CHAPTER 8.0 NATIVE AMERICAN CONSULTATION

Section 106 of the National Historic Preservation Act (as amended) and the Advisory Council on Historic Preservation regulations (36 CFR 800.2[c][2][ii]) mandate that federal agencies coordinate with interested Native American tribes in the planning process for federal undertakings. Consultation with Native American tribes recognizes the government-to-government relationship between the United States government and sovereign tribal groups. In that context, federal agencies must be sensitive to the fact that historic properties of religious and cultural significance to one or more tribes may be located on ancestral, aboriginal, or ceded lands beyond modern reservation boundaries.

Consulting tribes are offered the opportunity to identify concerns about cultural resources and comment on how a project might affect them. If it is found that the project will impact cultural resources that are eligible for inclusion on the National Register of Historic Places and are of religious or cultural significance to one or more consulting tribes, their role in the consultation process may also include participation in resolving how best to avoid, minimize, or mitigate those impacts. By describing the proposed undertaking and the nature of any known cultural sites, and consulting with the interested Native American community, FHWA and CDOT strive to effectively protect areas important to American Indian people.

In March 2004, eleven federally recognized tribes with a potential interest in El Paso County, were invited via letter to participate as consulting parties in the Powers Boulevard Environmental Assessment, from which the SH 16 Interchange project evolved. Those tribes included:

- Ute Mountain Ute Tribe (Colorado)
- Southern Ute Indian Tribe (Colorado)
- Ute Tribe of the Uintah and Ouray Agency ("Northern" Ute) (Utah)
- White Mesa Ute Tribe (Utah)
- Apache Tribe of Oklahoma
- Cheyenne and Arapaho Tribes of Oklahoma (two tribes administered by a unified tribal government)

- Pawnee Nation of Oklahoma
- Comanche Nation of Oklahoma
- Kiowa Tribe of Oklahoma
- Northern Arapaho Tribe (Wyoming)
- Northern Cheyenne Tribe (Montana)

Three tribes expressed the desire to be consulting parties for the Powers Boulevard project: the Northern Cheyenne Tribe, Cheyenne and Arapaho Tribes of Oklahoma, and Southern Ute Indian Tribe. When the SH 16 project was initiated as a separate undertaking in 2005, FHWA determined that instead of issuing a new solicitation for consulting tribes, these three tribes would automatically be considered consulting parties given their established interest in the Powers Boulevard project. In October 2005, FHWA notified the three tribes of the SH 16 project and affirmed their consulting status. The Southern Ute Indian Tribe responded in writing, indicating that the undertaking will have no effect on properties of religious or cultural significance to the tribe (see Chapter 10, Agency Correspondence). Although neither of the remaining two tribes responded, they remain consulting tribes unless or until FHWA is notified otherwise.

The Fort Carson Army Post administers land west of I-25 that would be used for portions of the interchange improvements. As such, Fort Carson and the Department of the Army have interest in and responsibility for the Section 106 compliance and tribal consultation process. As the lead federal agency, FHWA has taken responsibility for all facets of tribal consultation, although CDOT has been delegated facilitation of day to day consultation activities. Nonetheless, Fort Carson did not relinquish its responsibilities in this regard, as mandated by federal statute.

Impacts

Neither the No-Action Alternative nor the Proposed Action would have effects on any properties considered of religious or cultural significance to the consulting tribes.

Mitigation

FHWA and CDOT have committed to notifying the consulting tribes if cultural materials related to Native American occupation are discovered during any phase of construction associated with the Proposed Action, and to keep the tribes apprised of

progress on the undertaking. Through these actions, FHWA thus far has fulfilled, and will continue to fulfill its legal obligations for tribal consultation under federal law.