

## CHAPTER FIVE A CONSULTATION MODEL

Richard W. Stoffle

Previous chapters documented that Native Americans have values which Euroamerican society would interpret as sacred, have places which are sacred due to being occupied by many kinds of sacred things, and have a great number of well known sites that are widely recognized as being sacred. These chapters lay a foundation for understanding why and how officials of any specific DoD installation can begin to talk with Native Americans about sacred site identification and protection. These discussions will focus on DoD lands or lands affected by DoD activities.

This chapter presents a consultation model. As such it describes nine ideal steps for developing a consultation relationship with Native Americans who are culturally affiliated with lands held by a DoD installation. These steps are suggested on the basis of the past experiences of the authors of this report and on an analysis of other consultation relationships. Examples of relationships between Native Americans and other U.S. Federal agencies are used throughout so the model will be as instructive as possible. These steps suggest how a process might occur, but *they need not always be followed* in order to achieve an acceptable consultation. Instead the nine steps suggest a logical sequence of decisions and actions that normally would be involved in developing a consultation relationship. It is important that the DoD works with the involved Indian tribes to design a consultation relationship reflecting their needs, the needs of the involved DoD installation, and protection requirements of the cultural resources under consideration. The ideal steps are:

- Step #1: Defining Consultation
- Step #2: Establishing Cultural Affiliation
- Step #3: Contacting the Tribes
- Step #4: Having An Orientation Meeting
- Step #5: Forming A Consultation Committee
- Step #6: Conducting Site Visits
- Step #7: Developing Mitigation Recommendations
- Step #8: Maintaining Ongoing Interactions and Monitoring
- Step #9: Terminating Consultation, when Appropriate

These consultation steps are discussed in their logical sequence of occurrence. The first consultation step is to decide what type of consultation relationship is desired. The second step is to specify, using cultural and historical research, which Native people or peoples have traditional ties to the DoD lands. The third step is to establish government-to-government relationships between formally recognized American Indians tribes and Native Americans with special Federal standing and the DoD. The fourth step is to have an orientation meeting, where the DoD begins to meet and talk with Native Americans. The fifth step is to form a Native American consultation committee and establish mutually agreed upon procedures for its operation. The sixth step is to bring Native American cultural resource experts to the DoD lands so that traditional cultural resources can be identified, related to sites, and initial management recommendations can be made. Mitigation recommendations come as a seventh step followed by ongoing interactions and monitoring as an eighth step. Finally, because some consultation relationships do not or are not meant to last, a ninth step involves terminating the consultation relationship in an appropriate manner at the appropriate time.

The following model for developing a consultation relationship is presented here on the assumption that there is no preexisting relationship. Findings presented in Chapter Six suggest that most DoD installations do not currently have relationships with Native Americans. There are DoD installations, however, that do have working relationships with Native Americans at this time. Many of these relationships are working well from the perspective of both the Native Americans and the DoD installation. Few of these relationships have been established using all of the nine steps described here, but all nine steps have been successful at some installations.

### **Defining Consultation**

U. S. Department of Defense (DoD) installations wish to consult with Native American people regarding cultural resources found on DoD lands and on lands affected by DoD activity as part of a stewardship responsibility. The U.S. Federal government requires that all of the lands held by its various agencies be managed in certain ways; some ways defined by legal obligations, others defined by treaties, and still others reflecting the desire of the DoD to involve Native people in the management of their ancestral resources. Increasingly Native Americans have been asked to identify their cultural resources located on these lands and to suggest culturally appropriate management practices.

*Consultation* is a term that is commonly used to describe a process by which Native American peoples with traditional ties are identified and brought into discussions about cultural resources on DoD or military-affected lands. Consultation involves a fundamental decision on the part of the DoD to share some decision-making with Native Americans. Native people are asked to share in the decision to identify resources needing protection. Native peoples are also asked to share in the decision to prioritize which cultural resources will be protected first. Native peoples are asked to share in the decision to select from among a variety of management practices those that most appropriately protect the cultural resources in

the context of other resource uses. Native peoples are asked to share in the long-range planning and monitoring of these cultural resources and lands that hold them.

According to scholars who study consultation (Dobyns 1951; Cernea 1991; Parenteau 1988: 5-10), the quality and success of the consultation process depends directly on the degree to which decision-making power is shared. Arnstein's (1969) studies demonstrate that any consultation process can be characterized as falling on a scale from 1 - 8 where participation without shared power is called *manipulation* and where sharing power even to the point of negotiating with the agency is called *partnership*. The primary decision that a DoD installation must make is how much decision-making power can be and will be shared with Native peoples. Once the range of decision-making sharing is established, it should be clearly identified at the outset of the consultation so that it can become a part of the Native people's decision to participate in the consultation.

### **General Consultation**

More and more U.S. Federal agencies (including the DoD) are becoming involved in general consultation with Native Americans. This establishes a permanent relationship with Native American groups who have cultural ties to the lands and resources managed or affected by the Federal agency or DoD installation. General consultation should be based on extensive research concerning cultural resources that Native groups identify as being located on lands of concern. Cultural resource studies should consider at least the following: (1) archaeology sites; (2) petroglyphs; (3) human burials; (4) traditional cultural properties; (5) plants; (6) animals; (7) minerals; and (8) water. Cultural resource studies also can consider impacts to Native American cultural practices (like a traditional healing ceremony) that are not tied to specific places. Each of these cultural resources should become the subject of a separate study so that native groups can send persons with special knowledge about the topic. General consultation should be based on a strong information foundation.

A major advantage of general consultation is that it can occur in the absence of a specific project proposal, which is evaluated under specific laws usually as part of an Environmental Assessment process (see Chapter One). Often the laws that govern specific project studies add third parties to discussions between the DoD and Native peoples, which can confuse and limit discussions. General consultation occurs when it is desired by the DoD and the Native peoples and is neither limited by time nor issue. It is the perfect environment for discussing a complex relationship designed to protect cultural items of greatest significance. Another advantage of general consultation is that it produces a strong information base for identifying cultural resources for both the DoD and for Native peoples.

Through various cultural studies, the Native peoples build a set of recommendations that suggest how to best manage these resources. Most Native American cultural resources located on or effected by the DoD will become known through the process of general consultation. This will reduce the number of times that DoD activities will have to be stopped

and modified because of unanticipated discoveries of cultural resources. If DoD activities were to impact cultural resources not previously identified, procedures would be in place for informing the Native people about the discovery and those Native people would have procedures for helping the DoD minimize adverse impacts to the newly discovered cultural resources.

General consultation is the only way to build true and stable partnerships between U.S. Federal agencies and Native American peoples. Often project-driven environmental assessments bring Federal agencies and Native people together, and afterwards they decide to move to general consultation as a means of resolving problems before projects precipitate specific cultural resource decisions. Native people approach cultural resource management from what has been termed *holistic conservation* (Stoffle and Evans 1990). They respond positively to holistic studies that bring into consideration as many factors as possible, so the DoD can better understand the complex inter-relationship between cultural resources and other aspects of Native lifeways. Interestingly, the new U.S. Federal initiative for *ecosystem management* closely reflects the philosophical orientation of Native peoples. According to Gore (1993: 300) "... some people now define themselves in terms of an ecological criterion rather than a political subdivision." For example the people of the Aral Sea and the Amazonian Rain Forest define themselves in terms of these all important ecosystems. In March of 1994, eighteen U.S. Federal agencies demonstrated their ecosystem management activities to the U.S. Congress (Morrissey et al. 1994). Native people have responded in a positive way to Federal agencies who are willing to consider cultural resources from an ecosystem perspective.

### **Specific Consultation**

There is always the need for conducting specific consultation regarding cultural resource issues associated with DoD installations and activities. For example, when general consultation has identified all types of cultural resources, ground-disturbing activities may unexpectedly unearth a human burial or an object of great Native ceremonial significance. The DoD may wish to use some portion of their reserve lands for an activity that was not considered during general consultation. Also, the U.S. Congress may pass new laws regarding the management of cultural resources that potentially would alter the existing relationship between the Native peoples and the DoD. One such law is the Native American Graves Protection and Repatriation Act (1990), which specifically requires certain types of information to flow between the DoD as a Federal land manager and Native American people with ties to those lands.

Specific consultation is limited by the scope of the specific law that is being complied with and the proposed activity that is being evaluated. Native people often are frustrated by specific consultations because they are limited to those project-specific issues and cultural resources that are being assessed. The DoD's responses are too often limited by third parties who legally participate in the assessment. Nonetheless, a series of specific consultations can produce the base from which to build general consultation. For a DoD installation that

currently lacks any kind of relationship with Native American peoples, general consultation is recommended as the initial step in the consultation process.

### **Establishing Cultural Affiliation**

There are many ways that Native American peoples have established cultural affiliations to lands held or affected by the DoD. At the most general level Native Americans established these ties because they lived on the land long enough for a culturally shared connection to occur. So the basic question asked in cultural affiliation is, "What Native American peoples or ethnic groups lived here?"

The nature of the relationship between Native American people, culture, and the land is inherently special. The concept of culture (LeVine 1984:68,72,79) implies that a phenomena (1) is shared in that it represents a consensus on a wide variety of meanings among members of an interaction community; (2) that it is connected and ultimately comprehensible only as a part of a larger organization of beliefs, norms, and values; and (3) that people who share a culture make sense of new information in terms of a cultural rationale which is founded on a single collective formula. Simply put, the connection between Native Americans and lands held or affected by DoD installations is abstract, complex, and non-trivial. Assessing this relationship is best accomplished by professionals trained in the study of cultural systems, in consultation with potentially culturally affiliated Native American people.

Most laws, regulations, and guidelines that cause Federal land-holding agencies to consult with Native Americans do not define what is meant by the term cultural affiliation. Some laws do define this concept; for example, the term is defined very specifically by the Native American Graves Protection and Repatriation Act. It is important to note that when a DoD installation adopts a broad definition of cultural affiliation for most kinds of cultural resource studies they can still narrow the consultation process when needed for NAGPRA and then resume Native American interactions based on the broader definition. Flexibility is needed when establishing consultation relationships with Native Americans.

How long must a people have lived on the land in order to establish a cultural affiliation? The length of time Native Americans have spent on the land will vary from groups who perceive they have lived there since the beginning of creation to groups who have had a brief but culturally significant experience on the land. Native American cultural affiliations are created by the supernatural at the beginning of time and by historic events such as a military battle that lasted only a day. When periods of time are chosen as the frames for viewing cultural affiliation, three broad divisions emerge (1) traditional period, (2) aboriginal period, and (3) historic period. It is important to remember that Native Americans may use other definitions of time including a pre-human time which is without measure or time-less.

## **Traditional Period Affiliation**

Native American people have lived on the North American continent for at least 14,000 years according to some scholars (Haynes 1987; Dincauze 1991) and as much as 30,000 years according to other scientists (Dillehay 1991; Grayson 1988; Meltzer 1989; Whitley and Dorn 1993). Despite various scientific interpretations of their origins, most Native Americans believe they were created as a people in North America. Often Native American people have a specific cave, spring, valley or mountain where they were created (see Chapter Three). Similarly, the people of Polynesia, including Hawaiians, emerged from an earlier people known as the Lapita, who spread eastward into the Pacific from their homelands in northwestern Melanesia. The Lapita people were a marine people who began their eastern journey to new islands about 1600 BC and arrived in the Hawaiian islands about 300 AD (Abbott 1992:1-4; Cuddihy and Stone 1990).

Native American peoples have lived in many locations during the thousands of years that the Americas have been occupied. Because native peoples moved or were moved, most portions of land have been occupied by peoples of many different cultures. When such movements have been retained in the memory of the living native people, they often have cultural attachments to places where they no longer live. Oral history can accurately convey certain types of information over thousands of years, as illustrated by the Hebrew and Islamic peoples of the Middle East. Like other peoples with oral traditions, Native Americans retain their attachments to sacred places over long periods.

## **Aboriginal Period Affiliation**

The term *aboriginal* is used here to refer to those people who are recognized by the U.S. government as having possession of land at the time it was lost to the United States. For many Native American groups this transfer involved a treaty negotiated between their people and the government of the United States. For many other Native American people, however, they simply were moved away from their aboriginal lands without formal transference of title. These two unique processes of land loss produced two types of aboriginal period cultural affiliations for Native Americans, which are termed here (1) treaty-tribes and (2) land-claim tribes.

*Tribe* is used here to refer to the aboriginal inhabitants of territory lost to the U.S. Federal government. The term tribe is commonly used as a gloss for a variety of Native American social structures that existed aboriginally. Actually, few aboriginal Native American peoples were organized as a tribe, if the technical meaning of this term is used. Most cultural anthropologists would call aboriginal Native American people an *ethnic group*. In the following discussion the term tribe is viewed as meaning something like an ethnic group. It is important to make this distinction because not all of the people from any particular Native American ethnic group participated in the *tribalization process*. Representatives of the U.S. government often organized Native American ethnic groups by region. This process often

occurred without the full participation of the people. Normally some ethnic group members were left without any tribal membership. Today, there are many Native people who do not belong to a formally recognized tribe or Native organization (see Chapter One). These people are usually referred to as not *Federally acknowledged* peoples; nonetheless, they remain Native peoples. Some of these Native people are seeking Federal acknowledgement and others are not. The cultural concerns of not *Federally acknowledged* people need to be considered during most types of Native American consultation.

### *Treaty-Tribes*

Native Americans who lost control over some or all of the lands they occupied at the beginning of the historic period to the U.S. government are called here treaty-tribes. The term is a useful distinction for DoD installations seeking to understand cultural affiliation because there are a variety of primary references listing U.S. Federal treaties, specifying the lands considered under the treaty, and identifying the Native American group involved in the treaty. While it is relatively easy to identify treaty lands and tribes, most aboriginal lands were not transferred to the United States by treaty.

### *Land-Claims Tribes*

Most Native American people can be classified as Land-Claims tribes, because they lost control over their lands to Euroamericans, but no treaty was ever signed. In most cases, these Native Americans simply were moved off aboriginal lands by force and the lands were occupied by non-Indian settlers (Sutton 1985). The U.S. Federal government created the Indian Claims Commission (ICC) in 1946 (60 Stat. 1049) charging it with adjudicating the claims of Native Americans for lands lost. After three decades of legal action, a map was prepared that listed the lands considered and the associated Native American people. The ICC produced a multicolored fold-out map entitled "Indian Land Area Judicially Established" as part of its final report (ICC 1978, Sutton 1985:12-13). This ICC map is a useful (but not definitive) tool for identifying the cultural affiliation for most Native Americans to aboriginal lands.

To summarize, both treaty and ICC documents can be used to begin to determine which Native American ethnic groups occupied certain lands when these were lost to Euroamerican society through encroachment or the Federal government through treaty. It must be remembered, however, that both treaties and ICC processes only establish which Native American group lived on a segment of land at the time it was lost to non-Indian peoples, and neither identifies pre-existing Native groups who lived on the land. Furthermore, few land areas were covered by treaty and few treaty lands were surveyed to make reference maps geographically accurate. The ICC process also did not address lands jointly used or claimed by more than one Indian ethnic group, so that many lands were not designated as belonging to any Indian ethnic group (Sutton 1985:112). Finally, treaties and ICC claims rarely specified the contemporary Native American group or tribe who would be culturally affiliated with the

land in question. Given these limitations, the process of establishing cultural affiliation should include a search of treaties and ICC documents, but it should not be limited to Native ethnic groups found in these documents.

### **Historic Period Affiliation**

Probably the time of greatest movement for Native American peoples was during the historic period when the Euroamerican frontier expanded into Native American-held lands. The historic period began at different times for different Native American groups and the encroachment on Native lands resulted in both total dislocation and gradual dislocation. In many instances, however, when Euroamericans arrived in a place the Native peoples moved. After forced relocation Native peoples retained cultural attachments to their aboriginal lands, while culturally reestablishing their way of life in new lands. In the new lands they gathered plants, killed animals, planted crops, gathered clay for pottery, had babies and died. In other words they continued to live as coherent cultural groups. When they interacted with the new lands through traditional ceremony they formed new cultural affiliations.

Native people often were repeatedly relocated, thus they became culturally affiliated with many places. The Shawnee people, for example, were moved from southern Michigan to Ohio where they lived and died; then they moved near to Kansas City, Kansas, where they lived and died; then they moved to Oklahoma where they live today. When asked about cultural affiliation to places where they had lived in Kansas, Ohio, and Michigan, the Shawnee tribal council expressed concerns for these and other places where they had resided during their forced migrations (Stoffle 1990), because in these places their ancestors are buried and the places represent critical junctures in Shawnee cultural history.

Some Navajo people were relocated in the 1950s, in response to a certain amount of pressure from the U.S. government, to the Colorado River Indian Tribes reservation which is located on the lower Colorado River in the Mohave Desert. Two generations later, descendants of these Navajo people had attached themselves to these lands that were the aboriginal lands of both the Mohave and the Chemehuevi Southern Paiute. During recent cultural resource impact assessments, these Navajo people expressed concerns for places in the Mohave Desert that were made sacred when they worked there as railroad workers (Drover 1985) and for plants in the Mohave Desert now used in medicinal ceremony and rug weaving (Cultural Systems Research 1987: 129-131). These places and plants were only used by Navajo people after being relocated to the lower Colorado River, but the places and plants were used by the Navajo people in a traditional way, thus qualifying as sacred items under National Historic Preservation Act.

Perhaps one of the most complex cultural resource issue that emerged during the historic period occurs when one native ethnic group is relocated to lands formerly occupied by another native ethnic group. This process was not restricted to the historic period, but it seems to have occurred most often then. A recent study of petroglyph sites in Wyoming and Montana



(Francis, Loendorf, and Dorn 1993) used chemical dating techniques to show that over thousands of years different native peoples made petroglyphs on the same rock panel. The Navajo Nation expresses claims to prehistoric Pueblo sites because the sites are used by Navajo medicine men to gather arrowheads, pottery, rattles, and even the skin and bones from pueblo burials for use in Navajo ceremonies (McPherson 1992: 105 - 122). Some Navajo people express claims to prehistoric Pueblo sites because the Navajo people believe they are biologically and culturally related to these Pueblo people. These cases of sequential use and cultural affiliation demonstrate that places, artifacts, and even bodies can have multiple and even conflicting native cultural affiliations.

### **Contacting the Tribes**

Cultural affiliation studies basically establish which Native American ethnic groups potentially have traditional, aboriginal, or historic period ties to lands held or affected by the DoD. The term *ethnic group* means people who share a common culture. Perhaps an example will serve to clarify the complexity of moving from ethnic affiliation to that of contemporary Native American organizations which actually would be contacted about the consultation. One can speak of the Southern Paiute people as an ethnic group who aboriginally occupied a territory extending from the north in Utah along the right bank of the Colorado River through the Grand Canyon, and to near Blythe, California. This is a north-south distance of more than 600 miles. The southern portion of their aboriginal lands extended from the Colorado River west into the Mohave Desert almost to Death Valley. The boundary of these aboriginal lands was established in the Indian Claims Commission hearings. Near the present day community of Las Vegas, Nevada, is Nellis Air Force Base which is clearly within the aboriginal boundary of Southern Paiute Lands.

Nellis Air Force Base would want to consult with the Southern Paiute ethnic group regarding cultural resources on DoD lands, but this ethnic group lost most of its corporate functions between the 1840s and the 1860s as Euroamericans encroached on the major riverine and spring oases. Traditionally the Southern Paiute ethnic group was politically, economically, and socially integrated based on agriculture, natural food gathering, and trade. Social disintegration, which was manifested in Southern Paiutes having a simpler form of social organization, occurred due to drastic population reduction caused by dozens of lethal disease episodes and Euroamerican encroachment on key agricultural portions of the ecosystem. By the late 1890s the U.S. Federal government had established a series of small reservations to support Southern Paiute people. In the twentieth century, more small reservations were established where most, but not all, Southern Paiute people were registered so they could have access to Federal resources. In 1934 the U.S. government provided Indian people on reservations an opportunity to organize and become officially recognized as tribes. Thus various economic and political processes created a series of Southern Paiute tribes out of what aboriginally were local divisions of the Southern Paiute ethnic lands. Today, there are nine Southern Paiute tribes recognized by the U.S. government. In addition there are about 300 Southern Paiute people living in the four-ethnic group (Southern Paiute, Navajo, Hopi, and

Mohave) composite *tribe* called the Colorado River Indian Tribes. Furthermore, the Pahrump band of Southern Paiutes is a local group that has never been Federally recognized as a tribe even though its members continue to occupy its portion of aboriginal territory. Finally, most Southern Paiute tribal chairs belong to the Southern Paiute Chairmen's Association which attempts to provide ethnic-group level integration across a wide range of issues.

Who among all these Southern Paiute people should be involved in consultation relationships at Nellis Air Force Base? There is no legal answer, but there is a practical one. Ethnic groups ultimately hold the culture of their people. Not every member of an ethnic group will know about all aspects of this culture, so it is necessary to talk with persons who have specialized knowledge. Where are these people? They are scattered throughout the various tribes and unrecognized groups. If all tribes and organizations that represent Southern Paiute people are contacted during the consultation, potentially each will bring needed experts to visit the study area and identify places and things of cultural importance. The output of a broad-based consultation should be the fullest understanding of Southern Paiute concerns on Nellis Air Force Base lands. A more restricted consultation will leave out noted Southern Paiute cultural experts and produce an uneven quality in the cultural resource assessment. This could cause time-and-dollar-costly delays in DoD decisions, because decisions would be based on incomplete information.

Officially the U.S. government prefers to deal with Native American groups on a government-to-government basis. The well established Federal position was recently reaffirmed by The President in a Memorandum of April 29, 1994 entitled "Government-to-Government Relations With Native American Tribal Governments" (Memorandum of the President 1994). The National Congress of American Indians, which is the national association of tribal chairs, also supports government-to-government relationships. Such a relationship recognizes the *dependent nations-within-the-nation* status of American Indian tribes (Deloria 1985). This relationship should be the foundation of all consultation. The consultation will be incomplete, as discussed above, without a procedure for additional ethnic-group inputs from non-tribal government sources. It is suggested, therefore, that Federally unrecognized native groups, Native American organizations, and pan-Indian organizations be added to the consultation when it can be demonstrated that they do represent special ethnic-group perspectives relevant to the cultural resource management issues of concern to the DoD installation. Finally, individuals from the native ethnic group who otherwise would not be able to share important cultural insights, can be added to the consultation as *interested parties*. The recommendations of interested parties and non-tribal Indian organizations, however, must be subsumed under the recommendations of the officially recognized tribal governments.

### **Having An Orientation Meeting**

Contacting potential culturally affiliated tribes and Native American organizations should be done in a manner appropriate to the consultation. If it is to be a project-specific consultation, the information given to Native people should reflect that project. On the other

hand, if a general consultation is desired then a very different essay and set of materials are needed. Although project-specific consultation can lead to a mutual decision to begin general consultation, the orientation meeting should have a clear cut purpose and deal only with the issues actually under consideration at the time.

In general letters, maps, and diagrams appropriate to the issues to be discussed should accompany the initial communication with Native American groups and tribes. Such letters describe the agency that is making the contact and the purpose of the contact. Recently, a video-letter was used to inform almost two-dozen tribes about an assessment of cultural affiliation and concerns for Chaco Culture National Historical Park (Stoffle, Evans, Zedeno, Stoffle, Kesel 1994:11). The video letter was about 17 minutes long and began with the park superintendent discussing the goals of the study. This was followed by photos of places in the park which were the focus of the study. Clear instructions for becoming involved in the study closed the video. The video-letter was well received by the Indian government leaders who said it permitted them to make an informed decision about whether or not to send representatives to the park.

Letters alone generally are an insufficient basis for most tribal governments to gain sufficient understanding of an issue under discussion so that the government can respond to a project, and many letters therefore are not answered. Follow-up telephone calls are always necessary to provide further information, but most tribal governments require that a consultation request for their people's time and perhaps tribal resources be made in person. Cultural resource specialists and agency personnel should meet in person with tribal councils (or their officially chosen representatives) to explain the project and answer questions.

The members of tribal governments and Native American organizations tend to be unfamiliar with legal aspects of cultural resource questions, although they generally believe decisions about such issues to be highly significant. This presents an information-gap problem for most Native government leaders. One solution to the information-gap is for the U.S. Federal agency to invite government leaders to visit a portion of the study area as part of an orientation meeting. During the meeting government leaders can learn first-hand about what is being discussed and have the opportunity to exchange cultural resource views and strategies with other native leaders. The native government's need-to-know before making key cultural resource decisions should be respected and addressed by the consultation process.

### **Forming A Consultation Committee**

The decision to form a Native American consultation committee can be key to the success of the consultation when many tribes and Native American groups are culturally affiliated with DoD lands under consideration. The consultation committee stands as a meta-organization between the tribal governments and the DoD commanders. The committee is composed of and chaired by native people. As such, the consultation committee is able to resolve certain issues relating to the process of consulting. In the early stages of consultation,

for example, the committee may resolve issues such as how many days are needed to complete an ethnobotany study or it may decide how best to prepare progress reports to be submitted back to native governments. By meeting together and acting in unison, native people belonging to different tribes and ethnic groups are able to draw on common information and to speak with a single voice. The clarity and consistency of the Native American requests will influence the DoD's ability to respond effectively and acceptably.

The consultation committee may be asked to resolve problems that would otherwise be impossible for either the DoD or the tribal governments. After the consultation committee comes to understand both the laws that are driving the consultation process and the management needs of the DoD, the committee may be asked to determine when sufficient information has been collected so that recommendations can be made to both the tribes and the agency. If there are disagreements among the tribes or ethnic groups, the consultation committee can be asked to resolve these in closed executive session. Halmo (1994) has recently studied the benefits of a consultation committee participating with the Department of Energy to understand the cultural-resource impacts of the underground atomic testing program on the Nevada Test Site. He concludes that this program's success came largely because of the consultation committee's efforts to adjust the process to meet the needs of three major native ethnic groups represented by 17 tribes and native organizations.

There are few Native American consultation committees operating within the DoD at the time of this research, so successful examples have been selected from other agencies so that the potential benefits of such committees can be assessed. Two mini-case studies are presented here. One is from a National Park Service unit (Chaco Culture National Historic Park) and the other from a Department of Energy facility (the Nevada Test Site). Neither consultation committee was organized formally under the Federal Advisory Committee Act (FACA), which places formal limitations on the structure and operation of advisory committees to Federal agencies. Instead, each committee was designed to serve less formally and more under guidelines specifically developed to fit the desired cultural resource consultation.

### **Chaco Mini-Case**

There are very few studies of how Native American consultation committees operate, so a mini-case study is presented here to illustrate various issues associated with creating and operating consultation committees. In 1993 a University of Arizona study team was asked to conduct a cultural affiliation study for Chaco Culture National Historical Park (NHP) in New Mexico. As part of this study an existing American Indian consultation committee was to be evaluated with feedback from the tribes. Chaco Culture NHP has a long history of interacting with American Indians. These interactions have become more frequent and more formal in recent years and have become increasingly useful to both the Indian people and to the park. Despite past successes, the National Park Service felt it was time to rethink the Native American committee at Chaco by formally seeking input from culturally affiliated tribes. The

following is quoted from the final report from that project (Stoffle, Evans, Zedeno, Stoffle, Kesel 1994:81-86):

One purpose of the Chaco ethnographic study was to find out how the tribes evaluated the American Indian Consultation Committee and to ask for recommendations to improve its operation. The following comments were intended by tribal and pueblo representatives to be constructive advice for better structuring and operating the Committee.

#### **Committee Rules**

Currently, the Committee has no formal set of rules that regulate its membership, who can attend meetings, and how the Committee can make recommendations to the park. So one recommendation from tribal and pueblo representatives is to develop rules for the Committee. These rules should be a first order of business for the next Committee meeting.

*Membership.* The membership of the Committee is now more certain than before this ethnographic study. One goal of the study was to provide the opportunity for a wide range of American Indian tribes to express an interest in Chaco Culture NHP and visit the park, and to record their concerns for Fajada Butte and selected areas containing traditional use plants. The products of this effort are a set of six *park associated* tribes and a set of five *potentially park associated* tribes. It was the intention of the park superintendent to have a bounded set of Committee members so that interactions between the park and these Committee members could be focused. These are the Indian governments that the park wants to consult with.

It is up to the set of *park associated* and perhaps *potentially park associated* Committee members to set the rules by which the Committee operates. These Indian tribes should structure those rules so that the actions of the Committee can be approved or be considered as approved by the respective tribal governments.

Currently there are no other tribes, Indian organizations, or Indian persons who have formally expressed the desire to consult with Chaco Culture NHP. This situation will change as the process for expressing this desire becomes better known and the confidence that the request will be approved increases. This ethnographic study suggests that requests can be expected to come from the Native American Church, New Age groups having Native American leaders, and from private Indian persons. The Native American Church is on record as having used Fajada Butte for religious ceremonies. Although they have been denied access along with all other types of people by park policy, if American Indians belonging to the *park associated* tribes are once again given access to Fajada Butte, then Native American Church members are expected to make a similar request. It is common for New Age people to seek out places of religious significance to American Indians. In California and South Dakota, for example, some of these New Age groups are headed by American Indian people. These groups are using Native American sacred places under the *authority* of an Indian religious person. Such requests are expected and must be given serious consideration. There is one such case in a California court at this time. Many private Indian persons want things from the park. These people range from local Navajo families who wish to gather medicine plants to Pueblo potters who wish to gather pot sherds for making new pots. Such requests are not being made to the park at this time, but the desire is very clearly present based on interviews in this ethnographic study.

Unless the park wishes to deal with all of these requests alone, it should build a relationship with the Committee members and draw on their wisdom about what is an authentic or an unauthentic request. Evaluating such requests could very well become a major portion of the Committee's effort.

*Attendance.* Attendance and participation in Committee meetings should be decided upon by the members of the Committee. A key issue is who sets the agenda of the meeting. The tribal representatives would like to participate in setting the agenda. The most common response to the Committee's past meetings was that too much was discussed each time. Tribal members would like to talk about related topics, instead of ranging from burials to access to parklands for gathering plants. There is one very practical reason why the topics should be

similar: tribes send different types of cultural experts to meetings depending on what is being discussed. So if the issue is gathering plants, one specialist would be sent, and another would be sent to discuss burials. Another reason for having common topics is that tribes want to see all aspects and instances of a given issue discussed so they can learn about the overall park service management issues. When, for example, one road proposal is discussed at one time and another road proposal is discussed much later, the tribal representatives do not have the opportunity to grasp the broader view of new road proposals and their impacts. It was for just this reason that many Indian representatives did not want to talk only about Fajada Butte. Instead, they preferred to talk about a general management plan for the whole park.

During a portion of each meeting tribal representatives should be able to talk among themselves in executive session. There are some topics that Indian people want to discuss among themselves that they prefer not be shared with either the NPS or the public. Time for an executive session should be set aside at each Committee meeting.

*Making Recommendations.* The members of the Committee will have to decide how they and the tribal governments want to make decisions and make recommendations as part of the Committee. It was clear from tribal representatives' comments, however, that it would be better if members of the Committee submit their ideas for recommendations for consideration by the whole Committee. Once a reasonable agreement is reached, the recommendation should be submitted to the park as being supported by the Committee. This procedure would not eliminate the possibility of any participating tribe independently submitting a recommendation to the park. The strength of the Committee, however, will ultimately depend upon joint actions.

During the ethnographic study one tribe pointed out an example of why recommendations should be discussed by the Committee instead of just being submitted by one committee member or tribe. The early Native American Consultation Committee meetings often involved tours of park resources. On one of these tours a tribal representative commented about the contents of a park display. The superintendent responded to the expressed concern and brought the representative and elders from his tribe back at a later time to discuss how the display should be changed to better reflect their cultural perspective. The display was modified and the Indian persons involved were satisfied with the changes. During the ethnographic study members of another tribe observed the changed display and complained that the new display incorrectly referred to aspects of their culture. They had not been a part of the consultation to change the display and felt it could have been easily corrected if they had been consulted.

Had this recommendation for a change in a park display case been formally submitted to a fully functioning Committee, the Committee would have reviewed the recommendations and suggested the changes that would have made the new display culturally appropriate for all *park associated* tribes instead of just for one. Had conflicts in interpretation occurred among Committee members, they would have resolved it among themselves in executive session.

#### **American Indian Information Base**

Currently, Chaco Culture NHP has neither a procedure nor a plan for keeping records of Native American consultation experiences. So one recommendation from tribal and pueblo representatives is to develop an information base on which to build future consultations and make National Park Service policies consistent.

The Indian governments and the NPS change their leaders, which makes it important to know what types of interactions and types of agreements have been produced. Most Pueblo governors are appointed annually by the religious leaders of the tribe. Only six of the 19 New Mexico Pueblos elect their government leaders. Dobyns (1981) analyzed the tenure of a sample of tribal leaders and found that they average 4.3 years in office, with some changing regularly while others remaining in office for more than two decades. It should also be noted, that during the time of this study, the Indian people have worked with three Chaco Culture NHP superintendents. When new NPS and Indian government leaders take office they like to have a record of past government-to-government activities.

One type of consultation has been the on-site visit by tribal leaders or tribal members. There have been at least four and probably five Native American on-site consultation visits to Chaco. None of these were part of the activities of the Native American Consultation Committee. There is no formal record of any of these visits, although both the park and the involved tribes and pueblos keep oral history of what occurred. Some of the tribal representative who participated in this Chaco ethnographic study asked why we were asking questions they or other members of their tribe had answered years ago. When told there were no records of those questions and answers, they suggested that the park should not forget what it is told by the Indian people.

The Native American Consultation Committee, unlike the on-site consultations, left a record. These meetings cover a wide variety of issues which are summarized in the minutes. The only visible tribal recommendation from these meetings was provided by the Zia Tribe and involves the closure of Casa Rinconada. This recommendation, as mentioned above, was firmly rejected by the National Park Service lawyer. This formal rejection of an official tribal resolution stands out as the major response of the NPS to Committee recommendations. In fact, there were dozens of informal, individual recommendations that the NPS was responsive to but because the other committee members were neither aware of the recommendations nor of the NPS responses to the recommendations, these could not become examples of how responsive the NPS had really been to tribal requests.

A Native American information base is an essential aspect of long-term park-tribe consultation. It would replace oral history and personal memory as a means of recording the types of consultations that had occurred and their outcomes. If an elder is asked about the meaning of a place in Chaco Culture NHP then these important thoughts should be recorded. The information base permits new questions to be asked so that more complex issues can be addressed by new consultations.

Confidentiality of ethnographic data is just as important as confidentiality regarding information about rare and endangered plants and prehistoric sites. The difference is that the people who provide the information critical to protecting places, plants, and artifacts can participate in defining what can be used, by whom, and for what purpose. This is a task that is best left to the members of the Committee. Committee members will even decide whether or not to permit all information to be available to all other Committee members. What is consequential is that once Indian people are assured that their important cultural information is secure and will be used to protect these resources, then they will be more likely to share further information with the park. Also important, the information data base will become the official park memory so that elders are not disappointed because they are asked the same questions again.

It is suggested that the park establish a single point of contact between itself and the *park associated* tribes when talking about cultural resources. The most likely solution to this would be to modify the existing Native American Consultation Committee to be able to address a wide range of cultural issues. Such issues should include but not be limited to: (1) access to sacred areas for ceremonies, (2) access to areas containing useful plants, especially ceremonial and medicinal plants, (3) evaluations of park development plans, like construction of new roads and backfilling of ruins, (4) images, artifacts, and voices of Indian people in park displays, and (5) the disposition of religious and burial items currently held by the park.

The Chaco mini-case illustrates a number of points about consultation with Native Americans. Indian people demand a level of formality in their relationships with U.S. Federal agencies, even though they would like not to be driven by strict compliance with cultural resource laws. When Indian people share information with a Federal agency, these insights should be recorded and used as part of a shared database. Involved Indian tribes need the opportunity to speak to one another as well as to the Federal agency.

## **Nevada Test Site Mini-Case**

A second mini-case involves 22 Native American tribes and groups and the underground atomic testing program on the Nevada Test Site. The Nevada Test Site (NTS) American Indian Religious Freedom Act (AIRFA) compliance program was initiated by the U.S. Department of Energy-Nevada Operations Office (DOE/NV) in 1990. The goal of the program was to bring the agency into compliance with AIRFA. Compliance was to be achieved by establishing consultation relationships with tribal governments and Indian organizations whose members have historic and current cultural ties to the lands in south-central Nevada withdrawn from the public domain by the U.S. government in the 1950s for testing atomic weapons. The AIRFA compliance program was to document tribal concerns for cultural resources that could be adversely affected by ground-disturbing activities associated with underground nuclear tests.

Sixteen tribes representing three American Indian ethnic groups (Western Shoshone, Southern Paiute, and Owens Valley Paiute) were identified as having such ties to NTS lands. Five Indian ethnic and pan-Indian organizations also have consulted during the program. This work (Stoffle, Evans, Halmo, Dufort, Fulfrost 1994) built on the Yucca Mountain high-level radioactive waste repository project (YMP) (Stoffle, Halmo, Olmstead, Evans 1990).

Meetings included representatives of each of the involved tribes and Indian organizations, the DOE/NV, and the University of Arizona ethnographic research team. The first three years of the program culminated in two mitigation meetings out of which tribal representatives submitted a series of recommendations to the DOE/NV regarding continued consultation, strategies for protecting the various categories of cultural resources, and tribal participation in future cultural resource planning, fieldwork, and policy formulation. The DOE/NV favorably responded to the tribal recommendations, and accepted the vast majority of them with standard caveats (funding, scheduling). Currently, DOE/NV has what may be one of the most comprehensive American Indian consultation programs in the United States.

### *DOE/NV and Indian Consultation*

While U.S. Federal cultural resource laws require government-to-government relationships, DOE/NV consults with Federally-recognized tribes, and also consults with unrecognized tribal groups, Indian organizations such as the Las Vegas Indian Center, and pan-ethnic associations. The open policy of DOE/NV thus moves beyond the letter of the cultural resource laws to reflect their spirit. The DOE/NV has been engaged in a continuous program of consultation with these 21 Indian corporate organizations for eight years.

The nature of the consultation process led this program to be successful from both a human relations and policy standpoint. One feature of that success has been the coalescence of the several tribes and Indian organizations into a group that could speak with one voice (Halmo 1994) when talking to the DOE/NV. Several features employed in the consultation



process, including systematic, regular social interaction, combined with a respect for Indian autonomy in decision-making, shaped the context that allowed a new corporate group to evolve.

### *The Consolidated Group*

Indian tribal governments are inundated with projects, requests, and stacks of paperwork, all needing attention. Many tribal government officials, therefore, simply do not have the time or energy to be involved in every activity that affects various aspects of the lives of their people. For this reason, officials appoint representatives and confer responsibility upon them to participate in the project, obtain information, and keep the tribal council up to date on the progress of the project.

Tribal representatives involved in DOE/NV consultation decided by consensus to "incorporate" themselves as a unit called the *Consolidated Group* to more accurately reflect the group's corporateness in representing the interests of 16 tribes and 5 Indian organizations (Halmo 1994). In taking this action members bear the responsibility for representing the interests of not only their own tribes, but of all the other tribes and Indian organizations involved in the Consolidated Group. Today, the DOE/NV explicitly recognizes the Consolidated Group as the vehicle for consultation. Consultation presently occurs directly with the members of the Consolidated Group with the approval of tribal leaders who are fully cognizant that duly appointed individuals represent their interests regarding cultural resources on the NTS.

The Consolidated Group emerged from existing tribes and American Indian organizations who collectively conceived and created it. The Consolidated Group is not, however, a homogeneous, harmonious collection of individuals who uniformly share the same conventional understandings. Members of the group have contending and sometimes conflicting interests regarding the cultural resources located on what can best be described as the intertribal lands that are now incorporated as the NTS. In mitigating the disposition of NTS cultural resources, however, Indian rather than tribal specific concerns are represented by the Consolidated Group. Consolidated Group members have decided to take action in concert and speak with a common voice whenever such an action is appropriate and seems the best way to influence DOE/NV policies.

Face-to-face meetings were an important component of the consultation strategy and were routinely scheduled throughout the duration of the NTS AIRFA compliance program. These meetings provided the context in which representatives of no less than 22 contending groups, including 16 Indian tribes, 5 Indian organizations, and the DOE/NV, each with its own agendas and interests, could negotiate and reach compromise solutions that were acceptable to all involved parties. Such intimate forms of consultation are likely to catalyze the formation of new corporate groups that have as their purpose resolving issues and defending common interests in cultural preservation.

### *American Indian Monitors*

As a result of Consolidated Group recommendations, Indian monitors from each of the involved ethnic groups have participated in data recovery activities at archaeological sites that were slated for ground-disturbing activities. As part of the American Indian monitors program, Indian monitors received training in archaeological survey, collection, and analytical techniques. The most recent monitoring effort has resulted in the formal distribution by the DOE/NV of a monitors report of activities to each of the involved tribes and organizations.

### *The NAGPRA Subgroup*

That the Consolidated Group will continue to function in the future is evidenced by the fact that the NTS AIRFA compliance program is currently moving into other phases of consultation concerning archaeological materials related to the Native American Graves Protection and Repatriation Act (NAGPRA).

A NAGPRA *subgroup* was appointed by the Consolidated Group in March of 1994. This was the first time that the Consolidated Group had appointed a subgroup to conduct any significant business and therefore marked a point at which sufficient confidence was reached in both the DOE/NV and the Consolidated Group itself. The six members of the NAGPRA subgroup represent the Owens Valley Paiute, Western Shoshone, and Southern Paiute ethnic groups. The subgroup was to evaluate and select potential NAGPRA items from among the 450,000 items in the NTS collection for NAGPRA consultation with representatives of the 16 involved tribes.

The new challenge of NAGPRA was successfully met by the members of the subgroup in a series of three meetings. The subgroup selected about 200 items that are potentially (1) unassociated funerary objects or (2) sacred objects as these concepts are defined in the legislation. The subgroup also structured the NAGPRA viewing procedures so that consultation will occur in a culturally appropriate manner.

The Consolidated Group will serve in a review and advisory capacity to their respective tribes regarding NAGPRA recommendations on the disposition of items from the NTS collection. In the future, the consolidated group will be involved in studies of Traditional Cultural Properties (TCPs), animals, petroglyphs, and other types of cultural resources on the NTS.

### **Conducting Site Visits**

"What is out there?" is the fundamental question that must be addressed in any consultation. The answer will not come directly from tribal governments, but they will send cultural experts who can identify various cultural resources located on the DoD lands. Native

government leaders can appoint representatives to a consultation committee, and during the operation of that committee a native based inventory of cultural resources can be planned.

Native American cultural resource studies should be conducted separately whenever possible because tribes and native groups will send different types of cultural specialists depending on what is to be studied. The native person who can speak at length about archaeological sites may know little about the traditional use of plants. A native person who specializes in fishing ceremonies may have little knowledge of petroglyphs and curing ceremonies. Native cultures, like all cultures, are differentially held in the minds of specialists.

The term *study* is used to separate research that is needed to prepare a cultural resource inventory from what are sometimes described as Native American *tours*. Occasionally, U.S. Federal agencies will simply bring Native Americans to the lands under discussion and ask them individually or in a group what is out there. These tours are usually organized and conducted by agency personnel who are not professionally trained in scientific methods associated with cultural resource studies. The agency tour guides rarely have a hypothesis about what resources may be present and so naively believe that they can simply ask for information and the Native American will completely share all pertinent information. In an extreme case, a senior environmental manager of a DOE facility suggested that native representatives be taken to a high hill overlooking the thousand square mile facility, asked as a group what is out there, and then taken to dinner. In his opinion, all Native American cultural resource concerns could be addressed in one day. Native American tours were more common decades ago before there was an extensive body of research about how to conduct studies with Native Americans and what to expect from such studies.

### Forming A Study Design

Native Americans have become aware of the quality of information that is needed to make convincing policy recommendations on U.S. Federal lands, so they are demanding to participate in the formulation of study designs that are both culturally and scientifically valid. A recent analysis of Native American research studies suggest that the design of the study can directly influence the findings and the recommendations (Stoffle and Evans 1990). An analysis of 11 projects suggests that Indian people will have greater impacts on land use decisions if the study design permits them to identify and select for special protection those places, plants, and archaeology sites that have the highest cultural significance, a process that has been called *cultural triage* (Stoffle and Evans 1990:97). When it is difficult for Indian people to demonstrate how to move from cultural concerns to land management recommendations that protect the most cultural items, it becomes the responsibility of the scientist to help make this translation. For example, it is possible to calculate the cultural significance of individual Indian plants so that specific places where the plants grow can be assigned valued, and protection can be afforded to those places with the highest plant scores (Stoffle, Halmo, Evans, and Olmsted 1990:427-429).

## Defining Basic Concepts

It is essential that all parties to a study agree on what is to be studied. It is common for Indian people, agency personnel, and study scientists to assign different meanings to the same term. One of the most commonly misunderstood terms is *sacred*. This report devoted three earlier chapters towards explaining and illustrating the concept of sacred, especially regarding those places of great cultural significance such as the origin mountain of an Indian ethnic group. The concept of sacred is really a non-Indian concept that creates a division between the sacred and the profane. Most Indian people do not believe such a division exists. Indian cultures, and there are hundreds of variations, contain many ceremonies designed to assure proper behavior towards and communication with the natural environment, other humans, and the supernatural ("the mysterious presence" - see Chapter Two). These ceremonies literally translate everything touched by an Indian person into a sacred object. For example, a Shoshone Indian woman who makes willow baskets will keep the shavings that have been produced by smoothing the split willows. Eventually, she prays over these shavings and returns them to a natural area near her camp. The Shoshone woman considers these willow shavings as sacred. Indian people also have ceremonies associated with great life transitions -- birth, first menses, death -- that use and create sacred objects that are more generally recognized by others, such as Euroamericans. Finally, there are sacred objects that are specifically defined by U.S. Federal laws such as NAGPRA. So the concept *sacred* could refer in any given discussion to many categories of items, some defined by law, some defined and mutually recognized by Indian and non-Indian alike, and some exclusively perceived as sacred by Indian people.

Great care must be taken in the formulation of study concepts and when discussing the meaning of these concepts with native government representatives. If someone asks a native person to come to DoD lands and identify places and things that are sacred, the person is likely to respond that all is sacred. If on the other hand, the Indian person is asked to identify which objects in a museum collection are needed in a current religious ceremony as defined by NAGPRA, the person will be able to make a discriminate decision. The answer is often framed by the question, but it can also be influenced by the amount of time the native person has to share her/his cultural resource perspective and her/his confidence that deeper cultural resource insights will have more protective influence than simple *holistic conservation* statements.

## Assuring Participation

The U.S. Federal agency must approach the study of cultural resources with caution when seeking Native American participation in land management decisions, because Native Americans will weigh the potential benefits from increased protection against the potential that if cultural resources become known they will be threatened. In one study (Stoffle et al. 1982: 124) a Kaibab Paiute elder indicated he wanted to protect traditional trails, but that he would not reveal their location because once known they could be followed to hitherto undiscovered

Indian camps. Native people often say that revealing Indian plant usages causes the plants to be taken by non-natives who profit from sale of the plants. The curing power associated with certain places can be reduced if the place and its function becomes known to other ethnic groups, including other Indian people. Agency personnel should be aware that native experts who are sent to identify cultural resources are subject to ethical conflicts, emotional stress, and even fear of reprisal. Native experts express concern about violating traditional norms against sharing knowledge with outsiders. Concern is also expressed over how other tribal members and even future generations of tribal members will evaluate the sharing of information. Basically, the question they ask is whether or not more good than harm will come from sharing cultural knowledge (Greaves 1994).

When Native American tribes and organizations send experts to represent cultural concerns they expect that the shared information will be used to set policies to better protect cultural resources. To accomplish this the identifications of the experts must be systematically recorded so they can be written into a scientifically and ethnically acceptable report. In general, interviews should be conducted in private so that the native person does not have to share the information with others. An interview form should be prepared in advance with the assistance of the consultation committee or informed native people so that similar questions are asked of each expert and there is a place to record their answers. Tape recorders can be used as backup, but only used with the expert's permission. Experts' confidentiality should be assured unless they wish to go on the record regarding some aspect of the study.

Group interviews can be conducted when individual interviews are either not desired or impossible to conduct. Group interviews tend to produce *consensus data* which means that members of the group talk over possible answers and provide one answer to the interviewer. The weakness of group interviews is that some people are not willing to express their opinions in the presence of others. The strength of group interviews is that people have the opportunity to talk over a response while in the field. Focus group interviews are a special type of group interviews but they require special preparation and training for the focus group facilitator.

### **Presenting the Findings**

The report presenting the findings of the consultation process being discussed should be more than a pure description of what was said by the native experts. Some attempt should be made to translate the thoughts of native experts into information that can be used by agency land managers. In general, native concerns should be contextualized by providing findings from published historical and ethnographic literature that demonstrate how the expressed cultural concerns fit into the overall culture of the ethnic group. Translation into management information and contextualization will help achieve the goals of building Native American concerns into land management policies.

The report should receive a technical review by the native experts and members of the consultation committee before being sent for draft review by the agency. This will assure that

the report does not contain information that should not be revealed and that the information it does contain is accurate. When the technical review is complete the report should be given a draft review by the agency. Then the draft report should be sent to the Native American group or tribal government for official review and approval. Final reports should be available to other agencies seeking to achieve similar goals and in need of case data for developing or refining their own consultation processes. The public has a right to know about significant land management decisions made by Federal agencies, even if these are in consultation with Native Americans and have some element of confidentiality that will continue to be respected, so the final report and perhaps portions of the information (not the data) used to make the decision (Ruppert 1994) should be available to the public.

### **Developing Native Mitigation Recommendations**

Cultural resource technical reports should focus on the cultural resources under study and should not attempt to make government-level policy recommendations. Technical reports are the basis for proceeding with mitigation discussions and eventual recommendations from the native governments to the DoD. Policy decisions occur after the native recommendations are combined with what the land management agency can and will do to incorporate Native American recommendations. It is important that this point in the decision making process has been thoroughly considered by the agency before the consultation began -- see the earlier discussion of decision-making and consultation.

Native Policy recommendations should derive from three sources: (1) native experts during the on-site interviews; (2) consultation committee; and (3) native organizations and tribal governments. These three sources of recommendations represent a hierarchy of decision making authority that is inversely related to the degree of information about the resource. Native experts are knowledgeable about the cultural resource and, because of their on-site experiences, are aware of factors that could have either adverse or positive impacts on its protection. Native experts are charged, by their tribes and organizations, with identifying what is out there and making preliminary recommendations. The report should consolidate all of the native expert recommendations by place and resource and these should be presented to the consultation committee. Committee members have a long-term relationship with the project and are generally aware of what is possible in terms of resource management on the DoD installation. It is up to them to consider the recommendations of the native expert, if possible resolve conflicting recommendations, and add recommendations. The final cultural resource decision recommendations in a government-to-government relationship belongs to the tribal council and advisory board of a native organization. They tend to follow the advice of their appointed native experts and consultation committee members; however, they can add or modify recommendations.

Recommendations that have passed with some consensus through this hierarchy of native decision making should be seriously considered by the DoD installation. The strength of the recommendations depends in part on whether or not they remain within Federal laws that

govern land management decisions by the DoD installation. In addition, the native recommendations should be within the agreed upon limits of power sharing decided upon by the installation when the consultation process began. If the recommendations are within these limits, then credible cultural resource recommendations should be adopted by the DoD installation.

### **Maintaining Ongoing Interactions and Monitoring**

*Partnership* is a term often used to describe the desired outcomes of consultation relationships between Native Americans and DoD installations. Partnerships require shared power, mutual respect, and mechanisms for sustaining a long-term relationship. Partnerships can be established when the Native American people and the DoD installation establish (1) mutual trust, (2) a common knowledge base, (3) a cultural resource management plan, and (4) a monitoring plan.

#### **Mutual Trust**

When people get to know each other through face-to-face interactions they lay an understanding base that can be used to establish what is called *trust*. The term *trust* is not being used here to refer to the legal *trust relationship* that exists between the U.S. government and American Indian peoples. Instead, the term *trust* is used as it is more generally understood as confidence in the honesty, integrity, reliability and justice of another person or organization.

People do meet, but DoD-Native American consultation occurs within the context of government-to-government relationships. One of the great dynamics of mutual trust is differences between the people and the agency relationships. First and foremost Indian people must believe that their participation in consultation is more likely to protect cultural resources than would saying nothing at all. Decision-making should be shared (insofar as it is appropriate and possible) and the decisions must have some identifiable positive impacts (see monitoring below).

Trust derives from the history of relationships between the DoD installation and its personnel and Native Americans. This history may go back to a time with the Native peoples were at war with the U.S. Federal government. Trust also derives from more recent interactions about DoD installation policies like the location of low-level fly overs. It is important to address these issues early in the consultation process. In fact, it is likely that Native peoples will raise these issues as stipulations before they are willing to proceed with consultation. Concerns about past relationships are often raised in holistic conservation statements made by native elders and leaders in early consultation meetings. Stipulations are not debatable by the DoD, who instead will have its own stipulations it may wish to express at this time. Trust cannot be negotiated, when it begins with clearly expressed stipulations and

becomes an organizational element in developing a process of consultation, trust can emerge from long-term interactions. Trust must be earned and mutually shared.

Any consultation relationship will depend in part on the individuals involved. Friendly and professional relationships have the potential of overcoming any negative historic relationships between the native people and the DoD. Unfortunately, personnel change in both native organizations and DoD installations. Mechanisms should be in place to assure that consultation partnerships can survive personnel change.

### **A Common Knowledge Base**

A primary goal for every DoD-Native American consultation is to create or contribute to a common knowledge base that is shared by both. Native groups send their most knowledgeable experts to the DoD installation to identify cultural resources. These thoughts should not be lost. U.S. Federal agencies cannot afford to forget what has been told them by native groups. Similarly, most DoD installations have initial archaeology, botany, and animal studies that can be shared and used by native groups. The challenge is to develop a single, shared pool of information that can be used by both the DoD and the native peoples to know what is out there and to understand what is happening to it.

Geographic Information Systems (GIS) are being used by many U.S. Federal agencies and native groups to inventory and keep track of resources distributed across an extensive landscape. GIS systems are expensive and difficult to use, but innovative interactive multimedia data systems that can draw upon some GIS-like components are being developed. An ideal data base could be used simultaneously by the native people at their homes and the DoD installation. This is likely to require that a multimedia program be developed that can use and make easily accessible the products of the GIS data analysis. The GIS and multimedia system should be updated easily when new information comes from native expert visits or science studies. It should contain photos, video, sound clips, maps, and text. Finally the GIS and multimedia system should restrict access to certain portions of the database to reflect both the DoD and the native concerns for selective distribution of data and information.

### **Cultural Resource Management Plan**

U.S. Federal facilities produce overall land use plans usually including specific plans for wildlife, plants, and cultural resources. Native American cultural resource management could be developed in each plan. More difficult, but important, is including Native American cultural resource management comments in discussions of minerals and water.

The recommendations produced by the hierarchy of Native American decisions (experts, consultation committee, tribal governments) should be organized to reflect how the information can be incorporated into installation management plans. Early coordination with



the consultation committee should produce both information and recommendations that fit the installation's natural and cultural resource management.

### **Monitoring Plan**

There must be some way of knowing whether or not Native American consultation has influenced the condition of cultural resources contained on the DoD installation. Because it is impossible to constantly monitor all cultural resources located on DoD lands, monitoring time frames and monitoring locations must be chosen. How fast are culturally significant changes occurring to any specific cultural resource? Does the quality, quantity, or distribution of medicine plants change seasonally, annually, or over a period of years? Damage due to erosion or vandalism to archaeology sites may be occurring sporadically; monitoring should occur at least once a year with more sensitive sites monitored more often.

Monitoring locations should be decided in terms of how well they represent a certain cultural resource. Monitoring samples should be selected with full input from the Native people. Monitoring techniques will vary, from ground level photography of petroglyph panels to remotely-sensed data from satellites showing the distribution of plants. When ground disturbance is to occur, native monitors may be hired to oversee activities. The results of all monitoring efforts should be provided to the members of the consultation committee and native governments at regular intervals. *Regular feedback on the condition of cultural resources is the only way to maintain an on-going relationship with Native peoples.*

### **Terminating Consultation**

Today most U.S. land-managing agency initiatives to establish Native American consultation relationships are intended to be on-going because Native people's views will become part of the information base for making, monitoring, and adjusting on-going land management decisions. Still some consultations are designed to end. These may be project-specific consultations designed to provide a narrow-range of findings for the evaluations of a project or action proposal. Sometimes the DoD installation itself is closing (see Chapter Eight, section entitled "Installation Closure and Termination of Relationship"). Whatever the reason for termination, how it occurs has implications for both the involved native peoples and the U.S. Federal agency.

### **Making Analogs**

Anyone who has made a presentation before a tribal council or native governmental body has experienced some council or audience member standing up and talking at length about some other project that occurred many years in the past that did not end in a positive way. Most presenters want to say "That is not what I am talking about, it occurred a long time ago and I (or my agency) was not involved." The point presented by the Native American, however, is well taken; "we have seen your kind before and here is the summation of those

experiences." In most cases native people lump most U.S. Federal agencies together, so the mistakes of one agency are transferred to another.

*Project Analogs* is the technical term used to discuss the process of evaluation of a current proposal in terms of past proposals. For example, during the social impact assessment of the Superconducting Super Collider (SSC) for the State of Michigan it was discovered that local people responded to this new and quite unique proposal in terms of how the involved state and U.S. Federal agencies had behaved with past projects (Stoffle et al. 1987: 37-54, Stoffle et al. 1988). So the proposed SSC, a massive and generally positive project, was being evaluated in terms of how the Michigan Department of Natural Resources had conducted a public access for hunters program, a state utility had handled a cross-county pipeline project, a cement company had dealt with air pollution, and state politicians had proposed a prison for the area. These small-scale and highly localized projects were not similar in any respect to the SSC proposal, but the local people drew upon them as historic analogs for deciding whether or not to trust the State of Michigan and private business and support the SSC proposal.

### **Keeping Relations**

Relations between the U.S. DoD and Native Americans began long ago and is often recounted as a bitter history of adversarial relationships. All lands currently held or affected by DoD installations once belonged to a Native American ethnic group. Nonetheless, many Native peoples have served in the armed services and DoD installations have begun to establish positive relationships with native people focussed on cultural resources. It is important at this moment in the history of relations between Native Americans and the DoD to create positive analogs. So each effort is important. No positive action of the DoD will go unrewarded, because Native Americans respond well to being involved in decisions about their traditional resources. There are small and terminal consultations, but each has the potential of being a positive analog. The remaining chapters of this report bring together many of these successes.