

**Forest Service Handbook
National Headquarters - Washington Office
Washington, DC**

**Forest Service Handbook 1509.13 – American Indian and Alaska Native Relations Handbook
Chapter 10 - Consultation with Indian Tribes and Alaska Native Corporations**

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Responsible Staff:

Explanation of changes: Following is an explanation of the changes throughout the directive by section.

A notice of issuance of this amendment was published in the Federal Register on March 9, 2016 (81 FR 12447).

10: Changes chapter caption from “Consultation with Tribes” to “Consultation with Indian Tribes and Alaska Native Corporations.” Revises chapter in its entirety.

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10.1 - Authorities

The terms “federally recognized Indian tribe,” “Indian tribe,” and “Tribe” are used in this handbook to refer to any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community, the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1). See also Executive Order 13175, Sec. 1(b).

The laws, Executive Orders, and regulations that govern Federal agencies’ relationship with Indian tribes are abstracted at FSM 1563.01 and explained with more detail at FSM 1563.8. See also FSH 1509.13. sec. 14, exhibits, for the full text of selected authorities, including Executive Orders 13175 (Tribal Consultation) and 13007 (Sacred Sites), and the Food, Conservation, and Energy Act of 2008 (Cultural and Heritage authorities under the 2008 Farm Bill).

11 - Consultation with Indian Tribes

11.1 - Who May Consult

Government-to-government consultation may only occur between Forest Service Line Officers and tribal leaders who have authority to consult on behalf of their Tribe. In accordance with Forest Service Manual (FSM) 1230.6, the line of delegation passes from the Chief to the Deputy Chiefs and through Line Officers to the field. Tribal consultation may not be delegated from Line Officers to staff in the field. Line Officers should engage personally with tribal leaders. The Chief retains the right to delegate to any Forest Service employee, in writing and for specific, individual cases, the authority to consult directly with Indian tribes as a “Chief’s Representative” during government-to-government tribal consultation. This authority is reserved to the Chief only, and does not allow for other Forest Service Line Officers to delegate their tribal consultation responsibilities to staff other than Line Officers.

This direction is not intended to minimize the importance of staff-to-staff communication and collaboration. On the contrary, staff interactions are essential to set the stage for effective consultation and should be maintained and enhanced. Staff provide needed subject matter expertise, and sometimes provide the extensive relationships with tribal staff or leaders. Staff certainly can and should participate in consultation as well as in staff-to-staff and staff-to-leader discussions where it makes sense locally.

In Alaska, the Forest Service is also required to consult with Alaska Native Corporations (ANCs) on a government-to-corporation basis rather than government-to-government. See: Executive Order 13175 as modified by Public Law 108-199, 118 Stat. 3, 447, as further modified by Public Law 108-447, 118 Stat. 2809, 3267. However, as in the government-to-government consultations, the Forest Service representatives shall have delegated authority to consult. The Indian tribe or ANC has the sole authority to designate/authorize tribal representatives for the government-to-government consultation with the Forest Service. Consultations must be

accountable. That is, leadership in the Forest Service, the USDA, and the Office of Management and Budget must be able to find out characteristics of the consultation as delineated in FSM 1563.03.4.

Consultation under the National Historic Preservation Act (NHPA) (54 U.S.C. 300101 et seq.) often occurs between Forest Service staff, such as Forest level Heritage Program personnel, and tribal staff, such as tribal Historic Preservation Officers. This consultation is considered government-to-government consultation only when the Forest Service is represented by a Line Officer and the tribal representative(s) have delegated authority to consult on a government-to-government basis with the Forest Service.

See also FSM 1563.01c and FSM 1563.1.

11.2 - Consultation Timelines

1. Timeliness. For national-level actions that may affect Indian tribes from across the country or Alaska Native Corporations, the entities being consulted should have a realistic, meaningful opportunity to review the issue and associated materials, discuss fully with Agency consulting officials, and have concerns and suggestions received by the responsible official in time to be incorporated into the decision being made.

Notification to Indian tribes of the opportunity to consult does not itself constitute consultation.

2. Minimum Consultation Period. Widely applicable national issues must provide a consultation period of at least 120 days from the date the Indian tribe or Alaska Native Corporation received the information on which they are being invited to consult. This will require providing the notice of opportunities to consult prior to the beginning of the consultation period.

Other actions (such as consultation on national issues that may affect only one or a few Indian tribes or ANCs, or on regional or more local decisions) may require less time for consultation. Also, in emergencies, shorter periods may be necessary.

3. Protocols. Consultation periods and other aspects of consultation should be worked out through local protocols, ideally formalized in memoranda of understanding (MOU) negotiated with the affected Tribes or Alaska Native Corporations.

See also FSM 1563.13.

11.3 - Tribal Consultation Processes

The form of tribal consultation follows the context in which it is conducted. Some consultations occur at the national level, others occur at the local level. Some require years of planning and execution, others occur in the process of a conversation. Others are somewhere in the middle. In general, however, most tribal consultation will follow a common progression. Throughout all of these types and modes of consultations, the Principle of Mutual Concurrence (FSM 1563.03(3)(e)) applies: consultation only occurs when the office or Agency and tribal officials mutually agree that consultation is taking place. Office and Agency consulting officials and their staffs should be clear in identifying, in collaboration with the relevant tribal official(s), when an action or set of actions constitutes government-to-government consultation.

1. Types of Consultation. One type of consultation does not fit every situation. There are at least three types:

- a. Single event. Sometimes a single meeting between the consulting officials will suffice;
- b. Multiple events as part of a process. Some policies, programs, or planning decisions may require multiple consultation meetings. For instance, consultation may need to be conducted across the country in multiple locations or both prior to publication of a proposed rule as well as prior to publishing the final rule; and
- c. Ongoing as part of a relationship. Often, Forest Service Line Officers have regularly scheduled meetings, as well as interactions on an “as needed” basis, with tribal and ANC officials.

2. Modes of Consultation. There are many ways, or modes, for conducting meaningful consultation of these, real-time, in-person dialogue is the preferred method; however, the parties to the consultation may agree to carry out consultation by other modes. Sometimes there is a need to be creative about how to conduct consultation, regardless of whether it is a single session, multiple interactions, or part of an ongoing relationship. Consultation is based on dialogue, and dialogue can occur in many forms. We often think of consultation as taking place between Agency Line Officers and a tribal representative in the form of a face-to-face meeting, but it may also occur via telephone or video conference. Budget constraints of both parties must be taken into consideration when planning consultation sessions. Postal mail, email or other forms of communications media are generally utilized to ensure that all parties are in possession of relevant documents, maps and so forth, prior to the start of consultation. Consultation by written correspondence (paper or electronic) is possible, although face-to-face consultation is always preferred. In such circumstances, all consulting parties should agree that consultation is indeed taking place in such an exchange, and it should be documented as such. Filing and record-keeping is essential to ensure the accountability of the process as required by Executive Orders and Presidential Memoranda.

Modes of consultation are not mutually exclusive and may include one or more of these:

a. In-person meetings. The Forest Service may convene one or more meetings with affected, or potentially affected, Tribes to discuss all pertinent issues in a national, regional, or local forum, as appropriate, to the extent practicable and permitted by law, within allowable and available funding, when a proposed plan, policy or program may significantly affect one or more Tribes.

Tribes may request to meet one-on-one with an office or Agency head, or their designated representative, to consult on issues specific to that Indian tribe. Forest Service Line Officers should attempt to meet these requests when practicable and offer other means of consultation as an alternative. Other types of meetings and/or conferences occur which may not be considered consultation sessions, but these non-consultation meetings may provide an opportunity to share information, conduct workshops, and provide technical assistance to Indian tribes.

The Forest Service has occasionally held regional tribal consultation sessions in the past and may continue to do so, as funding allows. When funding constraints make execution of such events impossible, the Agency will nonetheless endeavor to provide meaningful consultation venues. Regular collaboration will be held to solicit Indian tribes' priorities and needs relating to ongoing and potential Forest Service actions. These sessions will provide an opportunity for Indian tribes to articulate their comments and concerns on budgets, regulations, legislation, and Agency policy matters. When conducted, regional in-person or telephonic venues should be preceded by informational sessions conducted primarily through electronic means.

b. Paper Correspondence. A series of correspondence between consulting officials may serve as consultation if agreed by the Agency and Indian tribe(s) and/or ANC(s). Written communications should provide Indian tribes with the appropriate level of information to provide comments and receive feedback on those comments.

c. Electronic Correspondence. Similarly, emails or electronic documents shared between consultation officials may serve as consultation.

d. Tribal Resolution. Communications from Indian tribes frequently come in the form of tribal resolutions. These resolutions may be the most formal declaration of a Tribe's position for the purpose of tribal consultation. Once an office receives a tribal resolution, the office should consider the resolution and respond appropriately within the consultation time frame.

3. Leveraging Intertribal meetings. Several national and regional Intertribal organizations hold one or several conferences each year. Tribal leaders, including many who may have delegated authority to consult with the Forest Service, attend these sessions. It can be worthwhile to inquire whether an Intertribal organization would be interested in hosting consultation sessions between Forest Service and tribal officials

during these meetings. This has the potential to leverage the attendance of multiple tribal leaders in a setting that is conducive to this type of discourse. Keep in mind, however, that such arrangements require consent of the Intertribal organization and planning far in advance. U.S. Department of Agriculture (USDA) officials should avoid 'taking over' an intertribal organization's meeting and be sensitive to the organization's needs. USDA officials should also keep in mind that consultation in these settings occurs between Agency officials and delegated tribal officials, not with the sponsoring Intertribal organization.

11.4 - Tribal Consultation Steps

11.41 - Establishing Tribal Consultation Protocols Through Agreements

Develop, when identified as appropriate in consultation and collaboration with Indian tribes, unit-specific programmatic and other agreements that make explicit statements of relationships with Indian tribes. These agreements should help clarify tribal rights and interests and set forth procedures and protocols for consultation, including the points of contact. These agreements and statements should include contact information for Forest Service officials and staff who are responsible for making final decisions that may affect Indian tribes and request the same of Indian tribes.

Agreements, such as MOUs, can be developed to lay out consultation protocols between single or multiple Forest Service units (that is, several National Forests) with single or multiple Indian tribes.

11.42 - Tribal Consultation Procedures

The standard process for consultations associated with proposed national policies or other actions is separate and distinct from, but may run concurrent with, the public notification and comment process. Tribal consultation on national-level issues should generally follow these steps.

1. Discuss with the Forest Service Office of Tribal Relations in Washington, DC the context, scope, and objectives of the action, possible collaboration and consultation processes, and the timing of the decision making process.
2. Provide an advance notice to the field about the pending action and consultation. Each Region may provide feedback on consultation through the regional tribal Relations Program Managers (appropriate timing, additional contacts, and so forth). Include the topic and timeline on the Tribal Relations website (<http://www.fs.fed.us/spf/tribalrelations/>).
3. Create information, such as briefing materials and letters, useful to consulting officials and their staffs.

4. For national-level consultations, Washington Office staffs should create letters to the Regional Foresters, Station Directors, and the Area Director to initiate consultation through the Field Offices. These should be sent, along with briefing materials and other pertinent information, to the Regions and Stations.
5. For national-level consultations, Washington Office staffs may send notification letters directly to Indian tribes. These letters do not replace local invitations to consult.
6. Staff is required to report to the Forest Service Office of Tribal Relations in Washington, DC the outcomes of the consultation.
7. A copy of all materials provided to Indian tribes shall be sent to the U.S. Department of Agriculture's Office of Tribal Relations (OTR-OSEC) for information.

Tribal consultation may be initiated and completed entirely by National, Regional, Station, or Area offices, but consultation at this level should rarely occur because of the value of the local relationships between Forest Service and tribal leaders. Tribal consultation on national-level issues nearly always entails local consultation events, where local Forest Service line officers serve as the consulting officials with individual tribes or groups of Tribes to discuss the national-level issues on behalf of the Forest Service.

Tribal consultation on Forest, District, or other field level planning and projects may be quite different than national level policies and may, therefore, require different approaches.

Whether initiated at the Washington Office or other units throughout the Forest Service, the following steps should be taken when coordinating consultation with Tribes and ANCs:

1. Evaluate all proposed policy, plans, projects, or actions as to whether they may affect one or more Tribes and/or ANCs.
 - a. The need to consult may be identified from within the office or Agency or Department, or may be identified by Indian tribes. This need may result from external forces such as Executive, Judicial, or Legislative Branch requirements, as well as from internal actions such as program or project planning.
 - b. The need to consult may also be the result of regularly scheduled consultations between a Forest Service unit and one or more Indian tribes.
2. Work with Tribal Relations Specialists to identify which Indian tribes or Alaska Native Corporations may be affected.
3. Collaborative processes are often desirable prior to or in the same time frame as consultation. Collaborative processes may include listening sessions, roundtables, focus groups, sessions at conferences, or even web-based forums. They help to identify

issues, interests, rights, and desired outcomes and may enhance the success of consultation and decision-making.

4. Plan a consultation process that fits the proposed policy, plans, projects, or actions and the needs, schedule, and resources of the affected Indian tribes and/or ANCs and the Agency. The staff or unit responsible for planning the consultation may request technical assistance from the Forest Service Office of Tribal Relations in Washington, DC or from Tribal Relations Specialists. Decision makers are encouraged to include tribal representatives and experts as ad hoc and formal team members. The Forest Service Office of Tribal Relations in Washington, DC maintains a collection of model processes from past consultations that are useful, including schedules, template letters, example briefing papers, and agreements.

- a. Identify the level and mode of the consultation. That is, will the consultation be at the National, Regional, Forest, Station, or Area level; will the consultation be done at a meeting at the tribal headquarters, at a Station Director's office, through a videoconference, or other means?
- b. Coordinate a schedule for the consultation. This may be part of the regularly scheduled consultation meetings or individually scheduled consultation events.
- c. Compile any documents and other information needed for conducting the consultation.
- d. Collect any information available from the U.S. Department of Agriculture's Office of Tribal Relations (OTR-OSEC) concerning prior communication between the Indian tribe(s) and/or ANC(s) and OTR-OSEC or other USG Departments or the Executive Branch.

5. Provide notice. Invite all affected, and potentially affected, Tribes and ANCs to consult.

- a. Include in the notice the reason for initiating consultation and what the level of consultation utilized must be.
- b. Notice must be made using all methods appropriate to that consultation including mailing, broadcast e-mail, Federal Register, fax, and other outlets. Sometimes, several methods of notice may occur simultaneously. Notices must include clear and explicit instructions for requesting consultation or submitting comments. Copies of each notice shall be forwarded to OTR-OSEC (DR 1350-002). Maintain a record of all attempts to provide notice for tribal consultation.
- c. Notice is not, by itself, consultation, but rather the communication of the opportunity for consultation.

- d. The Agency must provide reasonable and timely notice of consultation events initiated. The minimum standard notice period should be 30 business days, but in some instances involving complex policies or multiple policies, the notice period may extend for up to 120 days. In emergencies, shorter periods may be necessary.
 - e. Indian tribes and ANCs are not required to consult with the Forest Service. They may decline the opportunity to consult, or simply not respond. The Forest Service is responsible for providing a good faith opportunity to consult but is not required to consult with entities that choose not to consult. Maintain a written record of those Indian tribes and ANCs that choose to consult with the Forest Service as described in section 11.42.
6. Conduct the consultation.
- a. Consultations may be individual events or may consist of several sessions over a period of time.
 - b. For national level consultations involving multiple Tribes and ANCs or very complex, more local consultations, a minimum of 120 days should be provided for consultation. This is not a maximum; additional time may be provided if the circumstances warrant. The consultation period starts when it is reasonable to assume the Tribes and ANCs have received the notice; for national level consultations, allow 2 weeks for delivery time if the notification is by mail.
7. Include staff and subject matter experts from both the Forest Service and the Tribes or ANCs, when appropriate, in the consultation process. The importance of having subject matter experts involved in the process cannot be overstated. While Line Officers serve as the Consulting Officials, staff provides the depth and breadth necessary to ensure that all parties fully understand the proposed action.
8. Document the process and actions taken to consult with Tribes and ANCs, the results of those actions, and how the Forest Service's final decision was communicated to affected Tribes and ANCs.
- a. The Forest Service Consulting Official is responsible for making and maintaining a record of consultation.
 - b. For reporting and oversight purposes, the Consulting Official is responsible for ensuring the select components of the consultation record are entered into the Agency's recordkeeping system and the USDA Tribal Consultation Database to be created and maintained by the U.S. Department of Agriculture's Office of Tribal Relations (OTR-OSEC) (DR 1350-002). The entry of reporting data into the Database does not affect the Agency's obligation to maintain the full consultation record in accordance with this policy and any other applicable statutory or regulatory requirements, such as the Federal Records Act.

c. All records associated with Tribes must be maintained in perpetuity. See FSM 6230 and FSH 6209.11 for more information on records retention.

9. Inform Indian tribes and ANCs how their information and recommendations were considered in Forest Service decisions, including explanations in the event that tribal input was not adopted or incorporated.

10. Report on the outcomes of the consultation to the Director of the Forest Service Office of Tribal Relations in Washington, DC and to the U.S. Department of Agriculture's Office of Tribal Relations (OTR-OSEC) (as per DR 1350-002.5b, 8e, and 9). Reporting to OTR-OSEC shall be made as soon as practicable and within the 30 day window identified in DR 1350-002.9. Otherwise, reporting may be for individual consultations as they occur, or as part of an annual reporting process. The Tribal Consultation Database requires a limited set of information for upward reporting, but more detail information about outcomes stemming from the consultations is needed for overall program and Agency evaluation.

11. Incorporate the results of the consultation effort into the policy, plan, project, or action as appropriate. For instance, if rulemaking is the subject of consultation, the preamble to the regulation must contain discussions of the consultation effort, the comments received, and how the Agency addressed the comments received during consultation. How results of the consultation are incorporated into the Agency action will depend on the nature of the proposed action. Information provided by an Indian tribe during consultation with an expectation of confidentiality must be kept confidential, consistent with applicable law.

11.5 - Monitoring and Evaluation

1. Forest Service line officers with responsibilities for tribal relations shall conduct periodic program reviews of tribal relations, either as stand-alone reviews or part of other reviews.

These reviews should monitor and evaluate at least:

- a. Compliance with guidance in FSM1563 and FSH1509.13,
- b. Results or outcomes of consultations, and
- c. Effectiveness of consultation.

These reviews should incorporate questions such as:

- a. Are we managing natural and cultural resources and culturally important settings (including Indian sacred sites) to ensure the sustainability of and access to those resources and settings?

- b. Are the tribal relations processes and opportunities provided by the Forest Service positioned to meet the needs of current and future generations?
 - c. Are the tribally significant resources we manage threatened by excessive recreation visitation or insufficient protection?
 - d. Are there additional opportunities to form partnerships with Indian tribes, Alaska Native Corporations, outside partners, tribally-associated communities, and others in order to improve our management effectiveness?
 - e. What is the nature and magnitude of the full range of economic, social, and cultural values stemming from our relationships with Indian tribes?
 - f. Are the Indian tribes and the associated Forest Service unit satisfied with the current relationship? With the trajectory of the relationship? If not, why not?
2. Include tribal and ANC officials and representatives in the consultation review and the monitoring processes, including as stewards in monitoring sacred sites.

12 - Compensation

Agency officials are encouraged to facilitate tribal participation in Agency decision-making through financial support and other means. While there are no legal requirements to compensate for consultation or other involvement in Forest Service activities, the Forest Service may elect to provide compensation to Tribes or tribal representatives for extraordinary situations and specialized expertise.

The following provides guidance for compensation:

1. Various authorities enable the Forest Service to enter into grants, contracts, or cooperative agreements with Tribes for extraordinary consultation and specialized expertise, such as traditional knowledge that could be incorporated into restoration efforts (FSM 1563.01 and FSH 1509.11). The implementing regulations of NHPA also authorize Federal agencies to expend funds for historic preservation activities, which could include working with Tribes (16 U.S.C. 470h-2(g)). While the Agency is not required to compensate a Tribe, the Agency can take a number of actions to assist with tribal participation.
2. Facilitating tribal participation may include scheduling meetings in places and at times that are convenient for the tribe's members. The Forest Service may pay travel expenses for tribal members if specifically authorized by a statute, a contract, a grant, or the Federal Travel Regulations. Questions regarding whether travel expenses may be paid in a particular case should be addressed to the appropriate Fiscal Officer.

3. The Forest Service may request the Tribe to provide specific information and documentation or actual surveys and reports from the Tribe that would assist the Agency's management responsibilities. In these circumstances, the Tribe may be acting as a professional contractor or consultant and providing work products or services that the Agency would normally compensate for.

13 - Training

Requirements for training for Forest Service employees come from several sources, including the Departmental Regulation on Tribal Consultation, Cooperation, and Collaboration (DR 1350-002, published January 18, 2013) and the Report to the Secretary of Agriculture, *USDA Policy and Procedures Review and Recommendations: Indian Sacred Sites* (2012). Specific trainings will be developed to comply with these requirements and the trainings will lead to consulting officials and other employees attaining appropriate levels of knowledge and skill within a set of core competencies.

13.1 - Training Required by Departmental Regulation.

The USDA Departmental Regulation on Tribal Consultation, Cooperation, and Collaboration (DR 1350-002) requires training in tribal relations for USDA employees. The DR stipulates that USDA Officials charged with Consultation, which includes all Forest Service Consulting Officials, must complete a level of training as identified below. The training is separated into different “tier” groupings, including different levels of training for each tier. Ongoing tribal consultation training will be developed and offered as appropriate. (Section followed by explanation of the tier groups).

	Who	What
Tier 1	Primarily career Senior Executive Service employees and key national and regional program Directors with responsibilities for managing tribal relations within the Forest Service.	<ol style="list-style-type: none">1. Coordinated with USDA and conducted with a team of professional non-governmental tribal Consultation trainers and expert USDA staff, with inclusion of tribal governments as active participants in development and implementation.2. Explains the history of the legal relationship between Tribes and the U.S. Government; the definition of tribal sovereignty; the definition of trust responsibility; and the ramifications of USDA tribal Consultation per the President’s agenda.3. Involves components of legal issues as well as cultural competency.
Tier 2	Line Officers designated to conduct consultations with Tribes and/or ANCs, as well as the leaders of programs where those individuals would personally be involved in the consultation process.	<ol style="list-style-type: none">1. Coordinated with USDA, but oriented toward specific Regions, Forests, Stations, Laboratories, and other administrative units within the Forest Service. May use professional governmental, non-governmental, or tribal trainers as well as expert Forest Service staff, with inclusion of tribal governments as active participants in development and implementation.2. Covers basic areas of tribal relations competencies, with a specific focus on the context of the Forest Service unit.
Tier 3	All Forest Service employees.	Offered from the Office of Personnel Management (OPM) Ag-Learn program, “Working Effectively with Tribal Governments” that can be accessed via the Internet.

13.2 - Training Recommended in the Sacred Sites Report.

Section 1.B of the recommendations within the Report to the Secretary of Agriculture, *USDA Policy and Procedures Review and Recommendations: Indian Sacred Sites* (pg. 25 and 26) includes the following:

B. Training. Develop and implement core competencies for Line Officers and staff including a comprehensive training program for Line Officers, staff, and law enforcement personnel to provide the knowledge to build respectful relationships; to use available tools for sacred site protection; and to gain a broader understanding of and competency with AI/AN laws, customs, traditions, and values. Invite AI/AN people to assist in developing and delivering core curricula.

1. Existing: Develop a catalog of existing training offered by Tribes and other entities, work to increase Forest Service attendance at tribally sponsored sessions, and work with Forest Service Grants and Agreements to develop agreements to simplify the acquisition of these training services. (Forest Service and USDA OTR).
2. Departmental: Develop a training track to serve USDA at the Department level and be available for other USDA agencies to tailor to their particular mission area. (USDA OTR).
3. Agency Leadership/Regions: Develop training for its Line Officers and program area staffs at the Washington and regional levels using USDA and other available resources. Target audiences will also include the Acquisition Management staff FOIA officers; NEPA specialists; LEOs; and Lands and Recreation Special Uses, S&PF, and R&D staffs with program-specific training developed to address the particular needs and concerns in those areas. (Forest Service).
4. Local: Develop training for the field based on national core curricula. The target audience is national forest and grasslands Line Officers and staff, including Forest Supervisors' offices, District Rangers, Staff Officers at forest and district levels, and field employees. Training will include workshops and other relationship building efforts with partners and draw on existing training resources as described above. Forest Service units will reach out to local Tribes to ask for their assistance in both developing and delivering training to Forest Service employees. Forest Service units will coordinate with local Tribes when sponsoring Forest Service workshops or training to include tribal perspectives.

13.3 - CORE Competencies

Forest Service and other available training, adapted to the appropriate geographic and cultural context, will enable Forest Service Line Officers and others working with Indian tribes to attain the following competencies:

1. Knowledge: Why working with Indian tribes is different and important, and what is expected.
 - a. Historical phases of tribal Relations in the U.S. from public and tribal perspectives.
 - b. Basics of Federal Indian law: Constitution, and select judicial decisions.
 - c. International context, including the UN Declaration on the Rights of Indigenous Peoples.
 - d. Cultural context in working with Tribes.
 - (1) Colonialism from a tribal perspective.
 - (2) Historical trauma experienced by tribal communities.
 - (3) Diversity of Tribes.
 - (a) Basics: Tribes' differences in geography, ethnicity, language, cultures, history, and politics. Federally recognized contrasted with other groups.
 - (b) Specifics: Who are the Tribes in your area? What is their connection to the Agency?
 - e. Legal Context in working with Indian Tribes.
 - (1) Forest Service lands in relation to tribal rights and land tenure.
 - (2) Removal of Indian tribes from their ancestral lands.
 - (3) Forest Service context for nation-to-nation relationships with Indian tribes.
 - (4) Civil Rights and Indians.
 - (5) Inherent sovereignty. Self-determination. Self-governance.
 - (6) Federal Trust responsibilities.

(7) Tribal land tenure.

(a) Trust lands.

(i) Allotted lands.

(ii) Reservation lands.

(b) Fee lands.

(8) Treaty rights - on reservation and off.

(a) Treaties, treaty-like legislation, and Executive Orders.

(b) Reserved rights on ceded lands.

(9) Executive Orders, Laws, and regulations.

(a) EO13175 – Tribal Consultation.

(b) EO13007 – Indian Sacred Sites.

(c) Presidential Memorandum of 11/05/2009.

(d) Tribal Forest Protection Act.

(e) Heritage authorities National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, and the American Indian Religious Freedom Act.

(f) Cultural and Heritage Cooperative Authority: reburial, closure, confidentiality, and forest products.

(g) Community Forest and Open Space Program (36 CFR Part 230).

(h) Departmental Action Plan.

(i) USDA Departmental Regulation on Policies on American Indians and Alaska Natives

(j) USDA Departmental Regulation on Tribal Consultation, Coordination, and Collaboration.

(k) Other laws relevant to the Forest Service such as FLPMA, NEPA, Multiple Use Sustained Yield, and so forth.

- (10) Policy as expressed in the Forest Service Directive System,
 - (a) FSM 1563 - State, tribal, county, and local agencies; Public and Private Organizations-Tribal Relations,
 - (b) FSH 1509.13- American Indian and Alaska Native Relations Handbook.
 - (c) FSM 2360 - Recreation, Wilderness, and Related Resource Management-Heritage Program Management.
 - (d) Other Handbook and Manual sections that relate to Tribal Relations.
- f. Requirements, opportunities, and challenges in consultation and management.
 - (1) Meaningful Consultation: Definition of consultation, who can consult, consultation periods.
 - (2) Accountability in Consultation:
 - (a) The USDA Consultation Reporting Tool
 - (b) Regular and End of Year Reporting.
 - (c) OSEC/White House/OMB Accomplishment Reporting.
 - (3) National level consultation vs. regional level consultation vs. local level consultation.
 - (4) Processes that are similar to consultation (listening sessions, collaboration).
 - (5) Accommodating Indian religious and spiritual practices.
 - (6) Protecting and providing access to Indian Sacred Sites/Sacred Places.
 - (7) Traditional knowledge and Western science.
 - (8) Authorities, opportunities, and challenges related to working with groups that are not federally-recognized Indian tribes or Alaska Native Corporations.
 - (9) State-recognized tribes.
 - (10) Native Hawaiians.
 - (11) Inter-tribal Organizations
 - (12) Non-profits and others that work on behalf of Tribes.

(13) Imposters, posers, and others.

g. Partnership tools.

(1) Federal Financial Assistance – (Community Forestry, S&PF discretionary grants).

(2) Agreements (types and processes: Memoranda of Understanding; Participating Agreements, and so forth).

(3) Procurements (opportunities and requirements).

(4) Outreach (for interns, employment, expertise, and advisory committees).

(5) Inter-Governmental Instruments.

(6) Special Use Permits.

(7) Land Exchanges.

h. Communicating about Tribal Relations: Telling the Tribal Relations Story.

(1) U.S. Department of Agriculture's Office of Tribal Relations and Congressional Relations.

(2) Traditional media.

(3) Websites, Blogs, tweets, and other social media.

(4) Forest Service tribal Relations organizational structure across Deputy Areas.

(5) The Forest Service Tribal Relations Strategic Plan.

2. Skills and Abilities: Being able to do what needs to be done.

a. Include tribal perspectives in Forest Service planning, projects, policies.

(1) For example, consult with Tribes before and during NEPA processes.

b. Fairly consider tribal concerns, including traditional ecological knowledge and sacred sites, in Forest Service decision-making.

c. Establish, maintain, and enhance trusting and productive relationships.

(1) Learn how to express yourself to be understood: clearly, concisely, and without jargon and acronyms.

- (2) Learn how to listen and comprehend; be aware of how local people communicate.
- (3) Learn local communication protocol: find out who to talk to, and how.
- (4) Business as usual may not work; be humble; work within the Tribe's timeframe.
- (5) Develop lines of contact through your and the Tribes' staff and leadership.
- (6) Personally engage in meaningful collaboration and consultation.
- (7) Ensure that your staff is educated and competent in tribal relations.
- (8) Visit the Tribe on their lands or offices.
- (9) Include Tribes removed from their ancestral lands.
- (10) Ask for help if you need it.

d. Institutionalize relationships to transcend personnel.

- (1) Establish and carry out agreements - MOUs, Cooperating Agreements, and so forth.
- (2) Meet regularly on a mutually agreed-upon schedule.
- (3) Establish a dispute resolution process before disputes materialize; use that process should disputes materialize. Do the same with a consultation process.
- (4) Develop and regularly update a tribal Desk Guide for your unit.

e. Make culturally and politically informed decisions.

- (1) Consult in ways that are appropriate to the Tribe and the Agency.
- (2) Protect Indian sacred places as well as other sites of cultural importance.
- (3) Practice cultural competence.
- (4) Consistently report on collaboration and consultation.
- (5) Use discretion appropriately; practice leadership in a Tribal Relations context.
- (6) Incorporate indigenous perspectives, including traditional knowledge in management and/or research.

f. Engage the tribal community.

(1) Leverage partnerships to maximize mutual success; actively engage with Tribes and other partners to develop projects that mutually benefit tribal communities and the Agency.

(2) Hire American Indians and Alaska Natives (AI/AN) in staff and leadership positions.

(3) Reach out to tribal communities to identify and recruit AI/AN individuals as members of advisory committees.

(4) Use (through contracts, grants, and agreements) AI/AN people to interpret their own histories and interests, for example as Heritage Survey crews.

g. Tell your Tribal Relations story.

(1) Report on numbers and types of consultations and collaborations in a systematic way through your chain of command to the Washington Office and to the U.S. Department of Agriculture's Office of Tribal Relations.

(2) Develop success stories for internal and external use.

(3) Document challenges and share solutions.

14 - Exhibits

14.1 - Executive Order 13175

14.1 - Exhibit 01

Executive Order 13175 Consultation and Coordination with Indian tribal Governments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

- (a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.
- (b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.
- (c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).
- (d) "Tribal officials" means an elected or duly appointed official of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

- (a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

14.1 - Exhibit 01--Continued

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) Encourage Indian tribes to develop their own policies to achieve program objectives;

(2) Where possible, defer to Indian tribes to establish standards; and

(3) In determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. Consultation.

(a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's

14.1 - Exhibit 01--Continued

implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) Funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal

Government; or

(2) The agency, prior to the formal promulgation of the regulation,

(A) Consulted with tribal officials early in the process of developing the proposed regulation;

(B) In a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) Makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) Consulted with tribal officials early in the process of developing the proposed regulation;

(2) In a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) Makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

14.1 - Exhibit 01--Continued

Sec. 6. Increasing Flexibility for Indian Tribal Waivers.

- (a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.
- (b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.
- (c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.
- (d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. Accountability.

- (a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.
- (b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.
- (c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

14.1 - Exhibit 01--Continued

Sec. 9. General Provisions.

(a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. Judicial Review. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

/s/ William J. Clinton

THE WHITE HOUSE

November 6, 2000

14.2 - Executive Order 13007

14.2 - Exhibit 01

Indian Sacred Sites Executive Order 13007 of May 24, 1996 Indian Sacred Sites

Indian Sacred Sites

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. *Accommodation of Sacred Sites.*

(a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

- (i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;
- (ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe; and
- (iii) "Sacred site" means 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.

Sec. 2. *Procedures.*

(a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or

14.2 - Exhibit 01--Continued

ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things,

(i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites;

(ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

14.3 - Cultural and Heritage Cooperation Authority

14.3 - Exhibit 01

Cultural and Heritage Cooperation Authority

Food, Conservation, and Energy Act of 2008 (P.L. 110–246, Title VIII, Subtitle B, sections 8105 through 8107; codified at 25 U.S.C. 3051-3057)

SEC. 8101. PURPOSES. (25 USC 3051)

The purposes of this subtitle are—

- (1) to authorize the reburial of human remains and cultural items on National Forest System land, including human remains and cultural items repatriated under the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001et seq.);
- (2) to prevent the unauthorized disclosure of information regarding reburial sites, including the quantity and identity of human remains and cultural items on sites and the location of sites;
- (3) to authorize the Secretary of Agriculture to ensure access to National Forest System land, to the maximum extent practicable, by Indians and Indian tribes for traditional and cultural purposes;
- (4) to authorize the Secretary to provide forest products, without consideration, to Indian tribes for traditional and cultural purposes;
- (5) to authorize the Secretary to protect the confidentiality of certain information, including information that is culturally sensitive to Indian tribes;
- (6) to increase the availability of Forest Service programs and resources to Indian tribes in support of the policy of the United States to promote tribal sovereignty and self-determination; and
- (7) to strengthen support for the policy of the United States of protecting and preserving the traditional, cultural, and ceremonial rites and practices of Indian tribes, in accordance with Public Law 95–341 (commonly known as the American Indian Religious Freedom Act; 42 U.S.C. 1996).

SEC. 8102. DEFINITIONS. (25 USC 3052)

In this subtitle:

- (1) **ADJACENT SITE.**—The term “adjacent site” means a site that borders a boundary line of National Forest System land.
- (2) **CULTURAL ITEMS.**—The term “cultural items” has the meaning given the term in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), except that the term does not include human remains.
- (3) **HUMAN REMAINS.**—The term “human remains” means the physical remains of the body of a person of Indian ancestry.

14.3 - Exhibit 01--Continued

(4) INDIAN.—The term “Indian” means an individual who is a member of an Indian tribe.

(5) INDIAN TRIBE.—The term “Indian tribe” means any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1).

(6) LINEAL DESCENDANT.—The term “lineal descendant” means an individual that can trace, directly and without interruption, the ancestry of the individual through the traditional kinship system of an Indian tribe, or through the common law system of descent, to a known Indian, the human remains, funerary objects, or other sacred objects of whom are claimed by the individual.

(7) NATIONAL FOREST SYSTEM.—The term “National Forest System” has the meaning given the term in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)).

(8) REBURIAL SITE.—The term “reburial site” means a specific physical location at which cultural items or human remains are reburied.

(9) TRADITIONAL AND CULTURAL PURPOSE.—The term “traditional and cultural purpose”, with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.

SEC. 8103. REBURIAL OF HUMAN REMAINS AND CULTURAL ITEMS. (25 USC 3053)

(a) REBURIAL SITES.—In consultation with an affected Indian tribe or lineal descendant, the Secretary may authorize the use of National Forest System land by the Indian tribe or lineal descendant for the reburial of human remains or cultural items in the possession of the Indian tribe or lineal descendant that have been disinterred from National Forest System land or an adjacent site.

(b) REBURIAL.—With the consent of the affected Indian tribe or lineal descendant, the Secretary may recover and rebury, at Federal expense or using other available funds, human remains and cultural items described in subsection (a) at the National Forest System land identified under that subsection.

(c) AUTHORIZATION OF USE.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary may authorize such uses of reburial sites on National Forest System land, or on the National Forest System land immediately surrounding a reburial site, as the Secretary determines to be necessary for management of the National Forest System.

(2) AVOIDANCE OF ADVERSE IMPACTS.—In carrying out paragraph (1), the Secretary shall avoid adverse impacts to cultural items and human remains, to the maximum extent practicable.

14.3 - Exhibit 01--Continued

SEC. 8104. TEMPORARY CLOSURE FOR TRADITIONAL AND CULTURAL PURPOSES. (25 USC 3054)

(a) RECOGNITION OF HISTORIC USE.—To the maximum extent practicable, the Secretary shall ensure access to National Forest System land by Indians for traditional and cultural purposes, in accordance with subsection (b), in recognition of the historic use by Indians of National Forest System land.

(b) CLOSING LAND FROM PUBLIC ACCESS.—

(1) AUTHORITY TO CLOSE.—Upon the approval by the Secretary of a request from an Indian tribe, the Secretary may temporarily close from public access specifically identified National Forest System land to protect the privacy of tribal activities for traditional and cultural purposes.

(2) LIMITATION.—A closure of National Forest System land under paragraph (1) shall affect the smallest practicable area for the minimum period necessary for activities of the applicable Indian tribe.

(3) CONSISTENCY.—Access by Indian tribes to National Forest System land under this subsection shall be consistent with the purposes of Public Law 95–341 (commonly known as the American Indian Religious Freedom Act; 42 U.S.C. 1996).

SEC. 8105. FOREST PRODUCTS FOR TRADITIONAL AND CULTURAL PURPOSES. (25 USC 3055)

(a) IN GENERAL.—Notwithstanding section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a), the Secretary may provide free of charge to Indian tribes any trees, portions of trees, or forest products from National Forest System land for traditional and cultural purposes.

(b) PROHIBITION.—Trees, portions of trees, or forest products provided under subsection (a) may not be used for commercial purposes.

SEC. 8106. PROHIBITION ON DISCLOSURE. (25 USC 3056)

(a) NONDISCLOSURE OF INFORMATION.—

(1) IN GENERAL.—The Secretary shall not disclose under section 552 of title 5, United States Code (commonly known as the “Freedom of Information Act”), information relating to—

(A) subject to subsection (b)(1), human remains or cultural items reburied on National Forest System land under section 8103; or

(B) subject to subsection (b)(2), resources, cultural items, uses, or activities that—

(i) have a traditional and cultural purpose; and

(ii) are provided to the Secretary by an Indian or Indian tribe under an express expectation of confidentiality in the context of forest and rangeland research activities carried out under the authority of the Forest Service.

14.3 - Exhibit 01--Continued

(2) **LIMITATIONS ON DISCLOSURE.**—Subject to subsection (b)(2), the Secretary shall not be required to disclose information under section 552 of title 5, United States Code (commonly known as the “Freedom of Information Act”), concerning the identity, use, or specific location in the National Forest System of—

- (A) a site or resource used for traditional and cultural purposes by an Indian tribe; or
- (B) any cultural items not covered under section 8103.

(b) **LIMITED RELEASE OF INFORMATION.**—

(1) **REBURIAL.**—The Secretary may disclose information described in subsection (a)(1)(A) if, before the disclosure, the Secretary—

- (A) consults with an affected Indian tribe or lineal descendant;
- (B) determines that disclosure of the information—
 - (i) would advance the purposes of this subtitle; and
 - (ii) is necessary to protect the human remains or cultural items from harm, theft, or destruction; and
- (C) attempts to mitigate any adverse impacts identified by an Indian tribe or lineal descendant that reasonably could be expected to result from disclosure of the information.

(2) **OTHER INFORMATION.**—The Secretary, in consultation with appropriate Indian tribes, may disclose information described under paragraph (1)(B) or (2) of subsection (a) if the Secretary determines that disclosure of the information to the public—

- (A) would advance the purposes of this subtitle;
- (B) would not create an unreasonable risk of harm, theft, or destruction of the resource, site, or object, including individual organic or inorganic specimens; and
- (C) would be consistent with other applicable laws.

SEC. 8107. SEVERABILITY AND SAVINGS PROVISIONS. (25 USC 3057)

(a) **SEVERABILITY.**—If any provision of this subtitle, or the application of any provision of this subtitle to any person or circumstance is held invalid, the application of such provision or circumstance and the remainder of this subtitle shall not be affected thereby.

(b) **SAVINGS.**—Nothing in this subtitle—

- (1) diminishes or expands the trust responsibility of the United States to Indian tribes, or any legal obligation or remedy resulting from that responsibility;
- (2) alters, abridges, repeals, or affects any valid agreement between the Forest Service and an Indian tribe;
- (3) alters, abridges, diminishes, repeals, or affects any reserved or other right of an Indian tribe; or
- (4) alters, abridges, diminishes, repeals, or affects any other valid existing right relating to National Forest System land or other public land.

14.4 - Tribal Government Consultation and Coordination Under the Cultural and Heritage Cooperation Authority

14.4 - Exhibit 01

Tribal Government Consultation and Coordination Requirements under the Cultural and Heritage Cooperation Authority

Authority	Whom To Contact	Subject	Time Frame
Cultural and Heritage Cooperation Authority (CHCA) (Reburial), 25 U.S.C. 3053.	Indian tribe or lineal descendent.	Request for reburial of human remains and cultural items.	Timely.
CHCA (Closure) 25 U.S.C. 3054	Affected Indian tribe	Authorizes and ensures access to National Forest System land, to the maximum extent practicable, by Indians and Indian tribes for traditional and cultural purposes. Also allows, subject to certain limitations, NFS lands to be temporarily closed from public access for traditional and cultural purposes.	Timely.
CHCA (Forest Products), 25 U.S.C. 3055 (See also FSH 2409.18 – Timber Sale Preparation Handbook, Chapter 80 – Uses of Timber Other Than Commercial Timber Sales, Special Forest Products – Forest Botanical Products)	Affected Indian tribe	Authorizes the Forest Service to provide free of charge to Indian tribes any trees, portions of trees, or forest products from National Forest System land for traditional and cultural (not commercial) purposes.	Timely.

14.4 - Exhibit 01--Continued

Authority	Whom To Contact	Subject	Time Frame
CHCA (Disclosure), 25 U.S.C. 3056. (See also FSM 2720 and FSH 6209.13 – Freedom of Information Act/Privacy Act.)	Affected Indian tribe or lineal descendant	General prohibition on disclosure of information relating to reburials, cultural items, uses or activities that have a traditional and cultural purpose and provided with express expectation of confidentiality, notwithstanding requests for information made under 5 U.S.C. 552, commonly known as the Freedom of Information Act (FOIA).	Consult with affected Indian tribe or lineal descendant prior to any disclosure of information concerning reburials; or with appropriate Indian tribes prior to disclosure of other information.