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Chapter 3: Departmental Responsibilities for Protecting/Accommodating Access to Indian Sacred Sites

Originating Office: Office of American Indian Trust

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3.1 Purpose. This Chapter establishes the policy, responsibilities, and procedures to accommodate access to and ceremonial use of Indian sacred sites and to protect the physical integrity of such sites consistent with Executive Order No. 13007, "Indian Sacred Sites."

3.2 Policy. It is the policy of the Department of the Interior in managing federal lands under its jurisdiction, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, to accommodate American Indian and Alaska Native access to and ceremonial use of Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites. It is also the policy of the Department of the Interior to consult with American Indian and Alaska Native tribes on a government-to-government basis whenever the Department has reason to believe that its plans, activities, decisions, or proposed actions may compromise the physical integrity of, or access to sacred sites.

3.3 Definitions. For purposes of this Chapter:

A. "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

B. "Indian tribe" means an Indian or Alaska Native tribe, band, nation, Pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe;

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

D. "Agency action" has the same meaning as in the Administrative Procedure Act, 5 U.S.C. § 551(13).

3.4 Responsibilities.

A. Heads of Bureaus and Offices shall be consistent with this policy:

(1) Establish written guidance and procedures that ensure that the bureau or office, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions:

(a) manages federal lands under its jurisdiction in a manner that avoids adversely affecting the physical integrity of sacred sites and requires that any unavoidable impacts are explicitly addressed in planning, decision, and operational documents;

(b) accommodates access to and ceremonial use by Indian religious practitioners of Indian sacred sites located on federal lands it administers;

(c) provides reasonable advance notice in writing and through direct contact with the appropriate representative of affected tribes of proposed actions, plans, projects, activities or decisions which may adversely affect the physical integrity of sacred sites or which may restrict future access to or ceremonial use of such sites;

(d) consults with the federally recognized tribal government whose sacred site(s) may be potentially affected by its proposed actions, decisions, projects, or activities; and

(e) maintains the confidentiality of the nature and location of sacred sites, where appropriate.

(2) Such procedures and guidelines must include provisions which direct the bureau or office:

(a) where appropriate, to enter into a memorandum of understanding, a memorandum of agreement or other written instrument setting forth the mutual understanding of the tribe and the bureau or office with regard to access and use of

sacred sites on federal lands, confidentiality, and mutually acceptable processes for notice and dispute resolution including, for example, alternative dispute resolution procedures, which will 1) provide a mechanism for the early resolution of conflicts or disputes; 2) provide for the systematic resolution of complaints by tribes relating to agency action on federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites; and 3) enable tribal governments to file an administrative appeal from any action or failure to act by an official of the bureau or office that is contrary to the requirements of Executive Order No. 13007, "Indian Sacred Sites," the requirements of this Chapter, or bureau or office policy or procedures established to implement this Chapter or the Executive Order; and

(b) to identify, in consultation with concerned tribes, appropriate procedures to accommodate tribal concerns when a tribe has a religious prohibition against revealing precise information about the location or practice at a particular sacred site.

B. Office of American Indian Trust will coordinate the Department's policy implementation and serve as the Department's liaison and initial point of contact on all matters arising under this Chapter. All procedures and amendments to procedures by bureaus and offices shall be forwarded to the Assistant Secretary-Indian Affairs through the Office of American Indian Trust for review and comment. Each bureau or office shall designate a senior level staff member as a point of contact for the Office of American Indian Trust on matters arising under this Chapter.

C. Assistant Secretary - Indian Affairs is responsible for advising bureaus and offices regarding procedures, or amendments thereto, developed pursuant to paragraph 3.4A of this Chapter.

3.5 Procedures.

A. Each bureau or office with statutory or administrative responsibility for the management of federal lands shall implement procedures for the purposes of carrying out the provisions of paragraph 3.4, above.

B. In all actions pursuant to this section, each bureau or office shall comply with the Executive Memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments," and Departmental Manual Part 512, Chapter 2 "Departmental Responsibilities for Indian Trust Resources."

3.6 Reports.

A. As part of the planning process, each bureau or office must identify and analyze the potential effects its proposed actions, decisions, or activities may have with regard to the physical integrity of sacred sites or which may affect use of and/or access to

known sites. Any effect must be explicitly addressed in the planning/decision documents including, but not limited to, environmental assessments, environmental impact statements, and/or management plans prepared for the project or activity. Such documents shall:

- (1) clearly state the rationale for the recommended decision; and
- (2) explain how the decision is consistent with this Chapter.

B. Where a bureau or office determines that compliance with the general requirements of the Order would be clearly inconsistent with an essential agency function, the bureau or office shall fully explain its rationale for that conclusion in the report.

C. Beginning with an initial review conducted by September 30, 1998, each bureau or office shall undertake a periodic review of its policies, procedures, rules, and regulations to ensure consistency with the requirements of this Chapter and shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions:

- (1) make any changes necessary in order to accommodate access to and ceremonial use of Indian sacred sites; and
- (2) make any changes necessary to avoid adversely affecting the physical integrity of sacred sites;

3.7 Consultation. In all actions pursuant to this section, each bureau or office shall consult with the potentially affected federally recognized tribal government(s). Consultations with affected tribal governments shall be open and candid and each tribal government shall be accorded reasonable opportunity to evaluate fully the potential impact of the proposal prior to final agency action. Each bureau or office shall give full consideration to tribal views in its decision-making processes. Further, whether the consultation is initiated by a tribe or the Department, each bureau or office shall be respectful of tribal sovereignty. To the extent permissible under federal law and regulation, information received during consultation shall be managed in a manner which is least likely to be disclosed to third parties. Information so received shall be deemed confidential if disclosure would inappropriately reveal the nature, location or compromise the physical integrity of a sacred site.

3.8 Rulemaking. Each bureau or office shall take into account the policies and requirements mandated by Executive Order No. 13007, "Indian Sacred Sites" and this Chapter in the rulemaking process to ensure that Departmental rules and regulations are developed in accordance with the policies and procedural requirements outlined in this Chapter.

3.9 Memoranda of Agreement and Memoranda of Understanding. Each bureau or officeshall, whenever appropriate:

A. contact any Indian tribe likely to be affected by its activities to develop and enter intoMemoranda of Agreement or Memoranda of Understanding to:

- (1) avoid adverse impacts to the physical integrity of sacred sites;
- (2) accommodate access to and use of sacred sites by Indian religious practitioners;
- (3) safeguard the confidentiality of Indian sacred sites;
- (4) develop mutually acceptable notification processes; and
- (5) develop specific dispute resolution procedures.

B. develop a process for incorporating alternative dispute resolution procedures into a Memoranda of Agreement or Memoranda of Understanding.

3.10 Limitations. Nothing in this Chapter shall be construed to require a taking of vested property interests. Nor shall this Chapter be construed to impair enforceable rights to the use of federal lands that have been granted to third parties through final agency action or by statute. Nothing in this Chapter creates any rights, benefits or trust responsibility enforceable at law or equity by any party against the United States, its agencies, offices, or any person.