

Summary of meetings with Tribal Historic Preservation Officers (THPOs)
for the Northern Arapaho Tribe, the Rosebud Sioux Tribe and the
Cheyenne River Sioux Tribe
September 21-24, 2015

November 4, 2015

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Early Interactions between applicants and Tribal governments

- Applicants do not understand Section 106 of the National Historic Preservation Act (Section 106). This lack of knowledge leads to challenges in conducting and concluding a process involving the U.S. Nuclear Regulatory Commission (NRC), the government of an Indian Tribe (also referred to as Tribal government), and the applicant. In particular, applicants do not understand the unique role of a Tribal government in supporting the NRC's fulfillment of its Section 106 obligations and the mandate that NRC has to include Tribal governments in decisions on historic properties.
- Applicants do not understand that Indian Tribes are sovereign governments on the same level as the U.S. Government. In many cases, Tribal governments are not accorded the same level of respect.
- There have been instances of applicants and their representatives, such as contract archaeologists, disrespecting representatives of Tribes and demonstrating a poor understanding of a Tribe's culture during cultural surveys.
- There is a need for more Federal involvement in the interactions between Indian Tribes and project proponents. Agencies are accountable for practices and behavior of project proponents. Federal agencies may need to provide cultural sensitivity training.
- Private landowners, similarly, may or may not understand an agency's obligation under Section 106. For example, there may not be an understanding of why Tribes need access to proposed project land as part of the Section 106 compliance process.

Section 106 Process

- Identification of, evaluation of or assessment of effects on historic properties to which an Indian Tribe attaches religious and cultural significance are important parts of the Section 106 process.
- Tribes need to have the opportunity at the very earliest stages of a project to identify historic properties; NRC should notify Tribes when it first learns through company notification that a project may happen. Tribes need to have an equal opportunity to conduct studies and identify properties. Tribes need to be in the field before or simultaneously with archaeologists.
- Applicant sponsored archaeologists sometimes remove artifacts before Tribes have access to the land for their surveys. Private archaeological firms should not conduct surveys without Tribal representation.
- It is best to have a trained American Indian archaeologist who understands the Indian culture to conduct cultural surveys, especially if identified Tribes with religious and cultural ties to the project area cannot participate in the surveys.
- A Tribal Historic Preservation Officer (THPO) comes to the table with cultural and spiritual knowledge that supports his or her ability to identify properties of religious and cultural significance. How will Federal agencies address and incorporate this knowledge?
- Current agency/proponent survey methods rely on archaeologists; archaeologists are not trained to identify or have the expertise to identify sites of religious and cultural significance to Indian Tribes.

- Recovered artifacts obtained from archaeological surveys conducted on public lands are sent to the Wyoming State Archaeology Repository at the University of Wyoming. Through long negotiations, the Tribe (Northern Arapaho) obtains the artifacts attributed to their Tribe and the Tribe reburies them according to their cultural beliefs. There are concerns about this long process and the preference of the Tribe to have the artifacts remain in the ground, especially if the artifacts are attributed to their Tribe.
- Archaeological surveys frequently miss sites/properties that are important to the Tribe.
- Tribes need to be involved in all visits to a project site, including those visits that occur prior to the onset of Section 106 consultation.
- There is not a clear understanding of historic properties versus Traditional Cultural Properties (TCPs). For agreements, TCPs should be specified and not just historic properties.
- For all Programmatic Agreements (PA) and other agreements, Tribes should be signatories, on the same level as other parties. Nationwide PAs are not acceptable.
- There is not a clear understanding of landscapes and view sheds and how to protect these sites; identification efforts often only identify portions of landscapes and they are awarded limited, narrow protection.
- There are cultural properties aligned for miles; individual project surveys do not recognize the span and relatedness of these properties; agencies should not focus on individual sites, but understand the importance of the entire landscape.
- Inadvertent effects are not assessed adequately with federal projects.
- With a history of nomadic movement, the Tribe's sacred sites and burial sites are dispersed; agencies need to consider this fact when considering engagement of Tribes in projects.
- The Tribe's approach to potential adverse effects to sites of religious and cultural significance is avoidance.
- These project consultations require face-to-face meetings. Webinars do not adequately meet the need for interface and discussion.
- Anyone consulting for an agency needs to understand the history and culture of the region.
- Effective Tribal surveys include representatives from all affected Tribes; NRC's surveys did not have input from all Tribes.
- Representatives from Tribes conducting surveys need to be paid sufficient money to cover time and expenses; companies will not hire surveyors as temporary employees and pay insurance; surveyors cannot make enough money to cover these necessary expenses. The NRC survey processes do not provide enough resources to do the job. Payment for the Dewey Burdock survey was not adequate for the work required for the survey.
- Federal agencies do not always follow the prescribed Section 106 consultation process; consultation for Dewey Burdock is an example of this. Consultation processes for NRC and federal agencies do not reflect the meaning and spirit of the law.
- The Dewey Burdock process resulted in Tribes feeling "pushed into a corner." Agencies do not understand the impact of the destruction of Tribal history.
- The survey area was insufficient in regards to the Dewey Burdock Project.
- Tribal governments have developed Tribal codes and regulations related to the preservation of their culture; agencies need to be aware and work within these codes.
- A Tribe's history may not be written; the elders maintain knowledge of the Tribe's history, including Tribal activities and burial sites. This knowledge guides the work of the Tribal Historic Preservation Office. Resources to engage elders are needed in any identification work for cultural properties. A sufficient Tribal survey team would include a spiritual person and a crew leader.

- The Northern Plains Tribes have considered the creation of a Northern Plains THPO Office to support the high number of Federal review requests and they have created a committee to discuss this new office. There are questions about how it will be funded.
- One Tribe in South Dakota (SD) is meeting with the SD State Historic Preservation Officer and Governor concerning the state burial law. Under this law, Indian human remains or artifacts that are found on private property belong to the private land owner. The Tribe would like to work toward changing the state law and have something comparable to the California or Minnesota state burial law for Indian human remains and artifacts.
- Water is sacred to the Cheyenne River Sioux Tribe; traditional practices emphasize this value.
- There are no provisions in current Section 106 processes to recognize this value and protect water.
- National Register of Historic Places criteria are not appropriate for classifying Tribal sites.

Communication and consultation between Tribes and NRC

- Agencies need to provide timely, comprehensive, and easily accessible information in soliciting a response on a Tribe's interest in a project. If a THPO is provided all the required documents early in the project planning, the THPO will be able to provide a response to a solicitation of interest in a timely manner.
- There should be a mutual understanding and agreement on processes for communication and consultation; these processes would provide a clear understanding of steps and the sequence of activities and events.
- Agencies need to provide a consistent point of contact for a Tribal government so that the THPO can easily reach the agency and obtain responses to questions that arise. Agencies need to notify Tribes of changes in agency contacts for projects; changeover in management of Dewey Burdock is an example. There should be consistency of contact and an appropriate transition if needed.
- Agencies need to make more of an effort to communicate with Tribes; effective means of communication with the Tribe and involvement for Tribal consultation include scoping meetings, agreements, letters, and emails.
- NRC and other federal agencies must understand that only Tribal leadership, the Chairman and Council, can make decisions for the Tribe.
- As an employee of the government, the THPO can attend meetings, gather information, and make recommendations to the Tribal government, but agencies need to have government to government consultation to obtain a decision from Tribal leadership.
- The Environmental Protection Agency (EPA) has a very effective decision-making process for consultations; the EPA Regional Administrator visits each Tribe one time per year to discuss upcoming activities and concerns.
- The Federal Highway Administration collaborates with the North Dakota Department of Transportation (NDDOT) in a very effective process; NDDOT brings Tribes together for a week twice each year to review all upcoming projects.
- THPOs and other representatives of Tribes asked specific questions at meetings with NRC and responses have not been received.
- NRC should inform Tribes of all agency representatives who will participate in upcoming meetings, including attorneys, to give Tribes an opportunity to bring comparable support.
- It is very difficult to find specific information on projects on the NRC website.
- Consultation is a face-to-face process; not just a letter or a webinar.

- Tribes must learn new processes for each agency; differences among agencies are burdensome. Uniformity in consultation by federal agencies is important for Indian Tribes.

Tribal Historic Preservation Office Operations

- The Tribal Historic Preservation Office is responsible for vast areas that include Tribal lands and ancestral lands that span across many states and regions of the US.
- Tribal Historic Preservation Offices have a very high workload; this fact is an unavoidable aspect of the responsibility of protecting the nation's culture and history. Projects are prioritized if they are on Tribal lands, state lands, and ancestral lands; the highest prioritized projects are on Tribal lands.
- Tribal Historic Preservation Offices often have trained technicians to conduct surveys; however staff resources are not matched to the workload and the office would benefit from additional support, such as a staff person who could focus on projects associated with a specific agency.
- These trained technicians are in high demand, a situation that leads to staff turnover.
- THPOs may have to rely on a Federal agency for some specific expertise, such as using the BIA archaeologist for consultations.
- A Tribal Historic Preservation Office may have long term plans and goals for the Tribe and preserving their culture, such as identifying all important plants, developing archives, recording burial sites, and surveying all Tribal land. Unfortunately, there are insufficient resources to accomplish this work.
- Agencies need to understand differences in how Tribes handle finances; payments for surveys or other cultural resource work should be tailored to the requirements for each Tribe. The Northern Arapaho would prefer payments made directly to the Tribal government and not to individuals.
- Agencies sponsoring Tribal surveys that involve Tribes from other states need to ensure that surveyors/ report writers understand SHPO requirements for the project location, as SHPO and reporting requirements vary across states.
- The budgets for THPOs have been declining as the number of THPOs increases and the Federal funding that supports THPOs remains relatively flat.
- Tribes are beginning to charge fees for services. The increase in Federal project reviews is straining resources.

Tribal Concerns

- The Cheyenne River Sioux Tribe is located in one of the poorest counties in the US; yet, the Tribe is surrounded by projects that will yield billions of dollars.
- Economic development from projects is not benefitting the local people; many workers come from outside of the area.
- In addition, there are natural gas and other energy projects; the density of projects is having a negative effect on the environment.
- Tribes expressed concerns about the Keystone pipeline and the Dakota Access pipeline.
- The Cheyenne River Sioux Tribe opposes uranium projects in treaty territories.
- The Black Hills are not for sale.
- Some of the current projects are owned by foreign companies; who will enforce appropriate clean up when these projects are abandoned and companies leave the US? An example is the legacy of uranium mining.
- Federal statutes and regulations do not reflect an understanding of Tribal culture and customs.

Natural and Cultural Resources Concerns

- The environmental review process should examine the cumulative effects of so many government approved energy projects being in one location, including uranium, oil, gas, etc.
- There should be greater examination of the seismic risks of projects using injection, such as in-situ uranium recovery and fracking.
- The environmental justice review should consider the importance of certain resources to poorer communities. One example is the Cheyenne River that currently has high levels of pollution from industrial development; warnings have been issued on fish consumption. Yet this river is the only recreational resource for a poor community.
- Agencies do what is “allowable by law,” and use loopholes to avoid dealing with Tribal concerns about land, air, and water.
- One Tribe indicated that pollution on the reservation is flowing into Tribal lands from outside.
- The Tribe is very concerned about the indirect/direct effects on their water sources from the Baaken oil fields.