

POLICY RECOMMENDATIONS: MANAGEMENT OF CULTURAL RESOURCES ALONG THE INTERNATIONAL BORDER

Governor's Archaeology Advisory Commission, Phoenix, Arizona

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INTRODUCTION

The role of the Governor's Archaeology Advisory Commission is to advise the Governor on matters relating to the protection of Arizona's irreplaceable archaeological resources and to advance protection efforts through public education programs and support for maintaining professional standards in archaeology.

In late 2007, the Commission became concerned about reports of damage to archaeological resources along the international border with Mexico, resulting from illegal activities as well as the efforts of the state and federal governments to address and contain those activities. The Commission sought to obtain more information on the related issues in order to document its concerns while also developing policy recommendations to support improved protection and management of archaeological resources along the border. This policy paper summarizes those issues and presents recommendations to improve resource protection and management, while acknowledging the critical need to gain control over the serious problems of crime, human suffering, and environmental damage caused by illegal activities along Arizona's international border.

BORDER MANAGEMENT ISSUES AND CULTURAL RESOURCES

The activities associated with human smuggling, drug trafficking, and border incursions cause serious and irreversible adverse effects to archaeological resources as well as traditional cultural places that are important to Indian tribes. These damaging effects result from surface disturbance caused by new trails, roads, and off-road vehicle traffic; trash dumping; use of caves and rock shelters for campsites; damage to areas around water sources such as springs and historic wells; and vandalism and dismantling of historic structures. The associated public safety issues discourage public visitation and efforts to promote public education and interpretation, as well as the efforts of Site Stewards to monitor the condition of sites and to report and document vandalism. These problems are not confined to the border area itself but can affect archaeological resources within 100 miles or more.

Cultural resources are also placed at risk by poorly conceived and inadequately coordinated law enforcement and border management activities by government agencies. Problems include disturbance from off-road vehicle traffic; a lack of awareness and recognition of archaeological resources by law enforcement agents; damage to archaeological sites from inadequate or rushed surveys or insufficient measures to mitigate adverse effects through data recovery; a focus on

data recovery rather than avoidance; insufficient attention to adequate quality control of archaeological work and reporting; and insufficient attention to long-term monitoring of the condition of archaeological resources. There is a need for improvement in planning and coordination between law enforcement agencies such as the Department of Homeland Security (DHS) and U.S. Customs & Border Protection (Border Patrol) with land management agencies such as the U.S. Bureau of Land Management (BLM), U.S. Forest Service (USFS), U.S. Fish and Wildlife Service (USFWS), National Park Service (NPS), Department of Defense (DOD), and State of Arizona; and Indian Tribes that manage borderlands as sovereign nations, such as the Tohono O’odham Nation. Inadequate coordination hampers the sharing of information needed to ensure adequate identification, treatment, and protection of archaeological resources as well as places of traditional religious and cultural importance.

EFFORTS OF THE COMMISSION

Initially in 2007, Commission members received reports of damage to archaeological sites along the international border during construction of the border fence, vehicle barriers, and other facilities. According to one report, a large 60-foot wide “buffer zone” was graded through the historic San Bernardino Ranch, destroying one of its oldest structures. At a site in the San Pedro Riparian National Conservation Area, features at a historic ranch were dismantled, rather than avoided by construction crews. In some cases, staff of land management agencies cited inadequate coordination by the U.S. Army Corps of Engineers (USACE), which was the federal agency assigned to manage the mitigation of adverse effects to archaeological resources.

The Commission’s Public Policy Committee subsequently conducted interviews with staff from federal land managing agencies (BLM, USFS and NPS) and Indian tribes (Tohono O’odham Nation) to investigate these cases and related issues. These interviews addressed the following questions:

- How does the Department of Homeland Security interact with your agency in terms of cultural resource management?
- Has there been avoidable damage to cultural resources?
- Is this damage being mitigated and how so?
- What is the nature of archaeological work, and are you notified of work before it occurs?
- Does your agency deal with archaeological contractors/subcontractors directly?
- Do you receive timely and adequate reports?
- Is the work being done of good quality?
- What advice do you offer for other agency staff in this situation, or for policy makers?

These interviews gathered the following information. The Commission did not conduct extensive research to confirm specific allegations of inadequate work or faulty procedures. However, we wish to summarize these comments in the interest of developing constructive recommendations for improvement.

- A perception that a lack of timely communication by DHS and USACE with land managing agencies and tribes, regarding planned land-altering projects, has led to avoidable delays and increased costs to implement those projects, as well as needless impacts to cultural resources.
- Archaeological projects have taken place without adequate advance notification or required permits.
- Agency and tribal staffs lack adequate time to review archaeological reports or have not been given the opportunity to review such reports.
- There is a need for better coordination between out-of-state archaeological contractors and agency staff who are knowledgeable about local archaeological resources.
- Lacking sufficient and timely reporting, the full extent of impacts is difficult to assess.
- Some archaeological studies have relied on past surveys that were not adequate to assess current conditions and impacts.
- Some reports have not included sufficiently detailed information to adequately assess impacts to archaeological sites and to develop appropriate mitigation measures.
- In many cases, there has not been a clear path of communication regarding procedures and agency responsibilities for reviewing reports and consulting with the State Historic Preservation Office.
- In some cases, the Border Patrol continued to use roads that ran through archaeological sites being excavated.
- Some adverse effects could have been avoided by redesigning facilities.
- Long-term monitoring, where warranted, is required to protect cultural resource sites, including cases where sites already have been documented or received some level of investigation.

A common theme in comments from agencies and tribes was the need for improved planning and timely coordination among land managers, DHS, USACE and their contractors. Many agency staff stressed that they maintain good working relationships with individual contractors and employees of the Border Patrol, but that there is a need to improve coordination and involvement at the local level, as opposed to top-down direction from Washington. Agency staff also noted that border-related projects represent a large and unfunded workload. However, they are committed to following orderly and well-defined processes to identify, evaluate, and resolve adverse effects to archaeological resources. As documented in one interview, “making use of the cultural resource knowledge of the (agency) staff would save time, expedite DHS border security enhancement projects, save money, and better preserve Arizona’s cultural heritage.”

In January 2009, the Commission wrote and sent a letter to Governor Janet Napolitano regarding its concerns about damage to archaeological resources. The Commission stated that:

“One recommendation is clear: adequate funding for cultural resource inventories (under Section 110 of the National Historic Preservation Act) must be provided to land managing agencies. Much damage...could have been avoided if these agencies had, in the past, received the funding

to produce inventories of their respective resources. Having this knowledge in hand would have provided law enforcement and land managers much better information with which to make decisions regarding where to undertake ground-disturbing activities and which resources deserve the most protection.”

Later the Commission followed up with correspondence to Ms. Napolitano in her role as Secretary of the DHS, copied to Governor Jan Brewer. The Commission cited its concerns about the reported damage to archaeological resources at the San Bernardino Ranch and the San Pedro National Conservation Area. The letter stressed the importance of early and frequent communication and coordination with those entities responsible for day-to-day land and resource management. In March 2010, the Commission received a written response from David Aguilar, the acting Deputy Commissioner for U.S. Customs and Border Protection, stressing the agency’s commitment to the identification, treatment, monitoring, and curation of archaeological resources in accordance with federal requirements. Mr. Aguilar also described efforts at in-situ protection of archaeological sites. He asserted that appropriate professional measures were taken to survey, research, and document archaeological sites in the San Bernardino Ranch and San Pedro River areas.

Since the Commission began to investigate these issues, we believe that progress has been made to address the situation and that the involved agencies have improved their efforts at communication and coordination. During the same period, issues of border management have become more controversial, emotionally charged, and publicized. The Commission proposes to offer recommendations that will support effective law enforcement and border management activities, while providing for the protection and appropriate treatment of archaeological sites, important historical landmarks, and resources of traditional cultural importance.

RELATED CONCERNS OF INDIAN TRIBES

Cultural resources of importance to Indian tribes include archaeological sites, traditional cultural properties, sacred sites, and landscape features of traditional religious or cultural importance. All of these types of resources are at risk of damage or loss from border-related activities. The Commission sought input from members of the Four Southern Tribes who are knowledgeable and concerned about archaeological resources. These tribes include the Tohono O’odham Nation, Gila River Indian Community, Ak-Chin Indian Community, and Salt River Pima-Maricopa Indian Community. We must note that these discussions did not involve formal proceedings or consultations with tribal governments, nor did they include all of the Arizona tribes affected by illegal activities and border management actions.

In summary, tribal members offered the following comments:

- Border issues are perceived to affect all of the Southern Tribes, although the Tohono O’odham Nation, with lands adjacent to the border, suffers more of the direct impacts associated with smuggling, off-road driving, abandoned immigrant camps, and theft of

vehicles and horses. The tribes see problems in their communities that they perceive are associated with illegal border-related activities, such as crime, use of illegal drugs, and damage to archaeological sites and natural resources.

- The tribes are concerned about the disturbance and destruction of prehistoric and historic sites, traditional cultural places and landscapes, graves and burials, and traditionally important plants and animals and their habitats. Although they recognize that much of this damage is caused by illegal activities, tribal members also attribute problems to law enforcement and border management activities carried out by the federal and state governments.
- There is a concern that the Border Patrol and other agencies demonstrate a lack of sensitivity to tribal concerns and a lack of respect for tribal cultures and sovereign governments.
- The Border Patrol and other agencies need to do a better job of coordinating and sharing information with tribal governments.
- The agencies should incorporate more information on tribal concerns and cultural resource protection into their training programs, especially for law enforcement officers.
- Border managers should be educated to recognize the need for tribal members to cross the international border for social and ceremonial events that sustain relationships with their kin in Mexico. Efforts should be made to facilitate such border crossings.
- Once the border fence and vehicle barriers are completed, there will still be cultural resource management issues. Important archaeological sites will still need to be monitored and protected, even if they have already been subjected to data recovery.

POLICY RECOMMENDATIONS

Based on its review of the associated issues, the Commission offers the following recommendations to help improve the protection and management of archaeological resources along the international border. We observe that since the Commission began to consider these issues, government agencies have made improvements in coordination efforts and training programs. For example, the Bureau of Land Management established a formal “Border Strategy” including the following steps to foster the protection of public land resources and enhanced coordination with border partners, including the Border Patrol and the Tohono O’odham Nation:

- Engage in regular coordination of law enforcement activities.
- Establish regular communication/information exchange processes.
- Provide Border Patrol agents with information on natural and cultural resource values and work to establish consistent training programs.
- Work with partners to identify key areas for increased enforcement, closure, and protection efforts.
- Reinitiate contacts with the Arizona Office of Tourism and the Sonora (Mexico) Office of Tourism to identify projects for collaboration.

The BLM's Project ROAM (Reclaim Our Arizona Monuments) is a collaborative effort with the Border Patrol and other federal and state agencies, focused on protecting resources within the Sonoran Desert and Ironwood National Monuments. To date, accomplishments have included the construction of vehicle barriers to protect wilderness values and archaeological resources in the vicinity of Table Top Mountain and other areas. More information on the Arizona Border Strategy is available at www.blm.gov/az/st/en.html.

In addition, the Border Patrol is working with the State Historic Preservation Office, the Advisory Council on Historic Preservation, and other consulting parties to develop a Programmatic Agreement to ensure consistent and effective Section 106 compliance for operations in Arizona and other states along the border with Mexico. We believe it is crucial to comply with the National Historic Preservation Act and other laws that have provided a firm foundation for protecting archaeological resources through a well-defined process that involves the public and Indian tribes in agency decision-making.

The Commission offers the following recommendations:

- Improvement of interagency planning and coordination through concerted efforts such as Project ROAM.
- Development of efficient, standardized approaches to expedite projects while maintaining legal and professional standards.
- Employment of peer review procedures to assist in developing and maintaining professional standards for research designs, methods, and reporting on larger projects.
- Cultural resource surveys completed well in advance of specific projects to facilitate better planning and avoidance. Survey priorities should be defined to target areas that are known or expected to have numerous or particularly sensitive resources and are most vulnerable to damage and destruction.
- Preparation of a historic context study for the border, including a summary of known documented cultural resources within a certain distance.
- Improved attention to a broad range of tribal issues and coordination procedures, accomplished through government-to-government consultations between tribes, the Border Patrol, and other agencies.
- Development and implementation of effective educational programs for the Border Patrol and other law enforcement agencies.
- Improved dissemination of information from data recovery projects, including reports readily available to qualified professionals; professional conferences; and public outreach products such as brochures or web pages. Efforts would include outreach and information sharing with archaeologists and historic preservation agencies in Mexico.
- Long-term monitoring of selected archaeological resources, which may include certain properties that have already been subjected to data recovery, as well as sites that are avoided and protected *in situ* or are located in protected areas such as National Monuments.

- Implementation of site monitoring strategies that target the resources most vulnerable to damage, while not placing Site Stewards or other volunteers at risk in areas with safety and security issues. Monitoring activities should be implemented in coordination with multiple law enforcement entities from various governmental and tribal jurisdictions, utilizing a variety of technologies while preserving the confidentiality of site locations.
- Timely and appropriate repair and restoration of damaged sites.
- Funding to accomplish needed surveys, studies, monitoring, training, and effective coordination among the Border Patrol, state and federal agencies, and Indian tribes.