



FSM 1500 - EXTERNAL RELATIONS

**CHAPTER 1560 - STATE, TRIBAL, COUNTY, AND LOCAL AGENCIES;
PUBLIC AND PRIVATE ORGANIZATIONS**

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1560 – Revises chapter in its entirety giving specific edits to sections listed.

1563 – Changes code, caption, and direction from “American Indian and Alaska Native Relations” to “Tribal Relations” and sets forth direction.

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1562 - COUNTY AND LOCAL AGENCIES

Regions, Stations, and the Area may write under this section or may expand this section as needed for local use.

1563 - TRIBAL RELATIONS

The terms “federally recognized Indian tribe,” “Indian tribe,” and “Tribe” are used in this manual to refer to any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community, the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1). See also Executive Order 13157, Sec. 1(b).

This section establishes guidance for developing, maintaining, and enhancing the Forest Service’s relations with Indian tribes, as well as for consulting with Alaska Native Corporations.

The Forest Service and federally recognized American Indian and Alaska Native entities share the value of restoring, sustaining, and enhancing the nation’s forests and grasslands, providing, and sustaining benefits to the American people. In many cases, Indian tribes continue their traditional uses of the nation’s forests and grasslands to sustain their cultural identity and continuity, and for economic development. The Government’s trust responsibilities and treaty obligations make it essential that the Forest Service engages with Indian tribes in timely and meaningful consultation on policies that may affect one or more Indian tribes. Consultation alone is not sufficient. In addition to consultation, coordination and collaboration together lead to information exchange, mutual understanding, informed decision-making, and mutual benefit. The importance of consultation and coordination with Indian tribes was affirmed through Presidential Memoranda in 1994, 2004, and 2009, and in Executive Orders in 1998 and 2000 as well as in numerous statutes and policies. The value of collaboration is fully recognized within the Forest Service for all of its constituents, including Indian tribes.

The Forest Service Office of Tribal Relations in Washington DC manages and provides direction for the Forest Service Tribal Relations Program. In addition to government-to-government relations with federally recognized Indian tribes, the Forest Service encourages engagement with Alaska Native Corporations, non-Federally recognized tribes, and Native Hawaiians, as well as American Indian and Alaska Native individuals, communities, inter-tribal organizations, enterprises, and educational institutions. The Tribal Relations Program strives to develop the capacity of the Agency’s personnel, thereby enhancing the Agency’s ability to foster effective partnerships and protect tribal rights. For additional guidance and procedures for implementing this program, see FSH 1509.13.

The Tribal Relations Program focuses on improving relations between Indian tribes, as defined by 25 U.S.C. 459a, and the Forest Service. See FSM 1761.3, Civil Rights, for direction on special emphasis programs that focus on American Indian and Alaska Native people as

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individuals or minorities. See FSM 2360 for additional direction on cultural resources and Heritage Program requirements, many of which overlap with this section.

The direction in this section does not supersede, amend, or otherwise modify or affect the implementation of existing agreements between Indian tribes, tribal organizations, and the Forest Service.

1563.01 - Authority

The history of Federal policies, treaties, statutes, court decisions, and Presidential direction regarding Indian tribes and tribal rights and interests is extensive. The relationship between the United States and Indian tribes extends to all Federal agencies. This government-to-government relationship is unique, and distinct from that of other interests and constituencies served by the Forest Service.

Forest Service employees should strive to increase their understanding of tribal relations generally, and of opportunities to enter into contracts, grants, and agreements with tribal governments and Native American-owned businesses.

This section provides short descriptions of the authorities applicable to tribal relations. For a more detailed explanation of these authorities, see section 1563.8 of this Manual.

1563.01a - United States Constitution and Indian Tribes

See 1563.8a for more detail.

1. Commerce with Indian Tribes. Article 1, Section 8, Clause 3, gives Congress the power to regulate commerce with Indian tribes.
2. Treaties with Indian Tribes.
 - a. Article II, Section 2, Clause 2, grants authority to the President to make treaties with the advice and consent of the Senate.
 - b. Article VI, Clause 2, recognizes treaties as a supreme law of the land and States must recognize treaties even if they conflict with State constitutions or laws.
3. Federal Property Clause. Article IV, Section 3, Clause 2, known as the Federal Property Clause, establishes Congress' authority to dispose of and make all rules and regulations respecting the territory or property of the United States.

1563.01b - Treaty Rights and the Federal Trust Responsibility

See 1563.8b for more detail.

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1. Treaty Rights. The United States entered into over 300 treaties with Indian tribes prior to 1871. Under these treaties, Indian tribes ceded significant portions of their aboriginal lands to the United States. Each of these treaties is unique but, generally speaking, Indian tribes reserved separate, isolated reservation lands under the treaties and retained certain rights to hunt, fish, graze, and gather on the lands ceded to the United States. These rights retained on ceded lands are known as “off-reservation treaty rights” or “other reserved rights”.
2. Trust Responsibility. Trust responsibility arises from the United States' unique legal and political relationship with Indian tribes. It derives from the Federal Government's consistent promise, in the treaties that it signed, to protect the safety and well-being of the Indian tribes and tribal members in return for their willingness to give up their lands. The federal trust responsibility is a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages.

1563.01c - Consultation with Indian Tribes and Alaska Native Corporations

See 1563.8c for more detail.

For purposes of consultation with Indian tribes, determinations as to when a Federal action may have substantial direct effect on an Indian tribe's interests may be defined by the Indian tribe's perspective. If questions arise over what decisions or policies may have substantial direct effect, then consult with the potentially affected Indian tribe to ascertain their perspective.

1. Culture and Heritage Cooperation Authority of 2008 (25 U.S.C. Chapter 32(A), section 3056(b)(A)). Requires the Forest Service to consult with affected Indian tribes before releasing culturally sensitive information.
2. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, issued November 6, 2000, directs Federal agencies 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. Public Law (P.L.) 108-199 and Public Law (P.L.) 108-447 added language that directed the Office of Management and Budget and all Federal agencies to consult with Alaska Natives and Alaska Native Corporations on the same basis as Indian tribes under E.O. 13175.
3. Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701) requires coordinating of land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes. (See FSM 1563.01d.1).

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4. National Environmental Policy Act's (NEPA of 1969) (42 U.S.C. 4321 et seq.) Council on Environmental Quality (CEQ) implementing regulations at Title 40 of the Code of Federal Regulations, parts 1500-1509 (40 CFR parts 1500-1509) require Federal agencies to invite Indian tribes to participate in the scoping process for projects and activities that affect Indian tribes, and requires NEPA documentation of environmental impacts.
5. National Forest Management Act's (NFMA) of 1976 (16 U.S.C. 472a et seq.) regulations (36 CFR 219.4(a)) implementing the NFMA direct the Forest Service to consult with and coordinate forest planning with Indian tribes. (See FSM 1563.01d.2)
6. National Historic Preservation Act of 1966 (NHPA) (54 U.S.C. 300101 et seq.), as amended in 1992. Requires Federal agency officials to consult with Indian tribes concerning the effects of undertakings on historic properties of traditional and cultural importance to Indian tribes.
7. Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) (25 U.S.C. 3001 et seq.). Permits for the excavation and/or removal of "cultural items" protected by NAGPRA require Tribal consultation, as do discoveries of "cultural items" made during activities on Federal or Tribal lands under 25 U.S.C. 3002. The Secretary of the Interior's implementing regulations are at 43 CFR parts 10.3 – 10.4.
8. Presidential Memorandum of November 5, 2009. President Barack Obama issued a Presidential Memorandum to the heads of executive departments and agencies on Tribal Consultation. The Memorandum directed each Federal agency to develop and submit to the Office of Management and Budget a plan of action to implement the Executive Order, as well as annual progress reports on the status of those plans.
9. Public Law (Pub. L.) 108-199, 118 Stat. 3, 452, and Public Law (Pub. L.) 108-447. Added language that directed the Office of Management and Budget and all Federal agencies to consult with Alaska Natives and Alaska Native Corporations on the same basis as Indian tribes under Executive Order 13175.
10. Title 36, Code of Federal Regulations, Part 219 (Planning Rule). The Forest Service's 2012 Planning Rule provides direction for NFS land management planning under NFMA. Section 219.4 of the rule requires opportunities for public and Tribal participation and coordination throughout the planning process.
11. Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et. seq.). This act was adopted to curb the practice of imposing unfunded mandates on non-Federal governments, including tribal governments, and to improve cooperation and working relations among different levels of government.
12. USDA Departmental Regulation 1350-002, Tribal Consultation, Coordination, and Collaboration (DR), published January 18, 2013. The Regulation directs the USDA and its agencies to provide federally recognized Indian tribes the opportunity for government-to-

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government consultation and coordination in policy development and program activities which have direct and substantial effects on their Tribe.

1563.01d - National Forest System- Cooperative Land Management and Planning with Indian Tribes

See 1563.8d for more detail.

1. Coordination with Tribal Land Use Management and Planning. The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712(b)) requires the Forest Service to coordinate land use plans for NFS lands with the land use planning and management programs of and for Indian tribes.
2. Consultation and Coordination with Indian Tribes on Forest Planning. Regulations (36 CFR 219.4(a)) implementing the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 472a et seq.) direct the Forest Service to consult with and coordinate forest planning with Indian tribes. The Forest Service must also consult with Alaska Native Corporations pursuant to PL 108-199 and PL 108-447.
3. Consultation and Coordination with Indian Tribes on National Forest System Project Planning and Decision Making. The National Environmental Policy Act's (NEPA of 1969, 42 U.S.C. 4321 et seq.) Council on Environmental Quality implementing regulations at Title 40 of the Code of Federal Regulations, parts 1500-1509 require Federal agencies to invite Indian tribes to participate in the scoping process for projects and activities that affect Indian tribes and requires NEPA documentation.

1563.01e - National Forest System – Subsistence Uses in Alaska

See 1563.8e for more detail.

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (16 U.S.C. 3114) provides that the taking on public lands of fish and wildlife for subsistence uses by Native and non-Native rural residents of the State of Alaska shall be accorded a priority over the taking of fish and wildlife for other purposes, except as otherwise provided in the Act and other Federal laws.

While ANILCA does not provide an Alaska Native preference for subsistence in Alaska, the Federal Subsistence Board and those delegated authority to act on behalf of the board engage in consultation with Indian tribes and Alaska Native Corporations, which is conducted pursuant to Executive Order 13175, the [Federal Subsistence Board's Tribal Consultation Policy](#), and the Draft Alaska Native Claims Settlement Act (ANCSA) Corporations Consultation Policy.

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1563.01f - National Forest System – Tribal Cultural Resources and Indian Sacred Sites

See 1563.8f for more detail.

Federal land managing agencies hold in public trust a great diversity of landscapes and sites, including many culturally important sites held sacred by Indian tribes. The Forest Service's responsibility to protect tribal cultural resources and sacred sites is codified in Executive Orders, legislation, regulations, and other statutory authorities. Some authorities relate to cultural resources as sites of historical importance and other authorities relate to sacred sites as places held sacred because of religious or spiritual importance.

On December 6, 2012, the Secretary of Agriculture accepted the recommendations included in the [*USDA Policy and Procedures Review and Recommendations: Indian Sacred Sites*](#). That report recognizes many authorities that Forest Service personnel observe in protecting the cultural resources and sacred sites of Native Americans and Alaska Natives. Implementation of the recommendations from that report increases the level of protection and access to Indian sacred sites.

In general, the Forest Service Heritage Program is the lead staff for cultural resources and the Tribal Relations Program is the lead staff for Indian sacred sites. However, there is a great deal of overlap because these are not mutually exclusive categories. For actions that may affect Indian tribes or Alaska Native Corporations, the two programs have shared responsibilities. The Heritage Program directives are set forth at FSM 2360.

1. American Indian Religious Freedom Act (AIRFA) (42 U.S.C. 1996). This act declares that:

... 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 Indian, 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 ceremonial and traditional rites.

Actions protective of cultural resources, watersheds, animal or biological communities, and other natural resources that also protect an American Indian or Alaska Native sacred site may serve a secular purpose, as well as accommodate Tribal religion.

2. Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. 470aa et seq.). As amended, establishes a permit process for the excavation or removal of any archaeological resources from Federal and Indian lands.

3. Cultural and Heritage Cooperation Authority (25 U.S.C. Chapter 32A, sections 3053 and 3056). These two sections of the Cultural and Heritage Cooperation Authority authorizes the

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Forest Service to utilize National Forest System land for the reburial of human remains and cultural items, including human remains and cultural items repatriated under the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 et seq.); and prevent the unauthorized disclosure of information regarding human remains or cultural items reburied on National Forest System land.

4. Executive Order 13007, Indian Sacred Sites. This Executive Order directs Federal land management agencies, to the extent permitted by law, and not clearly inconsistent with essential agency functions, to accommodate access to and use of Indian sacred sites, to avoid affecting the physical integrity of such sites wherever possible, and, where appropriate, to maintain the confidentiality of sacred sites.

5. Executive Order 13287 – Preserve America, issued March 3, 2003. Establishes Federal policy to provide leadership in preserving America’s heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the Federal Government.

6. Federal Lands Recreation Enhancement Act (FLREA) (16 U.S.C. 6801 et seq) is the authority by which Federal land management agencies charge fees for certain services and facilities.

7. National Historic Preservation Act of 1966 (NHPA) (54 U.S.C. 300101 et seq.). As amended extends the policy in the Historic Sites Act to State and local historical sites as well as those of national significance, expands the National Register of Historic Places, establishes the Advisory Council on Historic Preservation and the State Historic Preservation Officers, and requires agencies to designate Federal Preservation Officers.

8. Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 et seq.). NAGPRA provides a process for museums and Federal agencies to return certain Native American cultural items – human remains, funerary objects, sacred objects, or objects of cultural patrimony – to lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations.

9. Religious Freedom Restoration Act of 1993 (RFRA) (42 U.S.C. 2000bb). This act reiterated that the Government may

substantially burden a person’s exercise of religion only if it demonstrates that application of the burden to the person-
(A) is in furtherance of a compelling governmental interest; and
(B) is the least restrictive means of furthering that compelling governmental interest.

10. Religious Land Use and Institutionalized Persons Act of 2000 (42 U.S.C. 2000cc). This act requires that no government shall

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impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution -

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

1563.01g - National Forest System – Tribal Forest Protection Act

See 1563.8g for more detail.

The Tribal Forest Protection Act of 2004 (118 Stat. 870, P.L. 108-278, codified at 25 U.S.C. 3115a, Tribal forest assets protection (TFPA)). The TFPA provides the authority for a Tribe and the Forest Service to enter into an agreement or contract to carry out a project to protect Indian forest land or rangeland that meets certain criteria.

1563.01h - National Forest System – Food, Conservation, and Energy Act of 2008, Title VIII, Subtitle B

See 1563.8h for more detail.

Title VIII, Subtitle B of the Food, Conservation, and Energy Act of 2008 was codified as the Cultural and Heritage Cooperation Authority (25 U.S.C. Chapter 32A) and includes provisions for reburial of human remains and cultural items, temporary closure for traditional and cultural purposes, forest products for traditional and cultural purposes, and prohibition on disclosure of information.

1563.01i - Business Operations – Grants and Agreements, Contracts, and Procurement with Indian Tribes

Forest Service employees should strive to increase their understanding of tribal relations generally, and of opportunities to enter into contracts, grants, and agreements with Indian tribes and Native American-owned businesses. The Forest Service has legally mandated trust responsibilities to consult, coordinate, and communicate with Indian tribes.

The following includes a section outlining terms and conditions within agreements with Indian tribes and a partial, selected list of authorities highlighting specific references to Indian tribes. Throughout the list, the term “Indian tribe” is used to designate federally recognized tribes. Where State-recognized tribes are relevant or eligible for a specific program, they are specifically included.

See FSM 1580.12, FSH 1509.11, FSM 1563.01h, and FSH 2409.19 for other authorities that cover contracting with Indian tribes, and FSH 6309.32, subchapter D, part 4G19 for detailed

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policies and procedures. Additional authorities related to heritage and historic properties are located in FSM 2365.21 (Passport in Time program); FSM 2364.11 (National Historic Preservation Act Memoranda of Agreement, Programmatic Agreements, and Protocols).

1. Terms & Conditions within Agreements with Indian Tribes

a. Confidentiality

Indian tribes that want to maintain the confidentiality of their project's findings/research collaboration, etc., may include language to that effect in the agreement. One way to do this is through demonstrating that the information is exempt from release under the Freedom of Information Act, as public access to culturally sensitive data and information on Indian tribes might be explicitly limited by the Cultural and Heritage Cooperation Authority's Prohibition on Disclosure (25 U.S.C. Chapter 32A, section 3056). Indian tribes should be aware that it may not be possible to bar release of information to the public because of the Freedom of Information Act, however.

b. Tribal Hiring Preference

Maintaining the ability to hire tribal employees: Indian tribes are excepted by the nondiscrimination provisions of Title VII of the Civil Rights Act of 1964 under certain circumstances because Indian preference is a political preference, not a racial preference (*Morton v. Mancari*, 1974. 417 U.S. 535). To be specific, Indian tribes can give preference in hiring Indians if the business or enterprise is on or near an Indian reservation, the hired Indian employee lives on or near a reservation, and the employer's preference for hiring Indians is publicly announced. Thus, Indian tribes can legally pass Tribal Employment Rights Ordinances that allow tribes to carry out hiring and contracting/granting practices to the advantage of tribal members on reservations (FSH 1509.11, Chapter 90). In addition, the Indian Self-Determination and Educational Act requires the inclusion of Indian preference provisions in certain Federal contracts and grants.

2. Government-wide Use Authorities:

a. Department of the Interior, Environment, and Related Agencies Appropriations Act (Public Law 106-291). Rural Development, Forestry, and Communities Program.

This program enables the Forest Service to help rural areas analyze and assess forest resource opportunities, maximize local economic potential through market development and expansion, and diversify communities' economic base. Funding may be allocated for such things as technical assistance, training and education, equipment, marketing, and all costs associated with making these services available to rural communities. Indian tribes are directly eligible. The Program requires annual Department of the Interior, Environment, and Related Agencies Appropriations direction to implement, so may be unfunded any given year. (Catalog of Federal Domestic Assistance 2009)

b. Economy Act of June 30, 1932 (31 U.S.C. 1535).

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This act authorizes one Federal agency to place an order with another Federal agency for goods and services under the following conditions:

- Funds are available
- The head of the requisitioning agency decides the order is in the best interest of the United States,
- The agency to fill the order is able to provide or get by contract the ordered goods or services, and
- The head of the agency ordering the goods or services determines that the ordered goods or services cannot be obtained by contract as conveniently or cheaply by a commercial enterprise.

This arrangement may be mutually beneficial to both the Forest Service and the Department of the Interior, Bureau of Indian Affairs (BIA), as well as other Federal agencies.

While this act is not an authority for providing money directly to Indian tribes, it may be appropriate for the Forest Service to contract with BIA or other Federal agencies for delivery of goods and services that benefit Indian tribes when the conditions in the previous paragraph are met.

c. Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a, Pub. L. 96-480).

i. Cooperative Research and Development Agreement

Through this agreement, the Forest Service provides personnel, services, facilities, equipment, or other resources with or without reimbursement from the cooperator to support scientific research aimed at developing commercially viable products or services. The agreement should be between one or more Federal laboratories and one or more non-Federal parties. (See FSH 1509.11, Ch. 70.1-79.2).

ii. Technology Transfer Agreement

The Forest Service may enter into cooperative research and development agreements (CRADAs) for technological transfer for commercial purposes. The Forest Service may provide personnel, services, facilities, equipment, or other resources with or without reimbursement from the cooperator to support scientific research aimed at developing commercially viable products or services. The agreement should be between one or more Federal laboratories and one or more non-Federal parties. Although Indian tribes are not specifically mentioned in this act, the Forest Service may enter into CRADAs with Indian tribes or tribal entities that fit the description of industrial organizations and with tribal colleges that fit

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the nonprofit organization description (See FSH 1509.11, Ch. 70.1; FSM 1563.01h; and FSM 1580.11).

d. Indian Financing Act of 1974, as amended (25 U.S.C. 1451 et seq.).

This act provides promotion and development of Native American-owned businesses and remains an essential foundation for economic growth and stability for Native Americans. The program provides for a revolving Loan Fund Program, and gives the Secretary of the Interior the ability to ensure and guarantee the repayment by qualified Native American borrowers of small business loans issued by private banks and lenders. Although this law is principally directed to the Secretary of the Interior, Section 1544 of this Act permits a Federal agency, like the Forest Service, to award a primary contractor a 5 percent bonus for subcontracting with a certified Indian firm.

3. Service-wide Use Authorities:

a. Cooperative Funds and Deposits Act (16 U.S.C. 565a-1).

This law provides the Forest Service with the authority to enter into cooperative agreements for a number of activities with public or private agencies, organizations, institutions, or people.

i. Participating Agreements (PAs)

Through PAs, the Forest Service may enter into cooperatively performed projects of mutual interest and benefit with other parties. Under a PA, the Forest Service is authorized to advance funding to the partner in a prorated amount for initial project costs. Participating agreements require a minimum of 20 percent cost sharing by the partner to demonstrate mutual interest and benefit in the qualitative outcomes of the project. Cost sharing by partnering organizations can include noncash and in-kind contributions toward overall project costs. The Forest Service is allowed to provide cash advances for the minimum amount needed to perform anticipated activities, or no more than is needed for a 30-day period, whichever is less

PAs are implemented with partnering organizations for local projects in targeted areas on Forest Service land as provided by statute. For partnerships that are national or multiregional in scope, a Master Participating Agreement (MPA) is signed. Individual, Supplemental Project Agreements (SPAs) are executed on a project-by-project basis to carry out the purpose of the MPA.

- Type 1: Cooperative Environmental Education and Forest History Materials—includes the development and publication of books, pamphlets, brochures, and audiovisual materials, but not maps unless the material specifically promotes environmental education or forest history.
- Type 2: Cooperative Manpower, Job Training, and Development Programs—appropriate when cooperator has an existing specific job program and

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parties share costs. It requires at least a 20-percent cost match and does not require competition.

- Type 3: Cooperative Pollution Abatement Agreement—enables cooperatively performed projects involving construction, operation, and maintenance of facilities relating to pollution abatement. Eligible parties include Indian tribes, public and private agencies, organizations, institutions, or persons. It requires at least a 20-percent cost match and does not require competition.
- Type 4: Forestry Protection Agreement—enables cooperatively performed projects involving fire prevention, fuels management, insect and disease control, noxious weed control, tree planting and seeding, erosion control, abandoned mine reclamation, land restoration, hazardous material identification, water testing and protection, and air pollution abatement. Projects have mutual interest and nonmonetary benefit. Eligible parties include Indian tribes, public and private agencies, organizations, institutions, or persons.
(See FSH 1509.11, Ch. 70.1-79.2).

ii. Cooperative Fire Protection Agreement

The Forest Service uses these agreements to partner with parties to provide wildland fire protection, to perform approved severity activities, and to respond to presidentially declared emergencies or disasters under Federal Emergency Management Agency authorities. The activities can occur on private land within or near National Forest System (NFS) land or can be performed for the benefit of those who occupy or use national forests or other lands administered by the Forest Service. Alternatively, the Forest Service can enter into reciprocal agreements with any fire organization maintaining fire protection facilities in the vicinity of NFS lands. (See also Reciprocal Fire Protection Act 1955, Granger-Thye Act 1950, and FSH 1509.11, Ch. 30).

b. Interior and Related Agencies Appropriations Act of 1992 (Pub. L. 102-154).

Using Challenge Cost-Share Agreements, the Forest Service cooperates with other parties to develop, plan, and implement projects of mutual interest and benefit to all parties and enhance Forest Service activities. Parties may include public and private agencies, Indian tribes, organizations, institutions, and individuals. It requires at least a 20-percent cost match and does not require competition (FSH 1509.11, Ch. 70, sec. 70.1 and FSM 1580.12).

c. Interior and Related Agencies Appropriation Act of 1998 (Pub. L. 106–291).

Congress created the Joint Fire Science Program to provide scientific support and tools to address wildland fuels issues. The program is run by six Government agencies, including the Forest Service and five U.S. Department of the Interior agencies (Bureau of Indian Affairs, Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, and the U.S. Geological Survey). It focuses on wildlands administered by the partner agencies and other federally administered lands. The program's agencies

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collaborate with private, nonprofit organizations and tribal, State, county, and local governments.

d. Memorandum of Understanding (MOU).

MOUs enable the Forest Service to formalize a relationship or coordinate its activities with other parties for mutual benefit, but each party directs its own activities and uses its own resources. It cannot be used to obligate or fund projects. Each MOU must contain an expiration date of no more than 5 years from the date of execution. MOUs are useful for government-to-government relationships. There are no specific legal authorities that dictate the contents or circumstances for using MOUs. However, the underlying activities covered by an MOU must be authorized by laws or regulations governing Forest Service programs (FSH 1509.11, Chapter 60).

e. Secure Rural Schools and Community Self-Determination Act of 2000; P.L. 106–393, 16 U.S.C. 500, as reauthorized and amended by the Emergency Economic Stabilization Act of 2008, Energy Improvement and Extension Act of 2008, and Tax Extenders and Alternative Minimum Tax relief Act of 2008, Section 601(a) in division C of P.L. 110; as reauthorized and amended by the Helium Stewardship Act of 2013, P.L. 113–40. FSH 1509.11, Chapter 70).

The act allows the Forest Service to enter into contracts, grants, cooperative agreements, and partnership agreements with local governmental entities, tribal nations, individuals, nonprofit and for-profit organizations, and so forth for eligible projects that have been recommended by the Resource Advisory Committee (RAC) and approved by the Forest Service. The act encourages project proposals from a wide range of proponents, including Indian tribes, and Indian tribes may also participate as RAC members. Planning and implementing the projects should help improve cooperative relationships among the people that use and care for Federal land and the agencies that manage the Federal land.

Title II funds may be used for the protection, restoration, and enhancement of fish and wildlife habitat, and other resource objectives consistent with the Secure Rural Schools Act on Federal land and on non-Federal land where projects would benefit the resources on Federal land.

The purposes of the Secure Rural Schools Act include making additional investments in, and creating employment opportunities through, Title II-funded projects that:

- Improve the maintenance of existing infrastructure,
- Implement stewardship objectives that enhance forest ecosystems, and
- Restore and improve land health and water quality.

The funds may be used for projects that enjoy broad-based support and have objectives that may include—

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- Road, trail, and infrastructure maintenance or obliteration;
- Soil productivity improvement;
- Improvements in forest ecosystem health;
- Watershed restoration and maintenance;
- The restoration, maintenance, and improvement of wildlife and fish habitat;
- The control of noxious and exotic weeds; and
- The re-establishment of native species

The act itself does not require matching funds or services from parties to an agreement. This act was designed to provide short-term assistance to rural communities and is subject to annual reauthorization or termination by Congress (currently funded through September 30, 2014).

f. Stewardship Authority (16 U.S.C. 6591c).

The Forest Service and the Bureau of Land Management (BLM) have authority to enter into stewardship end results contracting projects, under contract or agreement instruments, for up to 10 years. Stewardship projects help achieve land management goals while meeting local and rural community needs, including contributing to the sustainability of rural communities and providing a continuing source of local income and employment. Stewardship projects focus on the “end result” ecosystem benefits and outcomes, rather than on what is removed from the land. Forest Service staffs collaborate to build community partnerships with cooperating Federal, State, and local government agencies; tribal governments; nongovernmental organizations; and any interested groups or individuals to develop projects.

Some of the features of the authorizing legislation includes enabling the Forest Service and BLM to apply the value of timber or other forest products removed as an offset against the cost of services received, apply excess receipts from a project to other authorized stewardship projects, select contracts and agreements on a “best value” basis, and award a contract or agreement up to 10 years, which may stimulate long-term investment in the local community. Stewardship contracts and agreements may be used for treatments to improve, maintain, or restore forest or range land health; restore or maintain water quality; improve fish and wildlife habitat; and reduce hazardous fuels that pose risks to communities and ecosystem values.

The Forest Service would enter into a contract where the Forest Service designs the stewardship project, is the beneficiary of the work, pays the costs of the project, and contractors compete for the project. Stewardship agreements are particularly applicable for stewardship projects where there is a joint endeavor with mutual benefits and mutual interest and the partner is a State or local government, Indian tribe, or nonprofit. Some features of stewardship agreements include requiring a cost-share of 20 percent or more, not permitting a profit incentive, and allowing for termination by either party. Contractors

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in this case are typically not competing for the projects,. (See also Agricultural Act of 2014 (2014 Farm Bill), P.L. 113-79, Section 8205; FSH 2409.19, Ch. 60; FSH 1509.11, Ch. 70; and FSM 1580.12)

g. Watershed Restoration and Enhancement Agreement Authority (Wyden Amendment) (Public Law 105-277, Section 323 as amended by Public Law 109-54, Section 434, and permanently authorized by Public Law 111-11, Section 3001).

The Forest Service uses this authority when it enters into Cooperative Agreements and Participating Agreements with Federal, tribal, State, and local governments; private and nonprofit entities; and landowners to improve fish, wildlife, and other resources on National Forest System lands within a watershed, and to reduce risk of natural disaster where public safety is threatened within the watershed. Agreements may be with willing Federal, tribal, State, and local governments; private and nonprofit entities; and landowners to conduct activities on public or private lands for the following purposes: protection, restoration, and enhancement of fish and wildlife habitat and other resources; reduction of risk for natural disaster where public safety is threatened; or a combination of both. Indian tribes and State-designated tribes are eligible. Note that this type of agreement would require only mutual benefit, not necessarily mutual interest, and has no minimum matching requirement (FSH 1509.11, Ch. 20, sec. 21; FSH 1509.11, Ch. 70, and FSM 1580.12).

4. Service-wide Use Authorities Specifically for Research:

a. Food and Agriculture Act of 1977 (7 U.S.C. 3318).

This statute authorizes the Secretary of Agriculture to enter into contracts, grants, or cooperative agreements with outside parties, which could include Tribes, for research and other purposes, in the areas of food and agricultural sciences. Agricultural sciences have been interpreted to include forestry. When using a cooperative agreement, the act requires that all parties make a contribution toward the accomplishment of the objectives of the agreement and that the agreement will serve the mutual interest of all parties to the agreement. Whether a grant, contract, or cooperative agreement is used, the act limits the duration of such agreements to 5-year periods (FSM 1563.01h).

b. Forest and Rangeland Renewable Resources Research Act of 1978, as amended (16 U.S.C. 1641-1646, Pub. L. 95-307).

The Secretary of Agriculture may conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and using forest and rangeland resources in rural, suburban, and urban areas. The Secretary may cooperate with Indian tribes and is authorized to make competitive grants that will further research activities. (FSH 1509.11, sec.21; FSH 1509.11, Chapter 30; and FSM 1563.01h).

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c. National Agricultural Research, Extension, and Teaching Policy Act of 1977
(FSH 1509.11, Ch. 70, sec. 72.4 and FSM 1580.12)

i. Joint Venture Agreement.

This type of agreement enables the Forest Service to do research projects with any entity or individual to serve the mutual interest and benefit of the parties in agricultural research, extension, and teaching activities. The Forest Service may partner only with universities and colleges offering 4-year degrees for teaching activities. The Forest Service and the other party share costs—the agreement requires a 20-percent cost match. Reimbursable and advance payments are possible depending on the type of cooperator. The agreements are unsolicited (7 U.S.C. 3318(b)).

ii. Cost Reimbursable Agreements

These agreements allow the Forest Service to get certain goods or services from State cooperative institutions and colleges and universities to conduct agricultural research, extension, or teaching activities of mutual interest, although the parties may not benefit in the same qualitative way. The Forest Service may enter into these agreements with State cooperative institutions or other colleges and universities. The Forest Service may cooperate only with universities and colleges that offer baccalaureate or higher degrees (4 year) for teaching activities, however. The agreement does not require matching funds from the cooperator, although advance payments are prohibited (7 U.S.C. 3319(a)).

d. Food, Conservation, and Energy Act of 2008 (2008 Farm Bill); P.L. 110–246, as amended.The Community Wood Energy Program.

The Forest Service Forest Products Lab provides grants/assistance to develop community wood energy plans and provides competitive grants to acquire, upgrade, or demonstrate community wood energy systems. State-designated tribes and Indian tribes are eligible (FSH 1509.11, sec. 21).

5. Service-wide Use Authorities Specifically for State and Private Forestry:

a. Consolidated Appropriations Act, 2012 (P.L. 112–74);

Hazardous Fuels Treatment, Wildland Fire Hazardous Fuels Funds. The Forest Service may use up to \$15 million to enter into cooperative agreements or to issue grants for hazardous fuels reduction and for training or monitoring associated with such hazardous fuel reduction activities on non-Federal lands adjacent to Federal lands. The funds can be used to protect communities where planned hazard reduction activities on National Forest System lands have the potential to place such communities at risk. Grants should be planned and implemented to complement hazardous fuel reduction on Forest Service lands in high-priority areas such as those identified in Community Wildfire Protection Plans or equivalent. National forests are to coordinate hazardous fuel reduction projects with State,

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tribal, and local partners whenever possible and can use all authorities available (the Forest Service often uses the Wyden authority).

b. Cooperative Forestry Assistance Act of 1978 (Act of July 1, 1978); P.L. 95–313, 16 U.S.C. §§ 2101–2111, as amended 1990, 1991, 1992, 1996 and 2008; Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Farm Bill); P.L. 101–624, as amended. (FSH 1509.11, sec. 21).

i. Collaborative Forest Restoration Program

The Forest Service uses this program to promote healthy watersheds and reduce the threat of large, high-intensity wildfires, insect infestation, and disease in New Mexico forests. Eligible entities include local and tribal governments, educational institutions, landowners, conservation organizations, and other interested public and private entities (FSH 1509.11, Ch. 20 and FSM 1580.14).

http://www.fs.usda.gov/detail/r3/workingtogether/grants/?cid=fsbdev3_022022

ii. [Forest Health Protection](#) (16 U.S.C. 2104).

This program protects non-Federal forest and tree resources from damaging forest insects, disease-causing agents, and invasive plants; develops and improves forest health protection technologies; and monitors the health of our Nation's forests. Technical assistance, formula grants, and project grants are available. For technical assistance on private or tribal trust land, Indian tribes can approach the Forest Service directly. The Forest Service can also conduct detection surveys and biological evaluations of forest insect and disease outbreaks on U.S. Department of the Interior and tribal trust lands.

Indian tribes owning private land may apply for financial assistance through the State forester. Indian tribes desiring financial assistance for trust lands, however, should approach the regional Forest Service Forest Health Staff and the Bureau of Indian Affairs forester to submit a proposal to the Forest Health Headquarters in Washington, DC. By September 15 of each year, the Forest Service sends out a request for these proposals for forest insect and disease prevention and suppression projects in the subsequent fiscal year. Indian tribes are limited to the cost of conducting suppression and eradication projects (FSH 1509.11, Ch. 20, sec. 21).

<http://www.fs.fed.us/foresthealth/>.

iii. [Forest Legacy Program](#)

This program provides grants to States to protect forests with the focus on working forests—providing forest products and resource-based jobs, protecting air and water quality, providing recreational opportunities, and protecting important fish and wildlife habitat, including those for threatened or endangered species. Lands are

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protected through conservation easements (65 percent of all projects) and fee-simple purchases (35 percent of all projects). Projects are selected through a two-step competitive process resulting in high-quality projects that are supported locally and are nationally significant. Through the Forest Action Plans (Statewide Assessment and Resource Strategies), the States identify priority areas within the State to target Forest Legacy Program funds. *Indian tribes must apply through their State forester.* <http://www.fs.fed.us/spf/coop/programs/loa/flp.shtml>

iv. **Forest Stewardship Program** (16 U.S.C. 2103a).

These project grants help private forest landowners and individuals develop plans for managing non-Federal forest land. Note that projects cannot be conducted on tribal trust lands, thus only land owned by the Indian tribe is eligible. The Forest Service offers assistance, primarily through State agencies, to help protect and improve soil, water, range, aesthetics, recreation, timber, and fish and wildlife resources. It requires parties to share 50 percent of the costs. State forestry or equivalent State agencies, Indian tribes, nonprofit organizations, and municipalities are eligible. *Indian tribes must apply through their State forester or contact the Forest Service's national program lead* (See also Farm Security and Rural Investment Act 2002; FSH 1509.11).

<http://www.fs.fed.us/spf/coop/programs/loa/fsp.shtml>.

v. **Rural Fire Prevention and Control** (16 U.S.C. 2106), (FSH 1509.11, Ch. 20).

1. **Volunteer Fire Assistance Program**

This program provides financial, technical, and other assistance through State forestry agencies to organize, equip, and train small, local fire departments in rural communities with populations under 10,000 to prevent and suppress rural fires. State foresters pass this funding through to local fire departments and fire training academies. The grants are generally \$5,000 or less, and all cooperators must provide a 1:1 cost-share match. *Indian tribes must apply through their State government*

<http://www.fs.fed.us/fire/partners/vfa/>

2. **Cooperative Fire Protection: State Fire Assistance Program.**

This program supports State forestry agencies with responsibility for wildfire suppression by providing financial and technical support for equipment, training, and creation of fire-adapted communities through hazardous fuels reduction and planning. Projects target firefighter safety, fire planning, firefighter training, increased initial attack capability, and mobilization readiness for the efficient suppression and prevention of wildfires on non-Federal forest lands and other non-Federal lands. All cooperators must provide a

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1:1 cost-share match. *Indian tribes must apply through the local/State government*

vi. Urban and Community Forestry Challenge Cost-Share Program (16 U.S.C. 2105). There is both a national program and State-led programs. The national program grant assists State foresters, equivalent State agencies, Indian tribes, State-recognized tribes, interested members of the public, and private nonprofit organizations in urban and community forestry programs in cities and communities. It requires parties to share 50 percent of the costs, and the program must have national application. The organizers of the projects plan for, establish, manage, and protect trees, forests, green spaces, and related natural resources in and adjacent to cities and towns. Although individual landowners are not eligible, groups owning land are eligible. States have their own programs with varying criteria, but the party would have to apply through the State government.

<http://www.fs.fed.us/ucf/>.

vii. Wood Education and Resource Center (WERC) (16 U.S.C. 1650). (FSH 1509.11, Ch. 20).

1. Competitive Grants Program

This authority provides funds, on a cost-share basis, for projects that focus on enhancing opportunities for sustained forest products production for primary and secondary hardwood industries located in the eastern hardwood forest region. Non-Federal agencies; public and private agencies, including State, local, and tribal governments; institutions of higher education; nonprofit organizations; and for-profit organizations, corporations, and businesses are eligible. *Currently unfunded (See also Omnibus Consolidated Appropriations of 1998 and Forest and Rangeland Renewable Resources Research Act 1978).

2. The Hazardous Fuels Wood to Energy (W2E) Grant Program

Funds projects where some or all of the woody biomass is generated from National Forest Service System lands as a result of hazardous fuel treatments, forest restoration activities, insect and disease mitigation, catastrophic weather events, or thinning overstocked stands. Projects that use woody biomass from multiple land ownerships (State, Tribal, or private lands) and multiple sources (wood products facilities, urban wood waste, etc.) will be considered as long as some of the woody biomass is generated from National Forest System lands. Projects that do not anticipate using any wood from National Forest System lands will not be eligible. (See also 1990 Farm Bill; 2008 Farm Bill; Healthy Forest Restoration Act 2003; and Consolidated Appropriations Act 2014).

<http://www.na.fs.fed.us/werc/>

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d. National Forest Dependent Rural Communities Economic Diversification Act of 1990 (7 U.S.C. 6601 note, Pub. L. 101-624)

Woody Biomass Utilization Assistance Program.

This program provides annual project grants or cooperative agreements to further long-term forest health through enterprises that support forest management, hazardous fuel reduction, and other restoration activities. The program focuses on commercially viable wood energy project development through several different mechanisms:

- Statewide wood energy teams to support expansion of wood energy installations through cooperative agreements;
- Funding for the development of clusters of projects either geographically clustered or sector clusters (i.e., colleges, hospitals, etc.) through grants to help with the design; and
- Grants to assist with the design and other preconstruction costs of installing a wood-energy system.

Eligible entities include nonprofit organizations; local, State, and tribal governments; business, companies, corporation (for profit), and special purpose districts (public utilities districts, fire districts, conservation districts, or port). Find your regional contact on the official Web site.

<http://www.fs.fed.us/woodybiomass/index.shtml>

e. Food, Conservation, and Energy Act of 2008 (2008 Farm Bill); P.L. 110–246, as amended.

i. **Community Forest and Open Space Conservation Program (CFP).** Through this program, the Forest Service is authorized to provide federal financial assistance to local governments, Indian tribes, and qualified nonprofit organizations (including land trusts) to establish community forests that provide defined benefits. Note that financial assistance cannot be used to establish a community forest on tribal trust land, thus only land owned by the Indian tribe is eligible. Community benefits include economic benefits resulting from sustainable forest management, recreational benefits secured with public access, natural resource protection, forest-based experiential learning, and replicable models of effective forest stewardship. The program requires a 50 percent non-Federal match. There are several requirements for land acquired through the program, including public access and managing the land according to a Community Forest Plan, which is developed with community involvement (FSH 1509.11, sec. 21).

<http://www.fs.fed.us/spf/coop/programs/loa/cfp.shtml>

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6. Service-wide Use Authorities Specifically for the National Forest System (NFS):

a. Consolidated Appropriations Act, 2012 (P.L. 112–74).

Hazardous Fuels, Wildland Fire Hazardous Fuels Funds

The Forest Service may use contracts or enter into cooperative agreements for hazardous fuels reduction, and for training or monitoring associated with such hazardous fuel reduction activities on Federal lands. These activities should focus on protecting lands identified in Community Wildfire Protection Plans (CWPPs) or equivalent.

b. Cooperative Law Enforcement Act of August 10, 1971 (16 U.S.C. 551a, Pub. L. 92-82).

Used when the Forest Service partners with a State or political subdivision (local governments) to enforce State or local laws or ordinances on lands within or part of any unit of the National Forest System (NFS). There may be cross-jurisdictional opportunities, both Federal and State, to enable tribal police officers to work on NFS lands. *Indian tribes should contact their local law enforcement office.* See 1563.01j, Coordinating Law Enforcement with Tribes for more information. (FSH 1509, Ch. 30).

c. Omnibus Public Land Management Act of 2009, Title IV (P.L. 111–11, H.R. 146).

Collaborative Forest Landscape Restoration Program. The purpose of this program is to encourage the collaborative, science-based ecosystem restoration of priority forest landscapes. The program's fund may be used to pay for up to 50 percent of the cost of carrying out and monitoring ecological restoration treatments on National Forest System lands. No more than \$4 million may be spent from the Collaborative Forest Landscape Restoration Fund in any single fiscal year on any single project.

<http://www.fs.fed.us/restoration/CFLRP/>

d. The Reciprocal Fire Protection Act of May 27, 1955 (42 U.S.C. 1856a, Pub. L. 84-46). Cooperative Fire Protection Agreements.

The Forest Service uses these agreements to partner with parties to provide wildland fire protection, to perform approved severity activities, and to respond to presidentially declared emergencies or disasters under Federal Emergency Management Agency authorities. The activities can occur on private land within or near National Forest System (NFS) land or can be performed for the benefit of those who occupy or use national forests or other lands administered by the Forest Service. Alternatively, the Forest Service can enter into reciprocal agreements with any fire organization maintaining fire protection facilities in the vicinity of NFS lands (See also Granger-Thye Act 1950; Cooperative Funds and Deposits Act 1975; Cooperative Funds Act 1914; and FSH 1509.11, Ch. 30).

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e. Tribal Forest Protection Act of 2004 (P.L. 108-278, 118 Stat. 868).

To carry out projects on National Forest System (NFS) lands to protect Indian forest land, range land, or tribal communities, Indian tribes may submit requests to the Secretary of Agriculture and the Secretary of the Interior to enter into cooperative agreements or contracts (TFPA 2004). Forest Service officials may provide advice and information to Indian tribes in advance of the Indian tribes' submitting proposals for stewardship contracts or other instruments, contracts, or agreements. Forest Service officials may assist Indian tribes in developing proposals that are consistent with the selection criteria set forth in the Tribal Forest Protection Act (TFPA). Line officers may only accept proposals from a representative of the governing body of an Indian tribe, such as a tribal council or tribal chairman. The Indian tribe may submit a proposal on behalf of a tribal member that owns an allotment that meets the qualifications for a project.

Note that lands selected by Alaska Native Corporations under the Alaska National Interest Lands Conservation Act are not held in trust or with a restriction against alienation. Therefore, such lands are outside the scope of the TFPA. An Indian tribe to which an individual Indian allottee belongs, however, may submit a request to the Forest Service to enter into an agreement or contract to carry out a project to protect the allottee's land. The Secretary may issue public notice of initiation of any necessary environmental review or of the potential of entering into an agreement or contract with the Indian tribe no later than 120 days after the request is submitted (FSH 2409.19, Ch. 60).

1563.01j - Coordinating Law Enforcement with Tribes

The Forest Service acknowledges the principles of Indian self-determination and self-governance (25 U.S.C. 450, et seq.). There is currently no single direct authority for cooperative law enforcement with Indian tribes. Complex jurisdictional issues which vary geographically and from Tribe-to-Tribe may create barriers to coordinating law enforcement activities with Tribes. Depending on the local situation, certain authorities may apply:

1. 16 U.S.C. 551a provides authority for the Forest Service, Law Enforcement and Investigations (LEI), to enter into cooperative law enforcement agreements with States and their political subdivisions.
2. 16 U.S.C 559g provides authority for the Forest Service, LEI, to enter into cooperative law enforcement agreements with Federal agencies.
3. Court orders and consent decrees resulting from adjudicated off-reservation treaty rights may require Tribes to exercise self-regulation of those rights.

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1563.01k - Tribal Colleges and Universities Initiative

1. Executive Order 13592 of December 2, 2011. Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities. In recognition of the special commitment and in fulfillment of the solemn obligations it entails Federal agencies must help improve educational opportunities provided to all American Indian and Alaska Native students.

1563.02 - Objectives

Forest Service employees should strive to increase their understanding of tribal relations generally, and of opportunities to enter into contracts, grants, and agreements with Indian tribes and Native American-owned businesses. The Forest Service has legally mandated trust responsibilities to consult, coordinate, and communicate with Indian tribes. More specifically, Forest Service employees should:

1. Develop and maintain effective working relationships with Indian tribes in achieving the common values of shared stewardship, promoting ecosystem health, protecting cultural resources and sacred places, providing appropriate access to sacred places, and benefitting tribal communities to the greatest extent practicable and permitted by law.
2. Fulfill Agency treaty obligations and trust responsibility to protect the rights and interests of Indian tribes when the Agency undertakes the formulation and implementation of policies or other actions that may affect their interests.
3. Ensure that Forest Service officials, programs, and activities:
 - a. Respect tribal self-governance and sovereignty and honor tribal rights and interests;
 - b. Improve communication, outreach, and education in partnership with Indian tribes;
 - c. Acknowledge and respect traditional knowledge;
 - d. Integrate tribal perspectives in Agency decision making;
 - e. Include Indian tribes in outreach, employment, and advisory groups; and
 - f. Include Indian tribes and Native American-owned businesses in financial assistance.
4. Support the aspirations of the UN Declaration on the Rights of Indigenous Peoples.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In December 2010, the United States announced support for the UNDRIP. The UNDRIP is a nonbinding, aspirational document. It creates no new rights under United States or international law, nor is it

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a statement of current international law. However, it is an important statement of the importance of indigenous peoples' rights. In particular, the UNDRIP highlights that it is important to maintain culture and traditions (Article 11); and religious traditions, customs, and ceremonies (Article 12); to participate in decision making in matters which would affect their rights (Article 18); and to maintain spiritual connections to traditionally owned lands (Article 25).

1563.03 - Policy

The Forest Service will develop, maintain, and enhance government-to-government relationships with federally recognized Indian tribes. All Forest Service staffs and units shall provide an opportunity for Indian tribes to participate in the development and delivery of policy, programs, projects, and other actions to the greatest extent practicable and permitted by law. Indian tribes will be provided the opportunity for timely and meaningful government-to-government consultation regarding actions which may have tribal implications. This policy does not preclude the Agency from consulting with an Indian tribe when the Indian tribe and the office or Agency agree that consultation may be desirable, even if consultation is not specifically required.

There are many laws and executive policies that require or enable consultation and coordination with tribal governments. Due to the complexity of these individual authorities, local units should work closely with Indian tribes to develop protocols and processes for consultation that may then be documented in an agreement.

Specifically, it is the policy of the Forest Service that:

1. Sovereignty. All Forest Service personnel shall respect and uphold the sovereignty of all federally-recognized Tribal governments. This policy does not diminish any Tribal governmental rights, including treaty rights, other reserved rights, sovereign immunities or jurisdiction. Additionally, this policy does not diminish any rights or protections afforded American Indian and Alaska Native persons or entities under Federal law. Forest Service offices, units, and staffs shall:

- a. Implement Forest Service programs and activities consistent with and respecting Indian treaty and other reserved rights and fulfilling the Federal Government's legally mandated trust responsibility with Indian Tribes.
- b. Manage Forest Service-administered lands and resources on which tribal treaty rights exist in coordination with Indian tribes.
- c. Coordinate Forest Service land and resource management plans and actions with tribal land and resource management plans and actions to achieve shared stewardship and promote the health of ecosystems.
- d. Administer programs and activities in a manner that is sensitive to traditional American Indian and Alaska Native spiritual beliefs and practices, and assist tribal members in securing

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ceremonial and medicinal plants, animals, and the use of specific geographic places to the greatest extent practicable and permitted by law.

2. Government-to-government relationship. The Forest Service shall endeavor to establish and maintain government-to-government relationships with federally recognized Indian tribes as defined by 25 U.S.C. 459a.
3. Consultation. Forest Service offices, units, and staffs shall consult with Indian tribes and Alaska Native Corporations on matters that may affect their rights and interests, utilizing the following principles:
 - a. Comply with all laws, regulations, and other executive policies in a manner that is consistent with the special and unique legal and political relationship with Indian tribes. Government-to-government consultation generally involves more than the rights of tribal officials, as members of the general public, to comment on proposed policies or actions under other Federal laws of general applicability.
 - b. Collaboratively involve Indian tribes, as early as possible, in the development of regulatory and management policies, resource and land management plans, study plans and actions, and Federal undertakings that may have tribal implications. Work with Indian tribes to determine whether a proposed Forest Service policy or action has implications for their rights or interests that may warrant consultation, and where consultation is necessary, work with affected Indian tribes to establish an effective consultation process.
 - c. Respond in a timely manner to all requests for consultation by Indian tribes.
 - d. Coordinate as practical with other Federal and State agencies and local governments during consultation with Indian tribes.
 - e. As a general principle, consultation only occurs when the consulting officials of the Forest Service and the Indian tribe mutually agree that consultation is taking place. Agency consulting officials and their staffs should be clear in identifying, in collaboration with the relevant official(s) of the Indian tribe, when an action or set of actions constitutes government-to-government consultation.
4. Accountability. Each Forest Service Unit shall maintain an accountable process to ensure regular and meaningful consultation with Tribal officials in the development of policies or actions that may have Tribal implications, and, in Alaska, with Federally Recognized Native Entities and with Alaska Native Corporations. In order to ensure accountability, each Unit shall maintain an administrative record of all relevant decision making, information, and communications associated with each consultation. This includes initial outreach, consultative meetings and dialogue, and how the results of consultation were considered by the Agency in the decision-making processes. These administrative records must be retained by the Unit and pertinent information must be entered into the USDA Tribal Consultation Database. Information

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obtained from Tribes in consultations and considered by the Tribe to be confidential must, to the extent practicable and allowed by law, be kept confidential.

An accountable process must include, as a minimum, the ability for the Office of Management and Budget (OMB), Secretary of Agriculture and the USDA Office of Tribal Relations in the Secretary's Office (OTR-OSEC), Under Secretary for Natural Resources and Environment (NRE), Chief, and Consulting Officials to determine:

- a. The subject of the consultation;
- b. The event or decision initiating the need for consultation;
- c. Materials provided to, and received from, Consulting Officials relevant to the consultation topic;
- d. Names, titles, and contact information of the Consulting Officials (Federal and Tribal Representatives), and any additional individuals who were involved in the consultation process, including staff and others;
- e. How the consultation was conducted (the type and mode);
- f. The consultation schedule (dates, times, locations);
- g. Agendas, meeting minutes, or other records of consultation meetings (except for culturally sensitive or other information considered confidential, especially as falling under exemptions from the Freedom of Information Act);
- h. The outcome(s) of the consultation, including follow-up commitments, any agreements or points of disagreement;
- i. How the results of the consultation were considered in any decision-making process by the Agency and whether they were incorporated or rejected in the final decision(s);
- j. What additional steps may need to be taken; and
- k. Appropriate public disclosure of the consultation record.

5. Tribal Summary Impact Statement. In a separately identified portion of the preamble to each regulation that has tribal implications to be issued in the Federal Register, the issuing office, Unit, or staff shall provide a Tribal summary impact statement, which must consist of a:

- a. Description of the tribal implications and the extent of the Agency's prior consultation with Tribal officials,

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- b. Summary of the nature of the Tribe's concerns and the Agency's position supporting the need to issue the regulation, and
 - c. Statement of the extent to which the concerns of tribal officials have been met.
6. Certification. In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, include a certification from the official designated to ensure compliance with Executive Order 13175 stating that the requirements of Executive Order 13175 have been met in a meaningful and timely manner.
 7. Negotiated Rulemaking. On issues relating to tribal self-governance, tribal self-determination, tribal trust resources including land resources, or tribal treaty and other rights, each office, Unit, or staff should explore, and where appropriate in consultation with the USDA Office of General Counsel, use of consensual mechanisms for developing regulations, including negotiated rulemaking. The Forest Service should examine the appropriateness of using negotiated rulemaking processes for those programs and policies affecting tribal land resources in consultation with the USDA Office of General Counsel.
 8. Tribal Relations Training. All Forest Service employees shall take USDA mandated training "Working Effectively with Tribal Governments" to become familiar with the rights and interests of Indian tribes as defined by the Constitution, treaties, statutes, Executive Orders, and judicial rulings. Forest Service personnel shall additionally complete tribal relations training as per Departmental Regulation 1350-02.
 9. Confidentiality. All Forest Service employees shall protect the confidentiality of culturally sensitive and proprietary information (including reburial locations and associated documentation relating to human remains or cultural items reburied on National Forest System land) as requested by Tribes and required or permitted by law. See also FSM 6270 and FSH 6209.13 – Freedom of Information Act/Privacy Act.
 10. Sharing Information. Forest Service employees shall assist Indian tribes and tribal organizations by providing technical, educational, financial, and other information, and establish information exchanges where mutually agreed to and authorized by law.
 11. Reducing Impediments. It is the policy of the Forest Service to, wherever possible, reduce or remove legal or administrative program impediments that inhibit the Agency's and Indian tribes' capacity to work directly and effectively with each other.
 12. Repatriation. The repatriation of Native American human remains and associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony is consistent with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA). See also FSH 1509.13.14.3, FSH 1509.13 chapter 20 – Repatriation and Reburial Documentation.

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13. Reburial. Support, where appropriate, shall be provided for request(s) for reburial of human remains and cultural items on Forest Service-administered lands received from Indian tribes or lineal descendants. Document and provide explanation to the affected Indian tribe or lineal descendent for any request(s) that are denied.
14. Education. The Forest Service shall help improve educational opportunities provided to all American Indian and Alaska Native students, including students attending public schools in cities and in rural areas, students attending schools operated and funded by the Department of the Interior's Bureau of Indian Education (BIE), and students attending postsecondary institution including Tribal Colleges and Universities (TCUs).

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1563.04 - Responsibility

1563.04a - Chief

The Chief reserves the authority to:

1. Retain Line Officer responsibility for national leadership, planning, coordination, monitoring, evaluation, and execution of the Forest Service's tribal government relations programs and activities.
2. Provide programmatic oversight and assessment of the effectiveness of Forest Service consultations with Tribes on national issues.
3. Serve as the primary Agency Consulting Official
 - a. The Chief may assign delegated authority through Line Officers to serve as Consulting Officials throughout the Agency on pertinent topics. Tribal consultation may not be delegated from line to staff in the Field; and
 - b. The Chief retains the right to delegate to any Forest Service employee - in writing and for specific, individual cases - the authority to consult directly with Indian tribes as a "Chief's Representative" during government-to-government tribal consultation. This authority is reserved to the Chief only, and does not allow for other Forest Service Line Officers to delegate their tribal consultation responsibilities to staff other than Line Officers.
4. Submit, through the USDA to the Office of Management and Budget, an annual progress report on the Agency's actions regarding the plan of action developed in accordance with the Presidential Memorandum of November 5, 2009.

1563.04b - Deputy Chief, State and Private Forestry

The Deputy Chief of State and Private Forestry has the responsibility to:

1. Oversee the Forest Service Office of Tribal Relations in Washington, DC, and designate its Director.
2. Implement the Tribal Relations Program as it involves State and Private Forestry, including keeping the Forest Service Office of Tribal Relations in Washington, DC, and the U.S. Department of Agriculture's Office of Tribal Relations informed about any significant information or actions affecting Tribes or tribal relations.
3. Ensure that the Tribal Relations Program interests are represented in the decision-making process of the National Leadership Council and at the Department of Agriculture.

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1563.04c - Deputy Chief, National Forest System

The Deputy Chief for the National Forest System has the responsibility to:

1. Implement the Tribal Relations Program as it involves the National Forest System, including keeping the Forest Service Office of Tribal Relations in Washington, DC and the U.S. Department of Agriculture's Office of Tribal Relations informed about any significant information or actions affecting Tribes or tribal relations.
2. Ensure that Programs, Policies, Projects, and other actions of the National Forest System staffs are conducted in compliance with applicable Laws, Executive Orders, Regulations, and Policy as set forward in FSM 1563 and FSH 1509.13.

1563.04d - Deputy Chief, Business Operations

The Deputy Chief for Business Operations has the responsibility to:

1. Implement the Tribal Relations Program as it involves Business Operations, including keeping the Forest Service Office of Tribal Relations in Washington, DC informed about any significant information or actions affecting Tribes or tribal relations.
2. Ensure that Programs, Policies, Projects, and other actions of Business Operations Staffs are conducted in compliance with applicable Laws, Executive Orders, Regulations, and Policy as set forward in FSM 1563 and FSH 1509.13.

1563.04e - Deputy Chief, Research and Development

The Deputy Chief for Research and Development has the responsibility to:

1. Implement the Tribal Relations Program as it involves Research and Development, including keeping the Forest Service Office of Tribal Relations in Washington, DC informed about any significant information or actions affecting Tribes or tribal relations.
2. Ensure that Programs, Policies, Projects, and other actions of Research and Development Staffs are conducted in compliance with applicable Laws, Executive Orders, Regulations, and Policy as set forward in FSM 1563 and FSH 1509.13.

1563.04f - Director, Forest Service Office of Tribal Relations in Washington, DC

The Director of the Forest Service Office of Tribal Relations in Washington, DC has the responsibility to:

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1. Advise the Chief, the Associate Chief, Deputy Chiefs, Regional Foresters, Station Directors, and the Area Director on tribal relations programs, policies, and procedures as well as current tribal issues affecting Forest Service resource management on a national basis.
2. Integrate consideration of tribal issues across deputy areas and help to ensure that government-to-government relations between Tribes and the Forest Service are conducted in compliance with all applicable laws, Executive Orders, and Agency policy.
3. Maintain effective working relationships with the public, Tribes, members of Congress, tribal organizations, USDA, and other Federal agencies with interest in Forest Service programs as they relate to tribal relations. To maintain an effective working relationship with the U.S. Department of Agriculture's Office of Tribal Relations, the Director of the Forest Service Office of Tribal Relations in Washington, DC shall serve as the primary Forest Service point of contact, coordinating Forest Service responses to formal requests with the Deputy Chief of State and Private Forestry and other parties as appropriate.
4. Keep abreast of nationwide tribal issues and opportunities regarding the Agency's programs.
5. Work with Tribes on Forest Service management matters of national importance, coordinate tribal liaison needs and activities within the Washington Office and with Field units, and facilitate access between tribal leadership and the National Leadership Council.
6. Supervise the staff of the Forest Service Office of Tribal Relations Washington, DC, and provide overall direction for the agency Tribal Relations Program.
7. Lead the National Tribal Relations Team comprised of the Office of Tribal Relations in Washington, DC; the Regional Tribal Relations Program Managers; Forest, Grassland, and Prairie Tribal Liaisons; Research Station Liaisons; State and Private Area Liaisons; and others as identified by the Director.
8. Maintain coordination and communication with and among Regions, Stations, and the Northeastern Area for tribal relations activities and programs.
9. Coordinate with Washington Office Directors on policies, actions, and training that may affect or relate to tribal relations, and on information or actions involving Tribes that may have implications for their program areas.
10. Coordinate with the Director of Recreation, Heritage and Volunteer Resources Management on tribal issues involving compliance with the National Historic Preservation Act (NHPA) (54 U.S.C. 300101 et seq.); Executive Order 13007 pertaining to Indian Sacred Sites; the Native American Graves Protection and Repatriation Act (NAGPRA) (FSM 1563.01e); the Federal Lands Recreation Enhancement Act, 16 U.S.C. Chapter 87; the Cultural and Heritage Cooperation Authority, 25 U.S.C. Chapter 32A, and other authorities as appropriate.

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11. Coordinate regional responses to requests by Indian tribes or lineal descendants for reburial data essential to program budgeting and policy direction.
12. Ensure Service-wide orientation and training of Forest Service employees for competency in tribal relations, including the appropriate conduct of government-to-government consultation and protection of Indian sacred sites.
13. Facilitate efforts to address and, where possible, resolve disputes between Tribes and the Forest Service that cannot be resolved at the local level.
14. Serve as the Certification Officer for implementation of Executive Order 13175, as required in section 7 of the Order.
15. Serve as the Forest Service representative on the USDA Native American Working Group or its equivalent.
16. Serve as the Forest Service representative on the Interagency Working Group on Indian Affairs (IWGIA) or its equivalent.
17. Conduct monitoring, field reviews, functional assistance trips, and audits of Agency Tribal Relations Program activities and take other actions to ensure that the Tribal Relations Program is effective and meets national policy requirements.
18. Maintain web-based tools to support the national information needs of the Forest Service Tribal Relations Program, including treaties, treaty rights, memoranda of understanding, and judicial rulings related to Tribes and affecting the management of Forest Service-administered programs and lands.
19. Oversee the implementation and use of the USDA Tribal Consultation Database by Forest Service personnel.
20. Compile information from Washington Office staffs and Field units for an annual end-of-year report to be submitted to the National Leadership Council.

1563.04g - Washington Office Staff Directors

Each Washington Office Staff Director whose current or proposed programs or activities may have tribal implications has the responsibility to:

1. Coordinate and collaborate with Tribes in the early development of policies or programs that may have tribal implications.

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2. Ensure that Tribes have the opportunity to discuss through government-to-government consultation the actual or potential effects, and to obtain accurate information from Tribes related to tribal interests.
3. Prepare briefing materials and coordinate input from the Field on technical matters involving activities within their areas that may have substantial direct effects on Tribes.
4. Notify the Director of the Forest Service Office of Tribal Relations in Washington, DC, and the appropriate Deputy Chief(s) or the Chief of any significant information or actions affecting Tribes or tribal relations.
5. Meet with, or assign subject matter specialists to meet with, Tribal leaders and/or staff who visit the Washington Office.
6. Assign, where practicable, individuals to serve as staff liaisons to the Forest Service Office of Tribal Relations in Washington, DC.
7. Serve, on a case-by-case basis, as a Consulting Official for tribal consultation if that authority has been delegated to them by the Chief.

1563.04h - Regional Foresters, Station Directors, and the Area Director

Regional Foresters, Station Directors, and the Area Director have the responsibility to:

1. Fulfill, within the Forest Service's mission areas, the Government's trust responsibilities and treaty obligations.
2. Coordinate and collaborate with Tribes in the early development of policies and decisions that may have tribal implications.
3. Establish and implement effective Tribal Relations Programs for their Units.
4. Develop effective, timely communication between the Forest Service Office of Tribal Relations in Washington, DC, Regional Tribal Relations Program Managers, Research & Development (R&D) Tribal Liaisons, and Forest, Grassland, and Prairie Tribal Liaisons.
5. Designate employees to serve as a focal point for the Unit's contact between Tribes at the Regional, Station, or the Area level.
6. Ensure that Tribes with rights and interests that cross more than one Region, Forest, Station, the Area or other Units have one primary point of contact between the Forest Service and the Tribe.

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7. Ensure tribal program management interests are represented in the decision-making process of the National and Regional Leadership Teams.
8. Ensure that consultation is conducted with Tribes for Regional, Station, and the Area decisions and actions that may affect Tribes.
9. Ensure that the recommendations from the Report to the Secretary of Agriculture, USDA Policy and Procedures Review and Recommendations: Indian Sacred Sites and similar recommendations are implemented efficiently, effectively, and thoroughly throughout their Region, Station, and the Area.
10. Ensure appropriate repatriation of human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony from National Forests under their jurisdiction.
11. Support reburial of repatriated human remains and cultural items on National Forest System lands consistent with uses on the national Forest System land as determined necessary for management of the National Forest System.
12. Provide funding and training to Units in support of Tribal Relations work.

1563.04i - Regional Tribal Relations Program Managers

The Regional Tribal Relations Program Managers have the responsibility to:

1. Ensure that tribal interests and rights are considered and integrated across program areas and that government-to-government relations between Tribes and Forest Service Administrative Units are conducted in compliance with applicable laws, Executive Orders, and Agency policy.
2. Collaborate with other Federal agencies, Tribes, and American Indian advocacy organizations to implement programs and projects and seek mutually beneficial opportunities.
3. Serve as the Region's primary source of advice and assistance on matters involving tribal relations; including advising line and staff on responses to tribal requests for use of National Forest System lands and resources.
4. Brief and coach Line Officers, Forest, Grassland, and Prairie Tribal Liaisons, key staff, and appropriate specialists on effective communication and cultural knowledge and skills required for effective government-to-government relationships between the Forest Service and Tribes and tribal organizations.
5. Monitor Forest Service programs to ensure that tribal governments are consulted when land and resource management plans and/or other actions could affect tribal rights and interests.

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6. Seek to reconcile different views and facilitate timely resolution of disputes involving Tribes and the Forest Service that cannot be resolved at the local level.
7. Advise line and staff on their responsibilities to:
 - a. Fulfill, within the Forest Service's mission areas, the Government's trust responsibilities and treaty obligations.
 - b. Protect sacred sites and archaeological, historical, and cultural resources.
 - c. Accommodate Indian religious and spiritual values and practices to the maximum extent practicable, permitted by law, and not clearly inconsistent with agency functions.
 - d. Respond to tribal requests for reburial of human remains in coordination with the Heritage Resources Program Manager.
 - e. Explain off-reservation treaty rights that affect Forest Service-administered land management.
 - f. Seek traditional knowledge that may be relevant to the management of natural and cultural resources.
8. Coordinate and facilitate a Tribal Relations program of training at the Regional and local levels that includes elements of Indian law and policy, consultation, Federal-Tribal relations, sacred sites protection, and cultural awareness.
9. Collect and submit information to the Director of the Forest Service Office of Tribal Relations in Washington, DC and the U.S. Department of Agriculture's Office of Tribal Relations that summarizes the issues and outcomes of consultations with Tribal Governments within their respective Regions or Administrative Units, as requested by the Forest Service Office of Tribal Relations in Washington, DC.
10. Collect and annually submit information to the Director of the Forest Service Office of Tribal Relations in Washington, DC that summarizes the issues and outcomes of tribal relations efforts across the Region, to be included in a national annual end-of-year report.
11. Serve on the National Tribal Relations Team, led by the Director of the Forest Service Office of Tribal Relations in Washington, DC, to coordinate policy development, program reviews and improvement, and project support across the Agency.
12. Coordinate and provide Agency staff work necessary for processing requests by Indian tribes and lineal descendants for reburial of human remains and/or cultural items. Provide documentation, budget, and briefing materials necessary for management decisions and

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reporting. Initiate program and reburial activity reviews necessary to provide quality controls and tribal relations feedback.

13. Ensure the uniform use of the USDA Office of Tribal Relations' Tribal Consultation Database for reporting on Tribal consultation within the Regions.

14. Conduct periodic reviews to ensure compliance with the Forest Service reburial policy pursuant to requirements of the Cultural and Heritage Cooperation Authority of 2008 (25 U.S.C. Chapter 32A, section 3053).

1563.04j - Forest, Grassland, and Prairie Supervisors

Forest, Grassland, and Prairie Supervisors have the responsibility to:

1. Fulfill, within the Forest Service's mission areas, the Government's trust responsibilities and treaty obligations.
2. Coordinate and collaborate with Tribes in the early development of policies and decisions that may have tribal implications.
3. Serve as the Consultation Official on the Unit. This requires being personally engaged in the consultation process with Tribes.
4. Establish effective government-to-government relationships with Tribes that have rights and interests on their Unit, and with Tribes for whom lands within the administrative boundaries of the Unit have traditional, cultural, and/or spiritual importance.
5. Identify a Forest, Grassland, or Prairie Tribal Liaison to serve as the first point of contact with tribal leaders and as the person who will generally initiate Agency contact with Tribes.
6. In partnership with tribal officials, develop agreed-upon protocols for consultation on issues and decisions that may have a direct, substantial effect on tribal lands, subsistence uses, treaty rights, sacred sites, or cultural resources or practices on and off reservations.
7. Seek opportunities to develop partnerships with Tribes under all appropriate Forest Service authorities.
8. Encourage employees to act with respect when working with tribal officials or other American Indians or Alaska Natives or Alaska Native Corporations.
9. Develop action plans in consultation with Tribes in accordance with the implementing regulations for NAGPRA (43 CFR 10.3) for discoveries of American Indian human remains pursuant to permitted excavations under the Archaeological Resources Protection Act (ARPA) (FSH 1509.13).

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10. Ensure that requests for reburial are addressed in a timely manner. Undertake the following actions when there are requests for reburial of American Indian human remains and associated funerary objects on lands under their jurisdiction:

- a. Ensure that all requests for reburial are reported and coordinated with the Regional Tribal Relations Program Manager and Regional Heritage Resources Program Manager.
- b. When authorizing reburials, consult with the lineal descendants or culturally affiliated Tribe(s) to develop, where desired by the Tribe(s), a Memorandum of Understanding that delineates the reburial process. This agreement may include reburial of human remains and associated funerary objects.
- c. Inform appropriate law enforcement personnel of reburial activities in order to endeavor to protect reburial sites through monitoring and surveillance activities.
- d. Recommend actions to be taken on reburial requests by Indian tribes or lineal descendants.
- e. Comply with Freedom of Information Act, 5 U.S.C. 552 Exemption 3, which covers information specifically exempted from disclosure by statute, to prevent the unauthorized disclosure of information regarding reburial sites, including the quantity and identity of human remains and cultural items and location of sites
- f. Avoid adverse impacts to human remains and cultural items, to the maximum extent practicable.

11. Develop a section of the action plan in consultation with local Tribes (25 U.S.C. 3002(d)), for post-1990 ground-disturbing projects that deals with inadvertent discoveries of Native American remains and objects.

12. Ensure that activities relating to Tribes are reported to the Regional Office, through the Regional Tribal Relations Program Manager, for inclusion in an annual end-of-year report to be delivered to the Forest Service Office of Tribal Relations in Washington, DC.

1563.04k - District Rangers

District Rangers have the responsibility to:

1. Implement and maintain the Tribal Relations Program within their area of authority, including staffing.
2. Serve as the consultation official on the Unit when delegated that authority by the Forest Supervisor. This requires being personally engaged in the consultation process with Tribes.

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1563.04l - Forest, Grassland, and Prairie Tribal Liaisons

Tribal Relations personnel at the National Forests, Grasslands, and Prairies have the responsibility to:

1. Support their Unit and especially their Line Officer's efforts regarding tribal consultation, coordination, and collaboration.
2. Serve as the Unit primary staff point of contact for developing and maintaining relationships with Tribes.
3. Maintain the Unit's input to the USDA Tribal Consultation Database.
4. Serve as the Unit subject matter expert in providing information, training, and assistance to personnel across the Unit regarding working with American Indian and/or Alaska Native tribes and Alaska Native Corporations.
5. Assist the Regional Tribal Relations Program Manager in their responsibilities and activities, including end-of-year reporting.

1563.04m - Research & Development Tribal Liaisons

Research & Development (R&D) Tribal Liaisons have the responsibility to:

1. Serve as a focal point to facilitate two-way communication with Tribes on natural resource science and research issues, and for tribal inquiries and consultation requests related to Forest Service science and research programs;
2. Work with their counterpart Regional Tribal Relations Program Managers or Washington Office Tribal Relations staff to develop consultation protocols for R&D activities, including providing opportunity for tribal input into their Unit's research charters and priorities;
3. Serve as a point of contact for tribal and Forest Service personnel on the role and availability of traditional knowledge to inform regional or national natural resource management questions.
4. Serve as a point of contact to facilitate national reporting of their Unit's activities related to Tribal-related research and engagement efforts.

1563.04n - State and Private Forestry Area Tribal Liaisons

State and Private Forestry Area Tribal Liaisons have the responsibility to:

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1. Serve as a focal point to facilitate two-way communication with Indian tribes on natural resource science and research issues, and for Tribal inquiries and consultation requests related to Forest Service State and Private Forestry programs.
2. Work with their counterpart Regional Tribal Relations Program Managers or Washington Office Tribal Relations staff to develop consultation protocols for State and Private Forestry activities, including providing opportunity for tribal input into State and Private program priorities.
3. Serve as a point of contact for tribal and Forest Service personnel on the role and availability of traditional knowledge to inform regional or national natural resource management questions.
4. Serve as a point of contact to facilitate national reporting of their Unit's activities related to tribal-related State and Private Forestry engagement efforts.

1563.05 - Definitions

Adjacent Site/Adjacent to. Within the context of the Cultural and Heritage Cooperation Authority (25 U.S.C. Chapter 32A, section 3051, et seq.), the term "adjacent site" means a site that borders a boundary line of National Forest System land (25 U.S.C. 3052(1)). The term "adjacent site" should not be confused with the term "bordering or adjacent to" found in the Tribal Forest Protection Act (25 U.S.C. 3115a). This term remains undefined in the Tribal Forest Protection Act and does not necessarily mean a co-incident or contiguous boundary.

Accountable Process. A process by which the Agency is able to track and report on the efforts on any given tribal consultation, from initial outreach and consultation activities to how the results of consultation were used by the agencies. See D.R. 1350-002.5.b.

Action. The whole or a part of an Agency rule, legislation, order, license, sanction, relief, or the equivalent or denial thereof, including planning, program, permit, and project decisions (5 U.S.C. 551(13)). An action includes any project or activity authorized by the Forest Service.

Alaska Native Corporations. Created under the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), these corporations manage lands and resources for Alaska Natives. While not federally- recognized Indian tribes, consultation is required with these organizations in some instances as if they were Indian tribes pursuant to Public Law (P.L.) 108-199 and 108-447 directing all Federal agencies to consult with Alaska Native Corporations on the same basis as Indian tribes under E.O. 13175. This type of consultation is considered government-to-corporation, rather than government-to-government.

Associated Funerary Objects. Objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made

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for burial purposes or to contain human remains must be considered as associated funerary objects. See 25 U.S.C. 3001(3)(A).

Burial Site. Any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which, as a part of the death rite or ceremony of a culture, individual human remains are deposited.

Consulting Official. For the Forest Service, an employee with delegated authority to conduct tribal consultation. Consultation may only be conducted by employees who have delegated authority for consultation. This delegation occurs through the Secretary to Department Leadership, and flows from the Under Secretaries to the agencies. Whether the Consulting Official is the Secretary, Deputy Secretary, Assistant Secretary, Under Secretary, agency head, or another agency official depends on the nature of the regulation, policy, program or planning decision and how it may affect the consulting Tribe(s). For the Forest Service, Consulting Officials may be Line Officers, or, in certain cases, other Forest Service employees delegated – in writing and on a case-by-case basis – to be “Chief’s Representatives” as Consulting Officials.

For the Tribes, consultation is conducted by elected Tribal representatives or their representatives who have delegated authority from their Tribal government for consultation. This delegation is determined by the Tribes themselves as sovereign governments. The Consulting Official is usually the Tribal Chief, Governor, President or another official from the Executive Branch, though it could be a member of the Tribal Council or even a Tribal employee with specialized knowledge of the topic of the consultation. See D.R. 1350-002.11.f.

Cultural Items.

1. IN GENERAL: The term “cultural items” has the meaning given the term in subsection 3 of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 et seq.) which includes Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony.
2. EXCEPTION: The term “cultural items” does not include human remains.

Cultural Patrimony. Items having ongoing historical, traditional, or cultural importance central to the Indian tribe or Native Hawaiian organization itself, other than property owned by an individual tribal or organizational member. These items are of such cultural importance that they may not be alienated, appropriated, or conveyed by any individual tribal or organizational member. Such objects must have been considered inalienable by the culturally affiliated Tribe or Native Hawaiian group at the time the object was separated from such group. See 25 U.S.C. 3001(3)(D).

Executive Order Tribe. An Indian tribe that bases its status as a federally recognized tribe on a specific Executive Order, rather than on a treaty or congressional recognition.

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Federally Recognized Tribe. See Indian tribe.

Forest Service Office of Tribal Relations: The Forest Service Office of Tribal Relations in Washington, DC, manages and provides direction for the Forest Service Tribal Relations Program. The Office reports to the Deputy Chief for State and Private Forestry. The Office also informs and advises the Chief, as well as the U.S. Department of Agriculture's Office of Tribal Relations.

Government-to-government. In Federal Indian law, the term is used to characterize the unique legal relationship that exists between federally recognized Tribes and the Federal Government. This relationship evolved from the recognition of tribal sovereignty expressed in treaties between Tribes and the Federal Government and in the U.S. Constitution. This relationship is the basis of the government-to-government consultation requirement and has been expressed through numerous statutes, executive directives, and court decisions. See DR 1350-002.11.g.

Government-to-Government Consultation. Also "Tribal Consultation." The timely, meaningful, and substantive dialogue between Forest Service officials who have delegated authority to consult, and the official leadership of federally recognized Indian Tribes, or their designated representative(s), pertaining to decisions or actions that may have tribal implications.

Human Remains. The physical remains of the body of a person of Indian ancestry. See 25 U.S.C 3052(3).

Inadvertent Discovery. The unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal lands.

Indian. An individual who is a member of an Indian tribe. See 25 U.S.C 3052(4).

Indian Forest Land or Rangeland. Land that is held in trust by, or with a restriction against alienation by, the United States for an Indian tribe or a member of an Indian tribe; and

- a. Is Indian forest land (as defined in section 304 of the National Indian Forest Resources Management Act (25 U.S.C. 3103)); or
- b. Has a cover of grasses, brush, or any similar vegetation; or
- c. Formally had a forest cover or vegetative cover that is capable of restoration.

Indian Lands. Lands of Tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

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Indian tribe. Also “Tribe”. Any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community, the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1). See Executive Order 13157, Sec. 1(b).

Lineal Descendant. An individual who can trace, directly and without interruption, the ancestry of the individual through the traditional kinship system of an Indian tribe, or through the common law system of descent, to a known Indian, the human remains, funerary objects, or other sacred objects of whom are claimed by the individual. See 25 U.S.C. 3052(6).

Meaningful Consultation. In the context of government-to-government consultation as expressed in EO 13275, the information and dialogue exchanged actually has the potential to affect a decision for which the Agency has discretion. If a Tribe is part of a consultation and their views have no real potential to be used in the related decision, the consultation is not meaningful.

Native Knowledge. See also “Traditional Knowledge.” The 2012 Forest Service Planning Rule (Federal Register / Vol. 77, No. 68 / Monday, April 9, 2012) defines Native Knowledge as a way of knowing or understanding the world, including traditional ecological and social knowledge of the environment derived from multiple generations of indigenous peoples’ interactions, observations, and experiences with their ecological systems. Native knowledge is place-based and culture-based knowledge in which people learn to live in and adapt to their own environment through interactions, observations, and experiences with their ecological system. This knowledge is generally not solely gained, developed by, or retained by individuals, but is rather accumulated over successive generations and is expressed through oral traditions, ceremonies, stories, dances, songs, art, and other means within a cultural context.

Policies That May Have Tribal Implications. Proposed Forest Service regulations, legislative comments, or proposed legislation, and other policy statements or actions that may 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. See Executive Order 13157, Sec. 1(a).

Reburial Site. A specific physical location at which cultural items or human remains are reburied. See 25 U.S.C. 3052(8).

Reserved Rights Doctrine. Indian tribes retain all rights not explicitly given up in treaties or other legislation.

Sacred Objects. Items that are specific ceremonial objects that are needed by traditional Native American religious leaders for the practice of traditional religions by their present-day adherents.

Sacred Site. As identified in Executive Order 13007, any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to

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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.

Sacred Place. Any specific location on National Forest System land, whether site, feature, or landscape, that is identified by an Indian tribe, or the religious societies, groups, clans, or practitioners of an Indian tribe, as having important spiritual and cultural significance to that entity, greater than the surrounding area itself. Sacred places may include but are not limited to geological features, bodies of water, burial places, traditional cultural places, biological communities, stone and earth structures, and cultural landscapes uniquely connecting historically important cultural sites, or features in any manner meaningful to the identifying Tribe.

Special Forest Products. Products or natural resources that are not the traditional timber and fiber products.

Sacred Objects. Items that are specific ceremonial objects that are needed by traditional Native American religious leaders for the practice of traditional religions by their present-day adherents.

Subsistence. The customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. See 25 U.S.C. 3113; 25 CFR 242.4. On Federal public lands in Alaska, subsistence hunting, fishing, and trapping is regulated by the Federal Subsistence Program.

Substantial Direct Effect. Direct means that there is an uninterrupted causal connection between the action and the group or individual being affected. Effects may be positive, neutral, or negative. These elements should be considered if there is:

1. Definitely potential for an effect that is substantial and direct, consultation is required.
2. Any potential for an effect, consultation may be required, depending on the extent (significance) of the effect. If the Agency does not know the significance of the effect, or even whether there will be an effect, the Agency should inquire of potentially affected Tribes whether the Tribe thinks there would be an effect, how significant such an effect may be, and whether they would like to consult.
3. No potential for an effect, consultation is not required (but may still be valuable). See DR 1350-002.11.k.

Traditional and Cultural Purpose. As per the Culture and Heritage Cooperation Authority (25 U.S.C. Chapter 32A, section 3052(9)), a use, area or practice identified by an Indian tribe as

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traditional or cultural because of the long-established significance or ceremonial nature of the use, area or practice to the Indian tribe.

Traditional Ecological Knowledge. See also “Native Knowledge.” A cumulative body of knowledge, practice and belief, evolving by adaptive processes and handed down through generations by cultural transmission about the relationship between living beings (including humans) with one another and with their forest environment (Berkes F, Colding J, Folke C. 2000. Rediscovery of traditional ecological knowledge as adaptive management. Ecological Applications 10: 1251–1262).

Traditional Knowledge. A broad set of knowledge that includes “Native Knowledge” and “Traditional Ecological Knowledge.” Traditional knowledge is a way of knowing or understanding the world, including traditional ecological, social, cultural, and other knowledge derived from multiple generations of indigenous peoples’ interactions, observations, and experiences. This knowledge is generally not solely gained, developed by, or retained by individuals, but is rather accumulated over successive generations and is expressed through oral traditions, ceremonies, stories, dances, songs, art, and other means within a cultural context.

Treaty Rights. Those rights or interests reserved in treaties for the use and benefit of Tribes. The nature and extent of treaty rights are defined in each treaty. Only Congress may abolish or modify treaties or treaty rights.

Tribal Governments. See “Indian tribes,” and “Tribes.” Unique entities possessing attributes of sovereignty over both their members and their territory.

Tribal Officials. Any duly elected or appointed representatives of tribal governments. This would include, for instance, a Tribal Chairman, President, Governor, or Tribal Council member.

Tribal Organizations. Also “Intertribal Organizations.” Organizations formed around particular topics in support of tribal interests, such as timber, energy, housing, education, or others. These organizations are made up of formally assigned representatives of Indian tribes and are usually incorporated under State laws. The Forest Service may not consult with tribal organizations on a government-to-government basis, but the Forest Service may work with these organizations under other authorities.

Tribal Rights. Those rights legally accruing to a Tribe or Tribes as set forth in the U.S. Constitution, treaties, statutes, executive directives and court decisions.

Tribe. Same as “Indian tribe.”

Trust responsibility. Trust responsibility arises from the United States' unique legal and political relationship with Indian tribes. It derives from the Federal Government's consistent promise, in the treaties that it signed, to protect the safety and well-being of the Indian tribes and tribal members in return for their willingness to give up their lands. (See also FSM1563.9b)

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Unassociated Funerary Objects. Objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe. See: 25 U.S.C. 3001(3)(B).

Unrecognized Tribe. (Also non-federally recognized tribe) A group of Native Americans or Alaska Natives that are not included on the list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1), but which may be recognized as a Tribe by a State. The Forest Service has no trust or treaty responsibility to consult with unrecognized tribes on a government-to-government basis, but the Forest Service may work with these organizations through other authorities.

U.S. Department of Agriculture's Office of Tribal Relations. This Office is in the Office of the Secretary at the Department of Agriculture in Washington, DC. In direct service to the Secretary of Agriculture, this Office oversees tribal relations throughout the Department of Agriculture, including the Forest Service Office of Tribal Relations.

Usufructuary rights. A technical term in law for the right of enjoying a thing, the property of which is vested in another, of enjoying the products of property someone else owns. Individual Tribes have some usufructuary rights on National Forest System lands, depending on the conditions of their treaties and the Federal Government's trust responsibilities.

1563.1 - Consultation with Indian Tribes and Alaska Native Corporations

The Forest Service, like other Federal agencies, has a duty to consult and coordinate with Indian tribes on a government-to-government basis, as directed in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. In addition, agencies must consult with Alaska Native Corporations in accordance with the Consolidated Appropriations Act of 2004 as amended (PL 1098-447, Div. H., Title V, section 518. 118 Stat. 2809, 3267). Consultation with Alaska Native Corporations is considered to be on a government-to-corporation basis. Because Tribes and Alaska Native Corporations are affected by Forest Service land and resource management policies, as well as research, development, and other programs and actions, the Forest Service must consult with them on matters that could affect their rights and interests. Work with Tribal Relations Program specialists to identify which Tribes or Alaska Native Corporations (ANCs) may be affected. Factors to consider include:

1. When there is a "substantial direct effect" to one of more Tribes or ANCs from the proposed decision or action, consultation must be initiated.
2. When there are possible effects, consider the geographical extent of those effects. For instance, if an action or activity is confined to National Forest System lands, evaluate

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which Tribes or ANCs have connections to, or benefit from, those lands. Or, if a decision or action has a State-wide effect, but primarily on forested lands typically within the jurisdiction of State and Private Forestry, evaluate which Tribes or ANCs have cultural or historic connections to those lands.

3. When determining which Tribes or ANCs to consult with, check with intertribal organizations or other agencies which may have conducted consultation on similar actions or activities in the past. The National Park Service NAGPRA database may give an indication of which Tribes have an interest in a specific location.

In all cases, err on the side of more rather than less consultation and document the rationale for your decision. Never assume that a Tribe or ANC has no interest in the decision or action simply because they did not respond to a notification letter.

The Forest Service consultation policy was developed to comply with the requirements of Executive Order 13175 and to assist Forest Service Line Officers in consulting with tribal governments under a number of Federal laws.

Additional guidance regarding consultation may be found in FSH 1509.13.

1563.11 - General Consultation Requirements

In general, Forest Service officials shall:

1. Identify needs and opportunities for consultation.
2. Plan consultation processes.
3. Conduct consultations.
4. Incorporate results of consultations into decisions.
5. Report on each consultation to consulting partners and the USDA Tribal Consultation Database.
6. Maintain a record of each consultation.

Additional guidance on consultation is set forth in FSH 1509.13.

Exhibit 01 summarizes information on some key laws and Executive Orders that may require consultation and coordination; for more information, the complete statute or regulation should be consulted.

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Tribal Government Consultation and Coordination

Authority	Whom To Contact	Applies to:	Time Frame
AIRFA - American Indian Religious Freedom Act of 1978 (42 U.S.C 1996).	Native Traditional Religious Leaders, Religious Practitioners, and Tribal Officials.	Protect and preserve for American Indians their inherent right of freedom to believe, express and exercise traditional American Indian, Eskimo, Aleut, and Native Hawaiian religion. Evaluate policies and procedures to determine changes necessary to preserve American Indian access, religious cultural rights and practices.	Not specific. Contact during initial evaluation.
ARPA - Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), as amended and implementing regulations (36 CFR 296 et seq.)	Tribal Officials.	Ensure that permits are issued with awareness of tribal perspectives regarding Indian religious or cultural sites on public or Indian lands.	Forest Service must notify the Tribe 30 days before issuing a permit.
FLPMA - Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712(c)(9) and implementing regulations (36 CFR 222 et. seq.).	Tribal Officials.	Section 202 (c) (9) of FLPMA directs the Secretary to coordinate land use planning with tribal planning.	Timely.
Cultural and Heritage Cooperation Authority (CHCA) (Reburial, 25 U.S.C. Chapter 32A, section 3053).	Indian tribe or lineal descendent.	Request for reburial of human remains and cultural items.	Timely.

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CHCA (Closure, 25 U.S.C. Chapter 32A, section 3054)	Affected Indian tribe	Authorizes and ensures access to National Forest System land, to the maximum extent practicable, by Indians and Indian tribes for traditional and cultural purposes. Also allows NFS lands to be temporarily closed from public access for traditional and cultural purposes.	Timely.
CHCA (Forest Products, 25 U.S.C. Chapter 32A, section 3055).	Affected Indian tribe	Authorizes the Forest Service to provide free of charge to Indian tribes any trees, portions of trees, or forest products from National Forest System land for traditional and cultural (not commercial) purposes.	Timely.
CHCA (Disclosure, 25 U.S.C. Chapter 32A, section 3056).	Affected Indian tribe or lineal descendant	General prohibition on disclosure of information relating to reburials, cultural items, uses or activities that have a traditional and cultural purpose and provided with express expectation of confidentiality, notwithstanding requests for information made under 5 U.S.C. 552, commonly known as the Freedom of Information Act (FOIA).	Consult with affected Indian tribe or lineal descendant prior to any disclosure of information concerning reburials; or with appropriate Indian tribes prior to disclosure of other information.
NFMA - National Forest Management Act of 1976 (16 U.S.C. 472a et seq.), as amended and implementing regulations (36 CFR 219.4(a) et seq.).	Tribal Officials.	Provide opportunity to raise issues and comment on land-use plans.	Varies depending upon the stage of the planning process.

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NAGPRA - Native American Graves Protection and Repatriation Act of 1990, as amended.	Tribal Officials, Culturally affiliated Tribe & Lineal Descendants.	Treatment and disposition of certain human remains and associated funerary items and items of cultural patrimony. Also, when human remains or associated funerary items are excavated or accidentally discovered.	Not specific except for certain circumstances (see 25 U.S.C 3001-3013 and FSM2360 for further information).
NEPA - National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq.), as amended, and CEQ regulations at 40 CFR parts 1500-1509.	Tribal Officials. Indian tribes may be participating parties.	Among other purposes, to preserve important historic, cultural and natural aspects of our national heritage. Provide opportunity to participate in land management decisions.	Scoping process, comment period: 30 days on EA, 45 days on EIS.
NHPA - National Historic Preservation Act of 1996, as amended (54 U.S.C. 300101 et seq.).	Tribal Officials, Parties with a demonstrated interest (can include Religious Practitioners). Indian tribes may be concurring parties.	Provide opportunity to consult if Federal undertaking may affect properties of historic value to an Indian tribe on tribal or non-tribal lands. Invite Tribes to participate as concurring parties when requested.	Early, before an undertaking is initiated. See regulations re specific points 36 C.F.R. 800. Can be incorporated into NEPA process.
RFRA - Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.).	Religious Practitioners.	Ensure Agency decisions do not substantially burden free exercise of religion (whether or not compelled by, or central to, a system of religious belief.) unless there is a compelling justification.	Not specific.
Executive Order 13175 of 2000 - Consultation and Coordination with Indian Tribal Governments.	Tribal Governments.	Consult to extent practicable and permitted by law and operate within a government-to-government relationship.	Not specific.

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Executive Order 13007 of 1996 – Indian Sacred Sites.	Tribal Officials and individuals who are an appropriately authoritative representative of an Indian religion.	to the extent practicable, permitted by law, and not clearly inconsistent with agency functions: 1) accommodate access to and ceremonial use of sacred sites, and 2) avoid physically affecting the integrity of such sites.	Not specific.
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1563.12 Consulting Officials

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

This direction is not intended to minimize the importance of staff-to-staff communication and collaboration. On the contrary, staff interactions are essential to set the stage for effective consultation and should be maintained and enhanced. This section only indicates that staff may not serve as the Forest Service Consulting Official in government-to-government consultations. Staff personnel provide needed subject matter expertise, and sometimes they have extensive relationships with tribal staff or leaders. Staff certainly can and should participate in consultation as well as in staff-to-staff and staff-to-leader discussions where it makes sense locally.

In Alaska, in addition to consulting with Indian tribes, the Forest Service is required to consult with Alaska Native Corporations (ANC) on a government-to-corporation basis rather than government-to-government but, as in the government-to-government consultations, the Consulting Officials must have delegated authority to consult.

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The Indian tribe or ANC has the sole authority to designate/authorize who will engage in government-to-government consultation with the Forest Service.

1563.13 - Consultation Timelines

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

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

2. Minimum Consultation Period. Widely applicable national issues must provide a consultation period of at least 120 days from the date the Indian tribe or Alaska Native Corporation likely received the information on which they are being invited to consult. Allow an additional 14 days for delivery time if the notification is by postal service.

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

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

1563.14 - Consultation, Monitoring, and Evaluation

Once a decision on an action that may affect one or more Indian tribes is made, deciding officials shall document and track follow-up actions to ensure implementation. See FSH 1509.13.

1. Database entry. All consultation events must be entered into the USDA Tribal Consultation Database.

2. Record Maintenance. Each staff or Unit conducting consultations shall maintain a consultation record for each consultation.

3. Program Reviews. Consultation monitoring and evaluation of effectiveness must be incorporated, as appropriate, in program reviews. During program reviews, monitor and evaluate the results and effectiveness of consultation.

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1563.15 - Additional Consultation Considerations

1. Supplemental Agency Guidance. Administrative Units and program areas within the Forest Service are encouraged to develop supplemental consultation processes and training that are specific to their programs and consistent with national policy and legal mandates.
2. Compensation. The Forest Service may compensate Tribes and tribal members for specialized tribal expertise or other extraordinary consultation costs to the extent authorized by law. See FSH 1509.13 for guidance on compensation.
3. Emergencies and Exigent Circumstances. Responsible Officials may take such actions as may be necessary in an emergency or under exigent circumstances when consultation prior to the Forest Service action is not feasible. Responsible Officials shall consult with Tribes at the earliest opportunity when emergency actions are taken that may have substantial direct effects on Tribes.

1563.2 - Dispute Resolution

The Forest Service values public input for its policies, and collaboration in decision-making. There are three processes that may be utilized to resolve the dispute:

1 Administrative Review:

Several Forest Service administrative review procedures are available to individual tribal members and Tribal governments who have met the eligibility requirements of the applicable procedure. In general, eligibility is established by submitting specific comments during a public comment opportunity for a Forest Service proposed project or land management plan. These public comment periods vary in length depending on the nature of the proposed action and its complexity. Under the administrative review procedures for project and activity decisions implementing a land management plan (36 CFR 218), Federally-recognized Indian tribes and Alaska Native Corporations can also meet the eligibility requirements when specific written comments as defined in 36 CFR 218.2 are provided during Federal-Tribal consultations. Some of the administrative review procedures occur pre-decisionally and are referred to as objection procedures. Other procedures occur after a decision has been signed and are referred to as appeal procedures. Objection procedures are available for project and activity decisions implementing a land management plan (36 CFR 218) that are documented with a Decision Notice or Record of Decision and certain land management plan proposals (36 CFR 219). Appeal procedures are available for occupancy and special use authorizations (36 CFR 251) and certain land management plan decisions (36 CFR 219). For all of these administrative review procedures, participation by individual tribal members and Tribes is necessary to exhaust their administrative remedies if they wish to be able to file a lawsuit against a particular decision.

2. Mediation:

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The Forest Service utilizes open decision-making processes, including 120-day Tribal Consultation, to garner support for its decisions. Unfortunately, disputes between the Forest Service and others, including Indian tribes, may occur during and after a decision is made. Where appropriate and mutually agreed to, the Forest Service line officer with responsibilities for a particular decision and the Tribe's representative are encouraged to use Alternative Dispute Resolution processes, including mediation, where a neutral third-party facilitates a mutually-agreeable solution. It can help prevent conflict, but the process must be explained and negotiated with the Tribe.

3. USDA Departmental Regulation:

Pursuant to and consistent with DR 1350-002, An Indian tribe may seek conflict resolution through the U.S. Department of Agriculture's Office of Tribal Relations when:

1. An Indian tribe engaged in consultation believes that the Forest Service has not appropriately or adequately considered the needs, desires, or requests of the Tribe, or
2. An Indian tribe believes the Forest Service should engage with them in consultation and the Forest Service has not done so.

For the U.S. Department of Agriculture's USDA Office of Tribal Relations to engage in conflict resolution, it requires:

1. A request to consult from a Tribal Leader; or
2. A request to consult from an Intertribal organization representing Federally Recognized Indian tribes.

In both cases, the Forest Service shall remain primarily responsible for the government-to-government consultation unless there are extenuating circumstances.

1563.3 - Reburial of American Indian and Alaska Native Ancestral Remains and Cultural Items

Tribal requests for reburial of ancestral human remains and cultural items are, in general, closely tied to repatriations of those remains and objects by the Forest Service under the terms of the Native American Graves Protection and Repatriation Act (NAGPRA). However, guidance is provided to ensure that these two actions (repatriation and reburial) are treated as separate, although often related, processes.

1. Repatriation. The Forest Service provides for Indian tribal rights of ownership or control regarding Native American human remains and cultural items, and the Agency has already been repatriating such remains and items to the affected Indian tribe(s) or lineal descendent(s) under the terms of the NAGPRA (25 U.S.C. 3001-3013). NAGPRA

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does not specifically address reburial. Repatriations of American Indian human remains and funerary remains, as well as other objects defined in NAGPRA, are carried out under the Forest Service's statutory responsibilities. In general, guidance regarding the Forest Service's responsibilities regarding repatriation of Native American human remains and cultural items are set forth in the Heritage Program manual at FSM 2360.

2. Reburial. American Indians and Alaska Natives have expressed an interest in reburying the repatriated remains and cultural items of their ancestors on National Forest System lands. Some Forest Service regions and forests have developed procedures for reburials and have approved reburial of American Indian and Alaska Native human remains and associated funerary objects on National Forest System lands. Because of concerns over consistency within the Agency and because NAGPRA does not specifically address reburial, national policy and direction have been developed regarding the reburial of American Indian and Alaska Native human remains and cultural items on National Forest System lands.

Reburial of human remains or cultural items in the possession of the Indian tribe or lineal descendant that have been disinterred from National Forest System land or adjacent sites may be carried out as a discretionary action within the Agency's administrative authorities pursuant to the Cultural and Heritage Cooperation Authority of 2008 (25 U.S.C. Chapter 32A, section 3053). See also FSM 1563.01d.5.

1563.31 - General Reburial Considerations

1. The Forest Service retains the discretion to decide whether to authorize reburial of American Indian and Alaska Native human remains and cultural items on National Forest System lands, and under what conditions reburials will occur.
2. Respect is the foundation for all decisions regarding reburial of American Indian and Alaska Native human remains and cultural items on National Forest System lands, and Forest Service Officials are expected to be sensitive to the diversity of tribal cultural beliefs.
3. All activities and documentation related to reburial of American Indian and Alaska Native human remains and cultural items must be kept confidential to the extent authorized by law.
4. Prior to authorizing reburial on National Forest System lands, the Forest Service shall ensure that the lineal descendant(s) or culturally affiliated Tribe(s) has legal ownership or custody of the remains, and that the requirements of NAGPRA have been met.
5. When the Forest Service authorizes reburial on National Forest System lands, including wilderness and other special designation areas, the Agency shall attempt to accommodate all aspects of lineal descendants and culturally affiliated Tribe(s) requests. Reburials should be at or as close as practicable to the burial sites from which those American Indian and Alaska Native human remains and cultural items were originally recovered. When authorizing reburials, the

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Forest Service shall comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), the National Historic Preservation Act (54 U.S.C. 300101 et seq.), and other applicable laws.

6. For post-1990 excavations or inadvertent discoveries (section 3 of NAGPRA) related to a Forest Service funded, permitted, or licensed project, costs associated with reburial, if authorized, will be considered part of the project costs of the project component.
7. Lineal descendants and/or culturally affiliated Tribal representatives shall be given opportunities to be present and conduct ceremonies at reburial(s) and to be allowed future access to these sites for cultural and spiritual purposes, to the extent permitted by law.
8. In the case of human remains and cultural items recovered from adjacent sites, confirm with the Indian tribe or lineal descendant in possession of the human remains or cultural items that all applicable State laws and regulations regarding ownership or custody have been complied with prior to authorization for reburial on NFS lands.
9. Reburial locations will not constitute the establishment of a new cemetery. While the Forest Service may authorize the use of National Forest System land for the reburial of human remains or cultural items as described in 25 U.S.C. 3053, Indian tribes and lineal descendants may consider a reburial site to be a sacred site (as defined by Executive Order 13007) and to have traditional and religious significance.
10. Ensure that, when considering requests for reburial of human remains and cultural items, Forest Service Line Officers consider the requirement to avoid, to the maximum extent practicable, adverse impacts to cultural items and human remains which are reburied on Forest Service lands

Additional information relating to reburial is located in FSH 1509.13.20 and FSM 2364.03(h).

1563.32 - Reviews for Repatriations and Reburials

The Regional Tribal Relations Program Manager shall conduct periodic reviews to ensure compliance with the Forest Service reburial policy pursuant to requirements of the Cultural and Heritage Cooperation Authority of 2008 (25 U.S.C. Chapter 32A, section 3053). Each review must include the regional heritage resources program manager and other Forest Service programs, as appropriate. Copies of each review must be provided to the Regional Forester and the Director of the Forest Service Office of Tribal Relations in Washington, DC.

The Regional Tribal Relations Program Manager shall also assist the Heritage Program in conducting periodic reviews on compliance with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA).

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1563.4 - Closures for Traditional and Cultural Purposes

Indian tribes may request temporary closures of specific areas for tribal traditional cultural purposes under the Cultural and Heritage Cooperation Authority (25 U.S.C. Chapter 32A, section 3054). When considering such requests, Forest Service Line Officers, with support from appropriate Forest Service staff, should consult with appropriate tribal officials and traditional leaders regarding the need for appropriate signing, educational material, alternative locations, scheduling, and other topics. Closures for traditional and cultural purposes must affect the smallest practicable area for the minimum period necessary for activities of the applicable Indian tribe. All such closure requests and issuance of closure orders shall be copied to the U.S. Department of Agriculture's Office of Tribal Relations. Regulations for the issuance of closure orders, including closures under section 3054 of the Cultural and Heritage Cooperation Authority, are found at 36 C.F.R. 261.53. See FSH 5309.11, chapter 30 for issuance of closure orders. See FSH 1509.13 for guidelines for voluntary closures. See FSH 1509.13 30 and FSH 5309.11 for guidelines for voluntary closures, and FSM 2720 and FSH 5309.11 – special uses administration.

1563.5 - Forest products for traditional and cultural purposes

Indian tribes may request, and the Forest Service may provide, forest products for tribal traditional cultural purposes under the Cultural and Heritage Cooperation Authority (25 U.S.C. Chapter 32A, section 3055).

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

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

Interim direction for implementation of Cultural and Heritage Cooperation Authority, 25 U.S.C. Chapter 32A, section 3055, is found at FSH 2409.18-2012-2, 82.5 - Trees, Portions of Trees, or Forest Products Free of Charge for Indian Tribes for Non-Commercial Traditional and Cultural Purposes.

1563.6 - Prohibition on disclosure

The Forest Service shall, to the full extent allowed under the law, maintain the confidentiality of culturally sensitive information provided by Tribes with the express expectation of confidentiality.

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One of the purposes listed in the Cultural and Heritage Cooperation Authority (CHCA) (25 U.S.C. Chapter 32A, section 3051(5)) is “to authorize the Secretary to protect the confidentiality of certain information, including information that is culturally sensitive to Indian tribes.”

Under the CHCA Prohibition on Disclosure (25 U.S.C. Chapter 32A, section 3056), the Forest Service shall not disclose under section 552 of Title 5, U.S.C. (commonly known as the “Freedom of Information Act”), information relating to:

1. Human remains or cultural items reburied on National Forest System land under section 3053, or
2. Resources, cultural items, uses, or activities that (i) have a traditional and cultural purpose; and (ii) are provided to the Secretary by an Indian or Indian tribe under an express expectation of confidentiality in the context of forest and rangeland research activities carried out under the authority of the Forest Service.

There are exceptions, however, to the prohibitions on disclosure. The Forest Service may disclose information relating to human remains or cultural items reburied on National Forest System land if, before disclosure, the Forest Service:

1. Consults with an affected Indian tribe or lineal descendent;
2. Determines that disclosure of the information
 - a. Would advance the purposes of the subtitle; and
 - b. Is necessary to protect the human remains or cultural items from harm, theft, or destruction; and
3. Attempts to mitigate any adverse impacts identified by an Indian tribe or lineal descendant that reasonably could be expected to result from disclosure of the information.

Handbook directives for Exemption 3 of FOIA can be found at FSH 6209.13, chapter 10, section 11.62. See also FSM 2720 – special uses administration.

Also, the Forest Service, after consultation with appropriate Indian tribes, may disclose information about cultural items, uses, or activities otherwise protected in this authority if the Forest Service determines that disclosure of the information to the public—would:

1. Advance the purposes of this authority;

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2. Not create an unreasonable risk of harm, theft, or destruction of the resource, site, or object, including individual organic or inorganic specimens; and
3. Be consistent with other applicable laws.

1563.7 - Information and Technology Sharing

Since ecosystems transcend land ownership boundaries, effective land and resource management and shared stewardship requires cooperation and collaboration among the Forest Service, other Federal agencies, tribal, State, and county governments, and private landowners. Such cooperation and collaboration will involve the exchange of technical and traditional information.

The retention of traditional plants, uses, practices, and knowledge is a critical issue to American Indian and Alaska Native tribes and their people. Community identity and survival are dependent on continued access to National Forest System lands and other public lands for many Tribes. The maintenance of traditional gathering, hunting, fishing, and other activities; and use of certain landscapes, sites, and locations that contain important natural and cultural resources should be considered in Forest Service land management planning and research activities (see FSM 1920, 1950, and 4000). The Forest Service should also seek to identify traditional knowledge that tribal citizens hold about ecosystems that may be helpful in meeting management objectives of both the Forest Service and Tribes.

1563.8 - References

This section contains further explanatory information regarding authorities identified in section 1563.01 – Authorities.

1563.8a - United States Constitution and Indian Tribes

1. Commerce with Indian Tribes. Article 1, Section 8, Clause 3, gives Congress the power “[t]o regulate commerce with foreign nations, and among the several states, and with the Indian tribes”.
2. Federal Property Clause. Article IV, Section 3, Clause 2, known as the Federal Property Clause, establishes Congress’ authority to dispose of and make all rules and regulations respecting the territory or property of the United States. It states “The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.” Since lands held in trust by the United States are sometimes considered a “territory or property of the United States,” the Federal Property Clause may apply to tribal lands.
3. Treaties with Indian Tribes.

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a. Article II, Section 2, Clause 2, known as the treaty clause, grants authority to the President to make treaties with the advice and consent of the Senate.

In full, this clause states the President “shall have Power, by and with the Advice and Consent of the Senate to make Treaties, provided two thirds of the Senators present concur.”

b. Under Article VI, Clause 2, treaties are recognized as a supreme law of the land and States must recognize treaties even if they conflict with State constitutions or laws. This clause, known as the supremacy clause, states “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

1563.8b - Treaty Rights and the Federal Trust Responsibility

1. Treaty Rights. The United States entered into over 300 treaties with Indian tribes prior to 1871. Under these treaties, Indian tribes ceded significant portions of their aboriginal lands to the United States. Each of these treaties is unique but, generally speaking, Indian tribes reserved separate, isolated reservation lands under the treaties and retained certain rights to hunt, fish, graze, and gather on the lands ceded to the United States. These rights retained on ceded lands are known as “off-reservation treaty rights” or “other reserved rights”.

Many treaties involve ceded lands that are within the boundaries of present day National Forest System lands. The Forest Service shall administer lands subject to off-reservation treaty rights in a manner that protects Indian tribes’ rights and interests in the resources reserved under treaty.

Indian Treaty rights are property rights held by the sovereign Indian tribes who signed the treaties. These rights can only be extinguished by an express and unequivocal act of Congress. When courts interpret treaties, they shall use canons of construction in favor of Indian tribes, meaning that:

- a. Treaty rights must be interpreted as the Indian tribes understood them at the time of treaty signing, and
- b. Ambiguous treaty provisions are also to be interpreted in the Indian tribe’s favor. Similarly, the “reserved rights doctrine” states that Indian tribes retain all rights not explicitly abrogated in treaties or other legislation.

Indian tribes may use modern hunting and fishing implements when exercising their treaty rights, and they are not confined to use implements that existed at the time of treaty

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signing. Treaty rights may include an “easement of access” to the areas on which such treaty rights were reserved.

In 1971, Congress passed the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. Chapter 33, section 1601 et seq., instead of settling land claims through treaties. The Act granted title to 44 million acres, along with cash payments and other benefits, to Alaska Natives while extinguishing Alaska Native title to remaining ancestral lands. Alaska Native land control was given to State-chartered Alaska Native Corporations. See FSM 1563.01c – Consultation with Indian tribes and Alaska Native Corporations – for Forest Service responsibilities to consult on a government-to-corporation basis with Alaska Native Corporations.

2. Trust Responsibility. Trust responsibility arises from the United States' unique legal relationship with Indian tribes. It derives from the Federal Government's consistent promise, in the treaties that it signed, to protect the safety and well-being of the Indian tribes and tribal members in return for their willingness to give up their lands. The Federal Indian trust responsibility is now defined as a legally enforceable fiduciary obligation, on the part of the United States, to protect tribal lands, assets, resources, and reserved rights, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes. This responsibility requires that the Federal Government consider the best interests of the Indian tribes in its dealings with them and when taking actions that may affect them. The trust responsibility includes protection of the sovereignty of each tribal government.

First and foremost, it is our responsibility to view every Agency action through the lens of tribal effect; of tribal benefit and detriment. For example: How can Indian tribes benefit from this new law or program? How does this new policy affect tribal interest? Does this harm the Indian tribes in any way? Is this an unfunded mandate? If there is a potential effect, then we shall ensure tribal interest is understood by following the laws and Executive Orders that require government-to-government consultation. Further, we are responsible to the American public, as well as to the American Indian and Alaska Native tribes, to be transparent and accountable for that consultation and to honor traditional values and wisdom in so doing.

The Forest Service best serves the Federal Government’s trust responsibility by:

- a. Ensuring our actions never diminish the rights of Indian tribes and tribal members;
- b. Ensuring Forest Service program benefits reach Indian tribes and tribal communities;
- c. Observing and enforcing all laws enacted for the protection of tribal cultural interests;

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- d. Observing the principles of consultation whenever our policies, decisions, or other actions have tribal implications; and
- e. Treating NFS resources as trust resources where usufructuary rights exist.

1563.8c - Consultation with Indian Tribes and Alaska Native Corporations

For purposes of consultation with Indian tribes, determinations as to when a Federal action may have substantial effects on a Tribe's interests may be defined by the Tribe's views. If questions arise over what decisions or policies may have substantial direct effect, then consult with the potentially affected Tribe to ascertain their views.

1. Culture and Heritage Cooperation Authority of 2008, 25 U.S.C. Chapter 32A, section 3056(b)(2). Requires the Forest Service to consult with affected Indian tribes before releasing culturally sensitive information.
2. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Issued November 6, 2000, directs Federal agencies 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. This Executive Order further directs Federal agencies to develop an "accountable process" for ensuring meaningful and timely input by tribal officials in development of legislation and regulatory policies that have tribal implications. The Executive Order applies to regulations, legislative comments or proposed legislation, and other policies, 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. The full text of the Executive Order is set out in FSH 1509.13.
3. Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1712(b)) requires coordinating of land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes. (See FSM 1563.01d.1).
4. National Environmental Policy Act's (NEPA) of 1969 (42 U.S.C. 4321 et seq.) Council on Environmental Quality (CEQ) implementing regulations at Title 40 of the Code of Federal Regulations, parts 1500-1509 (40 CFR parts 1500-1509) require Federal agencies to invite Indian tribes to participate in the scoping process for projects and activities that affect Indian tribes and requires NEPA documentation of environmental impacts.

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5. National Forest Management Act's (NFMA) of 1976 (16 U.S.C. 472a et seq.) regulations (36 C.F.R 219.4(a)) implementing the NFMA direct the Forest Service to consult with and coordinate forest planning with Indian tribes. (See FSM 1563.01d.2)
6. National Historic Preservation Act of 1966 (NHPA) (54 U.S.C. 300101 et seq.), as amended in 1992. 54 U.S.C. § 300101 requires Agency officials to consult with Indian tribes concerning the effects of undertakings on historic properties of traditional and cultural importance to Indian tribes.
7. Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), (25 U.S.C. 3001 et seq.). Permits for the excavation and/or removal of "cultural items" protected by NAGPRA require Tribal consultation, as do discoveries of "cultural items" made during activities on Federal or Tribal lands under 25 U.S.C. 3002. The Secretary of the Interior's implementing regulations are at 43 CFR part 10.
8. Presidential Memorandum of November 5, 2009. President Barack Obama issued a Presidential Memorandum to the heads of executive departments and agencies on the subject of Tribal Consultation. In this Memorandum, the President stated that "[m]y 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." The Memorandum directed each Federal agency to develop and submit to the Office of Management and Budget (OMB) a plan of action to implement the Executive Order, as well as annual progress reports on the status of those plans.
9. Public Law (P.L.) 108-199 and Public Law (P.L.) 108-447 added language that directed the Office of Management and Budget and all Federal agencies to consult with Alaska Natives and Alaska Native Corporations on the same basis as Indian tribes under Executive Order 13175.
10. Title 36, Code of Federal Regulations, Part 219 (Planning Rule). The Forest Service's 2012 Planning Rule provides direction for NFS land management planning under NFMA. Section 219.4 of the rule requires opportunities for public and Tribal participation and coordination throughout the planning process.
11. Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 note). This act was adopted to curb the practice of imposing unfunded mandates on non-Federal governments, including tribal governments, and to improve cooperation and working relations among different levels of government. The Act directs Federal agencies to develop an effective process to permit elected officials of State, local, and tribal governments (or their designated officials acting on their behalf) to provide meaningful input in the development of regulatory proposals containing significant federal intergovernmental mandates.

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In order to facilitate the consultation process, section 204(b) of the Act provides an exemption from the Federal Advisory Committee Act (FACA) (P.L. 92-463; 5 U.S.C. App. 2) “for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.” Section 204(b) exempts government-to-government consultation with Tribes from FACA.

OMB guidance (M-95-20, 21 September 1995) for implementing section 204(b) states:

This exemption applies to meetings between Federal officials and employees and . . . tribal governments acting through their elected officers, officials, employees, and Washington representatives, at which 'views, information, or advice' are exchanged concerning the implementation of intergovernmental responsibilities or administration, including those that arise explicitly or implicitly under statute, regulation, or Executive Order. The scope of meetings covered by this exemption should be construed broadly to include meetings called for any purpose relating to intergovernmental responsibilities or administration. Such meetings include, but are not limited to, meetings called for the purpose of seeking consensus; exchanging views, information, advice, and/or recommendations; or facilitating any other interaction relating to intergovernmental responsibilities or administration.

* * *

As the Conference Report [for section 204(b) of the UMRA] stated, "an important part of efforts to improve the Federal regulatory process entails improved communications with ... tribal governments. Accordingly, this legislation will require Federal agencies to establish effective mechanisms for soliciting and integrating the input of such interests into the Federal decision-making process".

12. USDA Departmental Regulation 1350-002, Tribal Consultation, Coordination, and Collaboration (DR), published January 18, 2013. The Regulation directs the USDA and its agencies to provide federally recognized Indian tribes the opportunity for government-to-government consultation and coordination in policy development and program activities which have direct and substantial effects on their Tribe. This helps to ensure that tribal perspectives on the social, cultural, economic, and ecological aspects of agriculture, as well as tribal food and natural resource priorities and goals, are heard and fully considered in the decision-making processes of the Department and its agencies. The Departmental Regulation:

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- a. Sets forth criteria that all USDA agencies will use to identify actions that require an invitation be extended to Federally recognized Indian tribes to engage in consultation,
- b. Establishes a minimum set of requirements and expectations with respect to consultation and coordination throughout the USDA, including the Office of the Secretary and each of the Department's agencies,
- c. Holds the head of each USDA agency accountable for the implementation of this policy,
- d. Establishes requirements for reporting on consultation, as well as training and education for agency employees, and
- e. Affirms that each USDA agency is responsible for appropriate consultation and collaboration with Indian tribes.

1563.8d - National Forest System- Cooperative Land Management and Planning with Indian Tribes

1. Coordination with Tribal Land Use Management and Planning. The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701et seq.) at Section 202(b) provides that:

In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

Section 202 (c)(9) of FLPMA further directs the Secretary to coordinate land use planning with Indian tribes, to the extent the Secretary finds practical, by keeping apprised of tribal land use plans; ensuring that consideration is given to those tribal plans that are germane in the development of land use plans for public lands; assisting in resolving inconsistencies between Federal and tribal plans; and providing for meaningful public involvement in the development of land use programs, land use regulations, and land use decisions for public lands.

2. Consultation and Coordination with Indian Tribes on Forest Planning. Regulations implementing the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 472a et seq.) direct the Forest Service to consult with and coordinate forest planning with Indian tribes. The Forest Service must also consult with Alaska Native Corporations pursuant to PL 108-199 and PL 108-447.

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On April 9, 2012, the Department of Agriculture published in the *Federal Register*, a final rule, codified at 36 CFR Part 219, for NFS land management planning under NFMA. Section 219.4 of the final rule requires opportunities for public and tribal participation and coordination throughout the planning process. Section 219.4(a)(2) requires consultation with Federally Recognized Indian tribes or Alaska Native Corporations, and 219.4(a)(3) requires that the responsible official request “information about native knowledge, land ethics, cultural issues, and sacred and culturally significant sites” during consultation and opportunities for tribal participation. Section 219.6(b) requires the assessment to include identification and evaluation of information about cultural conditions, areas or tribal importance, and cultural and historic resources and uses. Section 219.8 requires “cultural and historic resources and uses” be taken into account to guide a plan area’s contributions to social and economic sustainability. Section 219.10(b)(1)(ii) requires plan components for a new plan or plan revision must provide for “protection of cultural and historic resources,” and “management of areas of Tribal importance.” The final rule also includes recognition of and requirements for assessment and provision of “ecosystem services,” which include “cultural heritage values” in their sub-definition of “cultural services” (sec. 219.19).

While land management plans must balance all issues related to management of NFS lands and resources, development of a land management plan may provide a proactive process for evaluating methods of consulting, coordinating, and collaborating with Indian tribes, including protecting American Indian and Alaska Native sacred sites. Forest Service decision makers must consider sacred sites in land management plans and incorporate processes to protect sacred sites wherever practicable.

Forest Service directives for implementing 36 C.F.R. Part 219 are located in FSM 1920 and FSH 1909.12.

3. Consultation and Coordination with Indian Tribes on National Forest System Project Planning and Decision Making. The National Environmental Policy Act’s (NEPA of 1969), 42 U.S.C. 4321 et seq.) Council on Environmental Quality (CEQ) implementing regulations at Title 40 of the Code of Federal Regulations, parts 1500-1509 (40 CFR parts 1500-1509) require Federal agencies to invite Indian tribes to participate in the scoping process for projects and activities that affect Indian tribes and requires NEPA documentation. Section 1501.2 requires that:

The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested persons and organizations when its own involvement is reasonably foreseeable.

Indian tribes may also meet with Line Officers in advance of the formal planning processes as part of ongoing consultation, cooperation, and collaboration relating to planned or potential projects.

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1563.8e - National Forest System – Subsistence Uses in Alaska

Section 801 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (16 U.S.C. 3101 et seq.) provides that:

Congress finds and declares that (1) The continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional and social existence; (and) . . . (4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents (16 U.S.C. 3111)

ANILCA provides that the taking on public lands of fish and wildlife for nonwasteful subsistence uses by Native and non-Native rural residents of the State of Alaska shall be accorded a priority over the taking of fish and wildlife for other purposes, except as otherwise provided in the Act and other Federal laws. Specifically, 16 U.S.C. 3114 provides that: “Except as otherwise provided in this act and other Federal laws, the taking on public lands of fish and wildlife for non-wasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes.” 16 U.S.C. 3120 stipulates how subsistence priorities affect land use decisions:

In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his/her designee shall evaluate the effect of such use, occupancy, or disposition on subsistence use and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

Section 810 also requires prior to withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses that the heads of Federal agencies to determine that:

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- (A) Significant restrictions of subsistence are necessary and consistent with sound management principles for the utilization of the public lands.**
- (B) The proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such a use, occupancy, or other disposition; and**
- (C) Reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.**

Sections 811(a) and 812 direct the Secretary of the Interior to ensure both Native and non-Native rural residents have reasonable access to subsistence resources on public lands.

While ANILCA does not provide a Native preference for subsistence in Alaska, the Federal Subsistence Board and those delegated authority to act on behalf of the board engage in consultation with Indian tribes and Alaska Native Corporations, which is conducted pursuant to Executive Order 13175, the [Federal Subsistence Board's Tribal Consultation Policy](#) and the Draft Alaska Native Claims Settlement Act (ANCSA) Corporations Consultation Policy.

1563.8f - National Forest System – Tribal Cultural Resources and Indian Sacred Sites

Federal land managing agencies hold in public trust a great diversity of landscapes and sites, including many culturally important sites held sacred by Indian tribes. Across all Federal agencies, the Forest Service's responsibility to protect tribal cultural resources and sacred sites is codified in Executive Orders, legislation, regulations, and other statutory authorities. Some authorities relate to cultural resources as sites of historical importance and other authorities relate to sacred sites as places held sacred because of religious or spiritual importance.

On December 6, 2012, the Secretary of Agriculture accepted the recommendations included in the [USDA Policy and Procedures Review and Recommendations: Indian Sacred Sites](#). That report recognizes many authorities that Forest Service personnel adhere to in protecting the cultural resources and sacred sites of Native Americans and Alaska Natives. Implementation of the recommendations from that report increases the level of protection and access to Indian sacred sites.

In general, the Forest Service Heritage Program is the lead staff for cultural resources and the Tribal Relations Program is the lead staff for Indian sacred sites. However, there is a great deal of overlap because these are not mutually exclusive categories. For actions that may affect Indian tribes or Alaska Native Corporations, the two programs have shared responsibilities. The Heritage Program directives are set forth at FSM 2360.

1. [American Indian Religious Freedom Act \(AIRFA\) \(42 U.S.C. 1996\)](#). This act declares that:

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. . . 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 Indian, 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 ceremonial and traditional rites.

Actions protective of cultural resources, watersheds, animal or biological communities, and other natural resources that also protect an American Indian or Alaska Native sacred site may serve a secular purpose, as well as accommodate Tribal religion.

2. Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. 470cc et seq.), as amended, establishes a permit process for the excavation or removal of any archaeological resources from Federal and Indian lands. Agency regulations at 36 CFR part 296 implement ARPA. If a permit issued under ARPA may result in harm to, disturbance to, or destruction of, any religious or cultural site, as determined by the Federal land manager, the Federal land manager shall notify any federally recognized tribe which may consider the site as having religious or cultural importance. The Forest Service can, but is not required to, do the same in regards to non-Federally recognized Indian tribes (see 36 CFR 296.7). Further, 36 C.F.R. part 296 :

- a. Establishes criminal and civil penalties for illegally excavating, removing, damaging, or defacing any archeological resources on federal lands,
- b. Establishes provisions for the confidentiality of archeological resources of public lands,
- c. Provides criminal penalties (felony and misdemeanor) and civil penalties for the unauthorized excavation, removal, damage, alteration, defacement, or the attempted unauthorized removal, damage, alteration, or defacement of any archaeological resource, more than 100 years of age, found on public lands or Indian lands
- d. Includes National Forest System lands in its definition of public lands,
- e. Prohibits the sale, purchase, exchange, transportation, receipt, or offering of any archaeological resource obtained from public lands or Indian lands in violation of any provision, rule, regulation, ordinance, or permit under the act, or under any Federal law, and
- f. Makes no distinction regarding National Register of Historic Places eligibility, and directs Federal land managers to survey land under their control for archaeological resources and create public awareness programs concerning archaeological resources.

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3. Cultural and Heritage Cooperation Authority (25 U.S.C. Chapter 32A, sections 3053 and 3056). These two sections of the Cultural and Heritage Cooperation Authority authorizes the Forest Service to utilize National Forest System land for the reburial of human remains and cultural items, including human remains and cultural items repatriated under the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 et seq.); and prevent the unauthorized disclosure of information regarding human remains or cultural items reburied on National Forest System land. The pertinent language of these two sections is as follows:

Section 3053(a) Reburial Sites: In consultation with an affected Indian tribe or lineal descendant, the Secretary may authorize the use of National Forest System land by the Indian tribe or lineal descendant for the reburial of human remains or cultural items in the possession of the Indian tribe or lineal descendant that have been disinterred from National Forest System land or an adjacent site.

Section 3053(b) Reburial: With the consent of the affected Indian tribe or lineal descendant, the Secretary may recover and rebury, at Federal expense or using other available funds, human remains and cultural items described in subsection 30533053(a) at the National Forest System land identified under that subsection.

c) Section 3056(a)(1) Prohibition on Disclosure: The Secretary shall not disclose under section 552 of Title 5, U.S.C. (commonly known as the “Freedom of Information Act”), information relating to—(A) subject to subsection (b)(1), human remains or cultural items reburied on National Forest System land under section 30533053. Subsection (b)(1) Reburial: The Secretary may disclose information described in subsection (a)(1)(A) if, before disclosure, the Secretary—(A) consults with an affected Indian tribe or lineal descendant; (B) determines that disclosure of the information (i) would advance the purposes of the subtitle; and (ii) is necessary to protect the human remains or cultural items from harm, theft, or destruction; and (C) attempts to mitigate any adverse impacts identified by an Indian tribe or lineal descendant that reasonably could be expected to result from disclosure of the information.

4. Executive Order 13007, Indian Sacred Sites. This Executive Order directs Federal land management agencies, to the extent permitted by law, and not clearly inconsistent with essential agency functions, to accommodate access to and use of Indian sacred sites, to avoid affecting the physical integrity of such sites wherever possible, and, where appropriate, to maintain the confidentiality of sacred sites. Federal agencies are required to establish, where practicable and appropriate, a process for ensuring that reasonable

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notice is provided to affected Indian tribes of proposed Federal actions or policies that may affect Indian sacred sites. Sacred sites are specific, discrete, narrowly delineated locations on federal land identified by Indian tribes.

5. Executive Order 13287 – Preserve America, issued March 3, 2003, establishes Federal policy to provide leadership in preserving America’s heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the Federal Government. The Order encourages agencies to seek partnerships with State, Tribal, and local governments, and the private sector to make more efficient and informed use of historic properties for economic development and other recognized public benefits. The Order requires Federal agencies to review and report on their policies and procedures for compliance with National Historic Preservation Act, Section 110 and 111, improve Federal stewardship of historic properties, and promote long-term preservation and use of those properties as Federal assets contributing to local community economies.

The Order requires the head of each agency to designate a Senior Policy Official. In addition, it directs the Secretary of Commerce, working with other agencies, to use existing authorities and resources to assist in the development of local and regional heritage tourism programs.

6. Federal Lands Recreation Enhancement Act (FLREA) (16 U.S.C. 6801, et seq.). FLREA is the authority by which Federal land management agencies charge fees for certain services and facilities. Section 6802(d), Limitations on recreation fees, states the following, in relevant part:

(1) Prohibition on fees for certain activities or services:

The Secretary shall not charge any standard amenity recreation fee or expanded amenity recreation fee for Federal recreational lands and waters administered by the Bureau of Land Management, the Forest Service, or the Bureau of Reclamation under this chapter for any of the following:

* * *

(I) For any person who has a right of access for hunting or fishing privileges under a specific provision of law or treaty.

(J) For any person who is engaged in the conduct of official Federal, State, Tribal, or local government business.

7. National Historic Preservation Act of 1966 (NHPA) (54 U.S.C. 300101 et seq.), as amended extends the policy in the Historic Sites Act to State and local historical sites as well as those of national significance, expands the National Register of Historic Places,

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establishes the Advisory Council on Historic Preservation and the State Historic Preservation Officers, and requires agencies to designate Federal Preservation Officers.

- a. NHPA Section 101(d)(2) establishes criteria for designating Tribal Historic Preservation Officers to assume the functions of a State Historic Preservation Officer on Tribal lands. 54 U.S.C. 302702.
 - b. NHPA Section 106 directs all Federal agencies to take into account the effects of their undertakings (actions, financial support, and authorizations) on properties included in or eligible for the National Register. 54 U.S.C. § 306108. Advisory Council on Historic Preservation regulations at 36 CFR part 800 implement NHPA Section 106.
 - c. NHPA Section 110 establishes inventory, nomination, protection, and preservation responsibilities for federally owned historic properties. 54 U.S.C. §§ 306101(a), 306102, 306107, 306113, and 306114.
8. Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 et seq.) NAGPRA provides a process for museums and Federal agencies to return certain Native American cultural items – human remains, funerary objects, sacred objects, or objects of cultural patrimony – to lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations. NAGPRA includes provisions for unclaimed and culturally unidentifiable Native American cultural items, intentional excavation and unanticipated discovery of Native American cultural items on Federal and Tribal lands, and penalties for noncompliance and illegal trafficking. The Act requires agencies and museums to identify holdings of such remains and objects and to work with appropriate Native American groups toward their repatriation. Permits for the excavation and/or removal of “cultural items” protected by the act require Tribal consultation, as do discoveries of “cultural items” made during activities on Federal or Tribal lands. The Secretary of the Interior’s implementing regulations are at 43 CFR part 10.
9. Religious Land Use and Institutionalized Persons Act of 2000 (42 U.S.C. 2000cc(a)).

This act requires that no government shall . . .

“ . . impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution -

(A) is in furtherance of a compelling governmental interest; and

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(B) is the least restrictive means of furthering that compelling governmental interest.”

10. Religious Freedom Restoration Act of 1993 (RFRA) (42 U.S.C. 2000bb-1(a)). This act reiterated that the Government may . . .

**“. . . substantially burden a person’s exercise of religion only if it demonstrates that application of the burden to the person-
(A) is in furtherance of a compelling governmental interest; and
(B) is the least restrictive means of furthering that compelling governmental interest.”**

1563.8g - National Forest System – Tribal Forest Protection Act

The Tribal Forest Protection Act of 2004 (118 Stat. 870, P.L. 108-278, codified at 25 U.S.C. 3115a, Tribal forest assets protection (TFPA)). The TFPA provides the authority for an Indian tribe and the Forest Service to enter into an agreement or contract to carry out a project to protect Indian forest land or rangeland that meets certain criteria. If an Indian tribe’s project proposal is denied, the Forest Service must provide a notice of denial that:

1. Identifies the specific factors that caused, and explains the reasons that support, the denial;
2. Identifies potential courses of action for overcoming specific issues that led to the denial; and
3. Proposes a schedule of consultation with the Indian tribe for the purpose of developing a strategy for protecting the Indian forest land or rangeland of the Indian tribe and interests of the Indian tribe in Federal land.

The Forest Service policy to implement the TPFA is included in FSH 2409.19, Chapter 60, Stewardship Contracting.

1563.8h - National Forest System – Food, Conservation, and Energy Act of 2008, Title VIII, Subtitle B

Title VIII, Subtitle B of the Food, Conservation, and Energy Act of 2008 was codified as the Cultural and Heritage Cooperation Authority (25 U.S.C. Chapter 32A) and included these purposes:

(1) to authorize the reburial of human remains and cultural items on National Forest System land, including human remains and cultural items repatriated under

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the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.);

(2) to prevent the unauthorized disclosure of information regarding reburial sites, including the quantity and identity of human remains and cultural items on sites and the location of sites;

(3) to authorize the Secretary of Agriculture to ensure access to National Forest System land, to the maximum extent practicable, by Indians and Indian tribes for traditional and cultural purposes;

(4) to authorize the Secretary to provide forest products, without consideration, to Indian tribes for traditional and cultural purposes;

(5) to authorize the Secretary to protect the confidentiality of certain information, including information that is culturally sensitive to Indian tribes;

(6) to increase the availability of Forest Service programs and resources to Indian tribes in support of the policy of the United States to promote tribal sovereignty and self-determination; and

(7) to strengthen support for the policy of the United States of protecting and preserving the traditional, cultural, and ceremonial rites and practices of Indian tribes, in accordance with Public Law 95-341 (commonly known as the American Indian Religious Freedom Act; 42 U.S.C. 1996).

Those purposes are to be accomplished in four areas:

1. (Sec. 3053) Reburial of human remains and cultural items (See FSM 1563.3)
2. (Sec. 3054) Temporary closure for traditional and cultural purposes (See FSM 1563.4)
3. (Sec. 3055) Forest products for traditional and cultural purposes (See FSM 1563.5)
4. (Sec. 3056) Prohibition on disclosure (See FSM 1563.6)

See also FHM 1563.01d.3, FSM 1563. and FSH 1509.13.