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FSM 1500 - EXTERNAL RELATIONS

**CHAPTER 1560 - STATE, TRIBAL, COUNTY, AND LOCAL AGENCIES;
PUBLIC AND PRIVATE ORGANIZATIONS**

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1563 - Incorporates interim directive (id) 1560-2010-1 in its entirety without revisions. Makes minor technical and editorial changes throughout the chapter.

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1562 - COUNTY AND LOCAL AGENCIES

Regions, stations, and the Area may write under this section or may expand this section as needed for local use.

1563 - AMERICAN INDIAN AND ALASKA NATIVE RELATIONS

This section sets out the basis for establishing the Tribal Relations Program managed by the Washington Office, Office of Tribal Relations, and provides direction for the program. For detailed policies and procedures for implementing this program; see Forest Service Handbook (FSH)1509.13.

The Tribal Relations Program focuses on improving relations between the American Indian and Alaskan Native Tribal Governments and the Forest Service. See Forest Service Manual (FSM) 1761.3 for direction on special emphasis programs that focus on American Indian and Alaskan Native peoples as individuals or minorities.

The direction in this section does not supersede, amend, or otherwise modify or affect the implementation of existing agreements between Tribes, tribal organizations, and the Forest Service.

1563.01 - Authority

The history of Federal policies, treaties, statutes, court decisions, and Presidential direction regarding Indian Tribes and tribal rights and interests is extensive. The relationship between the United States and Tribes extends to all Federal agencies and is unique and distinct from those that apply to other interests and constituencies served by the Forest Service. FSM 1563.01a through 1563.01i set out the legal authorities relevant to Forest Service relationships with Tribes.

1563.01a - United States Constitution and Indian Tribes

The Constitution contains several provisions that relate directly to Tribes.

1. Commerce with Tribes. Article 1, Section 8, Clause 3, gives Congress the power to regulate commerce with Tribes.
2. Treaties with Tribes.
 - a. Article VI, Section 2, Clause 2, grants authority to the President to make treaties with the advice and consent of Congress.
 - b. Under Article IV, Clause 2, treaties are recognized as a supreme law of the land and States must recognize treaties even if they conflict with State constitutions or laws.

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3. Federal Property Clause. Article IV, Section 3, Clause 2, known as the Federal Property Clause, establishes Congress' authority to dispose of and make all rules and regulations respecting the territory or property of the United States. Since lands held under Indian title are, generally speaking, held by the United States in trust for the benefit of Tribes, the courts have held that these lands are subject to the Property Clause.

1563.01b - Cooperative Land Management and Planning with Tribes

1. Coordination with Tribal Land Use Management and Planning. The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) at Section 202(b) provides that:

In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian Tribes by, among other things, considering the policies of approved tribal land resource management programs.

Section 202 (c)(9) of FLPMA further directs the Secretary to coordinate land use planning with Tribes, to the extent the Secretary finds practical, by keeping apprised of tribal land use plans; ensuring that consideration is given to those tribal plans that are germane in the development of land use plans for public lands; assisting in resolving inconsistencies between Federal and tribal plans; and providing for meaningful involvement in the development of land use programs, land use regulations, and land use decisions for public lands.

2. Consultation and Coordination with Tribes on Forest Planning. Regulations implementing the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 472 et seq.) direct the Forest Service to consult with and coordinate forest planning with Tribes. The land and resource management planning regulations, which implement NFMA, are set out at 36 CFR part 219. The full text of part 219 of the 1982 planning rule is set out in FSH 1909.12.

3. Consultation and Coordination with Tribes on National Forest System Project Planning and Decision Making. The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) and the Council on Environmental Quality (CEQ) implementing regulations at Title 40 of the Code of Federal Regulations, parts 1500-1509 (40 CFR parts 1500-1509) require Federal agencies to invite Tribes to participate in the scoping process for projects and activities that affect Tribes and requires NEPA documentation. Section 1501.2 requires that:

The Federal agency consults early with appropriate State and local agencies and Indian Tribes and with interested persons and organizations when its own involvement is reasonably foreseeable.

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Tribes with treaty rights and other federally protected rights on National Forest System lands may also meet with line officers in advance of the formal planning processes. Executive Order 13175 calls for early consultation with Tribes in the development of regulatory policies that have tribal implications (FSM 1563.01g, para. 1).

1563.01c - Subsistence Rights and Uses in Alaska

1. The Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (43 U.S.C. 1636 et seq.). Section 801 of ANILCA provides that:

Congress finds and declares that (1) The continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional and social existence . . . section (4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents . . .

ANILCA also recognizes subsistence hunting and fishing rights for Native and non-Native rural residents of the State of Alaska and gives them priority to subsistence resources in the event of shortages on public lands. Specifically, Title VIII of the act provides that: “Except as otherwise provided in this act and other Federal laws, the taking on public lands of fish and wildlife for non-wasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes.” Section 810 of this act stipulates how subsistence rights affect land use decisions:

In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his/her designee shall evaluate the effect of such use, occupancy, or disposition on subsistence use and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

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Section 810 also requires the heads of Federal agencies to determine that:

- (A) Significant restrictions of subsistence are necessary and consistent with sound management principles for the utilization of the public lands.**
- (B) The proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such a use, occupancy, or other disposition; and**
- (C) Reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.**

Sections 811(a) and 812 direct the Secretary of the Interior to ensure both Native and non-Native rural residents have access to subsistence resources on public lands.

1563.01d - Treaty Rights

The United States entered into over 300 treaties with Tribes prior to 1871. Under these treaties, Tribes ceded significant portions of their aboriginal lands to the United States. Each of these treaties is unique but, generally speaking, tribes reserved separate, isolated reservation lands under the treaties and retained certain rights to hunt, fish, graze, and gather on the lands ceded to the United States. These rights are known as “off-reservation treaty rights.”

Approximately 60 of these treaties involve ceded lands that are within the boundaries of present day National Forest System lands. The Forest Service must administer lands subject to off-reservation treaty rights in a manner that protects Tribes’ rights and interests in the resources reserved under treaty. Treaty rights are considered property rights protected by the 5th Amendment’s Just Compensation Clause.

Treaty rights must be interpreted as the Tribes understood them at the time of treaty signing and ambiguous treaty provisions are to be interpreted in the Tribe’s favor. Treaty rights are held by the sovereign Tribes who signed the treaties. Treaty rights can only be extinguished by an express and unequivocal act of Congress. Treaty rights are subject to limited State and Federal regulation, where such regulation is nondiscriminatory and reasonably necessary to the conservation of a species or resource. Tribes may use modern hunting and fishing implements when exercising their treaty rights, and they are not confined to use implements that existed at the time of treaty signing. Treaty rights include an “easement of access” to the areas on which such treaty rights were reserved.

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1563.01e - Protection of Tribal Cultural Resources and Sacred Sites on Forest Service Administered Lands

1. National Historic Preservation Act of 1966 (NHPA), as amended (16 U.S.C. 470 et seq.). NHPA, enacted in 1966, sets forth the Federal Government's policy to preserve and protect historical and cultural resources. This act states that the historical and cultural foundations of the Nation should be preserved as a living part of the Nation's community life and development in order to give a sense of orientation to the American people. Under NHPA, objects, sites, buildings, structures, and districts may be listed or eligible for listing on a National Register of Historic Places, and those with national significance also may be designated National Historic Landmarks. NHPA requires Federal agencies to, among other things, consider the effects of proposed actions on properties eligible for protection under NHPA; to assume responsibility for the preservation of historic properties, which are owned or controlled by such agency; to inventory properties under their jurisdiction that may qualify for inclusion on the National Register; and to provide the Advisory Council on Historic Preservation a reasonable opportunity to comment regarding proposed Federal undertakings.

Congress amended the NHPA in 1992 in a manner that strengthens the participation afforded to Tribes and Native Hawaiians. (Although NHPA refers to Native Hawaiians, this Manual chapter presently does not.). Specifically, the amendments identified traditional cultural properties as among those properties eligible for protection under NHPA; require agency officials to consult with Tribes concerning the effects of undertakings on historic properties of traditional and cultural importance to Tribes; and clarified Tribes' authority to assume the functions of State Historic Preservation Officers.

2. American Indian Religious Freedom Act (AIRFA) (42 U.S.C. 1996). This act declares that:

... it shall be the policy of the United States to protect and preserve for American Indians their inherent right of 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 ceremonial and traditional rites.

3. Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. 470aa-mm). This act establishes a permit process for the excavation or removal of any archeological resources from on Federal lands. If a permit issued may result in harm to, disturbance to, or destruction of, any religious or cultural site, as determined by the Federal land manager, the Federal land manager shall notify any federally recognized Tribe which may consider the site as having religious or cultural importance. The Forest Service can,

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but is not required to, do the same in regards to unrecognized Tribes (see 36 DFR 296.7). This law also establishes criminal and civil penalties for illegally excavating, removing, damaging, or defacing any archeological resources on Federal lands. It further establishes provisions for the confidentiality of archeological resources on public lands.

4. Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 et seq.. NAGPRA addresses the protection of Native American burial sites and the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony. NAGPRA also applies to the discovery of human remains of Indian ancestry, funerary objects, sacred objects, or objects of cultural patrimony. NAGPRA requires federal land management agencies to consult with Indian tribes prior to intentional excavations and in the event of inadvertent discovery of human remains or cultural items. NAGPRA also sets forth a process for the repatriation of human remains and cultural items in the possession of federal agencies and museums to the Indian tribe or lineal descendants to whom these remains or items belong. Although NAGPRA refers to Native Hawaiians, this manual chapter presently does not.

5. Executive Order 13007, Indian Sacred Sites. This Executive order directs Federal land management agencies, to the extent permitted by law, and not clearly inconsistent with essential agency functions, to accommodate access to and use of Indian sacred sites, to avoid affecting the physical integrity of such sites wherever possible, and, where appropriate, to maintain the confidentiality of sacred sites. Federal agencies are required to establish a process for ensuring that reasonable notice is provided to affected Tribes of proposed Federal actions or policies that may affect Indian sacred sites. Sacred sites are identified by Tribes.

6. Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), Title VIII – Forestry, Subtitle B – Cultural and Heritage Cooperation Authority, sections 8103 and 8106. These two sections of the 2008 Farm Bill authorize the U.S. Department of Agriculture (USDA) Forest Service to utilize National Forest System land for the reburial of human remains and cultural items, including human remains and cultural items repatriated under the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 et seq.); and prevent the unauthorized disclosure of information regarding human remains or cultural items reburied on National Forest System land. The pertinent language of these two sections is as follows:

Section 8103(a) Reburial Sites: In consultation with an affected Indian tribe or lineal descendant, the Secretary may authorize the use of National Forest System land by the Indian tribe or lineal descendant for the reburial of human remains or cultural items in the possession of the Indian tribe or lineal descendant that have been disinterred from National Forest System land or an adjacent site.

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Section 8103(b) Reburial: With the consent of the affected Indian tribe or lineal descendant, the Secretary may recover and rebury, at Federal expense or using other available funds, human remains and cultural items described in subsection 8103(a) at the National Forest System land identified under that subsection.

Section 8106(a)(1) Prohibition on Disclosure: The Secretary shall not disclose under section 552 of Title 5, U.S.C. (commonly known as the “Freedom of Information Act”), information relating to—(A) subject to subsection (b)(1), human remains or cultural items reburied on National Forest System land under section 8103. Subsection (b)(1) Reburial: The Secretary may disclose information described in subsection (a)(1)(A) if, before disclosure, the Secretary—(A) consults with an affected Indian tribe or lineal descendent; (B) determines that disclosure of the information (i) would advance the purposes of the subtitle; and (ii) is necessary to protect the human remains or cultural items from harm, theft, or destruction; and (C) attempts to mitigate any adverse impacts identified by an Indian tribe or lineal descendant that reasonably could be expected to result from disclosure of the information.

1563.01f - Contracting and Cooperative Agreements with Tribe

The following includes a partial, selected list of authorities highlighting specific references to Tribes. See FSM 1580.12 for other authorities that cover contracting with Tribes and FSH 6309.32, subchapter D, part 4G19 for detailed policies and procedures.

1. Indian Financing Act of 1974, as amended (25 U.S.C. 1451 et seq.). This act provides promotion and development of Native American-owned businesses and remains an essential foundation for economic growth and stability for Native Americans. The program provides for a revolving Loan Fund Program, and gives the Secretary of the Interior the ability to ensure and guarantee the repayment by qualified Native American borrowers of small business loans issued by private banks and lenders. Although this law is principally directed to the Secretary of the Interior, Section 504 of this act permits a Federal agency, like the Forest Service, to award a primary contractor a 5 percent bonus for subcontracting with a certified Indian firm.
2. Cooperative Funds and Deposits (Agreements) (16 U.S.C. 565a-1). This law provides the Forest Service with the authority to enter into cooperative agreements for a number of activities with public or private agencies, organizations, institutions, or persons:

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To facilitate the administration of the programs and activities of the Forest Service . . .; to engage in cooperative manpower and job training and development programs; to develop and publish cooperative environmental education and forest history materials; and to perform forestry protection, including fire protection, timber stand improvement, debris removal, and thinning of trees. The Secretary [of Agriculture] may enter into aforesaid agreements when he or she determines that the public interest will be benefitted and that there exists a mutual interest other than monetary considerations.

The Forest Service may use this authority to enter into cooperative agreements with Tribes.

3. Economy Act of June 30, 1932 (31 U.S.C. 1535). This act authorizes one Federal agency to place an order with another Federal agency for goods and services under the following conditions:

- a. Funds are available,
- b. The head of the requisitioning agency decides the order is in the best interest of the United States,
- c. The agency to fill the order is able to provide or get by contract the ordered goods or services, and
- d. The head of the agency ordering the goods or services determines that the ordered goods or services cannot be obtained by contract as conveniently or cheaply by a commercial enterprise.

This arrangement may be mutually beneficial to both the Forest Service and the Department of the Interior, Bureau of Indian Affairs (BIA), as well as other Federal agencies.

While this act is not an authority for providing money directly to Tribes, it may be appropriate for the Forest Service to contract with BIA or other Federal agencies for delivery of goods and services that benefit Tribes when the conditions in the previous paragraph are met.

1563.01g - Consultation with Tribes on Forest Service Regulations, Policies, and Actions

The following authorities require Federal agencies to consult with Tribes on proposed Federal decisions or projects that have substantial direct effects on tribal rights or interests. If questions arise over what decisions or policies may have substantial direct effect, then consult with the affected Tribe to ascertain their views.

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1. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. This Executive order directs Federal agencies to develop an “accountable process” for ensuring meaningful and timely input by tribal officials in development of legislation and regulatory policies that have tribal implications. The Executive order applies to regulations, legislative comments or proposed legislation, and other policies, statements, or actions that have substantial direct effects on one or more Tribes, on the relationship between the Federal Government and Tribes, or on the distribution of power and responsibilities between the Federal Government and Tribes. The full text of the Executive order is set out in FSH 1509.13.

2. Unfunded Mandates Act of 1995 (2 U.S.C. 1501 note). This act was adopted to curb the practice of imposing unfunded mandates on non-federal governments, including tribal governments, and to improve cooperation and working relations among different levels of government. The act directs federal agencies to develop an effective process to permit elected officials of State, local, and tribal governments (or their designated officials acting on their behalf) to provide meaningful input in the development of regulatory proposals containing significant federal intergovernmental mandates.

In order to facilitate the consultation process, section 204(b) of the act provides an exemption from the Federal Advisory Committee Act (FACA) (5 U.S.C. App.) “for the exchange of official views regarding the implementation of public laws requiring shared intergovernmental responsibilities or administration.” This exemption applies to all Federal agencies subject to FACA; it is not limited to the intergovernmental consultations required by section 204(a), but instead applies to the entire range of intergovernmental responsibilities or administration. In accordance with the legislative intent, the exemption should be read broadly to facilitate intergovernmental communications on responsibilities or administration. Such meetings include, but are not limited to, meetings called for the purpose of seeking consensus or facilitating any other interaction relating to intergovernmental responsibilities or administration.

1563.01h - Research Laws and their Applicability to Tribes

1. Forest and Rangeland Renewable Resources Research Act (16 U.S.C. 1641-1648). This act authorizes the Secretary of Agriculture to conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland resources in rural, suburban, and urban areas. Section 4(c) states “[i]n implementing this Act, the Secretary may cooperate with international, Federal, State, and other governmental agencies, with public or private

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agencies, institutions, universities, and organizations, and businesses and individuals in the United States and other countries.” Further, at section 5 “. . . the Secretary is authorized to make competitive grants that will further research activities authorized by this act to Federal, State, and other governmental agencies, public or private agencies, institutions, universities, and organizations, and businesses and individuals in the United States.” These provisions can be used to cooperate with and make grants to Tribes.

2. The Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a). In Section 3710a(a)(1), general authority is given to each Federal agency to allow the director of any of its Government-operated laboratories to:

Enter into cooperative research and development agreements (CRADAs) on behalf of such agency . . . with other Federal agencies, units of State or local government, and industrial organizations (including corporations, partnerships, and limited partnerships, and industrial development organizations); public and private foundations; nonprofit organizations (including universities); or other persons (including licensees of inventions owned by a Federal agency).

Although Tribes are not specifically mentioned, in this act, the Forest Service may enter into cooperative research and development agreements (CRADAs) with Tribes or tribal entities that fit the description of industrial organizations and with tribal colleges that fit the nonprofit organization description.

3. Food and Agriculture Act of 1977 (7 U.S.C. 3318). This statute authorizes the Secretary of Agriculture to enter into contracts, grants, or cooperative agreements with outside parties, which could include Tribes, for research and other purposes, in the areas of food and agricultural sciences. Agricultural sciences have been interpreted to include forestry. When using a cooperative agreement, the act requires that all parties make a contribution toward the accomplishment of the objectives of the agreement and that the agreement will serve the mutual interest of all parties to the agreement. Whether a grant, contract, or cooperative agreement is used, the act limits the duration of such agreements to 5-year periods.

1563.01i - Tribal Colleges and Universities Initiative

The following Executive order ensures that tribal colleges and universities are more fully recognized and have full access to Federal programs benefiting institutions of higher education.

1. Executive Order 13270, Tribal Colleges and Universities. This Executive order stresses that it is the policy of the Federal Government to ensure that education excellence and opportunity are extended to tribal colleges and universities that serve Indian Tribes and Alaskan Native entities. The Executive order establishes the White

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House Initiative on Tribal Colleges and Universities, and establishes within the Department of Education a Presidential advisory committee entitled the President's Board of Advisors on Tribal Colleges and Universities. The Executive order directs Federal agencies to develop and implement a 3-year plan of the agency's efforts to fulfill the purpose of the order. The Office of Tribal Relations has the responsibility for coordination of the White House Initiative on Tribal Colleges and Universities through the U.S. Department of Agriculture.

1563.02 - Objectives

1. To develop and maintain effective working relationships with American Indian and Alaska Native Tribes taking into account the cultural concerns and interests of Tribes.
2. To ensure that Forest Service officials, programs, and activities respect tribal self-government and sovereignty and honor tribal rights and interests.
3. To ensure consultation with Tribes when undertaking the formulation and implementation of policies that may have tribal implications, as defined in Executive Order 13175, Consultation and Coordination with Indian Tribes (FSM 1563.01g, para.1).
4. To establish and ensure effective government-to-government working relationships with Tribes to achieve the common goal of promoting and protecting ecosystem health.

1563.03 - Policy

1. Maintain a government-to-government relationship with federally recognized Tribes.
2. Ensure that Forest Service employees are familiar with the rights and interests of Tribes as defined by the Constitution, treaties, statutes, Executive orders, and judicial rulings, through training and other efforts.
3. Implement Forest Service programs and activities consistent with and respecting Indian treaty rights and fulfilling the Federal Government's legally mandated trust responsibility with Tribes.
4. Manage Forest Service-administered lands and resources on which tribal treaty rights exist in coordination with Tribes.
5. Coordinate Forest Service land and resource management plans and actions with tribal land and resource management plans and actions to promote the health of ecosystems.

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6. Administer programs and activities in a manner that is sensitive to traditional American Indian and Alaska Native spiritual beliefs and practices and assist tribal members in securing ceremonial and medicinal plants, animals, and the use of specific geographic places, consistent with Federal policy under AIRFA and E.O. 13007 (FSM 1563.01e).
7. Protect the confidentiality of tribal information (including information regarding repatriation and reburials) received by Tribes to the extent practicable under the law.
8. Assist American Indian and Alaska Native Tribal Governments by providing technical, educational, financial, and other information, and establish information exchanges where mutually agreed to and authorized by law.
9. Work to reduce or remove legal or administrative program impediments that inhibit the agency's and Tribes' capacity to work directly and effectively with each other.
10. Consult with Tribes on matters that may affect tribal rights and interests, utilizing the following principles:
 - a. Comply with laws and regulations in a manner consistent with the special and unique legal and political relationship with Tribes. Government-to-government consultation generally involves more than the rights of tribal officials, as members of the general public, to comment on proposed policies or actions under other Federal laws of general applicability.
 - b. Collaboratively involve Tribes, as early as possible, in the development of regulatory and management policies, resource and land management plans, study plans and actions that may have tribal implications. Work with Tribes to determine whether a proposed Forest Service policy or action has implications for their rights or interests that may warrant consultation and where consultation is necessary work with Tribes to establish an effective consultation process.
 - c. Respond in a timely manner to all requests for consultation by Tribes and maintain confidentiality of information to the extent authorized by law as may be implemented through an Executive order.
 - d. Coordinate with other Federal and State agencies and local governments during consultation with Tribes.

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11. Ensure that the repatriation of Native American human remains and associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony is consistent with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) (FSM 1563.01e, para. 4).

12. Support, where appropriate, request(s) for reburial of human remains and cultural items on Forest Service-administered lands received from Indian tribes or lineal descendants. Document and provide explanation to the affected Indian tribe or lineal descendent for any request(s) that are denied

13. Uphold confidentiality of reburial locations and associated documentation relating to human remains or cultural items reburied on National Forest System land.

14. Support reburial of American Indian and Alaska Native human remains and funerary objects on Forest Service administered lands. Consider reburial requests for specific locations and provide explanation for requests that are denied.

1563.04 - Responsibility

1563.04a - Chief

The Chief retains line officer responsibility for national leadership, planning, coordination, monitoring, evaluation, and execution of the Forest Service's tribal government relations programs and activities. The Chief is also responsible for programmatic oversight and assessment of the effectiveness of Forest Service consultations with Tribes on national issues.

1563.04b - Deputy Chief, State and Private Forestry

The Deputy Chief for State and Private Forestry has the Service-wide responsibility for the Washington Office, Office of Tribal Relations, and designates its director.

1563.04c - Director, Office of Tribal Relations, Washington Office

The Director, Office of Tribal Relations has responsibility to:

1. Advise the Chief, the Associate Chief, deputy chiefs, regional foresters, station directors, and the Area Director on the tribal relations programs, policies, and procedures as well as current tribal issues affecting Forest Service resource management on a national basis. Ensure tribal program interests are represented in the decision-making process of the National Leadership Team.

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2. Integrate consideration of tribal issues across deputy areas and help to ensure that government-to-government relations between Tribes and the Forest Service are conducted in compliance with all applicable laws, Executive orders, and agency policy.
3. Maintain effective working relationships with the public, Tribes, members of Congress, and tribal organizations with interest in National Forest System land management and programs. Keep abreast of nationwide tribal issues and opportunities regarding the agency's programs.
4. Provide a liaison to Tribes for National Forest System land and resource management matters of national importance; coordinate tribal liaison needs and activities within the Washington Office and with field units; and facilitate access between tribal leadership and the National Leadership Team.
5. Supervise the staff of the Washington Office, Office of Tribal Relations, and maintain coordination and communication with and among regions, stations, and the Northeastern Area for tribal relations activities and programs.
6. Coordinate with the Director of Recreation, Heritage and Volunteer Resources Management on tribal issues involving compliance with the National Historic Preservation Act (NHPA), Executive Order 13007 pertaining to Indian Sacred Sites, the Native American Graves Protection and Repatriation Act (NAGPRA) (FSM 1563.01e), and the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), Title VIII – Forestry, Subtitle B – Cultural and Heritage Cooperation Authority, sections 8101 – 8107, and other authorities as appropriate.

Coordinate regional responses to requests by Indian tribes or lineal descendants for reburial data essential to program budgeting and policy direction.
7. Ensure Service-wide orientation and training of Forest Service employees for competency in tribal relations, including the appropriate conduct of government-to-government consultation.
8. Facilitate efforts to address and, where possible, resolve disputes between Tribes and the Forest Service that cannot be resolved at the local level.
9. Serve as the certification officer for implementation of Executive Order 13175, as required in section 7 of the order.
10. Conduct monitoring, field reviews, functional assistance trips, and audits of agency tribal relations program activities and take other actions to ensure that the tribal relations program is effective and meets national policy requirements.

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11. Maintain a national database to support the information needs of the Office of Tribal Relations, including treaties, treaty rights, memoranda of understanding, and judicial rulings related to Tribes and affecting the management of Forest Service-administered programs and lands.

12. Notify other staff directors of information or actions involving Tribes that may have implications for their program areas.

1563.04d - Washington Office Staff Directors

Washington Office staff directors whose current or proposed programs and activities could substantively affect Tribes are responsible for ensuring that Tribes have the opportunity to discuss the actual or potential effects, and for obtaining accurate information from Tribes related to tribal interests. Other responsibilities include preparing briefing materials and coordinating input from the field on technical matters involving activities within their areas that may have substantial direct effects on Tribes.

Staff directors are also responsible for notifying the Washington Office, Director, Office of Tribal Relations, and the appropriate deputy chief(s) or the Chief of any significant information or actions affecting Tribes or tribal relations.

1563.04e - Regional Foresters, Station Directors, and Area Director

Regional foresters, station directors, and the Area Director have the responsibility to:

1. Establish and implement effective Tribal Relations Programs for their units.
2. Develop effective, timely communication with the Washington Office, Office of Tribal Relations.
3. Designate a Tribal Relations Program Manager to serve as a focal point for the unit's contact between Tribes at the regional, station, or Area level.
4. Ensure that Tribes with rights and interests that cross more than one forest or region have one primary point of contact between the Forest Service and the Tribe.
5. Ensure tribal program management interests are represented in the decision-making process of the National and Regional Leadership Teams.
6. Ensure that consultation is conducted with Tribes for regional, station, and Area decisions and actions that may affect Tribes.

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7. Repatriate human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony from national forests under their jurisdiction and undertake the following actions:
- a. Ensure that all provisions of the Native American Graves Protection and Repatriation Act have been met.
 - b. Ensure that requests for repatriation from lineal descendants or culturally affiliated Tribes are addressed in a timely manner (FSH 1509.13).
 - c. Ensure that projected costs associated with repatriation are considered in out-year budget submissions.
 - d. Determine actions to be taken on reburial requests by Indian tribes or lineal descendants.
 - e. Comply with Exemption 3 (which covers information specifically exempted from disclosure by statute) of the Freedom of Information Act (FOIA) in order to prevent the unauthorized disclosure of information regarding reburial sites, including the quantity and identity of human remains and cultural items and location of sites.
 - f. Avoid adverse impacts to human remains and cultural items, to the maximum extent practicable.

1563.04f - Regional Tribal Relations Program Managers

The Tribal Relations Program Managers have the responsibility to:

1. Ensure that tribal interests and rights are considered and integrated across program areas and that government-to-government relations between Tribes and Forest Service administrative units are conducted in compliance with applicable laws, Executive orders, and agency policy.
2. Collaborate with other Federal agencies, Tribes, and American Indian advocacy organizations to implement programs and projects and seek mutually beneficial opportunities.
3. Serve as the region's primary source of advice and assistance on matters involving tribal relations; including advising line and staff on responses to tribal requests for use of National Forest System lands and resources.
4. Brief and coach line officers, key staff, and appropriate specialists on effective communication and cultural knowledge and skills required for effective government-to-government relationships between the Forest Service and Tribes and tribal organizations.

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5. Monitor Forest Service programs to ensure that tribal governments are consulted when land and resource management plans and/or other actions could affect tribal rights and interests.
6. Seek to reconcile different views and facilitate timely resolution of disputes involving Tribes and the Forest Service that cannot be resolved at the local level.
7. Advise line and staff on their responsibilities to:
 - a. Protect sacred sites and archaeological, historical, and cultural resources.
 - b. Accommodate Indian religious and spiritual values and practices.
 - c. Respond to tribal requests for reburial of human remains in coordination with the Heritage Resources Program Manager.
 - d. Explain off-reservation treaty rights that affect Forest Service-administered land management.
 - e. Seek traditional ecological knowledge that may be relevant to the management of natural and cultural resources.
8. Collect and submit information to the Washington Office, Director of the Office of Tribal Relations, that summarizes the issues and outcomes of formal consultations with Tribal Governments within their respective regions or administrative units, as requested from the Office of Tribal Relations.
9. Coordinate and provide agency staff work necessary for processing requests by Indian tribes and lineal descendants for reburial of human remains and/or cultural items. Provide documentation, budget, and briefing materials necessary for management decisions and reporting. Initiate program and reburial activity reviews necessary to provide quality controls and tribal relations feedback.

1563.04g - Forest Supervisors

Forest supervisors have the responsibility to:

1. Establish effective government-to-government relationships with Tribes that have rights and interests on the forest and with Tribes for whom lands within the administrative boundaries of the unit have traditional, cultural, and/or spiritual importance.
2. Identify a tribal relations liaison to serve as the first point of contact with tribal leaders and as the person who will generally initiate agency contact with Tribes.

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3. In partnership with tribal officials, develop agreed-upon protocols for consultation on land management issues and decisions that may have a direct, substantial effect on tribal lands, or on subsistence uses, treaty rights, or cultural resources or practices on and off reservations.
4. Seek opportunities to develop partnerships with Tribes under all appropriate Forest Service authorities.
5. Encourage employees to act with respect when working with tribal officials or other American Indians or Alaska Natives.
6. Develop action plans in consultation with Tribes in accordance with the implementing regulations for NAGPRA (45 CFR 10.3) for discoveries of American Indian human remains pursuant to permitted excavations under the Archaeological Resources Protection Act (ARPA) (FSH 1509.13).
7. Undertake the following actions when there are requests for reburial of American Indian human remains and associated funerary objects on lands under their jurisdiction:
 - a. Ensure that requests for reburial are addressed in a timely manner.
 - b. Ensure that all requests for reburial are reported and coordinated with the Regional Tribal Relations Program Manager and Regional Heritage Resources Program Manager.
 - c. When authorizing reburials, consult with the lineal descendants or culturally affiliated Tribe(s) to develop a Memorandum of Understanding that delineates the reburial process. This agreement may include reburial of human remains and associated funerary objects (FSH 1509.13).
 - d. Inform appropriate law enforcement personnel of reburial activities in order to endeavor to protect reburial sites through monitoring and surveillance activities.
 - e. Recommend actions to be taken on reburial requests by Indian tribes or lineal descendants.
 - f. Comply with Exemption 3 (which covers information specifically exempted from disclosure by statute) of the Freedom of Information Act (FOIA) in order to prevent the unauthorized disclosure of information regarding reburial sites, including the quantity and identity of human remains and cultural items and location of sites
 - g. Avoid adverse impacts to human remains and cultural items, to the maximum extent practicable.

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8. Develop a section of the action plan in consultation with local Tribes (25 U.S.C. 3002(3)(d)), for post-1990 ground-disturbing projects that deals with inadvertent discoveries of Native American remains and objects (FSH 1509.13).

1563.05 - Definitions

Adjacent Site. A site that borders a boundary line of National Forest System land.

Action. The whole or a part of an agency rule, legislation, order, license, sanction, relief, or the equivalent or denial thereof (5 U.S.C. 551(13)), including planning, program, permit, and project decisions. An action includes any project or activity authorized by the Forest Service.

Associated Funerary Objects. Funerary objects for which the human remains with which they were placed intentionally are also in the possession or control of a museum or Federal agency. Associated funerary objects also would include those artifacts that were made exclusively for burial purposes or to contain human remains.

Burial Site. Any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which, as a part of the death rite or ceremony of a culture, individual human remains are deposited.

Cultural Items.

1. IN GENERAL: The term “cultural items” has the meaning given the term in section 2 of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 et seq.) which includes Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony.
2. EXCEPTION: The term “cultural items” does not include human remains.

Cultural Patrimony. Items having ongoing historical, traditional, or cultural importance central to the Indian Tribe or Native Hawaiian organization itself, other than property owned by an individual tribal or organizational member. These items are of such cultural importance that they may not be alienated, appropriated, or conveyed by any individual tribal or organizational member. Such objects shall have been considered inalienable by the culturally affiliated Tribe or Native Hawaiian group at the time the object was separated from such group.

Government-to-Government Consultation. A process that enables Tribes to provide meaningful, timely input and, as appropriate, exchange views, information, and recommendations on Forest Service proposed policies or actions that may affect their

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rights or interests prior to a decision. Tribes should be informed of how their concerns were addressed in the decision. Consultation is a unique form of communication between the United States and Tribes characterized by trust and respect.

Human Remains. The physical remains of the body of a person of Indian ancestry.

Inadvertent Discovery. The unanticipated encounter or detection of human remains, funerary objects, sacred objects or objects of cultural patrimony found under or on the surface of Federal lands.

Indian. An individual who is a member of an Indian tribe.

Indian Lands. Lands of Tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

Indian Tribe. Any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1).

Lineal Descendant. An individual that can trace, directly and without interruption, the ancestry of the individual through the traditional kinship system of an Indian tribe, or through the common law system of descent, to a known Indian, the human remains, funerary objects, or other sacred objects of whom are claimed by the individual.

Reburial Site. A specific physical location at which cultural items or human remains are reburied.

Policies That May Have Tribal Implications. Proposed Forest Service actions that may have effects on one or more Tribes and on the relationship between the Federal Government and Tribes; or on the distribution of power and responsibilities between the Federal Government and Tribes.

Sacred Objects. Items that are specific ceremonial objects that are needed by traditional Native American religious leaders for the practice of traditional religions by their present-day adherents.

Traditional and Cultural Purpose. A use, area, or practice identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.

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Treaty Rights. Those rights or interests reserved in treaties for the use and benefit of Tribes. The nature and extent of treaty rights are defined in each treaty. Only Congress may abolish or modify treaties or treaty rights.

Tribal Governments. Unique entities possessing attributes of sovereignty over both their members and their territory.

Tribal Officials. Any elected or appointed representatives of tribal governments, or authorized intertribal organizations.

Tribal Rights. Those rights legally accruing to a Tribe or Tribes by virtue of treaty, statute, or judicial decision.

Tribe. Federally recognized Indian or Alaska Native Tribe, band, nation, pueblo, village, or community included in Federally Recognized Indian Tribe List Act of 1994, (25 U.S.C. 479a).

Unassociated Funerary Objects. Those objects which may have become separated from their original context but which can be reasonably assumed to have come from a burial.

1563.1 - Consultation with American Indian and Alaska Native Tribes

The Forest Service, like other Federal agencies, has a duty to consult and coordinate with Tribes on a government-to-government basis. Because Tribes are affected by National Forest System land and resource management policies, programs and actions, the Forest Service must consult with Tribes on matters that could affect their rights and interests in compliance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (FSM 1563.01g, para. 1), prior to making a decision.

The Forest Service consultation policy was developed to comply with the requirements of Executive Order 13175. This policy also may assist Forest Service line officers in consulting with tribal governments under a number of Federal laws (FSM 1563.03).

1563.11 - General Consultation Requirements

Forest Service officials shall:

1. Notify Tribes of proposed policy, plans, projects or actions that may affect tribal rights or interests in order to provide Tribes an opportunity for meaningful dialogue on potential implications and effects.

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2. Develop, in consultation and collaboration with Tribes and, when mutually agreed upon, unit-specific programmatic and other agreements and statements of relationships with Tribes that help clarify tribal rights and interests and set forth procedures and protocols for consultation, including the points of contact.
 3. Provide Tribes with contact information for Forest Service officials and staff who are responsible for making final decisions that may affect Tribes and request the same of Tribes.
 4. Involve tribal representatives, including staff and technical representatives, in the consultation process including development of proposed policies, plans, projects, or actions, where appropriate. See FSH 1509.13 for guidelines.
 5. Fully consider the information from and recommendations of Tribes and address tribal concerns on proposed decisions.
 6. Inform Tribes how their information and recommendations were considered in Forest Service decisions, including explanations in the event that tribal input was not adopted or incorporated.
 7. Document the process and actions taken to consult with Tribes, the results of those actions, and how the Forest Service's final decision was communicated to affected Tribe(s). The consultation review and monitoring process shall involve tribal officials and representatives and may be included in the general management review process.
- Exhibit 01 summarizes information on key laws and Executive orders regarding requirements for consultation and coordination; for more information, the complete statute or regulation should be consulted.

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1563.11 - Exhibit 01

Tribal Government Consultation and Coordination Requirements

Authority	Whom To Contact	Subject	Time Frame
AIRFA - American Indian Religious Freedom Act of 1978.	Native Traditional Religious Leaders, Religious Practitioners, and Tribal Officials.	Protect and preserve for American Indians their inherent right of freedom to believe, express and exercise traditional American Indian, Eskimo, Aleut, and Native Hawaiian religion. Evaluate policies and procedures to determine changes necessary to preserve American Indian religious cultural rights and practices.	Not specific. Contact during initial evaluation.
ARPA - Archeological Resources Protection Act of 1979, as amended and implementing regulations.	Tribal Officials.	If permitted, work may harm an "Indian religious or cultural site or public or Indian lands."	Forest Service must notify the tribe 30 days before issuing a permit.
Federal Land Policy and Management Act of 1976 and implementing regulations.	Tribal Officials.	Section 202 (c) (9) of FLPMA further directs the Secretary to coordinate land use planning with tribal planning.	
Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), Title VIII – Forestry, Subtitle B – Cultural and Heritage Cooperation Authority, section 8103.	Indian tribe or lineal descendent.	Request for reburial of human remains and cultural items.	Timely.

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1563.11 - Exhibit 01—Continued

Authority	Whom To Contact	Subject	Time Frame
Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), Title VIII – Forestry, Subtitle B – Cultural and Heritage Cooperation Authority, section 8106.	Secretary required to consult with affected Indian tribe or lineal descendant prior to any disclosure of information concerning reburials; or with appropriate Indian tribes prior to disclosure of other information.	General prohibition on disclosure on information relating to reburials, cultural items, uses or activities that have a traditional and cultural purpose and provided with express expectation of confidentiality, notwithstanding requests for information made under 5 U.S.C. 552, commonly known as the Freedom of Information Act (FOIA).	Prior to any disclosure of information concerning reburials or disclosure of other information.
NFMA - National Forest Management Act of 1976, as amended and implementing regulations.	Tribal Officials.	Provide opportunity to raise issues and comment on land-use plans.	Varies depending upon the stage of the planning process.
NAGPRA - Native American Graves Protection and Repatriation Act of 1990, as amended.	Tribal Officials, Culturally affiliated Tribe & Lineal Descendants.	Treatment and disposition of certain human remains and associated funerary items and items of cultural patrimony. Also, when human remains or associated funerary items are excavated or accidentally discovered.	Not specific except for certain circumstances (see 25 U.S.C 3001-3013 for further information).
NEPA - National Environmental Policy Act of 1969, as amended (and CEQ regulations at 40 CFR parts 1500-1509).	Tribal Officials.	Among other purposes, to preserve important historic, cultural and natural aspects of our national heritage. Provide opportunity to participate in land management decisions.	Scoping process, comment period: 30 days on EA, 45 days on EIS.

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Authority	Whom To Contact	Subject	Time Frame
NHPA - National Historic Preservation Act of 1996, as amended.	Tribal Officials, Parties with a demonstrated interest (can include Religious Practitioners).	Provide opportunity to consult if Federal undertaking may affect properties of historic value to an Indian Tribe on tribal or non-tribal lands. Invite Tribes to participate as concurring parties when requested.	(See regulations re specific points 36 CFR 800). Can be incorporated into NEPA process.
RFRA - Religious Freedom Restoration Act of 1993.	Religious Practitioners.	Ensure agency decisions do not unduly burden free exercise of religion (access, use, or ritual practice) unless there is a compelling justification.	Not specific.
Executive Order 13175 of 2000 - Consultation and Coordination with Indian Tribal Governments.	Tribal Governments.	Consult to greatest extent and operate within a government-to-government relationship.	Not specific.
Executive Order 13007 of 1996 – Indian Sacred Sites.	Tribal Officials and individuals who are an appropriately authoritative representative of an Indian religion.	Accommodate access to and ceremonial use of sacred sites; avoid physically affecting the integrity of such sites.	Not specific.

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1563.12 - Consultation, Monitoring, and Evaluation

Once a decision is made, deciding officials shall document and track follow-up actions to ensure implementation. Consultation monitoring and evaluation of effectiveness shall be incorporated, as appropriate, in program reviews. During program reviews, monitor and evaluate the results and effectiveness of consultation.

1563.13 - Additional Consultation Considerations

1. Supplemental Agency Guidance. Administrative units and program areas within the Forest Service are encouraged to develop supplemental consultation processes and training that are specific to their programs and consistent with national policy and legal mandates.
2. Compensation. The Forest Service may compensate Tribes for specialized tribal expertise or other extraordinary consultation costs to the extent authorized by law. See FSH 1509.13 for guidance on compensation.
3. Emergencies and Exigent Circumstances. Responsible officials may take such actions as may be necessary in an emergency or under exigent circumstances when consultation prior to the Forest Service action is not feasible. Responsible officials shall consult with Tribes at the earliest opportunity when emergency actions are taken that may have substantial direct effects on Tribes.

1563.2 - Dispute Resolution

The Forest Service values collaboration and agreement with and support of its decisions. Disputes between the Forest Service and others, including Tribes, may occur during and after a decision is made. Where appropriate and mutually agreed to, the Forest Service line officer with responsibilities for a particular decision and the Tribe's representative are encouraged to use a neutral third party to facilitate consultation before or after a decision is made or during implementation of a decision. However, the use of a third party facilitator to attempt to resolve a dispute is not a substitute for filing appeals of agency decisions in the Forest Service's administrative appeals process. Administrative appeals of decisions (under 36 CFR parts 215 or 251) must be filed by Tribes in order to exhaust administrative remedies.

1563.3 - Reburial of American Indian and Alaska Native Ancestral Remains and Cultural Items

American Indians and Alaska Natives have expressed an interest in reburying the repatriated remains and cultural items of their ancestors on Forest Service-administered lands. The remains and cultural items have been, or are being, repatriated to the Tribes under the terms of

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the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001-3013). Some Forest Service regions and forests have developed procedures for reburials and have approved reburial of American Indian and Alaska Native human remains and associated funerary objects on Forest Service-administered lands. Because of concerns over consistency within the agency and because NAGPRA does not specifically address reburial, national policy and direction have been developed regarding the reburial of American Indian and Alaska Native human remains and cultural items on Forest Service-administered lands.

Repatriations of American Indian human remains and funerary remains, as well as other objects defined in NAGPRA, are carried out under the Forest Service's statutory responsibilities. The reburial of American Indian and Alaska Native human remains and cultural items is a discretionary action within the agency's administrative authorities. Tribal requests for reburial of ancestral human remains and cultural items are, in general, closely tied to repatriations of those remains and objects by the Forest Service under the terms of NAGPRA. However, guidance is provided to ensure that these two actions (repatriation and reburial) are treated as separate, although often related, processes. See FSM 1563.01e for the authority for repatriation of Native American remains originally removed from Forest Service-administered lands.

The USDA Forest Service provides for Indian tribal rights of ownership or control regarding Native American human remains and cultural items pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 et seq.). Human remains and cultural items have been, or are being, repatriated to the affected Indian tribe(s) or lineal descendant(s) under the terms of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3002(a) & 3005(a)).

Reburial of human remains or cultural items in the possession of the Indian tribe or lineal descendant that have been disinterred from National Forest System land or adjacent sites may be carried out pursuant to the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), Title VIII – Forestry, Subtitle B – Cultural and Heritage Cooperation Authority, section 8103.

1563.31 - General Reburial Considerations

1. The Forest Service retains the discretion to decide whether to authorize reburial of American Indian and Alaska Native human remains and cultural items on National Forest System lands, and under what conditions reburials will occur (FSM 1563.04e).
2. Respect is the foundation for all decisions regarding reburial of American Indian and Alaska Native human remains and cultural items on National Forest System lands, and Forest Service officials are expected to be sensitive to the diversity of tribal cultural beliefs.

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3. All activities and documentation related to reburial of American Indian and Alaska Native human remains and cultural items must be kept confidential to the extent authorized by law.
4. Prior to authorizing reburial on National Forest System lands, the Forest Service shall ensure that the lineal descendant(s) or culturally affiliated Tribe(s) have legal ownership or custody of the remains, and that the requirements of NAGPRA have been met.
5. When the Forest Service authorizes reburial on National Forest System lands, including wilderness and other special designation areas, the agency shall attempt to accommodate all aspects of lineal descendants and culturally affiliated Tribe(s) requests. Reburials should be at or as close as practicable to the burial sites from which those American Indian and Alaska Native human remains and cultural items were originally recovered. When authorizing reburials, the Forest Service shall comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), the National Historic Preservation Act, and other applicable laws.
6. For post-1990 excavations or inadvertent discoveries (section 3 of NAGPRA) related to a Forest Service funded, permitted, or licensed project, costs associated with reburial, if authorized, will be considered part of the project costs of the project component.
7. Lineal descendants and/or culturally affiliated Tribal representatives shall be given opportunities to be present and conduct ceremonies at reburial(s) and to be allowed future access to these sites for cultural and spiritual purposes, to the extent permitted by law.
8. In the case of human remains and cultural items recovered from adjacent sites, confirm with the Indian tribe or lineal descendant in possession of the human remains or cultural items that all applicable State laws and regulations regarding ownership or custody have been complied with prior to authorization for reburial on NFS lands.
9. Reburial locations will not constitute the establishment of a new cemetery. However, Indian tribes and lineal descendants may consider a reburial site to be a sacred site (as defined by Executive Order 13007) and to have traditional and religious significance.
10. Ensure that, when considering requests for reburial of human remains and cultural items, Forest Service line officers shall uphold both the letter and the spirit of section 8103 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), Title VIII – Forestry, Subtitle B – Cultural and Heritage Cooperation Authority, by interpreting any ambiguity in a manner that furthers Congressional intent to facilitate, and not to impede, reburial of these human remains and cultural items.

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1563.4 - Reviews for Repatriations and Reburials

The regional tribal relations program manager shall conduct periodic reviews to ensure compliance with the Forest Service reburial policy pursuant to requirements of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), Title VIII – Forestry, Subtitle B – Cultural and Heritage Cooperation Authority, section 8103. Each review must include the regional heritage resources program manager and other Forest Service programs, as appropriate. Copies of each review must be provided to the regional forester and the Director of the Office of Tribal Relations.

The regional tribal relations program manager shall also assist the Heritage Program in conducting periodic reviews on compliance with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA).

1563.5 - Information and Technology Sharing

Since ecosystems transcend land ownership boundaries, effective land and resource management requires cooperation and collaboration among the Forest Service, other Federal agencies, Tribal, State, and county governments, and private landowners. Such cooperation and collaboration may involve the exchange of technical, financial, education, and other assistance.

The retention of traditional plants, uses, practices, and knowledge is a critical issue to American Indian and Alaska Native Tribes and their people. Community identity and survival are dependent on continued access to National Forest System lands and other public lands for many Tribes. The maintenance of traditional gathering, hunting, fishing, and other activities; and use of certain landscapes, sites, and locations that contain important natural and cultural resources should be considered in Forest Service land management planning and research activities (see FSM 1920, 1950, and 4000). The Forest Service should also seek to identify traditional tribal knowledge about ecosystems that may be helpful in meeting management objectives of both the Forest Service and Tribes.

1563.6 - Financial Assistance to Tribes

The goal is to increase Forest Service employees and tribal understanding and of the opportunities to enter into contracts, grants, and agreements with tribal governments and Native American-owned businesses. Increased tribal participation in contracting and agreements is an important aspect of our responsibilities to consult, coordinate, and communicate with Tribes. Where appropriate, contracting with Tribal governments to conduct Forest Service activities or projects can help Tribes and the agency meet mutual objectives.

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1563.7 - Voluntary Closures

Forest Service units shall respond in a timely manner to tribal requests for voluntary closures of specific areas for tribal traditional cultural uses. When considering such requests, Forest Service line officers should consult with appropriate tribal officials and traditional leaders regarding the need for appropriate signing, educational material, alternative locations, and scheduling. See FSH 1509.13 for guidelines for voluntary closures.

1565 - IMPLEMENTATION OF EXECUTIVE ORDER 12372, INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

1565.01 - Authority

Executive Order (E.O.) 12372 of July 14, 1982, as amended by E.O. 12416 of April 8, 1983, requires the Forest Service to allow State and local governments to review proposed Federal financial assistance and direct Federal development programs. E.O. 12372 and E.O. 12416 (ex. 01 and ex. 02) replace the Office of Management and Budget (OMB) Circular A-95 clearinghouse process. The Department's implementing procedures are in 7 CFR 3015, Subpart V, and Departmental Regulation 2400-4 dated August 10, 1983.

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Presidential Documents

Title 3

Executive Order 12372 of July 14, 1982

The President

Intergovernmental Review of Federal Programs

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401(a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(a)) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

Section 1. Federal agencies shall provide opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for or that would be directly affected by, proposed Federal financial assistance or direct Federal development.

Sec. 2. To the extent the States, in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

(a) Utilize the State process to determine official views of State and local elected officials.

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1565.01 - Exhibit 01—Continued

(b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.

(c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.

(d) Allow the States to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient and where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.

(e) Seek the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas. Existing interstate mechanisms that are redesignated as part of the State process may be used for this purpose.

(f) Support State and local governments by discouraging the reauthorization of creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

Sec. 3. (a) The State process referred in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.

(b) At the direction of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

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1565.01 - Exhibit 01--Continued

Sec. 4. The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

Sec. 5. (a) Agencies shall proposed rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.

(b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective April 30, 1983.

Sec. 6. The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401(a) of that Act (42 U.S.C. 4231(a)), in a manner consistent with this Order.

Sec. 7. The Memorandum of November 8, 1968, is terminated (33 Fed. Reg. 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A-95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

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1565.01 - Exhibit 01--Continued

Sec. 8. The Director of the Office of Management and Budget shall report to the President within two years on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.

/s/ Ronald Reagan

THE WHITE HOUSE
July 14, 1982

(FR Doc. 82-19472
Filed 7-11-82; 3:18 pm)
Billing 3196-01-M

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1565.01 - Exhibit 02

15587

Presidential Documents

Executive Order 12416 of April 8, 1983

Intergovernmental Review of Federal Programs

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to allow additional time for implementation by State, regional and local governments of new Federal regulations which foster an intergovernmental partnership and strengthened federalism, it is hereby ordered as follows:

Section 1. The preamble to Executive Order No. 12372 of July 14, 1982 is hereby amended by inserting, after the words "42 U.S.C. 4231(a)", the following phrase: ", Section 204 of the Demonstration Cites and Metropolitan Development Act of 1966 (42 U.S.C. 3334)".

Sec. 2. Section 5(b) of Executive Order No. 12372 is amended by deleting "April 30, 1983" and inserting in its place "September 30, 1983."

Sec. 3. Section 8 of Executive Order No. 12372 is amended by deleting "within two years" and inserting in its place "by September 30, 1984".

/s/ Ronald Reagan

THE WHITE HOUSE
July 14, 1982

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1565.02 - Objective

To allow State and local governments to review and comment on proposed Federal financial assistance programs (grants) and direct Federal development projects.

1565.03 - Policy

The Forest Service shall use the State review process when coordinating review of programs covered by E.O. 12372 with the Single Point of Contact (SPOC) designated by the States.

1565.04 - Responsibilities

1565.04a - Washington Office, Acquisition Management Staff

The Washington Office, Acquisition Management staff shall:

1. Coordinate E.O. 12372 program requirements with the U.S. Department of Agriculture (USDA) and the Office of Management and Budget (OMB).
2. Monitor regional and Area compliance with the requirements of the Executive Order.
3. Provide to regions and the Area copies of applicable State processes for the review of Federal programs, a list of State Single Points of Contact (SPOC), a list of USDA programs selected for review by the States, and any subsequent changes by the States in their review processes, SPOC, or program selections.
4. Provide to the affected region or the Area copies of State process recommendations sent to the Department that require us to accommodate or explain.

1565.04b - Regional Foresters and Area Director

Regional foresters and the Area Director shall:

1. Direct and coordinate the E.O. 12372 process with all States within their areas of responsibility.
2. Ensure that the SPOC's have the opportunity to review selected grant programs giving them at least 30 days to comment on Federal financial assistance grants with noncompetitive continuation awards, and at least 60 days for competitive and non-continuing financial assistance. Exceptions to these timeframes must be approved by the USDA and shall be published in the Federal Register.

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3. Require applicants to submit SF-424, Federal Assistance, with all applications for grant funds. Check applications for grant programs selected for review to ensure the SPOC participated in the review process as prescribed in the Executive Order. Approve only after the grant applicant has certified that the grant application was cleared by the SPOC.
4. Continue to use the existing Forest Service planning (36 CFR 219) and National Environmental Policy Act (NEPA) consultation procedures (FSM 1920 and FSM 1950) for Forest Service direct development projects, sending copies of applicable documents to the SPOC's of States that have selected Forest Service direct development projects for review.
5. Coordinate with affected neighboring regions or the Area any agreements developed with the SPOC's.
6. Supplement Forest Service Manual direction on how the program will operate in each State, including a description of the State's review process, a list of affected programs, timing, and a schedule for submission of documents to the SPOC.
7. Either accommodates State review process recommendations by accepting them or reaching a mutually agreeable solution with the parties who prepared them, or explain in writing to the SPOC the reasons for not accepting the recommendations. Provide a copy of such responses to the Washington Office, Administrative Management staff.
8. Postpone final action on a proposed project for at least 15 days after rejecting a State process recommendation.
9. Consider comments which do not constitute a State process recommendation in accordance with other existing consultation requirements such as those of the Intergovernmental Cooperation Act of 1968 or the National Environmental Policy Act of 1969.

1565.05 - Definitions

Accommodate or Explain. For each State process recommendation sent directly to the Department for a Federal grant program or direct development project planned by the Forest Service, the Forest Service must either:

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- (1) Accept the recommendation;
- (2) Reach a mutually agreeable solution with the parties preparing the recommendation; or
- (3) Provide the SPOC with a written explanation for nonaccommodation.

The Forest Service must accommodate or explain only when a SPOC has sent its State process recommendations directly to the Department. State process recommendations for Forest Service programs are to be sent to:

U.S. Department of Agriculture
Office of Finance and Management
Attention: E.O. 12372
Washington, D.C. 20250

Direct Federal Development. All Federal real property acquisition and construction; major changes in the use of land, water, or real property owned or leased by the Federal Government; the issuance or modification of licenses and permits; and planning requirements for these activities as mandated by law.

Federal Financial Assistance. Categorical grant-in-aid programs identified in the Catalog of Federal Assistance (CFDA), or assistance in the form of loans or loan guarantees.

Single Point of Contact. The designated State official or organization to which the Forest Service shall send proposals for review, and who, in turn, coordinates the State's review and recommendations for Federal programs covered by E.O. 12372.

State Process. The framework under which State and local officials carry out intergovernmental review of activities under the Executive order.

State Process Recommendations. Statements developed by commenting State, area-wide, regional, and local officials and entities participating in the State process and sent to the Department by the SPOC within an established timeframe.

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1565.1 - Programs and Activities Covered Under Executive Order 12372

Forest Service Federal financial assistance and direct Federal development programs covered by E.O. 12372 that may be selected by the States for review are:

<u>CFDA number</u>	<u>Program</u>
10.664	Cooperative forestry assistance.
10.669	Accelerated cooperative assistance for forest programs on certain lands adjacent to Boundary Waters Canoe Area.
-----	National Forest Systems land management practices which involve direct development activities.

All direct development activities on National Forest lands fall within the scope of Forest Service planning processes described in 36 CFR 219 that includes the processes for consultation with State and local governments.

1565.11 - Programs and Activities Excluded From Executive Order 12372

Forest Service programs and activities excluded from the scope of Executive Order 12372 are:

<u>CFDA numbers</u>	<u>Program</u>
10.652	Forestry research.
10.665	Schools and roads - grants to States.
10.666	Schools and roads - grants to counties.
10.668	Additional lands - grants to Minnesota.
-----	Forest Service research activities.
-----	Land management practices involved with administration and protection on National Forest System land that are not direct development.
-----	Negotiations of involved and sensitive land exchanges or purchases that would be endangered or hampered with premature release of appraisal figures, resulting in adverse effects or local land speculation.
-----	Projects which are of small scale or size, are highly localized as to impacts, or display other characteristics which make review impractical.

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1566 - PUBLIC AND PRIVATE ORGANIZATIONS

The Forest Service relates with a variety of groups organized to provide social benefits. Examples would include service clubs, youth groups, religious institutions, public corporations, and associations of individuals with common interests. Some of these groups make use of National Forest lands under authorizing agreements, such as special use permits, while others may only have interests and purposes mutual to those of the Forest Service.

1566.1 - Youth Groups

1566.11 - Boy Scouts of America

This organization conducts a variety of activities and programs on the National Forests, including the operation of a number of organization camps authorized by special use permit. Exhibit 01 contains the text of a Memorandum of Understanding between The Boy Scouts of America and the Forest Service.

Exhibit 02 is the text of the master policy concerning indemnification and liability insurance which the Boy Scouts of America carries to provide coverage to all of its members. This policy continues until canceled and meets the requirements of clauses B-8 and B-10 of FSM 2783.11. When said clauses are included in special use permits (FSM 2713.32).

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1566.11 - Exhibit 01

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE BOY SCOUTS OF AMERICA (Boy Scouts)
U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE
(Forest Service)

I. Purpose and Scope

The Boy Scouts and Forest Service enter into this Memorandum of Understanding for the purpose of establishing a framework for a cooperative relationship under which the Boy Scouts and the Forest Service, to the extent permitted by law, will assist one another in areas of mutual concern.

The Boy Scouts and the Forest Service believe that conservation of natural resources is vital to boys personally and to the future of their country; that boys should develop and understanding of their interdependence with their environment; and that boys must understand their citizenship responsibilities to contribute to making a better environment in which to live.

Boy Scouts are desirous of lending their aid and support to the protection, development, and the improvement of the National Forest System as a means of providing healthful, wholesome, and educational outdoor activity for the Scouts.

The Forest Service, as an agency of the United States Government, is responsible for the management of the National Forest System and is assigned Federal responsibilities for national leadership in forestry. The Forest Service is desirous of cooperating with eligible agencies in furthering wise use of natural resources toward the maintenance of environmental quality. The Nation's forest resources as well as the citizens of the country would benefit from a cooperative relationship between the Boy Scouts and the Forest Service.

II. Authority

Forest Service

7 USC 2201
16 USC 565a-1

Boy Scouts

36 USC, 21 et. seq.

III. General Provisions

1. The Boy Scouts and the Forest Service, working together at appropriate national, regional, and local levels, will foster communications regarding volunteer programs and activities relating to the conservation, management, protection, and development of the Nation's forest resources. The effort will include, where possible, other Federal Departments having like concerns.
2. Subject to applicable limitations, the Forest Service will be involved in Boy Scout training and program activities to the extent they pertain to the conservation, management, and development of the Nation's forest resources.

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1566.11 – Exhibit 01--Continued

3. Forest Service personnel will be made aware of this Memorandum and, to the extent not in conflict with their Federal responsibilities, be permitted to serve on appropriate Boy Scout Committees and Councils at the national, regional, and local levels.
4. The Forest Service shall be consulted when questions relating to forest resource management arise. Appropriate conceptual program and/or activities of the BSA shall be presented to the Forest Service for technical review and/or direct assistance with development.
5. The Forest Service shall cooperate with BSA projects and activities such as, but not limited to:
 - a. National Jamboree.
 - b. High Adventure Programs.
 - c. National Conservation Committee.
 - d. National Camping Committee.
 - e. USDA Conservation Awards Program for BSA Councils.
 - f. BSA Campways Program.
 - g. BSA Historic Trails Program.

IV. Miscellaneous Provisions

- A. The duration of this Memorandum shall be from the last date shown below until terminated by written notice from either party to the other.
- B. Nothing in this Memorandum shall be construed to obligating the Forest Service to expend, or as involving the United States in any obligation for future payment of money, in excess of appropriations by Congress.
- C. In carrying out the terms of this agreement, there shall be no discrimination against any person because of race, creed, color, or national origin.
- D. No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

VI. This Memorandum supersedes the Cooperative Agreement between the Boy Scouts of America and the U.S. Department of Agriculture, Forest Service, dated May 14, 1971.

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1566.11 - Exhibit 01--Continued

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the last date shown below.

BOY SCOUTS OF AMERICA

U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE

/s/ J. L. Tarr
Signature

/s/ R. Max Peterson
Signature

November 17, 1982
Date

November 5, 1982
Date

J. L. TARR
Typed Name

R. MAX PETERSON
Typed Name

Chief Scout Executive, BSA
Title

Chief, Forest Service, USDA
Title

Address:

Address:

National Office
Boy Scouts of America
1325 Walnut Hill Lane
Irving, Texas 75062-1296

USDA, Forest Service
P.O. Box 2417
12th & Independence Avenue, SW
Washington, DC 20013

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1566.11 - Exhibit 02

INSURANCE COMPANY OF NORTH AMERICA

Philadelphia, Pennsylvania SCOUTING/USA

CERTIFICATE OF INSURANCE

(This certificate of Insurance neither affirmatively nor negatively amends, extends or alters the coverage, limits, terms or conditions of the policies it certifies.)

This is to Certify to

U.S. Department of Agriculture
Forest Service
Room 4231 South Building
Washington, DC 20250

POLICY NO. GLP 706452
POLICY PERIOD: From 1/1/78 until
cancelled 12:01AM, standard time
at North Brunswick, New Jersey.

Named Insured - Boy Scouts of America, National Council and Local Council named herein.

LOCAL COUNCIL: National and All Local Councils COUNCIL NO. N/A

ADDRESS: P.O. Box 61030 Dallas/Ft. Worth Airport, TX 75261

THE INSURANCE PROVIDES THE FOLLOWING COVERAGES AND LIMITS OF LIABILITY, SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF THE POLICY, FOR ALL SCOUTING ACTIVITIES OF THE NAMED LOCAL COUNCIL. INCLUSION OF MORE THAN ONE NAMED INSURED DOES NOT INCREASE THE COMPANY'S TOTAL LIMIT OF LIABILITY.

HAZARDS	LIMITS
COMPREHENSIVE-GENERAL LIABILITY and NON-OWNED AUTOMOBILE	BODILY INJURY AND PROPERTY DAMAGE LIABILITY \$500,00 per occurrence COMBINED SINGLE LIMIT \$500,000 aggregate as applicable
COVERAGE INCLUDED FOR:	Premises-Operations - Independent Contractors - Completed Operations/ Products - Blanket Contractual - Personal Injury - Employee Exclusion deleted - Malpractice-Incidental - Broad Form Vendors - Non-Owned Autos, Hired Cars & Drive other Car coverage - Employers Liability Stop Gap-where applicable - Watercraft Liability- owned and non-owned - Host Liquor Law Liability - Fire Legal Liability - Real Property - Broad Form Property Damage - Employee Benefits Liability

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TERRITORY: Worldwide

ADDITIONAL INSURED:

ALL SCOUT OFFICIALS, including Council members, Executive Board members, Council and District Committee members, Unit Leaders, Unit committees, Commissioners, Counselors, Camp Leaders and instructors - in short, all Cub, Scout, and Explorer Leaders; PROFESSIONAL AND NON-PROFESSIONAL EMPLOYEES, CHARTERED INSTITUTIONS(SPONSORS), VOLUNTEER WORKERS, (Whether or not registered Scouts) when engaged in Scouting operations as directed by a Scout Official. JUNIOR LEADERS, AUXILIARY ORGANIZATIONS AND THEIR MEMBERS; UNIT AND ITS MEMBERS; DONORS OF AUTOMOBILES-Donor or his representative when his automobile is being used in Scouting activities with the approval of a Scout official.

CERTIFICATE HOLDER IS ADDED AS AN ADDITIONAL INSURED. YES (X) NO ()

AS RESPECTS: The use of U.S. forest lands for Boy Scout Activities. In addition as respects these activities, the United States of America is added as an additional insured and will be indemnified against third party claims for injury to persons and property.

It is the intention of the company, if policy is cancelled that 30 days written notice will be given to Certificate Holder.

Authorized Representative
INSURANCE COMPANY OF
NORTH AMERICA

Signed /s/
Dated 1-14-80

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1566.11 - Exhibit 02--Continued

Boy Scouts of America

LOCAL COUNCIL: National and all Local Councils
ADDRESS: P.O. Box 61030
Dallas/Ft. Worth Airport, TX 75261
PRODUCER: Alexander & Alexander, Inc.
1185 Avenue of the Americas
New York, New York 10036
NAMED INSURED - BOY SCOUTS OF AMERICA, NATIONAL COUNCIL AND LOCAL COUNCIL NAMED HEREIN.
POLICY NUMBER: GLP 706452 POLICY PERIOD: From 1/1/78 until Cancelled 12:01AM, Standard time at Irving, Texas

This is a certified copy of the Master Policy issued to the Boy Scouts of America which neither affirmatively nor negatively amends, extends, or alters the coverage, limits, terms or conditions of the Master Policy.

The insurance provides the following coverages and limits of liability, subject to all the terms, conditions, and exclusions of the policy, for all scouting activities of the named local council. Inclusion of more than one named insured does not increase the company's total limit of liability.

HAZARDS		LIMITS
Comprehensive - General Liability and Non-Owned Automobile	Bodily Injury and Property Damage Liability	\$500,000 per occurrence COMBINED SINGLE LIMIT 500,000 aggregate As applicable

This Declarations and Coverage Part(s), with Policy Standard Provisions and Endorsements, if any, issued to form a part thereof, completes the above numbered policy.

/s/

Authorized Representative
INSURANCE COMPANY OF NORTH AMERICA

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1566.11 - Exhibit 02--Continued

Agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to the limits of liability, exclusions, conditions, and other terms of the policy as follows:

Coverage A--Personal Injury Liability
Coverage B--Property Damage Liability
Coverage C--Malpractice Liability

The Company will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of:

A--Personal Injury
B--Property Damage or
C--Malpractice

(1) to which this insurance applies, caused by an occurrence and the Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such personal injury, property damage, or malpractice, even if any of the allegations of the suit are groundless, false, or fraudulent, and may make such investigation and, with the written consent of the Named Insured as respects malpractice, such settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements;

(2) pay all expenses incurred by the company, all costs taxed against the insured in any such suit and all interest accruing after entry of judgment until the company has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the company's liability thereon;

(3) pay all expenses incurred by the insured for such immediate medical and surgical relief to others, except to campers at an established camp where there is a resident physician or registered nurse employed, as shall be imperative at the time of the occurrence;

(4) reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the company's request; and the amounts so incurred, except settlements of claims and suits, are payable by the company in addition to the applicable limit of liability of this policy.

EXCLUSIONS

This insurance does not apply:

(a) to personal injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of (1) and aircraft owned or operated by or rented or loaned to the Named Insured, or (2) any automobile owned or leased on a long-term basis by the Named Insured; but this

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exclusions does not apply to the parking of an automobile on premises owned by, rented to, or controlled by the Named Insured or the ways immediately adjoining, if such automobile is not owned by or rented to the Named Insured or to liability assumed by the Insured under contract.

(b) to personal injury or property damage arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to the Named Insured; but this exclusion does not apply to liability assumed by the Insured under contract;

(c) to personal injury or property damage due to war, where or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to (1) liability assumed by the Insured under contract, or (2) expenses for immediate medical and surgical relief under the Supplementary Payments provision;

(d) to any obligation for which the Insured or any carrier as his insurer may be liable under any worker's compensation, unemployment compensation or disability benefits law, or under any similar law;

(e) to personal injury or property damage resulting from the failure to the Named Insured's products or work completed by or for the Named Insured to perform the function or serve the purpose intended by the Named Insured, if such failure is due to a mistake or deficiency in any design formula, plan, specifications, advertising material or printed instructions prepared or developed by any Insured; but this exclusion does not apply to personal injury or property damage resulting from the active malfunctioning of such products or work.

(f) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of the Named Insured's products or work completed by or for the Named Insured or of any property of which such products to work form a part, if such products work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.

PERSONS OR ENTITIES INSURED

The unqualified word "Insured" includes:

(a) The named Insured, named in the Declarations of this policy.

(b) Scout Officials and employees whether or not registered with the Boy Scouts of America; units and their sponsors (charter organizations), and all volunteer workers working at the request of a scout official whether or not registered with the Boy Scouts of America; any organization or proprietor with respect to real estate management for the Named Insured; as respects Established Camps or Troop Camps, any affiliated troop or council.

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(c) any person, organization, trustee, estate, or governmental entity to whom or to which the Named Insured is obligated, by virtue of a written contract or by the issuance or existence of a permit, to provide insurance such as is afforded by this policy, but only with respect to operations by or on behalf of the Named Insured or to facilities of, or facilities used by the Named Insured and then only for the limits of liability specified in such contract, but in no event for limits of liability in excess of the applicable limits of liability of this policy.

(d) any Scout Official as defined herein and any Unit with respect to the use of a non-owned automobile in the scout activities of the Named Insured or any Unit; the donors and owners of non-owned automobiles while being used in the scout activities of the Named Insured or any Unit.

(e) Any vendor of Named Insured's products.

LIMITS OF LIABILITY

Regardless of the number of (1) Insured's under this policy, (2) persons or organizations who sustain personal injury, property damage, or malpractice of, (3) claims made or suits brought on account of personal injury, property damage, or malpractice, the Company's liability is limited as follows:

Personal Injury Liability, Property Damage Liability, and Malpractice Liability, the limit of the company's liability for all damages, including damages for care and loss of services, arising out of personal injury, including death at any time resulting therefore, sustained by one or more persons and for all damages, including damages for loss of use arising out of injury to or destruction of property, shall not exceed the amount stated in the declarations as a single limit as the result of any one occurrence.

For the purpose of determining the limit of the Company's liability, all personal injury, property damage, and malpractice arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

The inclusion in this policy of more than one insured shall not operate to increase the limits of the company's total liability to all insured's covered by this policy beyond the limits set forth in the declarations.

POLICY TERRITORY

This policy applies only to occurrences which take place during the policy period anywhere in the world outside the Union of Soviet Socialist Republics, Peoples Republic of China, and all other countries regarded as being under communist control or domination.

Countries are regarded as being under communist control or domination when listed by the U.S. Government in their list of Sub Group A (Sino-Soviet-bloc countries) under licensing provisions of the Export Control Act.

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WAIVER OF IMMUNITY

The company agrees that it will not use, either in the defense of suits against the insured or in the adjustments of claims, the immunity of the insured from tort liability, unless requested by the insured to interpose such defense. The insured states that the waiver of the defense of immunity shall not subject the company to liability for any portion of a claim, verdict or judgment in excess of the limits of liability stated in the policy.

DEFINITIONS

When used in this policy (including endorsements forming a part hereof);

Automobile

Except where stated to the contrary, the word "automobile" means a land motor vehicle or trailer as follows: (1) Owned Automobile--an automobile owned or leased on a long-term basis by the Named Insured; (2) Hired Automobile--an automobile used under contract in behalf of, or loaned to the Named Insured or any Unit provided such automobile is not owned by a leased on a long-term basis or registered in the name of (a) the Named Insured or any Unit or (b) any Scout Official or (c) an employee or agent of the named insured or any Unit who is granted an operating allowance of any sort for the use of such automobile; (3) Non-Owned Automobile--any other automobile.

Personal Injury

"Personal Injury" means (1) bodily injury, sickness, disease, disability, and if arising from any of the foregoing, mental anguish; (2) false arrest, detention or imprisonment, or malicious prosecution; (3) the publication or utterance of a libel or slander of other defamatory material, or a publication or utterance in violation of an individual's right of privacy, except when any of the foregoing of this part (3) arises from publications or utterances in the course of or related to advertising, broadcasting, or telecasting activities conducted by or on behalf of the Named Insured; (4) wrongful entry or eviction or other invasion of the right of private occupancy.

Completed Operations Hazard

"Completed Operations Hazard"--includes personal injury and property damage arising out of operation or reliance upon a representation or warranty made at any time with respect thereto, but only if the personal injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the Named Insured.

Damages

"Damages", as respect Coverage A and B, includes damages for death and for care and loss of services resulting from personal injury and damages for loss of use of property resulting from property damage: "damages", as respects Coverage C means all damages, including damages for death, which are payable because of injury to which the insurance afforded under Coverage C applies.

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Malpractice

"Malpractice" means injury to any person, other than an employee of any Insured, arising out of the rendering of or failure to render, by an insured as defined under this policy during the policy period, the following professional services; (a) medical, surgical, dental or nursing treatment to such person or the person inflicting the injury, including the furnishing of food or beverages in connection therewith, (b) furnishing or dispensing drugs or medical, dental, or surgical supplies or appliances if the injury occurs after the Named Insured has relinquished possession thereof to others, (c) handling of or performing post-mortem examinations on human bodies.

Mobile Equipment

"Mobile Equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the Named Insured, including the way immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle; power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transmit type); graders, scrapers, rollers, and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding, and building cleaning and equipment; and geophysical exploration and well servicing equipment.

Named Insured's Products

"Named Insured's Products" means goods or products manufactured, sold, handled, or distributed by the Named Insured or by others trading under his name, including any container thereof (other than a vehicle), but "Named Insured's Products" shall not include a vending machine or any property other than such a container, rented to or located for use of others but not sold.

Occurrence

"Occurrence" means an injurious exposure to conditions which results, during the policy period, in personal injury, property damage, or malpractice neither expected nor intended from the standpoint of the Insured.

CONDITIONS

Premium Computation

The premium for all Insuring Agreements is based upon the entire registered membership of the named insured and shall be computed by applying to each such member the applicable rate. Upon delivery of this policy the named insured shall pay the advance premium and at the end of each twelve (12) months of the policy period, shall render the company a statement of the membership as hereinbefore defined during that period and the earned premium shall be computed thereon and

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shall be paid to the company, except that the advance premium shown in the declarations shall be credited against the premium found to be due the company for the last twelve (12) months of the policy period. The company shall, in any event, retain the minimum premium stated in the Declarations.

Inspection and Audit

The company shall be permitted to inspect the named insured's premises, operations, and elevators and to examine and audit the books and records of the Named Insured at all reasonable times during the policy period and within three years after its termination insofar as they are related to this insurance, and the named insured shall render reasonable assistance and cooperation in furnishing the company with such information as it may require.

Notice of Occurrence

When an occurrence takes place, written notice shall be given by or on behalf of the insured to the company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the occurrence, the names and addresses of the injured and of any available witnesses.

Notice of Claim or Suit

If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons, or other process received by it or its representatives.

Assistance and Cooperation of the Insured

The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of injury.

Arbitration

Except with respect to liability assumed by the insured under a lease of premises, easement agreement, agreement, or escalator maintenance agreement, the company shall not be liable under this policy, as respects coverage afforded for assumed liability, for damages awarded in arbitration other than an arbitration proceeding wherein an indemnitee under a written contract or agreement seeks damages against the insured on account thereof and wherein the company is entitled to exercise the insured's rights in the choice of arbitrators and in the conduct of such arbitration proceedings.

Action Against Company

No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by a final judgment against the insured or by written agreement of the insured, the claimant and the company.

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Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join the company as a co-defendant in any action against the insured to determine the insured's liability.

Bankruptcy or insolvency of the insured shall not relieve the company of any of its obligations hereunder.

Other Insurance

If other collectible insurance with any other insurer is available to any insured concerning a loss also covered hereunder, except insurance purchased to apply in excess of the limit of liability hereunder, the insurance hereunder shall be in excess of and not contribute with such other insurance; and the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance.

Subrogation

In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefore against any person or organization and the insured shall execute and deliver instruments and papers and so whatever else is necessary to secure such rights, but the company shall have no right of subrogation against any Troop, Buc Pack or Explorer Post coming under the Named Insured's control or chartered by the Named Insured. The Insured shall do nothing after loss to prejudice such rights.

Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or change in any part of this policy or stop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

Assignment

Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; if, however, the Named Insured shall be adjudged bankrupt or insolvent such insurance as is afforded this policy shall apply (1) to the Named Insured's legal representative, as the Named Insured, but only while acting within the scope of his duties as such, and (2) with respect to the property of the Named Insured, to the person having proper temporary custody thereof, as Insured, but only until the appointment and qualification of the legal representative.

Cancellation

This policy may be cancelled by the Named Insured by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter such cancellation shall be effective. This policy may be cancelled by the company for any reason except non-payment of premium by mailing to the named insured at the address shown in the declarations

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written notice stating when no less than sixty (60) days thereafter such cancellation shall be effective. This policy may be cancelled by the company for non-payment of premium by mailing to the named insured at the address shown in the Declarations written notice stating when no less than ten (10) days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice, either by the Named Insured or the company, shall be equivalent to mailing. If the Named Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation. If this policy insures more than one named insured, cancellation may be effected by the first of such Named Insured's for the account of all Named Insured's; notice of cancellation by the company to such first Named Insured shall be deemed notice to all insured's.

Declarations

By acceptance of this policy, the Named Insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the Company or any of its agents relating to this insurance.

IN WITNESS WHEREOF, the INSURANCE COMPANY OF NORTH AMERICA has caused this policy to be signed by its President and a Secretary at Philadelphia, Pennsylvania, and countersigned on the Declarations page by a duly Authorized Agent of the Company.

/s/

BERTRAM C. DEDMAN, Secretary

/s/

JOHN R. COX, President

IN WITNESS WHEREOF, the INSURANCE COMPANY OF NORTH AMERICA has caused this policy to be signed by its President and a Secretary at Philadelphia, Pennsylvania, and countersigned on the Declarations page by a duly Authorized Agent of the Company.

/s/

BERTRAM C. DEDMAN, Secretary

/s/

JOHN R. COX, President