



Former NWS Concord Cultural Resources Management Team FY12 Accomplishments

Is it possible to overcome distrust and craft win-win solutions with diverse stakeholders and still support mission-critical actions and schedules?

For the Concord Cultural Resources Management Team, the answer is “Yes!”

Between December 2011 and August 2012, the Naval Facilities Engineering Command Headquarters (NAVFAC HQ) Base Realignment and Closure Program Management Office (BRAC PMO) successfully completed Native American Graves Protection and Repatriation Act (NAGPRA) consultation with Native American Tribes regarding the former Naval Weapons Station Concord, Concord, California. To support archaeological evaluations required for proposed property transfer, BRAC PMO developed a NAGPRA Plan of Action (PoA) identifying treatment and disposition actions in the event that Department of Navy (Navy) encountered human remains or NAGPRA cultural items during the fieldwork for the Phase II archaeological investigation. Despite intense schedule pressure and culturally-sensitive, emotionally-charged issues regarding human remains and land redevelopment, the Navy finished the archaeological fieldwork on time and within budget, while developing positive and productive working relationships with participating Native American Tribes.

As a result of excellent teamwork by BRAC PMO and NAVFAC Southwest, the Navy conducted a proactive and inclusive consultation that built Government-to-Government relationships with Native American Tribes that will ultimately streamline the National Historic Preservation Act Section 106 consultation process and allow Navy to meet its National Environmental Policy Act (NEPA) schedule and thereby, support property transfer. By building trust and mutual understanding with stakeholders, the Navy was able to develop mutually-beneficial and cost-saving outcomes. Lessons learned from the Concord project are transferable not only to cultural resources teams within the Navy and the Department of Defense (DoD), but the consultation and the finalized NAGPRA Plan of Action have also become models for the Native American Tribes as they coordinate with other Federal, state, and local agencies.

Summary of Achievements

- Built a cohesive Navy team, achieving synergy of technical and legal expertise across NAVFAC HQ BRAC PMO and NAVFAC Southwest
- Developed a culturally-sensitive Consultation Plan that led to new, collaborative partnerships with three Native American Tribes
- Completed proactive, inclusive consultation resulting in a NAGPRA Plan of Action, which is now becoming a model in the region
- Forged lasting trust with Tribal stakeholders who often distrust Federal agencies
- Expedited mission-critical schedule: project completed in 9 months (prior to the endangered species' breeding season and in less than half the time of a typical 18-24 month consultation)
- Realized cost savings by avoiding protracted consultation and consequential delays to related BRAC processes



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The Former Naval Weapons Station Concord and the BRAC Context

Part of the Navy West Coast ammunition storage system since 1942, Naval Weapons Station Concord, California (NWS Concord) was identified for closure by the 2005 Defense Base Closure and Realignment Commission. The Navy is now proposing transfer of approximately 5,000 acres of NWS Concord to the Local Reuse Authority (LRA) and other local agencies for redevelopment. NWS Concord contains administrative facilities, and numerous ammunition storage bunkers surrounded by grasslands, hills, and open space formerly used for agriculture and livestock grazing. Ultimately, the LRA and other property recipients plan to redevelop the former installation for residential, commercial, and retail uses along with a large, open-space recreation area.



NWS Concord, containing over 200 ammunition storage bunkers, is surrounded by vast open space and grasslands.

The Project: NAGPRA Consultation / Phase II Archaeological Evaluation In Support of Transfer

In accordance with Section 106 of the National Historic Preservation Act (NHPA), the Navy must analyze the reasonably-foreseeable effects of transfer and reuse on historic properties. The Navy initiated Section 106 consultation in 2007 and completed a Phase I archaeological survey in 2009, which identified three prehistoric-period archeological sites needing further evaluation. Since one of these prehistoric-period sites contained Native American artifacts and human bone, there was potential to encounter Native American human remains and NAGPRA cultural items during the Phase II evaluation. Discovery of these items triggers consultation with Native Americans pursuant to NAGPRA.

To support the schedules for Section 106, NEPA, and proposed land transfer, BRAC PMO had to complete the Phase II archaeological evaluation before the end of Summer 2012, in advance of seasonal restrictions on ground disturbance due to the breeding seasons of two endangered species, the California red-legged frog and the California tiger salamander.

The Concord Cultural Resources Management Team: NAVFAC BRAC PMO & NAVFAC Southwest

NAVFAC HQ BRAC PMO, located in San Diego, California, is responsible for the transfer/disposal of Navy BRAC installations, and associated compliance with NAGPRA, Section 106 of the NHPA, and NEPA. The NAVFAC BRAC PMO team for this project included cross-functional experts including a Cultural Resource Specialist, Base Closure Managers, Environmental Planner, and Caretaker Site Managers.

Anticipating formidable challenges with the Concord project, BRAC PMO partnered with Archaeologists and Counsel from NAVFAC Southwest. Members of the Concord Cultural Resources Management Team (Concord Team) are identified in the inset on Page 7.



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The Regulatory Context

NAGPRA requires Federal agencies to consult with Native American individuals and Tribes to seek agreements regarding the treatment and repatriation/disposition (transfer of physical custody and legal interest) of Native American human remains and certain cultural items. NAGPRA identifies the rights of Native American lineal descendants and Federally-Recognized Tribes with respect to the treatment, repatriation, and disposition of Native American human remains, “funerary objects, sacred objects, and objects of cultural patrimony” with which they can show a relationship of lineal descent or cultural affiliation.

The Cultural Context

For many Native American groups, human remains (HR) are not considered resources, per se, but are ancestors to whom members of a Tribe feel a cultural, familial, and moral obligation. Many Native Americans feel a personal responsibility to treat their ancestors and their burial sites with the utmost care and reverence. Some burial items, themselves, are even held as sacred or as sources of divine power. Discussions with non-Native Americans about potential impacts to HR and culturally-sensitive burial items are often emotionally charged. Additionally, it is a common experience for Tribes to be contacted only *after* an agency or developer irreparably damages HR or cultural items.



A bedrock outcrop containing 10 small, ceremonial cupules at NWS Concord.

For the Concord project, the Tribes saw the archaeological sites to be investigated not just as potential burial sites of ancestors, but as parts of a larger landscape where Tribal people had lived since time immemorial. Regardless of where the Tribes live now, the Tribes consider the Concord area to be their homeland. During the Gold Rush and early statehood in Northern California, many Tribal groups were dispossessed of their land through violence and/or through treaty negotiations with the United States Government that removed them from their land without compensation. For many California Indians, this history leads to a sense of betrayal and a lasting distrust of the Federal Government and its agents.

Proactive and Inclusive NAGPRA Consultation

The regulatory and cultural contexts above meant that compliance with NAGPRA and Section 106 of the NHPA would require consensus building regarding two very emotionally-charged topics (HR/cultural items and land redevelopment) in an environment of prior distrust and considerable schedule pressure. The Concord Team reviewed lessons learned from other Navy and Marine Corps installations and identified the following challenges for the Concord project: 1) definitively identifying individuals or Tribes with cultural affiliation to the property and working through potential disagreements between Tribes on these issues; 2) NAGPRA



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consultations typically take no less than 18 to 24 months due to the regulatory/cultural contexts; and 3) Navy did not have current consultative relationships with Tribes potentially affiliated with the former NWS Concord.

The Concord Team determined a NAGPRA "Plan of Action" (PoA) would best meet the Navy's mission and schedule requirements for property transfer at NWS Concord. A PoA would allow Navy to proactively consult with Tribes to determine a specific plan of treatment and disposition for HR and NAGPRA cultural items in the event Navy encountered them during fieldwork. The Concord Team then devised a consultation plan based on three principles: 1) build a consultation environment based upon cultural sensitivity, mutual respect, and collaboration; 2) everyone must recognize the schedule and the benefits that would come from meeting the schedule; and 3) frequent, open communication would be necessary to reinforce principles 1 and 2.

In early December 2011, the Concord Team contacted eight Plains Miwok Tribes now living in the Sacramento Valley. The first Government-to-Government consultation meeting was held in January 2012 and three tribes expressed interest in consulting. At this face-to-face meeting, the Concord Team focused on the first two principles of the consultation plan by sharing goals for a Plan of Action and seeking to identify the Tribes' interests and concerns. The Tribes indicated their interests in avoiding ground disturbance altogether and reburying any HR or NAGPRA cultural items on site. The Tribes also recognized Concord as a shared cultural area and requested that Navy reach out to other cultural groups (Wintun, Yokut, Maidu) to gauge their interest. Demonstrating its commitment to inclusiveness, openness, and respecting the input of the Tribes, the Concord Team contacted six additional tribes.

"Our success depended upon developing a Consultation Plan and building a collaborative partnership with Native American Tribes early in the process."

-Kimberly Ostrowski,
NWS Concord Base Closure
Manager

Overcoming the Legacies of the Past

Between January and March 2012, the Concord Team held frequent teleconferences to engage newly-identified, interested tribes. As new participants joined, their introduction to the BRAC process led to a fundamental question: Why had the Tribes not been informed and given the opportunity to receive property? The Concord Team had to research and answer that difficult question: Under two separate solicitations, one conducted by the Navy in 2006 and the second conducted by the LRA in 2007, no Native American tribes had identified their interest in property at NWS Concord and LRA planning efforts had progressed. Despite this explanation, consensus crystallized among the Tribes: they should receive portions, if not all of, their former homeland (the property proposed for transfer), and their ancestors should be reburied on site. Despite the Navy team's intentions to establish a respectful and productive consultation environment, the legacies of the past were creating the potential for an impasse.



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Unfortunately, the Concord Team could not honor the request for property transfer, nor could it commit to on-site reburial at that point. The LRA had just adopted a reuse plan based upon four years of planning and could not support a significant last minute request for property. Additionally, Navy could not commit to onsite reburial in advance of the archaeological evaluation and determination of National Register eligibility. In absence of an eligible property, the Navy did not have a legal mechanism for ensuring preservation of archaeological sites post-transfer. The Concord Team therefore could not commit to reburial without knowing whether long-term protections would ultimately be possible.

In light of the growing potential for impasse, the Concord Team focused on principles 2 and 3 of the consultation plan: emphasizing the mutual benefits of meeting schedule, and continuing frequent, open communication. In March 2012, the Team met with the Tribes in the Sacramento Area to discuss why development of a PoA was in the interest of the Tribes and the Navy. The Team highlighted the Tribes' opportunities to participate in the fieldwork and to help guide Navy's respectful treatment and disposition of HR. Additionally, the Team explained how the archeological fieldwork was necessary to support the National Register eligibility evaluation and to identify the most appropriate treatment and protections for the archaeological sites. By the end of the Sacramento meeting, the five Miwok, Maidu, and Yokut consulting Tribes were ready to consult on a Draft PoA.

In May 2012, the Concord Team distributed a Draft PoA and held a site visit and consultation meeting at NWS Concord. The site visit and Draft PoA seemed to inspire more trust in the Concord Team and ultimately the two non-Miwok Tribes deferred to the three Miwok Tribes to finalize the PoA.

Building Lasting Trust and Mutual Understanding

With less than two months left before fieldwork was scheduled to begin, tribal elections triggered a change in tribal representatives and the progress from the previous seven months seemed to fade away. The new Tribal representatives wanted to revisit contentious issues, such as property transfer and onsite reburial, and provided comments that conflicted with regulatory definitions and protocols under NAGPRA. With the fieldwork deadline looming, the Concord Team executed the Plan of Action in late July 2012. Although the PoA assumed repatriation/disposition to the Tribes in lieu of on-site reburial, the Concord Team forwarded the Final PoA with a detailed explanation of how Navy was addressing Tribal input within the regulatory, policy, and logistical constraints. In an effort to address some of the Tribes' concerns, the Concord Team also invited three "Native American Specialists" to participate during fieldwork, one of whom would serve as the Tribal NAGPRA POC representing the three tribes. With these parameters, two of the three Tribes signed the PoA.



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On August 13, 2012, the Navy started archaeological fieldwork on schedule. Although the Team expected to encounter HR at some point during fieldwork, no one anticipated encountering HR in the first test pit. The Tribal NAGPRA POC was shaken and insisted that the Navy reevaluate the PoA to consider reburial. As the Concord Team was caucusing to consider this, the Native American Specialists unilaterally reburied the remains. The Concord Team Archaeologist called an immediate in-field meeting and calmly explained that the Navy was in the field to work collaboratively with the Native American Specialists and to implement the PoA in good faith, and, that the Navy expected the same in return. This statement resonated with the Tribes and defused an emotionally-charged moment by refocusing efforts on real collaboration. The Team's Cultural Resources Manager then discussed the conundrum of not being able to ensure long-term preservation of the site before the archaeological evaluation was complete. The Tribal NAGPRA POC then shared her perspective: she needed to insist on reburial, however short-term the protections may be. She felt that her ancestors, her Tribe, and her own conscience depended upon her to do so.



Archaeological fieldwork underway at NWS Concord.



Prehistoric beads, similar to those depicted above, were discovered during the 2012 fieldwork.

The in-field discussion revealed that the Concord Team and the Native American Specialists were all trying to do the right thing—even if they defined that differently. Because long-term preservation was not essential to the Tribes, the Concord Team reassessed its position. Ultimately determining that onsite reburial would not jeopardize property transfer, the Navy acquiesced. In response to the Navy demonstrating flexibility, the Tribes also compromised by agreeing to scientific analysis of NAGPRA cultural items. The Tribes indicated that they were willing to do this because they were impressed with the Concord Team's honesty,

willingness to listen, and commitment to Government-to-Government consultation. With a new sense of cooperation and partnership, the Concord Team and the Native American Specialists agreed to consult further over dinner regarding the details. Although funerary objects and soil column samples would later be reburied on site, the Native American Specialists would allow Navy to analyze these items and use the data in the archaeological evaluation. All parties agreed that it was in the interest of all stakeholders to conduct the most complete archaeological evaluation possible. Before dessert was finished, the Concord Team and the Native American Specialists had come to agreement on an amended PoA.

This agreement was critical to the successful completion of the fieldwork prior to the endangered species' breeding season. The Native American Specialists became enthusiastic contributors to the evaluation effort, assisting with fieldwork and providing ethnographic information to support the evaluation. Due to the partnership the Concord Team built with



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the Tribes, Navy’s fieldwork was completed on time and within budget, despite HR and cultural items being uncovered in almost every testing location.

Expedited Consultation: On Schedule, Within Budget

From the inception of the project, the Concord Team recognized that focused schedule management and proactive consultation with the Tribes were critical to project success. Implementation of the three principles of the consultation plan allowed the Concord Team to complete consultation in less than half the time of typical NAGPRA consultations. By frequently communicating the benefit of schedule compliance, as well as the consequences of delay, the Concord Team incentivized the Tribes’ participation and their commitment to Navy’s schedule.

Additionally, the relationships built with the Tribes during the NAGPRA consultation and archaeological fieldwork will directly support the Section 106 consultation, NEPA, and property transfer processes. Due to the trust the Concord Team earned, the Tribes appear willing to work with Navy and the LRA to craft innovative approaches to minimizing and mitigating effects to cultural resources on the property. The upfront investment to build trust during the NAGPRA consultation will assist Navy in 1) avoiding costs and schedule delays associated with a contentious and protracted Section 106 consultation, and 2) avoiding unnecessary schedule impacts to the NEPA and property transfer schedules.

In all of these ways, the multi-faceted success of the NAGPRA consultation and archaeological evaluation directly support the NAVFAC BRAC PMO mission of cost-effective and expeditious property disposals.

Lessons Learned and Transferability

By developing and implementing a Consultation Plan based upon interest-based negotiation, sensitivity to Tribal histories and cultures, and a commitment to Navy mission, the Concord Team demonstrated that it is possible to create win-win solutions with stakeholders having diverse and competing viewpoints.

The Concord Team intends to formally present lessons learned with DoD colleagues and efforts are now underway to share this information within the Navy. As a testament to the power of this positive experience, the Tribes are also sharing the Concord success beyond the Navy and DoD. Participating Tribes intend to share the Navy’s PoA with other agencies, and other California Tribes have requested copies of the PoA. Perhaps the most lasting legacy of the Concord consultation will be the Tribes’ application of the Concord model to future projects and consultations with other Federal, state and local agencies.

The Concord Cultural Resources Management Team

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