



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**MAY 08 2015**

Dear Tribal Leader:

The Departments of the Interior, Defense, Agriculture, and Energy, and the Advisory Council on Historic Preservation are working together under a Memorandum of Understanding (MOU) to improve the protection of, and Indian access to, sacred sites through Federal interagency coordination and collaboration. As part of this ongoing work, these Federal organizations developed a policy statement on the confidentiality of information about sacred sites and an information paper to help educate private citizens and state, county, and local governments about the importance of sacred sites to Indian tribes so that they might be better protected and preserved.

We held 5 listening sessions on our work under the MOU during late 2014 and early 2015. Comments from these listening sessions were incorporated into the attached proposed drafts of the policy statement and information paper or have been reserved for follow-up guidance on this topic. Before adopting the policy statement and disseminating the information paper, we will host 2 tribal consultation sessions by teleconference:

**Monday, June 1, 2015, 2:00 p.m. – 4:00 p.m. EDT**

Conference line: 888-921-8428

Participant passcode: 6108878

**Tuesday, June 2, 2015, 2:00 p.m. – 4:00 p.m. EDT**

Conference line: 888-921-8428

Participant passcode: 6108878

We invite you to submit any comments you may have by June 2, 2015, via email to [consultation@bia.gov](mailto:consultation@bia.gov), with "Sacred Sites MOU" in the subject line, or via mail to Ms. Kathryn Isom-Clause, Counselor to the Assistant Secretary, Office of the Assistant Secretary – Indian Affairs, U.S. Department of the Interior, 1849 C Street, NW, MS-3642-MIB, Washington, DC 20240.

We thank you for your participation in this work and we look forward to hearing your comments.

Sincerely,

Kevin K. Washburn  
Assistant Secretary – Indian Affairs

Enclosures

## **Policy Statement on Confidentiality of Indian Sacred Sites**

Federal agencies have a duty to protect American Indians' and Alaska Natives' sacred sites. When consulting with tribes to determine whether culturally sensitive locations may be affected by Federal actions, Federal agencies shall respect tribal desires to keep information about such locations confidential. Many tribes cannot disclose, for cultural reasons, information about the location, the significance, and even the existence of traditional religious and cultural properties and places. Federal agencies must respect and recognize tribal ownership of this information.

Given the requirements of the Freedom of Information Act (FOIA), which provides for public access to Federal records with only limited exceptions, agencies should obtain and record information about sacred sites only in the detail absolutely necessary to support administrative decisions. For instance, areas that tribes regard as spiritually or culturally significant should be identified in broadest terms practicable, sufficient to alert agencies to an area's significance without recording or revealing precise site locations or sensitive information about tribal religious beliefs or cultural practices. Agency managers should routinely address matters such as: managing visitation in areas where religious activities may occur; siting facilities to avoid adverse effects on sacred sites or an imposition on religious activities; and considering any unintended effects that management actions may have on sacred sites, including, but not limited to, impacts on natural resources, air and water quality, noise levels, and visual intrusions.

To provide American Indians and Alaska Natives the fullest possible access to and use of sacred sites, and to provide Indian sacred sites the highest possible level of protection, Federal agencies are charged with carrying out the provisions of Executive Order 13007 in concert with other pertinent laws, regulations, policies, and guidance. Executive Order 13007, Indian Sacred

Sites, does not have a protection mechanism concerning confidentiality, so confidential information about sacred sites should be considered under legal authorities such as:

- (1) Section 304 of the National Historic Preservation Act (NHPA) provides limited authority for withholding disclosure to the public of information about the “location, character and ownership” of historic resources.<sup>1</sup>
- (2) Section 9 of the Archaeological Resources Protection Act (ARPA) provides authority to limit information on the “nature and location” of archaeological resources.<sup>2</sup>
- (3) In addition to the aforementioned authorities, the 2008 Farm Bill provides specific authority to the USDA Forest Service in Section 3056 of the Cultural and Heritage Cooperation Authority (25 USC 32A Section 3056) to protect tribal information from release under FOIA.<sup>3</sup>

If a sacred site is determined to be an historic resource or an archaeological resource, then the NHPA and ARPA may offer some protection of information. If, however, neither ARPA nor the NHPA apply, Federal agencies may find it impossible to keep information about a sacred site confidential, and should so advise the Tribe or religious leader prior to requesting sensitive information. Agencies shall make every effort to respect and honor to the greatest extent practicable any tribe's reluctance to reveal information related to the location of sacred sites or sacred places regarding the nature of religious or other cultural practices.

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<sup>1</sup> Defined as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register of Historic Places.

<sup>2</sup> Defined as any material remains of past human life or activities that are of archaeological interest more than 100 years old, and on public or Indian land. Such resources include, but are not limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, and human skeletal materials.

<sup>3</sup> This authority refers to nondisclosure of information about resources, cultural items, uses, or activities that have a traditional and cultural purpose (including ceremonial use), or are provided under an express expectation of confidentiality in the context of Forest Service research, with a prospect of limited release in consultation with the Indian tribe.

# THE PROTECTION OF INDIAN SACRED SITES

April 28, 2015

## I. INTRODUCTION AND PURPOSE

Tribal leaders have asked Federal agencies to help them inform private citizens and state, county, and local governments about the importance of sacred sites to Indian tribes so that they might be better protected and preserved. This paper is offered by the Departments of the Interior, Defense, Agriculture, and Energy and the Advisory Council on Historic Preservation as one means to help non-tribal people and entities have a better understanding of and appreciation for Indian sacred sites.

Public and private lands in the United States are carved out of the ancestral lands of American Indians and Alaska Natives. Since colonization, their lands have been reduced to a fraction of what they once were, placing the fate of their sacred sites in the hands of non-Indian peoples. The fact that most Indian sacred sites are no longer under the control of Indian tribes makes them vulnerable to damage and destruction. Past Federal policies prohibiting traditional lifeways and ceremonies meant that Indian peoples had to carry out their ceremonies in secret. Additionally, the removal of many Indian tribes from their homelands separated them from the places they held and still hold, sacred. All of these factors, in addition to present-day development, threaten the existence of Indian sacred sites and, in turn, Indian tribes and their cultures. However, despite all the threats, American Indians and Alaska Natives historical and spiritual connection to these culturally important and relevant places has not been extinguished.

Among the many responsibilities the Federal Government has to Indian tribes is the protection of their sacred sites. Federal lands include many such places but there are also a great many sacred places on state, local, and private lands. This paper is intended to inform non-Federal land managers and owners that there are sites that Indian tribes hold to be sacred and that are of central importance to the maintenance of their cultures. Protection of sacred sites is of such significance to indigenous peoples that it is included in the United Nations Declaration on the Rights of Indigenous Peoples.

## II. FEDERAL INTERAGENCY EFFORTS REGARDING INDIAN SACRED SITES

Since the management of tribal sacred sites is integral to the management of Federal lands, the Departments of the Interior, Defense, Agriculture, and Energy, and the Advisory Council on Historic Preservation (the signatories) entered into a memorandum of understanding (MOU) in 2012 to improve the protection of and tribal access to Indian sacred sites through enhanced and improved interdepartmental coordination and collaboration. For many years, tribal leaders have asked Federal agencies to assist them in informing the public about the importance of preserving and protecting sacred sites. Therefore, the MOU commits the signatories to inform the public about the importance of maintaining the integrity of sacred sites and the need for public stewardship in the protection and preservation of such sites.

## II. SACRED SITES: WHAT ARE THEY AND WHY ARE THEY IMPORTANT

For Federal agencies, a sacred site is defined in Executive Order 13007: Indian Sacred Sites “as any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian Tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the Tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.”

While the Federal legal definition of a sacred site is tied to a specific location, Indian tribes have often suggested that the definition be revised to reflect that sacred sites are often not specific locations with constrained boundaries. Instead, they should be viewed as “cultural landscapes” that are more than just their physical location – they also include plants, animals, sound, light, and other sometimes intangible features. In general, Native peoples have a special relationship with the land and sacred sites may be revered through or described, through a tribe’s language, in songs, stories, ceremonies, and place names.

It is important to understand that without these sacred sites, tribal communities would lose their cultural identity. These places are essential for tribal communities to pass on traditions, language, and beliefs to the next generation. Americans are more familiar with the dominant world religions, where if a church or other place of worship is destroyed, believers can continue to practice their faith elsewhere. However, that is not a luxury for many Native peoples; often, tribal religious beliefs and practices are directly tied to specific geographical places. If those specific places are destroyed or altered, those unique tribal religious beliefs and practices will no longer exist and the impacted tribes will lose their ability to freely exercise their religion. Because of the unique status of Indian tribes in the history of the United States, protecting their spiritually and culturally-important sites also has historical value for the nation as a whole.

## III. PROTECTION OF INDIAN SACRED SITES

What can you, as a state or local official, developer, or private citizen do to contribute to the protection of these important sites? To help protect the physical integrity of sacred sites for ceremonial use, be kind to the land by adhering to the following recommendations:

- Understand and respect the fact that Native peoples may not wish to share information about their sacred sites and that, in some cases, such information is actually protected by law. Such information may be culturally inappropriate to be shared with someone outside the community or there may be deep mistrust that the information will be misused.
- Obtain some understanding by researching local customs and being aware of sacred events that are known to the public, such as feast days, voluntary bans on climbing, observance times when sites should not be visited, being respectful of prayer bundles, and driving slowly during sacred runs/horse rides
- Contact any Indian tribes that may live in the vicinity, especially if you are planning an activity that may alter parts of landscapes. Ask whether an Indian tribe has an historical or current interest and ask what you can do to avoid harming any sacred sites.

- Walk lightly while visiting public lands and keep in mind that the beautiful places we all enjoy may be sacred to Indian tribes. Do no harm by not cutting down any plants or dig into the land unless the proper permission has been granted. On Federal and state land, such activities may require a permit so know the rules.
- For further background and context, you should read:
  - The *Report to the Secretary of Agriculture - USDA Policy and Procedures Review and Recommendations: Indian Sacred Sites* (<http://www.fs.fed.us/spf/tribalrelations/documents/sacredsites/SacredSitesFinalReportDec2012.pdf>) and
  - The *Interagency Sacred Sites MOU* (<http://www.fs.fed.us/spf/tribalrelations/sacredsitesmou.shtml>)

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