THE FOUNDATIONS OF INDIAN LAW & POLICY

A Sourcebook

National Park Service
American Indian Liaison Office
2012

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National Park Service
U. S. Department of the Interior

American Indian Liaison Office

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May 2012

Dedication

This work is dedicated to John E. Cook, former National Park Service Director of the Southwest, Alaska, and Intermountain Regions—a responsibility covering more than 100 parks and involving many more Indian tribes and Alaska Native corporations and villages. For many years, Mr. Cook led National Park Service efforts to effect policies that recognize tribal sovereignty. He understood that the National Park Service has a responsibility to protect and support American Indian cultures and religious practices, and championed administrative rules and practices that would provide access to and use of parklands for traditional and ceremonial purposes.

Indian Peace Medals (cover)

Indian Peace Medals were presented to American Indian chiefs and warriors by the U.S. government in the 18th and 19th centuries. While there were several styles, most featured a formal portrait of the current U.S. president on one side. The other side showed clasped hands with a crossed tomahawk and peace pipe and the words "Peace and Friendship."

Giving such medals "has been an ancient custom from time immemorial. The medals are considered as complimentary things, as marks of friendship to those who come to see us, or who do us good offices, conciliatory of their good will towards us... They confer no power, and seem to have taken their origin in the European practice of giving medals... to the negotiators of treaties." – Thomas Jefferson, Secretary of State (1793)

While the medals did not confer "power," the image of the U.S. president was significant as it represented a bond between sovereign governments.

Lewis and Clark carried the practice of presenting Peace Medals from coast-to-coast. The last peace medals were presented in 1896 by President Grover Cleveland.

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FOREWORD

This sourcebook was developed specifically as a supplement to the National Park Service workshop, "Foundations of Indian Law & Policy." This workshop has been offered since 1997 by the National Park Service American Indian Liaison Office in cooperation with the National Park Service Regional Offices and Parks. The primary instructor has been Charles Wilkinson, Moses Lasky Professor of Law, University of Colorado School of Law. The main text is *Indian Tribes As Sovereign Governments,* by Charles Wilkinson and the American Indian Resources Institute. This Sourcebook is intended to supplement that text, and to highlight major legal and policy issues specific to the National Park Service.

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PART ONE

THE RISE OF MODERN TRIBAL SOVEREIGNTY

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THE MODERN INDIAN SOVEREIGNTY MOVEMENT

This chart is compiled from notes taken during the National Park Service Workshop, "Foundations of Indian Law & Policy" as presented by principal instructor Charles Wilkinson, Moses Lasky Professor of Law, University of Colorado School of Law.

Professor Wilkinson's book, *Blood Struggle: The Rise of Modern Indian Nations,* W.W. Norton & Company, 2005, explores the subject in greater detail.

(Compiled by Patricia L. Parker, Chief, National Park Service American Indian Liaison Office, Washington, DC)

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	1950's
Congress	**Period of Extreme Assimilation—Goal to relinquish Federal jurisdiction in Indian Country and terminate tribal governments** *1953 Termination Act* –Impacts CA, OR, UT, WA, WI In CA, more than 100 tribes were terminated. Ended special programs for affected Indians and ends jurisdictional relationship between the Federal government and the affected tribes. Indian lands sold and tribal governments were dissolved. Indian schools closed. Indian children sent to state schools. Menominee, Klamath, Utes in Utah, Rancherias in California, Washington-Oregon coastal tribes were terminated. *1953 Public Law 280* –authorized State jurisdiction on Indian reservations in AK, CA, ID, MN, NE, OR, & WI for those tribes not terminated. States became responsible for law enforcement on tribal lands but lack funds. Indian land base at lowest -- only 50 million acres
Administration	**Period of Extreme Assimilation—"Bring Indians into American mainstream."** Tribes encouraged to agree to leases on mineral and other resources at below market value. BIA was the "real government" in Indian Country—appoint tribal officials, BIA Courts, prohibit Sundances, ceremonies . Indian Claims Commission (1946). Deadline for filing claims was August 1951. Goal to "pay off" Indian claims with no option for return of lands. Dillon Meyer, former head of War Relocation Authority which administered Japanese Detention Camps, heads BIA—responsible for relocation programs that created a large population of urban Indians displaced from their homelands.
Courts	**Generally inactive** 1955 --*Tee-Hit-Ton Indians v. U.S.* Indian title does not have to be compensated under the 5th Amendment—not a vested property right, can receive payment, but no interest.

	1950's (continued)
Business	Industry has a "right to develop" in Indian Country—oil, gas, uranium. BIA treated Indian lands like public lands. Industry negotiates with BIA as the "real government", despite the Indian Reorganization Act (IRA) that established a formula for the creation of tribal governments.
States	Increased state jurisdiction. Indians attend state schools, transfer of jurisdiction from BIA courts to state courts. State courts order adoptions of Indian children by non-Indian families. Between 25% and 35% of Indian children were taken from their homes and adopted by non-Indians. States regulate hunting and fishing, attempt to tax Indian revenues. State courts did not comprehend how it could be good to live in an Indian family and be raised by an extended family—grandparents.
Indian Country	**Political, economic cultural "low point"** Generally passive. Tribes were concerned that successful development in any area would lead to termination because tribal success shows tribes are progressive, and thus ready to enter the mainstream. Poverty, no indoor plumbing, no electricity, few paved roads. Sun Dance outlawed, 2 generations of boarding schools. Churches on all reservations to convert "heathens." Unemployment, infant mortality at all-time high. 20% - 30% Indian children adopted into Morman homes. Tribes had no capability to influence Congress; no litigation capability. Some tribes receive royalties but at below market value – no re-opener clause. No economic development of own. No college graduates except Cherokee, Choctaw. Alcoholism at all time high. Existing circumstances, long history of forced assimilation and loss of land and termination.

	1960's
Congress	1968 Indian Civil Rights Act—Extends many of the rights of the first ten amendments to the Constitution to tribes. Does not include republican form of government, prohibition against establishing religion, right to vote, jury trial in civil cases, free counsel for indigent. 1968 amendments to Public Law 280—State jurisdiction requires tribal consent and provides for retrocession. "Ends spread of termination policies." Not retroactive. 1964 War on Poverty – Office of Economic Opportunity (OEO) (self-determination for poor people) provides direct grants to tribes from departments and agencies other than BIA. Community Action Program brings desks, file cabinets, telephones. 1974 Community Development Block Grants (CDBG) extends to Indians through the addition of "and Indian tribes." For the first time, Indians have the muscle to lobby for own legislation.
Administration	**Greater Indian Presence** 1966 Bob Bennett, First Indian to head BIA in nearly a century. BIA becoming more advocate for Indians and less an overseer. "Great Society"
Courts	**Courts begin very active, generally pro-tribal period**. More than 100 Indian law cases from 1968-1988 Courts had not had a tribal sovereignty case in this century 1968 Menominee Tribe of Indians v. the United States Courts found that Termination Act did not abrogate hunting and fishing rights of the Menominee Tribe. (Congress can abrogate treaties, but it must be explicit.) 1968 Pre-Law Summer Institute at University of New Mexico School of Law--10 week program to prepare Indian students for law school begins in 1968.
States	**Resist Assertion of Tribal Rights** States resist court decisions recognizing Indian fishing rights, particularly in the Pacific Northwest. Mount litigation offensive.
Business	1966 Black Mesa Coal Leases—Peabody Mining--unfavorable terms for Hopi coal. Uranium, oil extracted from tribal lands. John Boynton represents Peabody Coal when representing Hopi. "Christmas tree" bill dependent on Hopi coal. Before NEPA.

	1960's (continued)
Indian Country	**Resistance to Assimilation --- Assert Tribal Rights** Tribal Agenda—"Save the land, protect our children, protect the treaties, enforce the trust." Restore sovereignty, end termination. Indian Veterans return from Vietnam. Several Termination bills stopped. e.g., Flathead Movement separate from Civil Rights Movement Resistance at Frank's Landing – tribes in the Northwest fight for their fishing rights. Eventually leads to the Boldt decision up held by the Supreme Court. Demonstrations by Menominees, Ponca, Navajo. Native American Rights Fund (NARF) established in late 1960's Indian Legal Services established on Navajo reservation. First in nation. Rough Rock School on Navajo Reservation, first tribal school to operate since 1903 when tribal schools in Oklahoma shut down. 1969 Vine Deloria, Custer Died for Your Sins An Indian Manifesto Tribal governments participate in "War on Poverty" and other "Great Society" programs –gain access to telephones, trips to Washington, DC, contact with agencies other than the BIA, e.g., Office of Economic Opportunity. Indian leaders – start to work together.

	1970's
Congress	**Indians and Alaska Natives Active in Congress** 1971 Alaska Native Claims Settlement Act--$962 million, 44 million acres 1973 Menominee Restoration Act –ends termination 1975 Indian Self Determination and Education Assistance Act—Tribes contract for services otherwise provided by BIA and IHS "…the Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities." 1978 American Indian Religious Freedom Act—drafted and lobbied for by Indians 1978 Indian Child Welfare Act—Right of tribal governments to determine fate of Indian children. Cases go to tribal courts. Stringent standards to keep child in tribe. Before 1/4-1/3 Indian children adopted out. Mormon community was particularly involved. 1978 Tribally Controlled Community College Assistance Act Now there are nearly 40. A few are 4 year colleges Indians serve as Congressional staff—Frank Duchenaux in House, Forrest Gerard in Senate
Administration	**Beginning of the Indian Self-Determination Era** 1970 Nixon proclaims Self-Determination policy in message to Congress repudiates termination. Has immense legal and moral force leading to ISDEA. 1971—Blue Lake returned to Taos Pueblo 1978 first Assistant Secretary for Indian Affairs 1978 Federal acknowledgement process established by regulation 70-80% of BIA employees are Indian

	1970's (continued)
Courts	**Very Active** More than 60 Indian cases to Supreme Court (more than any other kind of law) involving sovereignty, trust relationship, land restoration—most decided in favor of the tribes. Mostly brought by tribes or by industries resisting assertion of tribal rights to tax. Courts picked up on idea that the courts are the place of last resort for dispossessed people who cannot win at the ballot box. 1973 McClanahan v. Arizona State Tax Commission – State lacks jurisdiction to tax reservation Indian income. 1974 Morton v. Mancari –Indian preference in BIA, IHS 1978 Oliphant v. Suquamish Indian Tribe —tribes lack criminal jurisdiction over non-Indians—no inherent right to try and punish non-Indians. Lost. 1979 NW Fishing Cases "Boldt Decision" upheld—Washington v. Washington State Commercial Passenger Fishing Vessel Association.
States	Resist assertion of Indian rights within State borders. States lose authority over tribal families—one kind of sovereignty that States try to hold tight.
Business	Wait and see--wary of tribal power –concerned about who taxes and who regulates. Questions about how can we sue? What constitutes sovereign immunity?

	1970's (continued)
Indian Country	**Tribes effectively influence Congress and the Administration** Tribes are the "real governments." Head start programs are tribally run—schools, clinics "638 contracts" Tribal Courts developed for the first time in nearly a century. Before 1970's less than 100 tribes had organized courts and of these only 20-25 had serious dockets. Those were "CFR Courts" (25 CFR, or BIA courts). In 1970's, more than 70 new tribal courts asserting more jurisdiction. Tribal colleges established and active Tribal land restoration—purchase 1972 - American Indian Movement (AIM) March on DC—Did not develop wide support in Indian Country. It's primarily an urban Indian movement. Demonstrators take over BIA in Washington, DC. Occupation of Alcatraz. National AIM organization 1973 – AIM and Lakota tribal members occupy trading post at Wounded Knee, SD

	1980's
Congress	1980 Alaska National Interest Lands Conservation Act 1986 – Sen. Inouye took over Select Committee on Indian Affairs. Forest Gerrard and Frank Deuchaneaux staff the House Committee on Interior and Insular Affairs. 1988 Indian Gaming Regulatory Act (affects attitudes toward Indians in Congress and in public) "Tribes as States (TAS)" Amendments to statutes like the Clean Air Act, Clean Water Act. Definition of states includes tribes and presents greater opportunities for tribes to exercise their sovereignty. 1988 Self Determination expanded. Self-Governance Demonstration Project authorized.
Administration	Budget cuts of Reagan Era—"Indian reservation are examples of failed socialism" James Watt, Secretary of the Interior
Courts	1985 Oneida County, New York v. Oneida Indian Nation of New York State—state "treaty" in violation of Indian Trade and Intercourse Act. No statute of limitations on treaty tribes and federal government. Merrion v. Jicarilla Apache Tribe—Tribes can tax oil and gas leases 1987 California v. Cabazon Band of Mission Indians—Tribes and not states regulate gaming on tribal lands. Worchester v. Georgia argument. 1988 Lyng v. Northwest Indian Cemetery Protective Association Government can manage lands for public purposes even if it has disastrous effects on Indian religion, BUT government is encouraged to accommodate Indian religion. Shellfish habitat case upheld—protect salmon habitat/culverts
States	Cooperative intergovernmental agreements between state and tribes ---fisheries, law enforcement
Business	Increased interest in Indian Country

	1980's (continued)
Indian Country	**Tribal Government Building**—Increasing strength and vibrancy of tribal governments. Infrastructure and staff exist—fisheries, natural resources, social services—"638 contracts"—professionally staffed and active. Budget priorities include, natural resources, children, elders, saving the wild salmon in the Pacific West. This is facilitated in some tribes by income from gaming. Tribal Courts stronger—Navajo have 7 district courts and a supreme court. Peacemaker Court with Elders facilitate court process Indian lawyers are writing in law journals, speaking across the country Inter-Tribal Courts of Appeals in WA, OK, and Great Plains Tribes develop their own tax programs. Most tribes are putting money aside for land acquisition. 16 million Indian acres added. Tribal commitment to environmental protection--tribal natural resource agencies are professionally staffed and active. Cultural programs employ archeologists and other preservation professionals. Intertribal organizations to protect resources in Great Lakes, NE, SW, and national-- Northwest Indian Fisheries—60 employees, of them 47-50 are professional, representing 23 tribes. Council of Energy Resource Tribes, National Council of Timber Tribes. National & Regional Intertribal Organizations flourish-- NCAI, USET, Cultural renaissance--increased awareness of traditional values--more ceremonies, language restoration programs Use of elders in rehabilitation programs. Alcoholism and drug abuse addressed by tribal programs and clinics combining traditional and Western treatments. Many Radio stations, 150-200 newspapers

	1990's
Congress	1990 Amendments to the Native American Language Act—Native languages have unique status. Protects the rights of Indians to use and promote tribal languages as a medium of instruction in schools funded by the Department of the Interior. 1990 National Indian Forest Resources Management Act 1990 The Indian Arts and Crafts Act –makes it illegal for non-Indians to claim that their artwork is the "authentic" work of an American Indian. 1990 Native American Graves Protection and Repatriation Act 1992 Amendments to National Historic Preservation Act—require consultation with tribes if agency actions might affect places of traditional and religious significance, provides for Tribal Historic Preservation Programs 1993 Religious Freedom Restoration Act 1994 Tribal Self Governance Act extended tribal governmental control over Federal funds for tribal programs previously administered by BIA and IHS. Other titles of Indian Self Determination and Education Act amended to increase tribal control over tribal governments. Affects all Department of the Interior agencies, not just BIA. 1994 Peyote provisions added to American Indian Religious Freedom Act (AIRFA) Indian land base increases to 60 million acres. 1998 Miccosukee Reserved Area Act [in Everglades National Park].
Administration	Lots of Federal agency interaction--cooperative agreements Executive Orders on Government-to-Government relations, tribal colleges, environmental justice, tribal consultation, Indian education, Indian sacred sites, economic development Decreasing role of BIA in tribal internal affairs. Tribal governments do most work.

	1990's (continued)
Courts	**Generally Inactive** -- few cases heard by the Supreme Court for 10 years. More limited tribal sovereignty – mostly with regard to non-Indians. 1991 Oregon v. Smith – Indians' First Amendment Rights not guaranteed if the practice violates state law. 1998 Alaska v. Native Village of Venetie Tribal Government decision held that the Tribe's land is not 'Indian country' 1999 Minnesota v. Mille Lacs Band of Chippewa – Chippewa retain treaty rights from 1837 2,000 Indian lawyers in 1998 (only 12 in 1968) Tribal right to tax non-Indians denied. Cobell v. Secretary of Interior
States	Some cooperative agreements and some contention Several states accredit Indian languages as part of State educational curriculum
Business	Increased interest in Indian Country—look for opportunities

	1990's (continued)
Indian Country	**Unprecedented political access, power, economic influence** Reservations are better off. Nez Perce administer wolf reintroduction in Idaho. Increasing vibrancy of tribal governments Overseas investors Tribes effective in Congress, the Administration 36 tribal colleges with 4 colleges offering 4 year degrees and one offering a masters program and one a Ph.D. Many of the tribal colleges cooperate with State colleges and universities for transfer of credits. Upsurge in tradition (ceremony, involvement of elders in government, social, health, education programs) Save tribal languages. "Braids and Shades era"

	2000-2008
Congress	2000 -- Timbisha Shoshone Homeland Act, Partially in Death Valley National Park 2003 – Eastern Band of Cherokee Indians Land Exchange Act, authorized land exchange with Eastern Band of Cherokee Indians and Great Smoky Mountains National Park and Blue Ridge Parkway. 2004 Timber Management Act 2008 – Code Talkers Recognition Act [P.L. 110-420] Land Consolidation Act 2008 – Food, Conservation, and Energy Act increases U.S. Forest Service ability to accommodate Indian cultural and religious needs. [P.L. 110-234, Subtitle B]
Administration	Smithsonian Institution's National Museum of the American Indian opens September 21, 2004, in Washington, DC.
Courts	2001 Atkinson Trading Company v. Shirley 2001 Nevada v. Hicks -- Tribal and State jurisdiction 2005 City of Sherrill, NY v. Oneida Indian Nation of New York 2005 Cayuga Indian Nation of New York, Seneca-Cayuga Tribe of Oklahoma, United States of America v. George Pataki, Governor of the State of New York, et al -- exercise of tribal sovereignty over purchased parcels of land.
States	Arms-length, but increasing cooperation in fire-fighting and natural resource management.
Business	More comfort regarding sovereign immunity
Indian Country	Smithsonian Institution's National Museum of the American Indian opens September 21, 2004, in Washington, DC. Continuation of trends in 1990s. Continued expansion of land base

	2009 - 2012
Congress	2010 Indian Health Care Improvement Act Tribal Law and Order Act of 2010 Claims Resolution Act of 2010. Settlement of the Individual Indian Money accounts, established program aimed at tribal land consolidation, and resolved four tribal water settlement cases. Hoh Indian Tribe Safe Homelands Act Quileute Indian Tribe Tsunami and Flood Protection Act 2012
Administration	White House Tribal Nations Conference on November 5, 2009 **Presidential Memorandum on Tribal Consultation.** Directed all federal agencies to develop and implement tribal consultation policies. **Class Action Settlement Agreement**: Elouise Pepion Cobell, et. al. v. Ken Salazar, Secretary of the Interior, et. al. December 8, 2010. Established Accounting/Trust Administration Fund to settle Individual Indian Money Accounts, and to settle claims of Indian individual land owners for mismanagement of land, gas, oil leases, etc. Established Tribal Land Consolidation Fund to assist tribes to address fractionated land ownership, and established Indian Education Scholarships to develop a cadre of professionals to assist in carrying out the land consolidation provisions of the agreement and to serve as an incentive for Indians to participate in tribal land consolidation. White House Tribal Nations Conference on December 16, 2010 President Obama announces U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples.
Courts	2010 Cobell v. Salazar 2010 Keepseagle v. Vilsack 2009 Carcieri v. Salazar
States	
Business	
Indian Country	

PART TWO

INDIAN SELF-DETERMINATION & SELF-GOVERNANCE

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National Park Service
U. S. Department of the Interior

American Indian Liaison Office

THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT OF 1975 (ISDEA)

The Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. §§450a-450n) incorporated the recommendations made to Congress by President Nixon in 1970. In the Act, Congress recognized the obligation of the United States to respond to tribal demands for self-determination by assuring maximum Indian participation in the direction of educational and other Federal services to Indian communities in order to make such programs and services responsive to the needs and desires of those communities. **Control of and responsibility for those programs by tribal governments indeed became a centerpiece of federal Indian policy.**

There was to be an orderly transition from Federal domination over programs and services toward the control and administration of such programs and services by tribal governments. This included a commitment by the Federal government to assist tribes to develop and maintain strong and stable tribal governments.

The Secretarial policies of the Departments of the Interior and Health and Human Services are found at 25 C.F.R., Part 900. In these regulations, the Secretaries recognize that contracting for Federally authorized and funded Indian programs and services under the ISDEA **is an exercise by Indian tribes of the government-to-government relationship between the United States and the Indian tribes.** Indeed, contracting under the act is one of the primary tools that tribal governments have used over the quarter century to exercise their tribal sovereignty.

What this means on the ground in Indian Country is that tribal governments exercise their rights to assume control of Indian schools, hospitals, government operations, construction and maintenance of roads, infrastructure and other programs from the Secretaries of the Interior and Health and Human Services using Federally appropriated funds, including administrative costs, for such purposes. Until 1988 this was accomplished by contracts still known today as "638 contracts" after the original ISDEA, Public Law 93-638.

THE ISDEA & AGENCIES IN THE DEPARTMENT OF THE INTERIOR OTHER THAN THE BUREAU OF INDIAN AFFAIRS

Congress authorizes, and sometimes allocates funds to agencies, within the Department of the Interior other than the Bureau of Indian Affairs to conduct or provide oversight of work done on tribal trust lands or to administer programs for Indians because of their status as Indians. For example, the Bureau of Reclamation has construction projects on Indian lands. The Bureau of Land Management conducts cadastral surveys and Minerals Management Services and Office of Surface Mining oversees leasing of tribal natural resources. Some of these programs and activities are eligible for contracting under the ISDEA as "programs for Indians because of their status as Indians".

There is only one park where Congress has specifically authorized the use of Title I of the ISDEA. In 1995 Congress passed the Chaco Outliers Protection Act to authorize funding through the Director of the NPS to the Navajo Nation for the protection of sites "located on land under the jurisdiction of the Navajo Nation through a grant, contract, or cooperative agreement entered into pursuant to the . . . [ISDEA]." However, NPS has passed funds for the Chaco Outliers to the Navajo Nation through cooperative agreements not through the authority of the ISDEA.

The National Park Service did not negotiate nor enter into a contract under the original ISDEA. While several tribal governments have inquired about such contracts both formally and informally, the Service has been advised by our solicitors that the park programs and activities inquired about have not been eligible for contracting under this authority. Units of the National Park System have been established by Congress and administered by the National Park Service for the American public as a whole. In contrast, the programs and activities targeted by the ISDEA are for "Indians because of their status as Indians."

AMENDMENTS TO THE ISDEA: THE TRIBAL SELF-GOVERNANCE ACT & THE NATIONAL PARK SERVICE

In 1988, in response to increasing tribal concerns that the "638" contracting process was not responsive enough to the clearly growing capacities of tribal governments to conduct their own affairs, Congress authorized and funded a demonstration project in what became known as Tribal Self-Governance. The purpose of this project was to test the feasibility of loosening federal restrictions on how monies for tribal programs were spent and transfer such control and responsibility to tribes through something similar to "block grants" or "compacts" rather than the old contracting model.

In 1994, the ISDEA was amended. Provisions relating to Indian Self-Determination Act Contracts were incorporated into Title I. The demonstration project on Tribal Self-Governance was made permanent through the addition of Title IV, Tribal Self-Governance.

The Self-Governance program is a "tribally-driven" initiative. To participate within the Department of the Interior, a tribal government notifies the Office of Self-Governance in the

Office of the Assistant Secretary, Indian Affairs, of its desire to consider participation. The tribe then goes through a "planning phase" to determine whether self-governance would be the best option, and demonstrates fiscal stability by documenting the successful management of successive Federal contracts under Title I of the ISDEA, commonly known as "638 contracts." The tribe then becomes part of an "applicant pool" from which up to 50 tribes are selected by the Secretary of the Interior annually.

From the perspective of the National Park Service, the most important section of the ISDEA is Section 403(c) of Title IV, Tribal Self-Governance. Section 403(c) provides that tribes participating in the Self-Governance program may include in **"annual funding agreements"** "programs, activities, services, or portions thereof" which are of "**cultural, historical, or geographical significance"** to them with agencies within the Department of the Interior other than the Bureau of Indian Affairs.

This means that a Self-Governance Tribe that attaches cultural, historical, or geographical significance to programs, functions and activities carried out in a unit of the National Park System may approach the park and request available information pertinent to the management and funding of that program. This information must be provided within 15 days. The self-governance tribe may also request to enter into negotiations with the park for any, all, or portions of a program with the goal of concluding a mutually agreed upon **annual funding agreement**. The process requirements for the negotiation, review and conduct of annual funding agreements under Title IV are found at 25 CFR 1000.

A list of Self-Governance tribes with cultural, historical, or geographical ties to units of the National Park System is found below.

The National Park Service is required to negotiate with Self-Governance tribes but enters into annual funding agreements only if mutually acceptable terms and conditions are reached.

Since 1996, the National Park Service and Self-Governance tribes have entered into about 21 annual funding agreements with tribes the most recent of which are summarized below.

Section 405 of the Tribal Self-Governance Act requires that the Secretary of the Interior publish a list of programs eligible for negotiation in the *Federal Register* each Fiscal Year. The current *Federal Register* list of eligible programs and potentially affected units of the National Park System is found below.

To learn more about Tribal Self-Governance see Title IV of the Tribal Self-Governance Act of 1994 (Public Law 103-413) and the regulations developed to implement this law, Title 25 of the United States Code, sections 458aa through 458hh [25 USC 458aa]. On-line go to ***http://uscode.house.gov/search/criteria.shtml*** and select Title 25 and then sections 458aa through 458hh. National Park Service employees can find these documents and additional information on Inside NPS by doing a search for "self governance".

Current National Park Service Self-Governance Agreements

(1) At Grand Portage National Monument, there have been successive annual funding agreements for 14 years. The agreement, re-negotiated, amended and agreed upon by the National Park Service and the Grand Portage Band of Minnesota Chippewa, covers all of the maintenance, design, and construction planning for the park. The Band and the Park have dedicated a new Grand Portage Heritage Center.

Over fourteen years more than $6.3 million has been transferred to the Band and 83 special projects have been completed in addition to routine maintenance. In FY 2010 The Grand Portage Band received: $1,528,612.40 to perform all maintenance activities and select research at the Monument, construct a dormitory, and complete 13 additional projects for the NPS. By the way, the dorm is complete (and gorgeous) and we believe it is the first ever platinum LEED residential building on a reservation in the U.S. It was built by the Grand Portage Band through the AFA for NPS.

During FY 2011 The Grand Portage Band received: $1,285,449.05 to perform all maintenance activities and select research projects at the Monument, including 24 additional activities. Grand Portage NM reports 100% satisfaction regarding park facilities which tribal employees maintain.

(2) Since the early 1990's, Redwood National and State Parks has had annual funding agreements under the Tribal Self-Governance Act with the Yurok Tribe.

In FY 2010 over $2.4million has been allocated for Marine Mammal Study and Condor Restoration, Requa Area Site restoration and developing a Determination of Eligibility for listing a Traditional Cultural Property on the National Register of Historic Places.

In FY 2011 Yurok Tribe received an additional $75,000 to continue the Historic Preservation work in Redwood National and State Parks and monitor Air Quality in the Parks.

(3) In 2011, the NPS and the Maniilaq Association negotiated an annual funding agreement that provides $103, 581 for custodial services and maintenance at the Northwest Arctic Heritage Center in Kotzebue, Alaska. The agreement also provides funds for cultural education curriculum development that will tell the story of native culture in the Western Arctic National Parklands (WEAR) which include the Bering Land Bridge Natural Preserve, Cape Krusenstern National Monument, Kobuk Valley National Park, and the Noatak National Preserve.

Completed National Park Service Self-Governance Agreements

(1) From 2002 – 2010, the Lower Elwha Klallam has been assisting the NPS as a self-governance tribe in the planning, design, and implementation of mitigation measures for the Elwha River Ecosystem Restoration Project. Annual funding agreements (AFA) under the Tribal Self-Governance Act provided over $ 5.5 million as of FY 2010. Other activities include development of tribal fisheries, restoration of native salmon species to the Elwha River Valley and enhancement of tribal infrastructure.

(2) Kawerak, Inc. translated and transcribed audio taped interviews with elders to augment the culture and history archives of the Bering Straits Region through funding agreements from 1996-1998 totaling $464,410.

(3) Under four annual funding agreements from 2002-2005, the Tanana Chiefs Conference, Inc. recruited a program manager to facilitate and coordinate the interpretative design and economic analysis for the acquisition of land and construction of the Morris Thompson Cultural and Visitor Center in Fairbanks, Alaska.

SELF-GOVERNANCE TRIBES & NATIONAL PARK SERVICE UNITS JANUARY 2012

The following list presents the most apparent matches of Self-Governance Tribes (118), including consortia, and the national park units (61) to which they are likely to have geographical, historical, or cultural ties. It was prepared following consultation with National Park Service Regional Self-Governance points-of-contacts. The list of current Self-Governance Tribes was prepared by the Office of Indian Self-Governance/Self-Determination in the Office of the Director Bureau of Indian Affairs. In some cases park managers may be approached by Self-Governance tribes who have historical ties to the park even though the tribe is currently located some distance from the park unit.

Self-Governance tribes listed in bold capital letters have had, or currently do have, Annual Funding Agreements with the NPS under the Tribal Self-Governance Act.

State	Self-Governance Tribe	Park Unit	NPS Region
Alaska	Aleutian/Pribilof Island Association, Inc.		Alaska Region
	Asa'Carsarmiut Tribe		Alaska Region
	Association of Village Council Presidents, Inc.		Alaska Region
	Bristol Bay Native Association	Lake Clark NP Katmai NP	Alaska Region
	Central Council of Tlingit and Haida Indian Tribes of Alaska	Glacier Bay NP&PRES Klondike Gold Rush NHP Sitka NHP	Alaska Region
	Cheesh-na Tribe	Wrangell-St. Elias NP&PRES	Alaska Region
	Chugachmiut, Inc.	Kenai Fjords NP	Alaska Region
	Copper River Native Association, Inc.	Wrangell-St. Elias NP&PRES	Alaska Region
	Council of Athabascan Tribal Governments		Alaska Region
	KAWERAK, INC.	Bering Land Bridge NP Cape Krusenstern NM Kobuk Valley NP Noatak NPRES	Alaska Region
	Ketchikan Indian Corporation		Alaska Region
	Kenaitze		Alaska Region
	Salamatoff Village Tribe		
	Knik Tribal Council		Alaska Region
	MANIILAQ ASSOCIATION	Bering Land Bridge NP Cape Krusenstern NM Kobuk Valley NP Noatak NPRES	Alaska Region

Alaska (continued)	Metlakatla Indian Community		Alaska Region
	Native Village of Barrow		Alaska Region
	Native Village of Eyak		Alaska Region
	Native Village of Gambell	Bering Land Bridge NP	Alaska Region
	Native Village of Kotzebue	Cape Krusenstern NM Kobuk Valley NP Noatak NPRES	Alaska Region
	Native Village of Kwinhagak		Alaska Region
	Nome Eskimo Community	Bering Land Bridge NP	Alaska Region
	Native Village of Nulato		Alaska Region
	Native Village of Tanana		Alaska Region
	Organized Village of Kake		Alaska Region
	Orutsararmiut Native Council		Alaska Region
	Seldovia Village Tribe		Alaska Region
	Sitka Tribe of Alaska	Sitka NHP	Alaska Region
	TANANA CHIEFS CONFERENCE, INC.	Gates of the Arctic NP& PRES Yukon-Charley Rivers N-PRES	Alaska Region
	Yakutat Tlingit Tribe	Glacier Bay NP&PRES Wrangell-St Elias NP&PRES	Alaska Region
Arizona	Ak Chin Tribal Community	Casa Grande Ruins NM Hohokam Pima NM Montezuma Castle NM Organ Pipe Cactus NM Saguaro NP Tonto NM Tumacacori NHP Tuzigoot NM	Intermountain Region
	Gila River Indian Community	Casa Grande Ruins NM	Intermountain Region
	Salt River Pima-Maricopa Indian Community		Intermountain Region
Arkansas	Quapaw Tribe of Indians	Arkansas Post National Memorial	Midwest Region & Intermountain Region

California	Bishop Paiute Tribe	Death Valley National Park Devils Postpile NM	Pacific West Region
	North Fork Rancheria of Mono Indians	Yosemite National Park	Pacific West Region
	Cabazon Band of Mission Indians	Joshua Tree NP	Pacific West Region
	Ewiiaapaayp Band of Kumeyaay		Pacific West Region
	Hoopa Valley Tribe	Redwood NP	Pacific West Region
	Karuk Tribe of California		Pacific West Region
	Lower Lake Rancheria Koi Nation		Pacific West Region
	Manzanita Band of Mission Indians		Pacific West Region
	Pinoleville Rancheria of Pomo Indians		Pacific West Region
	Redding Rancheria	Lassen Volcanic NP Whiskeytown NRA	Pacific West Region
	Smith River Rancheria		Pacific West Region
	YUROK TRIBE	Redwood NP	Pacific West Region
Idaho	Kootenai Tribe of Idaho		Pacific West Region
	Duck Valley Shoshone Paiute Tribe	Hagerman Fossil Beds NM	Pacific West Region
Iowa	Sac and Fox Nation of Oklahoma	Effigy Mounds NM	Midwest Region & Intermountain Region
Kansas	Osage Nation, Oklahoma	Fort Scott NHS Tallgrass Prairie NPRES	Midwest Region & Intermountain Region
Massachusetts	Wampanoag Tribe of Gay Head (Aquinnah)	Boston Harbor Islands, a National Park Area Cape Cod NS New Bedford Whaling NHP	Northeast Region
Michigan	Grand Traverse Band of Ottawa and Chippewa Indians	Sleeping Bear Dunes NL	Midwest Region
	Sault Ste. Marie Chippewa Tribe	Isle Royale National Park	Midwest Region
Minnesota	Bois Forte Band of Minnesota Chippewa Tribe	Voyageurs NP	Midwest Region
	Fond du Lac Band of Lake Superior Chippewa		Midwest Region
	GRAND PORTAGE BAND OF CHIPPEWA INDIANS	Grand Portage NM	Midwest Region

Minnesota (continued)	Leech Lake Band of the Minnesota Chippewa Tribe		Midwest Region
	Mille Lacs Band of Ojibwe Indians		Midwest Region
	Red Lake Band of Chippewa Indians		Midwest Region
	White Earth Band of Chippewa Indians		Midwest Region
Montana	Chippewa Cree Tribe	Bear Paw Battlefield, Nez Perce NHP	Intermountain Region
	Confederated Salish and Kootenai Tribes of the Flathead Nation	Glacier NP	Intermountain Region
Nevada	Duck Valley Shoshone-Paiute Tribe		Pacific West Region
	Duckwater Shoshone Tribe		Pacific West Region
	Ely Shoshone Tribe	Great Basin NP	Pacific West Region
	Washoe Tribe of Nevada and California		Pacific West Region
New Mexico	Pueblo of Santa Clara	Bandelier NM	Intermountain Region
	Pueblo of Taos	Aztec Ruins NM Bandelier NM Chaco Culture NHP Tonto NM White Sands NM	Intermountain Region
	Fort Sill Apache of Oklahoma	Carlsbad Caverns NP White Sands NM	Intermountain Region
	Ohkay Owingeh Tribe of New Mexico		Intermountain Region
New York	Seneca-Cayuga Tribe of Oklahoma	Fort Stanwix NM	Northeast, Midwest & Intermountain Regions
Ohio	Absentee-Shawnee Tribe of Oklahoma	Hopewell Culture NHP	Midwest Region & Intermountain Region
	Seneca-Cayuga Tribe of Oklahoma	Cuyahoga Valley NP	Midwest Region & Intermountain Region
Oklahoma	Absentee-Shawnee Tribe of Oklahoma	Hopewell Culture NHP (in Ohio)	Midwest Region & Intermountain Region
	Cherokee Nation of Oklahoma		Intermountain Region
	Chickasaw Nation of Oklahoma	Chickasaw NRA	Intermountain Region
	Choctaw Nation of Oklahoma		Intermountain Region
	Citizen Potawatomi		Intermountain Region

Oklahoma (continued)	Delaware Tribe of Western Oklahoma		Intermountain Region
	Eastern Shawnee Tribe of Oklahoma		Intermountain Region
	Fort Sill Apache of Oklahoma	Carlsbad Caverns NP White Sands NM (both in New Mexico) Alibates Flint Quarries NM Guadalupe Mountains NP Lake Meredith NRA (3 units in Texas)	Intermountain Region
	Kaw Nation		Intermountain Region
	Kickapoo Tribe of Oklahoma		Intermountain Region
	Miami Tribe of Oklahoma		Intermountain Region
	Modoc Tribe of Oklahoma		Intermountain Region
	Muscogee Creek Nation of Oklahoma		Intermountain Region
	Osage Nation, Oklahoma	Fort Scott NHS, Tallgrass Prairie NP (in Kansas)	Midwest Region & Intermountain Region
	Ponca Tribe of Oklahoma		Intermountain Region
	Quapaw Tribe of Indians	Arkansas Post NM (in Arkansas)	Midwest Region & Intermountain Region
	Sac and Fox Nation of Oklahoma	Effigy Mounds NM (in Iowa)	Midwest Region & Intermountain Region
	Seneca-Cayuga Tribe of Oklahoma	Cuyahoga Valley NP (in Ohio) Fort Stanwix NM (in New York)	Midwest & Intermountain Regions Northeast & Intermountain Regions
	United Keetoowah Band of Cherokee Indians of Oklahoma	Great Smokey Mountains NP	Midwest & Intermountain Regions
	Wyandotte Tribe of Oklahoma		Intermountain Region
Oregon	Confederated Tribes of the Grand Ronde Community of Oregon		Pacific West Region
	Confederated Tribes of Siletz Indians of Oregon		Pacific West Region

Oregon	Confederated Tribes of the Umatilla Indian Reservation	John Day Fossil Beds NM Whitman Mission NHS (in Washington)	Pacific West Region
	Coquille Tribe of Oregon		Pacific West Region
Texas	Fort Sill Apache of Oklahoma	Alibates Flint Quarries NM Guadalupe Mountains NP Lake Meredith NRA	Intermountain Region
Washington	Jamestown S'Klallam Tribe	Olympic NP	Pacific West Region
	LOWER ELWHA KLALLAM TRIBE	Olympic NP	Pacific West Region
	Lummi Nation	San Juan Islands NHP	Pacific West Region
	Makah Tribe	Olympic NP	Pacific West Region
	Muckleshoot Indian Tribe	Mt. Rainier NP	Pacific West Region
Washington (continued)	Nisqually Indian Tribe	Mt. Rainier NP	Pacific West Region
	Port Gamble S'Klallam Tribe	Olympic NP	Pacific West Region
	Quinault Indian Nation	Olympic NP	Pacific West Region
	Shoalwater Bay Indian Tribe		Pacific West Region
	Skokomish Tribe of Washington	Olympic NP	Pacific West Region
	Squaxin Island Tribe		Pacific West Region
	Suquamish Tribe		Pacific West Region
	Swinomish Indian Tribal Community	Ebey's Landing NHR	Pacific West Region
	Tulalip Tribes of Washington		Pacific West Region
	Confederated Tribes of the Umatilla Indian Reservation (in Oregon)	Whitman Mission NHS	Pacific West Region
Wisconsin	Oneida Tribe of Wisconsin	Fort Stanwix NM (in New York)	Midwest Region & Northeast Region

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DEPARTMENT OF THE INTERIOR
Office of the Secretary
List of Programs Eligible for Inclusion in Fiscal Year 2012 Funding Agreements To Be Negotiated With Self-Governance Tribes by Interior Bureaus Other Than the Bureau of Indian Affairs

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice lists programs or portions of programs that are eligible for inclusion in Fiscal Year 2012 funding agreements with self-governance Indian tribes and lists programmatic targets for each of the non-Bureau of Indian Affairs (BIA) bureaus in the Department of the Interior, pursuant to the Tribal Self-Governance Act.

DATES: This notice expires on September 30, 2012.

ADDRESSES: Inquiries or comments regarding this notice may be directed to Sharee M. Freeman, Director, Office of Self-Governance (MS 355H–SIB), 1849 C Street, NW., Washington, DC 20240–0001, telephone: (202) 219–0240, fax: (202) 219–1404, or to the bureau specific points of contact listed below.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Indian Self-Determination Act Amendments of 1994 (Pub. L. 103–413, the "Tribal Self-Governance Act" or the "Act") instituted a permanent self-governance program at the Department of the Interior. Under the self-governance program, certain programs, services, functions, and activities, or portions thereof, in Interior bureaus other than BIA are eligible to be planned, conducted, consolidated, and administered by a self-governance tribal government.

Under section 405(c) of the Tribal Self-Governance Act, the Secretary of the Interior is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program; and (2) programmatic targets for these bureaus.

Under the Tribal Self-Governance Act, two categories of non-BIA programs are eligible for self-governance funding agreements:

(1) Under section 403(b)(2) of the Act, any non-BIA program, service, function or activity that is administered by Interior that is "otherwise available to Indian tribes or Indians," can be administered by a tribal government through a self-governance funding agreement. The Department interprets this provision to authorize the inclusion of programs eligible for self-determination contracts under Title I of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended). Section 403(b)(2) also specifies, "nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions and activities, or portions thereof, unless such preference is otherwise provided for by law."

(2) Under section 403(c) of the Act, the Secretary may include other programs, services, functions, and activities or portions thereof that are of "special geographic, historical, or cultural significance" to a self-governance tribe.

Under section 403(k) of the Tribal Self-Governance Act, funding agreements cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. However, a tribe (or tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance funding agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, the Secretary will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances.

Subpart G of the self-governance regulations found at 25 CFR part 1000 provides the process and timelines for negotiating self-governance funding agreements with non-BIA bureaus.

Response to Comments

Comments were received from two Tribal entities (Coquille Indian Tribe and Council of Athabascan Tribal Governments) and two Federal entities (National Park Service and U.S. Fish

and Wildlife Service).
The Coquille Indian Tribe suggested the following: (1) Revising Section I. Background [next to the last paragraph] to indicate that the Secretary (not each non-BIA bureau) will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances. This change was made; (2) Revising Section III. A. Eligible Bureau of Land Management (BLM) Programs [Other Activities paragraph] to change the title of Item 2. to Natural Resources Management (from Forestry Management) and insert silvicultural treatments, timber management, cultural resource management, watershed restoration as additional activities. This change was made; (3) Revising Section III. A. Eligible Bureau of Land Management (BLM) Programs [Other Activities paragraph] to insert implementation of statutory, regulatory and policy or administrative plan-based species protection efforts as additional activities to Item 6. Wildlife and Fisheries Habitat Management. This change was made; (4) Add the Administration of Forest Management Deductions as a third program to Section III. G. Eligible Office of the Special Trustee for American Indians (OST) Programs. This change was not made. This is a decision beyond the authority of the Office of the Special Trustee for American Indians to make.
The Council of Athabascan Tribal Governments suggested the following: (1) Listing the Council of Athabascan Tribal Governments in Section II. as having a Self-Governance Funding Agreement with the Bureau of Land Management. This change was made; and (2) Keep Subsistence Programs within the State of Alaska in the final **Federal Register** Notice and add to the eligible activities facilitation of Tribal Consultation to ensure ANILCA Title VII terms are being met, and activities fulfilling the terms of Title VIII of ANILCA. These changes were made.
The National Park Service suggested adding the following three Parks to the National Park Service section listing Locations of National Park Service Units with Close Proximity to Self-Governance Tribes: (1) Isle Royale National Park—Michigan; (2) Great Smoky Mountains National Park—North Carolina/Tennessee; and (3) Yosemite National Park—California. These changes were made.
The Fish and Wildlife Service suggested adding the following three Refuges to the Fish and Wildlife Service section listing Locations of Refuges and Hatcheries with Close Proximity to Self-Governance Tribes: (1) National Bison Range—Montana; (2) Ninepipe National Wildlife Refuge—Montana; and (3) Pablo National Wildlife Refuge—Montana. These changes were made.

II. Funding Agreements Between Self-Governance Tribes and Non-BIA Bureaus of the Department of the Interior for Fiscal Year 2011

A. Bureau of Land Management (1)
Council of Athabascan Tribal Governments
B. Bureau of Reclamation (5)
Gila River Indian Community
Chippewa Cree Tribe of Rocky Boy's Reservation
Hoopa Valley Tribe
Karuk Tribe of California
Yurok Tribe
C. Office of Natural Resources Revenue (none)
D. National Park Service (3)
Grand Portage Band of Lake Superior Chippewa Indians
Lower Elwha S'Klallam Tribe
Yurok Tribe
E. Fish and Wildlife Service (2)
Council of Athabascan Tribal Governments
Confederated Salish and Kootenai Tribes of the Flathead Reservation
F. U.S. Geological Survey (none)
G. Office of the Special Trustee for American Indians (1)
Confederated Salish and Kootenai Tribes of the Flathead Reservation

III. Eligible Programs of the Department of the Interior Non-BIA Bureaus

Below is a listing by bureau of the types of non-BIA programs, or portions thereof, that may be eligible for self-governance funding agreements because they are either "otherwise available to Indians" under Title I and not precluded by any other law, or may have "special geographic, historical, or cultural significance" to a participating tribe. The lists represent the most current information on programs potentially available to tribes under a self-governance funding agreement. The Department will also consider for inclusion in funding agreements other programs or activities not listed below, but which, upon request of a self-governance tribe, the Department

determines to be eligible under either sections 403(b)(2) or 403(c) of the Act. Tribes with an interest in such potential agreements are encouraged to begin discussions with the appropriate non-BIA bureau.

A. Eligible Bureau of Land Management (BLM) Programs

The BLM carries out some of its activities in the management of public lands through contracts and cooperative agreements. These and other activities, dependent upon availability of funds, the need for specific services, and the self-governance tribe demonstrating a special geographic, culture, or historical connection, may also be available for inclusion in self-governance funding agreements. Once a tribe has made initial contact with the BLM, more specific information will be provided by the respective BLM State office.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This listing is not all-inclusive, but is representative of the types of programs that may be eligible for tribal participation through a funding agreement.

Tribal Services

1. *Minerals Management.* Inspection and enforcement of Indian oil and gas operations: inspection, enforcement and production verification of Indian coal and sand and gravel operations are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement.

2. *Cadastral Survey.* Tribal and allottee cadastral survey services are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement.

Other Activities

1. *Cultural heritage.* Cultural heritage activities, such as research and inventory, may be available in specific States.

2. *Natural Resources Management.* Activities such as silvicultural treatments, timber management, cultural resource management, watershed restoration, environmental studies, tree planting, thinning, and similar work, may be available in specific States.

3. *Range Management.* Activities, such as revegetation, noxious weed control, fencing, construction and management of range improvements, grazing management experiments, range monitoring, and similar activities, may be available in specific States.

4. *Riparian Management.* Activities, such as facilities construction, erosion control, rehabilitation, and other similar activities, may be available in specific States.

5. *Recreation Management.* Activities, such as facilities construction and maintenance, interpretive design and construction, and similar activities may be available in specific States.

6. *Wildlife and Fisheries Habitat Management.* Activities, such as construction and maintenance, implementation of statutory, regulatory and policy or administrative plan-based species protection, interpretive design and construction, and similar activities may be available in specific States.

7. *Wild Horse Management.* Activities, such as wild horse roundups, adoption and disposition, including operation and maintenance of wild horse facilities may be available in specific States.

For questions regarding self-governance, contact Jerry Cordova, Bureau of Land Management (20 M St. WS–5242), 1849 C Street, NW., Washington, DC 20240, telephone: (202) 912–7245, fax: (202) 452–7701.

B. Eligible Bureau of Reclamation Programs

The mission of the Bureau of Reclamation (Reclamation) is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To this end, most of the Reclamation's activities involve the construction, operation and maintenance, and management of water resources projects and associated facilities, as well as research and development related to its responsibilities. Reclamation water resources projects provide water for agricultural, municipal and industrial water supplies; hydroelectric power generation; flood control; outdoor recreation; and enhancement of fish and wildlife habitats.

Components of the following water resource projects listed below may be eligible for inclusion in a self-governance annual funding agreement.

This list was developed with consideration of the proximity of identified self-governance tribes to Reclamation projects.

1. Klamath Project, California and Oregon.
2. Trinity River Fishery, California.
3. Central Arizona Project, Arizona.
4. Rocky Boy's/North Central Montana Regional Water System, Montana.
5. Indian Water Rights Settlement Projects, as authorized by Congress.

Upon the request of a self-governance tribe, Reclamation will also consider for inclusion in funding agreements, other programs or activities which Reclamation determines to be eligible under Section 403(b)(2) or 403(c) of the Act.

For questions regarding self-governance, contact Mr. Douglas Oellermann, Deputy Director, Native American and International Affairs Office, Bureau of Reclamation (96–43000) (MS 7069–MIB); 1849 C Street, NW., Washington, DC 20240, telephone: (202) 513–0560, fax: (202) 513–0311.

C. Eligible Office of Natural Resources Revenue (ONRR) Programs

Effective October 1, 2010, the Minerals Revenue Management program moved from the Bureau of Ocean Energy Management (formerly MMS) to the Office of the Assistant Secretary for Policy, Management and Budget (PMB) and became the Office of Natural Resources Revenue (ONRR). The ONRR collects, accounts for, and distributes mineral revenues from both Federal and Indian mineral leases.

The ONRR also evaluates industry compliance with laws, regulations, and lease terms, and offers mineral-owning tribes opportunities to become involved in its programs that address the intent of tribal self-governance. These programs are available regardless of self-governance intentions or status and are a good prerequisite for assuming other technical functions. Generally, ONRR program functions are available to tribes because of the Federal Oil and Gas Royalty Management Act of 1983 (FOGRMA) at 30 U.S.C. 1701. The ONRR program functions that may be available to self-governance tribes include:

1. *Audit of Tribal Royalty Payments.* Audit activities for tribal leases, except for the issuance of orders, final valuation decisions, and other enforcement activities. (For tribes already participating in ONRR cooperative audits, this program is offered as an option.)
2. *Verification of Tribal Royalty Payments.* Financial compliance verification and monitoring activities, and production verification.
3. *Tribal Royalty Reporting, Accounting, and Data Management.* Establishment and management of royalty reporting and accounting systems including document processing, production reporting, reference data (lease, payor, agreement) management, billing and general ledger.
4. *Tribal Royalty Valuation.* Preliminary analysis and recommendations for valuation and allowance determinations and approvals.
5. *Royalty Internship Program.* An orientation and training program for auditors and accountants from mineral producing tribes to acquaint tribal staff with royalty laws, procedures, and techniques. This program is recommended for tribes that are considering a self-governance funding agreement, but have not yet acquired mineral revenue expertise via a FOGRMA section 202 cooperative agreement, as this is the term contained in FOGRMA and implementing regulations at 30 CFR 228.4.

For questions regarding self-governance contact Shirley M. Conway, Special Assistant to the Director, Office of Natural Resources Revenue, Office of the Assistant Secretary—Policy, Management and Budget—1801 Pennsylvania Ave., NW., 4th Floor, 403D, Washington, DC 20006, telephone: (202) 254–5554, fax: (202) 254–5589.

D. Eligible National Park Service (NPS) Programs

The National Park Service administers the National Park System, which is made up of national parks, monuments, historic sites, battlefields, seashores, lake shores and recreation areas. The National Park Service maintains the park units, protects the natural and cultural resources, and conducts a range of visitor services such as law enforcement, park maintenance, and interpretation of geology, history, and natural and cultural resources.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This list below was developed considering the proximity of an identified self-governance tribe to a national park, monument, preserve, or

recreation area and the types of programs that have components that may be suitable for contracting through a self-governance funding agreement. This list is not all-inclusive, but is representative of the types of programs which may be eligible for tribal participation through funding agreements.

Elements of Programs That May Be Eligible for Inclusion in a Self-Governance Funding Agreement

1. Archaeological Surveys
2. Comprehensive Management Planning
3. Cultural Resource Management Projects
4. Ethnographic Studies
5. Erosion Control
6. Fire Protection
7. Gathering Baseline Subsistence Data—Alaska
8. Hazardous Fuel Reduction
9. Housing Construction and Rehabilitation
10. Interpretation
11. Janitorial Services
12. Maintenance
13. Natural Resource Management Projects
14. Operation of Campgrounds
15. Range Assessment—Alaska
16. Reindeer Grazing—Alaska
17. Road Repair
18. Solid Waste Collection and Disposal
19. Trail Rehabilitation
20. Watershed Restoration and Maintenance
21. Beringia Research
22. Elwha River Restoration
23. Recycling Programs

Locations of National Park Service Units With Close Proximity to Self-Governance Tribes

1. Aniakchack National Monument & Preserve—Alaska
2. Bering Land Bridge National Preserve—Alaska
3. Cape Krusenstern National Monument—Alaska
4. Denali National Park & Preserve—Alaska
5. Gates of the Arctic National Park & Preserve—Alaska
6. Glacier Bay National Park and Preserve—Alaska
7. Katmai National Park and Preserve—Alaska
8. Kenai Fjords National Park—Alaska
9. Klondike Gold Rush National Historical Park—Alaska
10. Kobuk Valley National Park—Alaska
11. Lake Clark National Park and Preserve—Alaska
12. Noatak National Preserve—Alaska
13. Sitka National Historical Park—Alaska
14. Wrangell-St. Elias National Park and Preserve—Alaska
15. Yukon-Charley Rivers National Preserve—Alaska
16. Casa Grande Ruins National Monument—Arizona
17. Hohokam Pima National Monument—Arizona
18. Montezuma Castle National Monument—Arizona
19. Organ Pipe Cactus National Monument—Arizona
20. Saguaro National Park—Arizona
21. Tonto National Monument—Arizona
22. Tumacacori National Historical Park—Arizona
23. Tuzigoot National Monument—Arizona
24. Arkansas Post National Memorial—Arkansas
25. Joshua Tree National Park—California
26. Lassen Volcanic National Park—California
27. Redwood National Park—California
28. Whiskeytown National Recreation Area—California
29. Yosemite National Park—California
30. Hagerman Fossil Beds National Monument—Idaho
31. Effigy Mounds National Monument—Iowa
32. Fort Scott National Historic Site—Kansas
33. Tallgrass Prairie National Preserve—Kansas
34. Boston Harbor Islands National Recreation Area—Massachusetts
35. Cape Cod National Seashore—Massachusetts
36. New Bedford Whaling National Historical Park—Massachusetts
37. Isle Royale National Park—Michigan
38. Sleeping Bear Dunes National Lakeshore—Michigan
39. Grand Portage National Monument—Minnesota
40. Voyageurs National Park—Minnesota
41. Bear Paw Battlefield, Nez Perce National Historical Park—Montana
42. Glacier National Park—Montana
43. Great Basin National Park—Nevada
44. Aztec Ruins National Monument—New Mexico
45. Bandelier National Monument—New Mexico

46. Carlsbad Caverns National Park—New Mexico
47. Chaco Culture National Historic Park—New Mexico
48. White Sands National Monument—New Mexico
49. Fort Stanwix National Monument—New York
50. Great Smoky Mountains National Park—North Carolina/Tennessee
51. Cuyahoga Valley National Park—Ohio
52. Hopewell Culture National Historical Park—Ohio
53. Chickasaw National Recreation Area—Oklahoma
54. John Day Fossil Beds National Monument—Oregon
55. Alibates Flint Quarries National Monument—Texas
56. Guadalupe Mountains National Park—Texas
57. Lake Meredith National Recreation Area—Texas
58. Ebey's Landing National Recreation Area—Washington
59. Mt. Rainier National Park—Washington
60. Olympic National Park—Washington
61. San Juan Islands National Historic Park—Washington
62. Whitman Mission National Historic Site—Washington

For questions regarding self-governance, contact Dr. Patricia Parker, Chief, American Indian Liaison Office, National Park Service (Org. 2560, 9th Floor), 1201 Eye Street, NW., Washington, DC 20005–5905, telephone: (202) 354–6962, fax: (202) 371–6609.

E. Eligible Fish and Wildlife Service (Service) Programs

The mission of the U.S. Fish & Wildlife Service is, working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. Primary responsibilities are for migratory birds, endangered species, freshwater and anadromous fisheries, and certain marine mammals. The Service also has a continuing cooperative relationship with a number of Indian tribes throughout the National Wildlife Refuge System and the Service's fish hatcheries. Any self-governance tribe may contact a National Wildlife Refuge or National Fish Hatchery directly concerning participation in Service programs under the Tribal Self-Governance Act. This list is not all inclusive, but is representative of the types of Service programs that may be eligible for tribal participation through an annual funding agreement.

1. *Subsistence Programs within the State of Alaska.* Evaluate and analyze data for annual subsistence regulatory cycles and other data trends related to subsistence harvest needs, and facilitate Tribal Consultation to ensure ANILCA Title VII terms are being met as well as activities fulfilling the terms of Title VIII of ANILCA.
2. *Technical Assistance, Restoration and Conservation.* Conduct planning and implementation of population surveys, habitat surveys, restoration of sport fish, capture of depredating migratory birds, and habitat restoration activities.
3. *Endangered Species Programs.* Conduct activities associated with the conservation and recovery of threatened or endangered species protected under the Endangered Species Act (ESA); candidate species under the ESA may be eligible for self-governance funding agreements. These activities may include, but are limited to, cooperative conservation programs, development of recovery plans and implementation of recovery actions for threatened and endangered species, and implementation of status surveys for high priority candidate species.
4. *Education Programs.* Provide services in interpretation, outdoor classroom instruction, visitor center operations, and volunteer coordination both on and off national Wildlife Refuge lands in a variety of communities, and assist with environmental education and outreach efforts in local villages.
5. *Environmental Contaminants Program.* Conduct activities associated with identifying and removing toxic chemicals, which help prevent harm to fish, wildlife and their habitats. The activities required for environmental contaminant management may include, but are not limited to, analysis of pollution data, removal of underground storage tanks, specific cleanup activities, and field data gathering efforts.
6. *Wetland and Habitat Conservation Restoration.* Provide services for construction, planning, and habitat monitoring and activities associated with conservation and restoration of wetland habitat.

7. *Fish Hatchery Operations.* Conduct activities to recover aquatic species listed under the Endangered Species Act, restore native aquatic populations, and provide fish to benefit Tribes and National Wildlife Refuges that may be eligible for a self-governance funding agreement. Such activities may include, but are not limited to: taking, rearing and feeding of fish, disease treatment, tagging, and clerical or facility maintenance at a fish hatchery.
8. *National Wildlife Refuge Operations and Maintenance.* Conduct activities to assist the National Wildlife Refuge System, a national network of lands and waters for conservation, management and restoration of fish, wildlife and plant resources and their habitats within the United States.
Activities that may be eligible for a self-governance funding agreement may include, but are not limited to: Construction, farming, concessions, maintenance, biological program efforts, habitat management, fire management, and implementation of comprehensive conservation planning.
Locations of Refuges and Hatcheries With Close Proximity to Self-Governance Tribes
The Service developed the list below based on the proximity of identified self-governance tribes to Service facilities that have components that may be suitable for contracting through a self-governance funding agreement.
1. Alaska National Wildlife Refuges—Alaska
2. Alchesay National Fish Hatchery—Arizona
3. Humboldt Bay National Wildlife Refuge—California
4. Kootenai National Wildlife Refuge—Idaho
5. Agassiz National Wildlife Refuge—Minnesota
6. Mille Lacs National Wildlife Refuge—Minnesota
7. Rice Lake National Wildlife Refuge—Minnesota
8. National Bison Range—Montana
9. Ninepipe National Wildlife Refuge—Montana
10. Pablo National Wildlife Refute—Montana
11. Sequoyah National Wildlife Refuge—Oklahoma
12. Tishomingo National Wildlife Refute—Oklahoma
13. Bandon Marsh National Wildlife Refuge—Washington
14. Dungeness National Wildlife Refuge—Washington
15. Makah National Fish Hatchery—Washington
16. Nisqually National Wildlife Refuge—Washington
17. Quinault National Fish Hatchery—Washington
18. San Juan Islands National Wildlife Refuge—Washington
19. Tamarac National Wildlife Refuge—Wisconsin
For questions regarding self-governance, contact Patrick Durham, Fish and Wildlife Service (MS–330), 4401 N. Fairfax Drive, Arlington, VA 22203, telephone: (703) 358–1728, fax: (703) 358–1930.
F. Eligible U.S. Geological Survey (USGS) Programs
The mission of the USGS is to collect, analyze, and provide information on biology, geology, hydrology, and geography that contributes to the wise management of the Nation's natural resources and to the health, safety, and well-being of the American people. This information is usually publicly available and includes maps, data bases, and descriptions and analyses of the water, plants, animals, energy, and mineral resources, land surface, underlying geologic structure, and dynamic processes of the earth. The USGS does not manage lands or resources. Self-governance tribes may potentially assist the USGS in the data acquisition and analysis components of its activities.
For questions regarding self-governance, contact Monique Fordham, National Tribal Liaison, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 911, Reston, VA 20192, telephone 703–648–4437, fax 703–648–6683.
G. Eligible Office of the Special Trustee for American Indians (OST) Programs
The Department of the Interior has responsibility for what may be the largest land trust in the world, approximately 56 million acres. OST oversees the management of Indian trust assets, including income generated from leasing and other commercial activities on Indian trust lands, by maintaining, investing and disbursing Indian trust financial assets, and reporting on these transactions. The mission of the OST is to serve Indian communities by fulfilling Indian fiduciary trust responsibilities. This is to be accomplished through the

implementation of a Comprehensive Trust Management Plan (CTM) that is designed to improve trust beneficiary services, ownership information, management of trust fund assets, and self-governance activities.

A tribe operating under self-governance may include the following programs, services, functions, and activities or portions thereof in a funding agreement:

1. *Beneficiary Processes Program* (Individual Indian Money Accounting Technical Functions).

2. *Appraisal Services Program.*

Tribes/consortia that currently perform these programs under a self-governance funding agreement with the BIA may negotiate a separate memorandum of understanding (MOU) with OST that outlines the roles and responsibilities for management of these programs. The MOU between the tribe/consortium and OST outlines the roles and responsibilities for the performance of the OST program by the tribe/consortium. If those roles and responsibilities are already fully articulated in the existing funding agreement with the BIA, an MOU is not necessary. To the extent that the parties desire specific program standards, an MOU will be negotiated between the tribe/consortium and OST, which will be binding on both parties and attached and incorporated into the BIA funding agreement.

If a tribe/consortium decides to assume the operation of an OST program, the new funding for performing that program will come from OST program dollars. A tribe's newly assumed operation of the OST program(s) will be reflected in the tribe's funding agreement.

For questions regarding self-governance, contact Lee Frazier, Program Analyst, Office of External Affairs, Office of the Special Trustee for American Indians (MS 5140—MIB), 1849 C Street, NW., Washington, DC 20240-0001, phone: (202) 208-7587, fax: (202) 208-7545.

IV. Programmatic Targets

During Fiscal Year 2012, upon request of a self-governance tribe, each non-BIA bureau will negotiate funding agreements for its eligible programs beyond those already negotiated.

Dated: August 26, 2011.

Ken Salazar,

Secretary.

[FR Doc. 2011-23683 Filed 9-14-11; 8:45 am]

National Park Service
U.S. Department of the Interior

Management Policy 2006

GOVERNMENT-TO-GOVERNMENT RELATIONS

1.11 Relationship with American Indian Tribes

The National Park Service has a unique relationship with American Indian tribes, which is founded in law and strengthened by a shared commitment to stewardship of the land and resources. The Service will honor its legal responsibilities to American Indian tribes as required by the Constitution of the United States, treaties, statutes, and court decisions. For the purposes of these policies, "American Indian tribe" means any band, nation, or other organized group or community of Indians, including any Alaska Native Village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

The formal legal rationale for the relationship between the National Park Service and tribes is augmented by the historical, cultural, and spiritual relationships that American Indian tribes have with park lands and resources. As the ancestral homelands of many American Indian tribes, parks protect resources, sites, and vistas that are highly significant for the tribes. Therefore, the Service will pursue an open, collaborative relationship with American Indian tribes to help tribes maintain their cultural and spiritual practices and enhance the Park Service's understanding of the history and significance of sites and resources in the parks. Within the constraints of legal authority and its duty to protect park resources, the Service will work with tribal governments to provide access to park resources and places that are essential for the continuation of traditional American Indian cultural or religious practices.

1.11.1 Government-to-Government Relationship

In accordance with the Presidential Memorandum of April 29, 1994, and Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), the Service will maintain a government-to-government relationship with federally recognized tribal governments. This means that NPS officials will work directly with appropriate tribal government officials whenever plans or activities may directly or indirectly affect tribal interests, practices, and/or traditional use areas such as sacred sites.

PRESIDENT NIXON, SPECIAL MESSAGE ON INDIAN AFFAIRS JULY 8, 1970

The new direction of Indian policy which aimed at Indian self-determination was set forth by President Richard Nixon in a special message to Congress in July 1970. Nixon condemned forced termination and proposed recommendations for specific action. His introduction and conclusion are printed here.

To the Congress of the United States:

The first Americans - the Indians - are the most deprived and most isolated minority group in our nation. On virtually very scale of measurement - employment, income, education, health - the condition of the Indian people ranks at the bottom.

This condition is the heritage of centuries of injustice. From the time of their first contact with European settlers, the American Indians have been oppressed and brutalized, deprived of their ancestral lands and denied the opportunity to control their own destiny. Even the Federal programs which are intended to meet their needs have frequently proved to be ineffective and demeaning.

But the story of the Indian in America is something more than the record of the white man's frequent aggression, broken agreements, intermittent remorse and prolonged failure. It is a record also of endurance, of survival, of adaptation and creativity in the face of overwhelming obstacles. It is a record of enormous contributions to this country – to its art and culture, to its strength and spirit, to its sense of history and its sense of purpose.

It is long past time that the Indian policies of the Federal government began to recognize and build upon the capacities and insights of the Indian people. Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.

SELF-DETERMINATION WITHOUT TERMINATION

The first and most basic question that must be answered with respect to Indian policy concerns the history and legal relationship between the Federal government and Indian communities. In the past, this relationship has oscillated between two equally harsh and unacceptable extremes.

On the other hand, it has – at various times during previous Administrations – been the stated policy objective of both the Executive and Legislative branches of the Federal government eventually to terminate the trusteeship relationship between the Federal government and the Indian people. As recently as August of 1953, in House Concurrent Resolution 108, the Congress declared that termination was the long-range goal of its Indian policies. This would mean that Indian tribes would eventually lose any special standing they had under Federal law: the tax exempt status of their lands would be discontinued; Federal responsibility for their economic and social well-being would be repudiated; and the tribes themselves would be effectively dismantled. Tribal property would be divided among individual members who would then be assimilated into the society at large.

This policy of forced termination is wrong, in my judgment, for a number of reasons. First, the premises on which it rests are wrong. Termination implies that the Federal government has taken on a trusteeship responsibility for Indian communities as an act of generosity toward a disadvantaged people and that it can therefore discontinue this responsibility on a unilateral basis whenever it sees fit. But the unique status of Indian tribes does not rest on any premise such as this. The special relationship between Indians and the Federal government is the result instead of solemn obligations which have been entered into by the United States Government. Down through the years through written treaties and through formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education and public safety, services which would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans.

This goal, of course, has never been achieved. But the special relationship between the Indian tribes and the Federal government which arises from these agreements continues to carry immense moral and legal force. To terminate this relationship would be no more appropriate than to terminate the citizenship rights of any other American.

The second reason for rejecting forced termination is that the practical results have been clearly harmful in the few instances in which termination actually has been tried. The removal of Federal trusteeship responsibility has produced considerable disorientation among the affected Indians and has left them unable to relate to a myriad of Federal, State, and local assistance efforts. Their economic and social condition has often been worse after termination than it was before.

The third argument I would make against forced termination concerns the effect it has had upon the overwhelming majority of tribes which still enjoy a special relationship with the Federal government. The very threat that this relationship may someday be ended has created a great deal of apprehension among Indian groups and this apprehension, in turn, has had a blighting effect on tribal progress. Any step that might result in greater social, economic or political autonomy is regarded with suspicion by many Indians who fear that it will only bring them closer to the day when the Federal government will disavow its responsibility and cut them adrift.

In short, the fear of one extreme policy, forced termination, has often worked to produce the opposite extreme: excessive dependence on the Federal government. In many cases this dependence is so great that the Indian community is almost entirely run by outsiders who are responsible and responsive to Federal officials in Washington, D.C., rather than to the communities they are supposed to be serving. This is the second of the two harsh approaches which have long plagued our Indian policies. Of the Department of Interior's programs directly serving Indians, for example, only 1.5 percent are presently under Indian control. Only 2.4 percent of HEW's Indian health programs are run by Indians. The result is a burgeoning Federal bureaucracy, programs which are far less effective than they ought to be, and an erosion of Indian initiative and morale.

I believe that both of these policy extremes are wrong. Federal termination errs in one direction, Federal paternalism errs in the other. Only by clearly rejecting both of these extremes can we achieve a policy which truly serves the best interests of the Indian

people. Self-determination among the Indian people can and must be encouraged without the threat of eventual termination. In my view, in fact, that is the only way that self-determination can effectively be fostered.

This, then, must be the goal of any new national policy toward the Indian people to strengthen the Indian's sense of autonomy without threatening this sense of community. We must assure the Indian that he can assume control of his own life without being separated involuntary from the tribal group. And we must make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support. My specific recommendations to the Congress are designed to carry out this policy....

The recommendations of this administration represent an historic step forward in Indian policy. We are proposing to break sharply with past approaches to Indian problems. In place of a long series of piecemeal reforms, we suggest a new and coherent strategy. In place of policies which simply call for more spending, we suggest policies which call for wiser spending. In place of policies which oscillate between the deadly extremes of forced termination and constant paternalism, we suggest a policy in which the Federal government and the Indian community play complementary roles.

But most importantly, we have turned from the question of *whether* the Federal government has a responsibility to Indians to the question of *how* that responsibility can best be furthered. We have concluded that the Indians will get better programs and that public monies will be more effectively expended if the people who are most affected by these programs are responsible for operating them.

The Indians of America need Federal assistance – this much has long been clear. What has not always been clear, however, is that the Federal government needs Indian energies and Indian leadership if its assistance is to be effective in improving the conditions of Indian life. It is a new and balanced relationship between the Unites States government and the first Americans that is at the heart of our approach to Indian problems. And that is why we now approach these problems with new confidence that they will successfully be overcome.

[*Public Papers of the Presidents of the United States: Richard Nixon, 1970, pp. 564-567, 576-76.*]

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PART THREE

INDIAN SACRED SITES

National Park Service
U. S. Department of the Interior

American Indian Liaison Office

The American Indian Religious Freedom Act (AIRFA)

Federal development of natural resources is often at odds with the protection of, or access to, Indian religious sites. In many instances, the federal government has initiated resource development that has interfered with or destroyed Indian religious sites and practices. AIRFA, passed in 1978, articulates specific policy objectives relating to the preservation of Indian religious sites and practices, but does not create a cause of action or any judicially enforceable individual rights. In 1994, AIRFA was amended to prohibit states from penalizing Indians who use peyote in a traditional manner in religious ceremonies. (Workshop text, *Indian Tribes as Sovereign Governments.*)

The American Indian Religious Freedom Act of 1978

92 Stat. 469 (1978)
(codified in part at 42 U.S.C § 1996)

Whereas the freedom of religion for all people is an inherent right, fundamental to the democratic structure of the United States and is guaranteed by the First Amendment of the United States Constitution;

Whereas the United States has traditionally rejected the concept of a government denying individuals the right to practice their religion and, as a result, has benefited from the rich variety of religious heritages in this country;

Whereas the religious practices of the American Indian (as well as Native Alaskan and Hawaiian) are an integral part of their culture, tradition and heritage, such practices forming the basis of Indian identity and value systems;

Whereas the traditional American Indian religion, as an integral part of Indian life, are indispensable and irreplaceable;

Whereas the lack of a clear, comprehensive, and consistent Federal policy has often resulted in the abridgement of religious freedom for traditional American Indians;

Whereas such religious infringements result from the lack of knowledge or the insensitive and inflexible enforcement of Federal policies and regulations premised on a variety of laws;

Whereas such laws were designed for such worthwhile purposes as conservation and preservation of natural species and resources but were never intended to relate to Indian religious practices and, therefore were passed without consideration of their effect on traditional American Indian religions;

Whereas such laws and policies often deny American Indians access to sacred sites required in the religions, including cemeteries;

Whereas such laws at times prohibit the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies;

Whereas traditional American Indian ceremonies have been intruded upon, interfered with, and in a few instances banned:....

42 U.S.C. § 1196. Protection and preservation of traditional religions of Native Americans

On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indians, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

In 1988, in *Lyng v. Northwest Indian Cemetery Protective Association,* the Supreme Court upheld the Forest Service's right to build a logging road that would be located near a sacred site and would interfere with the ceremonies of religious practitioners. The Court found that, because the federal government's neutral management of its lands did not penalize or coerce Indian religious practitioners, the government should have broad discretion in determining the use of its own land.

Importantly, however, the *Lyng* decision found that government officials have authority under AIRFA's policy direction and other laws to "accommodate" Indian religious practices. This discretion has become increasingly important in recent years, as federal land agencies have taken steps to protect Indian religious practices.

On May 24, 1996 President Clinton signed an executive order further bolstering the mandate of the American Indian Religious Freedom Act with respect to sacred sites. The order directed federal agencies to "accommodate access to and ceremonial use of Indian

sacred sites by Indian religious practitioners" on federal land. Agencies must "avoid adversely affecting the physical integrity of such sacred sites" through notice to and consultation with tribes. In Bear Lodge Multiple Use Association v. Babbitt, a federal district court upheld a National park Service voluntary ban on climbing for the month of June on Devil's Tower National Monument in Wyoming. The Tower is sacred to several American Indian tribes. (Workshop text, *Indian Tribes as Sovereign Governments.*)

National Park Service
U. S. Department of the Interior

American Indian Liaison Office

CARRYING OUT EXECUTIVE ORDER 13007 & THE NATIONAL PARK SERVICE

CARRYING OUT EXECUTIVE ORDER 13007—INDIAN SACRED SITES

In order to provide American Indian religious practitioners the fullest possible access to and use of sacred sites, and to provide Indian sacred sites the highest possible level of protection, park and program managers should carry out the provisions of Executive Order 13007 in conjunction with other pertinent laws, regulations, and policies.

Section 304 of the National Historic Preservation Act and Section 9 of the Archeological Resources Protection Act provide guidance regarding limiting public access to information about sacred sites provided by Indian tribes and religious practitioners. Given the difficulty of maintaining confidentiality of traditional knowledge under the Freedom of Information Act, park and program managers are encouraged to obtain and record information about sacred sites in only the detail needed to justify administrative decisions. The National Park Service should make every effort to respect any tribe's reluctance to reveal the location of sacred sites if they think disclosing such information would compromise confidentiality of their religious practices.

The Executive Order places a responsibility on Indian tribes to identify sacred sites on Federal lands. However, it is the responsibility of the National Park Service under other statutes, for example, the National Historic Preservation Act, National Environmental Policy Act, Native American Graves Protection and Repatriation Act, and others, to identify historic places, including Indian sacred sites, and to consult with American Indian tribal governments concerning how such sacred sites can be protected.

Indian sacred sites are parts of landscapes. They are not bounded conceptually by Indian peoples as specific identifiable spaces even though the Executive Order defines them as such. Park managers have the ability to accommodate the needs of Indian religious practitioners without drawing specific boundaries around sacred sites.

It is important to remember that there may be sacred sites on parklands that have not been identified by Indian tribes. Sacred sites are at times created through the practice of traditional American Indian religions and thus may not yet exist. Therefore, park and program managers are encouraged to develop consultation procedures that provide for on-going identification of sacred sites as part of National Park Service planning and environmental review procedures.

In order to accommodate access and use of Indian sacred sites, park managers should:

Understand that Indian tribes and traditional religious practitioners have needs for access and use of parklands that are different from those of the general public;

Carry out a program of on-going consultation with tribes about their needs for access and use of sacred sites;

Ensure that such consultation is sensitive to the cultural values of the tribe and its religious authorities; and,

Routinely address matters such as managing visitation in areas where religious activities are likely to occur, placing of facilities where religious activities may be impeded, and considering any unintended effects of management actions on sacred sites--for example changes in vegetation, air and water quality, noise level and view shed.

In order to avoid and/or reduce adverse effects on the physical integrity of sacred sites park managers should:

Minimize damage to any aspect of a sacred site's integrity that is of importance to those who value it; and,

Understand that adverse physical effects to the integrity of sacred sites may include not only ground disturbance, but also changes in air or water quality, noise levels, and view sheds.

In order to consider the effects on sacred sites in the planning process park managers should:

Consult on a government-to-government basis about how to make adjustments that are responsive to tribal concerns;

Provide for tribal participation in large scale planning efforts;

Meet with tribal governmental representatives as part of scoping to identify sacred sites issues and alternatives that are preferable to the tribe;

> Consider meeting with tribes prior to, and/or separate from, scoping meetings with the general public; and,
>
> Develop written government-to-government notification procedures that ensure that tribal concerns regarding any potential changes in access, use, and physical integrity of sacred sites may be given full consideration before National Park Service action. Park and program managers are encouraged to include in any such notification, an offer to meet with tribal representatives to hear their concerns directly at a place of their choosing.

MANAGING INDIAN SACRED SITES & THE FIRST AMENDMENT

The Supreme Court finds that the U.S. government has the ability to accommodate use of government property for Indian religious activities while retaining its right to use and manage its land.

Justice Sandra Day O'Connor delivered the Supreme Court decision in *Lyng v. Northwest Indian Cemetery Protective Association et. al.* [See pages 186-189 of your text, *Indian Tribes as Sovereign Governments.*] In this decision Justice O'Connor weighed the effects of a proposed logging road in a National Forest on the religious practices of three American Indian tribes in northern California. She found that even though "...the Government's proposed actions will have severe adverse effects on the practice of their (the tribes') religion" the Government is not precluded by the Free Exercise Clause of the First Amendment from permitting timber harvesting in, or constructing a road through, an area traditionally used by the tribes for religious purposes.

Justice O'Connor went on to note that American Indian religions are site-specific and to encourage the government to accommodate Indian religious practices on its land.

> The Constitution does not permit the government to discriminate against religions that treat particular physical sites as sacred, and a law prohibiting the Indian respondents from visiting the Chimney Rock area would raise a different set of constitutional questions. Whatever rights the Indians may have to the use of the area, however, those rights do not divest the Government of its right to use what is, after all, *its* land...
>
> Nothing in our opinion should be read to encourage governmental insensitivity to the religious needs of any citizen. The Government's rights to the use of its own land, for example, need not and should not discourage it from accommodating religious practices like those engaged in by the Indian respondents....It is worth emphasizing, therefore, that the Government has taken numerous steps in this very case to minimize the impact that the construction of the G-O road will have on the Indian's religious activities....

COURTS HAVE SUPPORTED NPS IN FIRST AMENDMENT CASES

Devils Tower National Monument—Bear Lodge

In the mid-1990s Devils Tower National Monument developed a Climbing Plan to address increasing use of the Tower by climbers and the associated impacts on park resources. As part of the scoping process, the park began what has become an on-going dialog with more than 20 Indian tribes traditionally associated with the Tower called Bear Lodge by the tribes. The tribes informed park managers of the religious and historical significance of Bear Lodge. They were specifically concerned that noise from the climbers and the use of equipment like climbing bolts and anchors desecrated the site, disturbed their religious ceremonies, and undermined their efforts to educate their children about the importance of Bear Lodge.

After extensive public discussion, the Final Climbing Plan called for a voluntary ban on climbing during the month of June. This generally corresponds to the summer solstice, a period of concentrated religious activity for many tribes in the northern plains. The park continues to issue permits to climbers, including commercial permits on request, but combines this with an educational campaign in climbing publications worldwide as well as interpretative displays and activities within the park. The use of signs such as those requesting visitors to "PLEASE DO NOT DISTURB PRAYER BUNDLES AND PRAYER CLOTHS" helps to alert park visitors to the sacred nature of Bear Lodge to American Indians.

The Bear Lodge Multiple Use Association brought suit against the National Park Service and the Department of the Interior alleging that the NPS unconstitutionally established American Indian religion by threatening a mandatory prohibition on climbing should the voluntary plan not be successful. The signage was alleged to be coercive and the educational program in general was alleged to establish American Indian religion.

The District Court dismissed the claims concerning signage and other educational management tools. The court did address whether or not the voluntary climbing ban was a violation of the establishment clause, and found that it was not. The court sought, like Justice O'Connor in the *Lyng* decision above, an appropriate balance of the valid exercise of governmental power and accommodation of American Indian religious practices.[1] The Court of Appeals for the Tenth Circuit upheld the District Court's decision and dismissed all claims.

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[1] Bluemel, Erik B., "Prioritizing Multiple Uses on Public Lands After Bear Lodge," *Environmental Affairs* Vol. 32, Issue 2, pages 365-394, (2005), page 386

Since the completion of the Final Climbing Plan, tribes have conducted religious activities such as the Sun Dance, in generally remote locations in the park away from main visitor use areas. Locating such activities in areas that provide for privacy during ceremonies is a useful management tool.

Reference: *Bear Lodge Multiple Use Association v. Babbitt*, 2 F. Supp. 2d 1448 (D. Wyo. 1998), *aff'd on other grounds*, 175 F. 3d 814 (10th Cir. 1999)

Rainbow Bridge NM-Glen Canyon NRA

Rainbow Bridge, recognized as the largest natural freestanding sandstone bridge in the world, has long been a destination for tourists. It is also a sacred site to at least five Indian tribes in the southwest, including the Navajo on whose reservation it stands. For many years Navajo religious practitioners have requested privacy during religious ceremonies conducted near the Bridge.

The park encourages visitors to respect Native American beliefs through signs such as this one: "American Indians consider Rainbow Bridge a sacred religious site. Please respect these long standing beliefs. Please do not approach or walk under Rainbow Bridge." Park rangers at the boat landing explain to visitors why they should not approach the Bridge, and the park has re-vegetated areas between the park trail and the Bridge to further discourage visitor access while still providing visitor use of the area.

The Natural Arch and Bridge Society brought suit against the park on grounds very similar to those brought by Bear Lodge Multiple Use Association at Devils Tower NM. Again the court dismissed all claims.

Reference: *Natural Arch and Bridge Society v. Alston*, No. 02-4099, 2004 W569888 (10th Cir. March 23, 2004)

PARK ENABLING LEGISLATION CAN INCLUDE SPECIAL ACCOMODATION FOR AMERICAN INDIAN RELIGIOUS PRACTITIONERS

Congress has recognized the needs of American Indian religious practitioners for access to and use of park lands and the need for ceremonial privacy in the enabling legislation of some parks.

Grand Canyon NP—Grand Canyon Expansion Act

- Havasupai Use Lands – 185,000 acres held in trust within the boundaries of Grand Canyon NP that "may be used for traditional purposes and the gathering of, or hunting for , wild or native foods, materials for paints and medicines." Tribal access to sacred or

religious places or burial ground, native foods, plants, materials, and medicines…."shall not be prohibited.

Chaco Culture NHP

- Any agreements entered into for the protection, preservation, and maintenance of the Chaco archeological sites …"shall not be deemed to prevent the continuation of traditional Native American religious uses of properties which are the subject of cooperative agreements."

El Malpais NM

- "In recognition of the past use of portions of the monument and the conservation area for cultural and religious purposes, the Secretary shall ensure nonexclusive access to the monument by Indian people for traditional and cultural purposes, including the harvesting of pine nuts. Such access shall be consistent with the purpose and intent of the American Indian Religious Act…." The Secretary shall seek advice from the Acoma and other appropriate tribes concerning needs for access, privacy, and protection (of religious sites).

- "The Secretary,…upon the request of an appropriate Indian tribe, may from time to time temporarily close to the general public use one or more specific portions of the monument or the conservation area in order to protect the privacy of religious activities in such areas by Indian people. Any such closure shall be made so as to affect the smallest practicable area for the minimum period necessary for such purposes."

Death Valley NP—The Timbisha Shoshone Homelands Act

- The Timbisha Shoshone Homelands Act establishes special use areas within Death Valley NP. Within these use areas , tribal members may use park resource "for traditional purposes, practices and activities" that do not include the taking of wildlife and are not in derogation of purposes and values fro which the Park was established." In two special use areas, the NPS is authorized to restrict and or limit visitor use to protect the privacy of the tribe. In the large "Timbisha Shoshone Natural and Cultural Preservation Area," the NPS and BLM shall accommodate access and use "for traditional cultural and religious activities, in a manner consistent with the purpose and intent of the American Indian Religious Freedom Act.'

- "on the request of the Tribe, the NPS and BLM shall temporarily close to the general public 1 or more specific portions of the area in order to protect the privacy of tribal members engaging in traditional cultural

> and religious activities....and any such closure shall be made in a manner that affects the smallest practicable area fro the minimum period necessary" (for such purposes).

These types of accommodations were noted by the U.S. Court of Appeals Tenth Circuit in responding to the appeal of the plaintiffs at Devil's Tower NM as examples of laws protecting Indian religion by providing access to and/or temporary closure of specific tribal sacred sites located on federal land.

Many Parks have formal or informal relationships with traditionally associated Indian tribes for access and use of parklands for traditional and religious purposes.

Many parks have informal arrangements with native peoples that allow the use of park resources for traditional and religious purposes. Sometimes these arrangements are formalized, such as at Hawaii Volcanoes NP, Pipe Spring NM and Olympic NP.

At Hawaii Volcanoes NP, the park established a park specific regulation in the superintendent's compendium that allowed the collection of plants for Native Hawaiian traditional and religious purposes. The regulation established a process by which a council of elders (*kapuna)* meets with the superintendent and his or her staff to establish, on an annual basis, which plants from what areas and for what general purposes can be collected. This is done in consultation with resource and law enforcement to ensure mutual understanding between the local community and park staff.

Pipe Spring NM, as well as Cedar Breaks NM and Zion NP, entered into a Memorandum of Understanding with five Paiute tribes to permit the limited collection of plant materials for traditional and religious purposes. On-going monitoring systems are part of the agreement, as well as mutually agreed upon collection areas generally away from main visitor routes.

Olympic NP entered into a comprehensive Memorandum of Understanding with the eight tribes of the Olympic Peninsula in July 2008. The memorandum, developed by the park and the tribes has as its purposes "to facilitate government-to-government relations, effective coordination, open and timely communication, and meaningful consideration of the interests and priorities between the Parties on issues of concern." The memorandum is respectful of tribal concerns for the protection of their treaty rights which predate the establishment of Olympic National Park in 1938. The park and the tribes intend that the memorandum will contribute to resource management through integrated management activities and collaborative relationships.

36 CFR Part 2.1

Current NPS regulations at 36 CFR Part 2.1(a) prohibits "possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state" living or dead wildlife or fish, plants, paleontological specimens, or mineral resources, or the parts or products of any of these items, except as otherwise provided. Section 2.1(c) provides for

the superintendent to permit, on a finding of no adverse effect on park resources, the taking of "fruits, berries, nuts, or unoccupied seashells" by hand for personal consumption.

36 CFR Part 2.1(d) provides that "This section shall not be construed as authorizing the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes, except where specifically authorized by Federal statutory law, treaty rights, or in accordance with Section 2.2 or 2.3 (hunting and fishing regulations)."

Over the past 25 years, these sections have been applied inconsistently by park and program managers with regard the use of park resources by Indian religious practitioners resulting in confusion in parks and by tribes about what is lawful.

In response to requests from NPS leadership, park superintendents, park rangers and others, the American Indian Liaison Office has been working with the solicitor's office and the field to draft a regulatory change to clarify the superintendents authority to permit the collecting of limited amounts of plants and certain minerals for traditional religious purposes.

The Department of the Interior attempted to promulgate a special regulation to allow the collection of golden eaglets from Wupatki NM for religious purposes.

In January 2001 the Secretary of the Interior directed the National Park Service to draft a regulation proposing that Hopi religious practitioners be permitted to collect golden eaglets for religious ceremonial purposes. This action was in response to a request from the Hopi tribe in spring, 1999, to collect golden eaglets from Wupatki NM under a permit from the Fish & Wildlife Service authorized by the Bald and Golden Eagle Protection Act.

The proposed rule was drafted under the leadership of Solicitor John Leshy and in cooperation with the Bureau of Indian Affairs. The rule "would authorize this activity upon terms and conditions sufficient to protect park resources against impairment, and consistent with the Bald and Golden Eagle Protection Act." The full text of the proposed rule is found at the reference: Proposed Rule, "Religious Ceremonial Collection of Golden Eaglets from Wupatki National Monument," *Federal Register*, Vol. 66, No. 14, Jan. 22, 2001, pages 6516-6521. (withdrawn after public comment)

After a lengthy discussion regarding the historical depth and centrality of the use of eaglets in the Hopi Religion, and of the very specific nature of their ancient practice, the proposed rule concludes that the National Park Service has the authority to accommodate the collection of golden eaglets for religious ceremonial purposes.

> "In light of the statutes, court decisions, executive orders and other legal consideration discussed above, we believe that the NPS has a reasonable legal basis for promulgating a regulation that allows the Hopi Tribe to collect golden eaglets at Wupatki National Monument for religious ceremonial purposes. The

> collection of golden eaglets from specific geographic areas is an important part of the Hopi religion, and there is an ancestral and historical connection between the Hopi Tribe and Wupatki National Monument. The proposed regulation would allow the NPS to include terms and conditions, including gathering times, take limits, and permit tenure, that are sufficient to protect the park resources against impairment, and would require compliance with the Bald and Golden Eagle Protection Act.
>
> "The proposed regulation, and the accompanying environmental assessment, applies only to this narrow situation. It is possible that NPS will receive requests from other tribes for similar rule changes to address their religious practices. Such requests will be addressed on their merits.".....

The actual proposed rule was intended to be published at Section 7.101.

> § **7.101 Wupatki National Monument.** (a) *Collection of golden eaglets from Wupatki National Monument by Hopi Tribe.* Upon terms and conditions sufficient to prevent impairment to park resources, and upon a showing that the Tribe has a valid permit to collect golden eaglets under the Bald and Golden Eagle Act, 16 U.S.C. 668-668d, the Superintendent of Wupatki National Monument shall grant a permit to the Hopi Tribe to collect golden eaglets from Wupatki National Monument for religious ceremonial purposes.

An environmental assessment was attached to the proposed rule. Thousands of comments were received averaging more than 2 to 1 against promulgating the proposed rule.

In the meantime, the park, in conjunction with the Fish & Wildlife Service and the Hopi Tribe undertook an intensive study of golden eagles in the western States. The park has established on-going monitoring of the golden eagle nesting sites within the park, and has put in place measures to control visitor access to the sites during nesting and fledging seasons.

However, there have been no reported eagle nesting pairs and no eaglets for the past ten years. There also have been no further requests from the Hopi tribe regarding the collection of golden eaglets as of this writing.

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Federal Register / Vol. 61, No. 104 / Wednesday, May 29, 1996

Presidential Documents

Executive Order 13007 of May 24, 1996

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.

Section 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 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.

Section 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)).

Section 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.

THE WHITE HOUSE,
May 24, 1996.
[FR Doc. 96–13597
Filed 5–27–96; 8:45 am]

National Park Service
U.S. Department of the Interior

Management Policy 2006

5.3.5.3.2 Sacred Sites

The National Park Service acknowledges that American Indian tribes, including Native Alaskans, treat specific places containing certain natural and cultural resources as sacred places having established religious meaning and as locales of private ceremonial activities. Consistent with Executive Order 13007 (Indian Sacred Sites), the Service will, to the extent practicable, accommodate access to and ceremonial use of Indian sacred sites by religious practitioners from recognized American Indian tribes and Alaska Natives, and avoid adversely affecting the physical integrity of such sacred sites.

In consultation with the appropriate groups, the Service will develop a record about such places, and identify any treatments preferred by the groups. This information will alert superintendents and planners to the potential presence of sensitive areas and will be kept confidential to the extent permitted by law. The Service will collaborate with affected groups to prepare mutually agreeable strategies for providing access to ordinarily gated or otherwise inaccessible locales, and for enhancing the likelihood of privacy during religious ceremonies. Any strategies that are developed must comply with constitutional and other legal requirements. To the extent feasible and allowable by law, accommodations will also be made for access to and the use of sacred places when interest is expressed by other traditionally associated peoples (especially Native Hawaiians and other Pacific islanders) and by American Indian peoples and others who often have a long-standing connection and identity with a particular park or resource.

Various ethnic groups, local groups with recently developed ties to resources in neighboring parks, and visitors to family and national cemeteries and national memorials also might use park resources for traditional or individual religious ceremonies. Mutually acceptable agreements may be negotiated with known groups to provide access to and the use of such places, consistent with constitutional and other legal constraints.

(See Confidentiality 5.2.3; Resource Access and Use 5.3.5.3.1; Use by American Indians and Other Traditionally Associated Groups 8.5; First Amendment Activities 8.6.3. Also see Director's Orders #66: FOIA and Protected Resource Information, and #71B: Indian Sacred Sites; NHPA [16 USC 470w-3]; Executive Order 13007 (Indian Sacred Sites); 512 DM 3)

National Park Service
U.S. Department of the Interior

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6.3.12 American Indian Access and Associated Sites

American Indian access rights and protection of sites associated with Indian tribes will be protected and maintained according to applicable laws and policies. The American Indian Religious Freedom Act reaffirms the First Amendment rights of Native Americans to access national park system lands for the exercise of their traditional religious practices. Native American human remains that were removed from wilderness areas and are subject to the NAGPRA repatriation may be reinterred at or near the site from which they were removed. American Indian religious areas and other ethnographic and cultural resources will be inventoried and protected. American Indians will be permitted access within wilderness for sacred or religious purposes consistent with the intent of the American Indian Religious Freedom Act, the Wilderness Act, and other applicable authorities provided by federal statues and executive orders.

(See also Executive Order 13007 (Indian Sacred Sites))

National Park Service
U.S. Department of the Interior

Management Policy 2006

8.5 Use by American Indians and Other Traditionally Associated Groups

The National Park Service will develop and implement its programs in a manner that reflects knowledge of and respect for the cultures of American Indian tribes or groups with demonstrated ancestral ties to particular resources in parks. Evidence of such ties will be established through systematic archeological or anthropological studies, including ethnographic oral history and ethnohistory studies or a combination of these sources. For purposes of these policies, the term American Indian tribe means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Other groups of people with traditional associations to park lands or resources include native peoples of the Caribbean; Native Hawaiians and other native Pacific islanders; and state-recognized tribes and other groups who are defined by themselves and known to others as members of a named cultural unit that has historically shared a set of linguistic, kinship, political, or other distinguishing cultural features.

The Service will regularly and actively consult with American Indian tribal governments and other traditionally associated groups regarding planning, management, and operational decisions that affect subsistence activities, sacred materials or places, or other resources with which they are historically associated. Information about the outcome of these consultations will be made available to those consulted.

In developing its plans and carrying out its programs, the Service will ensure the following:
_ NPS general regulations governing access to and use of natural and cultural resources in parks will be applied in an informed and balanced manner consistent with park purposes that (1) does not unreasonably interfere with American Indian tribal use of traditional areas or sacred resources, and (2) does not violate the criteria listed in section 8.2 for use of the parks.
_ Superintendents will establish and maintain consulting relationships with potentially affected American Indian tribes or traditionally associated groups.
_ Management decisions will reflect knowledge about and understanding of potentially affected American Indian cultures and people, gained through research and consultations with the potentially affected groups.

The American Indian Religious Freedom Act (42 USC 1996) states that

> Henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right to freedom to believe, express, and exercise the traditional religions of the American Indians, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

National Park Service
U.S. Department of the Interior

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8.5 Use by American Indians and Other Traditionally Associated Groups (continued)

The National Park Service recognizes that site-specific worship is vital to Native American religious practices. As a matter of policy and in keeping with the spirit of the law, and provided the criteria listed in section 8.2 for use of the parks are not violated, the Service will be as unrestrictive as possible in permitting Native American tribes access to park areas to perform traditional religious, ceremonial, or other customary activities at places that have been used historically for such purposes. In allowing religious access by other entities, including non-recognized Indian groups, the Service will consider requests individually, being mindful not to take actions that will either advance or inhibit religion. The Service will not direct visitor attention to the performance of religious observances unless the Native American group so wishes.

With regard to consumptive use of park resources, current NPS policy is reflected in regulations published at 36 CFR 2.1 and 36 CFR Part 13. These regulations allow superintendents to designate certain fruits, berries, nuts, or unoccupied seashells that may be gathered by hand for personal use or consumption if it will not adversely affect park wildlife, the reproductive potential of a plant species, or otherwise adversely affect park resources. The regulations do not authorize the taking, use, or possession of fish, wildlife, or plants for ceremonial or religious purposes, except where specifically authorized by federal statute or treaty rights or where hunting, trapping, or fishing are otherwise allowed.

When authorized under National Historic Preservation Act, the Archeological Resources Protection Act or other provisions of law, the Service will protect sacred resources to the extent practicable and in a manner consistent with the goals of American Indian tribes or other traditionally associated groups. The location and character of sacred sites will be withheld from public disclosure if disclosure will cause significant invasion of privacy, risk harm to the historic resource, or impede the use of a traditional religious site by practitioners.

Members of American Indian tribes or traditionally associated groups may enter parks for traditional nonrecreational activities without paying an entrance fee.

The ceremonial use of peyote will be limited to members of the Native American Church during religious ceremonies, in accordance with regulations of the Department of Justice, Drug Enforcement Administration ("Special Exempt Persons, Native American Church," 21 CFR 1307. 31).

(See Relationship with American Indian Tribes 1.11; Consultation 5.2.1; Ethnographic Resources 5.3.5.3; first Amendment Activities 8.6.3; Consumptive Uses 8.9. Also see Executive Order 13007 (Indian Sacred Sites); Director's Orders #71A: Government-to-government Relationships with Tribal Governments, and #71B: Indian Sacred Sites)

PART FOUR

PROTECTING HISTORIC PLACES & CULTURAL TRADITIONS

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National Park Service
U. S. Department of the Interior

American Indian Liaison Office

THE NATIONAL HISTORIC PRESERVATION ACT OF 1966 (NHPA) & INDIAN TRIBES

SUMMARY OF KEY TRIBAL PROVISIONS OF NHPA RELEVENT TO TRIBES

- National Register of Historic Properties, including Indian cultural and religious sites
- Advisory Council on Historic Preservation including tribal representation
- Federal, State, and Tribal Historic Preservation Officers
- Preservation "as a living part of community life"
- Protection of Indian sacred and cultural sites and religious practices through consultation, project review, and protection of sensitive information
- Financial support and technical assistance for tribal preservation and cultural offices and tribal colleges

The National Historic Preservation Act of 1966, as amended, establishes the framework for preservation and protection of places and properties of historical, archeological, cultural, and architectural significance. The framework, as it exists today includes the following key elements.

A **National Register of Historic Places**, which is a list of places meeting at least one of four general criteria established by the statute. The National Park Service administers the National Register of Historic Places and provides guidance and oversight to federal, state and tribal governments, private and public institutions and individuals on behalf of the Secretary of the Interior. The Keeper of the National Register has traditionally been a senior National Park Service preservation professional. National Register regulations are found at 36 CFR Part 60 and 61.

An **Advisory Council on Historic Preservation (ACHP)** that advises the President and Congress on preservation matters. The Advisory Council provides guidance and oversight to federal, state, tribal and local governments regarding

Section 106 of the NHPA. **Section 106** requires federal agencies to consider the effects their plans and projects on places listed on or found to be eligible for listing on the National Register of Historic Places. **Section 201** describes membership on the Council. **At least one member of the Council must be "a member of an Indian tribe or Native Hawaiian organization who represents the interests of the tribe or organization of which he or she is a member, appointed by the President."** ACHP regulations are found at 36 CFR Part 800. These regulations and ACHP guidance on Consulting with Tribal Governments can be found at their website ***www.achp.gov***. The ACHP publication, *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook*, is also available at this website. The ACHP *Policy Statement Regarding the ACHP's Relationship with Indian Tribes* is included below.

Federal, State, and Tribal Preservation Officers who oversee the identification, documentation, and evaluation of historic properties and places under their jurisdiction or that may be affected by actions of other agencies with responsibilities under NHPA.

Some provisions of NHPA that are important to our workshop include the following.

(Section One (b)) The Congress finds and declares that –
(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people

Section 101(d) Tribal Preservation Offices. Section 101(d) authorizes the Secretary of the Interior to establish regulations and provide guidance, financial support, and technical assistance to tribal governments who wish to conduct preservation activities similar to those carried out by State Historic Preservation Officers on tribal lands and to formally consult with other government agencies about actions that may affect places of significance off-reservation. A list of tribal historic preservation offices follows. A list of points of contacts and addresses is available at:

www.nps.gov/history/hps/tribal/thpo.htm

or through Inside NPS. That website also provides information on tribal preservation grants. Further information can be found at the National Association of Tribal Historic Preservation Officers website ***www.nathpo.org***

Section 101(d)(5) authorizes the Advisory Council on Historic Preservation to enter into agreements with tribes for review of federal undertakings on tribal lands under tribal regulations requiring equivalent review to regulations of the Advisory Council (36 CFR 800).

Section 101(d)(6)(A) provides that "properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined eligible for inclusion on the National Register", thus making it clear that **Indian sacred sites should be afforded the same level of consideration as**

other historic places. Section 101(d)(6) requires federal agencies to consult with any Indian tribe or Native Hawaiian organization that attaches significance to sites that may be listed on or determined eligible to the National Register.

Section 101(e)(3)(B) Financial Support for Tribal Preservation. Section 101(e) authorizes the Secretary of the Interior, in consultation with the appropriate State Historic Preservation Officer, to make grants or loans or both under this section to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the **preservation of their cultural heritage. Section 101(e)(5)** authorizes the Secretary of the Interior to administer a program of direct grants to Indian tribes and Native Hawaiian organizations for the purposes of NHPA. Importantly, requirements for matching funds may be modified or eliminated, and Federal funds available to Indian tribes or Native Hawaiian organizations may be used as match.

Section 101(j) Comprehensive Preservation Education and Training. Section 101(j) authorizes the Secretary of the Interior to develop and implement a comprehensive education and training program **including financial and technical assistance to tribal colleges.**

Section 304 Confidentiality of Information on Sensitive Historic Resources. Section 304 authorizes the heads of federal agencies or other public officials receiving financial assistance under NHPA to **withhold information regarding the location, character or ownership of a historic resource if such information may cause a significant invasion of privacy, risk harm to the historic resources, or impede the use of a traditional religious site by practitioners.**

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National Park Service
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1.11.2 Consultation

Consultations, whether initiated by a tribe or the Park Service, will be respectful of tribal sovereignty. The Federal Advisory Committee Act does not apply to consultation meetings held exclusively between federal officials and elected officers of tribal governments or their designees.

Tribal needs for privacy and confidentiality of certain kinds of information will be respected. Such information will be deemed confidential when authorized by law, regulation, or policy. Before beginning government-to-government consultations, park managers will consider what information is necessary to record. Culturally sensitive information will be collected and recorded only to the extent necessary to support sound management decisions and only in consultation with tribal representatives.

Mutually acceptable consultation protocols to guide government-to-government relationships will be developed at the park and program levels with assistance from regional and support offices as needed. The protocols will be developed with an understanding of special circumstances present at individual parks. These protocols and the actual consultation itself will be informed by national, regional, and park-based subject matter experts.

NPS managers will be open and candid with tribal governments during consultations so that the affected tribes may fully evaluate the potential impact of the proposal and the Service may fully consider tribal views in its decision-making processes. This means that government-to-government consultation should begin at the earliest possible stages of planning.

(See Consultation 5.2.1; Ethnographic Resources 5.3.5.3. Also see Director's Order #66: FOIA and Protected Resource Information)

National Park Service
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1.9.2.3 Information Confidentiality

Although it is the general NPS policy to share information widely, the Service also realizes that providing information about the location of park resources may sometimes place those resources at risk of harm, theft, or destruction. This can occur, for example, with regard to caves, archeological sites, tribal information, and rare plant and animal species. Some types of personnel, financial, and law enforcement matters are other examples of information that may be inappropriate for release to the public. Therefore, information will be withheld when the Service foresees that disclosure would be harmful to an interest protected by an exemption under the Freedom of Information Act (FOIA).

Information will also be withheld when the Park Service has entered into a written agreement (e.g., deed of gift, interview release, or similar written contract) to withhold data for a fixed period of time at the time of acquisition of the information. Such information will not be provided unless required by the Freedom of Information Act or other applicable law, a subpoena, a court order, or a federal audit.

NPS managers will use these exemptions sparingly, and only to the extent allowed by law. In general, if information is withheld from one requesting party, it must be withheld from anyone else who requests it, and if information is provided to one requesting party, it must be provided to anyone else who requests it. Procedures contained in Director's Order #66: FOIA and Protected Resource Information will be followed to document any decisions to release information or to withhold information from the public. Director's Order #66 also provides more detailed information regarding the four specific statutes and an executive order that exempt park resource information from FOIA disclosure.

(See Natural Resource Information 4.1.2; Studies and Collections 4.2; Caves 4.8.2.2; Research 5.1; Confidentiality 5.2.3; Access to Interpretive and Educational Opportunities 7.5.2. Also see Director's Orders #5: Paper and Electronic Communications; #19: Records Management; #84: Library Management; and #11C: Web Publishing. Also see Reference Manual 53, chapter 5)

PART FIVE

PROTECTING THE ANCESTORS

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National Park Service
U. S. Department of the Interior

National NAGPRA Program

Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001; 43 C.F.R. Part 10)

Summary

NAGPRA touches on four areas of established law:

- **Property law** – codifies American common law respecting human remains; recognizes the existence of communally owned property
- **Indian law** – reflects the government-to-government relationship between the Federal Government and Indian tribes
- **Human Rights Law**- enfranchises tribes to exercise rights granted to all in the U.S.; rectifies past disparate treatment
- **Administrative Law** – mandates all Federal agencies and museums to follow a specific process for sorting out the priority of rights

Key Elements of NAGPRA

- Provides a process for museums and Federal agencies to resolve rights to Native American human remains and cultural items in Federal and museum collections and from Federal and tribal land to lineal descendants and Indian tribes and Native Hawaiian organizations
- Establishes a Review Committee to monitor the NAGPRA process; make findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitate the resolution of disputes that may arise concerning repatriation; recommend specific actions for developing a process for disposition of culturally unidentifiable human remains; and report to Congress annually on the progress made, and any barriers encountered, in implementing NAGPRA compliance
- Authorizes Federal grants to Indian tribes, Native Hawaiian organizations, and museums to assist with the documentation and repatriation of Native American cultural items
- Establishes civil penalties to enforce museum compliance
- Establishes the crime of illegal trafficking in Native American human remains and cultural items, and penalties upon conviction
- Directs the Secretary of the Interior to promulgate regulations to carry out the Act (codified at 43 C.F.R. Part 10)

What items fall under NAGPRA?

Native American -

- **Human remains** - The physical remains of a human body of a person of Native American ancestry
- **Funerary objects**- Objects that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed with or near individual human remains at the time of death or later
- **Sacred objects** - Specific ceremonial objects needed by Native American religious leaders for the practice of traditional religions
- **Objects of cultural patrimony** - Objects that have ongoing historical, traditional, or cultural importance and were considered inalienable by the Native American group at the time the objects were separated from the control of the tribe or group, not individuals

Who must comply with the requirements of NAGPRA?

- **Federal agencies** (excluding the Smithsonian Institution which operates under a parallel law)
- **Museums** - Any institution or state or local government agency (including any institution of higher learning) that receives Federal funds after November 16, 1990, and has possession of, or control over, Native American human remains or other cultural items

Who has standing to make a claim under NAGPRA?

1. Lineal descendants (only human remains, funerary objects, and sacred objects)
2. Indian tribes (includes Alaska native villages) and Native Hawaiian organizations

What is cultural affiliation?

Cultural affiliation is a relationship of shared group identity which may be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. Cultural affiliation can be determined on the basis of:

- Geographical location
- Kinship ties
- Biological information
- Archaeological information
- Anthropological information
- Linguistic connection
- Folkloric references
- Oral traditional information
- Historical data or
- Other relevant information or expert opinion

What is the compliance process?

Two processes:

- **Discoveries on Federal or tribal land after November 16, 1990 - Section 3 (25 U.S.C. 3002) and 43 C.F.R. Part 10, Subpart B**
- **Collections - Sections 5,6,7,8 (25 U.S.C. 3003 – 3006) and 43 C.F.R. Part 10, Subpart C**

Discoveries on Federal or tribal land after November 16, 1990

In consultation with tribes, develop a plan for handling human remains and cultural items if and when they are discovered (intentional excavation); otherwise, upon discovery without a plan, stop work and consult with tribes to develop a plan (inadvertent discovery)

1. Publish dispositions in a newspaper
2. Complete disposition (the Federal government does not assume ownership)

Collections

Summary Process: Applies to sacred items, objects of cultural patrimony and unassociated funerary objects. Steps are as follows:

1. Museum or Federal agency develops summary of collection and mails it to relevant tribes
2. Interested tribe(s) contacts Museum/Federal agency
3. Tribe and Museum/Federal agency determine consultation process
4. Tribe makes claim for item(s)
5. Museum/Federal agency produces Notice of Intent to Repatriate
6. National NAGPRA Program publishes notice in the Federal Register
7. Museum/Federal agency waits 30 days to provide an opportunity for competing claims to be made
8. If none of the exceptions to repatriation applies, Museum/Federal agency must transfer control of item(s) to tribe(s) (exceptions, ie. right of possession in museum, or need to resolve competing claims).
9. Museum transfers possession of items to tribe(s) in a manner based on mutual agreement of the parties

Inventory Process: Applies to human remains and associated funerary objects. Steps are as follows:

1. Museum/Federal agency determines which tribes are potentially affiliated with their collection in consultation with tribes/Native Hawaiian organizations.
2. As a result of consultation, museum/Federal agency develops an inventory that includes determination of cultural affiliation for the human remains and associated funerary objects where possible, and for those culturally unidentifiable a disposition determination based on geographic location of the excavation.
3. Within 6 months of completion, Museum/Federal agency produces a Notice of Inventory Completion
4. National NAGPRA Program publishes Notice of Inventory Completion in the Federal Register
5. Tribes request individuals/associated funerary objects listed in the notice

6. Museum/Federal agency waits 30 days to provide an opportunity for competing claims to be made
7. If none of the exceptions to repatriation applies, Museum/Federal agency must transfer control of item(s) to tribe(s)
8. Museum transfers possession of items to tribe(s) based on mutual agreement of both parties
9. Museum/Federal agency that cannot determine cultural affiliation follows 43 C.F.R. 10.11 if the human remains have a "tribal land" or "aboriginal land" provenience

Prepared by NPS National NAGPRA Program
May 2011

For more information contact NPS National NAGPRA Director, Sherry Hutt at (202) 354-1479 or sherry_hutt@nps.gov

National Park Service
U.S. Department of the Interior

Management Policy 2006

5.3.4 Stewardship of Human Remains and Burials

Marked and unmarked prehistoric and historic burial areas and graves will be identified, evaluated, and protected. Every effort will be made to avoid impacting burial areas and graves when planning park development and managing park operations. Such burial areas and graves will not knowingly be disturbed or archeologically investigated unless threatened with destruction.

The Service will consult with American Indian tribes, Alaska Natives, Native Hawaiians, and other individuals and groups linked by demonstrable ties of kinship or culture to potentially identifiable human remains when such remains may be disturbed or are inadvertently encountered on park lands. Re-internment at the same park may be permitted and may include remains that may have been removed from lands now within the park.

American Indian, Alaska Native, and Native Hawaiian human remains and photographs of such remains will not be exhibited. Drawings, renderings, or casts of such remains may be exhibited with the consent of culturally affiliated Indian tribes, Alaska Natives, and Native Hawaiian organizations. The exhibit of non-Native American human remains, or photographs, drawings, renderings, or casts of such remains, is allowed in consultation with traditionally associated peoples. The Service may allow access to and study, publication, and destructive analysis of human remains, but must consult with traditionally associated peoples and consider their opinions and concerns before making decisions on appropriate actions. In addition, such use of human remains will occur only with an approved research proposal that describes why the information cannot be obtained through other sources or analysis and why the research is important to the field of study and the general public.

(See Cultural Resources 6.3.8; Consultation 7.5.6; Cemeteries and Burials 8.6.10. Also see ARPA; NAGPRA; 36 CFR Part 79; 43 CFR Part 10)

National Park Service
U. S. Department of the Interior

NAGPRA Points of Contact, May 2012

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PART SIX

WORKING EFFECTIVELY WITH TRIBAL GOVERNMENTS

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Federal Register Vol. 65, No. 218, Thursday, November 9, 2000

The President

Executive Order 13175 of November 6, 2000

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 elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Section 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.

(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.

Section 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.

Section 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.

Section 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 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.

Section 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 therefore.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Section 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.

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

Section 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.

Section 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.

President, United States
THE WHITE HOUSE,
November 6, 2000.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release November 5, 2009
MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES
SUBJECT: Tribal Consultation

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes.

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship.

My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175. Accordingly, I hereby direct each agency head to submit to the Director of the Office of Management and Budget (OMB), within 90 days after the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. This plan shall be developed after consultation by the agency with Indian tribes and tribal officials as defined in Executive Order 13175. I also direct each agency head to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

Each agency's plan and subsequent reports shall designate an appropriate official to coordinate implementation of the plan and preparation of progress reports required by this memorandum. The Assistant to the President for Domestic Policy and the Director of the OMB shall review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

In addition, the Director of the OMB, in coordination with the Assistant to the President for Domestic Policy, shall submit to me, within 1 year from the date of this memorandum, a report on more (OVER) 2 the implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the

plans and making the tribal consultation process more effective, if any, should be included in this report.

The terms "Indian tribe," "tribal officials," and "policies that have tribal implications" as used in this memorandum are as defined in Executive Order 13175.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

BARACK OBAMA

Department of the Interior

Policy on Consultation with Indian Tribes

I. Preamble

The obligation for Federal agencies to engage with Indian Tribes on a government-to-government basis is based on the U.S. Constitution and Federal treaties, statutes, executive orders, and policies. Federal agencies help to meet that obligation through meaningful consultation with Indian Tribes.

The Department of the Interior (Department) is committed to fulfilling its Tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments) or other applicable Secretarial Orders or policies—by adhering to the consultation framework described in this Policy. Through this Policy, the Department strives to strengthen its government-to-government relationship with Indian Tribes and begin a new era of consultation. This Policy reflects the Secretary's commitment to consultation with Indian Tribes, recognition of Indian Tribes' right to self- governance and Tribal sovereignty.

The Department's Bureaus and Offices shall review their existing practices and revise them as needed to comply with this Policy. All Bureaus and Offices will report to the Secretary, through the designee, on their efforts to comply with this Policy, as described in a companion Secretarial Order.

II. Guiding Principles

This Policy broadly defines provisions for enhancing the Department's consultation processes with Indian Tribes. This Policy shall complement, not supersede, any existing laws, rules, statutes, or regulations that guide consultation processes with Indian Tribes.

This Policy requires a government-to-government consultation between appropriate Tribal Officials and Departmental officials. The appropriate Departmental officials are those individuals who are knowledgeable about the matters at hand, are authorized to speak for the Department, and exercise delegated authority in the disposition and implementation of an agency action. Departmental officials will identify appropriate Tribal consulting parties early in the planning process and provide Indian Tribes a meaningful opportunity to participate in the consultation process as described in Section VII of this Policy. Departmental officials will participate in the consultation process in a manner that demonstrates a meaningful commitment and ensures continuity in the process. The Policy thus honors the government-to-government relationship between the United States and Indian Tribes, and complies with the Presidential Memorandum of November 5, 2009, which affirms this relationship and obligates the Department to meet the spirit and intent of EO 13175.

Consultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making. Consultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect,

and shared responsibility. Communication will be open and transparent without compromising the rights of Indian Tribes or the government-to-government consultation process. Federal consultation conducted in a meaningful and good-faith manner further facilitates effective Department operations and governance practices. To that end, Bureaus and Offices will seek and promote cooperation, participation, and efficiencies between agencies with overlapping jurisdiction, special expertise, or related responsibilities regarding a Departmental Action with Tribal Implications. Efficiencies derived from the inclusion of Indian Tribes in the Department's decision-making processes through Tribal consultation will help ensure that future Federal action is achievable, comprehensive, long-lasting, and reflective of Tribal input.

III. Definitions

Bureau or Office – As defined in the Department Manual.

Collaboration – The Department and Indian Tribes working together to implement this Policy.

Consultation Policies – Those policies established to comply with the procedures described in Section VII.

Departmental Action with Tribal Implications – Any Departmental regulation, rulemaking, policy, guidance, legislative proposal, grant funding formula changes, or operational activity that may have a substantial direct effect on an Indian Tribe on matters including, but not limited to:

1. Tribal cultural practices, lands, resources, or access to traditional areas of cultural or religious importance on federally managed lands;
2. The ability of an Indian Tribe to govern or provide services to its members;
3. An Indian Tribe's formal relationship with the Department; or
4. The consideration of the Department's trust responsibilities to Indian Tribes.

This, however, does not include matters that are in litigation or in settlement negotiations, or matters for which a court order limits the Department's discretion to engage in consultation.

Indian Tribe or Tribe – Any 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.

Tribal Governance Officer (TGO) – An individual designated by the Department to carry out responsibilities defined in this Policy.

Tribal Liaison Officer (TLO) – One or more individuals designated by a Bureau or Office to carry out responsibilities defined in this Policy.

Tribal Official – An elected or appointed Tribal leader or official designated in writing by an Indian Tribe to represent the Tribe in government-to-government consultations.

IV. Accountability and Reporting

Methods that ensure accountability and reporting are essential to regular and meaningful consultation. The heads of Bureaus and Offices shall include appropriate performance measures consistent with this Policy in future annual performance plans of their employees.

On an annual basis, Bureaus and Offices shall report to the Secretary the results of their efforts to promote consultation with Indian Tribes. Reporting is intended to be comprehensive and may include, but is not limited to, the scope of consultation efforts, the cost of these efforts, and the effectiveness of consultation activities. As part of its annual report, Bureaus and Offices

shall provide a comprehensive listing of the topics on which consultations were held, training, innovations, and the engagement of senior leadership in these efforts. Where possible, such reports shall include feedback from Indian Tribes with whom the Bureau or Office has consulted. Reports should reference the documents and correspondence with Indian Tribes that address the Implementation of the Final Federal Action Stage described in Section VII of this Policy, a description of budget expenditures in the execution of consultation efforts, narratives describing significant consultation efforts, and forthcoming consultation opportunities.
Based on information received from the Bureaus and Offices, the Secretary will provide an annual report to Indian Tribes on implementation of the Department's Consultation Policy. The Department will use its website to share report information, where appropriate.

V. Training

The Department will design training for Department staff aimed at improving the Department's capacity for promoting collaboration with Indian Tribes and executing the consultation provisions of Section VII of this Policy. The training will:

A. Promote consultation, communication, collaboration, and other interaction with Tribes;
B. Outline and reinforce the Department's duties concerning tribal interests;
C. Describe the legal trust obligation of the Federal-Tribal relationship; and
D. Highlight and provide the knowledge, skills, and tools necessary for collaborative engagement to Tribal and Departmental staff engaged in the consultative process with attention to the unique distinctions within Indian Country.

The Department, through the Department of the Interior University (DOIU), in collaboration with Bureaus, Offices, Tribal colleges and universities, and other entities with Indian expertise, will develop and deliver training to facilitate implementation of this Policy. DOIU will develop required core competencies, which Bureaus and Offices may enhance through other appropriate sources of Tribal expertise. This training will seek to enhance mutual understanding of cultural perspectives and administrative requirements between Tribal and Federal officials and to promote inter-governmental relationships. Tribal representatives will be encouraged to participate in training along with Federal employees.

VI. Innovative and Effective Consultation Practices

The Department's leadership will strive to advance Federal consultation practices and to offer examples for innovation across the Administration. The Department will identify and seek to address impediments, both external and internal, to improving its consultation processes.
In consultation with Indian Tribes, the Secretary will establish a joint Federal-Tribal Team for the purpose of making recommendations on the implementation of this Policy and for ensuring continued improvement of this Policy. The Federal Tribal Team may:

A. Host regular meetings between the Secretary and Indian Tribes;
B. Communicate through a regular gathering of Indian Tribes to discuss improving consultation practices and procedures;
C. Solicit recommendations from Indian Tribes for the initial development of performance measures described in Section IV, and thereafter for the evaluation of consultation practices.

VII. Consultation Guidelines

Consultation guidelines are meant to establish uniform practices and common standards, which all Bureaus and Offices will use except when otherwise agreed to in writing by a Bureau or Office and Indian Tribe, through an individual protocol conforming to the guidelines in this Section. Consultation and individual protocols will provide greater efficiency and transparency in Department practices in order to maximize Indian Tribes' participation. Departmental Actions with Tribal Implications that are regional or impact a limited number of Indian Tribes shall be carried out in a manner consistent with this Policy while allowing discretion to employ only appropriate parts of this Section.

A. *Initiating Consultation.* When considering a Departmental Action with Tribal Implications, a Bureau or Office must notify the appropriate Indian Tribe(s) of the opportunity to consult pursuant to this Policy. The Bureau or Office will strive to ensure that a notice is given at least 30-days prior to scheduling a consultation. If exceptional circumstances prevent notice within 30-days of the consultation, an explanation for the abbreviated notification will be provided in the invitation letter. An Indian Tribe may request an extension for timelines associated with this Policy.

Adequate notice entails providing a description of the topic(s) to be discussed, a timeline of the process, and possible outcomes. Notification of a consultation should include sufficient detail of the topic to be discussed to allow Tribal leaders an opportunity to fully engage in the consultation. The notice should also give Tribal leaders the opportunity to provide feedback prior to the consultation, including any request for technical assistance or request for clarification of how the consultation process conforms to this Policy.

Beginning at the Initial Planning Stage, see Section VII, Part E, Subsection 1, a Bureau or Office will consult with Indian Tribes on a Departmental Action with Tribal Implications. An Indian Tribe may request that the Department initiate consultation when the Indian Tribe believes that a Bureau or Office is considering a Departmental Action with Tribal Implications. Requests should be made in writing to the Department's TGO and should describe the specific Departmental Action with Tribal Implications. However, in the event that an Indian Tribe may choose not to engage the TGO, a Bureau or Office is not relieved of its obligation to engage in consultation as described by this Policy. If the Bureau or Office initiates consultation with a Tribe but does not receive a response, the Bureau or Office should make reasonable and periodic efforts to repeat the invitation and, whenever feasible, should allow an Indian Tribe to join an ongoing consultation. These efforts of engagement shall be appropriately documented.

B. *Role of Tribal Governance Officer and Tribal Liaison Officer in Consultation Process.*

1. The Secretary shall designate a TGO, who will have access to the Secretary or Deputy Secretary, to carry out the responsibilities defined in this Policy. These responsibilities shall include:

a. Monitoring compliance with this Policy, EO 13175, and other Consultation Policies pertaining to government-to-government consultation;

b. Serving as the Secretary's representative when requested to do so in matters pertaining to consultation;

c. Promoting government-to-government consultation;

d. Communicating and coordinating with TLOs concerning Bureau and Office compliance with this Policy;

e. Encouraging Indian Tribes to request consultation directly with the appropriate Bureau or Office representative or the TLO and helping to ensure the resolution of all requests.

f. Implementing, in coordination with the TLOs, a reporting system to ensure that consultation efforts are documented and reported to the Secretary and to the Department's TGO for EO 13175; and

g. Facilitating a government-to-government relationship that is honored by all parties in Tribal consultations of national significance or involving multiple Bureaus or Offices.

2. Each Bureau or Office shall designate one or more TLOs whose responsibilities shall include:

a. Working with the Bureau or Office to achieve compliance with this Policy, the Consultation Policies of the Bureau or Office, and any future policies related to EO 13175 or other government-to-government consultation policies;

b. Promoting and facilitating consultation and collaboration between Indian Tribes and the Bureau or Office;

c. Advocating opportunities for and consideration of the positions of Indian Tribes, consistent with Bureau or Office mission;

d. Serving as the principal point of contact for the TGO concerning compliance with this Policy, including the Bureau's and Office's reporting requirements;

e. Striving to enhance a trusting and on-going relationship with Indian Tribes, consistent with applicable law and executive orders;

f. Serving as an initial contact for Indian Tribes to request or inquire about consultation when it is unclear whom to contact in the Bureau or Office; and

g. Carrying out other responsibilities as assigned by Bureau or Office Consultation Policies.

3. Identify TLOs and TGO – Each Bureau or Office shall take appropriate measures to identify and disseminate the name and contact information of the TGO and the TLO(s) to facilitate contacts by Tribal Officials.

C. *Guidelines for Response to Request for Consultation.* The TGO or appropriate representative will confirm receipt of a request for consultation from a Tribal Official. When the request is directed to the TGO, the request is to be forwarded to the appropriate Bureau or Office. The TGO or appropriate representative will treat an official request for consultation in an expedited fashion and respond in writing that the Department has received the request, using the most expedient methods to communicate to the Indian Tribe.

D. *Consultation Process Support.* The Office of Collaborative Action and Dispute Resolution can assist in planning and facilitating an effective consultation process, negotiated rulemaking, or other collaborative approach to decision-making. In planning consultation processes as outlined below in Paragraph E, Bureaus and Offices are encouraged to consider best practices for engagement, including but not limited to, the use of neutral facilitation and other collaborative problem-solving approaches to promote effective dialogue and conflict resolution.

E. *Stages of Consultation.* Bureaus and Offices shall carry out the consultation stages described below for a Departmental Action with Tribal Implications.

1. Initial Planning Stage.

Each Bureau or Office will consult with Indian Tribes as early as possible when considering a Departmental Action with Tribal Implications. A Bureau or Office may conduct a meeting or other forms of interaction with Indian Tribes in order to receive and evaluate

comments received as part of the Initial Planning Stage. Bureaus and Offices will work with each other and with other Federal agencies, where appropriate, to avoid duplicative consultations.

2. Proposal Development Stage.

The Proposal Development Stage begins once the Department discloses the scope of a Departmental Action with Tribal Implications. Indian Tribes should be considered appropriate collaborative partners, particularly where negotiated rulemaking or a Tribal Leader Task Force is created.

The Bureau or Office shall develop a process for the Proposal Development Stage that maximizes the opportunity for timely input by Indian Tribes and is consistent with both Tribal and Bureau or Office schedules. The Bureau or Office will solicit the views of affected Indian Tribes regarding the process timeline to consult on a Departmental Action with Tribal Implications. The Bureau or Office should work with Indian Tribes to structure a process, to the extent feasible, that considers specific Indian Tribal structures, traditional needs, and schedules of the Indian Tribes. The Bureau or Office should make all reasonable efforts to comply with the expressed views of the affected Indian Tribes regarding the process timeline at this Stage, taking into account the level of impact, the scope, and the complexity of the issues involved in the Departmental Action with Tribal Implications, along with the other factors driving the schedule. The process will be open and transparent. The Bureau or Office then may proceed with the expectation that interested Indian Tribes will respond within a reasonable time period.

When the matter under consultation involves confidential or culturally sensitive information, the Bureau or Office will work with the Indian Tribe to develop a consultation process that addresses the sensitivity of the information to the extent permitted by Federal law. If litigation or legal requirements impact a Bureau's or Office's schedule for conducting consultation, the Bureau or Office shall explain these constraints to the Indian Tribe.

Examples of appropriate processes for the Proposal Development Stage include, but are not limited to, the following:

• Negotiated Rulemaking. Where appropriate, the Bureau or Office shall consider using negotiated rulemaking for developing significant regulations or other formal policies in accordance with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act.

• Tribal Leader Task Force. A Tribal Leader Task Force may be used, in appropriate circumstances, on regional or issue-specific matters (e.g., timber). In each instance, the composition of the Task Force shall be collaboratively determined by the Indian Tribes, provided that the Task Force shall be a process open to all Indian Tribes and, to the extent possible, represent a cross-section of Tribal interests with respect to the matter at issue. The location and number of meetings to be held will conform to the expressed views of the Indian Tribes, to the extent practicable and permitted by law and in accordance with FACA.

• Series of Open Tribal Meetings. The Bureau or Office may provide open invitations for Tribal leaders to attend a series of open meetings. Open meetings can be used for national, regional or subject-matter specific issues.

• Single Meetings. The Bureau or Office may host Tribal Officials in a single meeting to discuss a Departmental Action with Tribal Implications under consideration. Single meetings are particularly appropriate for local or regional issues, or a Tribe-specific issue. If either the Bureau or Office determines that the Administrative Procedure Act or other

Federal law or regulation expressly prohibits continued discussion at a specified point in the decision-making process, the Bureau or Office should so inform the Indian Tribes at the earliest opportunity in this Stage in the process.

3. Implementation of Final Federal Action Stage.

A Bureau or Office may consider implementing a post-consultation review process where it is consistent with law, regulations, and EO 13175. The review process shall not limit the Department's deliberative process privilege regarding internal considerations or any other applicable privilege. The Department may invite feedback from the Indian Tribe of the consultation process at this Stage. The Bureau or Office also will consider the need for training or technical assistance concerning the final Federal action.

F. *Impact of Consultation Guidelines.* Consultation does not preclude requests or recommendations by Bureaus, Offices, or Indian Tribes to collaborate and foster collaborative relationships between the Department and Indian Tribes outside of the processes described in this Section.

VIII. Supplemental Policies.

Bureaus and Offices, in collaboration with the TGO, shall review existing policies affected by this Policy. All existing policies shall conform to this Policy and, where necessary, a Bureau or Office may develop a new policy in order to conform to this Policy.

Consistent with Federal law, the Department shall develop a policy for consultation with Alaska Native Corporations and other entities as appropriate following the principles set out in this Policy.

Departmental entities that are not Bureaus and Offices may develop policies consistent with this Policy and in coordination with the TGO.

IX. Disclaimer.

Except to the extent already established by law, this Policy is intended only to improve the internal management of the Department, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the Department or any person. The Department also does not waive by virtue of this Policy any applicable privilege that it may hold.

Released
December 1, 2011

THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3317

SIGNATURE DATE: December 1, 2011

Subject: Department of the Interior Policy on Consultation with Indian Tribes

Sec. 1 **Purpose**. The purpose of this Order is to update, expand, and clarify the Department's policy on consultation with American Indian and Alaska Native tribes; and to acknowledge that the provisions for conducting consultation in compliance with Executive Order (E.O) 13175 (Consultation and Coordination with Indian Tribal Governments) and applicable statutes or administrative actions are expressed in the Department of the Interior Policy on Consultation with Indian Tribes.

Sec. 2 **Background**. Based on a renewed commitment to assess its practices and the opportunities to enhance consultation with Indian tribes, the Department consulted with tribal leaders, engaged Department leadership from across the organization, and convened a working group of tribal and Department officials to recommend new approaches to consultation. These efforts produced a policy document that guides how the Department engages Indian tribes when meeting the Department's responsibilities to consult Indian tribes and how the Department can maximize the benefit of consultation.

Sec. 3 **Authority**. This Order is issued in accordance with the authority provided by 25 U.S.C. sections 2 and 9; and Section 2 of the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended.

Sec. 4 **Policy**.

a. Government-to-government consultation between appropriate Tribal officials and the Department requires Departmental officials to demonstrate a meaningful commitment to consultation by identifying and involving Tribal representatives in a meaningful way early in the planning process.

b. Consultation is a process that aims to create effective collaboration with Indian tribes and to inform Federal decision-makers. Consultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility. Communication will be open and transparent without compromising the rights of Indian tribes or the government-to-government consultation process.

c. Bureaus and offices will seek to promote cooperation, participation, and efficiencies between agencies with overlapping jurisdictions, special expertise, or related responsibilities when a Departmental action with Tribal implications arises. Efficiencies derived

from the inclusion of Indian tribes in all stages of the tribal consultation will help ensure that future Federal action is achievable, comprehensive, long-lasting, and reflective of tribal input.

Sec. 5 **Responsibilities.**

a. Tribal Governance Officer. A Senior Departmental Official designated by the Secretary will serve as the Department's Tribal Governance Officer and will, in coordination with the Assistant Secretary – Indian Affairs establish and oversee the activities of a joint Federal Tribal Team, as described more fully in Section 9, below.

b. Tribal Liaison Officer. Heads of bureaus and offices will designate at least one official to serve as a Tribal Liaison Officer to carry out appropriate duties described in this Order.

c. Bureaus and Offices. Within 180 days of the effective date of this Order, bureaus and offices will review their existing practices, revise those practices as needed in order to comply with this policy, and begin a process to reference practices on tribal consultation in their appropriate bureau or office manual.

Sec. 6 **Training Plan**. Within 180 days of the effective date of this Order, the Office of Strategic Employee and Organizational Development will develop and present to the Tribal Governance Officer a plan of action to implement the provisions of this Order, including development and delivery of the training.

Sec. 7 **Reporting Requirements**. Within 180 days of the effective date of this Order, bureaus and offices will provide to the Tribal Governance Officer the results of their efforts to promote consultation with Indian tribes. Reports shall be submitted annually, thereafter, within 60 days of the end of the fiscal year.

Sec. 8 **Certification**. Heads of bureaus and offices will certify in a written statement that is part of the final publication for all regulations under their purview that the regulatory process complies with E.O. 13175.

Sec. 9 **Establishment of Joint Tribal-Federal Team**. A Joint Federal Tribal Team (Team) is established beginning with the effective date of this Order. The Team will convene a minimum of two (2) times annually to identify areas and opportunities for improvements in the Department's consultation practices.

a. Membership. Within 45 days of the effective date of this order, the Tribal Governance Officer will recommend to the Secretary a list of members to serve on the Team. The recommended list of members should represent diversity for the Department and the tribes. Members will continue to serve on the Team at the discretion of the Secretary.

b. Annual Work Plan. The Team will develop an annual work plan that identifies priorities that will improve the quality of the Department's consultation practices with Indian

tribes.

Sec. 10 **Establishment of an American Indian and Alaska Native Leaders List**. A single Departmental process shall be established to manage and maintain the contact list for all tribes and Alaska Native Corporation Settlement Act (ANCSA) corporations that are eligible for Federal consultation.

a. Action Plan. In compliance with Departmental consultation policy requirements for enhanced communication; the Tribal Governance Officer, the Chief Information Officer, the Director of the Bureau of Indian Affairs and the Director of the Fish and Wildlife Service will develop a plan of action to establish an electronic database that features an interactive system to update and list all appropriate points of contact for Indian tribes and ANCSA corporations that are eligible for consultation under Federal law.

b. Inter-Agency Outreach. The Assistant Secretary – Indian Affairs will solicit from applicable Federal agency heads any proposals to coordinate the use and access to any communication lists used for the purpose of federal compliance with E.O. 13175.

Sec. 11 **Effective Date**. This Order is effective immediately. It shall remain in effect until its provisions are converted to the Departmental Manual, or until it is amended, superseded, or revoked, whichever occurs first. In the absence of any of the foregoing actions, the provisions of this Order will terminate and become obsolete on December 30, 2012. The termination of this Order will not nullify the Department's consultation policy, effected herein.

/s/ Ken Salazar
Secretary of the Interior

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National Park Service
U.S. Department of the Interior

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5.2.1 Consultation

The National Park Service is committed to the open and meaningful exchange of knowledge and ideas to enhance (1) the public's understanding of park resources and values and the policies and plans that affect them; and (2) the Service's ability to plan and manage the parks by learning from others. Open exchange requires that the Service seek and employ ways to reach out to and consult with all those who have an interest in the parks.

Each superintendent will consult with outside parties having an interest in the park's cultural resources or in proposed NPS actions that might affect those resources, and provide them with opportunities to learn about and comment on those resources and planned actions.
Consultation may be formal, as when it is required pursuant to the Native American Graves Protection and Repatriation Act or section 106 of the National Historic Preservation Act, or it may be informal, when there is not a specific statutory requirement. Consultation will be initiated, as appropriate, with tribal, state, and local governments; state and tribal historic preservation officers; the Advisory Council on Historic Preservation; other interested federal agencies; traditionally associated peoples; present-day park neighbors; and other interested groups.

Consultations on proposed NPS actions will take place as soon as practical and in an appropriate forum that ensures, to the maximum extent possible, effective communication and the identification of mutually acceptable alternatives. The Service will establish and maintain continuing relationships with outside parties to facilitate future collaboration, formal consultations, and the ongoing informal exchange of views and information on cultural resource matters.

Because national parks embody resources and values of interest to a national audience, efforts to reach out and consult must be national in scope. However, the Service will be especially mindful of consulting with traditionally associated peoples—those whose cultural systems or ways of life have an association with park resources and values that predates establishment of the park. Traditionally associated peoples may include park neighbors, traditional residents, and former residents who remain attached to the park area despite having relocated. Examples of traditionally associated peoples include both federally designated and nondesignated American Indian tribes in the contiguous 48 states, Alaska Natives, Native Hawaiians, African Americans at Jean Lafitte, Asian Americans at Manzanar, Hispanic Americans at Tumacacori, and others.

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5.2.1 Consultation (continued)

In particular, traditionally associated peoples should be consulted about
_ proposed research on and stewardship of cultural and natural resources with ethnographic meaning for the groups;
_ development of park planning and interpretive documents that may affect resources traditionally associated with the groups;
_ proposed research that entails collaborative study of the groups;
_ identification, treatment, use, and determination of affiliation of objects subject to the Native American Graves Protection and Repatriation Act;
_ repatriation of Native American cultural items or human remains based on requests by affiliated groups in accordance with the Native American Graves Protection and Repatriation Act;
_ planned excavations and proposed responses to inadvertent discoveries of cultural resources that may be culturally affiliated with the groups;
_ other proposed NPS actions that may affect the treatment of, use of, and access to cultural and natural resources with known or potential cultural meaning for the groups; and
_ designation of National Register, National Historic Landmark, and World Heritage Sites with known or potential cultural meaning for the groups.

Consultation with federally recognized American Indian tribes will be on a government-to-government basis. The Service will notify appropriate tribal authorities (such as tribal historic preservation officers) about proposed actions when first conceived, and by subsequently consulting their appointed representatives whenever proposed actions may affect tribal interests, practices, and traditional resources (such as places of religious value).

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5.2.1 Consultation (continued)

There are other groups and individuals with strong connections to the land through experiencing a significant life event within or near a park unit. Through its civic engagement activities, the Service will be sensitive to and carefully consider the views of those who have these associations.

Whenever groups are created, controlled, or managed for the purpose of providing advice or recommendations to the Service, the Service will first consult with the Office of the Solicitor to determine whether the Federal Advisory Committee Act requires the chartering of an advisory committee. Consultation with the Office of the Solicitor will not be necessary when the Service meets with individuals, groups, or organizations simply to exchange views and information or to solicit individual advice on proposed actions. The act does not apply to intergovernmental meetings held exclusively between federal officials and elected officers of state, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities, when (1) the meetings relate to intergovernmental responsibilities or administration, and (2) the purpose of the committee is solely to exchange views, information, or advice relating to the management or implementation of federal programs established pursuant to statute that explicitly or inherently share intergovernmental responsibilities or administration.

(See Civic Engagement 1.7; Relationship with American Indian Tribes 1.11; Ethnographic Resources 5.3.5.3. Also see ARPA; NAGPRA; NEPA; NHPA [16 USC 470f]; 36 CFR Part 800; 40 CFR Parts 1500-1508; 41 CFR Part 101;, 43 CFR Parts 7 and 10; Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments; Executive Order 13007 (Indian Sacred Sites); Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments); 512 Department of the Interior Manual [DM] 2; Director's Order #71: Government-to-Government Relationships with Tribal Governments; NPS Guide to the Federal Advisory Committee Act)

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7.5.6 Consultation

The National Park Service will present factual and balanced presentations of the many American cultures, heritages, and histories. Diverse constituencies will be consulted to (1) ensure appropriate content and accuracy, and (2) identify multiple points of view and potentially sensitive issues. When appropriate, state and local agencies involved in heritage tourism and history (such as state historic preservation officers) should be included in consultations to foster coordination and partnerships. Acknowledging multiple points of view does not require interpretive and educational programs to provide equal time or disregard the weight of scientific or historical evidence.

Park managers will take culturally sensitive steps to preserve the knowledge of American Indian tribes and other traditionally associated peoples and secure the benefit of their deep understanding of the nature and spirit of places within the parks by aging their participation in park activities. A related goal will be to ensure that irreplaceable connections such as place names, migration routes, harvesting practices, prayers, and songs are cataloged for use in current and future activities.

The Service will respectfully consult traditionally associated peoples and other cultural and community groups in the planning, development, presentation, and operation of park interpretive programs and media relating to their cultures and histories. Cooperative programs will be developed with tribal governments and cultural groups to help the Service present accurate perspectives on their cultures. Ethnographic or cultural anthropological data and concepts will also be used in interpretive programs.

The Service will not display Native American human remains or photographs of those remains. Drawings, renderings, or casts of such remains will not be displayed without the consent of culturally affiliated Indian tribes, Alaska Natives, and Native Hawaiian organizations. The Service may exhibit non-Native American remains, photographs, drawings, renderings, or casts thereof, in consultation with appropriate traditionally associated peoples. The Service will consult with culturally affiliated or traditionally associated peoples to determine the religious status of any object whose sacred nature is suspected but not confirmed. These consultations will occur before an object is exhibited or any action is taken that may have an adverse effect on its religious qualities.

(See Relationship with American Indian Tribes 1.11; Evaluation and Categorization 5.1.3.2; Stewardship of Human Remains and Burials 5.3.4; Ethnographic Resources 5.3.5.3; Museum Collections 5.3.5.5)

PART SEVEN

TREATY RIGHTS, TRUST LANDS & SPECIAL PARK USES

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National Park Service
U. S. Department of the Interior

American Indian Liaison Office

The National Park Service and Indian tribes, Alaska Natives, and Native Hawaiians are bound together by a variety of obligations and responsibilities established by law and historical circumstances.

INDIAN TREATY RIGHTS

Indian treaty-making is a foundation of the government-to-government relationship. More than 130 units of the National Park System are located on lands once subject to treaty negotiations between sovereign Indian tribes and the United States Government. For example, the land that now comprises Glacier, Olympic, and Mt. Rainier national parks was once subject to treaty making in the 1850s by Isaac Stevens, representing the United States, and the Blackfeet and many of the tribes of the Pacific West. Lands in the Northeast and Great Lakes area were also once subject to treaty, as were the parks in the Northern Plains.

What remains unclear, and what must be solved on a case-by-case basis, is to what extent treaty rights, the supreme law of the land which cannot be abrogated without the specific intent of Congress, were changed or eliminated by the statutes or executive orders establishing national parks and monuments.

This is a source of uncertainty for some park managers and potential controversy with tribes who naturally fight to protect their reserved rights to their ancestral lands guaranteed by treaty with the United States.

Lately, park managers have been challenged by requests from tribes to authorize special accommodations to allow special access to parks, the collection and use of park resources, and hunting by tribal members based on treaty rights.

Again, each park manager must work with NPS Regional Offices and with the Department of the Interior solicitors to resolve management issues based on treaty rights.

The existence of prior or existing treaty rights should direct park managers to review *National Park Service Management Policies 2006* for guidance on establishing and maintaining the government-to-government relationships established by treaty, statute, and the U. S. courts.

TRIBAL TRUST LANDS IN NATIONAL PARKS

Tribal trust lands are created by treaty, by law, and by executive order. The U.S. government has trust responsibilities for the administration and stewardship of tribal trust lands. While the Secretary of the Interior's responsibility for managing trust land has been viewed as primarily the

work of the Assistant Secretary, Indian Affairs, it is important to understand that aspects of this responsibility also apply government-wide.

Some park units include, or are entirely made up of, tribal trust lands as shown on the list below. Any limits on National Park Service administrative authorities and any restrictions on trust lands are delineated in each case by the park's enabling legislation, conveyance documents and associated memoranda of agreement between the Federal government and the tribe. Often, however, the documents associated with parks and tribal trust lands contain ambiguities that can lead to misunderstandings and assumptions that are not shared by all parties. Park officials should attempt to administer parks that contain or are located on tribal trust lands with an understanding of the historical circumstances surrounding the park's establishment and of tribal expectations that may have related to those events.

I. National Park Units established within the exterior boundaries of an Indian Reservation (tribal trust lands)

Badlands NP—South Unit	Pine Ridge Reservation of Oglala Sioux Tribe
Canyon de Chelly NM	Navajo Indian Reservation
Chaco Culture NHS	Navajo Indian Reservation
El Morro NM	Navajo Indian Reservation
Grand Portage NM	Reservation of the Grand Portage Band of Minnesota Chippewa Indians
Hohokam Pima NM	Gila River Indian Reservation
Hovenweep NM	Southern Ute Reservation
Hubbell Trading Post NHS	Navajo Indian Reservation
Little Bighorn Battlefield NM	Crow Indian Reservation
Navajo NM	Navajo Indian Reservation
Nez Perce NHS (38 units)	15 Units within in Nez Perce Reservation 2 Units within Colville Reservation
Pipe Spring NM	Kaibab Indian Reservation
Rainbow Bridge NM	Navajo Indian Reservation

II. National Park Units containing Indian Trust Land

Big Horn Canyon NRA	Added lands from Crow Reservation
Death Valley NP	Timbisha Shoshone Homeland
Everglades NP	Miccosukee Reserved Area
Grand Canyon NP	Havasupai Reservation Addition
Great Basin NP	Two parcels under jurisdiction of Ely Shoshone Tribe

III. Alaska Parks—Parks established by the **Alaska National Interest Lands Conservation Act (A**NILCA) have Corporation-owned individual Alaska Native allotments. These are not tribal trust lands.

SHARED BOUNDARIES CREATE SPECIAL RELATIONSHIPS

The American Indian Liaison Office has compiled a list of park units that share boundaries with Indian reservations, have trust land or Alaska Native land within them, or are themselves located within the exterior boundaries of Indian reservations. The complete chart is available from the Office on request, or on the office website on Inside NPS.

In summary, in "the lower 48", 34 tribal governments share boundaries with 36 parks. In Alaska, 35 regional and/or village corporations share boundaries with 13 national parks and preserves. In total, 69 tribes and/or Alaska Native Corporations share boundaries with 49 national parks and preserves.

While Indian tribes, Alaska Natives, and Native Hawaiian communities that share boundaries with parks have traditional cultural and historical ties with parklands, other tribes that do not share boundaries may also have such ties. This is because in many cases tribes were removed from their ancestral homelands. Many tribes in Oklahoma have strong traditional ties to parks in the Southeast and Northeast. Also while some tribes, like the Hopi, are located in their ancestral homelands, but their reservation does not share boundaries with some of the parks that contain sites of extraordinary cultural significance to them, like Wupatki National Monument.

SPECIAL USE RIGHTS OF TRIBES, NATIVE HAWAIIANS, & SAMOANS IN NATIONAL PARKLANDS

Congress has authorized special use rights and other accommodations for tribes and Pacific Islanders in parks whose ancestral lands have been included within the boundaries of parkland. This is usually done in the park's enabling legislation. The following list provides an overview.

Date	Park Unit	Wildlife	Other Accommodations
1931	Canyon de Chelly National Monument (NM)	Grazing	Navajo tribal members have livestock, farmlands and preferential rights to furnish riding animals for use of visitors.
1937	Pipestone National Monument (NM)		Quarry rights of Indians "The quarrying of the red pipestone in the lands described in subsection (a) of this section is expressly reserved to Indians of all tribes, under regulations to be prescribed by the Secretary of the Interior. (16 U.S.C. sec 445c)"

1958	Grand Portage National Monument (NM)	Grand Portage Band of Chippewa can traverse the park to hunt and fish outside the park.	Tribal employment preference. Use of dock without cost by tribal members. Encouraged to sell handicrafts. Tribe has preferential right to provide visitor accommodations and services including guide services. Land to return to Tribe if park is abandoned.
1964	Lake Mead National Recreation Area (NRA)	Rights of Hualapai Tribe to hunt on Hualapai lands included in the NRA are protected. Tribe to regulate hunting on tribal lands within the NRA.	Jurisdiction of the tribe not altered. Revenues from mineral developments from tribal lands to be paid to Indian owners.
1965	Nez Perce National Historical Park (NHP)	Silent on hunting & wildlife.	Secretary (Secy.) can cooperate with Tribe regarding research into and interpretation of sites. Secy. can contract and make cooperative agreements with the Tribe. Secy. shall consult with tribe regarding interpretation of park and its history.
1966 MOA added 56,000 acres to NRA in 1967	Big Horn Canyon National Recreation Area (NRA)	Rights of Crow Tribe and its members to hunt on Crow lands included in the NRA are protected. Hunting on Crow lands to be regulated by the Crow Tribe.	Crow Tribe can build recreational facilities on shore on tribal land within the NRA. On-going negotiations since mid 1990s.
1968	Badlands National Park (NP)	Hunting incorporated into Memorandum of Agreement through which lands in the South Unit were taken into trust. The MOA was incorporated	Tribe can convey to Secy. up to 40 acres for a facility to interpret the park and the history of the Sioux nation.

	Badlands National Park (Continued)	into the deed exchanging the lands for the purpose of establishing the South Unit.	
1974	Big Cypress National Preserve	Hunting, fishing, trapping subject to regulations established by the Secretary.	Members of the Miccosukee Tribe and Seminole Tribe of Florida shall be permitted to continued their usual customary use and occupancy of the land and water within the Preserve including, hunting, fishing, trapping on a subsistence basis and traditional tribal ceremonies. Right of first refusal for visitor services in place before establishment of preserve.
1975	Grand Canyon NP—Havasupai Reservation Addition	185,000 acres of trust lands to be included in the Park—Tribe can use for traditional purposes, "including religious purposes, and the gathering of, or hunting for, wild or native foods, materials for paints or medicines". Tribe to sell licenses for hunting on tribal lands.	Agriculture, grazing allowed, continued use of burial grounds. Areas to be used for residences, educational and other community purposes in ways not inconsistent with park purposes. No commercial timber, mining, or industrial development. Land to remain "forever wild". Access by tribal members to sacred places, burial grounds.
1978	Kaloko-Honokohau NHP	Commercial, recreation, and subsistence fishing and shoreline food gathering—to be permitted for everyone—not only Native Hawaiians.	Secy. to maximum extent feasible, to use the traditional Native Hawaiian Ahupua's concept of land and water management. Secy. to provide traditional Native

	Kaloko-Honokohau NHP (Continued)		Hawaiian accommodations. Employ Native Hawaiians. Traditional Native Hawaiian culture demonstrations.
1979	Chaco Culture NHP	Silent on hunting & wildlife.	The continuation of traditional Native American religious uses of properties subject to cooperative agreements is not prevented by the statute.
1980	Kalaupapa NHP	Right to take fish and wildlife without regard to Federal fish and game laws—address special needs of leprosy patients.	Purpose of park is to preserve the settlement, maintain community, and protect lifestyle. Park to be managed and interpreted by patients to extent practical. Law addresses special needs of leprosy patients—visitation limited, health care to be provided, first right of refusal to revenue-producing services. Right to take and use plants and other natural resources for traditional purposes in accordance with State and Federal law. Employment preferences. Membership on advisory commission.
1987	El Malpais NM	Silent on hunting & wildlife.	Secy. to cooperate with Indian tribes, land exchange with Acoma. "In recognition of the past use of portions of the monument and the conservation area by Indian people for traditional cultural and religious purposes, the Secretary shall assure

	El Malpais NM (Continued)		nonexclusive access to the monument by Indian people for traditional and cultural religious purposes, including the harvesting of pine nuts." Secy. to seek tribal recommendation concerning access and privacy needs. Advisory committee, cooperative agreements.
1988	National Park of American Samoa	Subsistence use of marine area permitted—no fishing or gathering other than for subsistence.	Agricultural, cultural and gathering uses permitted if such uses predate park and are done by traditional methods and in the traditional manner. Park maps in Samoan and English. Training program for Samoan park professionals.
1998	Everglades National Park and the Miccosukee Reserved Area Act (P.L. 105-313)		Miccosukee Reserved Area expanded Special Use Area that had been in place since the 1930s. Tribe is to "live permanently and govern the Tribe's own affairs in a modern community within the Park." Area described as "Indian Country" in the Act.
2000	Bandelier National Monument and Cerro Grande Fire Assistance Act (P.L. 106-246)		In order to allow members of San Ildefonso and Santa Clara Pueblos to continue their traditional ceremonies uninterrupted (after the Cerro Grande fire) it is necessary to allow enrolled members to collect plant and mineral resources available at Bandelier NM consistent

			with applicable laws governing the Monument.
2000	Death Valley NP	Hunting prohibited in the park	Establishes a 314 acre Timbisha Shoshone Homeland (tribal trust land) centrally located in the park. Provides for up to 50 residences, a government office, cultural center and community service building, and limited economic development. 7,500 acres former BLM lands as reservation outside the park. Special use areas designated for Timbisha Shoshone traditional activities and practices, including mesquite and piñon management. Provides for temporary closures within special use areas for religious and ceremonial practices.

Parks use a variety of mechanisms to carry out their authorities for special uses by American Indians, Alaska Natives, Native Hawaiians, Pacific Islanders, and Caribbean Islanders. These include special park regulations, policy and procedures in superintendent's compendia, special use permits, and agreement documents.

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1.11.3 Trust Resources

Activities carried out on park lands may sometimes affect tribal trust resources. Trust resources are those natural resources reserved by or for Indian tribes through treaties, statutes, judicial decisions, and executive orders, which are protected by a fiduciary obligation on the part of the United States. In accordance with the government-to-government relationship and mutually established protocols, the Service will interact directly with tribal governments regarding the potential impacts of proposed NPS activities on Indian tribes and trust resources.

In considering a proposed program, project, or action, the Service will ensure that effects on trust resources are explicitly identified and evaluated in consultation with potentially concerned tribes and that they are addressed in planning, decision, and operational documents. With regard to activities that may impact Indian trust resources or tribal health and safety, the Service will consult with the Bureau of Indian Affairs, the Office of the Solicitor, and other offices and agencies, as appropriate.

(Also see Secretarial Order 3206, June 5, 1997)

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1.12 Native Hawaiians, Pacific Islanders, and Caribbean Islanders

The National Park Service administers parks in Hawaii, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, Puerto Rico, and the Virgin Islands. The Service will maintain open, collaborative relationships with native peoples for whom these islands are their ancestral homes. The Service will also meet any responsibilities that may have been defined in the enabling legislation of these island parks and to Native Hawaiians in the administration of the Native American Graves Protection and Repatriation Act and the National Historic Preservation Act.

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7.5.6 Consultation

The National Park Service will present factual and balanced presentations of the many American cultures, heritages, and histories. Diverse constituencies will be consulted to (1) ensure appropriate content and accuracy, and (2) identify multiple points of view and potentially sensitive issues. When appropriate, state and local agencies involved in heritage tourism and history (such as state historic preservation officers) should be included in consultations to foster coordination and partnerships. Acknowledging multiple points of view does not require interpretive and educational programs to provide equal time or disregard the weight of scientific or historical evidence.

Park managers will take culturally sensitive steps to preserve the knowledge of American Indian tribes and other traditionally associated peoples and secure the benefit of their deep understanding of the nature and spirit of places within the parks by encouraging their participation in park activities. A related goal will be to ensure that irreplaceable connections such as place names, migration routes, harvesting practices, prayers, and songs are cataloged for use in current and future activities.

The Service will respectfully consult traditionally associated peoples and other cultural and community groups in the planning, development, presentation, and operation of park interpretive programs and media relating to their cultures and histories. Cooperative programs will be developed with tribal governments and cultural groups to help the Service present accurate perspectives on their cultures. Ethnographic or cultural anthropological data and concepts will also be used in interpretive programs.

The Service will not display Native American human remains or photographs of those remains. Drawings, renderings, or casts of such remains will not be displayed without the consent of culturally affiliated Indian tribes, Alaska Natives, and Native Hawaiian organizations. The Service may exhibit non-Native American remains, photographs, drawings, renderings, or casts thereof, in consultation with appropriate traditionally associated peoples. The Service will consult with culturally affiliated or traditionally associated peoples to determine the religious status of any object whose sacred nature is suspected but not confirmed. These consultations will occur before an object is exhibited or any action is taken that may have an adverse effect on its religious qualities.

(See Relationship with American Indian Tribes 1.11; Evaluation and Categorization 5.1.3.2; Stewardship of Human Remains and Burials 5.3.4; Ethnographic Resources 5.3.5.3; Museum Collections 5.3.5.5)

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8.2.6.1 Recreation Fees

Visitors who use federal facilities and services for recreation may be required to pay a greater share of the cost of providing those opportunities than the population as a whole. Under the guidelines and criteria established by law and regulation, the Service will collect recreation fees of the appropriate type for its parks, facilities, and programs. No fees will be collected in circumstances in which the costs of collection would exceed revenue or where fee collection is prohibited by law or regulation. Fees charged for recreational activities will be collected only in accordance with the applicable authority, and recreation fee revenues will be managed according to law and policy. Fee rates will be reasonable and equitable and consistent with criteria and procedures contained in law and NPS guidance documents.
Those who lawfully enter or use a park for activities not related to recreation will not be charged an entrance fee, expanded amenity recreation use fee, or special recreation permit fee. Examples of non-recreation exemptions include persons entering parks for
_ First Amendment activities, which are exempt from all fees;
_ special park uses such as agricultural, grazing, and commercial filming activities (all of which are subject to special park use fees);
_ NPS-authorized research activities;
_ federal, state, tribal, and local government business;
_ hospital in-patients involved in medical treatment or therapy;
_ a leaseholder or property owner accessing their property;
_ outings conducted for noncommercial educational purposes by schools and other bona fide academic institutions.

Current law (the Federal Lands Recreation Enhancement Act) prohibits charging entrance fees to persons 15 years of age and younger. In Alaska, the Alaska National Interest Lands Conservation Act prohibits charging entrance fees to all national parks except Denali National Park.

(See Fees 8.6.1.2; First Amendment Activities 8.6.3)

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8.5 Use by American Indians and Other Traditionally Associated Groups

The National Park Service will develop and implement its programs in a manner that reflects knowledge of and respect for the cultures of American Indian tribes or groups with demonstrated ancestral ties to particular resources in parks. Evidence of such ties will be established through systematic archeological or anthropological studies, including ethnographic oral history and ethno-history studies or a combination of these sources. For purposes of these policies, the term American Indian tribe means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Other groups of people with traditional associations to park lands or resources include native peoples of the Caribbean; Native Hawaiians and other native Pacific islanders; and state-recognized tribes and other groups who are defined by themselves and known to others as members of a named cultural unit that has historically shared a set of linguistic, kinship, political, or other distinguishing cultural features.

The Service will regularly and actively consult with American Indian tribal governments and other traditionally associated groups regarding planning, management, and operational decisions that affect subsistence activities, sacred materials or places, or other resources with which they are historically associated. Information about the outcome of these consultations will be made available to those consulted.

In developing its plans and carrying out its programs, the Service will ensure the following:
_ NPS general regulations governing access to and use of natural and cultural resources in parks will be applied in an informed and balanced manner consistent with park purposes that (1) does not unreasonably interfere with American Indian tribal use of traditional areas or sacred resources, and (2) does not violate the criteria listed in section 8.2 for use of the parks.
_ Superintendents will establish and maintain consulting relationships with potentially affected American Indian tribes or traditionally associated groups.
_ Management decisions will reflect knowledge about and understanding of potentially affected American Indian cultures and people, gained through research and consultations with the potentially affected groups.

The American Indian Religious Freedom Act (42 USC 1996) states that

> Henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right to freedom to believe, express, and exercise the traditional religions of the American Indians, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

8.5 Use by American Indians and Other Traditionally Associated Groups (continued)

The National Park Service recognizes that site-specific worship is vital to Native American religious practices. As a matter of policy and in keeping with the spirit of the law, and provided the criteria listed in section 8.2 for use of the parks are not violated, the Service will be as unrestrictive as possible in permitting Native American tribes access to park areas to perform traditional religious, ceremonial, or other customary activities at places that have been used historically for such purposes. In allowing religious access by other entities, including non-recognized Indian groups, the Service will consider requests individually, being mindful not to take actions that will either advance or inhibit religion. The Service will not direct visitor attention to the performance of religious observances unless the Native American group so wishes.

With regard to consumptive use of park resources, current NPS policy is reflected in regulations published at 36 CFR 2.1 and 36 CFR Part 13. These regulations allow superintendents to designate certain fruits, berries, nuts, or unoccupied seashells that may be gathered by hand for personal use or consumption if it will not adversely affect park wildlife, the reproductive potential of a plant species, or otherwise adversely affect park resources. The regulations do not authorize the taking, use, or possession of fish, wildlife, or plants for ceremonial or religious purposes, except where specifically authorized by federal statute or treaty rights or where hunting, trapping, or fishing are otherwise allowed.

When authorized under National Historic Preservation Act, the Archeological Resources Protection Act or other provisions of law, the Service will protect sacred resources to the extent practicable and in a manner consistent with the goals of American Indian tribes or other traditionally associated groups. The location and character of sacred sites will be withheld from public disclosure if disclosure will cause significant invasion of privacy, risk harm to the historic resource, or impede the use of a traditional religious site by practitioners.

Members of American Indian tribes or traditionally associated groups may enter parks for traditional non-recreational activities without paying an entrance fee.

The ceremonial use of peyote will be limited to members of the Native American Church during religious ceremonies, in accordance with regulations of the Department of Justice, Drug Enforcement Administration ("Special Exempt Persons, Native American Church," 21 CFR 1307. 31).

(See Relationship with American Indian Tribes 1.11; Consultation 5.2.1; Ethnographic Resources 5.3.5.3; first Amendment Activities 8.6.3; Consumptive Uses 8.9. Also see Executive Order 13007 (Indian Sacred Sites); Director's Orders #71A: Government-to-government Relationships with Tribal Governments, and #71B: Indian Sacred Sites)

National Park Service
U.S. Department of the Interior

Management Policy 2006

10.2.4.5 Merchandise

The National Park Service will approve the nature, type, and quality of merchandise to be offered by concessioners. Although there is no Service-wide list of specific preferred merchandise, priority will be given to sale items that foster awareness, understanding, and appreciation of the park and its resources and that interprets those resources. Merchandise should have interpretive labeling or include other information to indicate how the merchandise is relevant to the park and its interpretive program and themes.

Each concession operation with a gift shop will have a mission statement based on the park's concession service plan or general management plan. Concessioners will develop and implement a merchandise plan based on the park's gift shop mission statement. The merchandise plan must be satisfactory to the Director, and should ensure that merchandise sold or provided reflects the significance of the park and promotes the conservation of the park's geological resources, wildlife, plant life, archeological resources, local Native American culture, local ethnic and traditional culture, historical significance, and other park resources and values. The plan should also integrate pollution prevention and waste-reduction objectives and strategies for merchandise and packaging.

Merchandise must be available at a range of prices. Theme-related merchandise manufactured or handcrafted in the United States—particularly in a park's geographic vicinity— will be encouraged. The revenue derived from the sale of United States Indian, Alaska Native, native Samoan, and Native Hawaiian handicrafts is exempt from any franchise fee payments.

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PART EIGHT

FEDERALLY RECOGNIZED TRIBES

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National Park Service
U. S. Department of the Interior

American Indian Liaison Office

FEDERALLY RECOGNIZED TRIBES: Introduction and How to Access the Official List and the Tribal Leaders Directory

The Bureau of Indian Affairs (BIA) within the U.S. Department of the Interior publishes in the *Federal Register* the "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs." The most recent list follows below.

BIA also compiles and publishes a *Tribal Leaders Directory*. This directory is organized in relation to BIA regions; BIA personnel are listed first and tribal leaders within that region follow. The tribal leader's name, address, telephone number and fax number, expiration date for his/her term of office, and e-mail address (if available) are provided.

Several indices found at the end of the document are helpful for locating tribal leaders and tribal governments. "Tribal Entities Listed by State" shows states within BIA Regions and all tribal governments in each state. "Name Index -- Tribal Leaders and BIA Representatives" is alphabetically arranged by the last name of the leader and includes organization or tribe and the page number the address etc. is on. "Index -- Tribal Entities" provides alphabetically the tribe, the BIA regional office, the state, and the page number.

The *Tribal Leaders Directory* can be located at the main DOI website. Simply go to DOI.GOV and click on Bureaus and Offices then click on Bureau of Indian Affairs. The *Tribal Leaders Directory* can be downloaded in PDF format from their Document Library.

Check out the BIA page at the DOI site for more frequently requested tribal information.

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DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the current list of 564 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. The list is updated from the notice published on August 11, 2009 (74 FR 40218).

FOR FURTHER INFORMATION CONTACT:
Elizabeth Colliflower, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 4513–MIB, 1849 C Street, NW., Washington, DC 20240.
Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is a list of federally acknowledged tribes in the contiguous 48 states and in Alaska. Amendments to the list include name changes and name corrections. To aid in identifying tribal name changes, the tribe's former name is included with the new tribal name. To aid in identifying corrections, the tribe's previously listed name is included with the tribal name.

We will continue to list the tribe's former or previously listed name for several years before dropping the former or previously listed name from the list.

The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: September 22, 2010.

Larry Echo Hawk,
Assistant Secretary—Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona
Alabama-Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town, Oklahoma
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Indians, California (formerly the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community, Michigan
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Mission Indians, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Nation of Oklahoma

Cahuilla Band of Mission Indians of the
Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville
Rancheria, California
California Valley Miwok Tribe, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
Barona Group of Capitan Grande Band
of Mission Indians of the Barona Reservation, California
Viejas (Baron Long) Group of Capitan
Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Indian Nation (aka Catawba
Tribe of South Carolina)
Cayuga Nation of New York
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of
the Trinidad Rancheria, California
Cherokee Nation, Oklahoma
Cheyenne and Arapaho Tribes, Oklahoma (formerly the Cheyenne-Arapaho Tribes of Oklahoma)
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation, Oklahoma
Chicken Ranch Rancheria of Me-Wuk
Indians of California
Chippewa-Cree Indians of the Rocky
Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians
of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians
of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Nation, Oklahoma
Confederated Salish & Kootenai Tribes
of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower
Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde
Community of Oregon
Confederated Tribes of Siletz Indians of
Oregon (previously listed as the Confederated Tribes of the Siletz Reservation)
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the
Yakama Nation, Washington
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians of
Oregon
Cowlitz Indian Tribe, Washington
Coyote Valley Band of Pomo Indians of
California
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow
Creek Reservation, South Dakota
Death Valley Timbi-Sha Shoshone Band
of California
Delaware Nation, Oklahoma
Delaware Tribe of Indians, Oklahoma
Dry Creek Rancheria of Pomo Indians of
California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of
North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of
the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians
of California
Ewiiaapaayp Band of Kumeyaay Indians, California
Federated Indians of Graton Rancheria,
California
Flandreau Santee Sioux Tribe of South
Dakota
Forest County Potawatomi Community,
Wisconsin
Fort Belknap Indian Community of the
Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the
Fort Bidwell Reservation of California
Fort Independence Indian Community
of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone
Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Yavapai Nation, Arizona
Fort Mojave Indian Tribe of Arizona,
California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila
River Indian Reservation, Arizona
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
Greenville Rancheria of Maidu Indians
of California
Grindstone Indian Rancheria of Wintun-
Wailaki Indians of California
Guidiville Rancheria of California
Habematolel Pomo of Upper Lake, California
Hannahville Indian Community, Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin
Hoh Indian Tribe of the Hoh Indian Reservation, Washington

Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the
Hopland Rancheria, California
Houlton Band of Maliseet Indians of
Maine
Hualapai Indian Tribe of the Hualapai
Indian Reservation, Arizona
Iipay Nation of Santa Ysabel, California
(formerly the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)
Inaja Band of Diegueno Mission Indians
of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of
California
Jamestown S'Klallam Tribe of Washington
Jamul Indian Village of California
Jena Band of Choctaw Indians, Louisiana
Jicarilla Apache Nation, New Mexico
Kaibab Band of Paiute Indians of the
Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the
Kalispel Reservation, Washington
Karuk Tribe (formerly the Karuk Tribe
of California)
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Kewa Pueblo, New Mexico (formerly the
Pueblo of Santo Domingo)
Keweenaw Bay Indian Community, Michigan
Kialegee Tribal Town, Oklahoma
Kickapoo Tribe of Indians of the
Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Tribes, Oregon
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Indians, California (formerly the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation)
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Lac du Flambeau Band of Lake Superior
Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior
Chippewa Indians, Michigan
Las Vegas Tribe of Paiute Indians of the
Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians, Michigan
Little Traverse Bay Bands of Odawa
Indians, Michigan
Lower Lake Rancheria, California
Los Coyotes Band of Cahuilla and Cupeno Indians, California
(formerly the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation)
Lovelock Paiute Tribe of the Lovelock
Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower
Brule Reservation, South Dakota
Lower Elwha Tribal Community of the
Lower Elwha Reservation, Washington
Lower Sioux Indian Community in the
State of Minnesota
Lummi Tribe of the Lummi Reservation,
Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian
Reservation, Washington
Manchester Band of Pomo Indians of the
Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission
Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Mashpee Wampanoag Tribe, Massachusetts
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission
Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians
of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations:
Bois Forte Band (Nett Lake); Fond du
Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians,
Mississippi
Moapa Band of Paiute Indians of the
Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians
of California
Morongo Band of Mission Indians, California (formerly the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation)
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muscogee (Creek) Nation, Oklahoma
Narragansett Indian Tribe of Rhode Island
Navajo Nation, Arizona, New Mexico &
Utah
Nez Perce Tribe, Idaho (previously listed as Nez Perce Tribe of Idaho)
Nisqually Indian Tribe of the Nisqually
Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana

Northfork Rancheria of Mono Indians of
California
Northwestern Band of Shoshoni Nation
of Utah (Washakie)
Nottawaseppi Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.)
Oglala Sioux Tribe of the Pine Ridge
Reservation, South Dakota
Ohkay Owingeh, New Mexico (formerly
the Pueblo of San Juan)
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Indians of Wisconsin
Onondaga Nation of New York
Osage Nation, Oklahoma (formerly the
Osage Tribe)
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah (Cedar Band
of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band
of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes))
Paiute-Shoshone Indians of the Bishop
Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone
Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of
the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of
California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians
of the Pauma & Yuima Reservation, California
Pawnee Nation of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation,
California
Penobscot Tribe of Maine
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Pomo Nation, California (formerly the Pinoleville Rancheria of
Pomo Indians of California)
Pit River Tribe, California (includes XL
Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek
Rancherias)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians,
Michigan and Indiana
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the
Port Gamble Reservation, Washington
Potter Valley Tribe, California
Prairie Band of Potawatomi Nation, Kansas
Prairie Island Indian Community in the
State of Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Indians, Oklahoma
Quartz Valley Indian Community of the
Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian
Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band of Cahuilla, California
(formerly the Ramona Band or Village
of Cahuilla Mission Indians of California)
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians,
Minnesota
Redding Rancheria, California
Redwood Valley Rancheria of Pomo
Indians of California
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of
California
Rosebud Sioux Tribe of the Rosebud
Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California
Sac & Fox Tribe of the Mississippi in
Iowa
Sac & Fox Nation of Missouri in Kansas
and Nebraska
Sac & Fox Nation, Oklahoma
Saginaw Chippewa Indian Tribe of Michigan
St. Croix Chippewa Indians of Wisconsin
Saint Regis Mohawk Tribe, New York
(formerly the St. Regis Band of Mohawk Indians of New York)
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe, Washington
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manuel Band of Mission Indians,

California (previously listed as the
San Manual Band of Serrano
Mission Indians of the San Manual
Reservation)
San Pasqual Band of Diegueno
Mission
Indians of California
Santa Rosa Indian Community of
the
Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla
Indians,
California (formerly the Santa Rosa
Band of Cahuilla Mission Indians of
the Santa Rosa Reservation)
Santa Ynez Band of Chumash
Mission
Indians of the Santa Ynez
Reservation, California
Santee Sioux Nation, Nebraska
Sauk-Suiattle Indian Tribe of
Washington
Sault Ste. Marie Tribe of Chippewa
Indians of Michigan
Scotts Valley Band of Pomo Indians
of
California
Seminole Nation of Oklahoma
Seminole Tribe of Florida (Dania,
Big
Cypress, Brighton, Hollywood &
Tampa Reservations)
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux
Community of Minnesota
Shawnee Tribe, Oklahoma
Sherwood Valley Rancheria of
Pomo
Indians of California
Shingle Springs Band of Miwok
Indians,
Shingle Springs Rancheria (Verona
Tract), California
Shoalwater Bay Tribe of the
Shoalwater
Bay Indian Reservation,
Washington
Shoshone Tribe of the Wind River
Reservation, Wyoming
Shoshone-Bannock Tribes of the
Fort
Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck
Valley Reservation, Nevada
Sisseton-Wahpeton Oyate of the
Lake
Traverse Reservation, South Dakota
Skokomish Indian Tribe of the
Skokomish Reservation,
Washington
Skull Valley Band of Goshute
Indians of
Utah
Smith River Rancheria, California
Snoqualmie Tribe, Washington
Soboba Band of Luiseno Indians,
California
Sokaogon Chippewa Community,
Wisconsin
Southern Ute Indian Tribe of the
Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota
Spokane Tribe of the Spokane
Reservation, Washington
Squaxin Island Tribe of the Squaxin
Island Reservation, Washington
Standing Rock Sioux Tribe of North
&
South Dakota
Stockbridge Munsee Community,
Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of
Nevada
Suquamish Indian Tribe of the Port
Madison Reservation, Washington
Susanville Indian Rancheria,
California
Swinomish Indians of the
Swinomish
Reservation, Washington
Sycuan Band of the Kumeyaay
Nation
Table Mountain Rancheria of
California
Te-Moak Tribe of Western
Shoshone
Indians of Nevada (Four constituent
bands: Battle Mountain Band; Elko
Band; South Fork Band and Wells
Band)
Thlopthlocco Tribal Town,
Oklahoma
Three Affiliated Tribes of the Fort
Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona
Tonawanda Band of Seneca Indians
of
New York
Tonkawa Tribe of Indians of
Oklahoma
Tonto Apache Tribe of Arizona
Torres Martinez Desert Cahuilla
Indians,
California (formerly the Torres-
Martinez Band of Cahuilla Mission
Indians of California)
Tule River Indian Tribe of the Tule
River Reservation, California
Tulalip Tribes of the Tulalip
Reservation, Washington
Tunica-Biloxi Indian Tribe of
Louisiana
Tuolumne Band of Me-Wuk Indians
of
the Tuolumne Rancheria of
California
Turtle Mountain Band of Chippewa
Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of
Mission
Indians of California
United Auburn Indian Community
of
the Auburn Rancheria of California
United Keetoowah Band of
Cherokee
Indians in Oklahoma
Upper Sioux Community,
Minnesota
Upper Skagit Indian Tribe of
Washington
Ute Indian Tribe of the Uintah &
Ouray
Reservation, Utah
Ute Mountain Tribe of the Ute
Mountain
Reservation, Colorado, New
Mexico
& Utah
Utu Utu Gwaitu Paiute Tribe of the
Benton Paiute Reservation,
California
Walker River Paiute Tribe of the
Walker
River Reservation, Nevada
Wampanoag Tribe of Gay Head
(Aquinnah) of Massachusetts
Washoe Tribe of Nevada &
California
(Carson Colony, Dresslerville
Colony, Woodfords Community,
Stewart Community, & Washoe
Ranches)
White Mountain Apache Tribe of
the
Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes
(Wichita,
Keechi, Waco & Tawakonie),
Oklahoma
Wilton Rancheria, California
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of
Nevada
Wiyot Tribe, California (formerly
the
Table Bluff Reservation—Wiyot
Tribe)
Wyandotte Nation, Oklahoma
Yankton Sioux Tribe of South
Dakota

Yavapai-Apache Nation of the Camp
Verde Indian Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai
Reservation, Arizona
Yerington Paiute Tribe of the Yerington
Colony & Campbell Ranch, Nevada
Yocha Dehe Wintun Nation, California
(formerly the Rumsey Indian Rancheria of Wintun Indians of California)
Yomba Shoshone Tribe of the Yomba
Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation,
California
Zuni Tribe of the Zuni Reservation, New
Mexico

Native Entities Within the State of Alaska Recognized and Eligible To
Receive Services From the United States Bureau of Indian Affairs

Native Village of Afognak
Agdaagux Tribe of King Cove
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of
Venetie Tribal Government)
Asa'carsarmiut Tribe
Native Village of Atka
Village of Atmautluak
Atqasuk Village (Atkasook)
Native Village of Barrow Inupiat Traditional Government
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Tribe
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chenega (aka Chanega)
Chalkyitsik Village
Cheesh-Na Tribe (formerly the Native
Village of Chistochina)
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Chignik Bay Tribal Council (formerly
the Native Village of Chignik)
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chitina
Native Village of Chuathbaluk (Russian
Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clarks Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Curyung Tribal Council
Native Village of Deering
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Kasigluk Traditional Elders Council
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
King Island Native Community
King Salmon Tribe
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper
Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna
Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Traditional Council
Metlakatla Indian Community, Annette
Island Reserve
Native Village of Minto
Naknek Native Village
Native Village of Nanwalek (aka English

Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Koliganek Village Council
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Nunakauyarmiut Tribe
Native Village of Nunam Iqua (formerly
the Native Village of Sheldon's Point)
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of
St. Paul & St. George Islands
Qagan Tayagungin Tribe of Sand Point
Village
Qawalangin Tribe of Unalaska
Rampart Village
Village of Red Devil
Native Village of Ruby
Saint George Island (See Pribilof Islands
Aleut Communities of St. Paul & St.
George Islands)
Native Village of Saint Michael
Saint Paul Island (See Pribilof Islands
Aleut Communities of St. Paul & St.
George Islands)
Village of Salamatoff
Native Village of Savoonga
Organized Village of Saxman
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Shishmaref
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Sun'aq Tribe of Kodiak (formerly the
Shoonaq' Tribe of Kodiak)
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Tangirnaq Native Village (formerly
Lesnoi Village (aka Woody Island))
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida
Indian Tribes
Traditional Village of Togiak
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiut Native Village (previously
listed as Umkumiute Native Village)
Native Village of Unalakleet
Native Village of Unga
Village of Venetie (See Native Village of
Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

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