

**Memorandum of Understanding
Among the
U.S. Department of Defense,
U.S. Department of the Interior,
U.S. Department of Agriculture,
U.S. Department of Energy,
and the Advisory Council on Historic Preservation
Regarding Interagency Coordination and Collaboration for the
Protection of Indian Sacred Sites**

I. Purpose and Principles

The Departments of Defense, the Interior, Agriculture, and Energy and the Advisory Council on Historic Preservation (Participating Agencies) enter into this Memorandum of Understanding (MOU) to improve the protection of and tribal access to Indian sacred sites through enhanced and improved interdepartmental coordination and collaboration.

II. Background

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. Indian tribes are defined here as an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior has published on the list of federally-recognized tribes pursuant to Public Law No. 103-454, 108 Stat. 4791. All Federal agencies are responsible for assessing the potential effects of undertakings they carry out, fund, or permit on historic properties of traditional cultural and religious importance to Indian tribes. While the physical and administrative contexts in which Federal agencies encounter sacred sites vary greatly, similarities do exist. Because of those similarities, the Participating Agencies recognize that consistency in policies and processes can be developed and applied, as long as they remain adaptable to local situations.

For purposes of this MOU, a “sacred site” retains the same meaning as provided in Executive Order 13007; that is, “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.” Such sacred sites may also be eligible for the National Register of Historic Places as historic properties of religious and cultural significance to Indian tribes.

Sacred sites often occur within a larger landform or are connected through features or ceremonies to other sites or a larger sacred landscape. Agencies should consider these broader areas and connections to better understand the context and significance of sacred sites. Sacred sites may include, but are not limited to geological features, bodies of water, archaeological sites, burial locations, traditional cultural properties, and stone and earth structures.

III. Authorities Which May be Relevant to the Protection and Preservation of Sacred Sites

The Participating Agencies will review the following authorities to determine their potential relevance to sacred sites and to determine if additional inter-agency measures may be warranted to better protect sacred sites:

Executive Order 13007: Indian Sacred Sites
National Historic Preservation Act
National Environmental Policy Act
Native American Graves Protection and Repatriation Act
American Indian Religious Freedom Act
Religious Freedom Restoration Act
Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

IV. Participating Agency Agreement

The Participating Agencies hereby agree to work together to accomplish and consult with Indian tribes as appropriate in developing and implementing the following actions:

1. Creating a training program to educate Federal staff on (a) the legal protections and limitations regarding the accommodation of, access to, and protection of sacred sites and (b) consulting and collaborating effectively with Indian tribes, tribal leaders, and tribal spiritual leaders to address sacred sites;
2. Developing guidance for the management and treatment of sacred sites, including best practices and sample tribal-agency agreements;
3. Creating a website that includes links to information about Federal agency responsibilities regarding sacred sites, agency tribal liaison contact information, the websites of the agencies participating in this MOU, and information directing agencies to appropriate tribal contact information for project consultation and sacred sites issues; this website would be hosted by one of the Participating Agencies;
4. Developing and implementing a public outreach plan focusing on the importance of maintaining the integrity of sacred sites and the need for public stewardship in the protection and preservation of such sites;
5. Identifying existing confidentiality standards and requirements for maintaining the confidentiality of sensitive information about sacred sites, analyzing the effectiveness of these mechanisms, and developing recommendations for addressing challenges regarding confidentiality;
6. Establishing management practices that could be adopted by Participating Agencies; for example, these could include mechanisms for the collaborative stewardship of sacred sites with Indian tribes, such as Federal-tribal partnerships in conducting landscape-level cultural geography assessments;
7. Identifying impediments to Federal-level protection of sacred sites and making recommendations to address the impediments;

8. Developing mechanisms to exchange and share subject matter experts among Federal agencies and identifying contracting mechanisms for obtaining tribal expertise;
9. Developing outreach to non-Federal partners to provide information about (a) the political and legal relationship between the United States and Indian tribes; (b) Federal agency requirements to consult with Indian tribes; and, (c) the importance of maintaining the integrity of sacred sites;
10. Exploring mechanisms for building tribal capacity to participate fully in consultation with Federal agencies and to carry out the identification, evaluation, and protection of sacred sites;
11. Establishing a working group of appropriate staff from each of the Participating Agencies to facilitate the implementation of the provisions of this MOU and address issues as they arise. The working group will develop an action plan for implementation of this MOU within 90 days. Participating Agency representatives will serve on the working group until replaced by their agencies. The working group will be chaired by one of the Participating Agencies chosen by majority vote of the working group and will serve a 2-year term. At the expiration of the chair's term, the Participating Agencies shall select a new chair from among the Participating Agencies.

V. Non-Funding Obligating Document

Participating Agencies will handle their own activities and use their own resources in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

Nothing in this MOU shall obligate any Participating Agency to obligate or transfer funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various Participating Agencies will require execution of separate agreements and will be contingent upon the availability of appropriated funds. Any such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

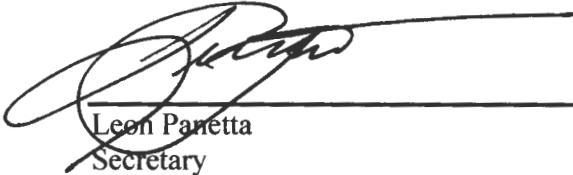
VI. Third Parties

This MOU is not intended to and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any party against the United States, its agencies, its officers, or any person.

VII. Administrative Provisions

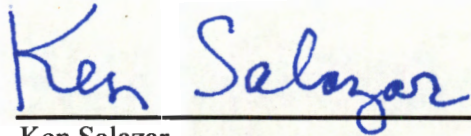
1. This MOU takes effect upon the signature of all Participating Agencies and shall remain in effect until December 31, 2017. This MOU may be extended or amended upon written consent from any Participating Agency and the subsequent written concurrence of the others.
2. Any Participating Agency can opt out of this MOU by providing a 60-day written notice to the other signatories.
3. Other Federal agencies may participate in this MOU at any time while the MOU is in effect. Participation will be evidenced by an agency official signature on the MOU.

VIII. Signatures of the Participating Agencies of the MOU on Indian Sacred Sites



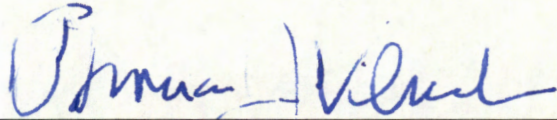
Leon Panetta
Secretary
U.S. Department of Defense

12/4/12
Date



Ken Salazar
Secretary
U.S. Department of the Interior

11/30/12
Date



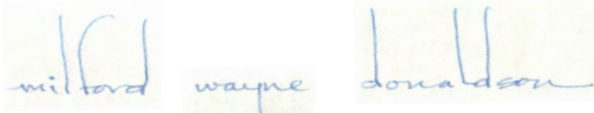
Thomas J. Vilsack
Secretary
U.S. Department of Agriculture

11/30/12
Date



Steven Chu
Secretary
U.S. Department of Energy

NOV 30 2012
Date



Milford Wayne Donaldson, FAIA
Chairman
Advisory Council on Historic Preservation

NOV 30 2012
Date