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Stephen A. Hardgrove
Assistant Inspector General
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

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Dear Mr. Hardgrove:

I am writing to draw your attention to recent events involving the Bureau of Indian Affairs, the Advisory Council on Historic Preservation, the State Historic Preservation Officer for New Mexico, and the Santa Fe Indian School campus. In 2000, Congress decreed that the property be held in trust by the federal government for the benefit of the 19 Pueblos of New Mexico. Included with the campus were more than a dozen buildings, dating from 1890, that had been found eligible for the National Register of Historic Places.

In 2002 Congress appropriated funds for the construction of a new school on the site. Accordingly, the BIA commissioned an environmental assessment. At the prodding of the New Mexico SHPO, the BIA added the following provision ("Historic and Cultural Resources," section 3.5):

"All vacated buildings will be maintained to the extent they have been maintained in the past. A study will be made as to the best use of the existing buildings. This study will be coordinated with the Bureau of Indian Affairs and the new Mexico Historic Preservation office."

But that never happened. Early Saturday morning, July 26, to the complete surprise of the SHPO and everyone else, wrecking cranes began demolishing more than a dozen of the historically significant buildings. By the end of the weekend they were destroyed. As a result of this hasty action, it appears that the National Historic Preservation Act and possibly other federal laws were violated.

Section 106 of the act requires that in any federal undertaking, the appropriate agency (in this case the BIA) "take into account the effect . . . on any district, site, building, structure, or object that is included in *or eligible for inclusion* in the National Register." If the agency surrenders its jurisdiction through "transfer, lease, or sale of property out of Federal ownership or control," then Interior Department regulations (36 CFR Part 800 -- Protection Of Historic Properties)

require that "adequate and legally enforceable restrictions or conditions" be put in place "to ensure long-term preservation of the property's historic significance."

The director of the Southwest Region of the BIA, Larry Morrin, has confirmed that his agency did not put Section 106 protections into place -- and claims that they were not required by NHPA because putting land into an Indian trust does not constitute a "transfer." Yet Mr. Morrin also argues that his agency was powerless to stop the demolition or compel the pueblos to follow NHPA because they are now "beneficial owners of the land held in trust" and can use it "according to their needs without intervention from the federal government." But that, according to the wording of Section 106, would surely be a transfer out of federal control.

If through some narrow interpretation, a "transfer" did not occur, then the Indian School property remains the responsibility of the government, in which case the BIA apparently violated Section 106 of NHPA as well as Section 110, which requires that "the heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency."

The bottom line is this: Either the campus was transferred or it was not. At the time of the demolition, the buildings were either controlled by the government or by the pueblos. One way or the other, NHPA was violated. As a result, irreplaceable historic properties were lost. Since the New Mexico SHPO has decided, for questionable reasons, not to pursue the matter, I am asking whether your office intends to investigate and determine which laws were violated and who was responsible.

There are additional issues that hang unresolved. Mr. Morrin has also claimed that the demolition was not a federal undertaking because it was paid for with tribal funds. Yet an undertaking includes any "project, activity, or program . . . requiring a Federal permit, license, or approval." The contractor in charge of the demolition applied for and received an EPA permit for asbestos removal, and the destruction of the buildings was tied to the construction of the new school, which was funded by the government.

Finally, if the land was not transferred to the pueblos, as Mr. Morrin contends, the possibility arises that the demolition constituted theft or destruction of federal property.

Thank you in advance for your attention to this matter.

Sincerely yours,

George Johnson
The Santa Fe Review

Enclosures