



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, NW
Washington, DC 20240

Policy Memorandum 22-03

To: National Leadership Council
Superintendents

From: Director

Subject: Fulfilling the National Park Service Trust Responsibility to Indian Tribes, Alaska Natives, and Native Hawaiians in the Stewardship of Federal Lands and Waters

1. Purpose and Duration

This Policy Memorandum sets forth guidance on how the National Park Service (NPS) will implement [Secretary's Order No. 3403](#), *Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters*, issued on November 15, 2021, by Secretary of the Interior Deb Haaland and Secretary of Agriculture Thomas Vilsack. The Secretary's Order describes how these departments will collaborate with Indian and Alaska Native Tribes,¹ Alaska Natives, and Native Hawaiians² to ensure that Tribal governments, Alaska Native entities,³ and the Native Hawaiian Community⁴ play an integral role in decision making related to the management of Federal lands and waters through consultation, capacity building, and other means consistent with applicable authorities.

This Memorandum supplements existing guidance found in [NPS Management Policies \(2006\)](#), Executive Orders, Presidential Memoranda, statutes, regulations, judicial decisions, Secretary's Orders, and other Department of the Interior guidance.

¹ **Indian Tribes or Indian and Alaska Native Tribes** means any Indian or Alaska Native Tribe, band, nation, pueblo, village, or other organized group or community, which the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, as amended (25 USC 5130-5131). Statutes, regulations, and caselaw often refer to "Indian Tribes" and include Alaska Native Tribes when doing so. For example, the definition of "sacred site" from Executive Order 13007 only refers to Indian Tribes but is inclusive of Alaska Native Tribes.

² **Native Hawaiian** means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii (43 CFR 50.4).

³ **Alaska Native entities** means the regional and village corporations established under the authority of the Alaska Native Claims Settlement Act of 1971, as amended (ANCSA), and their affiliated nonprofit organizations and Tribal consortia, and such other Alaska Native organizations created and designated by Tribes to represent their interests, consistent with ANCSA or with the Indian Self-Determination and Education Assistance Act of 1975, as amended.

⁴ **Native Hawaiian Community** means the distinct Native Hawaiian indigenous political community that Congress, exercising its plenary power over Native American affairs, has recognized and with which Congress has implemented a special political and trust relationship (43 CFR 50.4).

Consistent with guidance in [Director's Order #1: National Park Service Directives System](#), associate, assistant, and regional directors, and affected park and program managers will integrate the direction from this Memorandum into relevant policies, procedures, and practices, in support of co-stewardship with Tribal nations. The NPS Office of Native American Affairs may develop supplemental guidance to support implementation of Secretary's Order No. 3403, this Memorandum, and other laws and policies.

This Memorandum will remain in effect until amended, superseded, or rescinded by the Director.

2. Background

The NPS is entrusted with the management of over 85 million acres of Federal lands and waters that are the ancestral homelands of Indian and Alaska Native Tribes, and Native Hawaiians that predate the National Park System. As stewards, we are entrusted to conserve these resources for future generations, including resources, sites, and vistas that hold significance to Indigenous peoples who have lived on and cared for the land since time immemorial.

The NPS recognizes and supports the unique, nation-to-nation relationship that exists with Indian and Alaska Native Tribes that is based in the U.S. Constitution, treaties, statutes, and judicial decisions. In managing Federal lands and waters, the NPS is required to honor its treaty and trust responsibilities to protect Tribal interests, pursue an open and collaborative relationship with Indian and Alaska Native Tribes, and provide access to park resources and places so Indian and Alaska Native Tribes can maintain their cultural and spiritual practices.

Beyond its legal responsibilities, the NPS shares with Indian Tribes, Alaska Natives, and the Native Hawaiian Community the philosophy of making management decisions today that result in protection of park resources and values for generations into the future. In support of this, the NPS will incorporate the expertise of Indian Tribes, Alaska Natives, and the Native Hawaiian Community into planning and resource management activities including through the use of Indigenous knowledge. NPS officials will work directly with appropriate Tribal government officials, Alaska Native entities, and Native Hawaiian organizations whenever plans or activities may directly or indirectly affect Tribal, Alaska Native entity, or Native Hawaiian interests, practices, or traditional use areas. Consistent with *Management Policies* and [Director's Order #2: Park Planning](#), the NPS should include Indian and Alaska Native Tribes, relevant Alaska Native entities, and Native Hawaiian organizations in planning teams for the development of respective management plans and tourism initiatives.

For the purposes of this Memorandum, "Federal lands and waters" will include any area of land and water administered by the Secretary, acting through the NPS Director, for park, monument, historic, parkway, recreational, or other purposes. (See [54 USC 100501](#)).

3. Policy

3.1 Relationship with Indian and Alaska Native Tribes and Native Hawaiian Community

The NPS has a unique relationship with Indian and Alaska Native Tribes that is founded in law and strengthened by a shared commitment to stewardship⁵ of the land and resources. The NPS will honor its legal responsibilities to Indian and Alaska Native Tribes as required by the U.S. Constitution, treaties, statutes, and judicial decisions. Federally recognized Indian and Alaska Native Tribes are sovereign governments with a nation-to-nation relationship with the United States.

In accordance with the [Presidential Memorandum](#) of April 29, 1994, and [Executive Order 13175](#) (Consultation and Coordination with Indian Tribal Governments), the NPS will maintain a government-to-government relationship with Indian and Alaska Native Tribes. This relationship will respect Tribal self-government and sovereignty, honor Tribal treaty and other rights, and meet the responsibilities that arise from this unique legal relationship.

The NPS has a unique relationship with Alaska Native Tribes, Alaska Native organizations, and Alaska Native Corporations. The Federal Government maintains a nation-to-nation relationship with federally recognized Alaska Native Tribes as it does with Indian Tribes in the lower 48 states. The NPS is also required to consult with Alaska Native Corporations on issues affecting their interests in lands and resources, and the NPS often consults with Alaska Native organizations and consortia representing the interests of multiple Tribes within a single region.

The NPS has a special political and trust relationship with the Native Hawaiian Community that exists even without a formal government-to-government relationship ([43 CFR 50](#)). The Native Hawaiian Community uses Native Hawaiian organizations as its informal representatives. Based upon these relationships, Native Hawaiian organizations can engage directly with the NPS to address matters of mutual interest in the management of Federal lands and waters. The NPS will maintain its special political and trust relationship with the Native Hawaiian Community by interacting through Native Hawaiian organizations.

The NPS administers parks in Hawai'i, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, Puerto Rico, and the Virgin Islands. The NPS will maintain open, collaborative relationships with native peoples for whom these islands are their ancestral homes. The NPS will also meet any responsibilities that may have been defined in the enabling legislation of these island parks and to Native Hawaiians in the administration of the Native American Graves Protection and Repatriation Act and the National Historic Preservation Act. (See *Management Policies*, section 1.12)

3.2 Consultation

Consultation with Indian and Alaska Native Tribes is required under Executive Order 13175 and other Federal laws and policies. Following guidance in [512 DM 4](#) (Department of the Interior

⁵ **Stewardship** refers to the fulfilment of the Department's management responsibilities for Federal land and water resources. This includes authorized development activities; management of vegetation, fish, wildlife, and other resources; protection of cultural resources; and the provision of recreational and educational opportunities on Federal lands and waters.

Policy on Consultation with Indian Tribes and Alaska Native Corporations), the forthcoming 513 DM 1 and 2 (Department of the Interior Policy on Consultation with the Native Hawaiian Community), and *Management Policies*, the NPS will consult directly with Indian and Alaska Native Tribes, Alaska Native entities, and Native Hawaiian organizations on all activities that may directly or indirectly affect Tribal, Alaska Native, or Native Hawaiian interests, practices, or traditional use areas.

Consultation with the NPS ensures regular, meaningful, and timely input by Indian Tribes, Alaska Native entities, and Native Hawaiian organizations, to whom Federal agencies are accountable. Consultation should begin at the earliest possible stages of the planning and decision-making process and be maintained throughout. The NPS will give due consideration to Tribal recommendations and Indigenous knowledge in the planning and management of Federal lands and waters. To the maximum extent practicable, the NPS will incorporate Tribal, Alaska Native, and Native Hawaiian forest land, agriculture, traditional food gathering and propagation, access to inholdings, and range land management plans in its planning efforts.

The NPS recognizes the unique Federal relationship to Alaska Native Corporations, which are for-profit corporations established under the Alaska Native Claims Settlement Act of 1971 (ANCSA). The NPS will continue to consult with ANCSA Corporations when taking action that might have a substantial and direct effect on an ANCSA Corporation's interests. The requirement to consult with ANCSA Corporations is distinct from, and does not diminish, the nation-to-nation relationship and consultation obligations between the NPS and Alaska Native Tribes. To the extent that concerns expressed by Alaska Native Tribes and ANCSA Corporations substantively differ, the NPS will give due consideration to the rights, sovereignty and self-governance of Alaska Native Tribes. Within units of the National Park System, the NPS will adhere to statutory requirements for protection, use, and access of subsistence and traditional resources (including access to inholdings) established under the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). The NPS will also consult with Alaska Native organizations and consortia operating under the delegated authority of multiple Alaska Native Tribes; however, consultation with these organizations or consortia must be in addition to, and not in place of, consultation with individual Alaska Native Tribes.

Park superintendents and program managers, with assistance from regional and support offices, may develop mutually acceptable engagement protocols to guide Tribal, Alaska Native, or Native Hawaiian relationships at their park units or program offices. Engagement protocols should be developed with an understanding of special circumstances present at individual parks or within programs, and in collaboration with associated Indian and Alaska Native Tribes, Alaska Native entities, or Native Hawaiian organizations. The NPS may also consult with non-federally recognized Tribes, relocated Indigenous people with a historic link to an area, and other traditionally associated peoples.⁶

⁶ **Traditionally Associated People** means contemporary park neighbors and ethnic or occupational communities that have been associated with a park for two or more generations (40 years), and whose interests in the park's resources began before the park's establishment (*Management Policies*, 5.3.5.3).

The NPS will issue new guidance and procedures for consultation with Indian and Alaska Native Tribes, Alaska Native entities, and Native Hawaiian organizations in the forthcoming Director's Order #71C.

3.3 *Co-Stewardship of Federal Lands and Waters*

The Department considers co-stewardship⁷ to be a broad umbrella of working relationships with Indian and Alaska Native Tribes, relevant Alaska Native entities, and Native Hawaiians that includes co-management (through legal authorities), collaborative and cooperative management (often accomplished through agreements), and self-governance agreements (including annual funding agreements).

To increase opportunities for Indian and Alaska Native Tribes and Native Hawaiians to fully participate in Federal decision making and to safeguard their interests, the NPS will strive to engage in co-stewardship where:

1. Federal lands or waters, including wildlife and its habitat, are located within or adjacent to an Indian or Alaska Native Tribe's lands; or
2. an Indian or Alaska Native Tribe has subsistence or other rights, including treaty-reserved rights, or interests in Federal lands or waters even when that Indian or Alaska Native Tribe's lands are not adjacent to those Federal lands or waters; or
3. the Native Hawaiian Community has rights or interests in those Federal lands or waters.

Where authorizations (such as park-specific legislation or other legal authorities) include non-federally recognized Tribes, they will be presumed to be directly incorporated into this Memorandum. *Management Policies* requires and emphasizes consultation and cooperation with Federal, State, Tribal, and local government entities, as well as diverse constituencies.

For various purposes, the NPS has available authorities to enter into cooperative agreements, collaborative partnerships, and other arrangements with Indian and Alaska Native Tribes, relevant Alaska Native entities, and Native Hawaiian organizations, as well as annual funding agreements with self-governance Indian Tribes. These agreements and other collaborative partnerships further shared interests in the present management of Federal lands and waters, and the NPS will continue to explore additional opportunities as new authorities become available. See Director's Order #20: Agreements for more guidance about development and use of agreements.

The NPS acknowledges the distinction between cooperative or collaborative opportunities and "co-management," which the Department defines as a situation where there is a specific legal basis that requires the delegation of some aspect of Federal decision making or that makes co-management otherwise legally necessary ([Secretary's Order No. 3342](#), October 21, 2016).

⁷ **Co-stewardship** broadly refers to cooperative and collaborative engagements of bureau land managers and Indian and Alaska Native Tribes related to shared interests in managing, conserving, and preserving natural and cultural resources under the primary responsibility of Federal land and water managers. Cooperative and collaborative arrangements can take a wide variety of forms based on the circumstances and applicable authorities in each case. Forms of co-stewardship may, among other forms, include sharing of technical expertise; combining Tribal and bureau capabilities to improve resource management and advance the responsibilities and interests of each; making Tribal and Alaska Native knowledge, experience, and perspectives integral to the public's experience of Federal lands; and entering annual funding agreements under the Tribal Self-Governance Act.

Where co-stewardship is not permitted by law, the NPS will give consideration and deference to Tribal, Alaska Native, and Native Hawaiian proposals, recommendations, and knowledge that affect management decisions on such lands and waters wherever possible.

3.4 Collaborative and Annual Funding Agreements

To improve and strengthen the NPS's nation-to-nation relationship with Indian and Alaska Native Tribes and to help support Tribal self-governance, the NPS will develop appropriate institutional structures to implement collaborative and annual funding agreements for co-stewardship of natural and cultural resources on park lands, including cooperative agreements and service contracts. The NPS will use agreements as a tool to foster cooperation on protection of treaty, subsistence, sacred sites, land access, and religious rights.

Under the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA; [25 USC 5301 et seq.](#)), the NPS may enter into funding agreements with self-governance Tribes, as defined by ISDEAA, including Tribal consortia and organizations. Through these agreements, a self-governance Tribe can administer a non-Bureau of Indian Affairs (BIA) program, service, function, or activity administered by the Department, including those of special geographic, historical, or cultural significance to the Tribe. The NPS works with the BIA Office of Self Governance to publish an annual list in the Federal Register of activities that may be eligible for inclusion in a self-governance funding agreement for the upcoming fiscal year. In compiling this list, the NPS considers the proximity of an identified self-governance Tribe to a unit of the National Park System.

Where the NPS enters into collaborative or cooperative arrangements with Indian or Alaska Native Tribes, Native Hawaiian organizations, or Alaska Native entities, or into funding agreements with self-governance Tribes, the agreements will incorporate dispute resolution procedures appropriate to the subject of the agreement. In accordance with 512 DM 4 and Secretary's Order 3342, the NPS publishes an annual report with information about current agreements with Indian and Alaska Native Tribes, as well as any pending or declined agreements along with a reason why an agreement was declined.

3.5 Access to and Protection of Sacred Sites⁸

The NPS acknowledges that sites sacred to Indian and Alaska Native 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. The connection to place is essential to the spiritual practice and existence of Indian and Alaska Native Tribes, the Native Hawaiian Community, and other Indigenous peoples.

Per [Executive Order 13007](#) (Indian Sacred Sites), the NPS will, to the greatest extent practicable, accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners from Indian and Alaska Native Tribes and avoid adversely affecting the physical

⁸ **Sacred Site** means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian Tribe, or authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided the Tribe or authoritative representative has informed the agency of the existence of such a site (Executive Order 13007, Indian Sacred Sites).

and spiritual integrity of such sacred sites. During consultation with the NPS, Indian and Alaska Native Tribes may identify sacred sites and may also identify preferred treatments of such places. The size and scope of a sacred site may vary depending on the nature of the place but should always be identified to include areas that are clearly related to the site's character, as determined by the Indian or Alaska Native Tribe. This information will alert superintendents, planners, and resource managers to the potential presence of sensitive areas and will be kept confidential to the extent permitted by law. Upon the request of an Indian or Alaska Native Tribe, the NPS will strive to manage information received during consultation in the manner least likely to be disclosed to third parties, consistent with *Management Policies* and [512 DM 3](#) (Departmental Responsibilities for Protecting/Accommodating Access to Indian Sacred Sites). The NPS need record only the most minimal sacred site information necessary to document its related management decisions.

Per the November 2021 Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites, and to the extent feasible and allowable by law and consistent with *Management Policies*, the NPS will make accommodations for access to, and use of, sacred places identified by the Native Hawaiian Community.

Consistent with *Management Policies*, and to the extent feasible and allowable by law, the NPS will make accommodations for access to, and use of, sacred places identified by other traditionally associated peoples.

The NPS will collaborate with Indian and Alaska Native Tribes, the Native Hawaiian Community, and other traditionally associated peoples who have identified sacred sites within units of the National Park System to prepare mutually agreeable strategies for providing access to gated or otherwise inaccessible locales and for enhancing the likelihood of privacy during religious ceremonies. These strategies must comply with constitutional and other legal requirements. Superintendents and managers should limit public knowledge, as allowable by law, about the location and character of sacred sites if disclosure will risk or harm a site, impede the use of a site by associated groups, or cause a significant invasion of privacy.

3.6 Tribal Expertise and Indigenous Knowledge⁹

The NPS will seek out and consider Tribal and Alaska Native expertise and Indigenous knowledge as part of planning and decision making on NPS-administered Federal lands and waters, particularly concerning management of resources subject to reserved Tribal treaty rights and subsistence uses. The NPS will respect the existing and evolving rights of all traditional knowledge holders.

⁹ **Tribal Expertise and Indigenous Knowledge** means a body of observations, oral and written knowledge, practices, and beliefs that promote environmental sustainability and the responsible stewardship of natural resources through relationships between humans and environmental systems. It is applied to phenomena across biological, physical, cultural, and spiritual systems. It has evolved over millennia, and continues to evolve, and includes insights based on evidence acquired through direct contact with the environment and long-term experiences, as well as extensive observations, lessons and skills passed from generation to generation (Office of Science and Technology Policy-Council on Environmental Quality, [Memorandum: Indigenous Traditional Ecological Knowledge and Federal Decision Making](#), November 15, 2021).

3.7 Treaty Rights and Trust Responsibilities

The NPS will integrate consideration of Tribal treaty and reserved rights early in the planning, decision-making, and regulatory processes to ensure that NPS actions are consistent with constitutional, treaty, reserved, and statutory rights. The NPS will recognize and fulfill its legal obligations to identify, protect, and conserve the trust resources of Indian and Alaska Native Tribes and Tribal members, and to consult with Indian and Alaska Native Tribes on a nation-to-nation basis whenever plans or actions affect Tribal trust resources, trust assets, places, or resources of significance to a Tribe, or Tribal health and safety.

Within the National Park System, trust resources are any resources the United States holds in trust for Indian or Alaska Native Tribes or Tribal members, including any rights of access or use that an Indian or Alaska Native Tribe may retain through treaty or legislation. Documents within a park's planning portfolio should take into account relevant policies, plans, and programs of Tribal governments. Where there are inconsistencies between park planning documents and the policies, plans, or programs of Tribal governments, NPS managers should work with the appropriate entities to resolve any inconsistencies to the greatest degree possible consistent with applicable authorities. (See Director's Order #2, section 3.7).

The NPS will also recognize and fulfill its legal obligations to identify, protect, and conserve the trust resources of the Native Hawaiian Community.

4. Competencies and Training

The NPS will review staff positions to update core competencies for Tribal consultation, and for developing and maintaining effective Tribal relations, and will identify and support training opportunities for those competencies. The NPS will develop and implement performance standards and accountability processes by which employees will be measured on progress toward meeting the goals of Secretary's Order No. 3403, including:

- compliance in maintaining nation-to-nation relationships;
- development of new co-stewardship agreements; and
- active support and engagement for existing agreements or collaborative partnerships.

The NPS will prioritize and make available training for all staff who may be involved in programs and decision making that may impact Indian or Alaska Native Tribes, relevant Alaska Native entities, or the Native Hawaiian Community to ensure staff have an appropriate understanding of applicable laws and policies, treaty rights, trust responsibilities, and the Federal relationships with Indian and Alaska Native Tribes and the Native Hawaiian Community.

The NPS encourages continuous learning and skills development for staff with ongoing and sustained Federal-Tribal/Alaska Native/Native Hawaiian responsibilities and supports formal and informal networks of subject matter experts. The NPS will use a variety of communication methods to share information about consultation, Tribal self-governance, co-stewardship of Federal lands and waters, and related topics with employees and the public.

The NPS encourages and supports joint training opportunities with Indian and Alaska Native Tribes, the Native Hawaiian Community, and other Indigenous or traditionally associated

peoples to promote shared understanding, build working relationships, and develop best practices for communication and collaboration at local, regional, and national levels.

5. Third Party Enforceability

This Memorandum is intended only to improve internal management of the NPS and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

-----*End of Policy Memorandum*-----