MEMORANDUM OF UNDERSTANDING REGARDING INTERAGENCY COORDINATION AND COLLABORATION FOR THE PROTECTION OF INDIGENOUS SACRED SITES

Among the
the U.S. Department of the Interior,
U.S. Department of Agriculture,
U.S. Department of Transportation,
U.S. Department of Energy,
U.S. Environmental Protection Agency,
White House Council on Environmental Quality,
Advisory Council on Historic Preservation, and
Tennessee Valley Authority

I. Purpose and Principles

The signatory agencies (Participating Agencies) enter into this Memorandum of Understanding (MOU) to affirm their commitment to improve the protection of, and access to, Indigenous sacred sites through enhanced and improved interdepartmental coordination, collaboration, and action. The Participating Agencies intend to demonstrate their commitment through the early consideration of the protection and access to Indigenous sacred sites in agency decision-making and regulatory processes.

Background

Indian Tribes, the Native Hawaiian Community, and Indigenous peoples have creation narratives that are tied to places in every region of the United States and beyond. The connection to place is essential to the spiritual practice and existence of Indian Tribes, the Native Hawaiian Community, and Indigenous peoples. Indian Tribes, the Native Hawaiian Community, and Indigenous peoples share an essential truth of the interconnectedness to nature and all life. Desecration of sacred places and the relocation of many Indian Tribes, the Native Hawaiian Community, and Indigenous peoples from their original homelands has had traumatic impacts on those people collectively at the time, and has enduring negative impacts on the social, cultural, spiritual, mental, and physical wellbeing of Indian Tribes, the Native Hawaiian Community, and Indigenous peoples today.

Federal land management agencies are entrusted with a great diversity of landscapes, reserved areas, and sites, including many culturally important sites held sacred by Indian Tribes[1] and Native Hawaiian organizations.[2] Federal agencies, including those that approve

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[1] "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, E.O. 13007.

[2] "Native Hawaiian organization" means any organization which (A) serves and represents the interests of Native Hawaiians, (B) has as a primary and stated purpose the provision of services to Native Hawaiians and

or fund projects, are responsible for assessing and considering the potential impacts of their decisions on sacred sites and historic properties of traditional cultural and religious importance.

While the physical and administrative contexts in which Federal agencies encounter sacred sites vary greatly, similarities do exist. The Participating Agencies recognize that consistency in policies and processes should be developed and applied, as long as they remain adaptable to local situations. Moreover, agencies should take a forward-thinking approach and not only seek to avoid adverse actions, but collaborate with Indian Tribes and Native Hawaiian organizations to ensure good stewardship of their lands and allow their rightful access and use to certain public lands through Tribal-agency and co-management agreements, where possible.

Consistent with the relevant authorities listed below, "sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian Tribe or Native Hawaiian organization, or Indian or Native Hawaiian individual determined to be an appropriately authoritative representative of an Indian or Native Hawaiian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian or Native Hawaiian religion; provided that the Tribe, Native Hawaiian organization or appropriately authoritative representative of an Indian or Native Hawaiian religion has informed the agency of the existence of such a site. The Participating Agencies acknowledge the critical role of Tribes and Native Hawaiian organizations in defining the term "sacred sites," and Participating Agencies will seek consultation and engagement with Tribes and Native Hawaiian organizations to deepen the Participating Agencies' understanding of the term "sacred sites."

The Participating Agencies acknowledge that sites sacred to Indian tribes and the Native Hawaiian Community often occur within a larger landform or are connected through physical 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, plant communities and stone and earth structures and may be present on tribal, public, and private lands.

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 and Native Hawaiian organizations.

The Parties also recognize that the United States has affirmed the United Nations Declaration

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(C) has expertise in Native Hawaiian Affairs, and shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei. Native American Graves Protection and Repatriation Act of 1990, Public Law 101-601; 25 U.S.C. §§ 3001-3013;104 Stat. 3048-3058. Please note that Hui Malama I Na Kupuna O Hawai'i has dissolved; however, the U.S. Department of the Interior maintains its list of Native Hawaiian organizations at www.doi.gov/hawaiian.

on the Rights of Indigenous Peoples (UN DRIP). While not legally binding, the UN DRIP affirms the responsibility of the Parties to recognize, respect, and consider Tribal interpretations of their own treaty and reserved rights.

Authorities Relevant to the Protection and Preservation of Sacred Sites

Participating Agencies will review, at a minimum, the following authorities and their implementing regulations to determine whether 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
- Archaeological Resources Protection Act
- American Indian Religious Freedom Act
- Religious Freedom Restoration Act
- Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

II. Participating Agency Agreement

The Participating Agencies commit to work together and consult with Indian Tribes and Native Hawaiian organizations and collaborate with Tribal and Native Hawaiian organization leaders and spiritual leaders, as appropriate, in developing and implementing actions to improve the protection of and access to Tribal and Native Hawaiian sacred sites, including but not limited to:

1. Establish a working group with members from each of the Participating Agencies to enhance interagency collaboration and coordination and address significant issues as they arise. The working group intends to:

    a. Meet monthly;

    b. Work collaboratively to implement the provisions of this MOU;

    c. Develop mechanisms to exchange/share subject matter expertise among Federal agencies;

    d. Establish a sub-group of agency attorneys to facilitate interagency coordination on cross-cutting legal issues relating to sacred sites and provide other legal support to the working group;

    e. Submit a combined initial report to the Executive Director of the White House Council on Native American Affairs within 180 days of the execution of this MOU. This report will identify the existing practices the Participating Agencies have taken to implement the original version of this MOU, signed in

2012 and an analysis of which areas should be revisited for further action to implement the MOU and conduct a legislative review and recommendations for improved sacred site protection.

f. Submit an annual combined report to the Executive Director of the White House Council on Native American Affairs within one year of signing this MOU. This annual report will highlight significant issues raised by representatives of Indian Tribes and Native Hawaiian organizations, Tribal organizations and spiritual leaders, as appropriate, and agency officials regarding the protection of sacred sites. The report will also highlight existing and planned practices and procedures developed by the Participating Agencies of the working group.

2. Continue and enhance the Participating Agencies' efforts to integrate consideration of sacred sites early into the decision-making, regulatory, and consultation processes to ensure that agency actions acknowledge and honor the importance of sacred sites and are consistent with statutory and regulatory requirements for their protection while providing access to the sites by Indian Tribes and their citizens and Native Hawaiians organizations and the Native Hawaiians they serve. During Participating Agencies' consultations on projects or actions that may have an effect on a Tribe, discussion with the Tribe on whether the Tribe's sacred sites and cultural resources would be affected shall be conducted.

3. Develop and enhance best practices, procedures, and guidance for the management, treatment, and protection of sacred sites, identify impediments to Federal-level protection of sacred sites, and act to address and remedy the impediments.

4. Participating Agencies will also acknowledge and incorporate the use of Traditional Ecological Knowledge (TEK), as appropriate, in best practices procedures and guidance for the management, treatment, and protection of sacred sites.

5. Develop and enhance public outreach that focuses on the importance of maintaining the integrity of sacred sites and the need for public stewardship to protect and preserve the integrity of such sites; and develop and enhance outreach to non-Federal partners to provide information about (a) the political and legal relationship between the United States and Indian Tribes and Native Hawaiian organizations; (b) Federal agency requirements to consult with Indian Tribes and Native Hawaiian organizations; and, (c) the importance of maintaining the integrity of sacred sites;

6. Develop and enhance best practices and policies for (a) the collaborative stewardship of sacred sites with Indian Tribes and Native Hawaiians organizations including exploring, identifying options, and executing Tribal-agency and co-management agreements with Indian Tribes and Native Hawaiian organizations; and (b) setting benchmarks and goals for implementing these agreements with Indian Tribes and Native Hawaiian organizations;

7. Develop and enhance best practices and policies for meaningful consultation with Indian Tribes and Native Hawaiian organizations that give clear guidance on the duties and responsibilities of Federal agencies to address and incorporate traditional Indigenous knowledge and views when assessing the impact of Federal actions on sacred sites;

8. Develop and enhance best practices and policies for building Tribal and Native Hawaiian organization capacity to meaningfully engage in consultation with Federal agencies, carry out the identification, evaluation, and protection of sacred sites, and use contracting mechanisms to provide Tribal and Native Hawaiian expertise to Federal agencies;

9. Develop or update existing Participating Agencies' webpages to provide information on Federal agency sacred sites responsibilities and agency contact information, as well as information and guidance related to sacred sites;

10. Develop and enhance best practices and policies, in collaboration with Indian Tribes and Native Hawaiian organizations, for maintaining the confidentiality of sensitive information about sacred sites.

11. Evaluate the existing training program developed under the 2012 MOU for adequacy to train staff on (a) the legal protections regarding the accommodation of, access to, and protection of sacred sites; and (b) consulting with Indian Tribes and Native Hawaiian organizations and/or collaborating with Tribal and Native Hawaiian organization leaders and spiritual leaders to address consideration of sacred sites and make such training available to all appropriate agency staff. If necessary, Participating Agencies will develop additional training.

12. Within 120 days of the execution of this MOU, the White House Council on Native American Affairs shall organize a listening session(s) with Tribes, Native Hawaiian organizations, and the Participating Agencies on the MOU and its implementation. Each Participating Agency further commits to engaging in Tribal consultations on the implementation of the MOU for their own agency. Participating Agencies agree to develop and implement mutually agreed upon additional actions and amend this MOU, as deemed appropriate, following Tribal consultations.

IV. Non-Funding Obligating Document

Participating Agencies will handle their own activities and use their own resources in pursuing these objectives. Each Participating Agency will carry out its separate activities in a coordinated and mutually beneficial manner. Participating Agencies may evaluate the budgetary impacts of the MOU and consider budgetary requests, as appropriate, to support MOU activities.

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. To the extent permitted by law, each Participating Agency will request funding to address the issues and practices the Participating Agency finds necessary to protect sacred sites.

V. Limitations

This MOU is a voluntary agreement that expresses the good-faith intentions of the Participating Agencies, is not intended to be legally binding, does not create any contractual or fiscal obligations, does not unlawfully extend Federal authority, and is not enforceable by any party. It does not create any right or benefit, substantive or procedural, enforceable by law or equity, by any party, against the Participating Agencies, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of the Participating Agencies.

VI. Administrative Provisions

1. This MOU takes effect upon the signature of at least two Participating Agencies. The Participating Agencies shall review this MOU annually to determine whether it should be amended. 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.

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

See attachments.

NOV 09 2021

Deb Haaland
Secretary
U.S. Department of the Interior

Date

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November 2021

Thomas J. Vilsack
Secretary
Department of Agriculture

Date

November 10, 2021

Pete Buttigieg
Secretary
Department Transportation

Date

11/2/21

Jennifer Granholm
Secretary
Department of Energy

Date

Michael S. Regan

November 9, 2021

Michael S. Regan
Administrator
U.S. Environmental Protection Agency

Date

MEMORANDUM OF UNDERSTANDING REGARDING INTERAGENCY COORDINATION AND COLLABORATION FOR THE PROTECTION OF INDIGENOUS SACRED SITES

Brenda Mallory
Chair
White House Council on Environmental Quality

November 9, 2021

Jordan E. Tannenbaum

Jordan E. Tannenbaum 10/15/21
Vice Chairman
Advisory Council on Historic Preservation

Attachment
Signature Page to
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11/10/2021

Jeff Lyash
President and Chief Executive Officer
Tennessee Valley Authority

Date