

ABSTRACT

Title of Thesis: *ALHİE NDA' JILNISHGO, NAA'NISH LA ETI'*
WORKING TOGETHER, GETS WORK DONE: A
NAVAJO APPROACH TO CULTURAL RESOURCES
AND HERITAGE MANAGEMENT ON THE NAVAJO-
GALLUP WATER SUPPLY PIPELINE

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Since the mid-1800s, non-Navajo and Non-Indigenous archaeologists and researchers dictated the Navajo people's history a Western scientific lens. The Indigenous Archaeology movement of the 1970s and 1980s gave Indigenous people a voice not present before in modern archaeology. The campaign incorporated values important to Native people like oral traditions, landscapes, and sacred places. The revitalization effort has impelled the Navajo Nation's Heritage and Historic Preservation Department to reclaim its heritage. The Navajo Tribal Historic Preservation Office (THPO) is unique in that it decides what is significant to Navajo history, archaeology, and culture.

This Navajo approach to heritage is apparent in the Navajo-Gallup Water Supply Pipeline project. As the waterline weaves a path through a culturally rich landscape, the Navajo THPO uses its tribal laws and Federal legislation to manage and protect its cultural resources.

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by

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Preface

Yíiyáh' (scary or dangerous) is what my *má'sáni* (maternal grandmother) used to say when I first brought pottery and stone tools home. To the Navajo, disturbing archaeological sites is forbidden; they are powerful places filled with the spirits of the ancient ones. Navajos teach that "archaeological sites" should be avoided and left alone. Being told this, I only became more fascinated with my "ancestors who came before," or what archaeologists call the Anasazi. I spent most of my childhood outdoors, studying pottery tools and wandering through their houses. I learned my lesson and left the pottery where I found them, fearing a scolding from *shi má'sáni*. I began reading everything I could about the ancient people from the archaeologists who studied them. I read that these ancient people disappeared, leaving their bones, houses, pottery, and tools. But where did they go, I wondered? As I got older, I learned that these people were my ancestors; they did not disappear as the books stated. That is when I decided to become an archaeologist and tell the real story of my people.

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I also want to thank my husband Timothy and my sons MacArthur and Cecil for taking this journey alongside me. Your love and support powered me through – emotionally and spiritually.

To the Navajo people, thank you for instilling in me our beliefs, language, and beautiful way of life. *Hózhó náhásdilíí*

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List of Abbreviations

ACHP	Advisory Council on Historic Preservation
APE	Area of Potential Effect
ARPA	Archaeological Resources Protection Act
BIA	Bureau of Indian Affairs
BOR	Bureau of Reclamation
BLM	Bureau of Land Management
CRPA or NNCRPA	Navajo Nation Cultural Resources Protection Act
IA	Indigenous Archaeology
IMT	Indigenous Method Theory
NAGPRA	Native American Graves Protection and Repatriation Act
NEPA	National Environmental Policy Act
NMCRIS	New Mexico Cultural Resources Information System
NHPA	National Historic Preservation Act
NGWSP	Navajo-Gallup Water Supply Pipeline
NNAD	Navajo Nation Archaeology Department
NNHHPD or HHPD	The Navajo Nation Heritage and Historic Preservation Department, formally Historic Preservation Department
PA	Programmatic Agreement
PAPM	Programmatic Agreement Program Manager
THPO	Tribal Historic Preservation Office
TCP	Traditional Cultural Property
SAA	Society of American Archaeology

CHAPTER 1: INTRODUCTION

Yá' át'ééh shik'ei dóó shidine'é. Shi'ei Tamara Billie yinishyé. Tse Nahbilnii nishli', Kinyaa' aanii bashishchiín, Ashiichi dashicheíí, doo Ta'neesahnii dashinalí. Ákót'éego Nihokaa' Dine'e Bila' Ashldla'ii asdzáán nishli. Greetings, colleagues, and friends. My name is Tamara Billie, and I come from the Navajo Nation. I am of the Sleeping Rock People (maternal); born for the Towering House People (paternal); the Salt People are my maternal grandfathers, and the Tangle People are my paternal grandfathers. For 23 years, I have worked for the Navajo Tribal government's Navajo Nation Heritage and Historic Preservation Department (NNHHPD). In addition, I oversee the tribe's Cultural Resources Compliance Section.

The Navajo Nation's Need for Water

The Navajo Indian Reservation is the largest in the United States. It covers approximately 27,000 square miles into Arizona, Utah, and New Mexico (discovernavajo.com). It is estimated from the 2020 Census that there are about 399,494 Navajo Tribal members (Romero, 2021); most members live on the Navajo reservation. By 2040, the Navajo population will be over 250,000 people in the San Juan Basin (Usbr.gov). However, with almost 42% of the Navajo people living in poverty, much below that of neighboring towns, urgent economic measures are required to improve the population's prosperity (Leeper, 2003;21-30). Constructing the Navajo-Gallup Water Supply Pipeline (NGWSP) is designed to meet the long-term demand of Navajo communities, the City of Gallup, New Mexico, and the Jicarilla Apache Nation. The Navajo Nation's water consumption is well below the nearby towns and cities, with water use between 10 and 100 gallons per day, dependent on the water system and water supply availability. Compared with neighboring Indian communities, where the average water use per day is 190

gallons, the Navajo Nation is well below. Assuming that water use will continue to rise by the year 2040, water use may exceed 89,000 acre-feet. Based on the water usage and projected increase, there is a need for the water supply pipeline (BOR, 2016).

The Navajo-Gallup Water Supply Project

The Omnibus Public Land Management Act of 2009, Title X Part III (Public Law 111-11), signed on March 30, 2009 (Logansimpson.com), mandated the construction of the NGWSP as a significant component of the Navajo Nation San Juan River Basin Water Rights Settlement in New Mexico. As the lead federal agency, the Bureau of Reclamation (BOR or Reclamation) is responsible for compliance with the National Historic Preservation Act (NHPA) for the NGWSP infrastructure project. The NGWSP will pipe much-needed potable water from the San Juan River to the eastern section of the Navajo Nation, the southwestern portion of the Jicarilla Apache reservation, and the City of Gallup, New Mexico. The NGWSP consists of a 280-mile water pipeline, several pumping plants, and two water treatment plants, most located on Navajo Nation land. Early in the project, BOR ascertained the project's success would be determined by a cost and research standpoint using a landscape approach. The cultural information recovered is valuable and will provide information on cultural and environmental variations across the San Juan Basin.

The NGWSP is in its 11th year and was estimated to be completed by December 31, 2024. The majority of the waterline is in the ground; however, the project may be moved to 2029. The reason is that there are new design changes and upgrades to the existing structures. Therefore, a cost-saving plan is proposed to use an existing facility instead of building a new diversion dam.

The Navajo Nation's Role in NGWSP

The Navajo Nation Tribal Historic Preservation Office (THPO), or NNHHPD, has the overwhelming task of managing its cultural resources on about 17.5 million acres of land in New Mexico, Utah, Arizona, and now Colorado. The Navajo THPO performs the regulatory Section 106 function on behalf of the States (New Mexico, Arizona, Utah, and Colorado) and the Bureau of Indian Affairs (BIA).

The Navajo Nation's intrinsic right and obligation is to preserve and protect its heritage, ancestral sites, lands, and history. Preservation and protection of our traditional sites help us understand and ensure the future of the Navajo people; it honors our ancestors, promotes our sovereignty, and maintains our unique cultural beauty. In essence, I hope to enlighten you on how the Navajo Nation took a proactive role in managing its cultural heritage on the significant NGWSP project. The NGWSP Tribal consultation model shows how Federal and other land managers consulted effectively and incorporated Navajo interests and perspectives powerful to the landscape. Section 106 of the National Historic Preservation Act (36 CFR Part 800) requires Federal agencies to consult with Federally-recognized Tribes on a government-to-government level. However, the NGWSP paradigm incorporated the interests and concerns of local Navajo communities rather than just the input of the Navajo Nation Tribal Historic Preservation Office and the Navajo Nation government. The Parties involved collaborated to identify areas of Tribal significance considered in planning and management processes. Tribal communities were responsible for telling their histories and protecting the resources of interest to them.

I have been involved in the NGWSP as a tribal archaeologist since it began in 2010. I perform Section 106 reviews of cultural resource inventories interpret and provide recommendations of impacts of waterline on cultural resources along the waterline corridor. I

review mitigation procedures, attend site field visits, participate in Programmatic Agreement Tribal Workgroup meetings, and work with affected communities about their concerns. I also work directly with cultural resource management firms on interpreting Navajo Nation policies and procedures. My other job duties include managing the NNHHPD's new Geographic Information System (GIS) and *Nihi*Database (Our database) system. In addition, my team and I are revising the NNHHPD's Permit Package, which contains new permitting guidelines, permitting fees, fieldwork, and reporting standards. I am also part of the Archaeological Resource Damage Team, which oversees cultural resources' damage on Navajo Nation lands.

NGWSP Cultural Resource Approach

NGWSP's work aimed to get away from a colonial processual mindset of "excavation as mitigation" and instead use a cultural landscape approach that ensures the fundamental analysis of significant areas. In addition, this approach presents a holistic understanding of cultural meaning to Tribes with connections to the San Juan Basin. Indigenous people do not distinguish between "natural" and "cultural" resources in an area. As a result, agencies may undervalue the negative impact of a comprehensive plan on their ability to deal with complicated land management and regulatory challenges, especially on a large project like the NGWSP. Some excavations were unavoidable; however, the traditional excavate-analyze-curate method of data recovery is costly and would anger many Tribes. In addition, curating every ceramic, potsherd, mano, and metate in a museum facility is not the best method of historic preservation. Therefore, the BOR and the Tribes designed a targeted excavation and phased data recovery approach for the NGWSP project. This approach is challenging to implement but delivers an invigorating product that can be used as a model for other projects.

Indigenous archaeology began due to Indigenous People's demand to have a voice in their Tribal histories and how their ancestor's human remains were treated. Western archaeological practices have used Native Americans as "research" science subjects. According to Linda Tuhiwai Smith (1999), the term "research" is a dirty word that brings about bad memories and historical trauma to Indigenous people. Indigenous people around the world have endured abuse from outsiders performing studies and evaluations of them. The communities studied did not participate or collaborate on the assessments, and their voices were not heard. The BOR understands and respects the distress caused by historic archaeological methods; thus, the Tribes were instrumental in "examining, remembering, teaching, learning and protecting their heritage (Atalay 2006; 281).

BOR recognizes that multiple Indigenous communities have an affiliation to a single place. Therefore, this approach became transferable and adaptable to all Tribal communities. Using a community-based archaeological method, each Tribal community defined what is significant to them. Community elders and knowledgeable leaders helped guide the Tribal communities throughout the project. A Programmatic Agreement was initiated in 2011 to fulfill the regulations of Section 106 to help guide and implement a framework to satisfy both the Federal and tribal regulations and policies. The community-based framework established meaningful relationships between the BOR and the Tribal communities and recognized Indigenous perspectives on the significant landscape.

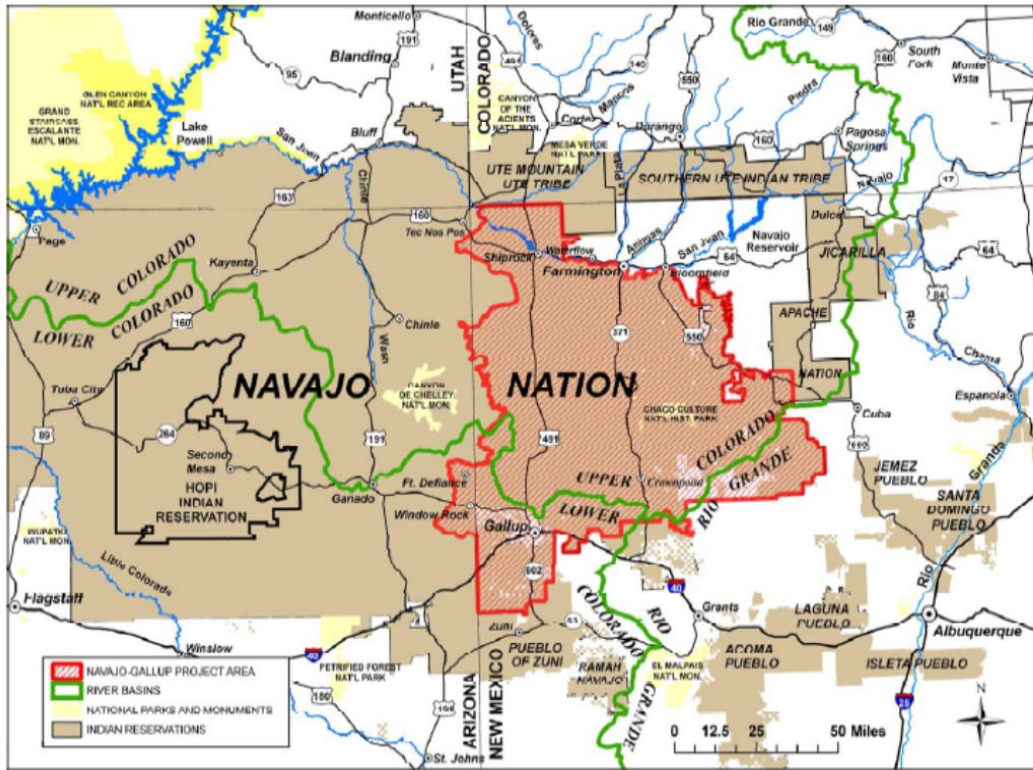
Many of the NGWSP's guiding principles promote tribal sovereignty and self-determination and are comparable to Tuhiwai Smith's Decolonizing Methodologies (Smith, 1999). Smith outlines how many Native communities and their allies are involved in the revival of native traditions on a broad scale. The concept is part of a more significant attempt to broaden

traditional historical and status quo interpretations to be more inclusive and less ethnocentric. This project uses a cultural landscape approach to encompass the natural environment containing geographical features, resources, and built constructed environment. This approach combines processual and post-processual perspectives since natural and cultural forces restrict and assist human activity. Because the San Juan Basin is still occupied and essential to many tribes, Native American participation and opinions are crucial to the landscape plan.

Initiatives of the NGWSP include pursuing economic development purposes. But unfortunately, these projects have a detrimental impact on cultural treasures. The Navajo People, the Navajo Nation government, the Heritage and Historic Preservation Department, and developers are all responsible for protecting cultural resources such as Traditional Cultural Properties (TCPs) following traditional Navajo cultural values and existing Federal and Navajo Nation legislation and regulations. Construction and infrastructure development cause irreplaceable damage; therefore, my role as a Navajo archaeologist is to protect our places of importance to connect to our ancestors and benefit future generations.

Metaphors of woven oral stories link the hearts, minds, history, and land (Charlton, 1969; 286-294) of Indigenous people involved in the NGWSP. I will demonstrate how a team of cultural specialists and land managers actively collaborated with the BOR to develop a partnership on one of the most significant water line projects in Northern New Mexico's San Juan Basin. The NGWSP research employs community-based practice methods by engaging Navajo traditionalists and Navajo archaeologists, deconstructing the Western archaeological process, and justifying why archaeology should be "with, for, and by" 'Indigenous people (Atalay 2006; 283).

Archaeologists, anthropologists, and others analyze Navajo history through a Western lens. The Navajo are among the most studied cultural groups in the Southwestern United States (Watkins 2000; 93). Anthropologists and archaeologists flocked to Navajo land to learn Navajo ceremonialism, traditions, language, music, etc. Unfortunately, these study methods have disrupted and misinterpreted Navajo knowledge production, history, education, and a sense of the past. The Navajo Tribal Historic Preservation is working to repair this harm by exercising its authority to oversee its cultural heritage.



[Figure 1. Map of the Navajo Nation. Image downloaded from <https://www.usbr.gov/uc/progact/navajo-gallup/pdf/GenLocation-map.pdf> in November 2021]

CHAPTER 2: INDIGENOUS ARCHAEOLOGY

This chapter aims to explain the impact of Western thought on archaeology and heritage on Native American communities and how Indigenous archaeology programs bridge the gap. Indigenous scholar Sonya Atalay asserts that archaeology relies heavily on Western methodologies and knowledge systems rooted in colonial history. Western archaeological methods use science and written traditions while excluding local communities', basing their data on theories and interpretations prone to bias and subjectivity (Graves 1998; 309-343). Therefore, although archaeology is a powerful tool, especially in understanding the past, it has colonial solid Western-based influence and values.

Archaeology was started in the 16th century by wealthy elite antiquity collectors who had little interest in science (Trigger, 1980; 662-676). However, the discovery of the New World sparked interest in the monuments and cities in the newfound land, which urged public interest. The appeal resulted in exhuming sites and collecting human remains and artifacts for display. Collections of artifacts were kept in private collections or housed in museums.

The idea of the Vanishing Race in the last quarter of the 19th century influenced archaeologists and anthropologists to collect massive amounts of artifacts and ethnographies, fearing the end of the Native American race and culture. For instance, at the beginning of the 20th century, Edward S. Curtis began photographing and documenting Native Americans before westward expansion destroyed the American Indian ways of life in his 30-year project called, *The North American Indian* consisting of 20 volumes.

Indigenous archaeology, a sub-discipline of archaeology, was born in the 1970s and 1980s (Pearsall 2008). Indigenous people began speaking out against the unethical collection, exhumation, and display of their ancestors' remains. Indigenous Civil Rights started with the

American Indian Movement protesting excavated sites where the public paid to view human remains on public display (Atalay, 2006; 280-310). Native Americans began to react to their ancestors being dug up and put in museums worldwide. They began to stand up against these atrocities to regain control of their heritage, history, and cultural resources. Indigenous people have endured a lot and adapted to outside forces to become vital in protecting and interpreting their material pasts (Colwell-Chanthaphonh; 2010; 45-82). Indigenous people continue to survive, demonstrating their ability to withstand Western cultural practices' complex changes while adapting to some elements of the same culture.

Indigenous people worldwide are stewards of their archaeological locations, materials, and surrounding communities (Atalay, 2007; 249-270). These communities examine, teach, remember, and safeguard their history, heritage, and cultural activities. Indigenous archaeological methodology empowers and engages Indigenous people to preserve their legacy and study their past. The NGWSP project engages Navajo traditionalists and Navajo archaeologists to seek answers according to their epistemologies. The method combines ethnography and linguistics, using the least invasive archaeological field excavation and site testing methods. This approach is not only practiced by Indigenous people; it includes scholars from many backgrounds and fields who believe in transforming traditional archaeological practices with respect to the Indigenous perspective. As a Navajo, it is my responsibility as a tribal representative, member of the community, and facilitator of a regulatory agency to *“repatriate our stories and inaccuracies”* (Ramone Riley, Cultural Resource Director, White Mountain Apache Museum, 7th Annual Repatriation Conference November 10, 2021).

Research and evidence show that social values and imperialist principles build upon archaeological interpretations. Eurocentric archaeological records are subjective and biased

(Goopy and Kassan 2020); they construct and interpret the past and influence Indigenous people's present (Atalay 2014). The Indigenous peoples' inherent right to oversee their cultural heritage is disrupted by outsiders' archaeological research and interpretations of the past. Archaeologists and anthropologists were the interpreters of Native American histories and culture until Native Americans criticized their practices and interpretations. Archaeologists were forced to reevaluate archaeological research and procedures regarding the treatment of ancestral remains. The Society for American Archaeology (SAA) in 1991 was the first to issue and adopt a Code of Ethics about reburial and repatriation. The Native American Graves Protection and Repatriation Act (NAGPRA) was developed in 1990 to address reburial and repatriation in collaboration with Native people. NAGPRA facilitates the return of ancestral remains and sacred objects to descendants and tries to rectify and heal the past. The regulations of NAGPRA outline a process to inventory and return collections to Tribes. NAGPRA is a beneficial law in that it requires museums and universities that receive federal funding to inventory their collections. This requirement compels museums and universities to reach out and collaborate with Tribes. Tribes have provided invaluable information about curation possessions, which otherwise would not be achieved by sitting on shelves in a museum.

Theoretical Review

Indigenous archaeologists have developed many theoretical perspectives to explain Native Americans' origin, existence, and history. Archaeologists, anthropologists, and scholars influence archaeological narratives, knowledge, and debates. I will expand on the community-based theory that engages Indigenous communities by using ethnographic and archaeological methods. Community-based archaeology moves toward collaborative archaeology involving Indigenous people to define and interpret their heritage. Descendent communities are involved in

all project phases: planning, developing research questions, data collection, analysis, and data interpretation. This theory aims to empower Indigenous communities to "own" their cultural heritage (Atalay 2019; 63), promoting healing and well-being, otherwise referred to as Indigenous method theory (IMT). According to the IMT, Indigenous scholars perform archaeology within Indigenous communities to revitalize and reclaim their histories, thus creating a more informed view of the past (Steeves, 2019). This theory involves engaging spiritual leaders, storytellers, elders, and community scholars rather than gathering information from outside the community. Engaging communities means informing the Indigenous stakeholders by consulting with them and involving them through collaboration, thus empowering them.

In contrast, gathering information involves using published literature, reports, or documents about a community rather than interacting with them. Oral traditions influence Indigenous archaeology and IMT. In contrast, Western archaeology is contingent on written practices (McNiven, 2016; 27-41).

Elders teach the younger generations about oral history, oral traditions, and traditional history (Kelley and Francis 2019:3-4). This knowledge is stored in people's memories, and in telling this history, it renews itself and builds a connection between the Navajo people and the earth. Stories tell living narratives about how Navajos came to be, about the origin of ceremonies, migrations, and life lessons. The Navajo language is crucial in telling these stories and is the glue that binds the Navajo universe.

Postcolonial archaeological theory denies stories that erase Indigenous humanity. Rehumanizing archaeology is critical for protecting religious and cultural sites (Scheiber and Mitchell 2010; 23-76). Traditional knowledge is vital to identify artifacts, landscapes, and

ceremonial sites. One gains traditional knowledge by being trained and sometimes initiated into that culture and embedded in our ceremonies and language. For instance, many Navajo ceremonial sites and traditional cultural properties are not identifiable during a field survey if looking through the lens of a non-Navajo. A ceremonial area may look like any other place on the landscape; however, certain factors are apparent to the Navajo, like the placement of a pile of rocks or the orientation of a pile of trees. Dr. Klara Kelley, an ethnoarchaeologist who has worked on the Navajo Nation for decades, writes that these landscapes hold special powers and where people connect with the deities. These areas are closely linked to oral traditions in the Navajo language (Kelley and Francis 1994; 1-3).

To understand Indigenous method theory, one must first understand the ongoing impacts of colonization and come to know people and why they feel they have had their humanity and history erased. It is crucial to revive and reclaim their heritage, which IMT scholars and archaeologists seek. Native Americans can find justice and healing in their communities when engaged in archaeological research and methodologies (Sternadori, 2017; 11-27). Efforts are made to counter archaeological interpretations that disconnect Indigenous people from their ancestors, cultural identities, and homeland (Julien and Bernard 2016; 35-58). The dominant Western English language to document Indigenous people's history and culture further alienates them from their ancestral lands. This use of Western language breaks the Indigenous connection to their land and ancestors (Charlton, 1969; 286-294). When the community participants are engaged and share information, they heal, embrace self-determination, and become emancipated.

IMT is the path of revival and healing for the community. IMT research is carried out in the form of a ceremony fostering the relationship between the ancient ancestral landscapes and

the Indigenous people. Transferring history to the descendants in any community supports natural continuity. As is the case with Native Americans, it speeds up healing. There are as many IMT variations as there are Indigenous communities globally. However, its operation frames are similar, ranging from responsibility, respect, and reviving lost relationships—all of these woven through storytelling and cultural practices (Ferris et al., 2014; 34-78). Indigenous archaeology has become a powerful tool in reclaiming Indigenous knowledge and restoring cultural practices across many colonized areas worldwide. IMT starts with cultural practices, oral traditions, and research with the community, then concludes with a ceremony.

Indigenous theory and methods are crucial to non-Indigenous and Indigenous communities and scholars because they support Indigenous history as an alternative to Western thought. Scholars note that Indigenous methodologies have prompted Western traditions to engage in self-study. Using this approach, Western thinkers experience a paradigm shift that compels them to approach the world less systematically (Gonzalez-Ruibal, 2016; 687-692). The past acts like a platform where Indigenous people can handle historical challenges with optimism when viewed through an Indigenous lens. Knowledge, history, and cultural practices are based on lived experiences over thousands of years in memories held in songs, land, arts, and stories, among others (Atalay, 2007; 249-270).

Indigenous archaeology includes research that deconstructs and criticizes scientific practices while investigating the community's unique systems, methods, and experiences by incorporating their voices, views, and interactions with their cultural beliefs. Community members, including cultural and spiritual leaders, share first-hand information and conceptions of the past, giving broader insights into epistemologies. As discussed earlier, these forces significantly impact the origin and nature of data collected through Western archaeological

means. Indigenous archaeology has global applications, emphasizing collaboration with stakeholders and the descendant communities.

Within the last 30 years, archaeological practices have changed significantly due to more profound and broader engagements with Indigenous communities worldwide. The National Historic Preservation Act (NHPA) of 1966 and the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 have helped to include tribal concerns. Generally, archaeologists must recognize the vital role that archaeological heritage plays in maintaining and forming Indigenous identities (Society for American Archaeology 2007; Hart, 2010). This novel understanding is advanced in Indigenous archaeology, encompassing many approaches and archaeological practices. The critical concerns of Indigenous archeology intersect with many other disciplinary movements that have emerged in recent years, such as Prehistoric Archaeology and Cultural Resource Management. Current Indigenous archeological approaches emphasize archaeological studies' political and social significance on Indigenous communities (Begay, 1996; Martin, 2017; 1392-1400). Indigenous communities can be transformed in theory and practice by combining historical archeological techniques with modern methods.

Past Archaeological Practices

The purpose of archeology is to understand human history and how other elements of nature have evolved. Regardless of its disciplinary context, the goal of any archaeological research is to develop a broader and deeper understanding of human history (Society for American Archaeology, 2007). Therefore, the crucial concern in the discipline of archaeology seems not to apply in Indigenous archaeology. Instead, its proponents are more interested in mitigating the presumed impacts of the history of archaeological practices on living members of Indigenous communities.

In recent years, negative perceptions of archaeology within Indigenous communities have increased. Firstly, many Indigenous people argue that archaeology as a discipline generally disregards their communities' traditional views on the subject (González-Ruibal, 2019; 34-43). In particular, archaeological practices drew from outsiders' views who may not accurately represent Indigenous communities' history and culture.

While it is clear that archaeological practices have brought some understanding of the history of Native Americans, the approaches used are problematic and, by extension, an affront to Indigenous communities' fundamental rights. In particular, there is a concern that past archaeological perspectives view Indigenous communities as simply a mere segment of human heritage (Schneider and Hayes, 2020; 127-148). Therefore, Western archeology implicitly and inadvertently deprives Indigenous communities of their heritage and rightful existence in the contemporary world. Furthermore, the view that archaeology works to integrate human beings with their history and nature seems not to apply to Indigenous communities, as the scientific investigation of these communities unjustifiably takes away their past, which is the basis of their current cultures. Therefore, archaeological practices cause Native Americans to view the discipline as insensitive to their history and culture.

Using Indigenous Methodology

Indigenous methodology refers to a body of theoretical and Indigenous methods and approaches, postulates, and rules applied in the research about Indigenous people. The main reason for developing Indigenous methodologies was to guarantee a more ethical, respectful, sympathetic, and correct approach of benefit and value to Indigenous communities (Porsanger 2004). On the other hand, Western archaeological methods are historically based on "solving Indigenous problems" and answering questions on Indigenous communities' history, nature, and

cultures (Porsanger, 2004; 105-120). As a result, Western archeological methods are highly unpopular among Indigenous people because they seem to take away some of their cultural aspects, such as their artifacts and remains of their ancestors (Ferguson, 1996; 63-79).

Consequently, many Indigenous people have negative perceptions of the Western approach as they are treated as passive objects (Hart, 2010). This disempowering of Indigenous people has attracted criticism from Indigenous researchers and the global community (Ferguson, 1996; 63-79).

Western archaeological methods are founded on Western research philosophies: analytical, reductionist, positivist, and materialistic (Nakashima 2006; 314-324). Western archaeological methods break down and solve research questions by reducing them to a science. The results are written in the literature or archaeological records. Proponents of these methods view archaeological research on Native people to collect and document information on them, and by extension, other Indigenous communities across the world. Indigenous communities view Western archaeology as "stealers" knowledge because the information they gather and artifacts they collect benefit other people and not Indigenous people (Porsanger, 2004; 105-120). The development of the Indigenous methodology has brought an ethically correct and respectful method of researching Indigenous communities. However, the proponents of Western archaeological methods argue that the IA approach is not based on existing processual archaeological theories that guide scientific research to explain their histories (Atalay 2006; 281-310). The Indigenous methodology adopts an entirely different approach. The Indigenous process is intuitive, holistic, and spiritually based on oral traditions. Despite concerns, this research method's adoption has increased. Many scholars and Indigenous archeologists in

Australia, the United States, and Canada now incorporate this approach in their research (Murray, 2011; 363-378).

Further, there has been a renewed push to develop a concise theoretical framework on which current and future Indigenous research will be based. This new framework will bring more objectivity to the study conducted under the Indigenous methodology paradigm. In the current accepted definition of scientific methods, it is generally agreed that a scientific method must involve a researcher remaining outside of the research experience, investigating the desired concepts through discovery and observation, and using objective observations to draw conclusions (Gauch et al. 2003). However, adopting such a strategy does not guarantee objectivity (Porsanger, 2004; 105-120). Therefore, scientific methods must be reworked and reconsidered to fully embrace the Indigenous research methodology.

The Indigenous methodology offers a novel and acceptable approach to Indigenous communities' research given Western archaeological methods. With or without a scientific framework, Indigenous methods are a far better method of conducting Indigenous research (González-Ruibal, 2018; 345-360). Further, the specific Indigenous methodology has to be selected to consider Indigenous ethics, defined research goals, and the impacts of any research on Indigenous communities (Cipolla et al., 2019; 127-142). For instance, the Indigenous methodology differs from Western archaeological methods. It stresses that Indigenous researchers must report their findings to the Indigenous communities (Porsanger, 2004; 105-120). Indigenous methodology prioritizes contributing to a body of knowledge, current, and past, while respecting Indigenous people's needs and interests.

Archaeology should engage Indigenous people in their histories. Western archaeological methods have many shortcomings and cannot be depended on to conduct objective, respectful,

and ethical research on Indigenous communities worldwide. There is an urgent need to adopt research methods that allow Indigenous people to engage in archaeology and research their histories (Porsanger, 2004; 105-120). This IA method ensures that Indigenous people do not feel disempowered and denied the right to guard their history and culture against unjustified external influence.

Indigenous methodologies must be developed to involve Indigenous people in their research. These methodologies should be used to define and explain the Indigenous agenda of any research project, view theories and research in Indigenous people's perspective, consult or include Indigenous people as participants and not mere research objects, and use language understandable by Indigenous people (Wilson, 2001; 175-179; Porsanger, 2004; 105-120; Wylie, 2019; 570-587). These practices are crucial in ensuring that Indigenous people are part of the research process. Collaboration is an essential element in ensuring the participation of the members of an Indigenous community.

Indigenous communities worldwide are setting conditions that must be met before any research is conducted on them (Murray, 2011; 363-378). This is a consequence of Western archaeological methods' failure to address the question of respect and ethical practices in Indigenous research. For instance, many Indigenous communities of New Zealand, Australia, Canada, and the United States have existing exclusion strategies if researchers do not prove their willingness to collaborate and consult with Indigenous people in their research study. Generally, Indigenous studies' ethical requirements will lead to more accountability and respect (Rigney, 1999; 109-121). These strategies align with Indigenous methodology ethics and significantly alter how Indigenous research is conducted.

The San Pedro Ethnohistory Project

An example of a successful community-based project is the San Pedro Valley Ethnohistory project. The San Pedro Valley is located in a rich archaeological landscape with abundant cultural heritage sites in Arizona. Since the 1930s, archaeologists have documented and recorded over five hundred different culturally significant areas in the San Pedro Valley spanning thousands of years (Ferguson and Cowell-Chanthaphonh, 2006; 63-79). Realizing all the data collected from excavated sites were from a colonial scientific perspective, Bill Doelle and his colleagues recognized that archaeology alone could not give a complete picture of the history of the San Pedro Valley. Thus, the San Pedro Ethnohistory Project was developed in the 1990s. It became one of the best models of community-based approaches. Unlike previous research in the Valley, this project collaborated with the four Native Indian tribes; Tohono O'odham, Hopi, Zuni, and San Carlos Apache Tribe. The tribes did not act just as ethnographic informants; they collaborated methodology, helped formulate research questions, and decided which stakeholders should be involved in the project.

Furthermore, these tribes maintain distinct oral traditions that provide context to explain the history of the Valley that archaeology cannot explain alone. This project is unique because it involves the tribes as partners rather than subjects. Archaeologists, traditional elders, Indigenous archaeologists had equal decision-making powers, which required commitment and compromise.

A Navajo Nation Road Project – Jeddito Valley

One of the first community-based projects on Navajo Nation lands started in 1997, the Jeddito Road Project. The pilot project used ethnographic information to complement qualitative research methods to help understand cultural resource management by engaging tribal consultants from the three tribes to share information about their cultural landscape. Moreover,

the tribal advisors accompanied the researchers to examine artifacts in museums and archaeological sites while documenting their oral histories. Ethnographic interviews were conducted with tribal cultural advisors regarding site interpretation and site visits during ongoing excavations. As a result, tribal advisors could interpret what the artifacts were used for and what context. This project is distinctive because it identified research questions critical to the Navajo Nation, Hopi, and Zuni Tribes, such as Tribal use, occupation, connection to place, and tribal interpretations of archaeological sites. Cultural advisors collaborated with archaeologists to paint a more thorough understanding of their history. Although views differed among each Tribe, these various tribal interpretations render a more enriched and comprehensive picture of the past (Swindler et al., 2000; 49-52).

CHAPTER 3: HISTORICAL BACKGROUND

“Navajos have been caring for archaeological sites for hundreds of years, it is part of our cultural teachings (Richard M. Begay-1996, Navajo Nation)

Long before any Federal laws and regulations, the Navajo people were caretakers and guardians of their cultural heritage. The Deities, according to the Navajo people's definitive history, created and put everything on the planet (Matthews, 1886; 841-850) and the universe to be revered. To comprehend the sanctity of the land, one must see that the land is particularly sensitive within the general holiness of the earth and universe. Traditional Navajo rules mandate that these places be safeguarded and left in their original state (Matthews, 1886; 841-850). Such places are power centers used for protection, healing, stability, and maintaining Navajo harmony and balance (Kelley and Francis, 2019).

Navajo people were the first to guide, inform and excavate ancient ruins in the Four Corners area alongside “luminaries” like Richard Wetherill (Brugge 1986:2), Neil M. Judd, George H. Pepper, and Earl Morris” (Two Bears, 2006 381-387; Campbell et al.; 2021; 253-267) beginning in the late 1800s. By the 1950s, the Navajo Nation began its pursuit to preserve its cultural heritage by establishing one of the first cultural resource management programs integrating “sacred places” (Begay, 1991; 1-4; Watkins 2000; 101). This new pursuit broke from traditional archaeological research methods using archaeological and ethnographic inventories.

One of the first cultural preservation programs grew out of The Indian Claims Commission Act of 1946 (25 USC §§70-70v-3), in which the Navajo Nation performed cultural resources work (archaeological and ethnographic) work on its own behalf on lands lost in treaties to the United States (Downer and Roberts 1996). The Navajo Tribal Museum was established in 1956 (Begay; 1991; 1-4) to house significant archaeological and ethnographic collections

specifically for Navajo. In 1972, the Navajo Nation Council passed a resolution called the Navajo Tribal Antiquities Law that acknowledged the Navajo Nation's irreplaceable and invaluable cultural heritage and the existence of ruins and artifacts on tribal lands (Watkins 2000); the law permitted the Museum to issue permits for archaeological investigations on Navajo Nation lands.

A large inventory project called the Navajo Indian Irrigation Project began in 1976. The Navajo Nation performed cultural surveys of 110,000-acres of land with a contract from the Bureau of Indian Affairs (BIA). The Navajo Nation Cultural Resources Management Program (CRMP) was created out of this contract; however, the New Mexico SHPO, not the Navajo Nation, managed the cultural resources and determined significant resources (Downer and Roberts, 1996; 39-79). It is essential to point out that the Navajo Nation engaged in cultural stewardship before the National Historic Preservation Act (NHPA) passed in 1966. The Navajo Nation cultural preservation office also served as a model for other Tribes to follow.

NHPA and its implementing regulations for Section 106 (36CFR Part 800) require federal agencies to work with tribes regarding project undertakings that may affect their cultural resources or places of concern on and off of tribal lands. In 1992, NHPA amendments created Tribal Historic Preservation Offices (THPOs) across the country to act in place of State Historic Preservation Offices (SHPOs). As a result, the Navajo Nation Historic Preservation Department (now called the Heritage and Historic Preservation Department) became the first designated Indigenous tribal preservation program in the United States (Downer and Roberts 1996; Watkins, 2000).

The BIA is the lead federal agency overseeing cultural resources management on Navajo Tribal Trust and Navajo Indian Allotment lands. Most projects occurring on Navajo Nation lands

(infrastructure, roads, electricity, telephone, fiber optic, telecommunications, etc.) include federal funding or permits and require compliance with NHPA. Before 1986, the BIA made all decisions regarding cultural resources management, rarely taking into account the concerns of the Navajo Nation. In 1986 the Navajo Nation applied for a contract with the BIA to create its own preservation office. The BIA agreed under the Indian Self-Determination Act and Education Assistance Act (Self-Determination Act), Pub L. No. 93-638 (Codified as amended at 25 USC §§450-450n) (Downer, 2000; 54-56). The 93-638 Contract created the Navajo Nation Historic Preservation Department (HPD), which became the lead in protecting and managing its cultural heritage. Instead of the BIA making the decisions about cultural resources management on behalf of the Navajo Nation, HPD makes cultural management decisions and advises the BIA on cultural issues. And rather than having two independent Section 106 review procedures, and two sets of permitting requirements, all functions are now provided in one centralized office. In 1988, the Navajo Nation Council passed the Cultural Resources Protection Act (CRPA) [CMY-19-88, Navajo Nation Tribal Code, Title 19, Chapter 11-Sections 1001-1061]. In addition to creating HPD, CRPA created the Navajo Nation Archaeology Department (NNAD) and the Navajo Nation Tribal Museum. The NNAD department oversaw the contract archaeology work, and the Museum oversaw the museum collections. In 2017, HPPD and NNAD merged to form the Heritage and Historic Preservation Department (HHPD).

Along with implementing CRPA, HPD began writing policies such as the Navajo Nation Policy to Protect Traditional Cultural Properties; Policy for the Protection of Jischaah': Gravesites, Human remains and Funerary Objects; Guidelines for the Treatment of Historic, Modern and Contemporary Abandoned Sites; and the Policy for the Disposition of Cultural Resource Collections. CRPA follows Federal laws but emphasizes Navajo Nation priorities. In addition,

CRPA directs a permitting system for cultural resource contractors who may visit or work on the Navajo Nation. The goals of CRPA are to promote Navajo Nations sovereignty, honor heritage, preserve the past for the future, connect us to land, language and ancestors, and protect research.

For non-federal involvement, there is a system in CRPA that mirrors the NHPA's Section 106 Process. CRPA can work together with Section 106 or can stand autonomously. CRPA has created criminal and civil penalties for individuals who violate permitting procedures or alter, collect, damage, deface, destroy, excavate, remove, or sell cultural resources or collect ethnographic data without a valid permit.

Before the 1992 Amendments of NHPA, Navajo HPD tried to negotiate with the Advisory Council on Historic Preservation (ACHP) to take over the SHPO responsibilities within New Mexico, Arizona, and Utah. Finally, in 1996, the Navajo Nation received THPO status recognition under the National Park Service (NPS). The Navajo Nation HPPD's function under Section 106, 36 CFR Part 800 is to consult with Federal agencies about undertakings that may affect historic properties on and off tribal lands.

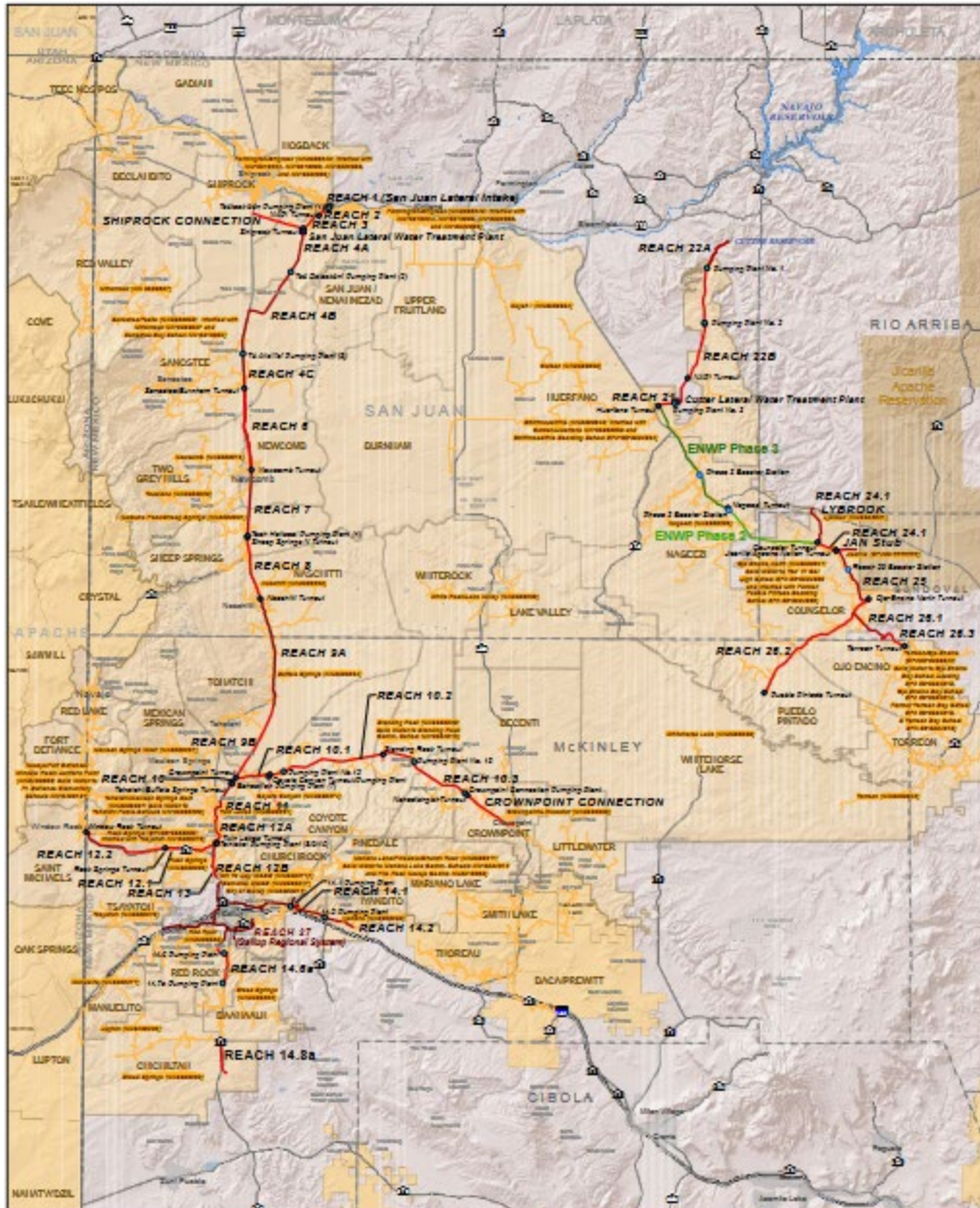
The NNHHPD has a unique position managing its cultural resources under the authority of the Navajo Tribal Council (CRPA 1988), the BIA (638 Indian-Self Determination Contract), and the National Park Service's (THPO designation) to oversee functions of the SHPOs. In addition, the NNHHPD is unique because it is advised by the Navajo *Hataali* Advisory Committee (HAC). *Hataali* translated is, "singer" or "chanter," and means a medicine person who practices Navajo traditional ceremonies.

The Navajo Nation Council approved Tribal Resolution GSM05-04, establishing the HAC to advise NNHHPD and the Navajo Nation Government on department and traditional cultural concerns. They also advise NNHHPD on policies and issues regarding repatriation,

NAGPRA, ARPA, NHPA, and other pertinent legislation in government-to-government consultation efforts. The committee is essential in providing spiritual guidance in ceremonies such as purification and retirement rites for repatriated *Jish* or sacred items, conducting offerings, and leading pilgrimages for the benefit of the Navajo people. HAC comprises twelve members who have specialized knowledge in at least one of the fourteen Navajo ceremonies (Blessing Way, Night Way, Wind Way, Shooting Way, Protection Way, Enemy Way, Evil Way, Mountain Top Way, Red Ant Way, LifeWay, Mountain Peak Way, Beauty Way, the Water Way and the Feather/Plume Way).

The Navajo-Gallup Water Supply Pipeline

Upon the NGWSP's inception, a Programmatic Agreement Working Group drew from nine Tribes and Pueblos to advise and collaborate with the Bureau of Reclamation (BOR), the Advisory Council on Historic Preservation, the New Mexico Historic Preservation Office, the Bureau of Land Management, the Bureau of Indian Affairs, the Indian Health Service, the City of Gallup, the Navajo Nation and concurring Tribes, the Pueblo of Acoma, the Hopi Tribe, Pueblo of Zuni, Jicarilla Apache Nation, Ute Mountain Ute, Santa Ana Pueblo, Santa Clara, and Jemez Pueblo.



Navajo Gallup Water Supply Project
RECLAMATION
Managing Water in the West

[Figure 2. Project Alignment Map of the Navajo-Gallup Water Supply Project showing each Reach. Image downloaded from <https://www.usbr.gov/uc/progact/navajo-gallup/pdf/20180814-Project-Alignment-Map.pdf>, November 2021]

BOR hired a Cultural Resources Management Consultant, PaleoWest Archaeology, to conduct a Class I inventory of the entire Area of Potential Effect (APE) as well as a quarter of a mile of the NGWSP centerline. The project undertaking includes a full range of plans and actions developed and carried out within the APE. The extent of the APE was agreed upon by all parties involved (BOR, Navajo Nation, Advisory Council on Historic Preservation - ACHP, NMSHPO). The undertaking encompasses earth-disturbing activities and planning and managing decisions that may affect cultural and historic properties within the APE. PaleoWest combined the New Mexico Cultural Resources Information System (NMCRIS) and the Navajo Nation's sites lists. The research showed over 750 documented archaeological sites ranging from Paleoindian to Historical and modern times. In addition to the Class I inventory, PaleoWest conducted a Class III survey of the APE 400-ft wide and 280-miles long. BOR and the Navajo Nation anticipated the results of the Class I inventory since the Navajo Nation lies within a culturally rich and complex area; it is a living landscape that the Navajo people have used since time immemorial. Excavations and surveys to date suggest that the density of sites along the NGWSP is from 4 to 8 sites per mile or about 2000 sites total. It is assumed that more than half of the sites would be eligible for the National Register of Historic Places.

Based on the estimates, BOR realized that they could not financially or logistically mitigate all the cultural sites within the APE through excavations. Instead, they could fund those areas with the greatest return in cultural resource management. As a result, the BOR contracted PaleoWest to draft an Archaeological Research and Sampling Design, Archaeological Monitoring Methods, and Field Manual document. These guiding documents helped facilitate the fieldwork for each Reach of the waterline.

The NGWSP waterline was projected to fall somewhere within a 400-ft wide corridor. BOR Engineers designed each Reach, avoiding identified cultural resources, burials, and TCPs. BOR collaborated with the Navajo Nation and the PA Workgroup through field visits and meetings.

The National Environmental Policy Act (NEPA) and the Navajo Cultural Resources Protection Act (CRPA) mandate that an undertaking avoid, minimize or mitigate adverse effects on cultural resources. In terms of mitigation, it does not always mean excavation, data recovery, artifact analysis, interpretation, and curation (Douglass and Manney 2020; 213-219). However, cultural resource management has been the mode of operation for decades. Therefore, the Tribes approached BOR and requested that they consider alternatives or creative mitigation. Examples of mitigation that lessen the adverse effects on cultural resources are constriction of the right-of-way, using trench boxes to limit site disturbance, burrowing under archaeological sites, or using ethnography to supplement archaeological findings. Navajo also worked with BOR to restrict above-ground appurtenances at specific locations, use paint that blends into the surrounding landscape, and many more solutions.

In addition to the guiding research documents, BOR oversaw the development of a treatment plan to guide archaeological investigations to mitigate adverse effects to NRHP-eligible sites. The archaeological testing (Phase I) and data recovery (Phase II) procedures within the Sampling Plan were guided by project-specific research and sampling design (Potter et al., 2013). Reclamation distributed the investigation and sampling design plan to the BIA, NMSHPO, and the Navajo Nation THPO. Consulting Tribes prefer minimizing data recovery efforts by restricting archaeological investigations to the portion of the site directly affected by the pipeline. Based on

this input, BOR developed a sampling approach, including a Historic Context document, that addresses Historic period sites with an ethnographic component.

Association to the landscape is an essential theme in the research design and was referred to as an Indigenous Perspectives and Participation and Landscape proposal. Potential mitigation treatments to address the loss of association were discussed at the PA Workgroup meetings. Six approaches were discussed: Collaboration in the production of archaeological reports, which include Indigenous perspectives; Tribal perspectives of the San Juan Basin, particularly Chaco Canyon; a comprehensive Tribal ethnographic study; ethnobotanical research with a potential traditional plant comparative analysis collection and seed bank; creating a youth program to engage younger Tribal members; and a LiDAR Data Collection Study. Each consulting Tribe will choose a theme or a combination of themes to address. This portion of the mitigation is ongoing and still being discussed.

Collaboration as Mitigation

Collaboration in the production of archaeological reports involves the incorporation of Tribal perspectives. This form of alternative mitigation is powerful and meaningful because it involves close cooperation with Tribal members, archaeologists, and anthropologists. Archaeological reports refer to Class III survey reports, testing and data recovery reports, and monitoring reports. Since archaeological reporting relies on Western scientific notions of archaeology to examine and report on cultural resources encountered on the project, the Tribes want to see a parallel approach focused on traditional cultural knowledge and tribal interpretation and perspectives. BOR has taken this approach and funded the Tribal TCP Studies. However, furthering this methodology and providing a complete interpretation of cultural resources would challenge BOR. Firstly, the Class III surveys were conducted at the beginning of the project, and

BOR was on a timeline to finish by 2023. An avenue to fulfill this effort would be to synthesize cultural data in a Technical Report series that incorporates cultural knowledge into the archaeology of the report.

Some Tribes felt that the entire San Juan Basin centering around Chaco Canyon would provide insights into the Chaco Phenomenon. Therefore, this mitigation option will involve ethnographic interviews with tribal community members and site visits to Chaco Canyon and surrounding Chacoan Outliers.

PA Workgroup members discussed focusing on the ethnographic work for Tribes who did not participate in a TCP Study. This single synthetic report will capture the tribal perspectives of cultural resources (archaeological, TCPs, landscapes, etc.) identified. Each Tribe will have its chapter and include summary TCP Studies.

The ethnobotanical mitigation approach focuses on ethnobotanical cultural knowledge from each Tribe. This option can further develop a traditional plant collection and working seed bank. The plants will have traditional names and traditional uses in cultural practices, ceremonies, and prayers. BOR has begun working on the ethnobotanical study because the Navajo Nation has been working on its re-vegetation plans.

Light Detection and Ranging or LiDAR mitigation will focus on non-destructive data collection of individual sites and the larger cultural landscape. This study will complement other studies conducted by the Bureau of Land Management, the Federal Emergency Management Agency, and the State of New Mexico. Many questions and concerns were discussed about this method and included ensuring that BOR is not replicating other work by Federal agencies and what information will be made available for Tribes, researchers, and land managers. BOR will need to develop a detailed site model using LiDAR data to supplement the archaeology surveys

and mapping already completed. This method is incumbent upon the consulting parties agreeing on its purpose.

The youth program focuses on involving Tribal youth in cultural resource management. Youth interactions with community representatives can foster opportunities to learn the traditional language, stories, songs, ceremonies, and prayers associated with the San Juan Basin. For many, it symbolizes rejuvenation and reconnection to the landscape by interacting with traditional tribal practitioners.

A significant component of cultural resource management in the region is a comprehensive Navajo Traditional Cultural Property (TCP) inventory, including cultural landscapes in areas or properties intersecting with the pipeline. As observed in the previous chapter, tribal views, especially regarding cultural heritage, can significantly impact a project, especially those undertaken in places of great cultural significance, such as the Navajo Nation.

The PA created and funded a Programmatic Agreement Program Manager (PAPM) to manage and coordinate all reviews and deliverables outlined in the PA. The PAPM is tasked to monitor and report to the PA Workgroup on compliance in terms of the PA. They also ensure technical reports meet professional standards, with Tribal input. The PAPM acts as a liaison between BOR and the Tribes to document all concerns. In addition, they coordinate and facilitate all meetings and site visits. Finally, they maintain open and transparent coordination between all Parties on design and construction between engineers, BOR archaeologists, and Tribes. They are also contracted to write a Best Practices Manual for the overall project.

A signatory agreement means that each participating agency has the authority to terminate the consultation process. As the lead agency, BOR ensures that all historical, architectural, and archaeological work performed under this Agreement is performed by or under the direct

supervision of a person or persons who meet, at a minimum, the Secretary of the Interior's Professional Qualification Standards and have been permitted for such work on public lands by the Bureau of Land Management (BLM), and tribal lands by the Bureau of Indian Affairs (BIA). For work on Navajo Nation lands and BIA-administered areas, BOR ensures that its contractors or employees are permitted by the Navajo Nation (Tribal Historic Preservation Officer) THPO to undertake work on tribal lands by the CRPA, which oversees the management of historic properties and other cultural resources. The Agreement also ensures that the relevant approval for construction is obtained and that the NGWSP would not undertake any criminal activities such as looting cultural artifacts. To ensure ARPA compliance on public and tribal lands, BOR collaborates with land-management partners.

Indigenous archaeology is a controversial topic that has been the subject of vicious debate. Opponents of the Indigenous methodology argue that it is not based on any scientific method. In contrast, this approach's proponents say it is the best method to conduct Indigenous research as it guarantees respect, ethical practices, and accountability. Outside the debate over scientific methods, there is a need for traditional Western archaeological research methods to be reworked, as they disempower and deny Indigenous communities their right to protect their culture and history. Current and future Indigenous investigations must be conducted under the Indigenous research paradigm. Employing Indigenous research involving collaboration and consultation with Indigenous people through practices is critical. The Navajo Nation's cultural resource program has proven that tribes should own and direct their preservation program based on their perspectives and beliefs. HPPD also shows how the Navajo Nation molded its unique program using Federal laws and policies. As Robert Hershey, Clinical Professor of Law Emeritus, Indigenous Peoples Law & Policy Program, University of Arizona College of Law,

stated on November 10, 2021, at the 7th Annual Repatriation Conference, “Each community should define how they want to be consulted.” They should “have their own tribal laws” guiding historic preservation.”

CHAPTER 4: METHODS AND DATA COLLECTION

This chapter summarizes the methods and data collection approach using structured interviews with various project stakeholders, including the Navajo project personnel and permitted cultural resource contractors (CRM firms). Aside from formal discussions, the research examined the project reports used to assess the cultural importance of the various TCPs about traditional Navajo Nation values.

Navajo Ethnographic Surveys

Collaborating with local Navajo people on the NGWSP is a crucial project component. The Navajo National Park Service issued National Register Bulletin 38, titled "Guidelines for Evaluating and Documenting Traditional Cultural Properties," and Navajo Nation's TCP Policy outlines procedures for identifying locations significant to Navajo People such as waterways, archaeological sites, ceremonial areas, springs, plant gathering areas, trails, mountains, hills, etc. It is essential to identify these critical places because NGWSP development may adversely affect them.

The evaluation and documentation of significant properties were conducted through ethnographic surveys of surrounding communities and traditional cultural practitioners. The Navajo Nation cultural resource management program was one of the first tribes to use traditional knowledge keepers (Watkins 2000; Doyel 1982) in cultural resource inventories. The knowledge keepers assist in identifying sacred sites and places of importance and help figure out

ways to resolve adverse effects. A CRM firm hired to work on Navajo land must demonstrate a good-faith effort to consult with local land users and the Chapter communities¹.

Navajo Methodologies

Navajo HHPD requires that all CRM firms perform ethnographic surveys for all their project, no matter the size of the project (Navajo TCP Policy). A successful and informative end product begins with a detailed scope of work for the ethnographic work to be performed. NNHHPD prefers Navajo-owned CRM firms to conduct the ethnographic inventories; however, there is currently only one firm on the Navajo Nation with this credential.

Ethnographic interviews were conducted with the Navajo communities during the NGWSP project. Dinetahdóó Cultural Resources Management (DCRM), a Navajo-woman-owned cultural resources management firm, conducted the Traditional Cultural Property study of the NGWSP's APE. The firm presents a unique tribal perspective because of Navajo archaeologists, anthropologists, and ethnologists. In addition, DCRM conducted a parallel study alongside the cultural resource inventory regarding cultural landscapes significant to the Navajo people. The interviews were semi-structured, with 8-10 open-ended questions on various topics of interest. The initial questions were supplemented with clarifying questions following responses and explanations to allow for a more flexible yet focused two-way dialogue.

Within the NNHHPD office, I work with a Navajo Traditional Cultural Specialist and review ethnographic reports. Together with BOR, we resolve any adverse effects to the TCPs or burials by avoiding and redesigning the waterline. Most of the ethnographic surveys are

¹ 110 Chapters make up the Navajo Nation Government and five agencies (Eastern, Western, Central Northern, and Fort Defiance). The Chapters are semi-self-autonomous, which means they make decisions regarding local concerns. An elected Council member is voted into the Navajo Nation Council to represent their Chapter communities. In addition, there are 24 Navajo Nation Council Delegates.

conducted concurrently with the Class III surveys. However, it is beneficial to all the parties that the ethnographic work be performed beforehand to identify significant areas influencing the project design.

Many Navajos who live around the project area are elders and speak only the Navajo language; therefore, CRM firms must use Navajo speakers to communicate effectively and interpret Navajo concerns and issues. In addition, having Navajo ethnographers on the project is vital because they can translate the Navajo language into English.

A Navajo ethnographer should be familiar with in-depth Navajo esoteric knowledge systems, especially when discussing sensitive information. Traditional practitioners obtain sacred knowledge based on proper ceremonial understanding; for example, Chaco Canyon's role in the Navajo Male Shootingway Chant. This religious knowledge is rooted in Navajo rituals, songs, and prayers. This level of consultation requires special attention, and the practitioners should be adequately compensated for their wisdom.

In contrast, an ethnographer may ask the general public who lives in the project area about any ceremonial sites or burials within the APE of the waterline. This method of consultation utilizes basic questions.

The Navajo Nation designed ethnographic questionnaires (Appendix A) and interview guidelines to help cultural resource contractors facilitate interviews (TCP Policy). All information obtained is confidential and is safeguarded at the HPD Office. The data and information collected include:

1. Source of information on traditional cultural properties:
 - Name(s) of interviewer and interpreter
 - Date of interview
 - Location of the interview
 - Language of discussion (Navajo or English)

2. Identification of each place by Navajo and English names (English translation of Navajo name if there is no English name) and location;
3. What type of place is it?
 - The description of its physical attributes or appearance
 - What are the traditional associations or functions (characteristics that make it a traditional cultural property)?
4. What impacts does the interviewee expect the proposed project to have on each place?
5. What modification or redesign of the proposed project would the interviewee recommend?
6. What measures would the interviewee recommend to mitigate the adverse effects if the resource cannot be avoided?

Personal experience

I live in a small community called Tohatchi, New Mexico, where Reach 9 of the NGWSP stretches east across my front yard. Navajo ethnographers identified my family's ceremonial and offering areas before BOR finalized the alignment of the waterline. In addition, there was a historic burial nearby, which is not evident by a conventional survey. My family's ceremonial site extended into the NGWSP's APE and consisted of a traditional Hogan and cookhouse. Family members who are practicing practitioners use the site repeatedly. Therefore, many significant ceremonies have occurred in this area, making it a traditional cultural property. After extensive consultation, my family advocated the realignment of the waterline to avoid the ceremonial site, offering areas and historic burial. The BOR accommodated our request. As a result, we can practice our ceremonies without the intrusion of the waterline.

Case Study Approach

In this research, I explored in-depth, multifaceted, and complex issues using the NGWSP case study approach, which describes the Navajo Nation's key issues about cultural preservation. The Navajo Nation Tribal perspectives on cultural resource management are relevant to the NGWSP. A case study is acknowledged as a suitable approach in many social sciences,

education, and community-based concerns. The case study allows the researcher to go beyond such boundaries to investigate specific individual or communal perspectives, in this case, views of the Navajo Nation regarding the management of NGWSP. A case study uses a mix of qualitative and quantitative data to discover phenomena by watching, recreating, evaluating interactions and human dynamics (Praetzellis & Praetzellis, 2011) of Navajo culture.

This case study focuses on a specific geographical region, the Navajo Nation, through which the water pipeline will pass. In its purest form, case studies examine real-world current events through a comprehensive contextual study of a limited number of occurrences or circumstances and their links. Thus, a case study is described as an empirical inquiry of an everyday event in its real-world setting where the border between the phenomenon and the context is unclear. In such cases, many sources of evidence are employed (Praetzellis & Praetzellis, 2011).

Case studies are frequently used in many fields, including sociology, law, government, and companies (Praetzellis & Praetzellis, 2011). Governments, for example, have conducted numerous case studies, mainly about manufacturing and its impacts on the environment, to implement appropriate legislation that ensures companies adhere to established ethical and moral norms. Thus, limiting data to only quantitative approaches would hide important data that needed to be uncovered in such investigations.

The case study design method has been chastised for its lack of robustness as a research instrument. As a result, case design must be meticulous. Depending on the researcher's worries about the issue, they can use multiple case designs or single cases. In this example, a single case design was used. This method will make obtaining information on the project more manageable, providing insights into tribal viewpoints on managing cultural resources in the area (NGWSP). It

will include examining the project's cultural reports about identifying and conserving Navajo Nation's historic sites, both constructed and natural.

The analyzed data sources used in my research were cultural resource survey reports, ethnographic reports, field site-visitation notes, PA Workgroup meeting notes, personal collaboration with CRM firms and Navajo communities. The goal is to understand the Navajo Nation's tribal viewpoints on managing cultural resources about the NGWSP. The data sources were supplemented by PA Workgroup meeting notes and participant observation with Navajo Communities and fieldwork notes.

These cultural resource survey and ethnographic reports were written by cultural resource contractors permitted by the Navajo Nation. The report content, analysis, and interpretations are created through consultation with the BOR and Tribal PA Workgroup. The analyzed reports are unaffected by the study's interest because they present significant decisions made for the entire NGWSP project, the unit of analysis, and provide detailed information about the project across the various stakeholders.

The contents of the reports were based on identifying the landscapes that were of cultural significance to the Navajo Nation and actions taken to preserve that heritage. The reports are broken down into narratives and analyzed closely with Navajo HPD. This method emphasizes the reports' framing and wording by demonstrating how BOR views its obligations and priorities to comprehend and explain the value of Navajo cultural heritage. Complementary material has been gathered from prior studies and reports from other relevant organizations and institutions to provide a more detailed picture. These other sources give information regarding NGWSP activity from a larger perspective. Newspaper articles and discussions are included to record and depict

the continuing arguments and viewpoints in the NGWSP's views on cultural landscape preservation.

Semi-structured interviews include essential questions that help outline the subjects to be covered. They also allow the interviewer or interviewee to go deeper into an idea or response (Segal et al., 2006; 121-144). According to Bernard (2002), semi-structured interviewing is best used when you only have one chance to interview someone and send several interviewers out into the field to gather data. Although this research is dependent on one interviewer, the use of a semi-structured interview guide will provide a clear direction for the interview process, resulting in obtaining reliable qualitative data that can complement the NGWSP project findings and also help in understanding the perceptions of the Navajo tribes regarding the project's efforts in preserving their cultural heritage.

The information gathered for the study is kept confidential, and participants are treated with dignity throughout the data collecting process. The information obtained will only be utilized for the study, and no participant identities were used. The organizations' and workers' confidentiality used pseudonyms and acronyms to hide the participants' identities. Furthermore, the information gathered throughout the data collecting process was encrypted and password-protected to prevent unwanted access.

CHAPTER 5: RESULTS AND ANALYSIS

This section describes the results of the study. The study's main goal was to determine what tribal people thought about cultural resource management in the NGWSP project. BOR invited 48 Tribes to develop an ethnographic overview study completed in 2013 (Gilpin and Thompson 2013). The overview documented definitive links between the San Juan Basin and the Hopi Tribe, Jicarilla Apache Nation, Navajo Nation, Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of San Felipe, Pueblo of Santa Ana, Pueblo of Santo Domingo, Pueblo of Taos, Pueblo of Zia, Pueblo of Zuni, Southern Ute Indian, and Ute Mountain Ute Tribe. BORs overview study entailed the analyses of archaeological and ethnographic reports regarding the cultural heritage in the Navajo Nation regarding the NGWSP project. The research involved exploring the perspectives of the Navajo Tribe on how the NGWSP considered the cultural resources in the project's path. In addition, the study aimed to investigate the measures taken to identify cultural landscapes in the NGWSP project. The analysis of the reports at the landscape level provides a clear picture of the actions taken to identify and protect these cultural treasures. Interviews with project leaders and community representatives provide complementary data.

Influence of the Programmatic Agreement

Numerous projects undertaken in the United States, especially on tribal land, are driven by Western cultural resource laws. The NGWSP Programmatic Agreement outlines how tribal perspectives are considered in all project phases. The Agreement brings many different stakeholders together to provide an avenue for the project to be carried out according to NHPA and the Navajo Nation cultural resource law, CRPA, to ensure that historic properties' effects were considered.

With this PA, BOR ensures that all Signatory and Concurring Parties meet their obligations; consult with tribal governments; supervise all cultural resource work; and compile all submissions and requests for concurrence from the Parties, including eligibility and effect determinations, treatment, or data recovery plans, and reports of findings or other relevant documents.

The Agreement also ensures that BOR will conduct Class III inventory surveys to identify the affected historic properties by the project. Finally, based on the analysis of the deal, tribal views are taken into consideration to preserve and protect cultural heritage sites in the path of the NGWSP project. The tribal communities continue to express interest in the project through continued consultation with the project leaders.

BOR had determined that the construction would adversely affect many historic properties within the NGWSP right-of-way. The adverse effects include changes in *association* for numerous historic properties of particular importance to tribes, associations between prehistoric sites, other National Register of Historic Places NRHP-eligible resources, cultural landscapes, and descendant communities.

As a result of the adverse effects to the landscape, BOR and the PA Workgroup identified some potential mitigation outcomes designed to document and convey the significance of jeopardized resources and associations. Five interrelated research themes emerged after many collaborative meetings with the BOR: cultural landscape, movement, identity, Native American perspectives, and participation. The last theme (i.e., Native American perspectives and participation) was chosen not only for its explicit significance to descendant communities but because they would inform, and be informed by, data recovered through the practice of Indigenous archaeology (BOR 2020). The program described was developed in consultation

with affiliated tribes over the last six years and will drive the IMT with Indigenous scholars conducting the work or IA methods using non-Indigenous scholars.

The PA Workgroup consists of various individuals from each Tribe or pueblo. The participants have different degrees of knowledge – lawyers, traditional and cultural advisors, Indigenous archaeologists, non-Indigenous archaeologists, etc.

At each consultation meeting, traditional prayer is said by one of the tribes in their language. The prayer brings all the people together and sets the tone for communal harmony. Each meeting includes updates from BOR regarding the progress of the waterline's funding, design, discoveries, and many more subjects. A traditional prayer ends the discussion. If the tribes choose to discuss sensitive topics, the BOR gives them an executive session to talk without the BOR or other agencies in the room.

Hearing Native Voices

Early in 2020, as the Covid-19 pandemic swept across the country, the PA Workgroup ceased in-person and field visits. However, an essential aspect of the PA workgroup is to carry out collaborative consultation and maintain our relationships as the project continues through the pandemic. As a result, the group has met virtually for the past two years. For example, the BOR and the PAPM team worked with NNHHPD to develop drone footage for virtual site visits. The footage contained still imagery and a video of data recovery on a site. The virtual site visit's goal was to glimpse the overall site and cultural landscape, showing landforms and water sources. This pilot project was successful, and the BOR is gearing up to conduct more virtual visits.

Each Tribe conducted data collection for the TCP Studies. The Tribe controlled the data collected and employed unique methods depending on their research questions. The study will help identify sensitive areas within the NGWSP project area and connect the Tribes to the

cultural landscape. Since most of the project is on Navajo Nation land, each Tribe applied for a cultural resource permit to conduct their studies. They are allowed on Navajo land to visit archaeological sites along the NGWSP corridor and participate in data recovery with this permit. The Hopi Tribe, Jicarilla Apache Nation, Pueblo of Acoma, Pueblo of Zuni, Santa Clara Pueblo, and the Ute Mountain Ute Tribe have begun their TCP Studies. Three TCP studies are complete, two are ongoing, and one is still in the planning stages.

Navajo Nation policies and regulations help guide what sorts of information and data are collected. In addition, it gives the Navajo Nation THPO decision-making authority. The local Navajo Nation Chapters influence Navajo Nation THPO decisions because the community members of the Chapters live, use, and provide stewardship of the land. For instance, the Navajo TCP Study identified many families and individual ceremonial locations. The users of the ceremonial areas were crucial in making mitigative decisions of the waterline's effects. In addition, the community is vocal in how their TCPs are protected. For example, they may want a protective fence around the area, monitoring, or make a request to realign the waterline. The NN THPO supports their recommendations. The same can be said for burials or Jischaah'. The ethnographic and TCP Study identified several graves along the waterline. Without the community's involvement, the burials would have unknowingly been destroyed.

Best Practices Manual

The PAPM team is developing a Best Practices Manual in coordination with the PA Workgroup. The goal of the Manual is to compile a "lessons learned" document that future projects like the NGWSP can implement. The document will be shared with all the parties involved with the project and interested agencies after project completion. The Manual covers how BOR collaborated with the Tribes on this complex project through efficient project

management. Section 106 of NHPA does not spell out a process for managing large projects, and regulations do not cover prescribed methodologies for effective collaboration between the parties involved. However, meeting the regulatory requirements of NHPA Section 106 and collaborating with the living descendants is critical to the project's success.

Identification of Culturally Significant Landscapes and Artifacts

The identification and inventory of landscapes and cultural resources is a critical goal of the Programmatic Agreement. Therefore, the BOR should meet the standards of the Navajo Nation and the Secretary of Interior. The Agreement ensures the identification of new and existing culturally significant artifacts and landscapes in areas on the Navajo Nation, thus, reclaiming and reconnecting people to places. Project participants positively received this approach.

Disposition Policy

Traditional archeological practices removing crucial artifacts and human remains from Navajo communities and converting them into commodities owned by non-Indigenous institutions was ostracized by the Navajo Nation. Archaeological curation practices historically involved depriving Indigenous communities of their heritage by taking away their cultural artifacts and putting them into museums to build the reputation of these institutions and researchers (Murray 2011). Removal of heritage happens at the expense of the interests of the Indigenous people. Critics of this archeological practice argue that it represents one of the fundamental problematic aspects of Western science.

The Navajo Nation HHPD adopted the Policy for the Disposition of Cultural Resources Collections to guide the curation and collections management using its fundamental values,

which challenge Western archaeological practices. Navajo traditional teachings stress non-disturbance to cultural sites and removal from the landscape. When removal or disturbance occurs, it disrupts the natural state of *hozhó*, or harmony, beauty, and balance. Therefore, the THPO office discourages excavation/disturbance and removal of resources from our ancestral sites unless data recovery is the only alternative treatment measure. When removal is completed, analysis is conducted following our guidelines. Finally, the remains/collections promptly returned to the cultural landscape except for items that the medicine people will reuse for restoring *hozhó* to the people. The Navajo believe that broken pottery, arrowheads, basketry, etc., have completed their lifecycle and should be offered back to nature, not stored on shelves in a repository; however, if the research questions will be answered by studying broken pottery, arrowheads, and basketry. In that case, it is understandable and necessary to collect and analyze them to answer those questions. They can then be returned to the earth. Data recovery and excavations are still essential aspects of archaeology and defining our history as a people. Limited excavation and non-collection methods can be incorporated into the archaeological discipline even when most items are returned to the landscape to undergo the natural course of returning to nature. The items not returned to the landscape can be of value to Tribes, archaeologists, and researchers by curating them. Especially collections that help to tell our history with assistance from the science of archaeology. Using this method, combining different perspectives will bring *hozhó* to the field for CRM.

The Navajo THPO, the BOR, has conducted four reburials of collections for the NGWSP. This approach has helped elevate some of the budget, curation, and storage space at repositories while keeping with Navajo principles.

Analysis

The Navajo Nation carefully examines and encourages economic growth. It has developed its lands and extracted resources to fulfill the Navajo people's needs. As a result, the Navajo Nation's expansion influences cultural resource management. Traditional Navajo cultural values protect TCPs, Federal and Navajo Nation legislation, and regulations. Using Navajo fundamental teaching, *T'aa altso Nizhoni doo T'aa altso diyin* – All is beautiful and sacred. These traditional teaching guide the Navajo Nation's preservation work on behalf of the Navajo people.

The Navajo Nation requires comprehensive cultural resource studies and landscape analysis to ensure projects conform to Navajo principles. As Dr. Klara Kelley writes in her book, *Navajo Sacred Places*, Navajo believe that “the whole land is sacred.” She refers to the complex relationship between the environment (landscape features, animals, plants, etc.) and the people themselves (1994;1-3). I offer a detailed analysis of the significant cultural resources within the NGWSP path according to the perspectives of the Navajo.

This history of archaeology on the Navajo Nation demonstrates that Western archaeologists did not distinguish between the "natural" and "cultural" resources. Thus, in the NGWSP project, significant effort is taken to preserve the Navajo culture. To capture the essence of the tribal perspective of the cultural resources, the project team utilized the tribal cultural landscape technique, a holistic cultural landscape approach. Various landscapes, locations, and cultural heritage resources can have different meanings and degrees of value depending on how individuals from different cultures, periods, and backgrounds interact with them. Therefore, the chance of cultural heritage preservation improves when utilizing this approach.

Cultural Resources Approach

A Navajo worldview acknowledges vast interconnections and holds that no single artifact or species exists in isolation. For example, important cultural or spiritual places may include an offering area or archaeological site with culturally significant plants, lightning-struck trees, with an underground habitation component. By not understanding this viewpoint, many cultural resources have been lost or destroyed by failing to understand their significance and relationship to other resources in the mosaic of the cultural landscape. Based on the analysis of the Programmatic Agreement, the inventory of cultural resources was conducted by a team of archaeologists and Navajo representatives conversant with the Tribe's cultural heritage. The NNTHPO oversaw the work and collaborated with BOR diligently.

The requirement for a broad team necessitated the cultural resources approach (CRA) in the TCP inventory. CRA provides an opportunity to integrate natural and cultural resource management and engage diverse voices and perspectives in techniques and practices (Rogers, 1992; 741). The approach is based on the premise that humans are intrinsically related to the landscape, shaping it and being affected by it. CRA examines how a location's resources interact with surroundings over time, taking cultural heritage and resources into account as part of the ecosystem and the broader landscape (Rogers, 1992). The approach is similar to ecosystem-based management in that it integrates cultural and natural resource management at the ecosystem and landscape levels. CRA may also reveal historical and contemporary artistic voices connected with a landscape, enabling the broadest possible public participation in planning and administration.

The Navajo Nation has a clear and better understanding of the region; for this reason, their involvement in the planning phase and future engagements is essential. They have a

thorough grasp of their intertwined environment (Ingold, 2000) in which they engage. This knowledge results from generations of involvement and contact with the natural world. Because species are intertwined, Navajo people have long recognized that resource management techniques impact the propagation and proliferation of other species. Under National Register Bulletin 38 (Parker and King 1990), a traditional cultural property (TCP) has conventional cultural importance.

Navajo Cultural Landscapes

A Navajo tribal cultural landscape (TCL) connects the people to a geographical area resource (natural and cultural), using Navajo cultural beliefs, practices, and language. For example, archaeological sites, burial grounds, and customary use sites have unique meanings to Navajo people with ties to the area and understand the tribal cultural landscape. This link is vital for, and frequently inseparable from, a community's cultural identity in many areas. The tribal cultural landscape description produced during this research combines the almost universal idea of Indigenous peoples' relationship to their natural environment across the southwestern United States.

Table 1. Cultural Landscape Resources Important to the Navajo People

(Note: The significance of particular cultural resources is contextually dependent and requires evaluations by knowledgeable people (Navajo archaeologists, traditional practitioners))

<i>Yáidihit– Father Sky</i>		
Landscapes	Navajo Emergence Place	Air
Mountain Ranges	Sacred Mountains	Clan Origin places
Archaeological sites (Pre-contact)	Major/Minor Rivers/Springs	Trails
Ceremonial areas – offering sites	Talking Rocks	Wild Game Corals
Trees	Navajo homesteads/hogans	Eagle Catching Traps
Places for gathering medicines	Sweat lodges	Trail Shrines
Petroglyphs & Pictographs	Homes of Navajo Deities/Beings	Rock outcrops
Agricultural Fields - Cornfields	Mineral outcrops or quarries	Mineral deposits (azurite, iron ore, jet, mica, obsidian, turquoise, salt, hematite)
Confluence of rivers	Places where apparition or other supernatural events occurred	Areas where life-cycle events occur (umbilical cord of newborn)
<i>Nahasdzáán – Mother Earth</i>		

Oral traditions and cultural practices can identify relationships that differ from one group to another and can be defined historically or geographically. Many tribes may have knowledge of and connections to the same location. Some tribes migrated or were displaced, and they may still exist today in areas other than where they began. When seen as a TCL, these place-based

relations helped the BOR comprehend the larger context of a site, the complexities of Navajo identity, and how we perceive key sites and resources. This section will discuss a detailed analysis of culturally significant cultural landscape and other resources based on the perception of the Navajo beliefs. These places are governed by traditional Navajo rules, which demand that they be safeguarded and, ideally, left in their natural state. These are power centers utilized for Navajo harmony, balance, protection, healing, stability, and survival. These sites may or may not result from human activity and may simply be natural aspects of the terrain. Thus, the community and its point of view shape TCPs and their relevance. The Navajo sacred mountains, for example, are TCPs for all Navajos. Still, an individual offering site may be significant just to a person, family, community, or ritual.

Significance of mountains on the landscape

Mountain ranges play an essential role in Navajo ceremonial and oral history, both inside and outside the Navajo Nation. Mountains are categorized as masculine or feminine; male peaks are generally linked with masculinity and roughness, while female mountains are associated with femininity and smooth or soft characteristics. The gender of the hill is used by the mountain's fauna, vegetation, minerals, and other resources. Navajo histories are embedded in landscapes of various sizes, such as Place of the Sun, which is related to Navajo traditional history and includes references to the Sun-Bearer and Changing Woman (Blake, 2001; 29-62).

The mountains have tremendous cultural meaning; some mountains have higher sanctity based on supernatural entities and the importance of Navajo events (Jett, 1992). Mountains connect people to their origin and anchor the Navajo people's proper pursuit of a way of life. According to the analogy underlying the significance of the mountains, being the earliest

locations created in their universe, the holy people are most accessible to mortal travelers. The importance of mountains is further demonstrated by gathering soil, stones, water, and plants (Jett, 1995) at the four sacred mountains. Mountain soil represents earth flesh, according to Jett (2001). The mountain soil bundle carried by traditional Navajos represents the medicine bundle of First Man and First Woman who brought all life into existence (Gill, 1981; 263-268). Navajo *Hataali* (Chanters, singers, medicine men) collect these mountain items for ceremonial and therapeutic purposes. According to Jett (1992), *Hataalis* regularly return to the sacred mountains to refill their graces and pray for rain or drought relief. Sacred mountains are not novel in the Navajo worldview. Still, they add significance due to interrelationships that occur in indivisibilities or the view from one point to another. The importance of each mountain is explained in the Navajo ceremonial sunrise cycle, which progresses from east to south, west to north, and eventually to the center (Jett, 1992). The cultural significance of these mountains is exemplified by the Navajo flag and seal, which prominently display the four cardinal mountains.

Mount Blanca, or *Sisnajini*, means a mountain with a dark belt around its waist. It is the eastern sacred mountain near Alamosa, Colorado. It is the east border of the Dinétah, the ancient Navajo homeland (Navajo-Gallup, 2016). It is adorned with white shells and symbolized with the color white. It is covered in daylight and the morning, and male lightning fastens it to the ground. To the Navajo people, Mount Taylor, or *Tsoodzil*, means "Blue Bead" or "Turquoise Mountain," is the southern mountain bordering Navajo land, located near Grants, New Mexico. Turquoise Girl lives on the mountains of the South (Jett, 1995), guarded by Cougar. *Tsoodzil* is represented by blue and adorned with turquoise fastened to the earth with female lightning. Sunbeams anchor San Francisco's summits, and the mountain is enveloped in a veil of golden haze (Wilson, 1995). It is represented by an abalone shell and the color yellow. According to the

Navajo people, *Dibé Ntsaa*, or Mount Hesperus near Mancos, Colorado, is shrouded in darkness and secured to the earth with a rainbow. The rainbow beam reflects peace and harmony after a day of work (Jett, 2001). Hence, the mountain represents darkness and is situated in the north.

Rivers and waterways

Similarly, the Navajo homeland is bounded by four rivers in each of the four cardinal directions. Rivers and waterways are connected to the ceremonial history of the Navajo. The rivers are living beings that are protectors of the Navajo land and its people (Roberts et al., 1995). To the East of Navajo land is the Rio Grande River, which runs from the Colorado Rockies into the Gulf of Mexico. To the south is the Little Colorado River, a tributary to the Green or Colorado River, a significant river to the West. It runs from the Rocky Mountains in Colorado to Lake Mead in Arizona and Nevada. To the north is the San Juan River, which is a significant tributary to the Colorado River and runs from Colorado to Northern New Mexico and Southeastern Utah. Traditional Navajos make offerings and pilgrimages to the mountains and rivers for their well-being (Martin, 2011). Thus, the four holy mountains and four sacred rivers, which are vital in all Navajo rites, are revered by all Navajos.

Sacred Areas

The Navajo people have sacred places viewed as significant importance to the people. Traditional Navajo people still make gifts in windswept soil, springs, rivers/lakes, plant collecting locations, and canyons (Martin, 2011). Cultural sites hold significance in the day-to-day activities of the Navajo people. Unlike mountains and rivers, these ceremonial sites and burial sites are exposed to the dangers of interference in projects such as NGWSP. As observed during the research, the Navajo people expressed appreciation in identifying sacred sites that hold significant

cultural value and collaborated on the project. Traditional cultural properties are of considerable importance to the Navajo people, even when they lack clear evidence of human use. However, such places are not likely to be detected by conventional surveys. No other way of seeing such sites has been used systematically. Navajo TCPs without clear evidence of human use include, but are not limited to: areas for gathering plants, minerals, and soils for ceremonial and other conventional uses; prayer offering places; places associated with the origin stories of particular ceremonials; places related to the general Navajo origin story; places associated with origin stories of particular ceremonials; areas related to the origin of clans; places where Navajo customs originated; places identified as the home of a Holy Beings such as Wind, Lightning, Big Snake; location of echoes or Talking Rocks, which convey human words to the Holy People; natural discoloration of rock that has some supernatural power; places where an apparition or other supernatural event occurred; and places that have played a part in the life cycle rituals of individuals (such as the spot where a newborn baby's umbilical cord is placed) (Navajo TCP Policy). These places feature natural landscapes, such as mountains, hills, rocky outcrops, springs, and individual trees. Unlike previous projects that did not appreciate the Indigenous people's cultural heritage, this project's efforts to preserve that culture are highly valued and receive community-wide acceptance.

Ceremonial sites are considered TCPs due to their cultural importance to the Navajo people. They are of archeological significance because they heal mental, physical, and spiritual ailments (Blake, 2001). Enemy Way, Mountaintop Way, Night way, and other Holy Way rites and other ceremonies are held at these ceremonial locations. Since prayers and liturgical practices were sung there, these locations should be protected (Martin, 2011). Structures at ceremonial sites are utilized for formal events, ceremonial feasts, and proper participants' temporary lodging. A huge

suitable building to the northeast and a cooking facility to the Southwest, for example, can be found at an Enemy Way location. Local communities highly value these ceremonial sites, and they are frequently utilized even today for ceremonial purposes.

The NGWSP Programmatic Agreement entailed identifying cultural resources in the Navajo Nation. Through analysis of the publicly available records of the project and questionnaires responses, there was a positive perception of the steps taken in managing these resources. In addition, identifying previous ceremonial sites lost to the elements or outside the Navajo reservation ensured their protection, which advantageous the Navajo people.

Archeological Sites

Because of their age and location, archeological sites may be considered TCPs. Archaeologists assess the value of these sites depending on the knowledge they may contain about a previous life. Lithic scatters, rock alignments, Anaasázi occupancy sites, hearths, changed landscapes, and Navajo and non-Navajo sites are among the archeological sites. Some Navajos think some of these locations are TCPs. These TCPs may be historic Navajo home sites with critical Navajo histories. An Anaasázi area may also be related to Navajo traditional histories, such as ceremonial, Clan, or general Navajo history. For example, Canyon de Chelly's White House Ruins have a good account (Jett, 2001). The Anaasázi, the ancient inhabitants of the Southwest, have a close relationship with the Navajo. The Navajo people's forefathers and mothers are as distinct as their Clans. Each Clan has a unique tale of how they came to be a part of the Navajo people. Some Navajo Clans have pre-Columbian roots in the Southwest, while others are dispersed over North America (Lynch, 1987).

Some pre-Columbian cultures moved to other locations after abandoning what is now recognized as archaeological sites. Eventually, some of them joined forces with their Navajo

ancestors to create a new way of life. The Navajo culture sprang from this way of living. Those Anaasázi who survived were absorbed or transformed into modern-day clans (Lynch, 1987). Although these pre-Colombian cultures relocated, their prehistoric sites still exist. According to the Navajo, although these places look like ruins, the Navajo people still view them as living. Because some of these sites are located outside the Navajo reservation, they may have been forgotten by the tribes. Thus, the project's initiative to inventory and categorize these sites marks a significant milestone in preserving Navajo archeological sites.

Mineral and Plant Gathering Places

Among Navajo, gathering places are of significant importance to their cultural heritage. This TCP category denotes locations where natural resources, such as wildlife and flora, were hunted and gathered for various reasons. Game trapping corrals and eagle traps are examples of these buildings and locations. Plant and herb gathering areas are beneficial for multiple reasons (Wilson, 1995). Plants and herbs are used for various reasons, such as medicine, and some of them were used for ceremonial purposes. Mineral collection for ceremonial purposes is another crucial aspect of Navajo culture. Mineral collecting can include gatherings for washing wool or ceremonial purposes and harvesting red ochre as paint and other rituals. These gathering places hold significant importance to the Navajo people and should be protected.

CHAPTER 6: CONCLUSION

Most historic preservation in the United States is part of cultural resource management. Cultural resources are an essential component of the human environment, and they must be protected with the other biological, social, and geophysical features of the environment or ecosystem. Excellent environmental stewardship necessitates good resource management, including managing our tangible and intangible cultural resources. The preservation of cultural resources requires the collaboration of resource specialists (e.g., anthropologists, archaeologists, architects, archivists, engineers, folklorists, and historians), material scientists, decision-making land managers, and Indigenous community members with ties to heritage resources. As a result, each participant organization and person (even scientists) maintain their interface by understanding (and respecting) other people's values and languages.

Charting Forward: Recommendations

According to Tainter & Lucas (1983; 707-719), the standards of Criterion D under the National Register Bulletin have been used since 1934. The term "significant" referred to sites recognized at a national level but have since been redesigned to signify sites at state and local levels. I feel that this way of illustrating significant sites is appropriate to some extent. However, Indigenous people should be left to decide which sites are substantial or essential in collaboration with the Federal agencies and archaeologists. CRM archaeology to Indigenous people represents a third-person, detached, objective view of history. Historical narratives generated by archaeologists have little direct relevance to contemporary Indigenous people. On the NGWSP, for instance, some artifact scatters along the NGWSP did not meet the criteria according to the Western archaeological perspective of the NRHP; however, some Tribal opinions countered the

BOR and the CRM firm. The BOR, in collaboration with the Tribes, PA Workgroup, and THPO, decided what is considered significant.

Lynne Sebastian (2010; 91-114) writes NRHP was initially designed and written for historic buildings but retrofitted to include archaeological sites. Criterion D, for example, has been used to evaluate ancestral sites because they yield valuable information to prehistory or history. I agree with Sebastian; however, if we were all to write research designs for CRM, it would be costly, time-consuming, and most agencies do not have much of either, especially Tribes.

The Navajo CRPA of 1988 states that NNHPD "shall create, expand, maintain and administer a Navajo Nation Register of Cultural Properties," or "Navajo Register." The Navajo Register's list includes buildings, districts, objects, places, sites, and structures significant in Navajo Nation history, architecture, archaeology, engineering, and culture. Although NNHPD advises federal, state, and sponsors to protect and manage Navajo cultural resources, we have not developed written criteria. NNHPD uses the National Park Services, National Register Bulletin 15's, *How to Apply the National Register Criteria (Register) for Evaluation Standards A, B, C, and D*, to identify the type of significance. Evaluating our heritage under these four criteria falls short of Navajo people's values and needs. As a Navajo archaeologist and a Section 106 Reviewer for my THPO, I have asked many questions. How should an archaeological site, landscape, ceremonial area be documented from a Navajo or Indigenous perspective? What essential aspects should be recorded and preserved? Are the National Register Criteria sufficient? What criteria can be added to fit our heritage needs? Many tribal preservation offices are writing their standards based on what is important to them.

In April 2019, I attended the SAA Annual Meeting in Albuquerque, New Mexico. One of the sessions I attended was titled, *Proposed National Register's 5th criteria*. The presenters argued that the current register criteria do not sufficiently include Indigenous sites, especially sites that we hold sacred. Therefore, the presenters drafted wording for Criteria E, "possess attributes and elements considered significant to Indigenous groups representations of cultural lifeways, beliefs, ceremonial activities, customs, genesis, astronomies, artistic forms, technologies, and spirituality, following NHPA Section 101(d) (6) (b) or NHPA 54 USC 302706(b). I agree with this new wording and support the latest addition to the Register. I recommend the NNTHPO adopt and craft a version of this criteria when writing our Register. National Register Bulletin 15 is outdated and should be revised to reflect today's thinking and the decedent communities' input. What criteria are essential to the Navajo Nation? How do we want our history interpreted? What do we want to pass on to our future?

Western archaeology studies and interprets the material remains of the ancient and recent human past using a colonial scientific lens. Based on the values of Western culture, the study of archaeology focuses on physical and materialistic remnants of archaeological sites. According to the National Park Service, an archaeological site is considered a physical "location of a prehistoric or historic occupation or activity, or a building, or structure whether standing or ruined." The study of archaeology further analyzes the remaining physical materials to comprehensively and broadly understand human culture. The National Register Bulletin reflects the Western perspective that a cultural landscape is a built or designed landscape, for example, a park, building, or garden.

On the other hand, a cultural landscape to the Navajo is a natural landscape. These two perspectives demonstrate the disconnect between the two worldviews of what the cultural

landscape is. Historic preservation laws and policies draw from the premise that culture is separate from nature. Therefore, if a landscape is not physically altered, it is not considered culturally significant.

Updating existing Navajo Cultural Resource Laws and Policies

NNHHPD was one of the first tribal preservation offices established by the Navajo Nation Council; it has been over 33 years since the passage of CRPA. I recommend revising the Act to reflect more Navajo perspectives. In addition, I would like to see work on a modified version of CRPA, working in collaboration with our HAC committee and creating our Navajo Register of Historic Places.

I recommend that NNHHPD develop detailed cultural resource management and ethnographic procedures for CRM firms and Federal agencies to use for cultural resource inventories on Navajo Nation land, mainly when they write a scope of work. Procedures The document should detail the importance of researchers consulting with elders and traditional practitioners on all projects on Navajo Nation land. In addition, CRM firms should be required to use qualified Navajo speakers trained in archaeology and anthropology. This method will alleviate misinterpretations and translations and protect privileged information. The practice will also need all Navajo language to be spelled correctly.

A compensation pay scale should be created to ensure knowledgeable people are paid for their knowledge and time. At the end of a project, the information collected must be given back to the communities for various teaching programs or youth programs.

Positive Outcomes of the Project

This NGWSP has been rewarding in and of itself since it seeks to provide a reliable water supply to the Navajo and Jicarilla Nations in the arid Southwest. Flowing water has never been available to large swathes of Indigenous settlements; this project will change that. In addition, the NGWSP project has been an excellent way for charting a path forward in protecting the cultural heritage of other tribes, as observed in what the Navajo Nation views as cultural resources. Finally, this project brought many people together and conveyed many different Tribal voices and perspectives. The NGWSP's success considers tribal engagement and collaboration as mitigation. The Tribal communities will move forward with alternative mitigations taking their TCP Studies back to their communities to use as a teaching tool for the youth.

Future of NGWSP

The NGWSP proposes to be completed in 2029, five years later than initially expected. As a result, NNHHPD is entering into a financial assistance agreement (FAA) with BOR to “effectively participate in the PA.” Recently the Navajo Nation submitted a scope of work to the BOR to cover the cost of supporting the cultural management of the project. The FAA will fund a full-time qualified archaeologist to oversee NGWSP using Navajo Nation policies, including reviewing reports, conducting internal consultation, Navajo Nation departmental coordination, participating in meetings, ensuring project contractors have all necessary permits for archaeological and ethnographic fieldwork, participating in monitoring activities, and other related actions. Consultation with the HAC and traditional cultural people is an added scope to the project. The knowledge collected will be incorporated into the Navajo landscape database for future management and protection. The Navajo HHPD will not expend its tribal money to

oversee this Federal project. The funding will cover the time and attendance of the archaeologist to attend the quarterly PA Workgroup meetings. The cost to coordinate internal Navajo departments is also written into the SOW. NNHHPD uniquely oversees cultural resources; however, our work overlaps with and affects the work of other Navajo departments. In addition, the Scope includes funds to organize and digitize all documents on the waterline and incorporate them into our Nihidatabase system. Finally, there is a monitoring task to HHPD can respond to discovery situations and disposition of artifacts.

The Navajo Nation Tribal Preservation Office and other federal agencies have consulted and collaborated on various federally funded projects on and off of Navajo Nation lands. The Navajo Nation expressed significant interest in the NGWSP project because the waterline project is being constructed within an important cultural landscape located within their tribal lands and traditional use areas.

Public involvement is imperative to the success of the Section 106 Process, especially in areas located within the ancestral lands of many American Indian Tribes. Indigenous peoples must be allowed at the table to voice their concerns when it comes to projects that may adversely affect areas of importance to them.

Many of the involved tribes request involvement with Section 106 at the level of genuine government-to-government consultation where high-level agency representatives meet with Tribal leaders, cultural advisors, and Tribal Historic Preservation Offices. To have successful and meaningful consultation with Tribes, Section 106 should begin early in the planning process. Mutual respect and understanding of concerns are important when engaging in talks, especially between Tribes and Agencies. Federal agencies should understand that they speak to the Indigenous people who have direct roots in the landscape. Federal agencies also need to work

with the recognized Tribal Historic Preservation Office and their advisory group of religious leaders. Many consultation meetings with BOR involving Navajo THPO were small and private, where NNHHPD could be more open to discussing their concerns.

BOR became familiar with Navajo and each Tribe's preferred consultation method; not every Tribe is the same. Navajo, as well as other Tribes, are consulting with several different agencies at a given time. BOR shared archaeological site information and locations with each Tribe while omitting sensitive areas and TCPs of other Tribes. According to the PA, in becoming familiar with consulting with Tribes, the Federal agency shared confidential information such as site information and site locations. For example, the Pueblo of Acoma requested the historic property areas to help them make better-informed decisions. Tribes are very motivated to protect their cultural sites. "Meaningful consultation is predicated on informed participants" (NATHPO Best Practices Manual, 2005).

It is also essential to be aware of the religious cycles of each Tribe. On certain occasions, they are unable to meet because of religious obligations. It is also necessary to consider that Tribes cannot talk about specific subjects at certain times of the year, or Tribes can only speak on particular issues if initiated into that religious society. This is a stringent rule.

Often Indigenous archaeologists are caught in the middle between the Western archaeological method of assessing significant cultural resource sites and the Navajo/Indigenous perspective for evaluating sites. On Navajo Nation land, an "archaeological site" ranges from Paleo-Indian period sites to modern Navajo sites and is viewed in a multi-layered and complicated landscaped fashion. To Navajo cultural resource managers, elders, and cultural advisors advise every ancestral site is "significant," and they are impressions left by our ancestors. Therefore, archaeological sites should not be treated as research subjects/objects. The

spiritual essence of our ancestors still lives within the footprints, fingerprints, imprints, and impressions that they left behind as the archaeological record.

Additionally, Indigenous ancestors are members of many present-day Southwestern Tribes; by extension, their living footprints, fingerprints, imprints, and impressions are part of our communities. Therefore, indigenous people are stewards of our ancestral sites. Our responsibility is to protect them to ensure that our ancestors' footprints live on.

The main objective of this study is to explore the tribal perspectives on cultural resource management regarding the NGWSP project. The analysis of publicly available materials and interviews with tribal and project representatives have clearly illustrated the importance of cultural diversity resources to the Navajo people. In addition, the project's concerted efforts in preserving the Navajo tribes' cultural heritage have positively affected the project.

The Navajo Nation must maintain and grow its cultural resource management program. As Navajo People, our inherent rights and obligation make CRM our priority. CRM is vital to the Navajo Nation because it helps understand what happened in their past and the Five Fingered Earth Surface People. Navajo involvement in CRM projects will guide the THPO to make better decisions for their future. In addition, it honors and protects the legacy of our ancestor's legacy and promotes sovereignty for the Navajo Nation by maintaining our cultural beauty and recognition of our heritage. It covers the vast interests of the Navajo people, and most importantly, it ensures that our legacy lives on in our younger generations to come.

APPENDIX A



**THE NAVAJO NATION
HERITAGE & HISTORIC PRESERVATION DEPARTMENT
Cultural Resource Compliance Section**

**SACRED & TRADITIONAL CULTURAL PROPERTIES
INTERVIEW GUIDING QUESTIONS &
DOCUMENTATION FORM**

PROJECT NUMBER/NAME:

PROJECT LOCATION:

CHAPTER:

LEGAL DESCRIPTION (for large projects, give Township, Range, & Sections only):

UTM COORDINATES (for small project areas only center point):

DATE OF INTERVIEW:

NAME(S) OF INTERVIEWEES:

NAME OF INTERVIEWER:

NAME OF INTERPRETER (if any):

WHAT LANGUAGE WAS THE INTERVIEW WAS GIVEN:

OTHERS PRESENT:

WHERE WAS THE INTERVIEW CONDUCTED? (Interviewee's home, project area, other specify):

WAS THE INTERVIEW REFUSED?

Yes No

1. How was the project area identified to the interviewee? (Site visit, map location (specify map), other methods (specify):

2. Which of the following types of sacred/traditional places, if any, does the interviewee identify? Inside or immediately adjacent to the project area? (Attach continuation sheet with information if necessary.)

a. A place for gathering plants for use in ceremonies (specify plant and ceremony if the interviewee is willing to supply that information:

b. A place for gathering plants for other purposes (specify plants and uses):

c. Place for gathering contents of sacred bundles (specify material gathered and typed of bundle, for example, Dzil leezh, Mountain Soil Bundle):

d. Place for gathering other materials for traditional purposes (specify materials and purposes):

e. Place where a ceremony has been held (specify ceremony; also names of sponsors and dates, if possible):

f. Former home site location (specify former residents and dates of use, if possible):

g. Former sweathouse location (specify former users and dates of use if possible):

h. Grave (specify the name of deceased and relationship to the interviewee, if possible; refer to Navajo Nation Policies and Procedures Concerning the Protection of cemeteries, Gravesites, and Human Remains for additional documentation and treatment required by Tribal law).

i. Prayer offering place (specify the type of prayer ceremony associated with it, if any, and kind of offering, if any):

j. Place associated with general Navajo origin (Emergence) story (indicate which part of the story the place is associated with):

k. Place associated with the origin story of a ceremony (specify ceremonial and how place figures in its origin story):

l. Place associated with the origin or home of a clan (specify clan and indicate nature of its association with the place):

m. Place identified as the home of a Holy Being such as Wind (Nilch'i), Lightning (li'ni), Big Snake (Tl'iistosoh) (specify which Holy Being, indicate any associated story):

n. Location of Talking Rocks (Tse Yalti' i--rocks that convey human words to the Holy People):

o. Petroglyph, pictograph, or natural discoloration of rock that has some power (specify):

p. Place associated with other traditional stories (give the story and indicate how the place is associated with it):

q. Other types of sacred/traditional places (describe):

3. Indicate locations of all resources listed above on portions of the USGS map and attach a copy to this form.

Yes No

4. Does the interviewee consider the proposed development a threat to any of the above types of places?

___ NO

___ YES (specify nature of the threat or perceived impact of the proposed project on the place):

5. If yes, what modification or redesign of the proposed project would the interviewee recommend not to threaten the place?

a. Avoidance (specify how close redesigned project could come to place)

b. Alternative location (specify - attach portion of USGS map if possible showing location):

c. Other (specify):

6. Is there anyone else that the interviewee feels should be consulted (filled out a separate form for each of these interviewees, but list names and locations of homes here:

7. Does the interviewee consider this information confidential? Who can/cannot view this information?

APPENDIX B

THE NAVAJO NATION
CULTURAL RESOURCES PROTECTION ACT
(NNCRPA)
TRIBAL COUNCIL RESOLUTION CMY-19-88

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The NAVAJO NATION
CULTURAL RESOURCES PROTECTION ACT

CMY-19-88

Navajo Nation Code, Title 19

Chapter 11–Sections 1001-1061

§ 1001. Findings

- A. This Act may be cited as the “Navajo Nation Cultural Resources Protection Act”.
- B. The Navajo Tribal Council finds and declares that:
 - 1. The spirit and direction of the Navajo Nation are founded upon and reflected in its cultural heritage;
 - 2. The cultural heritage of the Navajo Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the Navajo People;
 - 3. Cultural properties of the Navajo Nation are being lost or substantially altered, often inadvertently, with increasing frequency;
 - 4. The preservation of this irreplaceable cultural heritage is in the interest of the Navajo Nation and its people so that its vital legacy of cultural, educational, esthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Navajos;
 - 5. In the face of ever increasing energy development, economic development, sanitation and public health developments, the present Tribal governmental and non-Tribal governmental programs to preserve the Navajo Nation’s cultural resources are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of the Navajo Nation;
 - 6. Increased knowledge of our cultural resources, the establishment of better means of identifying and administering them, and fostering their preservation will improve the planning of federal, Tribal, state and other projects and will assist economic growth and development and expeditious project implementation; and
 - 7. Although the major role in cultural resource preservation has been borne by the federal and state governments, and both must continue to play a role, it is nevertheless essential that the Navajo Nation expand and accelerate its cultural resource preservation programs and activities.

§1002. Policy

It shall be the policy of the Navajo Nation, in cooperation with the states, federal government, other Indian Tribes, and private organizations and individuals to:

- A. Use appropriate measures to foster conditions under which our modern society and our cultural resources can coexist in productive harmony and fulfill the social, economic and other requirements of present and future generations;
- B. Provide leadership in the preservation of cultural resources of the Navajo Nation;
- C. Administer Navajo Nation-owned, administered or controlled cultural resources in a spirit of stewardship and for the inspiration of present and future generations;

- D. Contribute to the preservation of non-Navajo Nation-owned cultural resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;
- E. Encourage the public and private preservation and utilization of usable elements of the Navajo Nation's stock of historic buildings and structures.

§ 1003. Definitions

As used throughout this Act, the term:

- A. "Archaeology Department" means the Navajo Nation Archaeology Department.
- B. "Building" means any structure made by man primarily to provide shelter.
- C. "Cultural property" means any cultural resource deemed to be important enough to warrant listing in the Navajo Register.
- D. "Cultural resource" means any product of human activity, or any object or place given significance by human action or belief.
- E. "Department" means the Navajo Nation Historic Preservation Department.
- F. "District" means any discrete area comprising buildings, objects, sites or structures that form a recognizable, unified whole.
- G. "Indian" or "Indian person" mean any enrolled member of an Indian Tribe recognized by the Secretary of the Interior.
- H. "Lands in which the Navajo People have a historical interest" means all lands historically or traditionally used by the Navajo People.
- I. "Navajo Lands" means those lands held in Trust for the benefit of the Navajo Nation and those lands which the Navajo Nation holds in fee simple or in which it has a legal interest.
- J. "Navajo Landmarks" means those cultural properties that are of significance to the entire Navajo Nation.
- K. "Navajo Register" means the Navajo Nation Register of Cultural Properties.
- L. "Object" means a product of human activity or an item given significance or meaning by human activity or belief.
- M. "Place" refers to an identifiable location at which an event occurred or a location given significance by human action or belief.
- N. "Preservation Officer" means the Navajo Nation Historic Preservation Officer, who is the Director of the Navajo Nation Historic Preservation Department.
- O. "Site" means the location of the physical remains of human activity.
- P. "Sponsor" means the agency official or the official in a private capacity that has decision making authority over a particular undertaking.
- Q. "Structure" means construction resulting from human activity, the primary purpose of which is other than to provide shelter.

- R. “Tribal Archaeologist” means the Navajo Tribal Archaeologist, who is the director of the Archaeology Department.
- S. “Undertaking” means any project, activity, or program that can result in changes in the character or use of cultural properties, if any such cultural properties are located in the area of potential effects. The project, activity or program must be under the direct or indirect jurisdiction of a Sponsor. Undertakings include new and continuing projects, activities or programs not previously considered under the authority of this Act.

§ 1004. Historic Preservation Department

The Navajo Nation Historic Preservation Department (hereafter referred to as the “Department”) within the Division of Resources shall be the Navajo Nation’s agency responsible for the protection, preservation and management planning for the Navajo Nation’s cultural resources. The department shall be directed by the Navajo Nation Historic Preservation Officer (hereafter referred to as the “Preservation Officer”) who shall advise the President of the Navajo Nation, the Navajo Nation Tribal Council, the divisions, departments, programs, agencies, authorities, enterprises and any other instrumentalities of the Navajo Nation, the federal, state and local governments, private organizations and individuals on matters pertaining to cultural resource preservation to achieve the goals of this Act on Navajo lands, and on lands in which the Navajo people have a historical interest. The Department shall conduct such other activities authorized in accordance with the Department’s approved Plan of Operation.

§ 1005. Archaeology Department

The Navajo Nation Archaeology Department (hereafter referred to as the “Archaeology Department”) within the Division of Resources shall be the Navajo Nation’s agency for providing cultural resources services to project sponsors. The Archaeology Department shall be directed by the Navajo Tribal Archaeologist (hereafter referred to as the “Tribal Archaeologist”), who shall be responsible for organizing and providing cultural resource services to sponsors, including instrumentalities of the Navajo Nation, Navajo people, other agencies and industry in need of cultural resources services both on and off the Navajo Reservation. The Tribal Archaeologist shall also organize and implement, in consultation with the Preservation Officer, a program of archaeological and anthropological research designed to enhance and benefit the Navajo Nation’s cultural resources. The Archaeology Department shall conduct such other activities authorized in accordance with its approved Plan of Operation.

§ 1006. Navajo Nation Museum

The Navajo Tribal Museum shall be the repository for all cultural resources collected on Navajo Lands. The Navajo Tribal Museum shall conduct such other activities authorized in accordance with its approved Plan of Operation

§ 1011. Navajo Nation register of cultural properties and cultural landmarks

- A. The Preservation Officer shall create, expand, maintain and administer a Navajo Nation Register of Cultural Properties (hereafter referred to as the “Navajo Register”) comprising buildings, districts, objects, places, sites and structures significant in Navajo Nation history, architecture, archaeology, engineering, and culture.
- B. The Preservation Officer shall create, expand, maintain and administer a program for designation of Navajo Nation Cultural Landmarks (hereafter referred to as “Navajo Landmarks”), which shall include those cultural properties of significance to the entire Navajo Nation.
- C. Cultural properties on Navajo lands shall be deemed to be included in the Navajo Register if, as of the date of enactment of the Navajo Nation Cultural Resources Protection Act, they are
 - 1. Historic properties listed in the National Register of Historic Places;

2. Historic properties designated National Historic Landmarks;
 3. Natural areas designated National Natural Landmarks;
 4. Cultural properties included in the National Park System at Navajo National Monument, Canyon de Chelly National Monument, and Chaco Canyon National Historical Park; and
 5. Archaeological sites designated as Chaco Protection Sites pursuant to P.L. 96-550.
- D. The Preservation Officer shall establish a program to locate, inventory, and evaluate cultural resources on Navajo lands and to list all such resources as may be eligible in the Navajo Register and to designate such properties as may qualify as Navajo Landmarks.

§ 1021. Protection of Cultural Properties

In order to ensure the protection of the cultural properties of the Navajo Nation, the Sponsor of any undertaking must obtain the approval of the Preservation Officer prior to implementation or authorization of any undertaking by the Sponsor.

§ 1031: Prohibited Activities

No cultural property may be visited or investigated on Navajo Lands, except those cultural properties designated as open to the public within the boundaries of a Navajo Nation Park or a National Park or Monument; nor may any person alter, damage, excavate, deface, destroy or remove, any cultural properties on Navajo lands. No person may sell, purchase, exchange or transport cultural resources from Navajo lands. No person may engage in ethnographic research on Navajo lands: Except that such activities may be conducted under the authority of and in accordance with the stipulations of a valid Navajo Nation Cultural Resources Permit issued by the Preservation Officer under the authority of § 1032.

§ 1032. Permits

- A. There shall be three classes of Permits.
1. *Class A* permits shall be issued for activities involving casual visitation and inspection of cultural properties.
 2. *Class B* shall be issued for cultural resource inventory activities involving no collection or disturbance of cultural resources.
 3. *Class C* shall be issued for cultural resource investigations involving alteration, collection, excavation, removal or any disturbance of cultural resources or for ethnographic research.
- B. Permits shall be issued only on a case-by-case basis, except that organization qualifying for a Class 1 or 3 under Navajo preference pursuant to Navajo Nation Code may be granted blanket Class B permits. The Preservation Officer may waive this requirement whenever he or she finds that issuance of a blanket Class B permit is in the best interests of the Navajo Nation and its people.
- C. Permits shall not be issued for periods to exceed 12 months, except when necessary to cover the duration of a single project.

§ 1033. Exceptions

- A. The prohibition against visitation of cultural resources does not apply to enrolled members of the Navajo Nation or to Navajo Nation employees engaged in official activities.

- B. The prohibition against alteration, collection, disturbance, excavation or removal of cultural resources or collection of ethnographic data do not apply to:
 - 1. Navajo traditional practitioners engaging in activities directly relating to the practice of traditional Navajo religion; or
 - 2. To Navajo Nation employees engaged in official business, relating to cultural resources management activities approved in accordance with Departmental rules and procedures.

§ 1034. Permit requirements

Any person proposing to visit or inspect cultural resources, undertake cultural resources inventory, alter, collect, excavate or remove cultural resources or engage in ethnographic research, who is not exempted pursuant to § 1033 of this Act, shall apply to the Preservation Officer for a Navajo Cultural Resources Permit for the proposed activity. The Preservation Officer may issue a Permit to any qualified individual, subject to appropriate terms and conditions.

§ 1035. Suspension of permits

- A. The Preservation Officer may suspend a Permit without cause upon determining that continuation of activities under a permit would not be in the best interests of the Navajo Nation or its people. Such a suspension is made without liability to the Navajo Nation, its agents or employees. Such a suspension shall not prejudice the ability of the permit holder to hold or obtain other permits.
- B. The Preservation Officer may suspend a permit for cause upon determining that any term or condition of a permit is not being met by the permit holder.

§ 1036. Revocation of permits

- A. The Preservation Officer may revoke a permit without cause upon determining that continuation of a permit is not in the interests of the Navajo Nation or its People. Such a revocation is made without liability to the Navajo Nation, its agents and employees. Such revocations shall not prejudice the ability of the permit holder to hold or obtain other permits.
- B. The Preservation Officer may revoke a permit for cause upon finding that:
 - 1. Any of the terms or conditions of a permit has been willfully violated;
 - 2. A permit-holder has engaged in activities prohibited by this Act; and
 - 3. A permit-holder has engaged in activities that resulted in the prior suspension of a permit.

§ 1037. Criminal Penalties

Any Indian person violating the provisions of §1301 of this Act shall be subject to criminal penalties.

- A. Any Indian person who:
 - 1. Engages in cultural resource inventory activities except under the authority of a Class B permit, or
 - 2. Who alters, collects, damages, destroys, excavates or removes cultural resources except under the authority of Class C permit or under the exception provided by § 1033 of this Act, shall upon conviction, be guilty of a misdemeanor and subject to punishment of up to one year in jail and a fine of up to one thousand dollars (\$1000).

§ 1038. Civil assessments

Individuals violating the prohibitions in § 1031 or § 1037 of this Act shall be subject to civil assessments. Civil assessments shall be imposed by the Resources Committee of the Navajo Nation Council (hereafter referred to as the Resources Committee”), in accordance with procedures adopted by the Resources Committee expressly for this purpose. The Resources Committee shall adopt such procedures within 90 days of the adoption of this Act.

- A. Violation of the provisions of § 1031 or § 1037 of this Act by any person, who does business on the Navajo Nation, shall be grounds for withdrawal of the privilege of doing business on the Navajo Nation. The Resources Committee shall consider whether or not to recommend to the Navajo Nation Council that any individual found to have violated § 1031 or § 1037 shall lose the privilege of doing business on the Navajo Nation.
- B. Any non-Indian who visits or inspects cultural resources on Navajo lands without a valid Class A permit shall be committing trespass. Such individuals determined to be in trespass after a hearing before the Resources Committee of the Navajo Nation Council, shall be assessed a civil forfeiture of not more than one hundred dollars (\$100.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. For the purposes of this part, each visit to or inspection of a cultural resource on Navajo Lands shall be considered a separate offense. The Resources Committee may, at its discretion, recommend to the Navajo Nation Council that any person found to be in trespass be excluded from the Navajo Nation.
- C. Any non-Indian who engages in cultural resources inventory activities on Navajo lands, except under the authority of a valid Class B permit shall be committing trespass. Any individual determined to be in trespass after a hearing before the Resources Committee, shall be assessed a civil forfeiture of not more than one thousand dollars (\$1000) for each offense. For the purposes of this part, each inventory on Navajo lands shall be considered a separate offense. The Resources Committee shall consider whether or not to recommend to the Navajo Nation Council that any individual found to have violated this prohibition shall be excluded from the Navajo Nation.
- D. Any individual within Navajo lands who alters, collects, damages, defaces, destroys, excavates, removes or sells cultural resources or who collects ethnographic data without a valid Class C permit, or as permitted under the exceptions detailed in § 1033, or who engages in activities in violation of the terms and conditions of a valid permit shall be liable, after a hearing before the Resources Committee, to the Navajo Nation for civil damages as determined by the Resources Committee as follows:
1. Assessment of Actual Damages. The Resources Committee shall impose the civil assessments based upon actual damages in accordance with “Standards for Assessing Damages to Cultural Properties” that the Resources Committee shall adopt expressly for this purpose. The “Standards for Assessing Damages to Cultural Resources” shall include, but need not necessarily limit consideration to:
 - a. Full costs of restoration of the cultural resource;
 - b. Enforcement and administrative costs associated with the civil action;
 - c. Costs of disposition of cultural resources, including as appropriate, costs of curation in perpetuity;
 - d. Costs associated with documentation, testing and evaluation of the cultural resource in order to assess the characteristics of the cultural resource and plan for its restoration; and
 - e. Costs of any additional mitigation measures the Resources Committee deems appropriate to implement.
 2. Assessment of Treble Damages. In addition to the actual damages, the Resources Committee may, at its discretion, assess damages of up to three (3) times the amount of the actual damages.
 3. Seizure of Equipment and Cultural Resources. The citing officer shall seize all cultural resources in the possession of any individual cited under § 1031 of this Act, together with any other property used for or related to the violation in the possession of the individual cited, as the officer may deem necessary to obtain payment of any civil assessment.
 4. Forfeiture of Cultural Resources and Property. After hearing before the Resources Committee:
 - a. Any cultural resources obtained in violation of this Act shall be forfeited to the Navajo Nation;

- b. Any other property seized in accordance with § 1038(D) (3), shall be released to the owner upon timely payment of any related civil assessments;
 - c. Any seized property shall be forfeited to the Navajo Nation if the assessment has not been paid within 15 days of the hearing at which the civil assessment was levied or pursuant to this Act, whichever is later. Any such forfeiture shall be limited to the amount of the civil assessment. Any property remaining after forfeiture of property up to the value of the assessment shall be returned to the owner.
- E. Civil assessments imposed under this part shall be reserved solely for the purposes of restoring damaged cultural resources and for meeting the purposes of this Act and shall be deposited in the Historic Preservation Revolving Account for disbursement in accordance with Tribal budgetary procedures.
- F. Any individual assessed by the Resources Committee pursuant to § 1038 of this Act shall have the right to appeal the decision of the Resources Committee to the Navajo Nation District Court as follows:
- 1. Any appeal must be filed in writing with the Navajo Nation District Court within thirty days of notification of the action of the Resources Committee;
 - 2. The review by the Navajo Nation District Court shall be limited to:
 - a. Ensuring that the appellant received due process of law; and
 - b. Ensuring that any rights the individual may have under the Navajo Nation Bill of Rights and the Indian Civil Rights Act (25 U.S.C. § 1301-1341) were observed; and
 - 3. Consideration by the Navajo Nation District Court shall be limited to review of the administrative record created before the Resources Committee during the hearing before it.

§ 1041. Appeals

- A. Any administrative action taken by the Preservation Officer pursuant to this Act which is a final action made on behalf of the Navajo Nation may be appealed by any party directly and adversely affected by such action. Notice of appeal must be filed within 30 days of notification of the Preservation Officer's action.
- B. Within 90 days of the adoption of this Act, the Preservation Officer shall establish regulations governing appeals of administrative decisions reached under the authority of this Act. The regulations shall specify the procedures governing appeals, identify who may appeal, detail notification requirements, establish time limits for action on the part of all parties, enumerate documentation requirements, and include any other elements necessary to carry out the purposes of this Section.
- C. Any appellant adversely affected by the outcome of an appeal under regulations promulgated pursuant to § 1041(B) of this Act shall be entitled to review of the action in Navajo Nation District Court as follows:
- 1. Notice of an appeal under the provisions of this part must be filed with the Navajo Nation District Court within 30 days of receipt of notice of a final action by the Division of Natural Resources;
 - 2. Judicial review by the Navajo Nation District Court shall be limited to:
 - a. Ensuring that the appellant received due process of law, and
 - b. Ensuring that all rights of the appellant under the Navajo Nation Bill of Rights and the Indian Civil Rights Act (25 U.S.C. 1301-1341) were observed.
 - 3. Judicial review by the Navajo Nation District Court shall be limited to review of the administrative record created during the administrative appeals process.

§ 1051. Regulations, procedures, standards and guidelines

The Preservation Officer shall develop, promulgate, publish and implement such regulations, procedures, standards and guidelines necessary to implement the requirements of or to achieve the purpose of this Act.

§ 1061. Severability

If any provision of this Act or the application thereof to any person, court or circumstances is held invalid by a Navajo Nation or federal court, the invalidity shall not affect other provisions of this Act which can be given effect without the invalid provision or application and to this end; the provisions of this Act are severable.

APPENDIX C



THE NAVAJO NATION HERITAGE & HISTORIC PRESERVATION DEPARTMENT Cultural Resource Compliance Section

POLICY TO PROTECT TRADITIONAL CULTURAL PROPERTIES

Introduction

As economic development proceeds in the Navajo Nation, a growing number of places of significance to the Navajo people may be damaged by the land disturbance that accompanies development. In June of 1999, the Navajo National Park Service issued National Register Bulletin 38, titled “Guidelines for Evaluating and Documenting Traditional Cultural Properties.” The bulletin defines a “traditional cultural property” as a property that “is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community.”

Most traditional cultural properties significant to Navajos are of the type commonly called “sacred places.” Others are locations of other traditional activities, such as home sites and places where weavers gather plants for dyes.

We use the term “traditional cultural property” in this document to make apparent that we talking about the same kinds of places as Bulletin 38, and because this document is geared toward cultural resource managers and related professionals. The term, however, offends many Navajo traditionalists. One reason is that, by containing the word “property,” it suggests that such places can be treated as mere commodities, like real estate. Another reason is that the term seems like a long and lackluster euphemism for “sacred places,” which corresponds more closely to the Navajo term for such places (hodiyyin). “Traditional cultural property” is, indeed, partly a euphemism intended to obscure the “religious” qualities that these places have for people who do not separate the sacred from the secular. Within the present federal legal framework for historic and cultural preservation, such obscurantism seems necessary to keep such places from being found ineligible for protection under federal preservation law because of the doctrine of separation of church and state. We would prefer that, instead of avoiding the term “sacred places,” all concerned recognize that the root of what makes a place sacred is its association with aspects of the past that people connect with their present concerns of living. We apologize to traditionalists for perpetuating the use of the term “traditional cultural properties,” which we find a practical necessity in certain contexts.

Traditional Cultural Properties Covered by this Policy

This policy covers traditional cultural properties that lack the evidence of human use that qualify them as archaeological sites, historic properties or graves. The main emphasis here is on traditional cultural properties significant to the Navajo people. The last section of this policy statement, in addition, addresses such properties significant to other Native American groups that may be located on lands of the Navajo Nation. This policy supersedes the “Draft Proposed Nation Policy to Protect Navajo Sacred Places” (1986). Existing federal, state and tribal laws and rules protect archaeological sites, historic properties and graves. These laws and rules include the *Federal Antiquities Act of 1906* (P.L. 59-209); the *National Historic Preservation Act* (P.L. 89-665); the *National Environmental Protection Act of 1969 Executive Order 11953*; “Protection and

Enhancement of the Cultural Environment,” May 13, 1971 (36 C.F.R. 8921); the Archaeological Resources Protection Act of 1978 (P.L. 95-96); the American Indian Religious Freedom Act of 1978 (P.L. 95-341); the Native American Graves Protection and Repatriation Act (NAGPRA); New Mexico and Arizona laws protecting human remains on private lands; the Navajo Nation Policies and Procedures Concerning Protection of Cemeteries, Gravesites and Human Remains of 1986 (ACMA-39-86); and the Navajo Nation Cultural Resources Protection Act (CMY-19-88), which supersedes all previously existing Navajo Nation cultural resource preservation legislation.

Cultural resource surveys required by these laws and policies are very likely to detect sites with material evidence of human use (mainly archaeological sites) so that they can be protected. Certain types of Navajo traditional cultural properties are likely to have such evidence. These types include, but are not limited to, sites that may have been blessed such as those with hogans, houses, sweathouses, game corrals (needzii), eagle traps and so forth; and other sites where ceremonies may have occurred (if evidence of such use, such as the remains of ceremonial structures, is visible); trail shrines; rock art; and both marked and unmarked graves.

Because traditional cultural properties are considered eligible for inclusion in the National Register, such properties are protected by Section 106 of the National Historic Preservation Act, even when they lack clear evidence of human use. Such places are not likely to be detected by conventional surveys, however, and no other way of detecting such places has been used systematically up to now. Navajo traditional cultural properties without clear evidence of human use include, but are not limited to, the following types: places for gathering plants for use in ceremonies and other traditional purposes; places for gathering minerals for ceremonial and other traditional uses; places for gathering contents of sacred bundles; places for gathering other materials for ceremonial and other traditional purposes; unmarked graves (contain material remains but these are not necessarily visible on the surface); prayer offering places; places associated with the origin stories of particular ceremonials; places associated with the general Navajo origin story; places associated with origin stories of particular ceremonials; places associated with the origin of a clan; places associated with the origin of a Navajo custom; places identified as the home of a Holy Being such as Wind, Lightning, Big Snake; location of echoes (Talking Rocks, which convey human words to the Holy People); natural discoloration of rock that has some kind of supernatural power; places where an apparition or other supernatural event occurred; and places that have played a part in the life cycle rituals of individuals (such as the spot where a newborn baby’s umbilical cord is placed. Many of these sorts of places are features of the natural landscape, such as mountains, hills, rocky outcrops, springs and individual trees.

This policy outlines procedures for identifying such places, for determining how concerned Navajo people think particular development projects will affect those places, and for learning about the protection measures that concerned Navajo people think should be used. This outline is intended to be used along with National Register Bulletin 38, which offers general guidelines to document and evaluate such properties.

Traditional cultural properties covered by this policy statement may be on land under Tribal, BIA, other Federal (public land) and State jurisdiction. With land owner consent and cooperation, this policy statement will apply to private lands as well.

Identification of Traditional Cultural Properties on Lands Administered by the Navajo Nation for the BIA in Trust for Navajos

To identify Navajo traditional cultural properties, the developer of a proposed project on tribally or BIA administered land must observe the following procedures:

- A. The developer shall employ an archaeological contractor or consulting anthropologist who meets the professional standards of the Navajo Nation (or the land manager). That contractor or consultant shall conduct a cultural resources literature search that will include at least the following references for information on places of traditional cultural significance.

SUGGESTED READING LIST

Parker, Patricia L., and Thomas F. King

1990 Guidelines for Evaluating and Documenting Traditional Cultural Properties. National Register Bulletin 38. U.S. Department of the Interior, National Park Service, Interagency Resources Division, Washington, D.C.

Van Valkenburgh, Richard F.

1974 Navajo Sacred Places, ed. Clyde Kluckhohn. In Navajo Indians III, pp. 9 -199. Garland Publishing, New York

1941 Dine Bikeyah. U.S. Department of the Interior, U.S. Indian Service, Navajo Agency, Window Rock, AZ

** this work may be hard to find. But we suggest using Linford, Navajo Places, History, Legend, Landscape*

Kelley, Klara B.

1994 Navajo Sacred Places. Bloomington: Indiana University Press

Linford, Lawrence D.

2000 Navajo Places, History, Legend, Landscape. University of Utah Press

McPherson, Robert S.

1992 Sacred Land, Sacred View: Navajo Perceptions of the Four Corners. Signature Books

2009 Comb Ridge and Its People. The Ethnohistory of the Rock. United States University Press

****Also the following, if the proposed project is in the Eastern Navajo Nation:**

Carroll, Charles H.

1982 An Ethnographic Investigation of Sites and Locations of Cultural Significance to The Navajo People to be Affected by PNM's Four Corners to Ambrosia to Pajarito 500 kV Transmission Project. Public Service Company of New Mexico, Albuquerque

1983 The Ute Mountain Ethnographic Study. Public Service Company of New Mexico, Albuquerque

Fransted, Dennis

1979 An Introduction to the Navajo Oral History of Anasazi Sites in the San Juan Basin Area. Navajo Aging Services, Fort Defiance, AZ

Roessel, Robert, Jr.

1983 Dinetah: Navajo History. Rough Rock Demonstration School, Rough Rock, AZ

York, Frederick F.

1981 An Ethnographic Study of the Public Service Company of New Mexico's Proposed New Town Site and Its Environs. Human Environmental Resource Services Corporation, Anthropological Series 1, Albuquerque.

York, Frederick F., and Joseph C. Winter

1988 Report of an Ethnographic Study and Archeological Review of Proposed Coal Lease Tracts in Northwestern New Mexico. Office of Contract Archeology, University of New Mexico, Albuquerque

****In addition, the following background readings are strongly recommended for those consultants not thoroughly familiar with them:**

- Downer, Alan S.
1989 Anthropology, Historic Preservation and the Navajo: A Case Study in Cultural Resource Management on Indian Lands. Ph.D. Dissertation, Department of Anthropology, University of Missouri, Columbia
- Frisbie, Charlotte J.
1987 Navajo Medicine Bundles or Jish: Acquisition, Transmission and Disposition the Past and Present. University of New Mexico Press, Albuquerque.
- Gill, Sam D.
1981 Sacred Words: A Study of Navajo Religion and Prayer. Greenwood Press, Westport, Conn
- Kelley, Klara B.
1988 San Augustine Coal Area, Archaeological Investigations in West- Central New Mexico, Vol. 2, Historic Cultural Resources. Cultural Resources Series No. 4, U.S. Bureau of Land Management, New Mexico State Office, Santa Fe
- Kelley, Roger I., R. W. Lang and Harry Walters.
1972 Navajo Figurines Called Dolls. Museum of Navajo Ceremonial Art, Inc., Santa Fe, NM
- Kluckhohn, Clyde and Leland C. Wyman
1940 An Introduction to Navajo Chant Practice. Memoirs of the American Anthropological Association 53
- Spencer, Katherine
1957 Mythology and Values, An Analysis of Navajo Chantway Myths. Memoirs of the American Folklore Society 48
- Wyman, Leland C.
1970 Blessingway: With Three Versions of the Myth Recorded and Translated from the Navajo by Father Berard Haile, O.F.M. University of Arizona Press, Tucson.
- B. For all projects that require more than 1 acre, consultations with Navajo people are also required, (Projects of one acre or less are likely to include, but are not limited to, single home sites, single-business site leases, and isolated utilities installations for single home sites or single business sites.) In addition, consultations with Navajo people are also required for projects of 1 acre or less in certain localities and natural settings with a high probability of having traditional cultural properties. If the developer or anthropological consultant is in doubt about the need for such consultations, they should contact NNHPD. The project developer must demonstrate that a qualified professional anthropologist made a good-faith effort to consult:
1. Present surface user(s): grazing-permit holder(s) (individuals whose consents for right-of-way have been sought by developer); any other residents in or within view of the proposed project area.
 2. Chapter(s) within which the proposed project is located: chapter officers and/or delegate(s) to Navajo Nation Council; at the request of any of these individuals, the developer's consulting anthropologist will also make a presentation at a meeting of general chapter membership.
 3. Other knowledgeable people recommended by the present surface user(s), chapter officials, and chapter members.
- C. Documentation of the concerns of people consulted will normally take the form of a questionnaire or

interview schedule administered by the developer's consulting anthropologist and his or her interpreter/field assistant, if any. Documentation of each consultation will normally include the following information (documentation shall include a detailed explanation as why any of this information was not provided):

1. Source of information on traditional cultural properties: names of interviewer and interpreter, date and location of interview, language or interview.
2. Identification of each place by Navajo and English names (English translation of Navajo name if there is no English name) and USGS 1:24,000 or 1:62,500 scale map location;
3. What type of place is it: description of its physical attributes or appearance and its traditional associations or functions (attributes that make it a traditional cultural property)?
4. What impacts, if any does the interviewee expect the proposed project to have on each place?
5. What modification or redesign of the proposed project would the interviewee recommend?
6. If impacts cannot be avoided, what measures to mitigate adverse impacts would the interviewee recommend?

The Navajo Nation Historic Preservation Department Sacred and Traditional Places Documentation Form and guidelines for its use are appended to this policy statement and are recommended for this purpose.

Further documentation of concerns such as general chapter resolution or other written form that the chapter considers appropriate are required.

- D. Discoveries of Navajo traditional cultural properties during project development. The procedures set forth above in this section are likely to identify significant Navajo traditional cultural properties before development. No feasible procedure, however, can guarantee the identification of all such properties. There is always the possibility that during project development someone may report that the project area contains a previously unidentified property. This situation is considered analogous to an archaeological "emergency discovery situation" in which the developer encounters previously unreported subsurface archaeological remains. As soon as the developer learns of the presence of a previously unreported traditional cultural property, the developer will cease operations and notify the NNHPD. Normally operations will not resume until the NNHPD has obtained, on its own or through the developer, information adequate to identify and evaluate the reported traditional cultural property and devise a plan for its subsequent treatment, and has notified the developer to resume operations.

Identification of Navajo Traditional Cultural Properties on Lands NOT Administered by the Navajo Nation or BIA in Trust for Navajos

- A. In general. If these lands are surrounded by or are near lands used by Navajos, the developer, through a consulting anthropologist who meets the professional requirements of the Navajo Nation and the land manager, must consult the neighboring Navajo chapters and any knowledgeable individuals recommended by the chapters, and document those consultations according to guidelines set forth in the preceding section. If the lands are used by Navajos (for example, BLM-administered lands in the eastern part of the Navajo country), the developer's consulting anthropologist must make a good-faith effort to consult these Navajo users according to the procedures in Section C. above.
- B. Dinetah. Dinetah is a special case involving land in eastern San Juan County and western Rio Arriba and Sandoval Counties, New Mexico, much of which is not now used by Navajos. It needs special consideration because it contains so many recorded (and therefore probably many unrecorded) Navajo archaeological sites, sacred places, and other traditional cultural properties; because parts of it are not near any Chapter area; and because parts of it are not near any Chapter area; and because so many of its traditional cultural properties are of potential concern to Navajos all over Navajo land. Most of this land is under BLM jurisdiction, and BLM is required in accordance with the American Religious

Freedom Act and Section 106 of the National Historic Preservation Act (and its implementing regulations 36 CFR Part 800) to consult with interested Native American communities about management of cultural resources to be affected by its decisions. The developer's consulting anthropologist therefore must make a good-faith effort to consult neighboring chapters, any Navajo users, and document these consultations according to the guidelines set forth in Section C. above. In addition, the developer's consulting anthropologist must consult with NNHPD.

- C. Discoveries of Navajo traditional cultural properties during project development. Procedures set forth in Section C., Item 4. above will be applied here with the following modifications. The developer will normally notify the land manager as well as NNHPD, and the notification to the developer to continue operations will normally come from the land manager with NNHPD concurrence.

Possible Traditional Cultural Properties of Other Native American Groups on Lands Administered by the Navajo Nation or BIA in Trust for Navajos

The NNHPD is committed to protecting traditional cultural properties of other Native American groups on lands under its jurisdiction, with the expectation that other tribes on whose lands Navajo traditional cultural properties are located will make a reciprocal commitment. Therefore, the developer of a proposed project is responsible for consulting other Native American groups when such groups may have traditional cultural properties in the area affected by the developer's project. To determine which other groups, if any, are to be consulted, the developer's anthropological consultant normally will look at material showing the extent of the aboriginal land claims (and subsequent land claims, if appropriate) Before the Indian Claims Commission or U.S. Court of Claims made by those tribes nearest the part of Navajo land where the proposed project is to be located. The developer's consultant anthropologist will then make a good faith effort to consult any other groups in whose land claim(s) the proposed project area lies. NNHPD considers the land claims areas of other Native American groups to be the maximum areas within which traditional cultural properties of these groups may be identified.

NNHPD does not believe that the land claims neither areas were necessarily used exclusively by these groups nor that they are covered by any particular types of property rights use rights, etc. Nothing in this policy shall be construed as a concession by the Navajo Nation as to the validity of any claim of any other tribe concerning Navajo land. The Navajo Nation is attempting to foster cooperation between tribes on matters of general concern, such as traditional cultural properties, but this spirit of cooperation must not be misinterpreted as any sort of legally binding statement by the Navajo Nation.

The developer's anthropological consultant will be required to contact the appropriate tribal government and/or community representatives and proceed with identification efforts as directed by those entities. The developer's anthropological consultant should first contact NNHPD for referrals to appropriate contact people in the appropriate tribe or community.

Instructions for Using "Navajo Nation Historic Preservation Department's Sacred and Traditional Cultural Places Documentation Form"

This form is intended as a checklist of information required to document consultations with knowledgeable Navajo people about traditional cultural properties that may be impacted by a particular development undertaking. It is not intended to be administered as a questionnaire, although the interviewer may use it that way. The form should be used to present information gained in each interview, with continuation sheets attached for items where the form does not provide enough space. The interviewer will document each interview on a copy of the attached form. Interviewees are NOT to be asked to sign the form. For people contacted who refuse to be interviewed, the interviewer will fill out the top section of the form and indicate that the person refused to be interviewed, It is also important to make clear to the interviewee that the interviewee is under no obligation to be interviewed. If he or she refuses, however, any resources in the area may go unprotected since the people with the authority to protect them won't know about them. Also, during the interview, the interviewee may refuse to provide certain information such as name of a particular

medicinal plant. The interviewer should not press the person to reveal such information, but should note on the form that the person did not want to reveal it. Because these inquiries are so sensitive, the staff of NNHPD will be available to help your staff get oriented to conducting these interviews. If you wish, they will meet with the members of your staff who may be conducting these interviews to go over the process and answer any questions. Please call (928)-871-7147 if you have any questions.

APPENDIX D

NAVAJO NATION POLICY FOR THE PROTECTION OF *JISHCHAA'*: GRAVESITES, HUMAN REMAINS, AND FUNERARY ITEMS

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I. POLICY STATEMENT

Diné (Navajo) society is based on harmony and beauty. Issues related to death are treated with the utmost respect in our culture. In harmony with the Diné way of life, we do not talk about or discuss death. We avoid burial sites and do not handle materials belonging to one who is deceased. The Diné view is that human remains, associated funerary items, and unassociated funerary items all fit under *jishchaa'*, a term that refers to things that are associated with death as well as the burial itself.

Due to the circumstances of modern life, we find it necessary to establish rules and regulations concerning the protection of gravesites, human remains, and funerary items. We do this with complete and full awareness of the wide range of Diné values, beliefs, and practices. We apologize to those who have passed on for the intrusion. We apologize to the living for all the discomfort this subject causes.

This policy outlines procedures based on Diné cultural beliefs. The Navajo Nation is committed to protecting all gravesites, human remains, and funerary items under its jurisdiction. Human remains and funerary items, once interred, should not be disinterred. However, the Navajo Nation recognizes that under certain circumstances disinterment will occur. In these situations the human remains and funerary items must be reinterred as quickly as possible and as near to the original burial location as feasible. Except under extraordinary circumstances, analysis of human remains is restricted to in-field non-destructive visual determinations of age and sex for the purposes of locating lineal descendants. Records about human remains and funerary items or their location shall be maintained and safeguarded in the Cultural Resource Compliance Section (CRCS) at the Navajo Nation Historic Preservation Department for use in project planning and appropriate related activities.

In the absence of identified lineal descendants, all Native American human remains and funerary items identified on Diné lands are the responsibility of the Navajo Nation. The Historic Preservation Officer shall determine the treatment of human remains without identified lineal descendants and/or funerary items in consultation with other tribes, as appropriate. We expect that other tribes will make a reciprocal commitment. The Navajo Nation encourages the development of programmatic agreements with federal agencies and other tribes. The Navajo Nation expects all human remains and funerary items to be treated with the utmost respect from the time they are discovered until their final disposition.

II. AUTHORITY

This policy is implemented pursuant to the Navajo Nation Cultural Resources Protection Act (CRPA, CMY-19-88). It is intended to complement provisions set forth in the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA, P.L. 101-601), the Archaeological Resources Protection Act of 1979 (ARPA, P.L. 96-95), the National Historic Preservation Act of 1966 (NHPA, P.L. 89-665, as amended), and others.

III. DEFINITIONS

For the purpose of this policy, the following definitions apply.

Analysis of human remains - limited to non-destructive, in-field visual determinations of age at death, approximate date of interment (based on context), sex, and cultural affiliation of human remains. No other type of analysis will be allowed.

Analysis of funerary items - limited to non-destructive, in-field, visual determinations of cultural or temporal affiliation

Anaasázi - the Diné term for all ancient peoples who inhabited Diné customary lands, including all peoples whom archaeologists call "prehistoric."

Cultural Affiliation - a relationship of shared group identity which can be reasonably traced between the deceased and living people.

Cultural Property - any cultural resource deemed sufficiently important to warrant listing on the Navajo Nation Register of Cultural Resources.

Cultural Resource - any product of human activity, or any object or place given significance by human action or belief.

Cultural Resource Professional - any individual who is authorized by the Navajo Nation to conduct cultural resource investigations. Such individuals may include persons who work in archaeology, anthropology, ethnology, Navajo culture, and other related disciplines, including traditional healers

Diné - the Navajo people.

Federal Agency - any department, agency, or instrumentality of the United States

Funerary Items - items that are reasonably believed to have been associated with the deceased either at the time of death or later, whether or not they are found in direct association with human remains. For Navajo burials, such funerary items may include, but are not limited to, shovels, tinware, saddles, clothing, and jewelry.

Historic Preservation Department (HPD) - the Navajo Nation Historic Preservation Department as established by Section 20 of the CRPA.

Historic Preservation Officer - the Director of the Historic Preservation Department.

Human Remains - the physical remains of a human body, including but not limited to bone, teeth, hair, ashes, or mummified or otherwise preserved soft tissues of a person

Inadvertent Discovery - finding; locating; observing; uncovering; unearthing; learning about through conversation, discussion, or interview; or otherwise detecting human remains, funerary items, or site(s) in which human remains or funerary items are believed to exist when such discovery was not the original intent.

Intentional Excavations - the unearthing of sites, gravesites, human remains, or funerary items for an undertaking or any purpose authorized by the Historic Preservation Department pursuant to CRPA.

Jishchaa' - a location or item associated with death and burial of an individual.

Lineal Descendant - an individual tracing his or her ancestry directly and without interruption to a particular individual. The Diné traditional kinship system shall be used for Diné burials.

Navajo Nation lands (Diné lands) - all lands or interests in land owned or held by the Navajo Nation, whether held by original title, held in trust by the United States, held in fee simple or held under lease, easement, permit or otherwise, whether restricted or unrestricted, and whether within or outside the boundaries of the Navajo Nation.

Site - the location of human activity as indicated by physical or ethnographic evidence.

Sponsor - the agency official or the official in a private capacity who has decision-making authority over a particular undertaking.

Treatment - a thoughtfully developed and respectful plan for taking care of human remains or funerary items, accomplished through consultation with appropriate parties.

Unclaimed - human remains or funerary items for which no lineal descendants can be identified or located.

Undertaking - any project, activity, or program that can or does change the character or use of cultural properties or *jishchaa'*. The project, activity, or program must be under the direct or indirect supervision of a sponsor.

Unidentified - human remains or funerary items for which lineal descent or cultural affiliation cannot be determined through either consultation or analysis.

IV. TRADITIONAL CONCERNS

Diné traditional and spiritual values shall be observed in dealing with human remains, and associated funerary items, burials, and/or the relocation and transfer of gravesites. Diné teachings discourage the direct handling of human remains. Development projects, such as the construction and maintenance of roads, power lines, and water lines, often disturb burials. In such instances, the Navajo Nation must take steps to ensure the protection of human remains. It must also protect its people from association with human remains. The concerns listed below should therefore be taken into consideration in dealing with gravesites, human remains, and funerary items.

- A. All individuals involved in burial issues must be warned that handling human remains or funerary items, direct exposure to gravesites, or discussion of burial issues may affect their overall health in the immediate future or sometime during their lifetime. For example, the soil associated with a burial is considered contaminated by death. Procedures such as brushing bones or funerary items, taking soil samples, and disarticulating bones are therefore considered both offensive and dangerous. Knowledgeable Diné should be consulted regarding appropriate protective measures.
- B. Individuals involved with burial issues will come into contact with the Navajo public after they have been in contact with gravesites, human remains, or funerary items and that contact may affect the health of other individuals. They should take measures to protect the public and themselves when disinterring and/or reintering human remains or when in contact with gravesites. If individuals, sponsors, or their agents need assistance or information regarding protective measures, they should contact the Navajo Nation Historic Preservation Department Traditional Culture Program.

- C. Pregnant women, or individuals in daily contact with them, should not be directly involved in the handling, removal, or intimate discussion of gravesites, human remains, or funerary items.
- D. Funerary items must be treated with respect. They have been placed with the human remains for essential reasons and should not be handled casually, collected, removed, or separated from the human remains.
- E. Traditional Diné avoid gravesites, human remains, and funerary items. They do not talk about someone who has passed on, and they do not carelessly mention or discuss death. Researchers need to be aware that the Diné may be extremely uncomfortable even talking about the topic, may not be willing to visit the gravesite, and should not be interviewed over and over regarding the same topic.
- F. Sponsors and others should limit the number of individuals who come into contact with gravesites, human remains, or funerary items.

V. ENCOUNTERING GRAVESITES, HUMAN REMAINS, AND FUNERARY ITEMS

- A. The Navajo Nation requires sponsors to make a good faith effort to locate gravesites, human remains, and funerary items within the area of potential effect prior to initiation of an undertaking. Such good faith effort shall include the following:
 - 1. file searches of existing information, including files maintained at HPD (contact CRCS), mission records, and other pertinent materials as appropriate.
 - 2. archaeological inventory and ethnographic interviews with residents of the local community and with other knowledgeable individuals. Navajo Nation permitting procedures require that investigators contact local chapters prior to initiating field activities (Navajo Nation Policy To Protect Traditional Cultural Properties, 1989). Continuing contact may be appropriate to ensure that local concerns are addressed.
 - 3. other approaches, such as traditional diagnostic techniques, as necessary or appropriate. Traditional practitioners may provide such information.
- B. When an inadvertent discovery occurs in the context of an undertaking but outside the context of intentional excavation, the sponsor shall adhere to the following procedures.
 - 1. All ground-disturbing activities shall immediately cease within a 50-foot (15.2-meter) radius, using the discovery as the center point.
 - 2. The sponsor or its agent *must* contact CRCS within one (1) business day to arrange for proper evaluation and consultation.
 - 3. The sponsor or its agent shall identify itself and its project and shall supply the following information:
 - a. a verbal description of what has been found and the context in which remains are located;
 - b. the general location of the gravesite, human remains, and/or funerary items; and
 - c. any other pertinent information.
 - 4. Verbal notification shall immediately be followed by written notification. HPD will attempt to respond promptly so as not to cause project delays.

5. Human remains and funerary items *must* be protected in place until treatment measures are implemented. Treatment measures shall be consistent with Part VII of this policy.
 6. The sponsor or its agent may resume ground-disturbing activities only after a proposed treatment plan has been agreed upon *and* implemented.
- C. When an inadvertent discovery occurs within the context of intentional excavation, the sponsor shall adhere to the following procedures.
1. All trenching, hand excavation, sampling, photography, etc., shall cease within a 10-foot (3-meter) radius of the discovery after the nature and extent of buried remains have been determined.
 2. The sponsor or its agent *must* contact CRCS within one (1) business day to arrange for proper evaluation and consultation.
 3. The sponsor or its agent shall identify itself and its project and shall supply the following information:
 - a. a verbal description of what has been found and the context in which remains are located;
 - b. the general location of the gravesite, human remains, and/or funerary items;
 - c. a preliminary assessment of the type of burial it is (Diné, Anasází, other);
 - d. an assessment of the complexity of the burial(s) and the likelihood of disturbance if left in place;
 - e. a proposed location for reburial, if applicable; and
 - f. any other pertinent information.
 4. Verbal notification shall immediately be followed by written notification. HPD will attempt to respond promptly so as not to cause project delays.
 5. Human remains and funerary items *must* be protected in place until treatment measures are implemented. Treatment measures shall be consistent with Part VII of this policy.
 6. The sponsor or its agent may resume ground-disturbing activities only after a proposed treatment plan has been agreed upon *and* implemented.
- D. When CRCS is notified of an inadvertent discovery of human remains outside the context of an undertaking:
1. CRCS shall ask the notifying party to provide
 - a. a verbal description of what was found and the context in which remains are located;
 - b. the general location of the gravesite, human remains, and/or funerary items; and
 - c. any other pertinent information, including the name of a contact person.
 2. CRCS shall determine on a case-by-case basis whether HPD will assume responsibility for treatment.

VI. IDENTIFICATION OF GRAVESITES, HUMAN REMAINS, AND FUNERARY ITEMS

- A. Once gravesites, human remains, and/or funerary objects are located, a good faith effort shall be made to determine through contextual analysis, interviews, non-destructive visual inspection, and other appropriate means whether the remains represent:
 - 1. a burial with lineal descendants;
 - 2. a Diné burial for which lineal descendants cannot be identified or located;
 - 3. a Native American burial for whom lineal descendants cannot be identified or located (including Anaasázi burials, burials of individuals from other tribes, and unidentified burials); or
 - 4. a non-Native American burial for which lineal descendants cannot be identified.
- B. Non-destructive visual inspection of human remains shall be limited to determinations of age (of both the individual and the interment), sex, and cultural affiliation. To the greatest extent possible, such visual inspection shall be performed without handling, brushing off, or disarticulating the remains.
- C. Initial identification efforts may require consultation with Diné elders and other residents and non-residents who may have knowledge about the identity and/or cultural affiliation of the remains. When the remains are clearly Anaasázi, such consultation is not necessary. Chapter officials must be notified prior to initiating local consultation. All identification efforts must respect the culturally sensitive nature of discussions regarding human remains.
- D. In cases where no lineal descendants have been identified, the sponsor (in the case of an undertaking) must use all information available, including physical evidence as well as word of mouth, to determine the probable age at death and of interment and the sex of the individual buried at this location. Specialists such as physical anthropologists may be required to collect and analyze this information. One should err in the direction of greater age estimates for the date of interment when no firm data are available. Following the provisions of ARPA and the Resolution of the Parks Commission, Navajo Tribal Council (April 8, 1980), remains shall be considered "archaeological resources" only if they are, or are suspected to be, 100 years of age or older.

VII. PROCEDURES FOR TREATMENT OF HUMAN REMAINS AND FUNERARY ITEMS

The policy of the Navajo Nation is that gravesites, human remains, and funerary items should not be disturbed. In cases where disturbance is unavoidable, treatment procedures will vary depending on the results of consultation with lineal descendants, culturally affiliated tribes, or appropriate entities. In the case of an undertaking, all costs related to treatment shall be borne by the sponsor.

In all cases, only non-destructive, in-field visual analysis to determine age and sex of individuals shall be allowed. At no time shall the remains or funerary items leave the project area. All analysis shall take place on site. No soil samples of any kind shall be taken from within one foot (0.3 m) of human remains. Human remains shall not be brushed unless absolutely necessary to make age and sex determinations. Depictions (sketches, drawings, etc.) of gravesites, human remains, and funerary items shall not appear in the body of any report; however, a map showing the orientation of the remains and associated funerary items shall be provided in a confidential appendix. Site maps in the body of the report should identify all features, including burials, but detailed illustrations are not allowed.

Photographs of gravesites and human remains are prohibited. In cases where funerary items are to be reinterred and may be susceptible to theft, photographs of the funerary items may be permitted in consultation with HPD. All photographs and negatives shall become the property of HPD; to be kept on file should ARPA investigations be necessary.

If circumstances require that human remains be disinterred, an ARPA permit is required if the burial is at least 100 years old. ARPA permits are issued through the Bureau of Indian Affairs with the consent of the Navajo Nation. A Class "C" Navajo Nation Cultural Resources Investigation Permit also is required. It may take up to 30 days to obtain ARPA and/or Class "C" permits. Navajo Nation employees engaged in Navajo Nation business and Navajo traditional healers are exempt from permit requirements.

A. Burials with Lineal Descendants

If the deceased has known lineal descendants, regardless of cultural affiliation, consultation shall be conducted directly with the lineal descendants. Cultural resource professionals should take traditional Diné kinship into account when they determine lineal descendants. If the deceased was a member of another tribe, consultation with lineal descendants shall proceed only after contacting HPD and only after HPD has initiated government-to-government relations with such other tribes.

In consultation with HPD, the sponsor or its agent shall document the concerns of lineal descendants regarding the burial and shall record their wishes regarding treatment of the human remains and/or funerary items on a Statement of Wishes form (see Attachments). This form *must* be used to record the wishes of lineal descendants regarding treatment of the burial.

Results of consultation with lineal descendants shall be held in confidence among the sponsor, cultural resource professional, HPD, and the lineal descendants. Sponsors and their agents shall not provide any information collected during consultation with lineal descendants to anyone other than HPD (and the lineal descendants, as requested). Upon completion of the project, sponsors and their agents shall turn over all records to HPD.

Documentation shall be provided to HPD that the decision made by the closest lineal descendant was made without any improper influence or pressure and was based upon full knowledge of all options available to them. This documentation must be initiated and performed by the sponsor or its agent, in the presence of or with the participation of a trained cultural resource professional approved by HPD. The cultural resource professional should work closely with any and all appropriate local residents, officials, elders, and traditional healers; should be familiar with policies related to the protection of human remains; should be knowledgeable regarding local history and customs; and must abide by professional standards and ethics. The cultural resource professional shall act as a witness to the documentation. Statement of Wishes forms is available from CRCS.

B. Diné Burials without Lineal Descendants

In cases where Diné burials are identified but where it is not possible to locate lineal descendants, the local chapter may serve as proxy for lineal descendants. In order to determine whether the Chapter wishes to serve as proxy, the sponsor or its agent, in consultation with HPD, shall consult with Chapter officials to determine procedures to be followed regarding presenting information to the Chapter as a whole.

Normally, this determination should be made within five (5) working days. If the Chapter determines that it wishes to serve as proxy, the sponsor shall follow the procedures delineated in Section VII.A. If the Chapter determines that it does not wish to serve as proxy, the sponsor or its agent shall consult with HPD, and HPD shall make decisions regarding treatment in accordance with procedures established in Section VII.C. All costs related to treatment shall be borne by the sponsor. Upon completion of the project, the sponsor and its agent shall turn over all records to HPD.

C. Other Native American Burials without Lineal Descendants

In the absence of lineal descendants, all Native American human remains identified on Diné lands are the responsibility of the Navajo Nation [NAGPRA, 1990: Sec. 3(a)(2)(A)]. Such human remains may include Anasází burials, non-Diné burials without lineal descendants but for whom cultural affiliation is known and unidentified Native American burials. In cases where consultation with other tribes is required, consultation shall occur in coordination with HPD and treatment shall remain consistent with this policy. ARPA and Class "C" permits must be in hand before initiating excavation. Navajo Nation employees engaged in Navajo Nation business and Navajo traditional healers are exempt from permit requirements.

Treatment Plan

Human remains and funerary items, once interred, should not be disinterred. If the burial is in no danger of impact, its location shall be documented and remains shall be protected as necessary. Documentation shall be provided to HPD. If the burial is in danger of impact, sponsors must exhaust all reasonable alternatives before disinterring. The following treatment plan shall be used in all cases where disinterment is necessary. The treatment plan shall insure the rapid reburial of human remains.

1. Notification, Consultation, and Excavation:
 - a. Upon discovery of human remains or funerary items, the cultural resource professional shall immediately determine the nature and extent of the burial and/or funerary items, while leaving the remains in place and protected. All other activities must immediately cease within a 10-foot (3-meter) radius unless a previously approved data recovery plan is in place. When human remains or funerary items are encountered in the context of an approved data recovery plan, the cultural resource professional may continue investigations outside the immediate burial area.
 - b. HPD must be notified immediately that human remains have been encountered.
 - c. Remains must be kept in place on site until a determination is made by HPD regarding appropriate treatment. When security is a problem, the sponsor or its agent must consult with HPD regarding protective measures.
 - d. Analysis shall proceed according to Section VI.B, above.
 - e. The location of the remains shall be thoroughly documented. The location shall be described and recorded on the appropriate 7.5-minute USGS topographic map. Locational information shall be provided to HPD in a

confidential appendix. It shall not be retained by the sponsor, its agent, the cultural resource professional, or anyone else.

2. Human Remains Identified in the Laboratory. If human remains are discovered along with faunal remains or other samples during laboratory analysis, the sponsor or its agent must contact HPD and then shall rebury the remains consistent with the plan noted in Section 3, below.
3. Reburial
 - a. Reinterment should take place immediately following removal of remains, unless there are extenuating circumstances.
 - b. The reburial location shall be situated as close to the site of origin as possible, but far enough away from earth-disturbing and erosion activities so as to eliminate the likelihood of future impact. Selection of a reburial site will depend upon construction design plans, depth of soil, the security of the location, approval of land users (if needed), and other pertinent factors.
 - c. An identification number shall be assigned to the gravesite. To obtain a grave identification number, contact CRCS.
 - d. The new location shall be described and recorded on the appropriate 7.5-minute USGS topographic map. Recordation shall include a 50-foot (15.2-meter) radius buffer zone for the gravesite. Locational information shall be provided to HPD in a confidential appendix. HPD may provide to others on a need-to-know basis. It shall not be retained by the sponsor, its agent, the cultural resource professional, or anyone else.
 - e. The remains and funerary items shall be reburied in the same orientation and position as originally found. For relocation purposes, the location of the reburial and a sketch map depicting the position of the remains shall be prepared. Upon request, a skeletal illustration form is available from HPD to inventory the completeness of the human remains. This information shall immediately be turned over to, and shall become the property of, HPD.
 - f. The sponsor or its agent shall ensure that the reburial location is reclaimed to conform to the natural landscape and that protective measures are implemented, as necessary, to avoid future impacts to the reburial site (protective fencing, stabilization, reseeding, etc.).
4. Reporting. The results of investigations at a burial site shall be incorporated into a report as a detachable, confidential appendix. This report shall be submitted to the CRCS. None of the information regarding the location of burials shall be retained by the sponsor or its agent. Confidential appendices shall only be distributed to appropriate parties, as determined by HPD.

D. Non-Native American Burials without Lineal Descendants

In the rare instance that non-native human remains without lineal descendants are encountered on Diné lands, HPD shall initiate consultation with the appropriate entities.

VIII. DISPUTE RESOLUTION

HPD shall consider disputes within or between families, within a community, between tribes, or with federal agencies related to the treatment of gravesites, human remains, and funerary items on a case-by-case basis. Disputes among lineal descendants may be referred to the Navajo Peacemaker Courts (*Hózhó'í Naa'táanii*), as appropriate.

IX. ATTACHMENTS/FORMS

- A. Identification of Gravesites, Human Remains, and Funerary Items *and* Statement of Wishes: Burials *with* Lineal Descendants
- B. Identification of Gravesites, Human Remains, and Funerary Items: Burials *without* Lineal Descendants

APPENDIX E

**The NAVAJO NATION
POLICY FOR THE DISPOSITION OF
CULTURAL RESOURCES COLLECTION**



**DIVISION OF NATURAL RESOURCES
HISTORIC PRESERVATION DEPARTMENT**

Approved: 04/22/2008
Effective date: 04/29/2008

INTRODUCTION

This policy establishes definitions, standards, procedures and guidelines to be followed for the disposition of cultural resources collection recovered on Navajo Nation lands.

1. POLICY STATEMENT

This policy of the Navajo Nation to protect all cultural resources that it owns or that are under its jurisdiction. Under its obligation to *Diyin diné'é* (Holy People) and as an expression of its sovereignty, the Navajo Nation will treat its cultural resources in a manner consistent with *Diné* (Navajo) values.

Hózhó, a natural state of harmony, beauty, and balance, is the very heart of the *Diné* way of life. The disturbance and/or removal of cultural resources disrupts *hózhó*. In order to avoid unnecessary disturbance to *hózhó*, it is the policy of the Navajo Nation to strongly discourage the excavation, disturbance or removal of any cultural resources unless there is compelling need. When such disturbance occurs either accidentally or out of the necessity, it is Navajo Nation Policy to implement all prudent and feasible measures to return its' cultural resources to the cultural landscape.

Accordingly, the excavation of cultural resources may be permitted only after all alternative treatment measures (e.g., avoidance, protective fencing, project redesign, etc.) have been exhausted. When excavation or disturbance of cultural resources cannot be avoided, such activities shall be carried out in the least intrusive and most expeditious manner possible.

When the removal of material remains is completed, all appropriate analysis approved by the Historic Preservation Office has been completed, and the resulting technical report accepted by the Historic Preservation Officer or his designee, the remains are to be promptly returned to the cultural landscape in accordance with this Policy.

The Navajo Nation Historic Preservation Department shall act on behalf of the Navajo Nation to achieve these objectives through the implementation of the Policy.

AUTHORITY

In accordance with Navajo Nation Law and federal laws, including but not limited to: the Treaty of June 1, 1868, between the Navajo Nation and the United States, 156 Stat. 667; various United States statutes and executive orders expanding the Navajo Indian Reservation or otherwise confirming Navajo Nation ownership of Navajo Nation lands and all resources appurtenant thereto; the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa-mm (ARPA); the National Historic Preservation Act of 1966, 16 U.S.C. 470. *et seq.* (NHPA); and the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001, *et seq.* (NAGPRA), the Navajo Nation owns all material remains located on, discovered on, excavated, collected or removed from Navajo Nation Lands, except under limited circumstances where such law or laws expressly provide that such items are owned by private individuals.

Navajo Nation law and federal law provide that the Navajo Nation controls the ultimate disposition of material remains owned by the Navajo Nation. Nothing in federal law severs the Navajo Nation's ownership and control of cultural resources from Navajo Nation lands, even when those items have been collected under properly approved federal permits issued under the Antiquities Act of 1906 or ARPA.

Where associated records/archival materials are or have been prepared and assembled pursuant to the Navajo Nation Cultural Resources Protection Act, 19 N.N.C. 1001 *et seq.* (CRPA) or in the absence of a valid permit under ARPA, the Antiquities Act or other applicable law, the Navajo Nation owns such associated records/archival materials. Where associated records/archival materials are or have been prepared and assembled pursuant to a valid Navajo Nation cultural resources permit (and where applicable, a federal permit), the Navajo Nation retains ownership both of those associated materials and any and all intellectual property rights relating to those items.

In accordance with these rights of ownership of material remains, associated records/archival materials, and the cultural heritage and intellectual property of the Navajo Nation this Policy reflects Navajo Nation law concerning the disposition of material remains and associated records/archival materials in the possession of the United States, which nevertheless remain subject to the paramount rights of the Navajo Nation.

2. **DEFINITIONS**

For the purpose of this policy,

- 4.1. **Associated Records/Archival Materials** means original records (as well as any copies thereof) that were or are prepared, assembled, etc. to document efforts to locate, evaluate, document, study, preserve or recover cultural resources.
- 4.2. **Collection** means material remains that are excavated, collected or removed from a cultural resource, along with any associated records/archival materials. Some collections may consist of archival materials only.
- 4.3. **Cultural Landscape** (*Diné Bikéyah*) means the places that embody cultural meaning for the *Diné*, whether located within or outside of the boundaries of the Navajo Nation. For the purpose of this Policy, “cultural landscape” includes *Diné* individuals and communities.
- 4.4. **Cultural Patrimony** means objects having ongoing historical, traditional or cultural importance central to *Diné* traditional practitioners or clans (rather than property owned by an individual under the principles of Navajo common law) and which, therefore, cannot be alienated, appropriated or conveyed by any individual.
- 4.5. **Cultural Property** means any cultural resources deemed to be important enough to warrant listing in the National Register, 19 N.N.C. 1011.
- 4.6. **Cultural Resource** means any product of human activity or any object or place given significance by human action or belief, 19 N.N.C. 1003.D.
- 4.7. **Curation/Curatorial Services** means managing and preserving a collection according to professional museum and archival practices, including:
 - (i) Inventorying, accessioning, labeling, and cataloging a collection;
 - (ii) Identifying, evaluating, and documenting a collection;
 - (iii) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physical security controls;
 - (iv) Periodically inspecting a collection and taking such actions as may be necessary to preserve it;
 - (v) Providing access to and facilities for study of a collection; and

- (vi) Handling, cleaning, stabilizing and conserving a collection in such a manner as may be necessary to preserve it.

- 4.8. **Deaccession** means to formally and permanently withdraw material remains from a collection.

- 4.9. **Diné** means the Navajo People

- 4.10. **Hataalii** means a Dine chanter/healer/practioner recognized as such by his or her community.

- 4.11. **Historic Preservation Department (HPD)** means the Navajo Nation Historic Preservation Department as established by CRPA 19 N.N.C. 1004.

- 4.12. **Historic Preservation Officer** means the Department Manager of the Historic Preservation Department or his/her designee.

- 4.13. **Inadvertent Discovery** means finding, locating, observing, uncovering, unearthing, learning about through conversation, discussion or interview otherwise detecting cultural resources when such discovery was not the original intent of the activity.

- 4.14. **Intentional Excavation** means the removal of material remains from their original context for any purpose authorized by HPD pursuant to CRPA.

- 4.16. **Museum Director** means the Director of the Navajo Nation Museum.

- 4.17. **Navajo Nation Lands** means all lands or interests in land owned by or held by the Navajo Nation, whether held by original title, held in fee simple or held in trust by the United States, whether restricted or unrestricted, and whether within or outside the boundaries of the Navajo Nation.

- 4.18. **Navajo Nation Museum** means the museum established within the Historic Preservation Department by the Navajo Nation Museum Plan of Operation approved November 14, 1995, by the Resolution No. GSCN-92-95.

- 4.19. **Offering** means a give made to *Diyin diné'è* (Holy People) or at holy places including, but not limited to; precious gems, feathers, songs, prayers, carved items, incense/smoke, pollen, cornmeal, botanical items, water or minerals.

- 4.20. **Repository** means a facility such as a museum, archaeological center, laboratory or storage facility managed by a university; college, museum, other educational or scientific institution; a Federal, State, or local Government agency or Indian Tribe that can provide professional, systematic, and accountable curatorial services.
- 4.21. **Sacred Objects** means specific ceremonial objects that either have been offered to *Diyin diné'è* or are needed for the practice of healing ceremonies or traditional Native American Religions by their present-day adherents.
- 4.22. **Site** means the location of the physical remains of human activity, 19 N.N.C. 1003.O.
- 4.23. **Special Collection** means any collection or portion of a collection that requires special disposition, such as sensitive information; confidential information; fragile items; items that should only be viewed/used by persons of a particular age or gender, and/or items that can only be viewed/used at certain seasons of the year.
- 4.24. **Sponsor** means the agency official or an individual in a private capacity who has decision-making authority over a particular undertaking, 19 N.N.C. 1003.
- 4.25. **Tribal Archaeologist** means the Department Manager of the Navajo Nation Archaeology Department, 19 N.N.C. 1005.
- 4.26. **Undertaking** means any project, activity or program that can result in changes in the character or use of cultural properties. The project, activity or program must be under the direct or indirect jurisdiction of a Sponsor, 19 N.N.C. 1003.S.

3. COMPONENTS OF COLLECTIONS

Collections include material remains that are excavated or removed from a prehistoric or historic cultural resource, along with associated records/archival materials that are prepared or assembled in connection with the survey, excavation, removal or other study. Some collections may consist of archival materials only.

5.1. Material Remains

Classes of material remains (and illustrative examples) that may be in a collection include, but are not limited to:

- (i) Components of structures and features (such as houses, pit structures, sweathouses, hornos, hearths, mills, fortifications, raceways, earthworks, and mound(s));
- (ii) Intact or fragmentary artifacts of human manufacture (such as tools, weapons, pottery, basketry, and textiles);
- (iii) Intact or fragmentary objects used by humans (such as rock crystals, feathers, and pigments);
- (iv) By-products, waste products or debris resulting from the manufacture or use of cultural or natural material (such as slag, dumps, fire-cracked rock, cores, and debitage);
- (v) Organic material (such as plant and animal remains);
- (vi) Components of petroglyphs, pictographs, intaglios or other works of artistic or symbolic representation;
- (vii) Environmental and Chronometric specimens (such as pollen, seeds, wood, shell, bone, charcoal, tree core samples, soil, sediment cores, obsidian, volcanic ash, and baked clay); and
- (viii) Paleontological specimens that are found in direct physical relationship with a cultural resource.

5.2. **Associated Records/Archival Material**

Depending on the type of project, the following classes of associated records/archival material are illustrative examples of the materials that may be in a collection:

- (i) Records relating to the identification, evaluation, documentation, study, preservation or recovery of a cultural resource, such as, site forms, field notes, drawings, maps, photographs, slides, negatives, films, video and audio tapes, oral histories, artifact inventories, laboratory reports, computer cards and tapes, computer disks and diskettes, information stored on other forms of electronic media, printouts of computer data, manuscripts, reports and accession catalog, and inventory records;
- (ii) Records collected by ethnographic means, such as interview notes, genealogies, tape recordings, video recordings, oral histories, and photographs;
- (iii) Records relating to the identification of a cultural resource using remote sensing methods and equipment, such as, satellite or aerial photography and imagery, side scan sonar, magnetometers, and ground penetrating radar;
- (iv) Public records essential to understanding the cultural resources, such as deeds; survey plats, military and census records, birth, marriage and death certificates, immigration and naturalization papers, tax forms and reports;

- (v) Archival records necessary to understanding the cultural resources, such as historical maps, drawings and photographs, manuscripts, architectural and landscape plans, correspondences, diaries, ledgers, catalogs, and receipts, and;
- (vi) Administrative records relating to the survey, excavation or other study of the cultural resource, such as scopes of work, requests for proposals, research proposals, contracts, antiquities or ARPA permits, reports, popular summaries, documents relating to the compliance with Section 106 of NHPA, and the National Register of Historic Places nomination and determination of eligibility forms.

Oral history material forms a special class of associated records/archival materials, these materials include tape-recorded and/or video-recorded interviews or transcripts of interviews with individual or group of individuals that provide information of *Diné* life stories or local community history.

4. ACQUISITION OF COLLECTIONS

The Navajo Nation assumes responsibility for cultural resource collections in a variety of ways. Such collections may be the result of intentional archaeological excavation, inadvertent discovery, and/or ethnographic investigation. Cultural resource collections may also be returned to the Navajo Nation by museums, libraries, researchers, federal and other agencies, private individuals, contractors, and others. Some collections may be obtained as a result of legal proceedings (e.g., the return of confiscated material).

6.1. Intentional Excavation and Inadvertent Discovery

- (i) Intentional Excavation.
 - (a) The excavation of cultural resources may only occur after all alternative treatment measures (e.g., avoidance, protective fencing, project redesign, etc.) have been considered and found to be infeasible. When mitigation is necessary, it shall be carried out in the least intrusive and most expeditious manner possible.
 - (b) Sponsors and their agents shall consult with HPD and obtain the proper permits prior to collecting and/or conducting excavation and removal of cultural resources. To the extent feasible, research designs shall take into account the principles and traditional concerns inherent in this Policy.

Sponsors and their agents shall utilize sampling and other strategies as appropriate and feasible in order to minimize disturbance of cultural resources and to minimize the size of the collections. All mitigation measures for archaeological resources must be archeologically justified, necessary and feasible, systematic, thorough, as well as cultural respectful.

- (ii) Inadvertent Discovery. Sometimes cultural resources are discovered inadvertently, i.e., during the course of activities which are not otherwise intended identification, evaluated, and/or treated cultural resources. When cultural resources are inadvertently discovered:
 - (a) All work in the vicinity (within 50-feet/15-meters) of the resource shall be halted and the resource secured from further damage.
 - (b) The Historic Preservation Officer shall be consulted regarding the importance of the resource and feasible means to avoid damage to it.
 - (c) If the resource cannot be avoided, damage to the resource shall be mitigated in accordance with the decision of the Historic Preservation Officer and under the terms of a permit issued, as necessary, in accordance with Section 6.1(i)(b) above.

6.2. ETHNOGRAPHIC ACQUISITION

Sponsors and their agents shall consult with HPD and obtain the proper permits before initiating ethnographic activities. To the extent feasible, research designs shall take into account the principles and traditional concerns inherent in this Policy.

Sacred and ceremonial information is held in trust by individuals for the Navajo Nation as a whole. Information regarding sensitive cultural practices, the location of sacred or culturally significant places is transmitted orally and is not intended to be written down. Traditional *Diné* do not make permanent records or representations of sacred or ceremonial stories, songs and sandpaintings because such permanent records might fall into the hands of people without proper instruction or individuals who might

misuse the knowledge and, in either instance, may consequently harm themselves or others. Similar concerns surround the collection of personal information in life histories. Some kinds of information should never be collected or disseminated. Other types of information can only be shared during particular seasons of the year or with persons of a particular age, maturity level or gender, etc. Individuals who are required to collect and to disseminate such culturally sensitive information through necessary technical reports shall consult with and obtain prior written consent from the Historic Preservation Officer.

Personal information provided by an interviewee belongs to that individual. Such information shall only be collected after obtaining the informed written consent of the interviewee and with their full understanding of its intended use and, if applicable, the nature, type and degree to which that information may have to be disseminated.

Confidential information shall not be released by Sponsors, their agents or others without both the informed written consent of the individual who provided it and the prior written approval of the Historic Preservation Officer. Confidential and other sensitive information (including locational data) shall be included in reports only as removable, confidential appendices. Audio and/or video tapes of interviews, transcripts, field notes and other records and material directly derived from the project shall not be retained by the Sponsor, its agent or others but shall become the property of the Navajo Nation and shall be submitted to the Historic Preservation Officer for appropriate disposition. Interviewees shall be made aware that information they provide will become part of collections and may be maintained into perpetuity.

6.3. Return of Pre-existing Collections

There are numerous collections of both sacred and culturally significant Navajo Nation materials in the possession of universities and colleges, museum, libraries, federal agencies, other agencies, researchers, private individuals, contractors, and other individuals. Such collections are of interest and concern to the Navajo Nation. It is the intent of the Navajo Nation to return portions or all of these collections for appropriate disposition or curation by the Navajo Nation. The repatriation of human

remains, associated funerary items, and sacred objects will be addressed in a separate Policy.

6.4. Return of Confiscated Collections

Disposition of collections obtained as a result of legal proceedings (e.g. confiscated items) shall be dealt with by the Historic Preservation Officer.

5. PROSCRIBED COLLECTIONS

In addition to general Dine prohibitions regarding disturbance of prehistoric remains, and a preference for leaving the cultural landscape intact, there are also traditional prohibitions regarding certain types of material that should *never, under any circumstances*, be collected; including items that:

- (1) Are sacred or of a ceremonial nature;
- (2) Appear to be part of a ceremonial offering; or
- (3) Are in any way related to human burial, including associated and isolated funerary remains such as ceramic vessels, ornaments, wash basins, eating utensils, broken shovels, etc. Sponsors, their agents, and others shall pay particular attention to locations and shall also avoid disturbance of remains that are or appear to be out of the ordinary, such as cairns, shrines or grouped pieces of precious stones.

To avoid inadvertent collection of sacred or ceremonial objects, Sponsors, their agents, and others shall conduct necessary surface collections with great care. As part of the research process, Sponsors, their agents, and others shall make a reasonable and good faith effort to gather appropriate and adequate contextual information (usually by way of ethnographic interviews) on locations which may be sacred, ceremonial or where other culturally sensitive materials might be thought to be present.

Sponsors, their agents and others shall not collect the following:

1. *Hadaa_t'è ánídaalyaa'ígíí*, figurines typically constructed out of wood, cornmeal, gourd, clay, and /or other botanical materials. These figurines may be anthropomorphic forms or representations of quadrupedal, reptilian or amphibian beings, which have been created to heal ailments for a specific Navajo person. Such figurines are not to be touched, handled or removed. However, should removal appear to be absolutely necessary for the purposes of an undertaking, an *hataa_ii* must be consulted for advice regarding appropriate treatment, and the removal and disposition must be specially approved in writing by the Historic Preservation Officer. Evidence of the consultation,

together with the *hataa_ii*'s advice or opinion must be proved to the Historic Preservation Officer.

2. Offerings of any kind; including; any grouping of *nt_iz* – pieces of shell, turquoise, and jet, which may be found in association other minerals and with botanicals; *k'eet'aán*-botanical stems or pegs noticeably cut, notched, and decorated in association with the ladder, feathers, and cotton, and beads. Such offerings are not to be touched, handled or removed. However, should removal appear to be absolutely necessary for the purposes of an undertaking, a *hataa_ii* must be consulted for advice regarding appropriate treatment. The removal and disposition must be specially approved in writing by the Historic Preservation Officer. Evidence of the consultation, together with the *hataa_ii*'s advice or opinion must be provided to the Historic Preservation Officer.
3. Retired *Jish* – sacred objects; examples include but are not limited to, items showing evidence of manufacture or human alteration, wood products, cut, carved, and/or shaped; pieces of prepared buckskin or leather-thongs, strips, pouches, bags, etc.; lithics; pottery; tobacco pipes; botanicals; gourds; animal and bird parts-hide, claws, horns, hooves, feathers, bone, etc; shells; cotton string; yarn; etc. Such objects are not to be touched, handled or removed. However, should removal appear to be absolutely necessary for the purposes of an undertaking, a *hataa_ii* must be consulted for advice regarding appropriate treatment, and the removal and disposition must be specifically approved in writing by the Historic Preservation Officer. Evidence for the consultation, together with the *hataa_ii*'s advice or opinion must be provided by the Historic Preservation Officer.
4. Human remains in any context.
5. Funerary items, including items potentially associated with human burials such as shovel heads, broken shovels, dishware of all sorts, saddles or portions of saddles burned or unburned clothing wash basins, etc.
6. Collection of information through ethnographic interviews can occur only after obtaining the interviewee's informed, written consent.

Sacred objects and offerings shall not be photographed or sketched without the prior written permission of the Historic Preservation Officer. Should removal or relocation of sacred objects or offerings be unavoidable, the Sponsor or its agent shall consult with and obtain the prior written approval of the Historic Preservation Officer.

6. ITEMS OF CULTURAL PATRIMONY

In accordance with NAGPRA and upon notice and formal request of the governing council or properly authorized representative of another federally recognized Indian Tribe, government-to-government negotiation shall be initiated to return to such tribe objects of cultural patrimony belonging to that tribe that are in the possession of the Navajo Nation. Sacred objects and objects of cultural patrimony shall be expeditiously returned where

- (1) The requesting party is either the individual who originally owned the object or direct lineal descendant of an individual who owned the object; or
- (2) The requesting Indian Tribe can show that the object was owned or controlled by the Tribe; or
- (3) The requesting Indian Tribe can show that the object was owned or controlled by a member thereof, and that no identifiable lineal descendants have made a claim for the object. The place and manner of return of such objects shall be negotiated on a case-

by-case basis. Each requesting Indian Tribe shall afford the Navajo Nation reciprocity consistent with the Policy.

7. OBTAINING INFORMATION AND ASSISTANCE

If Sponsors, their agents or others need assistance or information regarding sacred or culturally sensitive material, measures, for protecting themselves or others against potential ill effects of contact with sacred items (some of which imbued with “power” that may be dangerous if inappropriately handled), traditional concern, interview methods, “culturally appropriate” activities or behavior, the role of *Hataa_ii*, and etc., they should contact the Historic Preservation Department.

8. DISPOSITION OF CULTURAL RESOURCES COLLECTIONS

10.1. Collection Disposition

Normally, collections of material remains will not be curated but will be returned to the cultural landscape. The Navajo Nation will curate or archive records. When the Navajo Nation accepts a collection for curation or archiving, it shall collect a

fee to cover the expenses associated with that activity and the maintenance of the collection.

10.2. Collection Repository

The Navajo Nation Museum shall be the repository of cultural resources for those collections or part of collections not returned to the landscape that are obtained on Navajo Nation lands. Records detailing disposition of collections shall be maintained and safeguarded by the Historic Preservation Officer or the Navajo Nation Museum.

10.3. Accessioning Collections

Sponsors, their agents, and others shall ensure that all parts of a collection to be accessioned by the Navajo Nation Museum are properly prepared for accessioning. Procedures for inventorying, identifying, evaluating, handling, cleaning, analyzing, labeling, cataloguing, packing, and storing collections shall be in accordance with standard professional practices. The Museum Director shall provide information including guidelines for preparing the collection for accessioning, as necessary. Collections deposited with the Navajo Nation shall include all information derived from the project that produced them.

Navajo Nation sacred and ceremonial objects shall only be dealt with in the context of repatriation activities. In the event that sacred or ceremonial objects are inadvertently collected, Sponsors, their agents, and others shall contact the Historic Preservation Officer and proceed as directed.

10.4. Collection Disposition Fee Schedule

The Museum Director shall develop and maintain a schedule of fees that shall be assessed for collections accepted by the Navajo Nation Museum pursuant to this Policy. Fees shall be used to defray the cost of collection disposition. Fees may be waived by the Museum Director with the concurrence of the Historic Preservation Officer.

10.5. Disposition Process

Prior to making any decisions regarding disposition, the Museum Director shall ensure that the collection is properly assembled, inventoried, and accessioned. If material remains or associated records are missing, it shall be the project Sponsors',

their agents or others responsibility to make a good faith effort to locate the missing items and append them to the collection.

Some collections consist exclusively of original records (or copies thereof) that are prepared, assembled, and document efforts to locate, evaluate, document, study, preserve or recover a cultural resource; that is, of archival materials only (including audiovisual recordings). Such collections shall be curated in their entirety. The Museum Director shall insure that these collections are managed and preserved according to professional museum and archival practices. Collection management shall take into consideration traditional concerns, as appropriate.

If the Historic Preservation Officer determines that certain material remains (e.g. sacred objects, ceremonial items, complete projectile points, complete tools, or complete ground stone implements) should be transferred to *Hataa_ii* or others for cultural reuse, the Historic Preservation Officer shall identify the appropriate recipient(s) and shall document the process by which the items are transferred. All documentation, including a Transfer of Caretake Responsibility Form shall be appended to the associated records for the collection and properly curated/archived.

10.6. Disposition within the Project Area

To the greatest extent possible, material remains that are intentionally excavated as part of an undertaking shall be returned to the cultural landscape. Material remains should be replaced within the boundaries of the project area but outside the construction zone and in locations that are unlikely to be disturbed in the future. Material remains should be placed far enough below the surface of the earth so that items will neither be visible nor exposed by erosion or other disturbance.

They should not be placed in containers of any sort but should be allowed to continue to weather naturally. The items should be permanently marked in a manner approved by the Historic Preservation Officer to make it clear that they have been reburied. Sponsors or their agents are responsible for returning material remains to the cultural landscape unless the Historic Preservation Officer determines that the Navajo Nation will take responsibility for this activity. The Historic Preservation Officer shall ensure that the actual procedures used for reburial of material remains are fully documented, including preparation of maps showing the locations of the reburied items. All documentation (including maps) shall be appended to the associated records for the collection and properly curated/archived.

To the greatest extent possible, material remains that were obtained through means other than intentional excavation (e.g. inadvertent discovery, return of pre-existing collections, or confiscation) shall also be returned to the cultural landscape. In such cases, the Historic Preservation Office shall determine the appropriate location and process for disposition. The Historic Preservation Officer shall ensure appropriate involvement of individuals with surface use rights (if any); as well as the actual procedures used to return of the remains to the cultural landscape are fully documented (including maps, if appropriate). All documentation (including maps) shall be appended to the associated records for the collection and properly curated/archived.

10.7. Disposition Outside of Established Project Boundaries

It is Navajo Nation Policy to return remains to the cultural landscape as near as possible to the location from which they were removed. When it is not prudent or feasible to rebury within the approved project boundaries, the Sponsor or its agents must identify a suitable area for reburial. The location selected is subject to the approval of the Historic Preservation Officer.

The Sponsor or agent must obtain the written consent of individuals (if any) with surface use rights recognized by the Navajo Nation when an area outside the project boundaries is proposed for reburial. The Sponsor or its agents must submit documentation of land user consent when requesting approval of the reburial location.

If there are no individuals with surface use rights legally recognized by the Navajo Nation, the Sponsor is responsible for obtaining the approval of the Chapter in which the proposed reburial is to be located.

9. ACCESS TO COLLECTIONS

The Historic Preservation Officer shall be responsible for establishing procedures and policies related to access to collections. Collections shall be made available for education, scientific and traditional uses, subject to such terms and conditions as are necessary to protect and preserve the condition, research potential, religious or sacred importance, and uniqueness of the collection. Access to sacred, confidential, and other highly sensitive

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Policy for the Disposition of Cultural Resources Collection

information may be limited on a seasonal or other basis. Access information shall be made available to individuals requesting access.

Collections (or portions thereof) may be loaned to other repositories, institutions or individuals for educational purposes, research, training, display, or other cultural appropriate purpose. Written loan agreements shall be prepared between the repository and the borrower that specify (a) the collection or item being loaned; (b) the purpose of the loan; (c) the length of the loan; (d) and restrictions on use of the collection or item; (e) the manner in which the collection or item must be handled; (f) requirements for insuring the collection or item being borrowed against loss, damage, or destruction during transit or while in the borrower's possession; and (g) any fees or charges associated with the loan and use of the collection or item.

In certain circumstances, the Historic Preservation Officer may decide to limit access to all or parts of the curated collection because it includes particularly sensitive information, confidential data, fragile items, items that should only be viewed or used during certain seasons of the year or by persons of a particular age or sex, and so forth. Such decisions shall be documented.

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