

TRIBAL CULTURAL RESOURCES SENSITIVITY TRAINING

California Environmental Protection Agency

Tribal Training Part 2 of 2

June 26, 2012

Definition of Culture*

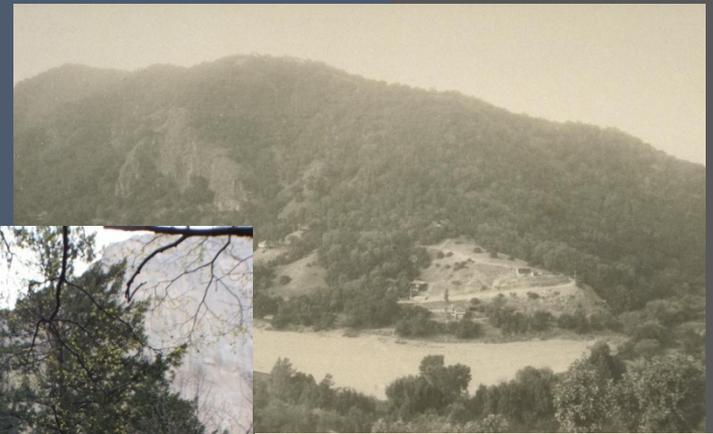
- Culture (is) a system of behaviors, values, ideologies, and social arrangements.
- These features, in addition to tools and expressive elements such as graphic arts, help humans interpret their universe as well as deal with features of their environments, natural and social.
- Culture is learned, transmitted in a social context, and modifiable.
- Synonyms for culture include "life ways," "customs," "traditions," "social practices," and "folkways." The terms "folk culture" and "folk life" might be used to describe aspects of the system that are unwritten, learned without formal instruction, and deal with expressive elements such as dance, song, music and graphic arts as well as storytelling.
- * taken from NATIONAL REGISTER BULLETIN GUIDELINES FOR EVALUATING AND DOCUMENTING TRADITIONAL CULTURAL PROPERTIES BY PATRICIA L. PARKER and THOMAS F. KING U.S. DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE NATIONAL REGISTER, HISTORY AND EDUCATION NATIONAL REGISTER OF HISTORIC PLACES 1990; REVISED 1992; 1998

Defining Cultural Resources

- ◎ What are they, legally?
 - Prehistoric and ethno-historic Native American archaeological sites;
 - Historic archaeological sites;
 - Historic buildings;
 - Elements or areas of the natural landscape which have traditional cultural significance.

Tribal Cultural Resources

- What are they to us?



Historic Foundations for Cultural Protection Laws

- From a tribal perspective, there seems to be a fascination for tribal ceremonial items and the bones of our family members.
- California Indians had created their own materials and marketed those materials
 - Including baskets, saddles, blankets, bridles, beeswax products, agricultural products and more.
- The market for “Indian artifacts” however
 - Established early in California’s infancy joint resolutions and statutes passed to facilitate payments to militia members who returned bodies then scalps for payment as part of the Indian wars.

California Expenditures from 1854 – 1859, excerpted from CRB-02-014 - “Early California Laws and Policies Related to California Indians” by Kimberly Johnston-Dodds (2002), p. 18.

Table 2 details the State’s expenditures for expeditions from 1854 to 1859.

Table 2

Expeditions Named in the Act of Appropriations by Congress made March 2, 1861				
Expedition	Year	Amount Allowed by California*	Amount Allowed by United States**	Amount Disallowed by United States
Shasta Expedition	1854	4,068.64	1,261.38	2,807.26
Siskiyou Expedition	1855	14, 036.36	6,146.60	7,889.76
Klamath & Humboldt Expedition	1855	99,096.65	61,537.48	37,559.17
San Bernardino Expedition	1855	817.03	419.99	397.04
Klamath Expedition	1856	6,190.07	2953.77	3,237.30
Modoc Expedition	1856	188,324.22	80,436.72	107,887.50
Tulare Expedition	1856	12,732.23	3,647.25	9,084.98
Klamath & Humboldt Expedition	1858 & 1859	52,184.45	31,823.94	20,360.51
Pitt River Expedition	1859	72,156.09	41,761.54	30,394.55
Total		\$449,605.74	\$229,987.67	\$219,618.07
Source: Comptroller of the State of California, <i>Expenditures for Military Expeditions Against Indians, 1851-1859</i> , (Sacramento: The Comptroller), Secretary of State, California State Archives, Located at “Roster” Comptroller No. 574, Vault, Bin 393.				

* Amount submitted to the United States for reimbursement.

** Amount actually paid by the United States.

Table 3 sets forth the twenty-seven California laws that the State Comptroller relied upon in determining the total expenditures recapitulated in the official report. The total amount of claims submitted to State of California Comptroller for Expeditions against the Indians was \$1,293,179.20.

Laws and Joint Resolutions Passed Relative to the Indian Wars in State of California, 1854 – 1859, excerpted from CRB-02-014 - “Early California Laws and Policies Related to California Indians” by Kimberly Johnston-Dodds (2002), p. 19.

Table 3

Laws and Joint Resolutions Passed Relative to the Indian Wars in the State of California 1851-1859			
Legislation	Date	Page	Description of Act or Joint Resolution
Statute	1851	489	Creating William Foster & William Rogers Pay Masters
Statute	1851	402	Creating James Burney Pay Master to pay Troops
Statute	1851	520	To negotiate a loan for the War Fund \$500,000
Joint Resolution	1851	530	To Establish Forts on our Borders
Joint Resolution	1851	532	Directing Adjutant General to enter names on Muster Roll
Joint Resolution	1851	534	Reference to the payment of claims and informal transfers in writing
Joint Resolution	1851	535	Reference to the payment of certain claims in the Gila Expedition
Joint Resolution	1851	538	Authorizing the Pay Master of the Gila Expedition to pay claims
Joint Resolution	1851	539	For the Benefit of the Citizens of Los Angeles County
Statute	1852	59	Authorizing the Treasurer to issue Bonds for \$600,000
Statute	1852	61	Authorizing and requiring Board of Examiners to settle with William Rogers
Statute	1852	250	For the relief of James S. Bolen
Statute	1852	261	For the relief of Jacob C. Kore
Statute	1852	262	For the relief of John G. Warrin
Statute	1853	79	For the relief of Thomas A. Wilton, M.D.
Statute	1853	95	To pay troops under Captain Wright S. McDermott \$23,000
Statute	1853	97	For the relief of Beverly C. Sanders
Statute	1853	130	For the relief of John C. Johnson
Statute	1853	134	Additional War Fund \$23,000
Statute	1853	154	For the relief of A.D. Blanchard and Samuel Stephens
Statute	1853	177	Secretary of State constituted one of the Board of Examiners
Statute	1853	177	Providing for the pay and compensation of Major James Burney
Statute	1853	200	For the relief of John Brown \$1,150
Statute	1853	225	Payment of the Fitzgerald Volunteers
Statute	1853	268	For the relief of John W. Jackson
Joint Resolution	1853	310	General Statement of War Debt to be made out
Statute	1854	171	For the relief of Powell Weaver

Source: Comptroller of the State of California, *Expenditures for Military Expeditions Against Indians, 1851-1859*, (Sacramento: The Comptroller), Secretary of State, California State Archives, Located at “Roster” Comptroller No. 574, Vault, Bin 393.

**Lyng v. NW Indian Cemetery
Protection Association, 485
U.S. 439 (1988)**

Lyng v. NW Indian Cemetery Protection Association, 485 U.S. 439 (1988)



6 mile portion of the road remains to be completed by Forest Service

Lyng v. NW Indian Cemetery Protection Association, 485 U.S. 439 (1988)

- In 1977, the Forest Service issued a draft EIS that discussed proposals for upgrading an existing unpaved road that runs through the Chimney Rock area. In response to comments on the draft EIS, the Forest Service commissioned a study of American Indian cultural and religious sites in the area. The Hoopa Valley Indian Reservation adjoins the Six Rivers National Forest, and the Chimney Rock area has historically been used for religious purposes by Yurok, Karok, and Tolowa Indians. The commissioned study, which was completed in 1979, found that the entire area "is significant as an integral and indispensable part of Indian religious conceptualization and practice." App. 181. Specific sites are used for certain rituals, and
 - successful use of the [area] is dependent upon and facilitated by certain qualities of the physical environment, the most important of which are privacy, silence, and an undisturbed natural setting.
- *Ibid.* (footnote omitted). *The study concluded that constructing a road along any of the available routes*
 - would cause serious and irreparable damage to the sacred areas which are an integral and necessary part of the belief systems and life way of Northwest California Indian peoples.
- *Id.* at 182. *Accordingly, the report recommended that the G-O road not be completed.* [p443]
- *Forest Service decided to proceed with road construction.*

Lyng v. NW Indian Cemetery Protection Association, 485 U.S. 439 (1988)

- District Court issues a permanent injunction prohibiting the road and the timber harvesting because both acts would violate the Free Exercise of Religion clause, FWPCA and that the EIS was deficient pursuant to NEPA.
 - And that both activities would violate the government's trust responsibilities
- While an appeal was pending in the 9th Circuit, CA passed the CA Wilderness Act of 1984 that designated the area as protected from commercial timber harvest activities with an exemption for the road (but closed the road to general traffic).
- 9th Circuit affirmed in part. It rejected the breach of trust findings and vacated the injunction to the extent that it had been rendered moot by the CWA of 1984.

Lyng v. NW Indian Cemetery Protection Association, 485 U.S. 439 (1988)

- After exhausting their administrative remedies, respondents -- an Indian organization, individual Indians, nature organizations and individual members of those organizations, and the State of California -- challenged both the road building and timber harvesting decisions in the United States District Court for the Northern District of California. Respondents claimed that the Forest Service's decisions violated the Free Exercise Clause, the Federal Water Pollution Control Act (FWPCA), 86 Stat. 896, *as amended*, 33 U.S.C. § 1251 *et seq.*, the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852, 42 U.S.C. § 4321 *et seq.*, several other federal statutes, and governmental trust responsibilities to Indians living on the Hoopa Valley Reservation.

Lyng v. NW Indian Cemetery Protection Association, 485 U.S. 439 (1988)

- The Free Exercise Clause does not prohibit the Government from permitting timber
- harvesting in the Chimney Rock area or constructing the proposed road. The Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government. Even assuming that the Government's actions here will virtually destroy the Indians' ability to practice their religion, the Constitution simply does not provide a principle that could justify upholding respondents' legal claims.

Key Federal Cultural Resources Protection Laws

Key Federal Cultural Resources Protection Laws

● Antiquities Act of 1906

- An act for the preservation of American antiquities.
- Authorizes the President to designate as National Monuments those areas of the public domain containing historic landmarks, historic and prehistoric structures, and objects of historic or scientific interests located on federally owned or controlled lands.
- The act further provides criminal sanctions for the unauthorized excavation, injury, or destruction of prehistoric or historic ruins and objects of antiquity.
- The Secretaries of the Interior, Agriculture, and Defense are authorized to issue permits for archaeological investigations on lands under their control to recognized educational and scientific institutions for the purpose of systematically and professionally gathering data of scientific value.
- www.usbr.gov/laws/antique.html

Key Federal Cultural Resources Protection Laws

- ◎ National Historic Preservation Act of 1966
 - An act to establish a program for the preservation of additional historic properties throughout the nation.
 - Authorizes the Secretary of the Interior to maintain a National Register of Historic Places; directs the Secretary to approve state historic preservation programs that provide for a State Historic Preservation Officer with adequate qualified professional staff, a state historic preservation review board, and public participation in the state program; authorizes a matching grants-in-aid program to the states; directs federal agencies to take into account the effects of their activities and programs on historic properties; establishes the Advisory Council on Historic Preservation to advise the President, Congress, and federal agencies on historic preservation matters; gives the Advisory Council the authority to issue regulations instructing federal agencies on how to implement Section 106 of the act; establishes the Certified Local Government program; establishes a National Historic Preservation Fund program; and codifies the National Historic Landmarks program.
 - www.usbr.gov/laws/nhpa.html

Key Federal Cultural Resources Protection Laws

- National Historic Preservation Act of 1966
- Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by ACHP.

Key Federal Cultural Resources Protection Laws

- National Environmental Policy Act (NEPA) of 1969
 - Declares that it is the policy of the federal government to preserve important historic, cultural, and natural aspects of the Nation's heritage.
 - The act further requires an interdisciplinary study of the impacts associated with federal program. Federal agencies must prepare environmental impact statements prior to making decisions about projects which may significantly affect the quality of the human environment.
 - www.afbca.hq.af.mil/handbook/basis/regs/ceqregs.htm

Key Federal Cultural Resources Protection Laws

- ◎ American Indian Religious Freedom Act (AIRFA) of 1978
 - An act setting forth a policy of protecting and preserving the rights of Native Americans to Freedom of Religion.
 - Makes it a policy of the federal government to protect and preserve for American Indians, Eskimos, Aleuts, and Native Hawaiians their inherent rights of freedom to believe, express, and exercise their traditional religions. It allows them access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites.
 - www.usbr.gov/laws/airfa.html

Key Federal Cultural Resources Protection Laws

- Archaeological Resources Protection Act of 1979
 - An act to amend the Antiquities Act of 1906.
 - Regulates the taking of archaeological resources on federal lands by setting a broad policy that archaeological resources are important for the nation and should be protected. The act further establishes a requirement for the excavation or removal of archaeological resources from public or Indian lands with special permits.
 - Violations of the law include civil and criminal penalties of fines and imprisonment.
 - www.usbr.gov/laws/arpa.html

Key Federal Cultural Resources Protection Laws

- Native American Graves Protection and Repatriation Act of 1990
 - An act to provide for the protection of Native American graves.
 - Requires federal agencies and recipients of federal funds, such as universities, museums, and governmental agencies, to document Native American human remains and cultural items within their collection, to notify all Indian tribes and Native Hawaiian organizations that are or are likely to be affiliated with these holdings, and to provide an opportunity for the repatriation of appropriate human remains or cultural items.
 - Cultural items include associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony.
 - www.usbr.gov/laws/nagpra.html

Key State Preservation Laws

California Preservation Laws

- California Environmental Quality Act (CEQA)
- California Executive Order W-26-92
- CA Native American Graves Protection and Repatriation Act
- SB 1816 – CA Native American Historic Resource Protection Act
- California Sacred Sites Bill (SB 18)
- Administrative Code, Title 14, Section 4307
 - No person shall remove, injure, deface or destroy any object of paleontological, archaeological, or historical interest or value.
- CCR Section 1427
 - Recognizes that California's archaeological resources are endangered by urban development and population growth and by natural forces. The Legislature further finds and declares that these resources need to be preserved in order to illuminate and increase public knowledge concerning the historic and prehistoric past of California. Every person, not the owner thereof, who willfully injures, disfigures, defaces, or destroys any object or thing of archaeological or historical interest or value, whether situated on private lands or within any public park or place, is guilty of a misdemeanor. It is a misdemeanor to alter any archaeological evidence found in any cave, or to remove any materials from a cave.
- Senate Concurrent Resolution Number 43
 - Requires all state agencies to cooperate with programs of archaeological survey and excavation, and to preserve known archaeological resources whenever this is reasonable.
- Senate Concurrent Resolution Number 87
 - Provides for the identification and protection of traditional Native American resource gathering sites on State land.

California Government Codes

- § 6254(r): California Public Records Act Exemption from Disclosure
 - Exempts from disclosure public records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.
- § 65092: Public notice to California Native American Indian Tribes
 - Includes California Native American tribe that is on the contact list maintained by the Native American Heritage Commission in the definition of “person” to whom notice of public hearings shall be sent by local governments.
- § 65351: Native American Involvement in General Plan Proposals
 - Requires local planning agencies to provide opportunities for involvement of California Native American tribes on the contact list maintained by the Native American Heritage Commission, and others, in the preparation or amendment of the general plan

California Government Codes

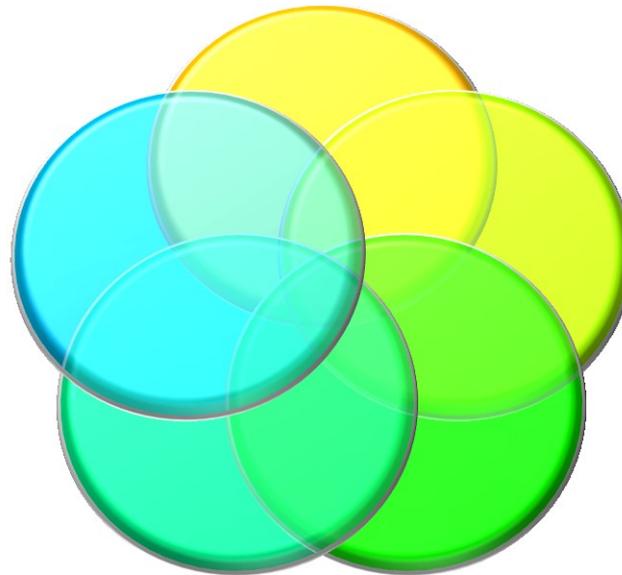
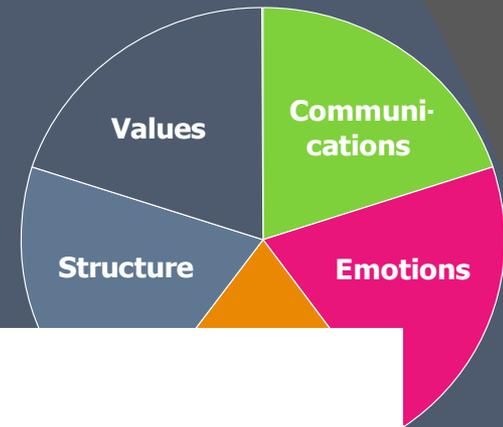
- § 65352: Referral of Action on General Plan Changes to Native Americans
 - Requires local planning agencies to refer proposed actions of general plan adoption or amendment to California Native American tribes on the contact list maintained by the Native American Heritage Commission, and others, with a 45 day opportunity for comments.
- § 65352.3- 65352.4: Consultation with Native Americans on General Plan Proposals
 - Requires local governments to conduct meaningful consultation with California Native American tribes on the contact list maintained by the Native American Heritage Commission prior to the adoption or amendment of a city or county general plan for the purpose of protecting cultural places on lands affected by the proposal.
- § 65560, 65562.5: Consultation with Native Americans on Open Space
 - Includes protection of Native American cultural places as an acceptable designation of open space. Requires local governments to conduct meaningful consultation with California Native American tribes on the contact list maintained by the Native American Heritage Commission for the purpose of protecting cultural places located within open space.

California Government Codes

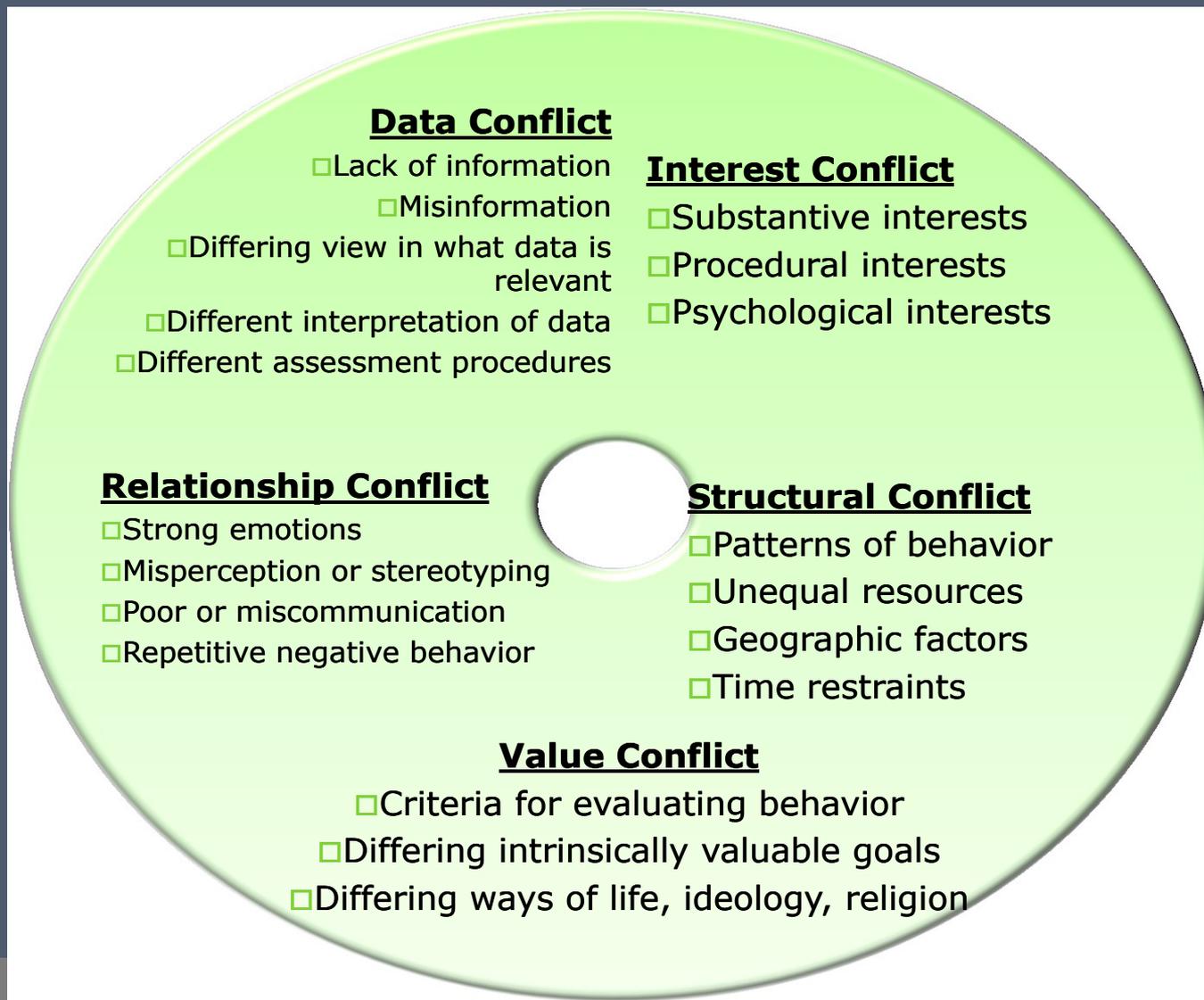
- § 12600-12612: Attorney General- Environmental Action
 - Permits the attorney general to intervene in any judicial or administrative proceeding concerning pollution or adverse effects on the environment. Authorizes the attorney general to maintain an action for equitable relief in the name of the people of the state against any person for the protection of the natural resources of the state from pollution, impairment or destruction. Includes historic sites in the definition of natural resources. Authorizes the court to hold the defendant accountable for the protection of natural resources of the state from pollution, impairment or destruction.
- § 25373, 37361: City/County Protection of Historic Resources
 - Allows city and county legislative bodies to acquire property for the preservation or development of an historic landmark. Allows local legislative bodies to enact ordinances to provide special conditions or regulations for the protection or enhancement of places or objects of special historical or aesthetic interest or value.
- § 50280-50290: Mills Act (Historical Property Contracts)
 - Allows the negotiation of contracts between a private owner of a “qualified historical property” and provides additional guidelines for such contracts.

**TRIBAL CULTURAL
RESOURCES SENSITIVITY
CAN IMPROVE WORKING
RELATIONSHIPS WITH
TRIBAL GOVERNMENTS**

Wheel of Conflict*

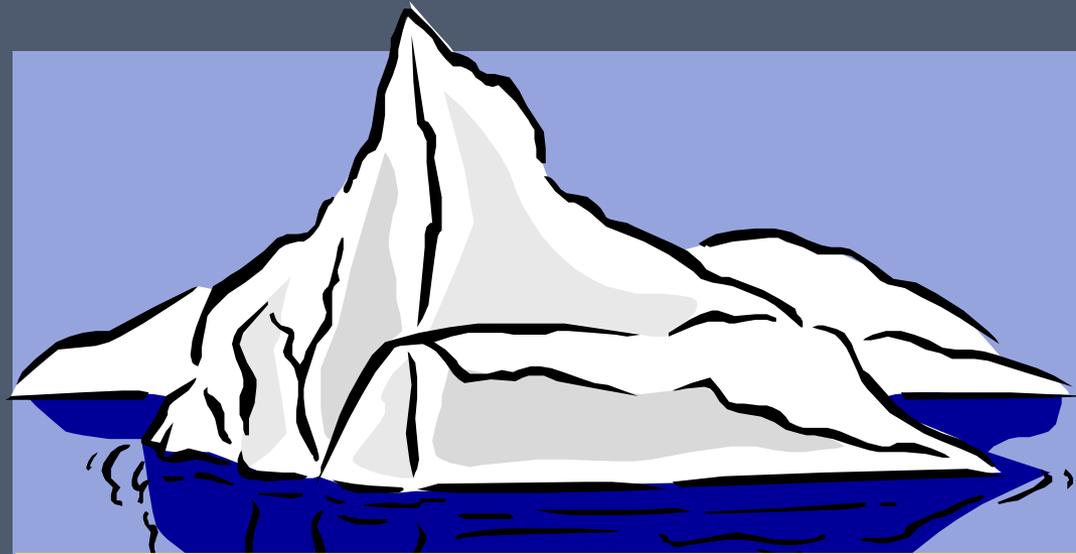


ADR Approach: Sphere of Conflict*



*Adopted from
Folberge & Milne,
Divorce Mediation:
Theory and
Practice, Ch. 13
(1988).

Active conflict is just
the tip of the iceberg

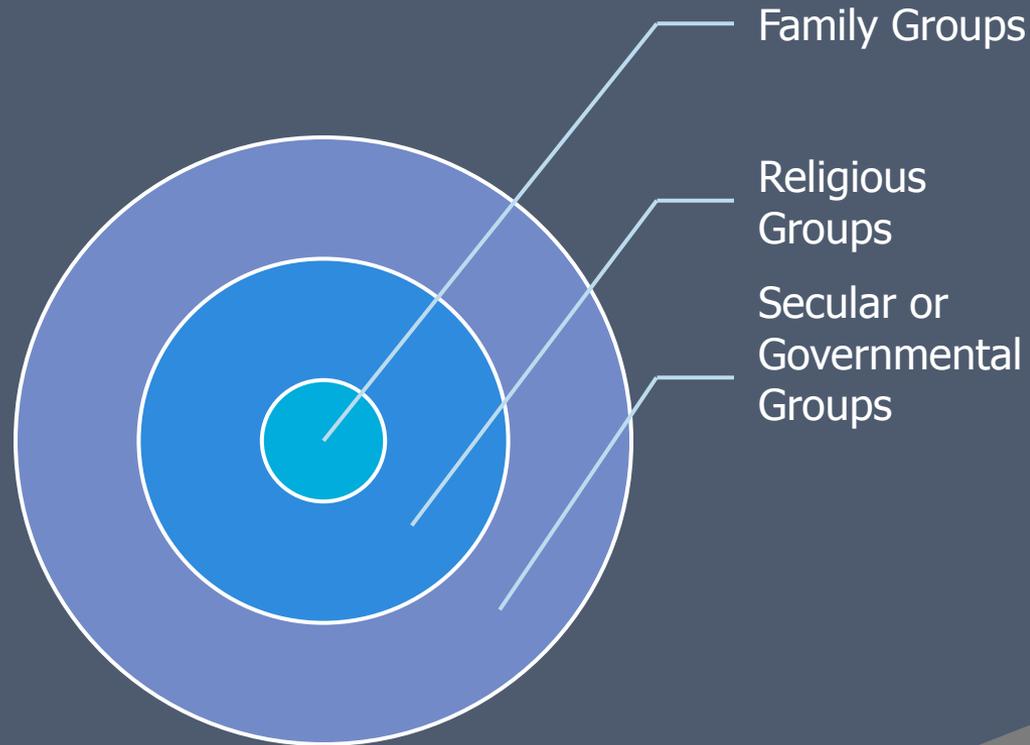


**anger, fear, distrust, frustration, fear
of change, fear of rejection,
humiliation, embarrassment, loss of
authority**

**ELEMENTS OF
TRADITIONAL TRIBAL
GOVERNMENTAL
STRUCTURES**

Aboriginal Systems

Generally, existed within a unique cultural and natural environment in which individuals relied upon the group for subsistence.



Sampling of Traditional Tribal Government Values and Traits

1. Kinship
2. Individual Autonomy
3. Emotional, spiritual and physical connection to homeland
4. No separation between physical and spiritual worlds
5. Sovereignty vested in community members
6. Males held elected or appointed positions, but women chose
7. Primary role of tribal government was more judicial than legislative

Steps for Conflict Resolution

1. Identify positions (“what are they saying”) of each side in conflict.
2. Learn more about the true needs and desires behind each side.
3. Ask clarifying questions for more information.
4. Brainstorm possible solutions.
5. Discuss how each solution would affect each side and figure out possible compromises.
6. Agree upon a solution.
7. Implement solutions.
8. Re-evaluate solutions, if necessary.