Native American Consultation: Some Guidelines

Nina Swidler
Navajo Nation Historic Preservation Department

We all are aware that the National Historic Preservation Act requires federal agencies to ensure that tribal values are taken into account as part of the nation’s preservation program. The implementing regulations for Section 106 of the Act clearly direct federal agencies to consult with tribal governments about federal undertakings that may affect places of concern to a tribe.

The Navajo Nation assumed the federal government’s responsibilities for management of cultural resources on Navajo lands ten years ago, years before formal recognition as a Tribal Historic Preservation Office. These responsibilities include consulting with other tribes about federal undertakings taking place on Navajo lands. Using our programs and experiences as reference, we’ve compiled a set of recommendations on how to more successfully conduct consultation with tribes. The following is a list of suggestions and common sense approaches to seek tribal participation, and incorporate and integrate tribal perspectives into cultural resources investigations.

Notification is not consultation. Often, it takes letters, follow-up telephone calls, and repeated in-person meetings to establish a meaningful relationship with tribes.

The planning framework outlined in the National Environmental Policy Act may be an appropriate place for agencies to begin the tribal consultation process. Not only are the government-to-government relationships established, but larger, regional issues can be discussed and recommendations for project design proposed.

If agencies have many projects planned, then regular meetings with tribes who have concerns within the agency’s jurisdiction can help to normalize and cement good working relationships.

Providing funding for tribal participation should be a universal given. Most tribes do not have sufficient funding to deal with essential human services, let alone the “luxury” of funding research even if that research has a direct bearing on tribal well-being. Recognizing tribal consultants as experts in their fields is important; providing sufficient compensation for consultants’ time and expertise is essential.

The appropriate point of contact may be at different levels across and within tribes. For example, it may not be appropriate to only consult with the central government; involving cultural or religious associations, local land users, and communities may be necessary. Also, most tribes have various autonomous or semi-autonomous villages or communities - each with their own governmental (Continued on page 6)
GUIDELINES FOR CONSULTATION

(Continued from page 1)

system, clans that may or may not cross cut village affiliation, and religious societies. Finding the individuals and groups who should be involved may take detective work.

Multiple tribal constituencies may need to be involved to identify and interpret cultural resources. These same constituencies must be involved in developing necessary treatment options.

Tribes will only become involved if a tribal concern exists. For example, if research designs are being employed that do not include key tribal hypotheses, researchers and sponsors cannot necessarily expect tribes to participate.

Myriad reasons exist for tribes to become involved in cultural resource management projects. These include the opportunity for tribes to explore their own history, to collect information that is internally important and useful, and having their concerns and recommendations heard. Tribes also cite educational and economic benefits as important reasons for involvement.

Participating tribes, traditionalists, and elders want to control their own research. Therefore, consult tribes at the initial stage of a project (the planning phase or assessment) to allow them time to develop their own research agenda. This will enable the tribes to identify traditionalists and other cultural experts who need to be involved throughout the project.

Some information is simply "off limits" to outsiders. Traditionalists and elders may not be willing to reveal information that researchers want to know. The appropriateness of questions posed to traditionalists or elders is idiosyncratic to each tribe or individual, and may not be ascertained a priori. The only way to test this is to ask the tribe or consultant.

Tribes simply won’t get involved with certain sites or places. Some sites have been "retired" and need to be left alone. Some tribes believe that dire consequences may occur to the archaeologist who mucks around in these places. More important, community members, who may have no idea that sites are being excavated or destroyed by the development process, may be inadvertently harmed by archaeological activities.

Many tribes have seasonal- or ceremonial-specific prohibitions for talking about certain things, or telling certain stories. There may also be seasonal differences between when males and females can participate in projects. Importantly, tribes recognize that men and women are keepers of different sets of information. Thus, structuring your research to allow sufficient time to bridge seasonal or ceremonial divides and to include both sexes is important.

Enabling tribal consultants of both genders to examine artifacts, either in-person in a laboratory setting or through electronic or photographic means, is useful for developing interpretations. Be aware that not all consultants may wish to be involved at this level.

Confidentiality is critical. Advance agreement should be negotiated with each tribe or tribal consultant about what information is available for public consumption, which is only for use in making management decisions, and that which is confidential to the tribe or consultant. Discussion of the possibility or likelihood of Freedom of Information (FOIA) requests for information is critical.

Advance agreement on the dissemination of information is crucial. Some information may not be divulged if a wide distribution of information is planned.

Archaeological and tribal definitions of direct and indirect effects of an undertaking on historic properties may not be at the same scale.

Discuss the question of site avoidance versus excavation before ground disturbing activities. While tribes usually prefer that sites be avoided, they are also pragmatic about effects caused by development. Many tribes reluctantly agree to scientific excavation although they suggest that alternatives to excavation be explored (e.g., capping sites, use of remote sensing, project redesign, etc.).

Tribal consultants, anthropologists, and archaeologists agree that having the tribal consultants visit the field during all phases of work is both useful and important. Each participant sees the usefulness of field visits differently:

—For the tribal consultants, field visits enable them to better understand the context in which sites are located and where artifacts are situated within sites and structures. It enables consultants to develop and change research foci as more information becomes available. It also provides the opportunity for consultants to gain an understanding, if not appreciation, for what information scientific archaeology can reveal.

—For the anthropologists, it provides the opportunity to get direct input into research questions, and to elicit discussion about topics that would otherwise not be addressable because the context is unknown.

—For the archaeologists (and especially, Native American archaeologists), having the tribal consultants in the field enables an exchange of ideas about artifact function, site morphology, and contextual information. Sometimes tribal consultants can validate archaeologists’ interpretations and through their participation, archaeologists can learn new things such as the value of traditional observations about a place.

The dialogue between tribal consultants and archaeologists is a two-way street. While archaeologists want to know what tribes and tribal consultants get out of project involvement, tribal consultants want to know what archaeologists get out of having the consultants involved. Documentation of these discussions in the technical report may be an important addition to understanding the various perspectives advanced by scientists and traditionalists.

Always handle human remains and funerary items with respect. Tribes differ on the types of scientific analyses that can be done on human remains and the protocols for reinterment. Discuss these topics and agree to a protocol before ground disturbing activities begin.

Curation of artifacts is a controversial issue for tribes. For example, many tribes support reburial of artifacts over curation. Some tribes support ceremonial re-use of certain artifacts on a permanent or temporary basis. Thus, discuss this issue and reach consensus during project planning.

Nina Swidler can be contracted at the Navajo Nation Historic Preservation Department, 13 N. San Francisco Street, Suite 202, Flagstaff, Arizona 86001; 520/773-1349; nswidler@flagstaff.az.us.