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**FSM 1500 – EXTERNAL RELATIONS**

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

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**Approved:** JAMES M. PEÑA  
Acting Associate Deputy Chief, NFS

**Date Approved:** 11/18/2010

**Posting Instructions:** Interim directives are numbered consecutively by title and calendar year. Post by document at the end of the chapter. Retain this transmittal as the first page(s) of this document. The last interim directive was 1560-2009-1 to FSM 1560.

<b>New Document</b>	id_1560-2010-1	10 Pages
<b>Superseded Document(s) (Interim Directive Number and Effective Date)</b>	id_1560-2009-1, 6/30/2009	12 Pages

**Digest:**

1560 - Reissues interim directive (id) 1560-2009-1 in its entirety with minor technical corrections.

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## **1563 - AMERICAN INDIAN AND ALASKA NATIVE RELATIONS**

### **1563.01e - Authorities**

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.

**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 descendant; (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.

### **1563.03 - Policy**

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).

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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.

### **1563.04 - Responsibility**

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

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.

#### **1563.04e - Regional Foresters, Station Directors, and Area Directors**

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 Managers**

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.

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### **1563.04g - Forest Supervisors**

- 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.

### **1563.05 - Definitions**

Add to the list of existing definitions the following:

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

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.

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

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

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.

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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.

**1563.11 - General Consultation Requirements**

**1563.11 - Exhibit 01**

**Tribal Government Consultation and Coordination Requirements**

<b>Authority</b>	<b>Whom To Contact</b>	<b>Subject</b>	<b>Time Frame</b>
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.	

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**1563.11 - Exhibit 01—Continued**

<b>Authority</b>	<b>Whom To Contact</b>	<b>Subject</b>	<b>Time Frame</b>
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.
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, not withstanding 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).

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**1563.11 - Exhibit 01—Continued**

Authority	Whom To Contact	Subject	Time Frame
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.
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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### **1563.3 - Reburial of Human Remains and Cultural Items**

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**

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.

#### **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.

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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).