



What is the status of the review, as of July 2011?

A Preliminary Draft Sacred Sites Report to the Secretary was completed in early June 2011. During the week of July 11, 2011, the Official Draft Report was mailed to all Federally Recognized Tribes across the United States and, in Alaska, the Alaska Native Claims Settlement Act (ANCSA) Native Corporations. The report was posted on the Forest Service Sacred Sites Web site on July 15. In a letter dated July 15, 2011, from the Chief of the Forest Service, regional foresters were directed to contact Tribes with interests in national forests within their regions and offer them the opportunity to consult, or engage in further dialogue as appropriate. Consultation is planned to be completed on or about November 14, 2011.

As stated in the Chief's letter, consultation on the Draft Sacred Sites Report may be coordinated with other ongoing consultation events or topics, as appropriate, to maximize efficiency and minimize burden on tribal members and Forest Service staff. Besides consultation with Tribes, regions were requested to reach out to other Native Americans with interest in Sacred Sites such as Non-Federally Recognized Tribes, as well as clan leaders, traditional practitioners, medicine men, elders, and others.

What information is being requested during the consultation phase, currently underway (July to November 14, 2011)?

We request feedback on the content of the Draft Report to the Secretary, including ...

- In the report, did we represent your concerns, as well as your ideas for modified Sacred Sites policies and procedures?
- Do you have ideas on how to enhance the recommendations in the report?

What are the differences between the Preliminary Draft and the Official Draft Report?

The differences between the Preliminary Draft Report and the Official Draft Report are minor and non-substantive. The changes primarily do two things:

- Clarify that all actions undertaken to address the recommendations in the report will be subject to the availability of funding and that no additional funding is expected; and
- Clarify whether the USDA, Forest Service, or the team conducting the review is making the statement in the Draft Report.

Why was this effort initiated?

The U.S. Department of Agriculture (USDA) and the Forest Service have heard concerns about Sacred Sites from Tribal leaders, traditional practitioners, and others for several years. These concerns and past experience demonstrated to us the need to review our procedures for the accommodation and protection of Indian Sacred Sites.

In a letter of July 2, 2010, the Secretary of Agriculture directed the USDA Office of Tribal Relations (USDA-OTR) and the Forest Service to immediately begin convening consultative sessions with Tribal leaders regarding Sacred Sites. The USDA Office of Tribal Relations and the Forest Service reached out telephonically and face to face in over 50 listening sessions with Tribes and other interested Native Americans from November 2010 to April 2011 to gather information to develop the Draft Report to Secretary Vilsack. The draft report includes recommendations for how we can do a better job in addressing Sacred Sites issues.

What is the timing for the development of the Sacred Sites report to the Secretary?

Report development will take place between November 2010 and December 2011. Consultation with Tribes will be ongoing throughout the process, beginning with Tribal listening sessions:

- November 2010 – April 2011
The Forest Service and USDA-OTR engaged the Tribes and other interested Native Americans in listening sessions specific to Sacred Sites procedures.
- April – May 2011
The Forest Service and USDA-OTR prepared a Draft Report for the Secretary, including recommendations for new Sacred Sites procedures.
- July – mid-November 2011
The Forest Service and USDA-OTR will conduct Government-to-Government and Government-to-Corporation (Alaska) consultation on the draft report and its recommendations, and continue with collaborative dialogue.
- November 2011
The Forest Service and USDA-OTR will write the final report and refine the recommendations for the Secretary.
- Winter 2011/2012
The Secretary of Agriculture will receive the final report with recommendations and proposed procedural changes. Implementation will follow.

Will the Secretary release the FINAL Report to the Tribes and to the public?

Yes.

What is an Indian Sacred Site?

The definition of an Indian Sacred Site is governed by Executive Order 13007 (E.O. 13007) of May 24, 1996. E.O. 13007 defines an Indian Sacred Site as—

Any specific, discrete, narrowly delineated location on federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

It is the Tribe or the traditional religious practitioner of the Tribe, not the Federal Government, that identifies a sacred site.

What is current policy on Indian Sacred Sites?

EO 13007 directs the Forest Service and other federal land management agencies, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions—

- *To accommodate access to and ceremonial use of Indian Sacred Sites by Indian religious practitioners,*
- *To avoid adversely affecting the physical integrity of such Sacred Sites, and*
- *To maintain the confidentiality of Sacred Sites where appropriate.*

E.O. 13007 also directs Federal land management agencies to implement procedures to carry out the provisions described above. The Executive Order instructs that the procedures should include, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of Sacred Sites.

Development of new or supplemental procedures for Sacred Sites will address issues identified by the Tribes and help us more directly meet the needs of Indian communities for the protection of Sacred Sites.

After the final report and proposed changes are presented to the Secretary, as directed by the Secretary, the USDA Office of Tribal Relations and Forest Service will take the appropriate next steps, which may include notice and comment rulemaking to adopt changes.

Are there other laws and regulations that pertain to Sacred Sites?

The Draft Report to the Secretary summarizes the major laws, regulations, and other policies that pertain to Sacred Sites.

There are many laws and associated regulations that pertain to Sacred Sites in general. For example, each of these laws may, in some instances, figure into considerations regarding Sacred Sites: the National Historic Preservation Act, the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, and the Religious Freedom Restoration Act.

The Food, Conservation, and Energy Act of 2008 (P.L. 110-246, June 8, 2008) (“2008 Farm Bill”) also contains a number of provisions that enhance USDA’s ability to protect lands used for traditional and cultural purposes, which might include Sacred Sites. Specifically, Title VIII – Forestry, Subtitle B-Cultural and Heritage Cooperation Authority, contains provisions related to the Reburial of human remains and cultural items (§8103); Temporary closure for traditional and cultural purposes (§8104); Forest products for traditional and cultural purposes (§8105); and Prohibition on disclosure (§8106) (See below: “How will the Forest Service handle confidential information about Sacred Sites?”). Farm Bill §8104, granting the Secretary the authority to temporarily close specifically identified National Forest System land from public access to protect the privacy of tribal activities for traditional and cultural purposes, was recently codified into Forest Service regulations by adding definitions for “Indian tribe” and “Traditional and Cultural Purpose” at 36 C.F.R. §261.2, and by adding paragraph “g” to § 261.53, Special Closures, (“When provided in an order, it is prohibited to go into or be upon any area which is closed for the protection of...”)

(g) The privacy of tribal activities for traditional and cultural purposes. Closure to protect the privacy of tribal activities for traditional and cultural purposes must be requested by an Indian tribe; is subject to approval by the Forest Service; shall be temporary; and shall affect the smallest practicable area for the minimum period necessary for activities of the requesting Indian tribe.¹

Other Executive Orders need to be considered as well, including E.O. 12898 (Environmental Justice) and E.O. 13175 (Consultation and Coordination with Tribal Governments). Links to these laws, and other regulations and policies affecting the Forest Service relationship with Tribes, can be found on the Forest Service Office of Tribal Relations’ Web site, at <http://www.fs.fed.us/spf/tribalrelations/policies.shtml>. Many are described in greater detail in the Draft Report to the Secretary.

Has the Forest Service reviewed its procedures for Sacred Sites before? What happened?

In 2003, the Forest Service Deputy Chief of State and Private Forestry asked a team to look into Forest Service policy regarding implementation of E.O. 13007. The earlier effort held listening sessions in the Western United States and in Alaska; analyzed policies from Forest Service and other agencies; and interviewed Forest Service personnel. That effort informed Forest Service leadership discussion about management that may affect Sacred Sites and about policies that may benefit the Forest Service ability to implement the vision of E.O. 13007. The earlier effort did not include formal Tribal consultation and ultimately did not result in changes to policy. A summary

¹ See 76 Fed.Reg. 3015-3017 at 3017, January 17, 2011.
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of the findings and themes of this earlier effort can be found at <http://www.fs.fed.us/spf/tribalrelations/sacredsites.shtml> and in the Draft Report to the Secretary (Appendix H).

Does the Draft Report to the Secretary use the information provided during the national listening sessions 6 years ago? Do Tribal participants need to repeat that information?

The findings from those earlier listening sessions were incorporated into this Draft Report to the Secretary. Participants in those early listening sessions may review the summary of the effort posted online at the Forest Service's Sacred Sites Web site listed above. (See "Review of USDA & Forest Service Policies and Procedures for the Protection of Indian Sacred Sites: Summary of 2003-2007 Forest Service Sacred Sites Policy Review" under "Background Materials") and in the Draft Report (Appendix H). Participants in the current effort were alerted that they could refer to specific language in the summary if it represents their concerns. If the information included in that summary did not adequately reflect their concerns or comments raised during the earlier effort, or if participants wished to provide additional detail, they were invited to do so.

Shouldn't the Forest Service consider Sacred Sites in its revision of the Planning Rule?

The Planning Rule is a broad-scale nationwide regulation. The proposed rule, published February 14, 2011, does not contain a requirement for the responsible official to protect Sacred Sites. The agency believes the appropriate place to require protection of Sacred Sites is in the land management plan itself, as appropriate for the Forest Service unit and the Tribes concerned with management of the Sacred Sites area. The Proposed Rule requires responsible officials to request information about native knowledge, land ethics, cultural issues, and sacred and culturally significant sites, as part of Tribal consultation and participation, and requires plan components that provide for "management of areas of Tribal importance." Agency personnel working on the Sacred Sites review are closely coordinating with staff working on the Planning Rule revision.

How will the Forest Service handle confidential information about Sacred Sites?

This Sacred Sites effort does not require the disclosure of any culturally sensitive information, nor does the Forest Service expect anyone to disclose specific locations of Sacred Sites. We hope for an open and informative dialogue throughout the Sacred Sites listening sessions and consultation. However, in any discussion or consultation during this review, should an attendee provide information that he or she would like to remain confidential, the Forest Service understands the importance of maintaining the confidentiality of that information, especially concerning the locations and significance of those Sacred Sites.

E.O. 13007 clearly states, "Where appropriate, agencies shall maintain the confidentiality of sacred sites." In the event that culturally sensitive information is shared by the Tribes or individuals during listening sessions or consultation, that information may be protected from disclosure by certain laws and regulations. For

example, some information about locations of certain archaeological or burial sites can be protected through the National Historic Preservation Act, Cave Resource Protection Act, Archaeological Resource Protection Act, and Native American Graves Protection and Repatriation Act. Section 8106 of the 2008 Farm Bill can also provide Tribes with protection from disclosure under the Freedom of Information Act. Information protected under the 2008 Farm Bill may include—

- Information relating to human remains and cultural items reburied on National Forest System lands pursuant to Section 8103 of the 2008 Farm Bill.²
- Information relating to resources, cultural items, uses, or activities that have a traditional and cultural purpose and are provided to the Forest Service by an Indian or Indian tribe under an express expectation of confidentiality in the context of forest and rangeland research activities.³
- Information concerning the identity, use, or specific location in the National Forest System of a site or resource used for traditional or cultural purposes by an Indian tribe, or any cultural items not covered by Section 8103 of the 2008 Farm Bill.⁴

Anyone providing information he or she wants to keep confidential should inform the Forest Service when he or she wants such information to be kept confidential. We will work with Tribes, Tribal members, and knowledgeable religious practitioners to take the fullest possible advantage of these statutory protections.

Are individuals and groups other than officials of Federally Recognized Indian Tribes being included in this initiative?

It is important to note that E.O. 13007, the Executive Order on Indian Sacred Sites, is specific to Federally Recognized Indian Tribes, and that the Federal Government has legal, policy, and trust-related responsibility to conduct Government-to-Government consultation with Federally Recognized Indian Tribes. E.O. 13007 instructs agencies to accommodate access to and ceremonial use of Indian Sacred Sites by Indian religious practitioners; “Indian” in this context refers to members of Federally Recognized Indian Tribes.

USDA and the Forest Service have also reached out to a variety of Tribal members and Tribal groups in a collaborative way in order to consider a wide and diverse set of perspectives regarding Indian Sacred Sites. In this broad approach, the Forest Service hopes to discuss with and learn from traditional Tribal practitioners, Intertribal organizations, and other Tribal members what their concerns may be and their ideas for appropriately considering Sacred Sites in the context of Forest Service procedures and management. This approach recognizes the individual Tribal members and non-Tribal-Governmental aspects of Sacred Sites as they pertain to Indian religions and practices.

² See Section 8106(a)(1)(A) of the 2008 Farm Bill.

³ See Section 8106(a)(1)(B) of the 2008 Farm Bill.

⁴ See Section 8106(a)(2) of the 2008 Farm Bill.

Are you coordinating this effort with the U.S. Department of the Interior or other Departments? And if so how?

The intent of this review and consultation is to focus on laws and policies, and USDA and Forest Service procedures that may impact Tribal Sacred Sites on National Forest System land, or which influence Forest Service operations to protect those sites. Therefore, throughout the review, the team will keep other USDA agencies and other Departments informed; coordinate at both leadership and field levels; and, if appropriate, invite representatives from other agencies to national, regional, and local telephonic and face-to-face sessions. However, this effort is solely the responsibility of the USDA and the Forest Service. Some of the input received from the listening sessions and consultation encouraged the USDA and Forest Service to improve our coordination with other agencies and Tribes to coordinate protection of Sacred Sites.

What are the existing mechanisms USDA can use to sustain Sacred Sites on Federal lands and accommodate use of and access to them?

Mechanisms to provide protection, conservation, or enhancement of Indian Sacred Sites range from protective components in a forest or grassland land management plan (such as the special area designation used in the Bighorn National Forest plan for Medicine Wheel) to temporary closures permitted by the 2008 Farm Bill to simple continued access and use by Tribes, the need for which is identified through ongoing collaboration and Government-to-Government consultation. The USDA and the Forest Service want to learn how different types of Sacred Site issues and needs might fit with various accommodation mechanisms.

What information was requested to help inform this review during the listening-session phase?

The team evaluating existing Sacred Sites procedures asked for recommendations for new or changed policies or procedures that would provide additional or improved ways of accommodating Sacred Sites needs. The team asked, "How can we do a better job addressing sacred site issues while simultaneously balancing pursuit of the Forest Service mission to deliver forest goods and services for current or future generations?" The listening sessions provided opportunities for participants to:

- Relate past experience interacting with the Forest Service on management and preservation of Sacred Sites.
- Tell us about current interaction with the Forest Service on management and preservation of Sacred Sites, including the effectiveness of existing laws and regulations.
- Let us know what they would like changed including, what regulations and/or policies to change to better address Sacred Sites.
- Describe how they would like us to consult with them on the draft report to the Secretary.

- Discuss any other issues regarding Sacred Sites with the USDA and Forest Service.

*Who should I contact for more information, such as to receive a hard copy of the report?
Where do I send comments if I am unable to meet with a government official?*

For more information, contact:

Fred Clark, Forest Service Office of Tribal Relations, 202-205-1548, fclark@fs.fed.us
Toni Stanger, USDA Office of Tribal Relations, 202-557-6212, toni.stanger@osec.usda.gov

Or regional Tribal relations managers:

<http://www.fs.fed.us/spf/tribalrelations/documents/contacts/FY2011USFTribalRelationsProgramContacts.pdf>

Comments should be sent to: tribalsacredsites@fs.fed.us or by hard copy to:

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