State Historic Preservation Office’s Guidance on Tribal Consultation for State Agencies

Hopi Consultations at Reeve Ruin
Why Consult with Tribes?

Since it is not required under the State Historic Preservation Act…

- It is important to know if Tribes attach cultural and religious significance to any prehistoric and historic properties and places that may be on your lands or under your control.

- It is a state agency REQUIREMENT under Executive Order 2006-14.
What is Consultation?

“... seeking, discussing, and considering the view of other participants and, where feasible seeking agreement with them.”

• It is best if it is a dialogue -- **meaningful**, **thorough**, and **productive**

• It should be GOVERNMENT-TO-GOVERNMENT state agency decision maker/leader to Tribal leader and cultural office (e.g., THPO)

Hopi Cultural Advisory Team at a consultation meeting.

Zuni Tribal members consulting at Davis Site in San Pedro River area.
What is SHPO’s Role?

• SHPO can advise agencies on their Tribal consultation efforts:
  1) who to consult (i.e., which Tribes),
  2) when to consult,
  3) how to consult (what format, what to include, etc.)
  (see SHPO Guidance Point #9 on Tribal consultations for state agencies)

• SHPO can also provide informational resources:
  – contacts for each Tribe,
  – maps of Tribal areas,
  – contact information for the Arizona State Museum,
  – information on general Tribal concerns and issues.
When Do You Consult with Tribes?

Integrate Tribal Consultation into Long range, Agency-wide Planning

• Initiate a dialogue with Tribes long before the Agency has an actual project.

• Begin with the Agency’s long range planning. Expand internal planning to include Traditional Cultural Properties, sacred sites, and other properties of importance to Tribes.

Ways to do this:
1) Submit annual work plans directly to Tribes, with specific projects clearly identified, for their review & comment.
2) Include Tribes in Agency planning meetings, as appropriate.
3) Meet with Tribes IN PERSON on a regular basis: Tailor timing, location, and frequency of meetings to specific Tribe’s needs.
4) Meet in the field to visit project areas, sites, excavations, etc., as needed.
5) For specific projects -- begin consulting EARLY in the project’s planning.
How to Conduct Tribal Consultations

Develop Memoranda of Understanding (MOUs) with Individual Tribes
(see SHPO Guidance Point #9 for example)

MOUs are negotiated between the Agency and a given Tribe for:

1) **Streamlining**: Can be tailored to agency and Tribe’s interests and needs, specifying the types of planning and projects on which the Tribe wants to be consulted, as well as the frequency and format of consultation.

2) **Targeting issues/concerns**: Can discuss the identification and evaluation of TCPs and can include burial issues (as per 41-844).

3) **Flexibility**: Can allow for flexibility in project review, as needed by an Agency, given the nature of certain projects (e.g., human health & safety issues).

4) **Expedited reviews**: Can address shorter review times for certain types of projects to assist agency planning and implementation for timely project (e.g., prescribed burns before fire season, etc.).
Procedures, Policies, and Other Types of Agreements

As per E.O. 2006-14, many state agencies already have policies or procedures for Tribal consultation (examples are provided on the Governor’s website).

However, most do not include consultation on cultural resources or cultural resource issues.

Agencies should seek Tribal input when compiling and formulating these procedures/policies in order to best address Tribal needs, and thus better facilitate the Agency’s plans/actions.

Policies should be re-examined regularly, in dialogue with the Tribal government, and updated as needed.

DYNAMIC DOCUMENTS!
Question: Are there specific types or sizes of projects for which Tribes should be consulted?

NO DEFINITIVE ANSWER, it depends! Different Tribes may have concerns about certain projects – it depends on what is important to a given Tribe.

However, there are ways to streamline the consultation:

1) Negotiate an MOU/consultation protocol to streamline by specifying the types of projects and plans for which an individual Indian Tribe wants to be consulted.

2) Provide Tribes with your Agency’s list of projects (at least annually) for their review, well before projects are initiated -- Tribes can then identify those projects for which they want to be consulted in the upcoming year.
Identify a Tribal Liaison

As per E.O. 2006-14, “…agencies shall have one person to handle all tribal consultations relating to cultural resources”

Why? It’s all about building relationships and having open lines of communication:
1) More meaningful and personal dialogue, and
2) More consistency for both the Tribes and the Agency.

Consultation should be Government-to-Government!

If it is necessary to use a consultant:
1) should be a preservation professional, and
2) the Agency should first ask the Tribes if use of a consultant is acceptable, and
3) notify Tribe (in writing) that the consultant/applicant is authorized to conduct these consultations, and
4) all formal, written, correspondence should be on Agency letterhead, and
5) manage the process carefully from the very onset in order to fulfill Government-to-Government consultation obligations, and to encourage the building of trust relationships directly between the Agency and the Tribes.
Personal Consultation with Tribes is Best

Most helpful if Tribal Liaison meets in person with tribal contacts

One-on-one interaction is best

Tohono O’odham Tribal Members Consulting at the Alder Wash Site
Consult with Tribes in Person

Western Pueblo Tribes consultation meeting, working on agreements and providing input.

Often, it is best to meet together at the table to “hammer out” the details of a consultation agreement.

Face-to-face interaction is critical for building trust relationships.
Determine the Tribes with Whom your Agency Needs to Consult

Generally, any Tribe that claims cultural affiliation (aboriginal lands and reservation lands) with the project area should be consulted.

How to do this, currently:

- Maps of tribal affinity are available from the State Burial Coordinator at the Arizona State Museum
- Go to the National Park Service’s NAGPRA website (www.cr.nps.gov/nagpra/documents/claimsmap.htm) for a map of judicially established Indian Lands based on information provided by the Indian Claims Commission

Good “Rule of Thumb:” *IF IN DOUBT, ASK THE TRIBE*
More Information on Determining Tribal Contacts

- SHPO provides a list of Tribal leadership, Tribal Historic Preservation Officers (THPOs), and cultural resource department contacts. (We recommend that all correspondence go to both the elected official and the THPO. If there is no THPO, the Tribal cultural resources coordinator should also be included.)

- For Tribal government contact information, Agencies can also go to Arizona’s Commission on Indian Affairs http://www.indianaffairs.state.az.us, the Inter Tribal Council of Arizona, Inc. www.itcaonline.com, and the Bureau of Indian Affairs.

- Agencies should maintain their own contact list of Tribal Government contacts and Tribal Cultural Resources personnel; this list should be checked frequently and updated for changes.
On-line Toolkit for Government-to-Government Consultation: In Progress

SHPO received grant for development of an online GIS data base:

Database to include updated information:

1. Tribal and Agency contacts
2. Tribal claims/affiliation maps
3. Existing agency and tribal consultation policies, MOUs, etc.
4. Tribal sensitivity trainings
5. Additional links to other important on-line resources
Sensitivity of Tribal Information

*Information provided by Tribes to assist Agencies in their planning may be sensitive, so Agencies should develop security procedures and policies for keeping sensitive Tribal information confidential.*

Ask Tribes:

- what information is sensitive, and
- how they would like to have sensitive information managed by the Agency.

State agencies can maintain this confidentiality under A.R.S. 39-125
Continue to Seek Tribal Perspectives during All Phases of a Project

It is important to ask for Tribal viewpoints on all aspects of archaeological investigations, and throughout the life of a project.

CONSULT OFTEN!

Hopi Tribal members consulting during excavation field work.
Determine Appropriate Time Schedules for Consultation and Tribal Responses

Arizona Tribes need *at least 60-90 days* to review and comment on submittals.

1) Many Tribes lack adequate staff to process the large numbers of consultations that they receive and often need extra time.

2) Many Tribes also need to send their comments through their Tribal Councils, requiring a Tribal Resolution, a process that takes additional time.

3) Many Tribes may have ceremonial calendars that prevent certain activities during certain times of the year.

DO NOT ASSUME THAT LACK OF RESPONSE MEANS A TRIBE HAS NO CONCERNS OR COMMENTS – FOLLOW UP WITH THEM

These are important reasons why consultation should begin early in the planning stages of a project.

**EARLY & OFTEN!**
CONCLUSION

Government-to-government tribal consultation is a dialogue that has a beginning, but does not have a definitive end, as it should represent an embedded, continuing relationship between the Tribe and the Agency.

THINK: TRIBAL RELATIONS, not just CONSULATION
Dialogue should be continuous, beginning well before the life of a specific project and pervading the Agency’s internal management and planning framework.

THINK: SHARED STEWARDSHIP OR COLLABORATIVE MANAGEMENT
Approach Tribal consultation with the mindset that you are seeking advice on how to accomplish an activity, and that the Tribe is a partner in the decision-making process.
Additional References

For further information on Tribal consultation practices:


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