

**Forest Service Handbook
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**Forest Service Handbook 2309.12 – Heritage Program Management Handbook
Chapter 10 - Coordination and Consultation**

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

2309.12: Establishes new handbook “FSH 2309.12, Heritage Program Management Handbook.”

Zero code: Establishes codes, captions, and sets forth new direction for the management of the Heritage Program.

10: Establishes codes, captions, and sets forth direction for the coordination and consultation requirements for the Heritage Program.

20: Establishes codes, captions, and sets forth direction for the planning requirements for the Heritage Program.

30: Establishes codes, captions, and sets forth direction for the identification, evaluation, and allocation for management use requirements for the Heritage Program.

40: Establishes codes, captions, and sets forth direction for protection and stewardship requirements for the Heritage Program.

50: Establishes codes, captions, and sets forth direction for public education and outreach requirements for the Heritage Program.

60: Establishes codes, captions, and sets forth direction for the management of heritage collections for the Heritage Program.

70: Establishes codes, captions, and sets forth direction for administering the permits, agreements, and contracts for the Heritage Program.

80: Establishes codes, captions, and sets forth direction on the uniform guidance and procedures for Heritage professionals to manage and report cultural resource information.

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10.1 – Authorities

This section provides uniform guidance for Heritage Program coordination and consultation in accordance with the National Historic Preservation Act (NHPA) of 1966 as amended (16 U.S.C. 470 et seq.) and other Federal statutes. Use this direction in conjunction with FSM 2361, 2364, 1563 and FSH 1509.13. Detailed guidance on NHPA Section 106 compliance procedures can be found in chapter 42 of this Handbook. Information on coordinating NHPA Section 106 compliance with project planning under National Environmental Policy Act (NEPA) (42 U.S. C. 4321-4347) can be found in chapter 20, section 22.4 of this Handbook.

10.3 – Policy

1. Coordinate with other Forest Service programs; Federal, State, and local governments; Indian Tribes; and historic preservation organizations to identify opportunities for collaboration in cultural resource advocacy, education, protection, and stewardship.
2. Consult with State Historic Preservation Officers (SHPOs), Indian Tribes, and other parties as identified in specific statutes to provide the opportunity to comment on land use and project level planning.
3. Consult with Indian Tribes regarding land use planning and Heritage Program activities affecting cultural resources determined by the Indian Tribe(s) to be of interest to them.

10.4 – Responsibility

See Section 2361 of the Table of Delegated Authorities in FSM 2360.4 Exhibit 01. Heritage Professionals:

1. Coordinate Heritage Program activities with the SHPOs, State and Federal agencies, Tribal Historic Preservation Officers (THPOs), Indian Tribes, and other historic preservation groups to establish effective working relationships, create collaborative partnerships, and enhance program capacity.
2. Consult with the SHPOs, THPOs, Indian Tribes, the Advisory Council on Historic Preservation (Advisory Council), local governments, and historic preservation entities to meet legal requirements and create informed and positive outcomes.

10.5 – Definitions

In addition to the definitions set out in section 05 (Zero Code of this Handbook), the following terms are specific to this chapter.

Coordination. Coordination is for the purpose of general program management to address mutual concerns and opportunities and may be between any level of the Agency and the other entity(s). Coordination or collaboration with Indian Tribes is not

government-to-government consultation and may be, for example, between entities such as Forest Service Resource Specialists and a Tribal cultural committee.

Consultation. Consultation is formal communication required in legislation and is between the Forest Service Responsible Official and specific parties indicated in the pertinent legislation. The National Historic Preservation Act defines consultation as the process of seeking, discussing, and considering the views of other participants designated in statute or regulation, and where feasible, reaching agreement with them regarding matters affecting cultural resources on National Forest System lands. Notification may also be required in legislation, but unlike consultation, does not necessarily require discussion or agreement.

Indian Tribe. Throughout this chapter, the term Indian Tribe refers to Federally recognized Tribes and includes Alaska Natives as defined in the Alaska Native Claims Settlement Act (ANCSA) of 1971 (ANCSA) (43 U.S.C. 1601-1642). See the full definition of Indian Tribe in definitions.

Tribal Consultation. The USDA Policy of Tribal Consultation, Coordination, and Collaboration provides an operation definition as follows: “The timely, meaningful, and substantive dialog between USDA officials who have delegated authority to consult, and the official leadership of Federally recognized Indian Tribes, or their designated representative(s), pertaining to USDA policies that may have Tribal implications.” Tribal consultation is government to government as required under Executive Order 13175-- Consultation and Coordination With Indian Tribal Governments issued November 6, 2000 (E.O. 13175).

11 – Heritage Program Coordination

For related direction see FSM 2360.8.

Heritage Program coordination occurs at all Agency levels with entities that share cultural resource issues, concerns, and opportunities, including but not limited to other Forest Service program areas, other Federal agencies, Indian Tribes, educational institutions, local historical societies, and other community and historic preservation groups.

General guidelines for coordination with internal and external partners include:

1. Identify existing and potential partners in National, Regional, and Forest/Grassland strategic and program plans.
2. Build working relationships and partnerships to increase Heritage Program visibility, viability, and capacity.
3. Leverage Heritage Program funding with other organizations to coordinate historic preservation efforts and implement mutually beneficial projects and activities.

4. Work with preservation partners to solicit grant and other external funding.
5. Use partnership agreements, including memoranda of understanding and participating agreements, as necessary to define projects of mutual interest and benefit, and establish agency and cooperator roles and work tasks (see FSM 2367.2 and ch. 70, sec. 72.2 of this Handbook). Use the appropriate cooperative agreement when Agency funding is involved.
6. Engage in community programs and projects that support mutual preservation interests including, but not limited to outreach and education, (such as volunteers, school curricula, media, public events, heritage tourism); preservation planning (for example State-wide historic context development); and site protection (such as a site steward programs).
7. Monitor educational and interpretive materials provided by internal and external partners regularly to ensure the information is accurate and current.

12 – Coordination Between Heritage and Tribal Government Relations Programs

The Forest Service Office of Tribal Relations (OTR) is a Washington Office staff located within the State and Private Forestry Deputy Area. OTR oversees the Tribal Government Relations Programs in the Regions. For purposes of this Handbook, the Tribal Government Relations Program includes OTR. FSM 1563 and FSH 1509.13 provide policy and guidance for the Forest Service Tribal Government Relations Program.

On some Forest Service units, the Heritage Program Leader has collateral duties as the Tribal Government Relations Program Manager or Liaison. When this is the case, follow FSM 2360 and FSH 2309.12 when carrying out Heritage Program responsibilities, and FSM 1563 and FSH 1509.13 when carrying out Tribal Government Relations Program responsibilities.

Heritage Program personnel with collateral duties as the Tribal Government Relations Program Leader or Liaison should have training in treaty rights, sovereignty, trust responsibilities, government to government protocols, and other Tribal issues to carry out these duties.

12.1 – Program Leads and Mutual Responsibilities

The Heritage and Tribal Government Relations Programs have shared as well as distinct responsibilities under different Federal statutes and Executive Orders. The following table is only a guideline. Determine the lead program on a case-by-case basis.

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Chapter 10 - Coordination and Consultation
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12.1 – Exhibit 01

Heritage & Tribal Government Relations Programs: Leads & Responsibilities

Heritage Lead	Mutual Responsibilities	Tribal Government
<u>FSM 2360 & FSH 2309.12</u>		<u>FSM 1563 & FSH 1509.13</u>
NHPA <ul style="list-style-type: none"> • Tradition Cultural Properties (TCP) • Consultation • Compliance • Nomination • Confidentiality EO 11593 – Inventory	Government to government relationships FOIA – confidentiality EO13007 - Sacred Sites NAGPRA – compliance review Food, Conservation and Energy Act of 2008 - Confidentiality Research Intellectual property rights Fire management – BAER Information & technology sharing Contracts, grants, and agreements	Treaty rights American Indian Religious Freedom Act Religious Freedom Restoration Act EO13007 - Sacred Sites <ul style="list-style-type: none"> • Identification • Access • Protection EO13175 – consultation & coordination Tribal Forest Protection Act Food, Conservation & Energy Act of 2008 <ul style="list-style-type: none"> • Reburial • Temporary closures • Forest products NFMA – consultation & coordination NEPA – consultation & coordination Traditional ecological knowledge Subsistence rights Special forest products
ARPA <ul style="list-style-type: none"> • Permitting • Consultation • Law enforcement • Public education • Confidentiality NAGPRA <ul style="list-style-type: none"> • Inventories • Repatriation • Excavation • Protection EO13287-Preserve America <ul style="list-style-type: none"> • Partnerships • Stewardship • Public benefits NFMA – Heritage planning NEPA – NHPA compliance		

12.2 – Identifying Tribal Representatives for Consultation and Coordination

Seek the assistance and advice of Tribal Government Relations staff to identify the appropriate Tribal representative with whom to consult or coordinate for specific management activities. The Tribal Government Relations staff contacts Tribal governments to learn who is officially designated by the Tribe to represent them in various circumstances. Contingent on the type of activity, the Tribal representative may be the THPO or a designate, a religious leader, or a specific individual.

Activities that trigger Tribal coordination or consultation include but are not limited to:

1. Agency or agency-authorized undertakings that require NHPA Section 106 review.
2. Development of Heritage Program plans.
3. Issuance of Permits for Archaeological Investigation under the Archaeological Resources Protection Act (ARPA) of 1979 as amended (16 U.S.C. 470aa-mm).
4. Discovery of human remains.
5. Identification and evaluation of Traditional Cultural Properties.
6. Planning and implementation of site protection measures.
7. Development of interpretive materials and programs.

13 – Heritage Program Consultation

For related direction see FSM 2360.4 – Exhibit 01, and FSH 1509.13, chapter 10, Consultation with Tribes.

Contact Indian Tribes, SHPOs, and other historic preservation interested parties early in annual work planning to identify potential issues and concerns.

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321-4347) Schedule of Proposed Actions (SOPA) and annual Program of Work are important sources of information about proposed, planned, or on-going Agency projects and activities. The Forest/Grassland Planning or NEPA Program staff usually provides a quarterly SOPA to the public and Indian Tribes. The annual Program of Work is an internal planning tool that a Heritage professional may share and discuss with Indian Tribes during coordination and consultation meetings.

these guidelines when consulting about Heritage Program activities and Agency projects:

1. Determine the consulting parties identified in the pertinent legislation under which you are consulting. Contact those parties for the name and title of their responsible official or their designated representative.

2. Be prepared to discuss all facets of the project(s).
3. Set realistic expectations and timeframes when initiating consultation.
4. Document all contact and correspondence.
5. Respect consulting parties' social and cultural customs and business practices and accommodate their scheduling of consultation requests as much as possible.
6. Maintain confidentiality of culturally sensitive information received during consultation.

13.1 – NHPA Section 106 Consultation

For related direction see FSM 2361.2

See FSM 2364.1 and chapter 42 of this Handbook for NHPA Section 106 compliance procedures. See chapter 20, section 22.4 of this Handbook for information concerning the timing and interaction between NHPA Section 106 and NEPA compliance.

NHPA Section 106 and its implementing regulations at Section 800.2 of Title 36, Code of Federal Regulations, Part 800 – Protection of Historic Properties, identify consulting parties as the SHPO, Indian Tribes and Native Hawaiian organizations (including THPOs designated per NHPA Section 101[d][2]), representatives of local governments, applicants for Federal assistance, and additional consulting parties including the public and other interested parties.

The level of consultation with Indian Tribes, local governments, applicants for Federal assistance, and other interested parties should reflect the nature and complexity of each undertaking, its potential effects on historic properties, and the likely interest of the consulting parties.

As soon as possible during annual work planning, provide a program of work and project list to SHPOs, Indian Tribes, and other consulting parties to facilitate scheduling of consultation and coordination meetings.

The following exhibit shows which consulting parties are involved in the steps identified in 36 CFR 800. The Advisory Council on Historic Preservation and the Keeper of the National Register are not generally involved in NHPA Section 106 consultation for routine Forest Service undertakings. They are included in the table to illustrate specific situations in which they may be a consulting party.

13.1 - Exhibit 01

Consulting Parties under NHPA Section 106

Forest Service Undertaking	SHPO	Indian Tribes	Other*	Advisory Council	Keeper
NHPA project compliance	A	C	C	C	
NHPA alternative procedures	A	C	C	A	
National Register evaluation & nomination	A	C	C		
Forest Service and SHPO failure to agree on eligibility					A
Determination of Effect	A	C	C	C	
Forest Service and SHPO failure to agree on effect	A			A	
Adverse effect to Historic Property	A	C	C	A	
Mitigation Measures	A	C	C	C	

A = Always; C = Contingent on specific undertaking or affected cultural resource(s)

*Other = representatives of local governments, applicants for Federal assistance, and additional consulting parties including the public and other interested parties (36 CFR 800.2)

13.11 – NHPA Section 106 Consultation with SHPO

Unless a program alternative such as a programmatic agreement is in effect, consult with the SHPO according to 36 CFR 800 Subpart B – The Section 106 Process.

Consultation with SHPO may be required at each step outlined at 36 CFR 800.3 – 800.6:

1. Section 800.3. Determine if the proposed Federal action is an undertaking as defined in 36 CFR 800.16 and if it has the potential to affect historic properties. If it does not, the Agency Official has no further obligations under NHPA Section 106. If it does, identify consulting parties.
2. Section 800.4. Consult with the SHPO to determine the scope of identification needs and Area of Potential Effect (APE) to report the results of identification and evaluation of historic properties.
3. Section 800.5. Consult with the SHPO to apply the criteria of adverse effect to historic properties.
4. Section 800.6. Consult with the SHPO to resolve adverse effects.
5. Section 800.7. Terminate consultation if there is a failure to agree on the resolution of adverse effects and if the Agency Official determines that further consultation will not be productive. Either the Agency Official, the SHPO/THPO, or the Advisory Council may terminate consultation.
6. Section 800.8. Coordination with the National Environmental Policy Act when the Agency Official wishes to use the NEPA process to satisfy NHPA Section 106 responsibilities. See chapter 20, section 22.42 of this Handbook.
7. Section 800.14. When an Agency Official develops alternate procedures to comply with NHPA Section 106. See section 13.2 of this Handbook.

Initiate SHPO consultation for each step or combination of steps with a formal letter signed by the appropriate Agency Official (see FSM 2360.4 ex. 01).

The SHPO has 30-days in which to comment on information provided at each step. Seek expedited review pursuant to 36 CFR 800.3(g) when possible, which collapses subsections 800.3 through 800.6 and can reduce the time spent in the consultation process.

13.12 – NHPA Section 106 Consultation with Indian Tribes

Consultation with Indian Tribes in accordance with NHPA Section 106 is between the Agency Official and the Tribal Official. The Tribal Official may designate a representative for NHPA Section 106 consultation. If an Indian Tribe has a THPO designated under NHPA Section 101(d)(2), the Tribal Official sometimes designates that individual as the appropriate contact for purposes of NHPA Section 106. For purposes of this discussion, the term Indian Tribe implicitly

includes the representative designated by the appropriate Tribal authority to be the point of contact for NHPA Section 106.

Identify Indian Tribes with potential concerns or interests in proposed undertakings. Include Indian Tribes who may no longer reside in the area, but who have ancestral ties to it.

Conduct regular meetings with Indian Tribes to describe annual agency work plans, including Heritage Program activities affecting cultural resources such as subsurface testing and ruin stabilization. Involve the Agency Official and project planners as necessary to fully explain projects.

Conduct meetings in places that meet accessibility standards for that type of facility, especially if Tribal elders are involved. Incorporate field visits as necessary. Always involve an Agency Official during field reviews and consultation meetings. Follow culturally-sensitive protocol and document consultation efforts.

In accordance with 36 CFR 800.2(c)(2)(ii), provide Indian Tribes the opportunity to:

1. Identify concerns about historic properties.
2. Advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance.
3. Articulate views on the undertaking's effects on historic properties.
4. Participate in the resolution of adverse effects.

Initiate consultation in a formal letter signed by the appropriate Agency Official that describes the undertaking, defines the Area of Potential Effect using maps and photographs as applicable, and provides as much known cultural resource information for the project as possible.

As warranted, meet with the Tribal officials to discuss the undertaking and seek their help in identifying TCPs or other areas important to the Tribe for religious or cultural purposes.

Include the following minimum elements in a written record of consultation with Indian Tribes (from the USDA Policy on Tribal Consultation, Coordination, and Collaboration):

1. The subject of the consultation.
2. Materials provided to and received from the Indian Tribe relevant to the consultation topic.
3. Name, title, and contact information of the consulting officials for both the Agency and the Indian Tribe.

4. Name and title of other individuals or staff from the Agency and the Indian Tribe that were involved in the consultation process.
5. How the consultation was conducted (by phone, meeting, field trip, or other means).
6. The consultation schedule (dates, times, locations).
7. The outcome(s) of the consultation, including follow-up commitments, and agreements, or points of disagreement.
8. How the results of the consultation were considered in any decision-making process by the agency and whether they were incorporated or rejected in the final decision(s).
9. Additional steps, as necessary.

13.13 – NHPA Section 106 Consultation with Local Governments, Land Use Applicants, and Other Interested Parties

Consult with local governments that have jurisdiction over the area where an undertaking will occur. Meet with city or county Historic Preservation Officers and local Historic Preservation Planning Commissions to obtain information about cultural resources on NFS lands that are important to local communities. Incorporate this information into project plans and designs, as appropriate.

Land use applicants (applicants for Federal assistance, permits, licenses, or other approvals) may also participate in the NHPA Section 106 process as a consulting party. The Forest Service always retains the responsibility for NHPA Section 106 consultation with the SHPO, Advisory Council on Historic Preservation, Indian Tribes, local governments, and other consulting parties to the project unless the applicant is a Federal agency. If the applicant is another Federal agency, then the Forest Service and the Federal agency agree in writing on which agency will take the lead in NHPA Section 106 consultation.

Seek and consider the views of the public in a manner that reflects the nature and complexity of each undertaking. Consider using the procedures for public involvement under the National Environmental Policy Act (NEPA) to solicit information and concerns from members of the public.

Cultural resource consultation with the public and other interested parties may be formal (such as a Federal Register notice) or informal (such as a meeting, field visit).

Local government and community review of Forest/Grassland NEPA documents may also identify cultural resource issues and concerns. The Agency Official responds formally to public comments on NEPA documents through the NEPA process rather than NHPA Section 106.

13.14 – NHPA Section 106 Consultation with the Advisory Council on Historic Preservation

The Advisory Council on Historic Preservation (Advisory Council) is usually not involved in NHPA Section 106 consultation for routine Forest Service projects. Any consulting party may request the Advisory Council's participation and the Advisory Council itself may elect to consult on its own behalf.

In accordance with 36 CFR 800, notify the Advisory Council and invite them to participate in consultation when:

1. Section 800.6(a)(1). It is determined that a project will have an adverse effect on a historic property;
2. Section 800.7. The Agency Official or SHPO decides to terminate consultation after failing to resolve adverse effects;
3. Section 800.8(c). The Agency Official intends to use the NEPA process for NHPA Section 106 purposes;
4. Section 800.10. A project may adversely affect a National Historic Landmark;
5. Section 800.12(b)(2). An emergency situation requires an undertaking that could adversely affect a historic property and no pre-approved procedures are in place (as in a Programmatic Agreement or Heritage Program Plan) for taking historic properties into account during operations which respond to a disaster or emergency;
6. Section 800.13(b)(3). The discovery of a historic property is made post-NHPA Section 106 review, the project has commenced, and there is no Programmatic Agreement in place that governs the actions taken when historic properties are discovered during the implementation of an undertaking; or
7. Section 800.14. The Agency Official wishes to develop alternative procedures to the NHPA Section 106 process, such as a Programmatic Agreement.

Consultation with the Advisory Council is advantageous when projects are complex or controversial, for example, an energy corridor crossing multiple agency boundaries.

13.2 – NHPA Section 106 Program Alternatives

For related direction see FSM 2364.12.

Options for developing alternative processes for consultation under NHPA Section 106 include:

1. Alternate procedures. Agency-wide procedures to substitute for compliance with NHPA Section 106. Alternate procedures must be consistent with regulations pursuant to NHPA Section 110 and are typically developed at the National level.

2. Programmatic agreements. An agreement among the Agency Official, the Advisory Council, the appropriate SHPO or the National Conference of SHPOs, and THPOs where Tribal lands are involved to govern the implementation of a particular program or the resolution of adverse effects from complex project situations or multiple undertakings. A programmatic agreement may be Forest, State, Regional, or National in scope.
3. Exempted categories. The Advisory Council or an Agency Official may propose a program or category of undertakings that may be exempted from review under the provisions of NHPA Section 106, if the program or category meets the criteria listed in 36 CFR 800.14(c)
4. Standard treatments. Standard methods established by the Advisory Council for the treatment of a category of historic properties, undertakings, or effects on historic properties.
5. Program comment. An Agency Official may request the Advisory Council to comment on a category of undertakings in lieu of conducting individual reviews under NHPA Section 106 for the identification of historic properties, assessment of adverse effects, and resolution of adverse effects.

Program alternatives, including programmatic agreements, involve considerable negotiation with consulting parties and reviewing agencies. Allow sufficient time for alternative procedure development, internal review, external review, and Agency Official signature. The Regional Office must review and approve all Forest/Grassland Programmatic Agreements.

Programmatic agreements may be at the National, Regional, State, or Forest/Grassland levels. All other program alternatives are National or Regional only. All consulting parties and signatories to a program alternative monitor the activities carried out under that alternative to ensure the stated intent and purposes are being met.

The Forest/Grassland Heritage Program Leader should ensure that the Agency Official and Forest/Grassland Heritage Program personnel receive information and training on new protocols and processes in any NHPA Section 106 program alternatives that are developed.

13.3 – Traditional Cultural Properties Consultation under NHPA

Traditional Cultural Properties (TCPs) are associated with cultural practices or beliefs of a living community, are rooted in the community's history, and are important in maintaining the continuing cultural identity of the community.

To be eligible for inclusion in the National Register, a traditional cultural property must be a tangible property, such as a district, site, building, structure, or object as defined in Section 60.4 of Title 36, Code of Federal Regulations, Part 60 – National Register of Historic Places, and must meet one or more of the criteria in 36 CFR 60.4.

Follow National Register Bulletin 38 guidance for the identification of and consultation on TCPs. The brochure entitled “Traditional Cultural Properties: Questions and Answers” produced as a joint project of the Forest Service and the NPS, also provides additional guidance and examples of TCPs.

Groups or communities may not require the Forest Service to conduct survey primarily for the purpose of identification of TCPs. However, the Forest Service should include identification of potential TCPs during scheduled cultural resource surveys under NHPA Section 106 or 110.

See FSM 2361.5 for guidance on when it is appropriate to compensate individuals and groups including Indian Tribes for information that the Forest Service requests.

13.4 – NAGPRA Consultation with Tribes

For related direction see FSM 2361.3

Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 et seq.) requires Federal agencies to prepare inventories and summaries of Agency collections, provide notification of planned excavations that may result in the discovery of NAGPRA items, and prepare inadvertent discovery protocols in consultation with Indian Tribes.

13.41 – Consultation on NAGPRA Summaries and Inventories

Federal agencies and museums must consult with lineal descendants, Indian Tribes, and Native Hawaiian organizations regarding the identification and cultural affiliation of the cultural items listed in their NAGPRA inventories and summaries.

Federal agencies and museums must send notices to lineal descendants, Indian Tribes, and Native Hawaiian organizations describing cultural items and lineal descendancy or cultural affiliation, and stating that the cultural items may be repatriated. The law requires the Secretary of the Interior to publish these notices in the Federal Register. See chapter 60 and the Zero Codes, section 07.4 of this Handbook for additional information and online resources to assist with preparing NAGPRA notices.

13.42 – Consultation on Planned Excavations and Archaeological Permitting

Consultation with Indian Tribes is required for planned excavations (research, data recovery) that may result in the discovery or excavation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony (Title 43, Code of Federal Regulations, Part 101 - Native American Graves Protection and Repatriation Regulations).

Notify all Indian Tribes with aboriginal or historic ties to NFS lands involved in any Applications for a Permit for Archaeological Investigations (FS 2700-30) at least 30 days before the issuance of a Permit for Archaeological Investigations (FS 2700-32). Issuance of a Permit for Archaeological Investigation does not require notification of non- Federally recognized

Tribes, however, consider permit applications on a case-by-case basis and include those Tribes when appropriate.

If the discovery of human remains or associated funerary or other objects is anticipated, prepare a written Plan of Action in accordance with 43 CFR 10.3. The Plan of Action must be developed in consultation with affected Tribes and signed by the Agency Official (Forest Supervisor in most cases).

The Plan of Action should contain, at minimum, the following information:

1. Description and location of the planned activity.
2. The sources used to determine that human remains, funerary objects, sacred objects, or objects of cultural patrimony may be excavated.
3. The basis for determining likely custody pursuant to NAGPRA.
4. Proposed time and place for further meetings or consultation.
5. Forest Service proposed treatment of human remains, funerary objects, sacred objects, or objects of cultural patrimony.
6. Proposed disposition of any excavated human remains, funerary objects, sacred objects, or objects of cultural patrimony.

If the planned activity is subject to NHPA Section 106 review, the Agency Official should coordinate consultation and any subsequent NHPA compliance agreement with NAGPRA requirements in 43 CFR 10.3 and 10.5.

13.43 – Consultation on Inadvertent Discoveries

Follow the notification and consultation protocols in NAGPRA Section 3 and 43 CFR 10.4 in the event of an inadvertent discovery. This protocol also applies to excavations under a Permit for Archaeological Investigation when a Plan of Action is not in place.

Upon inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on NFS lands, the Agency Official shall cease any activity that may affect the remains and make a reasonable effort to protect them.

As soon as possible, but no later than 3 working days after receipt of written notification, the Agency Official shall notify by telephone with written confirmation, the Indian Tribes likely to be affiliated with the remains.

The Agency Official shall initiate consultation on an inadvertent discovery, in accordance with NAGPRA Section 3 and 43 CFR 10.4, with known lineal descendants and the Indian Tribe or Tribes likely to be affiliated with the remains.

Construct an action plan and/or agreement to determine treatment, disposition, and custody of the human remains or cultural items.

Continue consultation until all questions regarding the status and custody of the remains and cultural objects have been resolved.

13.5 – Coordination for the Reburial of Human Remains on NFS Lands

The Food, Conservation, and Energy Act of 2008 authorizes the reburial of human remains repatriated under NAGPRA on NFS lands under certain conditions. The Tribal Government Relations Program is the lead Forest Service program for policy regarding reburial of repatriated remains. Coordinate with Regional Tribal Government Relations Program Leaders for questions regarding reburial of repatriated remains.

13.6 – Consultation on Sacred Sites

For related direction see FSH 2309.12 chapter 46.17

It is the responsibility of an Indian Tribe or appropriately authoritative representative of an Indian religion to notify an agency of the existence of a sacred site. Notification may occur during routine or project-specific consultations with Line Officers, Tribal Government Relations staff, or Heritage Program staff. See chapter 80, section 86.4 of this Handbook for information on confidentiality of sacred sites.

Occasionally sacred sites may be or may contain archaeological sites, historic or prehistoric structures, traditional cultural properties, or be part of cultural landscapes that may or may not be eligible for listing in the National Register. Sacred sites that are not or do not contain historic properties (cultural resources eligible for listing in the National Register of Historic Places) fall under the management purview of Forest Service Tribal Government Relations program, while those that do contain historic properties need to be coordinated with both the Heritage and Tribal Government Relations programs.

Work closely with Forest Service Tribal Government Relations staff when a sacred site is or contains an historic property. Additional government to government consultation may be necessary to discover the full scope of Tribal concerns about the site, including discussions to determine the limits of the sacred site, the range of activities that may be acceptable in the vicinity, environmental conditions, and access periods when the site will be used by Tribal members.

14 – Confidentiality

Refer to FSM 2361.4 for laws that provide for protection of sensitive information from public disclosure, including NHPA Section 304(a), ARPA Section 9, the Freedom of Information Act

(5 USC 552 [b](3)), and the Food, Conservation, and Energy Act of 2008. Regard all Forest Service cultural resource data as confidential. See also chapter 86 of this Handbook.

15 – Compensation

For related direction see FSM 2361.5 for guidance on when it is appropriate to compensate individuals and groups including Indian Tribes for information the Forest Service requests.

Consult with the SHPO, Indian Tribes, and other interested parties as necessary if scientific investigation, and interpretive development, or preparation of a historic structure for adaptive reuse have the potential to affect historic properties.