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**National Listening Session  
FINAL THEMES SUMMARY**

*February 14, 2011  
2:00 p.m.-4:30 p.m. EST*

## **PURPOSE OF THE LISTENING SESSION**

On February 14, 2011, the U.S. Department of Agriculture (USDA) and the U.S. Forest Service (Forest Service) held a telephonic National Listening Session for tribes and other interested Native Americans.<sup>1</sup> This call was the second national call in a yearlong 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 deliver forest goods and services for current 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.

This listening session occurred in the midst of regional and local listening sessions that will be held through March of 2011 (with a few exceptions). The results of the listening sessions will be used to develop a draft report containing recommendations for changes in USDA/Forest Service sacred sites procedures. Consultation events will be held with tribes on this draft report from May through August of 2011. Additional information about this process is posted on the sacred sites website ([www.fs.fed.us/spf/tribalrelations/sacredsites.shtml](http://www.fs.fed.us/spf/tribalrelations/sacredsites.shtml)).

The objectives of the February 14, 2011 call were to hear from tribal representatives about:

- How Forest Service actions have affected American Indian and Alaska Native sacred sites, how the agency has approached those actions, and what the agency can do better to protect these kinds of sites in the future.
- What has worked and what tools or techniques could be recommended for improving the agency's management as it pertains to American Indian and Alaska Native sacred sites.
- How participants recommend that the consultation events on the draft report to Secretary Vilsack be conducted.

## **SUMMARY OF OUTCOMES**

During the two-and-a-half-hour call, participants called in from around the country, and a total of 156 phone lines were 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 29 callers chose to provide comments verbally, and an additional participant provided written comments by email.

Overall, participants described the importance of conducting in-person, meaningful consultation; requested that the definition of a sacred site be revisited to include cultural landscapes and intangible qualities beyond the physical location; recommended a range of options for working with tribes and

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<sup>1</sup> The February 14, 2011, 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.

traditional practitioners to protect sacred sites; and highlighted current laws or policies that are preventing protection of sacred sites.

Several themes emerged from the comments provided by phone and e-mail during the listening session including:

- I. How to conduct the current Forest Service review of sacred sites policies and procedures
- II. Opportunities for Forest Service and Tribal/Traditional Practitioner collaborations to protect sacred sites
- III. How to conduct early communications and meaningful consultation on Forest Service activities that may affect sacred sites
- IV. Generally-applicable law & policy related to sacred sites
- V. Concerns regarding specific Forest Service management activities

A summary of the comments related to each of these themes is provided below. The complete transcript of the listening session is available by request at [TribalSacredSites@fs.fed.us](mailto:TribalSacredSites@fs.fed.us).

## **I. HOW TO CONDUCT THE CURRENT FOREST SERVICE REVIEW OF SACRED SITES POLICIES AND PROCEDURES**

**Consultation with tribes during the review of sacred site policies and procedures needs to be meaningful and in-person.**

- Consultation always needs to occur at the regional and local level and not nationally in the form of a national call-in. This will enable tribes to develop relationships and the trust needed to discuss specific sacred sites issues.
- There are many forms of consultation; the Forest Service needs to work with each tribe to determine what constitutes meaningful consultation.
- Consultation should include face-to-face communication with medicine people, spiritual leaders, and elders.
- The Forest Service needs to go beyond consultation with tribes by bringing them to the table to participate in decision-making about sacred sites.

**The Forest Service needs to reach out beyond the use of modern technologies.**

- Many traditional practitioners are not from federally recognized tribes. The Forest Service should take that into account when reviewing sacred sites policies and procedures.
- Some tribes and traditional practitioners lack modern communication technologies. Outreach needs to go beyond websites and telephonic listening sessions.
- Some traditional people need to have face-to-face conversations about sacred sites.

## **II. OPPORTUNITIES FOR FOREST SERVICE AND TRIBAL/TRADITIONAL PRACTITIONER COLLABORATIONS TO PROTECT SACRED SITES**

**Agreements between tribes and the Forest Service have an important role in the protection of sacred sites**

- MOUs between tribes and Forest Service can create stronger relationships that allow for tribal participation and for religious keepers to feel more confident about sharing information.
- Co-management of sacred sites by tribes and the Forest Service will better protect sacred sites.
- Special use permits seem to work well to permit the gathering of minerals or other natural resources from sacred sites by native people.

- The only way to determine what is sacred is in consultation with tribes. This requires dialogue, programmatic agreements, and memoranda of understanding (MOUs) or MOAs. Only tribes can decide what is sacred and what is not.
- The tribes can help locate grant funding to supplement Forest Service funds for the protection of sacred sites.
- More than verbal assurances are needed to ensure sacred sites marked for avoidance will actually be avoided.

**Collaborative working relationships and cultural sensitivity training provide for better protection of sacred sites.**

- Provide for increased opportunities for internships within the Forest Service for tribal members to learn about the Forest Service and to work with Forest Service staff on the protection of sacred sites.
- Work with tribes to train Forest Service staff on sensitivity to cultural areas.
- The Forest Service should cross-deputize tribal enforcement officers to assist with sacred sites protection.
- If information about sacred sites is to be shared with the public, tribes must take part in the development of appropriate interpretation materials.
- The Forest Service should work with tribes to develop an orientation about the cultural aspects of the landscapes for vendors or other concessionaires who receive special permits to tour or guide on Forest Service-managed lands.
- Forest Service staff must know and be prepared to work and consult with not only those tribes physically located nearby the forest, but also those tribes for which the forest was their aboriginal homeland but who have long since been removed.

**Consider appropriate roles for archaeology activities and staff.**

- Forest Service or other archaeologists (e.g., consultants,) cannot determine whether sites are sacred or not. Only tribal representatives can do this.
- In some instances, Forest Service archaeologists or tribal liaisons have been giving tours of sacred sites. If tours to sacred sites are given, tribal members need to be involved. It will not always be appropriate to give tours of sacred sites.
- Traditional consultants, such as tribal archeologists, should be included in Forest Service project analyses and compensated for their particular and specific knowledge and skills as it relates to sacred sites. Right now, if tribal experts are involved, they are spending their own time and are not compensated for it, and are often asked to participate after a project analysis is well underway.
- Before conducting any archaeological studies, tribes should be consulted.
- Consultation about archeological studies should be conducted with the appropriate tribes.
- Tribes have encountered difficulty engaging with Forests on Archeological Resources Protection Act (ARPA) permits and acquiring data related to the permits.

**Traditional Ecological Knowledge can benefit protection of sacred sites.**

- Implementing Traditional Ecological Knowledge with the management techniques of western science would be helpful in creating a balanced approach to protecting sacred sites.
- One participant noted that incorporating tribal Traditional Ecological Knowledge with Forest Service and the Washington State Department of Natural Resources management decisions has worked well.
- The intangible feel of a site may be more important than the physical site itself.

### **III. HOW TO CONDUCT EARLY COMMUNICATIONS AND MEANINGFUL CONSULTATION ON FOREST SERVICE ACTIVITIES THAT MAY AFFECT SACRED SITES**

**The Forest Service must provide early notice to tribes about programs or actions which may affect sacred sites.**

- Tribal councils meet infrequently, limiting a tribe's ability to respond in short timeframes. More advanced notice (i.e. two months) is needed to account for this.
- Tribes need to be included very early in planning and decision making processes.

**Sacred sites protection requires meaningful consultation.**

- Consultation has many definitions and each tribe should be able to define what this means for the Forest Service, not the other way around.
- Consultation must be conducted with agency decision-makers present. Too often what was agreed to during consultation is not what is ultimately decided upon.
- Early consultation can encourage better communications, especially when multiple agencies, states, and private entities are involved.
- Tribes that do not reside on their aboriginal homelands still need to be consulted about activities that may affect sacred sites on those homelands, despite the geographic distance.

**Information sharing and confidentiality is important to sacred sites protection.**

- The Forest Service needs to work with Tribes to protect GIS data and intellectual property.
- Formal or informal information sharing during consultation needs to be considered confidential.
- If information sharing agreements or other confidentiality agreements are required for meaningful consultation, these need to be determined early in the consultation.

**Effective relationships between Forest Service staff and tribes in each region requires on-going communications.**

- Better policies need to be developed to involve tribes during Forest Service leadership transitions to ensure that MOAs or other programmatic agreements continue.
- Forest Service staff changes are particularly challenging for tribes that do not reside on their aboriginal homelands, but who retain their rights to consultation.
- The annual "To Bridge A Gap Conference" offers a good model to maintain regular communications between tribes and the Forest Service.
- Have quarterly or annual meetings with the State Historical Preservation Office, the Forest Service, and the interested Tribe to maintain good communications.

### **IV. GENERALLY-APPLICABLE LAW & POLICY RELATED TO SACRED SITES**

**The definition of what a sacred site is needs to be clarified.**

- Sacred sites are more than just their physical location – they also include the sound, light, and other features of a place that are sacred.
- The Forest Service should include living resources in its definition of sacred sites. The National Historic Preservation Act does not give cognizance of living resources, such as plants and animals, that are sacred to tribes and instead focuses on remains or archaeological items.
- Sacred sites as cultural landscapes should be incorporated into sacred sites procedures and policies instead of assuming sacred sites are specific locations.

- Tribes, scientists, and the Forest Service could collaborate to better promote the terminology of cultural landscapes.
- The National Historic Preservation Act defines a historic property to be 50-years old. This needs to be revisited because of the contemporary use of many sacred sites by tribes.
- Holistic management, such as that espoused by the proposed Forest Service Planning Rule, cannot be done without incorporating spirituality.
- The Forest Service needs to understand the United Nations Declaration of Rights of Indigenous Peoples as it applies to sacred sites.

**Sacred sites policy should be consistent across federal land management agencies.**

- On large developments that require multi-agency permitting, federal agencies need to collaborate together in order to have a blanket policy with respect to tribes and sacred sites.
- At a minimum, the Army Corps of Engineers, Bureau of Land Management, and Forest Service should work together to construct a common approach for its policies and procedures to protect sacred sites

**V. CONCERNS REGARDING SPECIFIC FOREST SERVICE MANAGEMENT ACTIVITIES**

**Current Forest Service activities may not align with the protection of sacred sites.**

- Desecration of sacred sites continues today, and in order to move forward, this desecration must stop. Then everyone can come together to talk about moving forward.
- The Forest Service's mission statement of delivering forest goods and services for current and future generations competes with preserving the indigenous spiritual way of life.
- The Forest Service has a federal government trust responsibility that may conflict with its current mission statement.
- Just because something is categorically excluded from environmental analysis under NEPA doesn't mean it's excluded from consultation under §106 of the National Historic Preservation Act or from consultation generally.
- The hearing process surrounding Mount Taylor uranium mining process is ineffective because it isolates tribal members that offer comments and discourages the community from listening to one another.
- Tribes are notified about military use on Forest Service managed lands, but there is no way to change what will happen.
- In some regions, there is not enough Forest Service law enforcement staff assigned to help with investigations.

**Land transfers were noted as having the potential to support or limit protection of sacred sites.**

- Land transfers need to include consultation with tribes because of the possibility that burial locations or sacred sites located on Forest Service-managed lands might transfer into private ownership.
- Land transfers from private to public land would help to facilitate access to sacred sites located on Forest Service lands.
- Tribes need to be notified early about agency plans for land transfers involving sacred sites, especially for tribes that have off-reservation treaty rights to living resources that are considered sacred.
- An agency's ability to put a monetary value on spiritually important items or the spirituality of tribes during land transfer negotiations is questionable.

**Wildfire management and past Forest Service actions need to be revisited.**

- Fire retardants and pesticides on forests have caused health issues to Native American people using sacred sites for a long time.
- Better coordination between tribes and firefighters need to occur to protect sacred sites before, during, and after wildfires.
- The Forest Service needs provide repayment for losses of Indian homes due to forest fires in California during the 1940s and 1950s.

**Better coordination on energy development and transmission projects between tribes, agencies, states, and companies needs to occur in order to protect sacred sites.**

- The Forest Service needs to work with geothermal and power line companies to protect sacred sites.
- Forest Service districts need to have more authority in collaborating with tribes on projects that affect sacred sites, such as energy development projects.
- Meaningful, face-to-face consultation between sovereign nations about energy projects needs to occur.
- Federal agencies need to sit down with western tribes to discuss the implications of the “Clean Energy Act” on sacred sites.

**Wilderness area policy directly affects tribal sacred site use and access.**

- Some rules do not take into account tribal gathering needs in Wilderness Areas.
- Road closures and other wilderness area designations can restrict access to sacred sites for elders.

**The 1872 Mining Act prevents the protection of sacred sites on Forest Service managed land.**

- The 1872 Mining Act is outdated and is a significant impediment to the protection of sacred sites.
- The Forest Service needs to explore what may be possible to help protect sacred sites in the face of the 1872 Mining Act.
- If the Forest Service does not have authority to say no to mining under the 1872 Mining Act, then concerns raised about sacred sites will be not be taken into account during decision making about mining.

**Impacts of the San Francisco Peaks case.**

- It is inconsistent for the Forest Service to express a willingness to revisit policies and procedures regarding sacred sites while at the same time arguing against tribes in the San Francisco Peaks case.
- Callers expressed concern about the scientific research cited in the Snowbowl analysis setting a “scientific precedent” for other 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](mailto: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](http://www.fs.fed.us/spf/tribalrelations/contacts.shtml).

Updates can also be found at the sacred sites website [www.fs.fed.us/spf/tribalrelations/sacredsites.shtml](http://www.fs.fed.us/spf/tribalrelations/sacredsites.shtml)