a significant contribution to broad patterns of our history; Criterion B is that the property has an association with the lives of significant persons in or past; and Criterion D is that the property has yielded or may be likely to yield information important in history or prehistory. See Meeting Minutes, p. 7, ¶ 3.

26. The nomination listed a period of significance from time immemorial to the present. See Meeting Minutes, p. 7, ¶ 3.

27. The written nomination provided evidence under all of these three criteria. “Criterion A: Mt. Taylor is important to events important to broad patterns of history; Criterion B: Mt.

Taylor is associated with the lives of significant personages in the past; and Criterion D: Mt. Taylor has yielded information—and possesses the significant potential to yield additional information—important to our collective and individuals understandings of history.” Nomination, § 12: 40-41.

28. The written nomination provided evidence under all of these three criteria. The Pueblo of Acoma’s portion of the nomination provided evidence to satisfy these three criteria. See Nomination, § 12: 4-36. The Hopi Tribe’s portion of the nomination provided evidence to satisfy these three criteria. See Nomination, § 12: 36-41. The Pueblo of Laguna’s portion of the nomination provided evidence to satisfy these three criteria. See Nomination, § 12: 41-77. The Navajo Nation’s portion of the nomination provided evidence to satisfy these three criteria. See Nomination, § 12: 77-93. The Pueblo of Zuni’s portion of the nomination provided evidence to satisfy these three criteria. See Nomination, § 12: 77-110.
29. The oral presentation of the nomination provided evidence under all of these three criteria at the May 15, 2009 meeting. Zuni Tribal Governor Norman Coeoyate provided oral testimony regarding the criteria. See Meeting Minutes, p. 10. Pueblo of Laguna Governor John Antonio, Sr. provided oral testimony regarding the boundary. See Meeting Minutes, p. 11. Pueblo of Acoma 1st Lt. Governor Mark Thompson provided oral testimony addressing the concerns of private owners. See Meeting Minutes, p. 12. Navajo Nation Vice-President Ben Shelley provided oral testimony regarding the criteria. See Meeting Minutes, p. 13. Kelly Francis, Navajo Nation Cultural Specialist, provided testimony regarding the creation of the map for the TCP Property. He provided several maps for public display including: (a) the TCP Property boundary map; (b) TCP Property

boundary map compared the US Forest Service proposed boundary for national listing; and (c) a map citing archaeological sites in the TCP Property boundary. See id. Hopi Tribe member Leroy Lewis Shelley provided oral testimony regarding the criteria. See id.

30. The State Historic Preservation Officer advised the Committee that the TCP Property was eligible under any or all of three of the criteria. See Meeting Minutes, p. 7, ¶ 3.

31. There was no substantive dispute during the public hearing regarding whether the nomination provided evidence to satisfy these three criteria.

32. The nomination established evidence under all of these three criteria.

Public Concerns—Church v. State

33. There was a public concern noted in oral and written comments at the May 15 meeting about whether listing the TCP Property was a violation of the Establishment Clause of the U.S. Constitution.

34. There are hundreds of churches on the State and National registers across New Mexico—they are not on the register simply as churches but because of their architectural, historical and cultural significance. See Meeting Minutes, p. 6, ¶ 3.

35. The U.S. Ninth Circuit Court of Appeals in Cholla Ready-Mix v. Civish et al, 382 F.3d 969 (9th Cir. 2004) determined that the Establishment Clause does not require governments to ignore the historical value of religious sites. See Meeting Minutes, p. 6, ¶ 3.

Public Concerns—Boundary Ramifications

36. The one-year temporary nomination used elevation lines in its boundary that had not fulfilled general National Park Service guidelines for dividing the TCP's boundary in

terms of what it means to their people in terms of their culture and history. See Meeting Minutes, p. 7, ¶3.

37. The permanent nomination, in order to fulfill those guidelines, provided a larger boundary than the one-year temporary nomination and the boundary was extended and defined to encompass San Mateo Mesa, Jesus Mesa, La Jara Mesa, Horace Mesa, and Mesa Chivato, including the extension referred to as Bibo Mesa, nearly to the bases of their slopes. See Meeting Minutes, p. 7, ¶3.
38. There was a public concern noted in oral and written comments at the May 15 meeting about the ramifications of owning property within the boundary of the TCP Property. See Meeting Minutes, p. 7, ¶ 1.
39. The permanent nomination lists a privately owned property as a “non-contributing resource” within the TCP. The State Historic Preservation Officer explained that this means a non-contributing resource does not add to the historic significance of the nominated property. See Meeting Minutes, p. 7, ¶ 1.
40. This means that the private property does not need to be afforded the protections provided by a State Register listing. See Meeting Minutes, p. 7, ¶ 1.
41. There are examples of state registered districts that contain non-contributing properties. See Meeting Minutes, p. 7, ¶ 1
42. The Nominating Tribes were asked to document private ownership by name and address as well as township, range, section, and quarter section. See Meeting Minutes, p. 14, ¶ 5.
43. The process identified a total of 119 property owners within the TCP boundary. See Meeting Minutes, p. 14, ¶ 7.

44. The Committee received oral and written statements from government agency representatives regarding the ramifications of the boundary at the May 15, 2009 meeting. The representatives in attendance included the State Historic Preservation Officer, U.S. Forest Service, U.S. Bureau of Land Management, New Mexico Game and Fish Department, New Mexico Environment Department, New Mexico Office of State Engineer, New Mexico Energy, Minerals and Natural Resources Department (Mining and Minerals Division or “MMD”) and New Mexico State Land Office.
45. The Forest Service has previously (2008) made a determination of eligibility for listing the TCP Property on the National Register. The Forest Service’s boundary has a similar, but not identical, boundary.
46. The Committee asked Ms. Nancy Rose, U.S. Forest Service, Cibola National Forest Supervisor, about the boundary difference between the nomination and the Forest Service designated boundary.
47. These two boundaries do not have to be identical. See Meeting Minutes, p. 17, ¶4.
48. The Committee asked Mr. Bill Brancard, New Mexico Energy, Minerals and Natural Resources Department (Mining and Minerals Division), to comment on the impact of the proposed nomination.
49. There is a relevant MMD rule that requires additional review for projects located in an area with cultural resources listed on either the National Register of Historic Places or the State Register of Cultural Properties. See Meeting Minutes, p. 17, ¶ 7.
50. A landowner would not be denied an application or a permit because his or her property was located in an area with listed cultural resources; it simply defines the permitting

category, but the process is more detailed in terms of other agency reviews and public review. See Meeting Minutes, p. 17, ¶ 8 and p. 18, ¶4.

Public Concerns—Land Grants

51. There was a public concern noted in oral and written comments at the May 15 meeting about the ramifications of land grants within the TCP Property.
52. There are three land grants that have some of their land within the TCP boundary-- the Cebolleta (Seboyeta), Bartolome Fernandez, and the San Mateo Springs land grants. See Meeting Minutes, p. 15, ¶ 1.
53. NMSA 1978, Section 49-1-1 (2004) makes land grants political subdivisions of the State of New Mexico. See Meeting Minutes, p. 15, ¶ 1.
54. The nominators informed the Committee that land grants cannot be excluded as private properties. See Meeting Minutes, p. 15, ¶ 1.
55. If a land grant has deeded portions of its land to individuals and those individuals are on the county tax rolls, then those names are listed on the table of private property owners within the Mount Taylor TCP boundary. See Meeting Minutes, p. 15, ¶ 1. Those deeded private property owners are to be treated like other private property owners.
56. With the exception described in item #55 above, the land grants along with other state, federal and tribally owned lands within the Mount Taylor TCP boundary are contributing properties to the TCP. See Meeting Minutes, p. 15, ¶ 1.

Permanent Nomination-Notice to Property Owners After May 15 Hearing

57. There were individuals who believed their private parcels have not been identified in the nominators' maps at the May 15, 2009 meeting. These individuals were allowed to provide to the Historic Preservation Division a notarized copy of the deed record

including township, range and section from the appropriate county courthouse and submit it before or after the June 5th hearing. See Meeting Minutes, p. 36, ¶6.

58. The Committee recommended that HPD publish the non-contributing private property list in local papers. See Meeting Minutes, p. 36, ¶ 7.

59. The Committee, at the close of the May 15, 2009, meeting, informed the Nominators of the need to make corrections to the nomination based on the results of the public hearing.

60. The Committee extended the written public comment period until May 20, 2009. The Committee placed no page limitation on the written public comments.

61. On May 22, 2009, the Historic Preservation Division issued a statewide press release identifying its list of approximately 119 private property owners on Mt. Taylor. The press release notified other private property owners of their ability to contact the Division's office in order to be placed on this list. The private property owners were informed they needed to provide a notarized copy of the deed from the appropriate county indicating property size in acres, township, range and section to the Division.

62. On May 22, 2009, the Historic Preservation Division emailed a notice of the June 5, 2009 meeting to known private property owners and provided a copy of the meeting agenda.

63. On May 22, 2009, the Historic Preservation Division placed a copy of the June 5, 2009 meeting agenda on its website.

64. On May 23, 2009, the Historic Preservation Division mailed a notice of the June 5, 2009 meeting to known private property owners and provided a copy of the meeting agenda.

65. On May 23, 2009, the Nominators submitted a corrected nomination to the Historic Preservation Division.

66. The Historic Preservation Division placed the corrected nomination on its website. This included a list of non-contributing private property owners.

67. On or about May 26, 2009, the Gallup Independent and Cibola Beacon published the information provided in, or similar to, the Historic Preservation Division's press release.

Permanent Listing-Final Vote

68. On June 5, 2009, the Committee held a regular meeting in Santa Fe and included the Mt. Taylor nomination on its agenda.

69. The State Historic Preservation Officer provided a summary of information in the corrected nomination for the Committee and the public.

70. The corrected nomination contained 434,767 acres of contributing lands and 89,938 acres of non-contributing lands.

71. The corrected nomination contained more specific information on land grant holdings and listed the property of owners who came forward in the last week before the June meeting and had their information incorporated into the nomination.

72. On June 5, 2009, the Committee reviewed all evidence, deliberated and voted unanimously to approve the nomination.

73. On June 5, 2009, the Committee authorized the State Historic Preservation Officer to allow private property owners to continue to contact the Division on an on-going basis in order to continue to be placed on the list of non-contributing private property owners within the TCP Property boundary.

Conclusions of Law:

1. The Committee has the authority to “determine what constitutes historical, archaeological, scientific, architectural and other cultural significance for the purpose of identifying cultural properties as used in the Cultural Properties Act.” NMSA 1978, § 18-6-5(A).
2. The Committee “shall prepare and keep up to date the official register.” NMSA 1978, § 18-6-5(B). “This official register shall be composed of properties identified by the committee as having historical or other cultural significance and integrity, being suitable for preservation and having educational significance.” Id.
3. The State Historic Preservation Officer “shall maintain the state register of cultural properties.” NMSA 1978, § 18-6-8(D)(2).
4. Courts have ruled: “we [will] affirm decisions to designate property as historic unless we make an independent determination that the decisions are unreasonable, arbitrary, or capricious.” See Billy Graham Evangelistic Ass’n v. Minneapolis, 667 N.W. 2d 117, 123 (Minn. 2003).
5. Based on Findings of Facts #1-73, the Committee’s decision was based on the record proper.
6. Based on Findings of Facts #9-19, 57-67, the Committee acted reasonably in providing notice and due process protections in the process.
7. Based on Findings of Facts #20-32, the nomination met the criteria as applied under Criterion A, B and D.
8. Based on Findings of Facts #36-56, the Committee acted reasonably in reviewing the nomination’s eligibility and creating a process where issues about the boundary could be addressed.

9. The nomination establishes the TCP Property as worthy of protection and preservation under NMSA 1978, Section 18-6-5.

ORDER

IT IS THEREFORE ORDERED, by unanimous vote, that the nomination is approved for listing on the New Mexico Register of Cultural Properties effective the date of this order. The Order provides that: (a) the nominated property be listed as a Traditional Cultural Property; (b) the private property within the boundaries be designated as non-contributing; (c) HPD maintain a flexible and ongoing list of non-contributing private properties; and (d) HPD maintain a flexible and ongoing map illustrating the location of non-contributing properties.



Chairperson

Date: 14 Sept. 2009

Judicial Review

This Order constitutes the final decision for purposes of initiating any contemplated judicial review. An aggrieved party has the right to judicial review of this Order by filing a petition for writ of certiorari in the district court under Rule 1-075 NMRA. A petition for writ of certiorari shall be filed in the district court within thirty days after the date of this written order pursuant to Rule 1-075 NMRA.