

Navigating Federal Regulations and Native Cultural Properties: A View from the East

Session Title: Developing Context for Archaeological Site Evaluations

Paper delivered at the
Transportation Research Board Summer Workshop:
Integrating the Environment and Engineering
Madison, Wisconsin
July 27 – July 31, 1999

Virginia R. Busby
Department of Anthropology
University of Virginia
100 Brooks Hall
Charlottesville, Virginia 22903

This paper takes a more theoretical perspective on context development, viewing archaeological sites as parts of larger cultural systems of the past and the present. The newly revised ACHP regulations and concerns expressed within several TRB venues regarding interpretation and preservation of cultural landscapes, the interface of environmental and cultural resource management, and more inclusive practices regarding these resources provides a context for this paper. The concerns of Native Americans resonate within each of these facets.

Recently the need to critically assess and improve our contexts for the evaluation of archaeological resources has been the subject of much discussion within cultural resource management, particularly in regards to Native American concerns. The newly revised Advisory Council's regulations include three directives with important implications for context development. These include:

- 1) A shift to greater responsibility to federal agencies, SHPOs, and THPOs for more local interpretation and implementation;
- 2) The encouragement of increased public involvement at all stages of preservation initiatives; and
- 3) A call for more concerted and improved efforts to integrate Native American people and their concerns in the process.

The subjects of these directives have been addressed within several meetings, papers, and publications of the Transportation Research Board specifically relating to context development. There has been a call for increased and joint participation of federal agencies, Historic Preservation Offices, DOTs, and the public in the development of these contexts. There has also been a call to develop contexts that enable Cultural Resource specialists to better identify, evaluate, and understand native cultural properties, especially such federally-defined entities as Traditional Cultural Properties and cultural landscapes (Parker and King 1990).

This paper addresses context development from experiences in the Middle Atlantic (predominantly from the states of Delaware, Maryland, and Virginia), considering the specific historical and cultural trajectories of native people in this region. Suggestions from recent TRB meetings and literature, SHPO studies, and less formal conversations and commentary from DOTs, consulting firms, independent researchers, and native groups and individuals—including those with federal recognition, state recognition, and those self-identified—are distilled here with some remedies presented.

It is apparent that our conceptualization of contexts needs to be reconfigured, taking a broader view beyond and inclusive of archaeological data, so that we may be able to integrate native perspectives of their past in a culturally-relevant framework and address cultures and different aspects of culture in the past (see Rubertone 1989; Stoler 1992; Ucko 1999). To do this we must not restrict the formulation of our questions nor what we consider appropriate data solely by the nature of archaeological data or the status of the field of archaeology at present. We need contexts that enable us to effectively identify, examine, protect, and develop treatment plans for native cultural properties

(Stoffle et al. 1996). Also, when constructing or revising our contexts we need to be keenly aware of the potential impact such constructions can have not only for guiding research designs and the interpretation of archaeological data, but also their potential to contribute to the development of alternative mitigation alternatives, public involvement, native concerns. We must also consider that they can be used to make significant contributions to our understanding and preservation of the past as well as contributions to living communities. They need not be lost and ignored parts of the perhaps inaccessible grey literature. It is suggested that we view contexts as a “total package” and develop them in relation to social, cultural, environmental, and economic concerns always considering their real-world applicability.

Contexts can be described as interpretive frameworks or series of questions about specific temporal, spatial, and cultural aspects of the archaeological and historic record. They are developed by state historic preservation offices, local governmental entities, and departments of transportation for use in developing research designs for Section 106 and other compliance projects and in the evaluation of the fieldwork and results. They might also be utilized to guide research in the state or locality outside of compliance work. Federal entities also construct and utilize contexts in their management and research practices.

Contexts have the ability to designate the important questions and resources for a federal entity, state or locality and in turn greatly impact the treatment of these resources. They are not merely politically-uncharged guidelines to the past. Rather, who constructs and implements them and how directly impacts living people and communities (Downer et al 1994; Esplenade 1998: 120-123; Kelley and Francis 1998; Kluth and Munnell

1997:112-119; Watkins 2000:170). Deciding how to approach the past and what aspects are considered important affects the people whose past is being studied. This paper deals with the ways context development impacts the preservation and treatment of Native American history and living Native Americans.

After examining our current contexts, several remedies will be discussed. At the outset of this assessment it is critical to ask, “How are Native Americans treated and involved in contexts? In their conceptualization, construction, and implementation?” In terms of how Native Americans in the past figure into contexts in the Middle Atlantic, they are usually categorized under archaeological contexts and within that per view, treated within prehistoric and contact periods (MD, DE, PA, Va?). Within prehistoric contexts the focus has been on developing cultural chronologies, technological innovations, and settlement/subsistence models that most archaeologists agree need updating.

The continued presence of Native Americans is rarely considered within historic archaeological contexts and if so, they are presented as a backdrop to European settlement. Some state contexts include a model of refugee native settlements followed by dispersal early on. There is also the use of outdated assimilationist models whereby a measure of “Indianness” of a site or its inhabitants is quantified and correlated with the presence, amount, and type of European-produced goods.

In terms of native involvement in the construction of contexts, it is non-existent.

Now that the short-comings of our contexts have been recognized, we are seeking new ways of approaching cultural resource management. No longer can we focus on the archaeological site as traditionally defined through the presence of a concentration of

artifacts or even solely fix our attention on sites when considered as parts of larger settlement systems. If we are to more fully understand the past and more effectively treat with native cultural properties, particularly TCPs and cultural landscapes, we must seek to incorporate larger spaces, interstitial spaces, places with sparse artifact counts or devoid of artifacts altogether. These are places that might have been and may still be of cultural significance. We must take a more holistic approach to native culture and history, native landscapes, and Native Americans and broaden our definitions of appropriate data.

Focusing on broader concepts of landscapes and TCPs, useful in context development, one fruitful avenue for compiling data would be to create databases of native landscape practices on local, state, regional levels. This would be most effectively pursued through the integration of SHPOs, DOTs, THPOs and other agencies with the goal of reducing redundant efforts and maximizing the production of useful data. A relatively untapped resource for this type of information is primary documents and the doing of thick ethnohistoric description. This requires going beyond superficial usage of documents, going beyond early explorers' accounts, and focusing a critical eye on these records. This requires reading between the lines more often than not and piecing together of patterns and practices from nuances from what is included in the records and what is not. Records are an artifact themselves and while they speak to only a limited portion of time, they can be made to reveal an incredible wealth of information. The types of records that can be used include court cases, probate inventories, tax lists, rent rolls, private letters, Indian treaties, land disputes, and newspapers. Such work entails record "stripping" on a certain topic, gathering data into a database that can then be distilled into

a narrative for use in contexts. Such topics include the locations and construction of Indian settlements, Indian paths, botanical information, economic practices, information on what Indians thought about their landscape, sometimes the language used to describe it and their relation to it.

This information can be used to pinpoint locations of more ephemeral landscape features or those not glimpsed from an archaeological perspective. These data can also be used to inform our archaeological research designs and management plans.

Equally important in the construction of our contexts is the voice of Native Americans today. It is imperative that the generation of questions and answers about native cultural properties of the past and present and the treatment of these properties have the opportunity to come from Native Americans. This need has been made clear repeatedly but little practical implementation has been undertaken thus far in the Middle Atlantic. This short-coming can be attributed to several factors, the more pleasant of which include:

- 1) Federal policies geared toward federally-recognized tribal groups and undertakings on tribal lands;
- 2) Lack of effective channels of communication between Native Americans and the CRM profession;
- 3) The lack of understanding of alternatives or the lack of willingness of the CRM profession to take new directions.

Native people living in the states of Delaware, Maryland, and Virginia are predominantly those with state recognition or are self-identified people. Thus, federal laws most often do not treat with their concerns or recognize their ability to inform our understanding of

the native past and present. However, at least as “concerned publics,” these voices must be accorded respect. The critical task of incorporating these voices confronts Middle Atlantic states at present.

Indian Paths and Best Practices: A hypothetical scenario illustrating a holistic approach to context development.

In order to gauge the ease of implementation and real-world applicability of the remedies suggested in this paper, several context scenarios were considered. They were geared toward aspects of native landscapes past and present with an eye on inclusiveness, non-redundant efforts, and the development of alternative mitigation plans. The concepts were also considered for cases in the Middle Atlantic region. One involved the development of a revised transportation/settlement context which moves beyond and incorporates prior approaches to archaeological contexts. In this case the focus was on Indian paths. Cooperative efforts between SHPOs, DOTs, federal agencies, parks, native and other community groups are envisioned. The steps considered are listed below.

- 1) Develop context theme and direction in consultation with Native Americans and other interested parties.
 - a. hold public meetings, present ideas, gather ideas,
 - b. targeted audiences include native people, landowners, historic and environmental groups
- 2) Perform ethnohistoric research to:
 - a. further identify the locations of paths and coordinate with modern maps

- b. gather information on how paths were used, what they linked, their construction, activities and practices associated with paths.
 - c. investigate if paths were reused by Europeans/EuroAmericans and if they correlate with any modern roadways or land divisions.
3. Transfer path information to modern highway maps and other planning devices with computer mapping programs so that any time a project area is defined, the paths may be mapped onto the plans.
4. Transfer path information onto archaeological site distribution maps to aid interpretation of broader conceptions of the landscape.
5. Field check potential path locations and develop treatment or anticipatory protection measure to preserve any intact portions. (There are intact portions of paths recorded in Md and Va).
6. Alternative mitigation plans:
 - a. Coordinate with public, especially native people, to develop protection/appreciation measures:
 1. develop bike or pedestrian paths along pathway
 2. develop path adoption program with various native people or groups, and/or historic/environmental groups.
 3. Place signage along path
 4. Use paths to name new or extant roadways
 - b. When within an area of potential effects CRM can:
 1. incorporate into archaeological research design and interpretation
 2. be required to include info. in brochures and public presentations

7. Funding and cooperative context development: This context can be an attractive theme for DOTs and can be linked to such funding sources and preservation initiatives as the White House's Millenium Trails program and TEA-21.

While these are more ephemeral and perhaps not well-preserved parts of the archaeological record, it is important to know where they were for several reasons including:

- a) their ability to augment our interpretations of other forms of archaeological data
- b) they provide access into broader conceptions of landscape, and have the potential to contribute to our understanding of native views of their world past and present
- c) their ability to increase public awareness of the need to protect sites providing a sense of stewardship through cost-effective planning procedures.

Bibliography

Alonso, Ana Maria

1994 The Politics of Space, Time and Substance: State Formation, Nationalism, and Ethnicity. *Annual Review of Anthropology* 23:379-405.

Basso, Keith H.

1996 *Wisdom Sits in Places: Landscape and Language among the western Apache*. Albuquerque: University of New Mexico Press.

Birnbaum, Charles A.

web Protecting Cultural Landscapes: Planning, Treatment and Management of Historic Landscapes. Historic Landscape Initiative of the National Park Service, Technical Preservation Services, Preservation Briefs 36. www2.cr.nps.gov/tps/briefs/briefs36.htm

Brow, James

1990 Notes on Community, Hegemony, and the Uses of the Past. *Anthropological Quarterly* 63(1):1-6.

Custer, Jay

1986 A Management Plan for Delaware's prehistoric cultural resources.

DeCunzo, LuAnn and Wade P. Catts

1990 Management Plan for Delaware's Historical archaeological resources. UDCAR, Newark.

Delaware, State of

1996 *The Future of Our Past: Planning for Historic Preservation in Delaware*. State Historic Preservation Office, Dover, Delaware.

Downer, Alan S. Jr., Alexandra Roberts, Harris Francis, and Klara B. Kelley

1994 Traditional History and Alternative Conceptions of the Past. In *Conserving Culture: A New Discourse on Heritage*. M. Hufford, ed. Pp. 39-55. Urbana: University of Illinois Press.

Espland, Wendy

1998 Legally Mediated Identity: The National Environmental Policy Act and the Bureaucratic Construction of Interests. In *Readings in American Indian Law: Recalling the Rhythm of Survival*, ed. Jo Carrillo, pp. 110-125.

Greider, Thomas and Lorraine Garkovich

1994 Landscapes: The Social Construction of Nature and the Environment. *Rural Sociology* 59(1):1-24.

Kelley, Klara Bonsack and Harris Francis

1998 Other Studies [of Sacred Placed]: What They Did and How They Did It. In *Readings in American Indian Law: Recalling the Rhythm of Survival*, ed. Jo Carrillo, pp. 290-301.

Kluth, Rose and Kathy Munnell

1997 The Integration of Tradition and Scientific Knowledge on the Leech Lake Reservation. In *Native Americans and Archaeologists*, ed. Swidler et al, pp. 112-119.

Maryland Historical Trust

1986 *The Maryland Comprehensive Historic Preservation Plan*. Department of Economic and Community Development, Crownsville.

Parker, Patricia L. and Thomas F. King

1990 Guidelines for Evaluating and Documenting Traditional Cultural Properties. National Register Bulletin 38. Washington, D.C.: Interagency Resources Division, National Park Service, USDI.

Draft Do Not Cite Without Permission

Rubertone, Patricia E.

1989 "Archaeology, colonialism and 17th-century Native America: towards an alternative interpretation" in *Conflict in the Archaeology of Living Traditions* edited by Robert Layton (Unwin Hyman, Boston 1989).

Stoffle, Richard W., David B. Halm, and Diane E. Austin

1995 (rev. 1996) *Cultural Landscapes and Traditional Cultural Properties: A Southern Paiute View of the Grand canyon and Colorado River*. Bureau of Applied Research in Anthropology, University of Arizona, Tucson. <http://www.library.arizona.edu/users/jlcox/class/readings/land2x2.html>.

Stoler, Ann Laura

1992 Rethinking Colonial Categories: European Communities and the Boundaries of Rule, in *Colonialism and Culture*, edited by Nicholas B. Dirks, pp. 319-352. The University of Michigan Press, Ann Arbor.

Ucko, P. and Robert Layton, eds.

1999 *The Archaeology and Anthropology of Landscape*. Routledge.