



ENERGY,
INSTALLATIONS,
AND ENVIRONMENT

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

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MEMORANDUM FOR PRINCIPAL DEPUTY ASSISTANT SECRETARY OF THE ARMY
(CIVIL WORKS)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(ENVIRONMENT, SAFETY AND OCCUPATIONAL HEALTH)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ENVIRONMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(ENVIRONMENT, SAFETY AND INFRASTRUCTURE)
STAFF DIRECTOR, DEFENSE LOGISTICS AGENCY (DES-E)

SUBJECT: Guidelines on Maintaining the Confidentiality of Information about Indian Sacred Sites

In December 2012, the U.S. Departments of Defense (DoD), Interior, Agriculture, and Energy, and the Advisory Council on Historic Preservation (ACHP), entered into a "Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites" (resigned in September 2016, extending duration to 2024). On November 6, 2015, pursuant to the terms of that MOU, the signatories issued a "Policy Statement on the Confidentiality of Information about Indian Sacred Sites" (attached).

The Policy Statement directs federal agencies to "respect tribal desires to keep information about [culturally sensitive] locations confidential to the extent legally possible," and provides general guidelines for doing so. Although Federal agencies may pledge to use their best efforts to protect sensitive and confidential information pertaining to Indian sacred sites, confidentiality cannot be assured. Consequently, DoD Components should follow these guidelines:

1. Consult regularly and meaningfully with tribes concerning Indian sacred sites and historic properties of traditional cultural and religious importance to tribes pursuant to agency responsibilities under relevant statutes, regulations, Executive Orders, and DoD policies.
2. Do not request information about the location of sacred sites unless that information is absolutely necessary and instruct consultants to refrain from doing so. When it is necessary to request such information, avoid documenting specific locations where general locational information will suffice (see numbers 3 and 4 below).
3. If a DoD proposed action may affect DoD lands of interest to one or more tribes, engage affected tribes in government-to-government consultations concerning the proposed action, anticipated land disturbance and impacts, and the potential for the presence of sacred sites. If a tribe indicates there is a potential for the presence of sacred sites, collect locational information only in general terms (e.g., a broadly identified "area of sensitivity" within which one or more sacred sites are known to be located by a tribe). Where practicable, actions should be planned in a manner that avoids these areas of sensitivity without the need to know sacred site locations. This avoidance strategy is most effective if tribes are consulted routinely and early in the planning process.

4. If more discrete information about a sacred site is absolutely necessary, consult orally with appropriate tribal officials and Indian religious practitioners; record in writing all meetings or site visits, noting only that the consultation took place and an area of sensitivity was identified. Do not record specific locational information concerning the site. Do share the area of sensitivity in broad terms with installation planners to avoid damaging the area of concern.
5. If the sacred site includes archaeological resources, use the authority provided under Section 9 of the Archaeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. § 470hh, and its implementing regulations at 43 C.F.R. § 7.18, to avoid releasing information about the nature or location of the archaeological resources. In almost all circumstances, ARPA § 9 *requires* that managers responsible for the protection of archeological resources hold such information about these resources confidential.
6. If locational or other information about a sacred site must be recorded in writing or otherwise documented and a request for disclosure of this information is subsequently received, consult with the National Register of Historic Places (NRHP) and National Historic Landmarks Program (responsibility delegated from the Secretary of the Interior) regarding justification to withhold as required under 36 C.F.R. § 800.11(c)(1), pursuant to Section 304 of the National Historic Preservation Act of 1966, as amended (NHPA) (54 U.S.C. § 307103). The confidentiality protections of § 304 of the NHPA and 36 C.F.R. § 800.11(c) pertain to sites both listed in and *eligible for* inclusion in the NRHP. If confidential information is developed in the course of complying with Section 106 or Section 110 of the NHPA (54 U.S.C. §§ 306101-306102, 306108) and a subsequent information request is received, consult with the ACHP to withhold sacred sites information (see 36 C.F.R. § 800.11(c)(2)).
7. The duty to withhold sensitive information under either ARPA § 9 or NHPA § 304 is non-discretionary. Confer with counsel to ensure statutory prerequisites are satisfied and appropriately recorded for information requests related to sacred sites.

In short: Never ask for information about sacred sites unless it is necessary; never ask for discrete and specific locational information for sacred sites if more general locational information will enable an informed decision; and never record discrete and specific locational information for sacred sites in writing unless absolutely required to support a critical decision.

My point of contact concerning these guidelines is Ms. Michelle Volkema, at (571) 372-6888, or michelle.a.volkema.civ@mail.mil.



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Attachment:
As stated