Appendix A: Authorities, Major Laws, and Regulations That Pertain to the Forest Service

Included in this appendix is general information about existing laws and court decisions. Several excerpts from Forest Service authorities are also listed to provide a point of reference to the reader.

Major Laws and Regulations

Pre-Constitutional

Before the U.S. Constitution, Indian Nations were treatied with (the act of signing treaties) most European countries, except England. The British Crown issued doctrines describing the relationship it held as being a political relationship with Indian Nations. The King of England further defined areas west of the Appalachians as Indian Territory. Indian tribes were recognized as sovereign nations.

Once lands Northwest of the Ohio River were opened for settlement, the Continental Congress passed the *Northwest Ordinance* (1 Stat 51, 1787) in part to have some representation of law and order, because settlers were sure to encounter Indian Nations occupying lands there.

The courts had established that "discovery" gave European colonial powers fee simple ownership of the domain they had "discovered," subject to the Indians' right of occupancy and use or "Indian title." This fee title passed to the United States on its independence from England, subject to treaty rights or conditions reserved by or for the Indians and by subsequent actions by Congress or the Executive to abrogate or condition treaties, laws, and agreements.

Aboriginal Rights

Aboriginal rights are based on aboriginal title, original title, or Indian title which is the possessory right to occupy and use the area of land that Indians have traditionally used. Congress could extinguish such rights or title at will through treaty or otherwise. Individual aboriginal rights were based on continuous actual possession by occupancy, enclosure, or other actions establishing a right to the land to the exclusion of adverse claimants. For national forest managed lands, such possession must have predated the establishment of the national forest.

Constitutional

As quoted in Felix S. Cohen's *Handbook on Federal Indian Law*, Chief Justice John Marshall observed in *Cherokee Nation* v. *Georgia* that "[t]he condition of the Indians in relation to the United States is perhaps unlike that of any other two peoples in existence. [T]he relation of the Indians to the United States is marked by peculiar and cardinal distinctions that exist no where else." The Federal-Tribal relationship is based upon broad, but not unlimited, Federal constitutional power over Indian affairs, often described as "plenary." The relationship includes a fiduciary trust to deal with Indian tribes.

The *Commerce Clause* is the Constitution's primary authority over Indian tribes. Under it, Congress is authorized to "regulate commerce with foreign Nations, and among the States, and with the Indian Tribes." Other constitutional powers were important in the early years such as the *Treaty Clause*. The courts have determined that these two clauses, along with the *Supremacy Clause,* are the primary basis for the U.S. Government's exclusive authority to provide for the Federal management of Indian matters. The specific clauses pertaining to Indians are—

Article I, Section 8, Clause 3. Power under Indian Commerce Clause is limited to Federally Recognized Tribes. Congress "shall have the power to regulate Commerce with...the Indian Tribes."

Article I and 14th Amendment. Indians are not taxed.

Article II, Section 2, Clause 2. The Treaty Clause: "...the President shall have the power to make treaties, provided two-thirds of the senators present concur..." This was the principle foundation for Federal power over Indians.

Article I, Section 8, Clauses 1,11,12,15–17. National defense powers of the Constitution provided for administration of Indian affairs at least during the first century of the U.S. Nation's existence. During this period Indian affairs were more of a military and foreign policy matter than a matter to be handled under domestic or municipal laws.

Article IV, Section 3, Clause 2. The *Property Clause,* has been considered as an additional source of authority over Indian affairs. The power over U.S. property is exclusively committed to Congress (see FSM 5501.1). Under this clause, executive order reservations have been sustained on the basis of Congress' longstanding acquiescence in the practice. An historical argument has been made that because technically lands held under "Indian title" were also "property of the U.S.," they were subject to the Property Clause.

The Property Clause provides: "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or Property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State."

Public lands owned by the United States are administered for public purposes by the Federal agencies under the Property Clause. These Federal lands are distinct from lands held by the United States in trust for the benefit of the American Indians.

Article VI, Clause 2. This is the clause confirming that States of the Union have no jurisdiction over Indian Nations or their treaties. "This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Laws and Treaties

Numerous laws, treaties, executive orders, cooperative agreements, and so forth provide assistance, give use rights, or define relationships between the Forest Service and American Indians and Alaska Natives.

Laws and Treaties Specific to Indians

Numerous Treaties. Beginning with a *Treaty with the Delawares* in 1778, the United States sought to maintain the peace, establish boundaries for protection of settlers and Indians, and acquire territory to be opened to settlement. Subsequent treaties beginning with the *Treaty with the Wyandots* (January 9, 1789, 7 Stat. 28) and others provided for certain rights, such as hunting, to be retained by the Indians.

Non-Intercourse Acts of 1790 and 1834. Gave the Federal Government authority over Indian matters and provided a base for U.S. Indian policy.

Treaty with France for Louisiana Purchase of 1803. The French ceded the Mississippi drainage to the United States bringing the territory and its inhabitants under U.S. rule and protection free from European intervention.

Indian Removal Act of 1830. Enabled the President to negotiate and remove tribes from east of the Mississippi to areas west of the Mississippi (Indian Territory—Oklahoma).

Treaty of Dancing Rabbit Creek 1830. Involved dissolution of tribal territory and assimilation into U.S. society.

Treaty with Great Britain added Oregon Territory in 1846. Ceded the Northwest Territory to the United States, bringing the area and its inhabitants under U.S. rule and protection free from European intervention. The Organic Act establishing the Oregon Territory reiterated within it Article the third from the Northwest Ordinance, which related to the settlement of lands where Indian people are still occupying said lands.

Treaty with Mexico 1848. Treaty with Mexico (also known as the Treaty of Guadelupe Hidalgo) ceded the southwest territory to the United States, bringing the area and its inhabitants under U.S. rule and protection free from European intervention.

Rider in Appropriation Act of 1871. Ended treaty era.

Major Crimes Act 1885. Extended criminal jurisdiction to Indian Country.

General Allotment Act 1887 (Dawes Act). Provided for the allotment of lands to Indians on various reservations and public domain and extended the protection of laws of the United States and territories over Indians. This was an attempt at assimilation by cessation of Indian tribal holdings and relations and by treating Indians as individuals by division of lands among them to establish homes, develop their lands, and become a part of American society. The act also offered U.S. citizenship to any individual applying for an allotment. This act resulted in the transfer of over 80 million acres (actual estimates of acreage transferred ranged from 50 to 134 million acres) of Indian lands into private ownership.

Court of Private Land Claims Act of 1891. Gave the Court of Private Land Claims jurisdiction over all Spanish or Mexican land grant claims in Colorado, Nevada, and Wyoming and all land claims in Arizona, New Mexico, and Utah.

Intercourse Act of 1892. This act prohibited the intrusion of non-Indians on Indian lands.

Alaska Native Allotment Act of 1906. Congress created procedures whereby individual Alaska Natives could acquire land. The act specifically provided that land acquired would be held in trust by the United States for the benefit of the individual Native owner. The Alaska Native Claims Settlement Act of 1971 (ANCSA) repealed this act.

Allotment Act of 1910 (Amended Dawes Act of 1887). Section 31 provided for allotting lands to Indians found to be occupying, living on, or having improvements on lands that had become National Forest lands.

The Indian Citizenship Act of 1924. Granted the status of citizenship to Indians, regardless of their land tenure or place of residence. Up until this time, the U.S. Constitution did not apply to individual Indians.

Pueblo Lands Board Act of 1924. Allowed non-Indians to validate title to previously acquired Pueblo lands.

Indian Reorganization Act of 1934. Allowed Indian Tribes to reorganize and adopt bylaws and so forth under the Secretary of the Interior, ended allotments in severalty, and gave the Secretary authority to acquire lands inside or outside of reservations to provide lands for Indians.

Indian Claims Commission Act of 1946. Established Indian Claims Commission (ICC) as an independent agency to hear and determine claims in law or equity arising under the Constitution, laws, treaties of the United States, all other claims in law or equity, and claims based upon honorable dealings that are not recognized by any existing rule of law or equity.

House Concurrent Resolution No. 108 of 1953. Articulated U.S. Government policy leading to Termination Acts. Between 1954 and 1967, 109 tribes and bands were terminated.

Indian Civil Rights Act of 1968. Defined Indian Tribes and their members as having the same civil rights as non-Indian citizens under the U.S. Constitution (P.L. 90–284).

General Laws

The following general laws will have a major effect on the interpretation and implementation of Forest Service policy:

The Forest Service Organic Act of 1897. This act provides that national forests shall be established only to improve and protect the forest therein, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for use and necessities of the citizens of the United States In addition, the Secretary of Agriculture may make rules and establish such service as will assure the objectives of the Forest

Reserves, namely, to regulate their occupancy and use and preserve the forest thereon from destruction.

The Weeks Law of 1911. Authorizes and directs the Secretary of Agriculture to acquire forested, cutover, and denuded lands within watersheds of navigable streams necessary to the regulation of the flow of navigable streams or for timber production. Under the act, such lands are to be permanently reserved, held, and administered as national forests.

Bankhead-Jones Act of 1937. Authorizes and directs the Secretary of Agriculture to develop a program of land conservation and utilization, to correct maladjustments in land use, thus controlling soil erosion, and reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreation facilities, mitigating floods, conserving surface and subsurface moisture, protecting watersheds of navigable streams, and protecting the public lands, public health, and welfare.

Sustained Yield Forest Management Act of 1944. Provides authority to the Secretary of Agriculture and the Secretary of the Interior to establish cooperative sustained yield units with private and other Federal agencies in order to provide for a continuous and ample supply of forest products and to secure the benefits of the forest in maintenance of water supply, regulation of stream flow, prevention of soil erosion, amelioration of climate, and preservation of wildlife. Under Section 7, trust or restricted Indian land, whether tribal or allotted, could be included in such a unit with the consent of the Indians concerned.

Multiple-Use Sustained-Yield Act of 1960. Confirms the policy of Congress that national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. It authorizes and directs the Secretary of Agriculture to develop and administer the renewable resources for multiple use and sustained yield of the several services and products obtained therefrom. It authorizes the Secretary of Agriculture to cooperate with interested State and local governmental agencies and others in the development and management of the national forests.

Fish and Wildlife Conservation Act of 1960. Provides for Interior/Agriculture coordination in cooperation with States to develop, plan, maintain, and coordinate programs for the conservation and rehabilitation of wildlife, fish, and game including, but not limited to, specific habitat improvement projects and protection of threatened or endangered species.

National Environmental Policy Act (NEPA) of 1969 (P.L. 91–190). NEPA's implementing regulations require Federal agencies to invite Indian tribes to participate in the scoping process on projects and activities that affect them. Tribes with treaty rights on National Forest System lands may also meet with line officers in advance of the formal planning processes about their reserved rights.

Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974. Directs and authorizes the Secretary of Agriculture to make an assessment of the renewable resources and to determine the ways and

means needed to balance the demand for and the supply of these renewable resources, benefits, and uses in meeting the needs of the people of the United States. Assures that national forest plans provide for multiple use and determine harvesting levels and availability and suitability for resource management. It also specifies procedures to insure that such plans are in accordance with NEPA requirements.

Federal Land Policy and Management Act (FLPMA) of 1976. Directs the Secretary of Agriculture to coordinate National Forest System land use plans with the land use planning and management programs of and for Indian tribes by considering the policies of approved tribal land resource management programs. Parts of sections on range management and minerals on surface rights also apply to National Forest System lands.

National Forest Management Act (NFMA) of 1976. Directs consultation and coordination of National Forest System planning with Indian tribes.

National Indian Forest Resource Management Act (PL 101–630). Provides for the management of forested tribal trust lands.

Alaska Native Claims Settlement Act (ANCSA) of 1971 (PL 92–203). Provides settlement of Alaska Native land claims and provides specific Federal benefits and services for those lands and for the development of Native corporations.

Alaska National Interest Lands Conservation Act (ANILCA) of 1980 (P.L. 96–487, 16 U.S.C. 18f). Recognizes subsistence hunting and fishing rights. Recognizes conservation units and protection of lands and waters and so forth.

Specific Indian Occupancy and Use Laws

In addition to the general laws, such as the Forest Service Organic Act of 1897, the following laws have application under specific circumstances on Federal lands and will have a major effect on the interpretation and implementation of Forest Service policy.

Antiquities Act of 1906 (P.L. 209), as amended. Provided penalties for the illegal removal, disturbance, or destruction of any object of antiquity on Federal lands. Required permits for examination, excavation, or gathering of objects of antiquity on Federal lands. Authorized the President to designate national monuments to protect historic and prehistoric structures and other objects of historic or scientific interest.

Indian Reorganization Act of 1934 (IRA) (25 U.S.C. 461 et seq.). Its primary thrust was to establish tribal governments with whom Congress and the Department of the Interior could conduct governmental business and other provisions directed toward improving the lot of Indians.

National Historic Preservation Act of 1966 (NHPA) (P.L. 89–665, as amended, P.L. 91–423, P.L. 94–422, P.L. 94–458 and P.L. 96–515). NHPA states that “the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people.” The 1992 amendments

to NHPA strengthen requirements for cooperation between Federal agencies and American Indian tribes and Native Hawaiian Organizations.

Alaska Native Claims Settlement Act of 1971 (ANCSA) (P.L. 92–203). Provided settlement of Alaska Native land claims and provided specific Federal benefits and services for those lands and Native corporations.

Endangered Species Act of 1973 (P.L. 93–205, as amended by (P.L. 94–325, P.L. 94–359).

Archeological and Historic Preservation Act of 1974 (P.L. 93–291).

Indian Self Determination and Education Assistance Act of 1975 (P.L. 93–638). Encouraged tribes to assume responsibility for Federally funded programs designed for their benefit that had previously been administered by the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS).

The American Indian Religious Freedom Act of 1978 (AIRFA) (P.L. 95–341). The policy of the United States is to protect and preserve religious rights, practices, and beliefs of the American Indian, Eskimo, Aleut, and Native Hawaiian. This includes, but is not limited to: access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites.

The Archeological Resources Protection Act of 1979 (ARPA) (P.L. 96–95). Establishes a permit process for the management of cultural sites on Federal lands which provides for consultation with affected tribal governments.

Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (P.L. 96–487, 16 U.S.C. 18f). Among other things, recognizes subsistence fishing and hunting.

Management of Museum Properties (18 U.S.C. 1163).

Embezzlement and Theft from Indian Tribal Organizations (25 CFR Indians).

E.O. 11593—Protection and Enhancement of the Cultural Environment (1971).

Native American Grave Protection and Repatriation Act (NAGPRA) (P.L. 101–601, 25 U.S.C. 3001–3013). Addresses the rights of lineal descendants and members of Indian tribes, Alaska Native and native Hawaiian organizations to retain certain human remains and precisely defined cultural items. It covers items currently in Federal repositories as well as future discoveries.

Policy Statements Compared With Statutes

The United States Constitution, Article I, Section 8, includes a clause commonly referred to as the *Commerce Clause: "Congress shall regulate commerce with...the Indian Tribes..."* It further states, in Article VI, that judges in every State shall be bound to the laws of the United States. The sovereign status of Indian Nations has been addressed consistently over time:

The Trade and Intercourse Act of 1790, (1 Stat. 137), established a fiduciary relationship between Indians and the U.S. Government. In 1814, 25 years after the Constitution was ratified, and in order to bring the War of 1812 with Great Britain to a close, the United States signed the *Treaty of Ghent.* This was the first document establishing that the Federal Government would act as a guardian for Indian Nations and their lands. Great Britain insisted that its provisions include the return of lands taken from Indian tribes by the United States before 1812 (the former Northwest Territory).

By 1831, Chief Justice Marshall in his Supreme Court opinion reaffirmed the guardian/ward relationship that the U.S. Government has toward Indians. This was reiterated by the Supreme Court in *U.S.* v. *Kagama*—1886: "Indian Tribes are wards of the Nation." In 1832, Congress authorized three items:

- The Presidential appointment of a Commissioner of Indian Affairs within the Department of the Interior.
- Delegations of authority for the Secretary of the Interior.
- Authorized the President to prescribe regulations pertaining to Indians (25 U.S.C., Sec. 1, 2, and 9). The authority of the President to make executive regulations is subject to the implied condition that they be consistent with the statutes enacted by Congress and in execution of and supplementary thereto (*Romero* v. *U.S.*—1889, 24 Ct Cl. 331).

No statute, law, or court decision to date has affected or altered the above assigned trust responsibility or related principles. Even the recent "Self-Governance Compacts" negotiated between the Secretary of the Interior and Indian tribes do not change the statutory duties delegated by Congress. In these compacts, the trust responsibility associated with individual Indian trust lands has been specifically reserved by the Secretary of the Interior.

Presidential Indian policy provides guidance in working with Indian tribes. Any divergence from the longstanding and pervasive role of the Secretary of the Interior would be inconsistent with Federal statutes, tribal sovereignty, and the guardian-ward relationship the United States has with Indian Nations.

Excerpts from the Forest Service Manual and Litigation

FSM 5550.15 — *Judicial Interpretations*. The courts have issued decisions and final judgments that interpret treaties, statutes, laws, rules, and regulations as to the extent of Indian rights and interests including those rights reserved by or for Indian tribes in treaties with the U.S.:

Interpretation of Reserved Rights Language Where Ambiguities Exist:

Worcester v. *Georgia (1832).* "...the language used in treaties with the Indians should never be construed to their prejudice."

Choctaw Nation v. *Oklahoma (1970).* Because treaties were imposed on the Indians, "treaties with the Indians must be interpreted as they would have understood them...and any doubtful expressions in them should be resolved in the Indians' favor."

Oliphant v. *Suquamish Indian Tribe (1978).* Indian treaties "cannot be interpreted in isolation but must be read in light of the common notions of the day and the assumptions of those who drafted them."

Washington v. *Washington State Commercial Passenger Fishing Vessel Association (1979).* The treaty words must be construed "in the sense in which they would naturally be understood by Indians."

Nature of Tribal Powers

Worcester v. *Georgia (1832).* Indian tribes are "distinct, independent political communities" with powers of self government that exist by reason of their original tribal sovereignty.

Whitefoot v. *United States (1962) and United States v. Washington (1975).* Treaty rights are reserved to or by the tribe not to the individual; they are tribal rights regulated by tribal government actions.

United States v. *Wheeler (1978).* Realty management activities, land exchange, occupancy and use, title claims and so forth, must be carried out with the tribal government level.

U.S. v. *White Mountain Apache Tribe (9th Cir. 1986).* "Tribal sovereignty cannot prevent the Federal Government from exercising its superior sovereign powers."

Nature of Treaty Rights Affecting National Forest System Lands

Worcester v. *Georgia (1832).* Since statutory direction is limited, use the Court interpretations when dealing with the exercise of treaty rights affecting or affected by realty management activities.

U.S. v. *Dion (1985).* Treaty rights may be abrogated by Congress only through clear explicit language. (Abrogation of treaty rights cannot be affected by realty management activities, they must rely on Court interpretation or explicit Congressional direction).

Lac Courte Oreilles Band of Chippewa Indians v. *Wisconsin (1990).* Treaties reserve a tribal usufructuary right or right of occupancy and use on the ceded lands, also the right to gather miscellaneous forest products on State public land.

United States v. *Winans (1905).* The court held that:

- Non-Indians may not prevent treaty American Indians access to fishing sites open to the general public on ceded lands.
- American Indians reserve rights by treaty. The United States does not grant treaty rights.
- The off-reservation right constitutes a servitude or easement over land to access such sites regardless of land ownership.

Seufert Brothers v. *United States (249 U.S. 194, 1919).* The United States Supreme Court determined that the Indians signing the Yakima Treaty would have understood their reserved fishing rights to extend to all their traditional fishing areas, without regard to ceded land boundaries.

Tee-Hit-Ton Indians v. *United States (1955).* The court held that aboriginal or original Indian title is not a property right, but is a right of occupancy which the Sovereign grants and protects against intrusion by third parties. This right of occupancy may be terminated and lands fully disposed of by the Sovereign itself without any legally enforceable obligation to compensate the Indians.

Lyng v. *Northwest Indian Cemetery Protective Association (1988).* The court ruled, regarding a proposed road construction project that could lead to infringement on Indian rights to exercise their religion, that "...there is no violation of the free exercise of religion clause because the affected individuals will not be coerced by governmental action into violating their religious beliefs, nor will the Government action penalize religious activity."

United States v. *Dann (1989).* The court ruled that:

- Only Congress can extinguish aboriginal title;
- Individual American Indian grazing rights were retracted to those exercised before their withdrawal from public lands; and
- Treaty rights, when shared with others, are subject to reasonable regulations.

Water Rights

Winters v. *United States (1908).* The court ruled that the United States could reserve water rights from the State of Montana for tribes. The *reserved water right as applied to Indians* is derived from *Winters* v. *U.S., 1908.* This landmark Supreme Court case held that "*sufficient water was implicitly reserved to fulfill the purposes for which the reservation was established.*" This "Doctrine of Federal Reserved Rights" established a vested right (a right so completely settled that it is not subject to be defeated or cancelled), whether or not the resource was actually put to use, and enabled the tribe to expand its water use over time in response to changing reservation needs. The quantity of water was determined by evaluating the purposes for which the Indian reservation was established and applied to all uses—including irrigation of lands that were not currently serviced with a water supply. This analysis includes information about current and planned (future) reservation uses such as municipal, industrial, and natural resources. The Winters Doctrine provides that tribes have senior water rights and the national forests have junior rights. Some recent court decisions have given Indian reservations priority water rights on Federal lands, including national forests.

United States v. *Adair (723 F.2nd 1394 9th Cir. cert denied 467 U.S. 1252 —1984).* The Ninth Circuit has held that the tribe has an implied water right with a priority date of time immemorial, to as much water on the former reservation lands as they need to support their hunting and fishing rights. "...The Government and the tribe intended to reserve a quantity of water...not only for the purposes of agriculture, but also for the purpose of maintaining the tribe's right to hunt and fish or reservation lands."

Menominee v. *United States (1968).* The court said that the Termination Act did not deprive tribes of hunting and fishing rights on reservation lands.

Kimball v. *Callahan (1974).* The court said that treaty rights to hunt, trap, and fish are permitted on former Indian Reservation land, including lands taken for National Forest and privately owned land open to those uses; for example, such rights that survived the Termination Act.

United States v. *Gemill (1976).* The court found that aboriginal American Indian land rights, which no treaty, agreement, or statute had specifically recognized, were extinguished when those lands were included within a National Forest.

Oregon Department of Fish and Wildlife v. *Klamath Indian Tribe, 473 U.S. 753 (1985).* "A 1901 agreement accomplished diminution of the reservation, no language evidences any intent to preserve special off-reservation hunting or fishing rights for the Tribe" (including lands that are now NFS Lands).

TITLE 1500 - EXTERNAL RELATIONS
WO AMENDMENT 1500-90-1
EFFECTIVE 6/1/90

1563 - TRIBAL GOVERNMENTS

1563.01 - Authority. Numerous laws related to the recognition of American Indian and Alaska Native Governments, hereinafter referred to as Native Americans, and spell out specific rights enjoyed by them. Of specific interest are the following:

1. Alaska National Interest Land Conservation Act of 1980. Subsistence hunting and fishing rights are recognized.

2. President's Federal Indian Policy, January 24, 1983. Supports the primary role of Tribal Governments in matters affecting American Indian Reservations. This policy stresses that the Federal Government will pursue the principle of Indian self-government, and that it will work directly with Tribal Governments on a government-to-government basis.

3. USDI/USDA Agreement in Principle, January 13, 1988. Recognizes that the two agencies have a common objective of helping to promote the highest and best use of Native American lands. This agreement is a foundation for the Departments' endeavors in promoting the objectives of meeting the needs of American Indians.

4. American Indian Religious Freedom Act of 1978. The policy of the United States is to protect and preserve religious rights, practices and beliefs of the American Indian, Eskimo, Aleut and Native Hawaiian. This includes, but is not limited to, access to sites, use and possession of sacred objects, and freedom to worship through ceremonial and traditional rites.

5. Alaska Native Claims Settlement Act of 1971. Provided settlement of Alaska Native land claims and provided specific Federal benefits and services for those lands and Native corporations.

6. National Forest Management Act of 1976. Directs consultation and coordination of planning with Indian tribes.

7. The Archeological Resource Protection Act of 1980. Establishes a permit process for the management of cultural sites on Federal lands which provides for consultation with affected Tribal Governments.

1563.02 - Objective. Heighten sensitivity and awareness of our employees, and establish mutual and beneficial partnerships.

1563.03 - Policy. In carrying out the unique relationship and obligation the United States Government has with Indian Tribal Governments and similar legally defined relations with Alaska Native Corporations, the Forest Service policy shall be to:

1. Maintain a governmental relationship with Federally Recognized Tribal Governments.

2. Implement our programs and activities honoring Indian treaty rights and fulfill legally mandated trust responsibilities to the extent they are determined applicable to National Forest System lands.

3. Administer programs and activities to address and be sensitive to traditional Native religious beliefs and practices.

4. Provide research, transfer of technology, and technical assistance to Tribal Governments.

1563.04 - Responsibilities

1563.04a - Deputy Chief, State and Private Forestry. The Deputy Chief, State and Private Forestry, carries out the American Indian and Alaska Native program service-wide and in the Washington Office.

1563.04b - Regional Foresters, Station Directors, and Area Director. Regional Foresters, Station Directors, and Area Directors are responsible for establishing and implementing an effective American Indian and Alaska Native program.

1563.04c - Line and Staff. Line and Staff at all organizational levels are responsible for implementing a comprehensive American Indian and Alaska Native program.

1563.05 - Definitions

1. Federally Recognized Tribes means an Indian group for which: (1) Congress or an Executive Order created a reservation for the group either by treaty (before 1871), statutorily expressed, agreement by Executive Order, or other valid administrative action; and (2) the United States has some continuing political relationship with the group, such as providing services through the Bureau of Indian Affairs.

2. Treaty means a legally binding agreement between the United States Government and a Tribe, or the Tribe's legal successors.

3. Tribe means any Alaska Native corporation or group, Indian Tribe, Band, Nation, Pueblo, Community, Rancheria, Colony, or Group recognized in statutes or treaties by the Federal Government.

4. Trust Responsibility means the permanent fiduciary relationship and obligation of the United States Government to exercise statutory and other legal authorities to protect Indian rights. As applied to the Forest Service activities, the trust responsibilities are defined primarily by the authorities listed in part 1563.01, and by treaties which may have application to specific areas of the National Forest System. Treaty rights on National Forest System lands are interpreted and applied by the Court.

1563.06 - Relationship to Other Programs

The Native American Program differs from Civil Rights Special Emphasis Programs because of the governmental nature of the Native Americans and Alaska Natives. However, the goals of the Special Emphasis Program (FSM) 1761.3)) are applicable to carrying out an effective Native American Program.

The Indian Civil Rights Act of 1968
(25 U.S.C. SS 1301-03)

S 1301 Definitions
For purposes of this subchapter, the term -

(1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;
(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and
(3) "Indian court" means any Indian tribal court or court of Indian offenses.

S 1302 Constitutional Rights
No Indian tribe in exercising powers of self-government shall -

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people to peaceably assemble and to petition for a redress of grievances;
(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
(3) subject any person for the same offense to be twice put in jeopardy;
(4) compel any person in any criminal case to be a witness against himself;
(5) take any private property for a public use without just compensation;
(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year or a fine of S5,000, or both;
(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
(9) pass any bill of attainder or ex post facto law; or
(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

S 1303 Habeas corpus
The privilege of the writ of habeas corpus shall be available to any person, in court of the United States, to test the legality of his detention by order of an Indian tribe.

United States Department of Agriculture | **Forest Service** | **Washington Office** | **14th & Independence SW P.O. Box 96090 Washington, DC 20090-6090**

Reply to: 2360 **Date:** September 6, 1991

Subject: National Register Bulletin 38

To: Regional Foresters

From time to time, the National Register of Historic Places (NRHP) publishes technical guidance on the identification and assessment of properties that may be eligible for listing on the National Register. This information is useful in assisting the Forest Service and other federal agencies in their mission of identifying and nominating eligible properties to the National Register. This technical guidance is supplemental to the primary statutory and regulatory direction provided by the National Historic Preservation Act (NHPA) and its implementing regulations. It neither amends nor supersedes any regulatory direction previously provided.

One recent technical guidance document, Bulletin 38, "Guidelines For Evaluating and Documenting Traditional Cultural Properties," seems to involve agency cultural resource responsibilities under several statutes. However, it is important to understand and maintain the distinction among agency responsibilities under the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and the American Indian Religious Freedom Act (AIRFA) when following the guidelines of Bulletin 38. For this reason, we are enclosing detailed information on these distinctions and the role Bulletin 38 will play in the management of the National Forest System.

Bulletin 38 does not change the way we manage cultural resources. It does not alter our responsibilities under NHPA. It does not alter the definition of a cultural property. It does not impose new consultation requirements.

The Forest Service will use Bulletin 38 as guidance for NHPA Section 106 consideration of National Register properties which may contain traditional cultural significance. It will be applied in accordance with the guidelines in the enclosed.

/s/ Larry Henson for

F. DALE ROBERTSON
Chief

Cultural Resource Management

Bulletin 38:

Evaluating and Documenting Traditional Cultural Properties

National Register Bulletin 38, "Guidelines For Evaluating and Documenting Traditional Cultural Properties," seems to involve agency cultural resource responsibilities under several statutes. It is important to understand and maintain the distinction among agency responsibilities under the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and the American Indian Religious Freedom Act (AIRFA) when following the guidelines of Bulletin 38. Failure to do so may result in inappropriate environmental and cultural evaluations and undue difficulties and delays in implementing management decisions.

NEPA requires Federal agencies to consider the effects of their decisions upon a broad range of resources. Forest Service NEPA procedures at FSH 1950 describe the initial NEPA review process for a project as including "scoping." However, there is a distinction between the legal requirements for scoping as established by the Council on Environmental Quality's NEPA regulations, and the "scoping" process more broadly applied by the agency. The scoping provisions at 40 CFR 1501.7 apply only when an EIS is involved; the scoping provisions at FSH 1950, Chapter 10, exceed the regulatory requirements by considering scoping as the review mechanism used early in a project to help decide the nature and depth of environmental analysis that will be necessary. This initial NEPA review process should include the contacting of concerned publics, including American Indians and other cultural or ethnic groups who might be interested in the proposed project. Such contact should reveal any concerns among those groups regarding traditional or cultural values that might be associated with the project area. If an EIS will be prepared, 40 CFR 1501.7(a)(1) requires, as part of scoping, that the agency, "invite the participation of...any affected Indian tribe..." Several other sections of the CEQ regulations require attention to Indian concerns: 40 CFR 1503.1(a)(2)(ii), inviting comments from Indian tribes; 40 CFR 1506.6(b)(3)(ii), requiring public involvement measures to include notice to Indian tribes; and 40 CFR 1508.5, concerning Indian tribes as cooperating agencies.

The NEPA regulations treat cultural resources at separate sections from those parts describing obligations towards Indians, whereas Bulletin 38 creates a direct link between the ethnic/cultural attributes and associations of a property and its consequent qualification for consideration as historic under NHPA. For example, 40 CFR 1502.16(g) lists "historic and cultural resources" among the elements to be discussed in terms of environmental consequences in an EIS. 40 CFR 1502.25(a) requires integration of the draft environmental impact statement preparation with "related surveys and studies required by the . . . National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.). . ." and 40 CFR 1508.27(b)(8), in explaining the term "significantly" in the NEPA context, discusses "intensity" by listing a range of factors, including: "the degree to which the action may adversely affect district, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources." Treatment of cultural resources in the course of NEPA compliance may indicate the need for ethnographic surveys to supplement the standard cultural resource survey.

Such subsequent surveys could then trigger a need for further measures to comply with NHPA and/or AIRFA. The NHPA pertains only to tangible properties (buildings, structures, sites, or objects) which are important in history (have chronological persistence). NHPA requires us to consider the effects of our undertakings on properties eligible for or listed in the National Register of Historic Places by following the regulatory process specified at 36 CFR 800.

The American Indian Religious Freedom Act (AIRFA) states that:

"...it shall be the policy of the United States to protect and preserve for American Indians their inherent right for freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites" (42 USC 1966).

AIRFA imposes a duty upon Federal agencies to evaluate their policies and procedures with the aim of protecting Indian religious freedoms. The Courts have declared that AIRFA does not: a) require Federal agencies to consult with Indian spiritual leaders before making decisions; b) confer a "cause of action" but merely states Federal policy; and c) create any judicially enforceable rights (See Lockhart v. Robertson, 927 F.2d 1028 [8TH CIR,(S.D.], decided March 7, 1991, quoting from Lyng v. Northwest Indian Cemetery Protective Ass'n (108 S.CT. 1319 [1988].) Agencies need to make a good faith effort to learn about Indian religious practices and consider any adverse impacts on them in their decisionmaking practices. The consideration of intangible, religious, ceremonial, or traditional cultural values and concerns which cannot be tied to specific cultural properties could be done under the auspices of AIRFA but would not be appropriate as part of the NHPA Section 106 consultation and compliance process.

A property may be eligible to the NRHP and may have traditional values associated with it, but traditional values do not make an area eligible unless they are directly associated with a historic property. As Bulletin 38 points out, "the National Register is not the appropriate vehicle for recognizing cultural values that are purely intangible, nor is there legal authority to address them under Section 106 of the NHPA unless they are somehow related to a historic property."

Bulletin 38 does not change the way we manage cultural resources. It does not alter our responsibilities under NHPA. It does not alter the definition of a cultural property. It does not impose new consultation requirements.

The Forest Service will use Bulletin 38 as guidance for National Historic Preservation Act Section 106 consideration of National Register properties which may contain traditional cultural significance. The Bulletin defines such significance on page 1, as being "derived from the role the property plays in a community's historically rooted beliefs, customs, and practices." Recognizing these traditional cultural values and documenting the types of properties with which they are associated involves an expansion of traditional archaeological and historical techniques to include methods more common to ethnographers, ethnohistorians, and oral historians. This is not a new requirement. We have been identifying and evaluating traditional sites for years. Bulletin 38 should serve as a reminder of our commitment to consider broad definitions of historic values and not focus only on significance as determined by a single class or segment of the public.

Since this consideration of traditional values is provided under Section 106 of the NHPA and implementing regulations at 36 CFR 800 and 36 CFR 60 (USDI Bulletin 38, pages 1-3), a property with traditional cultural values must meet the basic criteria of applicability established by 36 CFR 60. Thus, in order to be considered under the provision of Section 106 of NHPA, a property must meet the following criteria considerations:

1. The property must be tangible and discrete, as defined under 36 CFR 60.4.

2. The property must have clearly definable physical boundaries and attributes which can be documented historically.

3. Designation of large land areas as potential National Register nominations is warranted only when such areas contain multiple properties definable as an historic district by theme group or cultural significance.

4. The traditional values attributed to the property must have a documentable history of at least 50 years.

5. The property must be traditional and of integral importance to the ethnic group or Indian tribe.

6. The property's significance must be established through multiple lines of documentation (e.g., archaeology, history, oral tradition, ethnography, or ethnohistory) or a preponderance of evidence in any one of these fields.

If a property or area being considered for treatment under the provisions of the National Historic Preservation Act does not meet all these criteria, the Section 106 provisions do not apply. The concerns expressed for designation may be very real and very important, but consideration of any traditional cultural values associated with the area might properly occur under some other mechanism or process, such as NEPA or AIRFA.

F. DALE ROBERTSON
Chief

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release May 24, 1996

EXECUTIVE ORDER 13007

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. Accommodation of Sacred Sites. (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions: (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) "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;

(ii) "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; and

(iii) "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.

Sec. 2. Procedures. (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedures Act (5 U.S.C.551(13).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies officers, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,
May 24, 1996.

United States Department of Agriculture | **Forest Service** | **Washington Office** | **14th & Independence SW, P.O. Box 96090, Washington, DC 20090-6090**

File Code: 1620/1300 **Date:** October 2, 1995
Route To: 1000/1600

Subject: Recent Federal Advisory Committee Act Interpretations

To: All Employees

The Forest Service has a long-standing tradition of providing opportunities for State, local, tribal, and private stakeholders to share with us their values and opinions. Efforts to inform and involve the public have yielded substantial benefits for everyone involved. However, employees and members of the public continue to raise questions about the applicability of the Federal Advisory Committee Act (FACA) to external relations.

Recently, we have been meeting with the USDA Office of the General Counsel, USDA Office of White House Liaison, General Services Administration, and Department of Justice to make sure we are in compliance with FACA while being responsive to our stakeholders. In light of these discussions, I have decided to update my policy letters of July 12, 1994, and January 17, 1995. This letter replaces my two previous letters. However, the public participation principles described in the July 12, 1994, letter hold. We can do no less to keep the best external relations possible. For ease of reference, I reiterate them here:

Make It Timely. The process allows enough time for the public to participate fully, with enough advance notice for all activities and crucial points in the process.

Make Your Process "Free." The public is able to participate at minimum cost and commitment of time, while meeting your public involvement objectives.

Emphasize Fairness. Participants agree that the process is fair, that all views offered are considered.

Practice Openness. Dialogue is welcomed and facilitated among all interests. Anyone who wishes to participate can. Information to the public (documents, etc.) is accessible to all and is in language that people can understand.

Make Involvement Early and Continuous. The public is involved from beginning to end, and relationships are built over the long term.

Make It Tangible. Results of the public's input are clearly demonstrated, and the public understands how public involvement affected the decision or outcome.

To help clarify if FACA applies to meetings with outside groups, I offer these general guidelines:

Meetings With State, Local, and Tribal Elected Officials—Under Section 204 of the Unfunded Mandates Reform Act (Public Law 104-4), meetings among Forest Service personnel and elected officials of State, local, or tribal governments, or their designees, are not subject to FACA. Such meetings can be held to obtain consensus advice relative to the implementation of Federal programs, or simply for exchanging information. Section 204 is currently in effect.

Groups Not Controlled by the Federal Government—FACA does not apply to groups established, organized, and managed by entities outside the Federal Government. Examples include businesses, environmental organizations, trade or industry associations, and citizens' groups. You may meet with such groups to hear their opinions, views, and advice; however, no group can become a preferred source of advice for the agency without sparking FACA concerns. Remember, too, that public perception is everything. If people observe you holding repeated private meetings with the same group, they may feel excluded and assume that FACA committee-formation requirements are being violated. If you become aware of members of the public having such feelings, find a way to include those citizens. Every interested party that wishes to be heard, should be heard. Not only will you then receive a broader range of views and opinions, you will minimize any perception of bias or unfairness in your decisionmaking. (See also Enclosure 1.)

Make sure there is sufficient separation between the Federal Government and outside groups. The Federal Government cannot control the group, its organization, or its operations, nor can the Federal Government have someone else establish a group for it. Federal control would be inferred if the Federal Government funds, selects members, or sets the agenda of the group. Federal control could also be inferred if the Federal Government indirectly funds, selects members, or sets the agenda of a group.

Federal employees may attend meetings of groups not controlled by the Federal Government and represent the Forest Service at such meetings, as long as the Federal employees are not in a position to determine, directly or indirectly, the group's activities, and their participation does not create a conflict of interest or violate any other principle of ethical conduct as codified in the Department of Agriculture "Employee Responsibility and Conduct Handbook." However, do not let any group become a preferred source for advice. Remember to practice the public participation principles presented on the previous page.

Groups Controlled Even in Part by the Federal Government—If the Federal Government organizes or controls even in part a group containing private citizens or organizations, there is a high probability that it violates the committee-formation requirements of FACA. Examples of groups not covered by FACA are included in Enclosure 1. The two exemptions most commonly found in the Forest Service are: 1) meetings we hold to obtain the advice from individuals

rather than consensus advice or recommendations from groups, and 2) meetings or committees whose function is not advice-giving. Here is further elaboration:

Group is set up to provide advice—If Federal employees seek advice from a group, then that advice must be obtained on an individual basis without group deliberation. Yet, if you are at a meeting and the group chooses to offer consensus advice:

Explain to the group that you convened them to hear individual advice, not a group consensus.

Explain that group advice could prove to be a problem because they are not a chartered advisory group. And if you were to accept their consensus advice, it could be challenged in court and the Forest Service could be enjoined from using the advice—something no one wants.

There are occasions when, in fact, what you need is an advisory committee. While Executive Order 12838 limits the number of advisory committees the Department may charter, it does not eliminate them completely. Forward requests for new advisory committees to the Public Affairs Office for review. Any legitimate request will be forwarded to the Secretary and GSA for action.

The best way to address concerns about the committee-formation requirements of FACA is to practice good public involvement. Even if you are confident that FACA does not apply, if you are seeking public opinions that will influence your decisions, be sure that it is sought in the most public manner possible and made available to the public as a matter of public record.

We will continue to provide you with updated information regarding compliance with FACA. I believe we are making progress in removing real and perceived barriers to working with our intergovernmental and public partners while complying with the law.

/s/ Joan M. Comanor for

JACK WARD THOMAS
Chief

Enclosure

ENCLOSURE 1

The Code of Federal Regulations addresses FACA in 41 CFR 101. Section 101-6.1004 lists examples of meetings or groups not covered by FACA. Here are the exemptions that would apply most commonly to the Forest Service:

(a) Any committee composed wholly of full-time officers or employees of the Federal Government;

(f) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies;

(g) Any committee which is established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically provided by law, such as making or implementing Government decisions or policy. An operational committee may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether such a committee is primarily operational. If so, it would not fall under the requirements of the Act and this subpart, but would continue to be regulated under relevant laws, subject to the direction of the President and the review of the appropriate legislative committees;

(h) Any meeting initiated by the President or one or more Federal official(s) for the purpose of obtaining advice or recommendations from one individual;

(I) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations. However, agencies should be aware that such a group would be covered by the Act when an agency accepts the group's deliberations as a source of consensus advice or recommendations;

(j) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's views, provided that the President or Federal official(s) does not use the group recurrently as a preferred source of advice or recommendations;

(l) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information.

This appeared in the Federal Register October 24, 1996.

104TH CONGRESS
1ST SESSION

H. R. 742

To amend the Federal Advisory Committee Act to limit the application of that Act to meetings between Federal officers or employees and representatives of State, county, and local governments and Indian tribes, and to limit the application of that Act to activities of the Department of the Interior related to consultations of the Department with Indian tribal organizations with respect to the management of funds held in trust by the United States for Indian tribes.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 1995

Mr. DICKS introduced the following bill; which was referred to the Committee on Government Reform and Oversight

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A BILL

To amend the Federal Advisory Committee Act to limit the application of that Act to meetings between Federal officers or employees and representatives of State, county, and local governments and Indian tribes, and to limit the application of that Act to activities of the Department of the Interior related to consultations of the Department with Indian tribal organizations with respect to the management of funds held in trust by the United States for Indian tribes.

//Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,\\

!!SECTION 1. LIMITATION ON APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT TO CERTAIN MEETINGS AND CONSULTATIONS.!!

Section 4 of the Federal Advisory Committee Act (5 U.S.C. App.) is amended—

(1) in subsection (c) by inserting before the period the following: "or to any meeting between a full-time officer or employee of the Federal Government and one or more representatives of any combination of one or more State, county, or local governments or Indian tribes"; and

(2) by adding at the end the following:

"(d) This Act does not apply to any activity of the Department of the Interior related to consultation of the Department with an Indian tribal organization with respect to the management of funds held in trust by the United States for an Indian tribe."