

Cultural Resources Management and Tribal Consultation Tools Workshop

Sustaining Military Readiness Conference
Tuesday, August 14, 2018, 3:30 – 5:00 pm
Workshop Summary

Facilitators

Michelle Volkema, OASD(EI&E), DFPO
Alicia Sylvester, OASD(EI&E), Incoming Senior Advisor and Liaison for Native American Affairs

Panelists

Kathleen McLaughlin, Deputy Federal Preservation Officer, Department of the Army
John McDonagh, Associate General Counsel, EE&I, Department of Defense
Adrienne Velasquez, Air Force Civil Engineer Center
Kate Kerr, Advisory Council on Historic Preservation (ACHP)

Workshop Summary

Alicia Sylvester: Workshop and Speaker Introduction

Kathleen McLaughlin, Department of the Army

- Why we consult – the legislative mandate
- Types of military training and the types of impacts it may have on cultural resources
- Consultation requirements – always pre-decisional or it is merely notification; how to consult, when to consult, the role of tribes

John McDonagh, DoD Office of General Counsel

- Federal laws and regulations regarding cultural resources management and tribal consultation
 - Obligations of Federal agencies rooted in Federal Trust Responsibility, Treaty Reserved Rights, Laws, Executive Pronouncements, and DoD consultation policies
- National Historic Preservation Act (NHPA)
 - Section 106 -- Federal agencies must take into account the effects of their undertakings on historic properties
 - Volume of information provided to tribes to review is not meaningful
 - Boilerplate communications not sufficient; must engage directly with the tribe
 - Generalized information requests and offers of info is not sufficient
 - Arbitrary time limits convenient to the agency are not enough; tribes must have time to meaningfully participate
 - Agency has a duty to gather adequate information and not leave it to the consulting party to do that
 - Section 110 – federal agencies must establish preservation programs to identify, evaluate, and protect historic properties
- National Environmental Policy Act – proposals with biophysical effects not categorically excluded must be reviewed; consultation activities should inform the decision, not simply justify a pre-determined course of action by the agency
- Native American Graves Protection and Repatriation Act – triggered by intentional excavation or inadvertent discovery on federal or tribal lands. Of concern, Native American cultural items such as human remains, funerary objects, sacred objects; obligations on agency to stop work, protect the site, and consult with the tribe(s), develop a Plan of Action.
- American Indian Religious Freedom Act – protects rights to exercise traditional religions; duty to consult with traditional religious leaders and consider American Indian religious practices
- Religious Freedom Restoration Act – does planned Federal agency activity create a substantial burden on the exercise of religion? Government must explain its compelling interest and use least restrictive means

Cultural Resources Management and Tribal Consultation Tools Workshop

- Executive Order 13007 – Indian Sacred Sites – federal agency must provide the tribe(s) notice of proposed actions that may limit access to or adversely affect sites; agency must accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and must avoid adversely affecting physical integrity of sacred sites
- Executive Order 13175 – Consultation and Coordination With Indian Tribal Governments – agency must consult regarding regulations, proposed legislation or other policy statements that may have substantial effects on tribes

Adrienne Velasquez, Air Force

- Integrated Cultural Resources Management Plans (ICRMP) -- tool for training range managers
 - What's in the plan? Inventory of cultural resources, summary of management activities, major planned undertakings, potential conflicts between mission and resources, standard operating procedures, and points of contact
 - How does it help manage cultural resources? Outlines and focuses on priorities, establishes long-range plans for identifying and evaluating resources, and identifies consultation needs and protocols for working with tribes and State Historic Preservation Officers (SHPO)
 - What should be surveyed and when? Planning level strategies use predictive models and sampling strategies; compliance surveys for Section 106 of NHPA outline proposed undertakings and resources; getting to 100% surveying helps prevent mission delays and enhances communication with stakeholders
 - Concurrence of consultation partners with ICRMP is not required
 - Best practices – consult with tribes on resources of concern; consult with SHPO on plan for surveying; consult early and often; seek tribal expertise as needed; regularly update inventory tables; include agreements on inadvertent discoveries
 - Seek and use templates for your ICRMP

Kate Kerr: Advisory Council on Historic Preservation (ACHP)

- How Range Managers Can Use Programmatic Agreements (PA)
- Programmatic Agreements – can cover programs, complex
 - Range operations related to triggering Section 106 – open air training, live fire, electronic combat, maneuvers, use of airspace at new or existing ranges
 - Use of PAs can help support OPSEC re range operations; helps build relationships with internal audiences on the installations as well as with external partners; helps build appreciation of current inventory of historic properties and ones of traditional religious and cultural importance; and helps build awareness of current and planned training infrastructure

Kathleen McLaughlin

- Tribal Consultation (TC) Protocols as a tool for range operations –
 - TC Protocols are general in nature and focus on relationship between the installation and affiliated tribe regarding cultural and natural resources
 - TC Protocols will outline geographic and topical areas of concern, establish processes for consultation and consideration of tribal customs and a mechanism for dispute resolution.
 - The protocol will also last for a specific period of time after which it can be renewed
 - What it contains – discussion of military impacts on specific sites, characterization of the sites, provisions regarding training for military staff in cultural awareness and how to avoid infringement on cultural resources/property; could include references to use of fencing, signage or other site hardening to protect specific areas from intrusion
 - Benefits of TC Protocols – streamlines compliance; establishes a record of consultation and expected practices by the military; builds skills through training; and enhances working relationship with tribes affiliated with the installation

Alicia Sylvester: facilitator wrap up