

# ENVIRONMENTAL REVIEWS AND CASE STUDIES

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## Indigenous Traditional Cultural Places in Environmental Impact Assessment: The Case of the Ch'u'itnu Watershed

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The Ch'u'itnu (Chuit River) flows southeast out of the Chigmit Mountains into Alaska's Cook Inlet. It is undammed—a wild river that supports a healthy forest, a diversity of wildlife, and an impressive salmon spawning run. The Native Village of Tyonek lies just south of the river's mouth. The lives of the Tyonek people—also called Tubughna, a division of the Dena'ina—have been intimately intertwined with the workings of the Ch'u'itnu watershed since time immemorial. The Tubughna trap and net salmon on their way to spawning beds in the Ch'u'itnu headwaters. They hunt moose throughout the Ch'u'itnu drainage. They gather plants and harvest small game. All these vital subsistence activities are structured by Tubughna culture. There are culturally defined rules governing the harvest and sharing of salmon and the construction and maintenance of fish traps. The site of a man's first moose kill becomes a special place in his family's traditional spiritual life. The Ch'u'itnu drainage and adjacent parts of the Cook Inlet shore are simply home to the people of Tyonek Village; they have been home to them for at least a thousand years. It is hard for an outsider to fathom what this kind of time-depth means in terms of place attachment.

PacRim Coal, LLP (PacRim) proposes to construct an open-pit coal mine in the upper Ch'u'itnu drainage, shuttling the excavated coal to the mouth of the river by conveyor. On the shore of Cook inlet it would be loaded in ships bound for China's coal-fired power plants. The project requires a permit from the U.S. Army Corps of Engineers (Corps) under Section 404 of the Clean Water Act; in deciding whether to issue the permit, the Corps must comply with Section 102(c) of the National Environmental Policy Act by performing environmental impact assessment. One aspect of the US Energy Information Administration (EIA) is the assessment of impacts on "cultural resources."

## "Cultural Resources" of the Ch'u'itnu Watershed

So, what are the cultural resources of the Ch'u'itnu watershed?

The Corps' approach thus far has been to apply the term only to archaeological sites and historic buildings. The Corps and PacRim have given lip service to addressing all cultural resources important to Tubughna people—notably including the fish, wildlife, and plants vital to traditional subsistence and the cultural beliefs and practices that surround subsistence—but the only "cultural resource" studies PacRim is known to have conducted or been told by the Corps to conduct have been archaeological and building surveys. It has thus been left to the Native Village of Tyonek, at its own expense, to assemble a team of cultural anthropologists to help document Tubughna cultural resources. The team's efforts have highlighted the fact that the entire Ch'u'itnu watershed landscape, including the Cook Inlet shore southwest of the Ch'u'itnu's mouth, and offshore areas in Cook Inlet, constitute a "traditional cultural place", a type of cultural resource that may be eligible for the National Register of Historic Places and hence subject to special consideration under the National Historic Preservation Act. The Native Village's report goes on to show that the landscape is eligible for the National Register by virtue of meeting criteria published by the National Park Service.<sup>2</sup>

Having received the Village's 144-page report,<sup>3</sup> the Corps of Engineers sat on it for almost a year and then advised the State Historic Preservation Officer that it was unable to decide whether the landscape is eligible for the Register—implying that it will treat it as not eligible. Meanwhile the Corps is processing the EIA prepared for PacRim, apparently without attention to the Native Village's expressed concerns.

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The Corps' lassitude will be resolved, in the courts if not otherwise, but let's examine the underlying issue. Why is the whole Ch'u'itnu watershed landscape a traditional cultural place? What makes it eligible for the National Register? And since the mine's impact on it clearly should be considered in the environmental impact assessment, why is the Corps having such trouble considering them?

A traditional cultural place, according to the 1990 federal guideline that defined the term, is a place whose significance is derived from "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."<sup>4</sup> Such a place can be eligible for the National Register if it meets any one of four criteria spelled out in National Park Service regulation.<sup>5</sup> The Village's report makes it clear that the Ch'u'itnu landscape is intimately associated with cultural practices and beliefs that are rooted in at least a thousand years of Dena'ina history, and that continue today as vital aspects of the community's sociocultural identity. It also shows that the landscape meets at least National Register Criterion "a"—"association with events that have made a significant contribution to the broad patterns of our history."<sup>6</sup> That association is with the millennium-old lifeways, subsistence practices, and spiritual beliefs of the Tyonek people, all of which continue to function today, and all of which the people of the Village value as aspects of their identity. The landscape is much more than a mere collection of sites recognizable by archaeologists. Its significance lies in the relationships among the river and its tributaries, their salmon and other fish, their plants, wildlife and marine mammals, their air and water quality, their auditory and even olfactory qualities, and the ancient and ongoing Tubughna cultural practices and beliefs with which they all are invested.

The Corps has not challenged the Village's assertions; it has simply said that it cannot determine whether the landscape meets the National Register criteria and hence, implicitly, that it intends to set the Village's report aside and ignore it. It has also ignored the recommendation of the Advisory Council on Historic Preservation<sup>7</sup> that it take the matter to the Keeper of the National Register in the Department of the Interior, who by law is the arbiter of National Register eligibility.

## Addressing the Effects of a Project on Cultural Resources

When a National Register eligible place will be affected by a project, the regulations of the Advisory Council require that

the responsible federal agency apply "criteria of adverse effect" found in the Advisory Council's regulations.<sup>8</sup> If the effect is found to be adverse, the agency goes on to consult with concerned parties about ways to resolve the adversity. On behalf of the Native Village of Tyonek, the Native American Rights Fund has documented the (obvious) fact that the proposed mine will have adverse effects on the Ch'u'itnu landscape's cultural attributes—by excavating the river's headwaters where salmon spawn, disrupting salmon runs, driving away wildlife, introducing industrial operations into a now-pristine natural environment, and destroying the places where Tyonek people fish, hunt, gather, and carry out spiritual activities<sup>9</sup>—but the Corps has ignored this documentation just as it has the eligibility study. Meanwhile, however, it continues to move forward with the development of the EIA as though the watershed's cultural significance and the proposed mine's effects on it did not exist.

## Generalizing on the Ch'u'itnu Experience

However the PacRim case works out, the Ch'u'itnu landscape is a good example of the kind of cultural resource that is often of most importance to an indigenous community, and the kind that seems most difficult for federal agencies and EIA practitioners to understand. The watershed landscape, like many other such traditional cultural places, has at least the following key attributes:

1. It is a natural area, an expansive landscape of river, tributary streams, hills, valleys, and seacoast;
2. Its animals and plants are critical to its cultural significance; this may or may not have anything to do with their significance in the eyes of wildlife biologists, fisheries biologists, or endangered species specialists; and
3. It is fundamental to the identity of the people who value it; they may literally be unable to imagine themselves as themselves if it is destroyed or substantially altered.

These attributes are intrinsic to the place, and cannot be defined away, but defining them out of existence is exactly what contemporary environmental impact assessment too often does.

"Cultural resources" are usually described in environmental documents by archaeologists, who naturally focus their attention on the kinds of sites and artifacts they understand, and in which they are interested. Old living sites, campsites, and cemeteries are things that archaeologists can recognize, and to which they can relate. A watershed or other landscape may be understood as the environmental context of a group of sites, but the sites themselves—tightly defined specific locations—are the archaeologist's "resources." That

the watershed itself, with all its plants, animals, water, dirt, rocks, and human activities, and the feelings that the watershed evokes and encompasses, might be a “resource” is not something that archaeologists are often trained to grasp. So the “cultural resource” section of the impact assessment’s description of the affected environment tends to discuss only archaeological sites—and historic buildings, if any are found there.

Impacts on archaeological sites are often perceived to be easily avoided—one simply avoids disturbing the sites by shifting the project footprint a bit this way or that. If a site must be disturbed, the impact of doing so is perceived to be easily “mitigated” by paying archaeologists to excavate it. So impacts on cultural resources seldom are recognized as being significant enough by themselves to require preparation of an Environmental Impact Statement under the National Environmental Policy Act (NEPA). Nor are they seen as sufficient to demand that serious consideration be given to abandoning a project, denying a permit, or pursuing an alternative approach to meeting the project’s defined purpose.

## Cultural Issues Elsewhere in EIA

Separate from its consideration of cultural resources, the Corps in the Ch’u’itnu case does acknowledge the potential for impacts on socioeconomics and subsistence—attributes whose analysis might be expected to reveal something of the intrinsic relationship among the landscape, its waters and biota, its people, and their culture. This is often the case in environmental impact assessment—cultural concerns with the environment crop up (if they crop up at all) in multiple places throughout the analysis, without coordination. However, things like socioeconomics and subsistence are usually discussed with reference to easily quantified variables like demographics, household income, formal education, and harvest size. This is all important data, but data that does nothing by itself to represent the cultural value of a place like the Ch’u’itnu watershed landscape to people like those of the Native Village of Tyonek, or to provide a basis for understanding how a project like PacRim’s proposed mine will affect it. The cultural, human value of the watershed—the major “cultural resource” involved—literally goes unconsidered. At this writing, this appears to be the case in the Corps’ Ch’u’itnu impact assessment.

## Why Indigenous Groups Give Up on EIA

Confronted with such egregious cultural bias by the agency vested with authority to issue or deny a permit or approve or

disapprove a project, an indigenous group is likely to throw up its hands in despair. And when the group tells the environmental impact analysts—if it gets the chance—that the watershed (or river, bay, mountain, desert valley, or other kind of cultural landscape) is vital to its existence, it is often reduced to using words like “sacred,” which while accurate enough, leave impact analysts rolling their eyes. “Sacred,” like “historic,” is a Euroamerican abstraction that does a poor job of expressing indigenous values, but it tends to be understood by impact assessment specialists simply to mean “inviolable.” Since a resource that is truly inviolable tends to be a project-stopper, analysts often offer tortuous technical arguments to prove that the abstraction does not apply—that the resource is not, technically, “sacred” or “historic.” When such insulting, demeaning arguments are advanced, whatever communication there may have been with the community breaks down, and the indigenous group experiences another affront to its cultural integrity. Impact assessment proceeds with reference only to Euroamerican perceptions of the environment, and whatever the indigenous group valued about the environment is compromised.

## Conclusions

While it is possible to ascribe dark motives to agencies like the Corps of Engineers, companies like PacRim, and their consultants, in the Ch’u’itnu case it may well be that their representatives simply do not know what to make of what the Native Village of Tyonek has told them. Government agencies and environmental consultants routinely talk and write about cultural sensitivity, environmental justice, and respect for traditional ecological knowledge, but seldom seem able to translate their rhetoric into reality—quite possibly because they simply do not know how.

The answer to the “how” question, however, is not complicated. One simply needs to approach the potentially affected community with respect, and inquire about what is important to its people in the environment—without assuming that the important thing must be an archaeological site or an old building or must be no bigger than a set number of acres or square meters. This may require the assistance of experts in cross-cultural communication, or it may not; the critical things it demands are an open mind and respect for a community’s traditional knowledge, beliefs, and modes of communication and decision-making.

Places like the Ch’u’itnu watershed are of absolutely central cultural importance to indigenous groups like the Tubughna people of the Native Village of Tyonek. The potential impacts of proposed projects on such places are simply not being

analyzed by the agencies legally responsible for doing so. Whether by accident or design, the structure and practice of environmental impact assessment discriminates against considering and addressing impacts on the valued environment of people like the Tubughna. If the United States is to have a responsible, unbiased, just system for ascertaining and addressing the environmental impacts of change, a new paradigm is in order.

## Notes

- <sup>1</sup> National Register Bulletin 38, cited below, calls such places “traditional cultural properties,” but some indigenous groups and others object to “property” as suggesting commodification, and contemporary usage favors “places.”
- <sup>2</sup> 36 CFR § 60.4.
- <sup>3</sup> Boraas, A.S., R.T. Stanek, D.R. Reger, and T.F. King. 2015. *The Ch’u’itnu Traditional Cultural Landscape: A District Eligible for the National Register of Historic Places*. Native American Rights Fund for Native

Village of Tyonek. Report submitted to the U.S. Army Corps of Engineers, the Alaska State Historic Preservation Officer, and others.

- <sup>4</sup> National Register of Historic Places. 1990. *Guidelines for Evaluating and Documenting Traditional Cultural Properties*, National Register Bulletin 38, National Park Service. Available at <http://www.nps.gov/nr/publications/bulletins/nrb38/> (accessed January 24, 2016).
- <sup>5</sup> National Register of Historic Places Program. 1966. National Register Federal Program Regulations, 36 CFR 60.4. Available at <http://www.nps.gov/nr/regulations.htm#604> (accessed January 16, 2016).
- <sup>6</sup> See 36 CFR 60.4(a).
- <sup>7</sup> The independent US government agency charged with overseeing federal agency compliance with Section 106 of the National Historic Preservation Act.
- <sup>8</sup> See 36 CFR 800.5.
- <sup>9</sup> Letter of April 3, 2015 to the U.S. Army Corps of Engineers.

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