



Policy Statement on the Confidentiality of Information about Indian Sacred Sites

Federal agencies have a duty to protect American Indians' and Alaska Natives' sacred sites. When consulting with tribes to determine whether culturally sensitive locations may be affected by federal actions, federal agencies shall respect tribal desires to keep information about such locations confidential to the extent legally possible. Many tribes cannot disclose, for cultural reasons, information about the location, the significance, and even the existence of traditional religious and cultural properties and places. Federal agencies must respect and recognize tribal ownership of information.

Agencies should seek to preclude, to the greatest extent possible, the possibility that disclosure of sensitive information may be required by the Freedom of Information Act or other authority. To that end, agencies and their contractors should request and record only that information about sacred sites that is absolutely necessary to support required administrative decisions. For instance, areas that tribes regard as spiritually or culturally significant should be identified in the broadest terms practicable, sufficient to alert agencies to an area's significance without recording or revealing precise site locations or sensitive information about tribal religious beliefs or cultural practices. Agency managers should routinely address matters such as: managing visitation in areas where religious activities may occur; siting facilities to avoid adverse effects on sacred sites or an imposition on religious activities; and considering any

unintended effects that management actions may have on sacred sites, including, but not limited to, impacts on natural resources, air and water quality, noise levels, and visual intrusions.

To provide American Indians and Alaska Natives the fullest possible access to and use of sacred sites, and to provide Indian sacred sites the highest possible level of protection, federal agencies are charged with carrying out the provisions of Executive Order 13007 in concert with other pertinent laws, regulations, policies, and guidance. Executive Order 13007, Indian Sacred Sites, does not have a protection mechanism concerning confidentiality, but the agency will consider whether confidential information about sacred sites may be protected under:

- (1) The National Historic Preservation Act (NHPA, 54 U.S.C. § 307103), which provides limited authority for withholding disclosure of information about the “location, character and ownership” of historic resources to the public;¹
- (2) The Archaeological Resources Protection Act (ARPA, 16 U.S.C. § 470hh), which provides authority to limit information on the “nature and location” of archaeological resources;² and
- (3) The Cultural and Heritage Cooperation Authority (25 U.S.C. § 3056), which provides specific authority to the USDA Forest Service to protect tribal information from release under the Freedom of Information Act.³

If a sacred site is determined to be an historic resource or an archaeological resource, then the NHPA and ARPA may offer some protection of information. If, however, neither ARPA nor

¹ Defined as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register of Historic Places.

² Defined as any material remains of past human life or activities that are of archaeological interest more than 100 years old, and on public or Indian land. Such resources include, but are not limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, and human skeletal materials.

³ This authority refers to nondisclosure of information about resources, cultural items, uses, or activities that have a traditional and cultural purpose (including ceremonial use), or are provided under an express expectation of confidentiality in the context of Forest Service research, with a prospect of limited release in consultation with the Indian tribe.

the NHPA apply, federal agencies may find it impossible to keep information about a sacred site confidential, and should so advise the Tribe or religious leader prior to requesting sensitive information. Agencies shall make every effort to respect and honor to the greatest extent legally possible any tribe's reluctance to reveal information related to the location of sacred sites or regarding the nature of religious or other cultural practices.