

Indigenous Sacred Places and Cultural Protections Statement

Native Nations and Indigenous Peoples have been here since time immemorial. We stand together to protect our sacred places, medicines, burials, cultural items, and ceremonial ways, and to ensure Indigenous voices and representation lead in these important matters pertaining to our rights, freedoms, and ways of life. We believe that all life is sacred and must be protected. We reclaim the Indigenous names of our sacred places that were reimagined and reidentified without our consent. And we stand, not only for the protection of Indigenous Peoples living today, but for the Ancestors that went before us and for our future Indigenous generations.

The protection of Indigenous sacred places, Ancestors, cultural items, medicines, and cultural ways of life are paramount, and Native Nations', traditional societies', ceremonial grounds', and Indigenous spiritual leaders' authority on these matters must be given full weight and center around Indigenous free, prior, and informed consent.ⁱ These are matters that pertain to: our self-determination; our families, past, present, and future; and our ability to practice our ways of life. They represent a sacred duty and traditional law, which are indigenous to these lands.

The harms done to our sacred places, Ancestors, and cultural ways of life violate our natural rights, constitutional rights, natural & spiritual laws, and individual freedoms. These harms have taken an immeasurable toll on the health, safety, welfare, and well-being of our Peoples and caused drastic and intergenerational trauma, sickness, loss, and death. It is time we speak these truths and that the United States engage in a Truth and Reconciliation process of its treatment of Indigenous Peoples, our sacred places, and our cultural ways of life.

Consent is Indigenous to these lands and it is the free, prior and informed consent of our Native Nations, traditional societies, ceremonial grounds, Indigenous spiritual leaders, and Indigenous Peoples that should be fully honored and integrated into legislation, regulations, agency administration, executive orders, and other directives. The oversight and management of sacred places should be placed in the hands of Native Nations, traditional societies, ceremonial grounds, and Indigenous spiritual leaders. In this moment of self-reflection across the United States and the acknowledgement of past and present traumas inflicted upon Native Nations, traditional societies, ceremonial grounds, Indigenous spiritual leaders, and Indigenous Peoples without our consent, we request that the President and Congress take a strong position with us to protect sacred places and our Indigenous ways of life and implement policies, procedures, and legislation.

In doing so, the President and Congress should commit to the following Guiding Principles:

- The adoption of free, prior and informed consentⁱⁱ of Native Nations, traditional societies, ceremonial grounds, and Indigenous spiritual leaders as a principle that guides sacred places and cultural protection in policies, regulations, agencies, and the law.
- Equal distribution of authority in public lands management and administration with Native Nations, traditional societies, ceremonial grounds, and Indigenous spiritual leaders.ⁱⁱⁱ
- The development of Indigenous data governance structures with the free, prior and informed consent of Native Nations, traditional societies, ceremonial grounds,

Indigenous spiritual leaders, and Indigenous Peoples to protect culturally sensitive information, Indigenous knowledge, and Indigenous intellectual and cultural property rights.

- Recognition of Native Nations, traditional societies, ceremonial grounds, Indigenous spiritual leaders, and Indigenous Peoples as experts of our own culture, of sacred places, of our burial places, and on all cultural matters.
- Honoring and upholding the treaty rights and inherent sovereignty of Native Nations.
- Acknowledgement that sacred lands and waterways have inherent and natural rights, and should have the same rights as a person.^{iv}
- Enacting full protections for sacred places, such as: Arctic National Wildlife Refuge, Bear Butte, Bears Ears, Black Hills, Bristol Bay Watershed, Coldwater Springs, Greater Chacoan Landscape, Mauna Kea, Menominee River & Sixty Islands Area, Missouri River, Nantucket Sound, Oak Flat & Apache Leap, Pipestone National Monument, San Francisco Peaks, Serpent Mound, Wind Cave National Park, and all other sacred places.^v
- Eliminate the threats to sacred places from pollution and harm, such as destructive practices from extractive industries, including: Back Forty Mine, Pebble Mine, Keystone XL Pipeline, Dakota Access Pipeline, Mariner East Pipeline, Rio Tinto, Enbridge Line 3, Shasta Dam, and other harmful industry and practices to Indigenous sacred places.
- Investigate and stop the devastating effects that extractive industry development have on Indigenous women, including physical and sexual violence (rape, sexual assault, sexual assault of minors, and sex trafficking), resulting from Man Camps and dramatic increases in population without sufficient law enforcement. Not only are these horrific crimes against women, but they violate the sanctity of our sacred places.^{vi}

In addition, the President and Congress should commit to the following:

- Review and rescind (or issue new policies) in meaningful and robust consultation with Native Nations all Executive Orders, Presidential Proclamations, Presidential Memorandums, and Presidential Permits that damage and violate our sacred places, cultural protections, and rights including, but not limited to: Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects (Aug. 15, 2017); Executive Order Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects (Jan. 24, 2017); Executive Order on Promoting Energy Infrastructure and Economic Growth (April 10, 2019); Presidential Proclamation Modifying the Bears Ears National Monument (Dec. 4, 2017); Presidential Proclamation Modifying the Grand Staircase-Escalante National Monument (Dec. 4, 2017); Executive Order on the Review of Designations Under the Antiquities Act. (April 26, 2017); Presidential Memorandum on the Construction of the Keystone XL Pipeline (Jan. 24, 2017); Presidential Memorandum Regarding Construction of American Pipelines (Jan. 24, 2017); Presidential Memorandum on the Construction of the Dakota Access Pipeline (Jan. 24, 2017); Presidential Memorandum for the Construction of American Pipelines (Jan. 24, 2017); and all Presidential Permits, Executive Orders, Memorandums, and Proclamations in opposition to sacred lands and cultural protections. This process should occur in the least harmful way possible to Sacred Places, Indigenous Ancestors, and Indigenous

health, and may include issuing new Executive Orders or legislation to strengthen these protections.

- Reverse all Secretarial Orders that damage or violate our sacred lands, cultural protections, and rights, including, but not limited to Secretarial Order 3355 on Streamlining National Environmental Policy Act Reviews and Implementing Executive Order 13807 (August 31, 2017).
- Pass the Chaco Cultural Heritage Area Protection Act of 2019 (S.1079), Bears Ears Expansion and Respect for Sovereignty (BEARS) Act (H.R. 871), Antiquities Act (H.R. 1050/S. 367), Safeguard Tribal Objects of Patrimony Act of 2019 (H.R. 3846/S. 2165), and other legislation protecting sacred lands and cultural protections.
- Update Executive Order 13175 to include: “free, prior and informed consent” of Native Nations, traditional societies, ceremonial grounds, and Indigenous spiritual leaders; require agency-wide education of Native Nations, Indigenous Peoples, and all laws that pertain to sacred places protection and repatriation; and require inter-agency and intra-agency coordination of federal laws pertaining to sacred places protection, repatriation, and Indigenous cultural practices.
- Hold a meeting between Indigenous spiritual leaders and the President to discuss responsibilities and necessary actions for sacred places protection and global climate change.
- Require all federal agencies and the administration to come into full compliance with federal laws pertaining to sacred places, such as the National Historic Preservation Act (NHPA), National Environmental Policy Act (NEPA), Archaeological Resources Protection Act (ARPA), Native American Graves Protection and Repatriation Act (NAGPRA), Transportation Act, Clean Water Act, Clean Air Act, Endangered Species Act, Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, Indian Arts and Crafts Act, and PROTECT Patrimony, and hold administrative compliance hearings with Native Nations, traditional societies, ceremonial grounds, and Indigenous spiritual leaders regarding sacred places and cultural protections.
- Initiate an investigation into the public release of datasets pertaining to sacred places and burial places without the free, prior and informed consent of Native Nations and spiritual leaders.
- Establish a Native American cabinet-level position in the White House with sacred places and cultural protection experience, chosen by Native Nations and Indigenous spiritual leaders.
- Appoint senior level tribal appointees in all cabinet level federal agencies to ensure compliance with federal laws and diplomatic relationships with Native Nations.
- Eliminate harmful exemptions to sacred places and cultural protections under section 106 of the National Historic Preservation Act.
- Create an environmental protection standard in agency policies that requires agencies to first seek the input and consent of Native Nations, traditional societies, ceremonial grounds, and Indigenous spiritual leaders before initiating the scoping process.
- Implement a federal program for the return of Indigenous sacred places to Native Nations.
- Adopt pre-decisional, Indigenous consent-based administrative policies, directives, executive orders, and regulations prior to engaging in early and meaningful tribal

consultations pertaining to Indigenous sacred places, cultural issues, and access to sacred places at the U.S. borders. Free, prior, and informed consent should be obtained from Native Nations, traditional societies, Indigenous spiritual leaders, and Indigenous Peoples.^{vii}

- Initiate a federal investigation into and develop a GAO report on the failures in compliance, investigations, enforcement, and prosecutions of the Archaeological Resources Protection Act (ARPA), Native American Graves Protection and Repatriation Act (NAGPRA), National Historic Preservation Act (NHPA), National Environmental Policy Act (NEPA), Transportation Act, Clean Water Act, Clean Air Act, Endangered Species Act, Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, Indian Arts and Crafts Act, and PROTECT Patrimony, and other federal legislation pertaining to Indigenous sacred places and cultural protections.
- Adopt free, prior and informed consent of Native Nations into all policies, regulations, and agencies pertaining to sacred places and cultural protections.
- Stop commercial enterprises, universities, museums, private collectors, and institutions engaged in the buying, selling, trade, and transfer of Native American human remains, funerary objects, sacred objects, and cultural patrimony.
- Create a national study on the harmful effects of mining, fracking, oil and gas, and other extractive industries on Native American health, our sacred places, and of the long-term effects on the environment.
- Establish a required fund for each development project that covers remediation and clean-up in the event of an environmental disaster or health crisis of surrounding populations and includes funds set aside for decommissioning projects that have reached the end of their life.
- Adopt the U.N. Declaration on the Rights of Indigenous Peoples into executive orders, presidential proclamations, policies, and legislation, as a minimum standard for all things that affect our Indigenous populations.
- Pass Sacred Places and Cultural Protections legislation, drafted by Native Nations, Indigenous Peoples, Indigenous spiritual leaders, traditional societies, and Congress, with substantive protection and ensure an ongoing and well-funded commitment to these important Indigenous issues.

We look forward to discussing these matters with the President, Senators, and Representatives.

ⁱ The UN Declaration on the Rights of Indigenous Peoples establishes minimum standards regarding Indigenous Peoples. It was endorsed by President Obama on December 16, 2010. In particular, Articles 10, 11, 19, 28, 29, and 32 specifically reference free, prior and informed consent and call for Indigenous consent-based approaches by governments and their agencies concerning sacred lands and cultural ways of life. Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

ⁱⁱ *Id.*

ⁱⁱⁱ See e.g. BEARS EARS INTER-TRIBAL COAL., PROPOSAL TO PRESIDENT BARACK OBAMA FOR THE CREATION OF THE BEARS EARS NATIONAL MONUMENT (Oct. 15, 2015), available at <https://bearscoalition.org/wp-content/uploads/2015/10/Bears-Ears-Inter-Tribal-Coalition-Proposal-10-15-15.pdf>.

^{iv} See e.g. Establishing the Rights of the Klamath River. Res. of the Yurok Tribal Council. (May 9, 2019), available at [http://files.harmonywithnatureun.org/uploads/upload833.pdf?fbclid=IwAR0zOFrsXxyOeomawyeJXlim2wAM3G2NUbcgt0eDF3obzhLwcXAAcVG3Nso](http://files.harmonywithnatureun.org/uploads/upload833.pdf?fbclid=IwAR0zOFrsXxyOeomawyeJXlim2wAM3G2NUbcgt0eDF3obzhLwcXAAcVG3Nso;);

Te Awa Tupua (Whanganui River Claims Settlement) Act of 2017 (New Zealand). Pub. Act 2017, No. 7 (March 29, 2017), available at

http://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html?fbclid=IwAR3aj4_0ES1wj6ebZ0RLWZrhf5qJglzK7VU8V9keJE5Frgkj9QMwmd7kcxl.

^v Other sacred places that should hold the full weight of consent-based protection also include, but are not limited to: Antelope Hills, Antelope Springs, Big Canyon (Threatened by Big Canyon Pumped Hydro Storage), Badger Two Medicine, Badlands, Basin and Range, Bear Butte, Bear Lake, Bear Medicine Lodge, Black Mesa, Blue Lake, Boboquivari Mountain, Buffalo Springs, Bunchgrass Mountain, Cahokia, Cave Rock, Cedar Bluffs, Chickamauga Mound, Chief Cliff, Coastal Chumash Sacred Lands in the Gaviota Coast, Cocopah Burial and Ceremonial Grounds, Coldwater Springs, Colorado River, Columbia River, Deer Medicine Rock, Desert National Wildlife Refuge, Dzil Nchaa Si An (Mount Graham), Eagle Rock, Effigy Mounds, Enchanted Rock, Everglades, Fajada Butte, Fewkes Mound, Ganondagan, Garden of the Gods, Gold Butte, Grand Canyon, Grand Staircase-Escalante National Monument, Great Mound (Mound Bottom), Gulf of Mexico, Gwich'in Territory & Porcupine Caribou Herd, Gypsum Cave, Haleakala Crater, Hatchet Mountain, He Sapa, Hickory Ground, Holy Mountain, Horseshoe Bend, Hualapai Nation Landforms in Truxton and Crozier Canyons, Indian Pass, Kaho'olawe, Kasha-Katuwe, Kituwah, Kituwah Mound, Klamath River, Kumeyaay Bands Burial and Ceremonial Grounds, Lake Oahe, Lake Superior, Little Bighorn Battlefield Monument Memorial, Little Colorado River, Luiseno Ancestral Original Landscape, Magic City, Mato Paha (Bear Butte, Lakota), Maze, Medicine Bluffs, Medicine Hole, Medicine Lake Highlands, Medicine Wheels, Migi zii wa sin (Eagle Rock), Moccasin Bend Mound, Moku'ula, Mount Capitan, Mount Katahdin, Mount Mokuhinta, Mount Shasta, Mount Taylor, Mount Tenabo, Muhadagi Doag (South Mountain), Nine Mile Canyon, Noavose (Giving Medicine Mountain, Holy Mountain Tsistsistas, Bear Butte), Nunamta Aulukestai, Nu Wav Kaiv (Snow Mountain/Spring Mountain), Mukhya Kv, Ocmulgee Old Fields and National Monument, Old Stone Fort, Onondaga Lake, Organ Mountains, Organ Pipe Cactus National Monument, Painted Canyon, Palo Duro Canyon, Panther Mound, Petroglyphs National Monument, Pinson Mounds, Pipestone National Monument, Puget Sound, Puvugna, Pyramid Lake Stone Mother, Quechan Burial and Ceremonial Grounds, Rainbow Bridge, Rattlesnake Island, Red Rock, Red Butte, Rio Grande River, Rosebud Battlefield, Sand Creek, Sloan Canyon, Snoqualmie Falls, South Mountain, Stone Mountain, Sutter Buttes, Sweetgrass Hills, Topock Maze, Tsagaglalal (She Who Watches), Horsethief Butte Lake, Tse Whit Zen Village, Tsi-Litch Semiahmah Village, Tule Springs, Turtle Mounds, Tus Us, Valley of Chiefs, Valley of Fire, Valley of the Gods, Valmont Butte, Wakarusa Wetlands, Walking Woman Place, Washita, West Berkeley Shellmound and Village Site, Wind Cave Winnemucca Lake, Wolf River, Woodruff Butte, Wounded Knee, Yucca Mountain, Zuni Salt Lake, Sacred Places of All Removed Nations, All Massacre Sites, All Waters and Wetlands.

^{vi} Kathleen Finn, Erica Gajda, Thomas Perin & Carla Fredericks, *Responsible Resource Development and Prevention of Sex Trafficking: Safeguarding Native Women and Children on the Fort Berthold Reservation* 40.1 Harv. J.L. & Gender 1 (2017). Carla F. Fredericks, Kate Finn, Erica Gajda, Jesse Heibel, *Responsible Resource Development: A Strategic Plan to Consider Social and Cultural Impacts of Tribal Extractive Industry Development*, Harv. J.L. & Gender 1, 26 (Oct. 2018) available at

<https://scholar.law.colorado.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1671&context=articles>.

^{vii} See *e.g.* Testimony of The Honorable Ned Norris, Jr., Chairman, Tohono O'odham Nation of Arizona, U.S. House of Representatives Committee on Natural Resources, Subcommittee for Indigenous Peoples of the United States. Hearing on Destroying Sacred Sites and Erasing Tribal Culture: The Trump Administration's Construction of the Border Wall, *available at*:

<https://naturalresources.house.gov/imo/media/doc/SCIP%2002.26%20-%20Chairman%20Norris.pdf/>.