



**National Listening Session
FINAL THEMES SUMMARY**

*November 29, 2010
2:00 p.m.-5:00 p.m. EST*

Purpose of the Listening Session

On November 29, 2010, the U.S. Department of Agriculture (USDA) and the U.S. Forest Service (Forest Service) held a National Listening Session for tribes on sacred sites issues. This call initiated a year long process to develop recommendations for USDA Secretary Thomas J. Vilsack on how USDA and the Forest Service can do a better job addressing sacred site issues while balancing the agency's mission to sustain the health, diversity and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. This process will build on the outcomes of the Forest Service effort conducted in 2004-2007 to review the agency's implementation of Executive Order 13007 on Indian Sacred Sites.

The November 29, 2010 listening session was facilitated by Betsy Daniels from Triangle Associates, Inc. under a contract with the U.S. Institute for Environmental Conflict Resolution. This summary was prepared for the USDA/Forest Service Sacred Sites team by Betsy Daniels and the Triangle Associates team.

This listening session will be followed by regional and local listening sessions in January and February of 2011, the development of a draft report by USDA and the Forest Service in March and April of 2011, and consultation events with tribes on this draft report in May through August of 2011. The schedule for the regional listening sessions will be announced in December 2010 on the sacred sites website (www.fs.fed.us/spf/tribalrelations/sacredsites.shtml), through the National Congress of American Indians (NCAI) publications, and other tribal news sources and e-mail list-serves.

The objective of this call was to hear from tribal representatives about:

- The past, present, and future of Forest Service protection of sacred sites for tribes including what's happened in the past, what's happening now, and what they wish for the future, what has worked, been successful, what has not worked, and what tools and techniques are recommended.
- How participants recommend that the consultation events on the draft report to Secretary Vilsack be conducted.

Summary of Themes

During the three-hour call, participants called in from around the country and a total of 194 phone lines were recorded as connected to the listening session. The exact number of participants is unknown as several callers noted that they were calling in on the same telephone line. A total of 32 callers had the opportunity to provide comments, and an additional 15 participants provided written comments by e-mail.

Overall, participants reminded the Forest Service about the importance of sacred sites to Native American people. Several themes emerged from the comments provided by phone and e-mail during the listening session including:

- I. Comments and recommendations on the current Forest Service review of sacred sites uses
- II. Relations between tribes and the Forest Service on sacred sites issues
- III. Law, policy, and precedent from recent lawsuits related to sacred sites
- IV. Activities of the Forest Service related to sacred sites protection
- V. Common issues of concern related to specific sacred sites

A summary of the comments related to each of these themes is provided below. Each summary statement or bullet may represent comments from one or more individuals. The complete transcript of the listening session is available by request at TribalSacredSites@fs.fed.us.

I. COMMENTS AND RECOMMENDATIONS ON THE CURRENT FOREST SERVICE REVIEW OF SACRED SITES USES

In-person government-to-government consultation and face-to-face meetings related to sacred sites are essential.

- Telephonic listening sessions and webinars are not as substantial as face-to-face consultation with elders.
- In order to adequately discuss the issue of sacred sites with tribes, face-to-face high level meetings with the government are required.
- The desired outcomes of face-to-face meetings include development of specific policies for tribal sacred sites concerns.
- More than just consultation should occur – a true partnership with tribes is needed.

The right tribal people must be involved when discussing sacred sites.

- Incidents have occurred where Forest Service officials consulted with the incorrect individuals about removal of remains from burial sites – need to connect with the right people.
- Consultation should include more than governmental representatives. Involving tribal spiritual leaders and elders in the sacred sites process is critical as many are not associated with a specific tribal government.
- Indigenous elders, medicine people, and spiritual leaders should have a role in consultation and decision-making.
- A difference exists between those that hold cultural knowledge and tribal governments – both groups need to be included as they are complementary to one another.
- Create a formal process to include non-federally recognized tribes.

The true measure of success will be demonstrated through actions.

- While a listening session is a good first step, it will be necessary for the Forest Service to create real dialogue through direct consultations and produce on-the-ground actions.
- Listening sessions do not produce actual dialogue; input is given, but most often there is no follow through and tribes do not see results.

II. RELATIONS BETWEEN TRIBES AND THE FOREST SERVICE ON SACRED SITES ISSUES

Effective relationships between Forest Service staff and tribes in each region require on-going communications with the right contacts at each tribe, cultural orientation and training for Forest Service staff, and liaisons that are tribal members.

- There are successful models for tribes and the Forest Service sharing the cost of Forest Service liaisons that are tribal members.
- Ongoing communication with tribes at the local level is essential. Liaisons could help with more effective public education and outreach.
- The USDA/Forest Service should work with tribes to co-develop tribe-specific cultural orientation.
- Each National Forest should conduct individual consultations or orientations with each tribe. Forest Service staff turnover affects the quality of the Forest Service's relationships with tribes.
- Training for current and new Forest Service and tribal staff is critical to maintain relationships.

The current Forest Service multiple use mission may not align with the protection of sacred sites.

- Participants questioned the ability of the Forest Service to work with sacred sites while maintaining the current multiple use mission.
- The San Francisco Peaks case was noted as an example where the needs of indigenous peoples come into conflict with the needs of the Forest Service and its multiple use mission.
- The Forest Service should examine whether it is describing a need or a want – is multi-use recreation a need or is it really a want? Participants noted that while recreation may be desirable, clean water, medicines, and a healthy environment are more important.
- The Forest Service should examine how the Forest Service’s multiple use mission filters down from the national to local levels.
- The Forest Service mission statement should include reference to sacred sites or cultural resources.

Past actions of the Forest Service have often negatively impacted sacred sites directly and therefore limit the ability of tribes to trust the Forest Service.

- Some Forest Service actions have not been respectful of burial sites.
- The U.S. government should sign the United Nations Declaration on the Rights of Indigenous Peoples.
- Because of past Forest Service actions, it will be difficult to develop trust that the Forest Service is changing for the better.

Successes and good relationships do exist between tribes and the Forest Service at the local and regional level.

- Some good relationships exist with line officers and other Forest Service staff at the local and regional level.
- A quarterly tribal forum to keep tribes up-to-date with Forest Service activities is a model that was noted as working well.
- Successful relationships with the Forest Service allow for Native Americans to become advocates for the Forest Service.
- Forest Service archaeologists need to work closely with Tribal archaeologists when accessing or researching sacred sites and agreements need to be established to ensure this happens.

III. LAW, POLICY, AND LEGAL PRECEDENT RELATED TO SACRED SITES

Clarification is necessary regarding the implications of specific provisions of the Farm Bill related to sacred sites on Forest Service land.

- The recent Farm Bill was noted as enacting important tools, including Sections 8103 on Burial on Forest Service land, 8104 on Temporary Closure of Forest Service Land for Traditional or Cultural Purposes, and 8106 on the specific FOIA exemption preventing release of tribal confidential information on reburial information and cultural practices. Meaningful consultation regarding the implementation of these tools should occur.
- *Question:* How will the non-disclosure provisions of the 2008 Farm Bill relating to sacred sites be implemented and will the Forest Service develop internal guidance regarding this provision?
Response: This internal guidance is being developed.
- *Question:* Will there be consultation on the implementation of the provisions in the Farm Bill, such as reburial, including recent interim regulations?
Response: Yes, tribes can request consultation regarding these specific provisions of the Farm Bill by contacting the Tribal Liaison in each Region.

Forest Service rulemaking and land management can better accommodate sacred sites issues.

- Consideration of the American Indian Religious Freedom Act needs to occur when the Forest Service implements its rule making.
- The Forest Service should conduct land closures – similar to what it does for forestry or mining – for sacred sites uses.
- Sacred sites management and policies for the Forest Service, Bureau of Indian Affairs, and U.S. Fish and Wildlife Service, and other federal agencies should be consistent.
- The Tribal Forest Protection Act does not place enough responsibility for protection of sacred sites on the Forest Service.
- The tribes requested additional resources so they could participate in National Environmental Policy Act (NEPA) processes.
- There was caution expressed for how the NEPA process was applied in the San Francisco Peaks case.

The 1872 Mining Law prevents the protection of sacred sites on National Forest system land.

- The 1872 Mining Law and the inability of the Forest Service to prevent mining on National Forest System land has significant impacts on sacred sites.
- The 1872 Mining Law trumps all legal defenses that tribes have (e.g., the Native American Graves Protection and Repatriation Act), thus making it almost impossible to protect sacred sites from mining.
- Numerous new mining operations are proposed in the Southwest; the size and the amount of resources used (primarily water) for some of these mines will impact sacred sites.

IV. ACTIVITIES OF THE FOREST SERVICE RELATED TO SACRED SITES PROTECTION

The Forest Service needs to provide adequate funding to manage, inventory, and protect sacred sites.

- The Forest Service should partner with Tribes to advocate for this funding.

Tribes are concerned about retaining the confidentiality of sacred site locations and activities.

- The Forest Service’s volunteer stewardship program is a concern as the tribes do not have control over who the volunteers are and what training they receive.
- Tampering and other inappropriate activities have been observed at and around sacred sites.
- Some issues with confidentiality have occurred due to a misinterpretation or failure to implement non-disclosure provisions about sensitive sacred sites information.
- Cooperative agreements like memorandums of agreement (MOAs) may be beneficial to help increase trust and understanding for sacred site confidentiality.

Land transfers should be reviewed as a way to protect sacred sites.

- *Question:* Does a process exist for the Forest Service to put its land into trust for a tribe, or to transfer it to the Bureau of Indian Affairs, for specific tribes?
Response: The Forest Service cannot transfer land into trust for a specific tribe. Land can be transferred to the Bureau of Indian Affairs and it can then be designated as trust land for a specific tribe.

Cooperative agreements (e.g., MOUs, MOAs) and state-based laws for management can serve as models for the protection of sacred sites.

- A memorandum of understanding (MOU) template with the California State Historical Records and Information System offers a model that the Forest Service should examine for accessing and mapping data about known and unknown cultural sites.

- In certain instances, annual reviews of existing MOUs have been successful with the local Forest Service representatives.
- State laws, such as Exhibit C of California's Master Cooperative Wild Fire Management and Stafford Act Response Agreement or CFMA, are models for wildfire management that address sacred sites protection.

V. COMMON ISSUES OF CONCERN RELATED TO SPECIFIC SACRED SITES

Policies and procedures related to repatriation for reburial need to be developed by the Forest Service in consultation with tribes.

- Ongoing challenges exist with efforts related to reburial on Forest Service land.
- Landless tribes and tribes with ceded territory need access and a procedure for reburial on Forest Service lands.

Protection of sacred mountains, such as Mt. Tenabo, San Francisco Peaks, Mt. Graham, Mt. Taylor, and others were noted as a concern to many participants.

- Activities, such as mining and recreation diminish access to prayer locations and medicinal gathering on sacred mountains.
- An analysis of the implications and precedent set by the San Francisco Peaks decision and the type of consultation that was conducted leading up to the lawsuit was requested.

Consideration of sacred sites includes water resources concerns.

- Examples of contamination of ceremonial and household water resources were noted including uranium mining and artificial snow making using reclaimed water.

Wildfire suppression activities need to be conducted in a manner that follows site-specific instructions that have developed.

- Wildfire suppression activities have been conducted by the Forest Service in a manner that has severely impacted sacred sites.
- Incident commanders were noted as not taking into account the results of consultations with tribal resource advisors, tribal councils, and archaeologists about sacred sites in specific locations.

Next Steps

For more information on the USDA/Forest Service effort to consider policy and procedures related to the protection of sacred sites, please e-mail TribalSacredSites@fs.fed.us, call the USDA Office of Tribal Relations at 202-205-2249, the Forest Service Office of Tribal Relations at 202-205-1514, or contact a Tribal Liaison in your region with contact information located at www.fs.fed.us/spf/tribalrelations/contacts.shtml.